

**IN NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT- V**

**C.P. 745/IB/MB/2021**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4  
of the Insolvency and Bankruptcy  
(Application to Adjudication Authority)  
Rule 2016)

*In the matter of*

**Mrs. Neeta Navin Nagda**

13, Vasant Breeze Chambers, 2<sup>nd</sup> Floor,  
Opp. Maheshwari Udyan, Matunga  
(C.R.), Mumbai – 400019

**..... Financial Creditor/  
Petitioner**

**Vs**

**Anusmera Realty and Infra Private  
Limited**

A.F.F. 83/A, N. G. Acharya Marg,  
Chembur, Mumbai - 400 071

**..... Corporate Debtor/  
Respondent**

**Order Reserved On: 16.01.2023**

**Order Pronounced On: 23.03.2023**

**Coram:**

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via Videoconferencing)*

**For the Petitioner:** Adv. Jayom Shah a/w Ms. Maitri Malde i/b Mr. Ranit Basu

**For the Corporate Debtor:** Adv. Nausher Kohli

*Per: Shri. Kuldip Kumar Kareer, Member (Judicial)*

### **ORDER**

1. The above Company Petition is filed by Mrs. Neeta Navin Nagda, hereinafter called as "**Petitioner**" seeking to initiate of Corporate Insolvency Resolution Process ("**CIRP**") Anusmera Realty and Infra Private Limited hereinafter called as "**Corporate Debtor**" by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 7,57,56,215/-/-
2. The Petitioner submits that she is a shareholder of the Corporate Debtor holding 24.63% equity share capital.
3. The Petitioner submits that during the course of business, the Corporate Debtor was in continuous need of funds to carry on construction work of building project. In this regard, the Petitioner disbursed an about of Rs. 4,41,25,000/- to the Corporate Debtor. It was also agreed between the parties, that the Petitioner will levy an interest from 01.04.2016 at the rate of 12% per annum upon the amount so disbursed by the latter. Subsequently, the Respondent paid interest at the interest rate of 12%p.a. as agreed for the financial year 2016-2017, however, for financial year 2017-2018 the Respondent paid interest at the rate of 9% which was objected to by the Petitioner. After the said objection, the Respondent paid interest at the rate of 12% for the year 2017-2018 and issued a statement of confirmation of accounts accordingly. The Petitioner submits that for the financial year 2018-2019 the Respondent has neither paid interest nor credited the interest to the principal amount in the financial statements and has continued to do so for the subsequent years.
4. As the Corporate Debtor started defaulting in paying interest since April 2019, the Financial Creditor has time and again issued several reminders to the Corporate Debtor and its directors for payment of interest. But the Corporate Debtor avoided repayment of debt citing financial difficulties.

5. Thereafter, the Petitioner has called upon the Respondent to return the outstanding principal amount along with interest due thereof by a letter dated 19.09.2020. The Respondent issued a reply dated 27<sup>th</sup> October, 2020 to the said notice denying the liability and insisting that the payment was towards share premium. In addition to that, the Petitioner sent another reminder by a letter dated 17.04.2021 to the Corporate Debtor demanding repayment of loan which was again refused by the Corporate Debtor vide its email dated 28.04.2021.
6. Thus, in spite of repeated reminders and follow ups and demands by the Petitioner calling upon the Respondent to repay the balance outstanding amount, the Respondent has failed to repay the outstanding amount due and payable by it. Hence the Petition.

**Reply filed by the Respondent:-**

7. The Respondent has filed an affidavit in reply controverting the allegations made in the Petition.
8. The Respondent submits that the Petitioner is an investor and not a financial creditor of the Respondent, as the Respondent and the Petitioner had not entered into any loan agreement and neither any other written understanding is in place to prove that the alleged amount was advanced as a loan. The Petitioner has failed to furnish any financial contract/loan agreement along with the present Petition to show that the disbursement of the alleged amount is a loan transaction. The Respondent submits that no 'financial contract' is in place setting out the terms of loan including the date of repayment, applicable interest and date of default. The Petitioner has not mentioned any repayment schedule that was agreed for the purported loan. In absence of a financial contract, there is no basis to establish that the Petitioner is a financial creditor of the Respondent and the amount alleged to be in default in the present Petition is a financial debt as per the terms of section 5(7) and 5(8) of the Code. The Respondent further submits that there is nothing on record to ascertain the date of default. The Petitioner has failed to mention any date of default with respect to the amount claimed in default.

