

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP (IB)- 4023/I&BP/MB/2018

Under Section 7 of the I&B Code,
2016

In the matter of

Jagdambey International

E-10, 4th Floor, Office Enclave,
Sector – 1, Rohini, Delhi - 110085

.... Petitioner

Vs.

Visa Powertech Pvt. Ltd.

W-223, MIDC, TTC Industrial Area,
Khairne, Navi-Mumbai - 400709

.... Respondent

Order delivered on: 06.03.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Parveen Kumar Aggarwal, Advocate.

For the Respondent: Mr. Shyam Kapadia a/w Mr. Abhijeet Shinde, Ms. Sara
Sundaram, Advocates.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Jagdambey International (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Visa Powertech Pvt. Ltd (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 09.10.2018 in repayment of the financial loan granted to the Corporate Debtor to the extent of Rs. 40,00,000/-, 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 initially filed Form 1 claiming a sum of Rs. 61,45,745/- saying that they are entitled to charge interest @18% p.a. and accordingly claimed interest of Rs. 21,45,745/-. Subsequently, the Petitioner filed amended Form 1 claiming the Principal sum of Rs. 40,00,000/- as unpaid financial debt and excluding interest.

3. The Petitioner contends that Mr. Satindra Baldevraj Aggarwal, the director of the Corporate Debtor have some acquaintance with Mr. Amit Goyal, one of the partner of the Petitioner and requested in October 2015 for a Short Term Financial loan of Rs, 50,00,000/- for two to three months. The Petitioner by way of bank transfer transferred Rs. 28,00,000/- on 20.10.2015 and Rs. 17,00,000/- on 23.10.2015 to the Corporate Debtor. The Petitioner further submits that the loan is repayable with interest @ 18 % p.a. and in view of the previous acquaintance and mutual trust the Petitioner lent the amount without insisting for a written document.
4. The Petitioner submits that the Corporate Debtor transferred a sum of Rs. 5,00,000/- to the bank account of the Petitioner on 26.11.2015. After the above payment the Petitioner submits that there a due of Rs. 40,00,000/- from the Corporate Debtor.
5. The Petitioner sent a demand notice on 25.09.2018 through an advocate calling upon the Corporate Debtor to pay a sum of Rs. 40,00,000/- along with interest @ 18 % p.a. within 10 days of the receipt of the notice. The Corporate Debtor by an email dated 09.10.2018 addressed to the advocate of the Petitioner, stated that the claim is bad in law, with malafide intent, they do not carry any material substance and it is a claim utterly wrong in representation. It was further stated that they will submit a detailed response through their lawyers shortly.
6. The Corporate Debtor sent a detailed reply on 23.10.2018 through their counsel to the counsel for the Petitioner stating that the amount of Rs. 45,00,000/- was a part payment by the Petitioner on behalf of R.K. Singh and Sai Ysh Solar for the commissioning of 500 k.w. Solar P V Power Plant project and the same has been duly accounted in the Corporate Debtor's ledger. They further submitted that since the Petitioner was demanding unreasonable commission on the ground that they got the Letter of Award for the solar power project in favour of the Corporate Debtor they have paid a sum of Rs. 5,00,000/- as commission. Thus they have denied liability saying that the amount paid by the Petitioner was on behalf of M/s R. K. Singh and M/s Sai Ysh Solar towards the payment obligation under the letter of award.
7. The Corporate Debtor filed reply, the Petitioner filed rejoinder and the Corporate Debtor filed sur-rejoinder. An additional affidavit was filed by the Petitioner for amending Form 1 and an affidavit in reply to the amended

application was filed by the Corporate Debtor. Both the parties have filed the written submissions also.

