

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) - 3795/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016  
In the matter of  
Ms. Darshita Haresh Mehta,  
8-A/1, Prithvi Apartment, Altamount  
Road, Mumbai-400026  
.... Petitioner

Vs.

Gloabtel Convergence Limited,  
190, R. K. Building, Ground Floor, 9<sup>th</sup>  
Khetwadi Road, Mumbai - 400004  
.... Respondent

Order delivered on: 04.02.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Ankit Lohia, Advocate, Ms. Vaishali Shah, Advocate,  
Mr. Parthi Gotecha, Advocate, i/b Vaishali Shah.

For the Respondent: Mr. Pinaz Contractor, Advocate

*Per: V. Nallasenapathy, Member (T)*

ORDER

1. Ms. Darshita Haresh Mehta (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Gloabtel Convergence Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 15.07.2015 in making payment to the extent of Rs. 95,28,888/- including interest, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner had advanced a sum of Rs. 35 lacs on 16.10.2014 to the Corporate Debtor by RTGS payment. The Corporate Debtor by letter dated 10.04.2015 admitted liability to the extent of Rs. 41,12,500/- and stated that the same will be paid on or before 15.05.2015, with a further confirmation that the Petitioner is entitled interest @2.25% p.m. compounded quarterly if the due is not paid on or before 15.05.2015.
3. Further on 15.05.2015, the Corporate Debtor admitted liability to the Petitioner to the extent of Rs. 42,97,560/- with further confirmation that in the event the aforesaid amount is not paid on 15.05.2015 the Corporate

Debtor shall pay additional interest @2.25% p.m. compounded quarterly upon the said amount till the realisation.

4. The Petitioner has enclosed the copies of seven cheques, all dated 23.02.2016 to the extent of Rs. 34 lacs issued by the Corporate Debtor which were all dishonoured when presented for payment by the Petitioner. The cheque return memos were also enclosed.
5. The Corporate Debtor by an E-mail dated 10.03.2016 addressed to the solicitor of the petitioner stated that *"in respect of your claim and my amount payable to you I am arranging the funds and whatever payable to you, shall be paid to you. I will try to repay as early as possible but need 9 months to repay you the amount with few weeks grace period. Please understand my situation."*
6. The Corporate Debtor filed reply contending as below:
  - a. The Petitioner is guilty of suppressive vari and suggestio falsi which disentitles the petitioner to any relief.
  - b. The Petition filed by the power of attorney holder Mr. Atman Harsh Mehta is based on the power of attorney dated 24.04.2016 and the said power of attorney was executed before the notification of Insolvency and Bankruptcy Code, 2016 and further there is no specific power of attorney to initiate CIRP under the code and hence the Petition deserves to be dismissed.
  - c. The Petition is based on the mere bank statement wherein the sum of Rs. 35 lacs was disbursed on 16.10.2014 and the said entry in the Bank Statement relied on by the Petitioner do not evident the disbursement to the Corporate Debtor.
  - d. The claim is barred by limitation as the date of default was 15.07.2015 whereas this Petition was filed by 05.10.2018.
  - e. Since the Petitioner advanced money to the Corporate Debtor as an investment and not as a debt and the same does not qualify with the definition of the financial creditor defined under Section 5 (7) of the code. The debt is not a financial debt as defined under Section 5 (8) of the Code.
  - f. The Petitioner has not placed any documents/ loan agreement in support of the claim and there was no agreement to the interest of 2.25% p.m. compounded quarterly as claimed by the petitioner.
  - g. The Petitioner has failed to show that the debt disbursed was against consideration for time value of money as prescribed under Section 5 (8) of the Code

h. The investment of 35 lakhs by the petitioner is only an investment at an agreed rate of return and the same is not a financial debt.

i. The acknowledgement issued by the Corporate Debtor and instructions of the power of attorney holder is only for the repayment of the investment in good faith and the acknowledgement is not for repayment for debt/loan.

j. The Corporate Debtor had issued undated security cheques to the power of attorney holders without the mentioning the name of the parties and the amount. The power of attorney holder without information to the Corporate Debtor filled up the details of the petitioner in the said cheques which were dishonoured.

k. There was no principal document executed between the petitioner and the Corporate Debtor in relation to agreement for charging interest of 2.25% p.m. compounded quarterly.