9. The Respondent has denied that any financial debt is due and payable to the Petitioner as no loan was disbursed against time value of money. The Respondent submits that the alleged amount is primarily an 'investment in the Project' and not a disbursement against the time value of money. The Respondent submits that an amount which is invested in a real estate project for commercial consideration cannot be considered as a 'loan for time value' without any confirmation from the Respondent. Thus, an investor cannot be treated as a Financial Creditor. In addition to that, the investment in the Project which is reflected as a 'loan' in the books of accounts of the Respondent, fails to fall within the definition of financial debt under section 5(8) of the Code. Thus, the Petitioner is not a financial creditor holding financial debt which is in default of payment by the Corporate Debtor.
8. The Respondent submits that there is no financial contract, no agreement for charging interest on the amount, no evidence to show that interest was charged periodically as per any established accounting principle. The Respondent further submits that no interest was payable at the rate of 12% per annum as alleged by the Petitioner and neither any interest was demanded by the Petitioner from the year 2012 till 2016.
9. The Respondent submits that the Petitioner has neither invested in the shares of the Respondent Company to earn dividends or to reap benefit of appreciation in value of shares, nor the Petitioner has advanced the purported loan to earn interest. The Petitioner has invested to earn profits out of the real estate Project and since the Project got delayed. Accordingly, it was agreed that the Petitioner should get a return of 9.00% for FY 2016-2017 and FY 2017-2018. The Petitioner has accepted a credit return of 9.00% p.a. without any objection as is evident from the signed confirmation of account for the FY 2016-2017. However, when the same rate of return of 9.00% p.a. was applied for FY 2017-2018, the Petitioner demanded a return of 12.00% p.a. It is further stated that no interest has been charged from FY 2012-2013 to FY 2015-2016 on the purported loan. In addition to that, the Petitioner is not able to decide whether the claimed loan carries simple interest or compound interest. Since the

Petitioner's letter dated 22.09.2020, the Petitioner has demanded compound interest at 12% p.a. but, in the same letter, the Petitioner has, for FY 2017-2018, demanded interest at the rate of 12% on simple interest basis.

10. The Respondent submits that TDS as required was deducted on the interest credited for two years to the account of the Petitioner. Since, the amount invested in the Project by the Petitioner was already shown as a loan in the books of the Respondent, the return was given in the form of interest.
11. The Respondent submits that since, there exists no loan document and the amount advanced by the Petitioner, is an investment and not a loan. Thus, the Petition is liable to be dismissed.

**Findings: -**

12. We have heard the Counsel for the parties and have gone through the records.
13. During the course of the arguments, the Counsel for the Petitioner has argued that it stands established from the documents placed on record that the Petitioner advanced a loan of Rs. 4,41,25,000/-. The details of the disbursement of the loan is evident from the bank statements (Exhibit -B) of the Petitioner. The Counsel for the Petitioner has further pointed out that though the initial interest on the disbursed amount was not to be charged but subsequently it was agreed that the Respondent would pay interest. The Counsel for the Petitioner has further referred to Exhibit D1 to D7 whereby the Respondent confirmed the outstanding balance on yearly basis from 01.04.2014 to 01.04.2019. The Counsel for the Petitioner has further pointed out that the Respondent has been paying interest and after deducting TDS as is evident from Form No. 16A, i.e. Exhibit I-1 and I-2. The Counsel for the Petitioner has further referred to the financial statement as Exhibit-J for the year 2019 to 2020 wherein the Petitioner shown to be in the list of persons from whom unsecured loans have been availed by the Respondent/Corporate Debtor. Therefore, according to the Counsel for the Petitioner, the factum of the financial debt having been availed by the Respondent from the Petitioner stands cogently

proved on record. Since the Respondent has not repaid the outstanding amount despite notice (Exhibit-E) dated 19.09.2020 having been issued, clear cut case of default on the part of the Respondent is made out and therefore, the Petition under Section 7 deserves to be admitted.