8. The Corporate Debtor in their reply raised the following contentions;
 - (a) There is no relationship between the debtor and the creditor as a financial creditor. The amount paid by the Petitioner was equity contribution of Sai Ysh Solar towards the solar project and the Corporate Debtor issued bank receipt vouchers showing this payment made by the Petitioner as payment on behalf of the Sai Ysh Solar. There is no agreement or any other document on record to support the alleged loan. The Petitioner failed to show any correspondence demanding the alleged money for the Corporate Debtor for the last 3 years and this reveals the frivolity of the claim. The Petitioner is not a financial creditor within a meaning of section 5(7) of the Code and the debt is not a financial debt as provided as under section 5(8) of the Code.
 - (b) The claim is barred by limitation in view of the fact that the alleged loan was advanced on 20.10.2015 and 23.10.2015 and this petition was filed on 22.10.2018. The alleged loan of Rs. 15,00,000 advanced on 20.10.2015 is barred by limitation. Since the Petitioner failed to substantiate that the payment of Rs. 5 lacs was towards the alleged loan, the Petitioner does not have the benefit of section 19 of the Limitation Act, 1963. Hence the claim is time barred.
 - (c) The contents of the petition reveals that the Petitioner is a money lender with high rate of interest @18% p.a., not registered as money lender or NBFC, not authorised to carry on the business of financing and is prohibited under Section 10 of the Bombay Money Lenders Act, 1946.
 - (d) The Corporate Debtor being an unregistered Partnership Firm, the Petitioner is barred from instituting any proceedings as provided under Section 69(2) of Indian Partnership Act.
 - (e) The Corporate Debtor has been communicating with the Petitioner for the release of payment, for the commissioning of the solar power plant. On 04.08.2015, by an email, the Corporate Debtor requested Mr. Anil Goyal, one of the partner of the Petitioner to release the payment of Rs. 67,85,575/- by attaching the RA Bill No. 002 dated 04.08.2015.
9. Even though the Corporate Debtor has raised so many issues the first and foremost issue that has to be decided is whether the amount

claimed by the Petitioner is a financial debt and whether the Petitioner is a financial creditor within the parameters of the Code.

10. Section 5(8) of the Code defines Financial Debt as *"a debt alongwith interest, if any, which is disbursed against the consideration for time value of money and includes-*
 - a. Money borrowed against payment of interest;*
 - b. Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*
 - c. Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
 - d. The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
 - e. Receivable sold or discounted other than any receivable sold on non-recourse basis;*
 - f. Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;*
 - g. Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
 - h. The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause"*
11. When the facts of this case are analysed, the financial debt claimed does not fit into any of the clauses mentioned under section 5(8) of the Code.
12. It is unclear why the Petitioner was keeping quiet for three years without asking for the principal or interest when Rs.40 lacs is advanced to the Corporate Debtor as a financial debt except the only Demand Notice dated 25.09.2018. No document was produced in support of the loan showing this amount as a financial debt except saying that there is an oral agreement.
13. The Petitioner submitted that the payment made to the Corporate Debtor was accounted by them under the heading "other current assets" for the year 2015-16 and in the year 2016 – 17 the same was accounted under

the heading "loans and advances". It is not even the contention of the Petitioner that interest has been charged to the Corporate Debtor and the same was debited to the account of the Corporate Debtor. The same amount of Rs. 40 Lacs was only shown in the Balance Sheet for both the years which means that no interest was charged. Hence the Petitioner cannot say that the money is given for interest but subsequently also in the amended Form – I, the claim for interest was given up by the Petitioner and hence the transaction cannot fit in the definition of "Financial Debt" as defined under the Code. It is not the case of the Petitioner that they are the shareholders/directors/promoters of the Corporate Debtor and had given interest free loan to the Corporate Debtor, so that they will get some indirect benefit by increase in the earning of the Corporate Debtor or by a saving in interest expense since there is no outgo on account of interest payment and ultimately there is some indirect monetary benefits to the stakeholders so that the amount advanced can be considered as a "Financial Debt".

14. Per contra the Corporate Debtor claims that the amount paid by the Petitioner is towards the equity contribution for the solar project, on behalf of Sai Ysh Solar and accordingly the payment made by the Petitioner was credited to the account of Sai Ysh Solar on 05.12.2015 and produced the ledger account to that effect. Further, the Corporate Debtor as early as on 04.08.2015 requested the partner of the Petitioner to pay a sum of Rs. 67,85,575/- for commissioning the solar project. Hence, the contentions of the Corporate Debtor in this regard cannot be ignored totally considering the relationship between the parties and the correspondence between the Corporate Debtor and the partner of the Petitioner.
15. Since the Petitioner has failed to prove the basic requirement that the amount advanced is a financial debt as provided under the Code, the other contentions raised by the parties are not gone into detail.
16. In view of the above discussion the petition is dismissed with liberty to the Petitioner to proceed in accordance with law. No cost.

SD/-
V. NALLASENAPATHY
Member (T)

SD/-
BHASKARA PANTULA MOHAN
Member (J)