7. (a) The Corporate Debtor very much admits that the amount disbursed by the Petitioner is only towards investment and hence he cannot take a stand that the Corporate Debtor has not received the amount of Rs. 35,00,000/- from the Petitioner.

(b) The letter dated 10.04.2015 issued by the Corporate Debtor to the Petitioner (and to the other family members of the Petitioner in respect of borrowings) reads as below:

*"To*

*Mr. Atman Mehta/Ms. Rupa Mehta/ Ms. Darshita Mehta*

*Dear Sirs,*

*Re: Your outstanding amounts lying with us*

*This is to confirm to you that as of today the following principal sums are lying outstanding with us, payable by us to you.*

*1. Atman Mehta Rs. 77,00,000/- (Rupees Seventy-Seven Lakh Only)*

*2. Rupa Mehta Rs. 3,00,000/- (Rupees Three Lakh Only)*

*3. Darshita Mehta Rs. 35,00,000/- (Rupees Thirty-Five Lakh Only)*

*TOTAL Rs. 1,15,00,000/- (Rupees One Crore Fifteen Lakh Only)*

*We shall pay the aforesaid principal sums together with interest thereupon, as under, on the following dates.*

*1. Atman Mehta Rs. 34,37,500/- (Rupees Thirty-Four Lakh Thirty- Seven Thousand Five Hundred Only)*

*2. Atman Mehta Rs. 61,70,000/- (Rupees Sixty-One Lakh Seventy Thousand Only)*

*3. Rupa Mehta Rs. 3,52,500/- (Rupees Three Lakh Fifty-Two thousand Five Hundred Only)*

*4. Darshita Mehta Rs. 41,12,500/- (Rupees Forty-One Lakh Twelve Thousand Five Hundred Only)*

*TOTAL Rs 1,40,72,500/-(Rupees One Crore Forty Lakh Seventy-Two thousand Five Hundred Only)*

*We further confirm that in the event we are unable to make the aforesaid payment on the aforesaid dates, we shall bear and pay to you further interest thereupon @ 2.25% p.m. compounded quarterly, till payment and/or realization thereof.*

*Thanking you.*

*Yours sincerely,*

*Gloftel Convergence Limited*

*sd/-*

*Tushar Morakhia, Director"*

(c) The above letter clearly shows that interest is payable @ 2.25% p.m. compounded quarterly and hence this is a Financial Debt as defined u/s 5(8) of the Code, which reads as below:

*"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) money borrowed against the payment of interest;*

*(b) .....*

*(c) .....*

*...*

*..*

*..*

*(i) ....."*

(d) Even though there is no principal document for the debt (such as promissory note) the letter issued by the Corporate Debtor acknowledging the liability with interest payable, is enough for the proof of financial debt.

(e) In view of the letter dated 10.04.2015 the contention of the Corporate Debtor that the amount disbursed by the Petitioner is only towards investment and the same is not Financial Debt is not at all acceptable and the same is a Financial Debt since interest is provided.

8. In view of the above, the Petitioner has established his case that Financial Debt is due from the Corporate Debtor who has defaulted in making payment to the Petitioner.

9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- I (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 04.02.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Rajendra Karanmal Bhuta, 1207, Yogi Paradise, Yogi Nagar, Borivali (West), Mumbai, Maharashtra, 400092, Email:- rkbhuta@gmail.com, having Registration No. IBBI/IPA-001/IP-P00141/2017-18/10305 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.

11. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-  
V. Nallasenapathy  
Member (Technical)

sd/-  
Bhaskara Pantula Mohan  
Member (Judicial)