14. On the other hand, the Counsel for the Respondent has argued that the Petitioners have failed to make out a case that a financial debt is owed by the Respondent to the Petitioner. In this regard, the Counsel for the Respondent has pointed out that there is no loan agreement. Moreover, the Petitioner herself is the single largest shareholder of the Corporate Debtor as she along with her nominees holds 31.98% shares. The husband of the Petitioner has been acting as an Auditor of the Respondent from 01.04.2010 to 31.03.2013. The Counsel for the Respondent has further contended that merely on the basis that TDS is shown to have been deducted by the Respondent does not prove the transaction to be a financial debt. The Counsel for the Respondent has further argued that since the nature of transaction is not proved to be a financial debt, on this ground alone, the Petition deserves to be dismissed.
15. It has further been argued on behalf of the Corporate Debtor that the husband of the Petitioner namely Mr. Navin Shah alias Mr. Naveen Nagda was the Auditor of the Corporate Debtor and as in the year 2011-12, the Company was doing good business in its real estate project. Mr. Navin Nagda invested money in the Corporate Debtor through his wife and cleverly reflected the investment as loan in the books of accounts of the Corporate Debtor. Otherwise, no person would advance unsecured loans of crores of rupees without a loan agreement and that too without a security. The Counsel for the Respondent has further argued that the Petitioners and her nominees paid only the face value of Rs. 10 each in respect of 3198 shares of the Corporate Debtor and it does not appeal to reason that such substantive stake in the Corporate Debtor could be acquired for a meagre sum of Rs. 31980. This clearly shows that no loan was advanced and in fact, the investment was made by Mr. Naveen Nagda through his wife, i.e. the Petitioner. Subsequently, return on investment @ 9% per annum was credited to the account of the Petitioner for the years ending 31.03.2017 to

30.03.2018. All the circumstances clearly indicate that there was no financial debt and the claimed amount was only an investment for acquisition of the equity stake in the Corporate Debtor. In support of his contentions, the argument of the Counsel for the Corporate Debtor has relied upon "**Pawan Kumar Vs. Utsav Securities Ltd & Ors (Co Appeal (AT)(Ins) No. 251 of 2020**" whereby it has been held that mere reduction of TDS would not be sufficient to conclude that there was a financial debt as TDS can be deducted for various reasons.

16. We have thoughtfully considered the contentions raised by the Counsel for the parties.
17. In this case, the Petitioner claims to have advanced a loan of Rs. 4,41,25,000/-. It has been claimed that for the initial years, the debt was to incur no interest as agreed between the parties and the interest from 01.04.2016 @ 12% per annum was payable annually on 31<sup>st</sup> March on every subsequent year.
18. On the contrary, the defence raised by the Counsel for the Respondent is that there was no loan agreement executed between the Parties at any point of time nor the Corporate Debtor had availed any loan from the Petitioner and as a matter of fact, the husband of the Petitioner, who was a statutory Auditor of the Corporate Debtor from 01.04.2010 to 31.03.2013, had preferred to make an investment to acquire equity stake and so called transaction was never intended to be a loan transaction. In this regard, it has been pointed out that the Petitioner along with her husband acquired 3198 shares of the Corporate Debtor for a sum of Rs. 31980/- @10 per share without any premium. According to the Counsel for the Corporate Debtor, a huge chunk of shares of the Corporate Debtor could not be acquired for a meagre sum which clearly shows that the investment was made by the husband of the Petitioner through her to acquire equity stake in the Corporate Debtor and the transaction cannot be treated as a loan.
19. Having thoughtfully considered the above contentions raised on behalf of the Corporate Debtor, we are of the considered view that even if there is no

agreement of a financial debt executed between the Parties, yet the Corporate Debtor in the confirmation of accounts (Exhibit D1-D7) has been acknowledging its liability from 01.04.2014 regularly. In addition to this, the financial statement (Exhibit-J) filed by the Corporate Debtor with ROC, the outstanding amount of more than Rs. 5 crores are referred as unsecured term loan raised from Petitioner, i.e. Ms. Neeta Navin Nagda. Apart from that, no document has been relied upon by the Corporate Debtor that the amount in question which was received from the Petitioner was to be adjusted in the share premium account nor any such entry has been made over the years till the filing of the instant petition. In the absence of any such document, it is difficult to fathom that the amount in question was received with an intention to adjust the same on account of investment for acquiring equity stake and there is further not even a semblance of evidence on record at what premium shares were allotted to the Petitioner or her husband and their allies.

20. On the contrary, the Respondent has candidly admitted in the reply in Para No. 21 of the reply that a return on investment @ 9% per annum was credited to the account of the Petitioner for the year ended 31.03.2017 and 31.03.2018 which was discontinued subsequently. As a matter of fact, it appears that admittedly the interest was paid on the outstanding amount for these two years which was discontinued subsequently. Under the given circumstances of the present case, when there is absolutely no indication in terms of any document that the amount were received by the Corporate Debtor on account of investment to acquire equity stake for all purposes, the disputed amount appears to have been received as a loan and this fact is further corroborated from the fact that, as stated above also, the amount has been reflected in the books of account as unsecured loan from the Petitioner coupled with the fact that, interest was paid and TDS was also deducted.
21. No doubt, it has been held in "**Pawan Kumar Vs. Utsav Securities Ltd & Ors (Co Appeal (AT)(Ins) No. 251 of 2020**" (supra) relied upon by the Counsel for the Respondent/Corporate Debtor that TDS cannot constitute the proof of a loan transaction as TDS can be deducted on many other counts also.

However, the law laid down in the cited case cannot be applied to the facts and circumstances of the instant case as the documents on record clearly reveal that it was a loan transaction on which interest was admittedly paid. It is well settled that on an investment, no interest is paid and it is not the case of the Corporate Debtor that some dividend was paid to the Petitioner. Therefore, looking at the case from any angle, the plea raised by the Respondent is that it was not a loan transaction and was rather an investment to acquire equity stake cannot be accepted.

22. Another contention raised on behalf of the Corporate Debtor that there is no date of default mentioned in the Petition and on this ground also, the petition deserves to be dismissed. In this case, no loan agreement was admittedly executed between the Parties. It has been claimed by the Petitioner that the Respondent stopped paying interest from 31.03.2018 onwards. After 31.03.2018, several reminders were issued including a notice through advocate dated 19.09.2020 followed by the remainder dated 17.04.2021. In the demand notice (Exhibit-E) dated 19.09.2020, the Respondent was called upon to repay the outstanding amount of Rs. 6.96 crores along with interest immediately and as the payment was not made by the Corporate Debtor and rather the liability was absolutely denied in reply dated 27.10.2020, the date of default can be treated as 19.09.2020. Though it was claimed that the amount was invested in the Corporate Debtor as a share premium, but this fact does not prove on record. Under the circumstances, it cannot be said that the Petition is liable to be dismissed on account of the fact that no date of default has been mentioned by the Petitioner.
23. No other points have been argued.
24. After hearing the submissions and upon perusing the material available on record, we find that the Petitioner has successfully demonstrated the existence of "**debt**" and "**default**" committed by the Corporate Debtor in this case.
25. Accordingly, the above Company Petition No. 745 of 2021 is '**admitted**' by passing the following: -

**ORDER**

- A. The above Company Petition No. (IB) 745 of 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Anusmera Realty and Infra Private Limited**.
- B. Since the Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is hereby appoints **Mr. Atul Laxmichand Gala**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01974/2020-2021/13130, having Email id [atulgala.cirp@gmail.com](mailto:atulgala.cirp@gmail.com) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- C. The Financial Creditor shall deposit an amount of Rs. (5) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- D. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- E. 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.
- F. 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.
- G. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- H. That the Public Announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- I. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 745 of 2021** is admitted.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**