

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.963/MB/2021

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

IN THE MATTER OF

BRIDGE & BUILDING CONSTRUCTION CO. PVT.LIMITED

[CIN: U45201WB1955PTC022290]

205, Rabindra Sarani

Kolkata – 700007,

West Bengal.

...Applicant/Financial Creditor

Vs.

RUNWAL REALTORS PRIVATE LIMITED

[CIN: U00111PN1993PTC072336]

1st Floor, Runwal Roshni Plaza

41/12 Karve Road

Pune-411004

Maharashtra.

...Respondent /Corporate Debtor

Pronounced:06.02.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Amir Arsiwala a/w Adv Ashwini Gawde i/b ASR &
Associates

Corporate Debtor: Adv. Atit Soni



ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]


1. BACKGROUND

- 1.1 This is an Application bearing C.P. (IB) No.963/MB/2021 filed by Bridge and Building Construction Co. Pvt. Ltd., Applicant/Financial Creditor on 03.09.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”) through its Director and Authorised Signatory Mr. Ajit Kumar Jindal for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Runwal Realtors Private Limited, the Respondent/Corporate Debtor.
- 1.2 The Corporate Debtor and the Applicant/Financial Creditor had entered into a Joint Venture Agreement (herein referred to as “JVA”) dated 12.01.2017 to develop and construct ‘Runwal Manjari Township’ in the land measuring 2.75 acres situated at Manjari Khurd, Taluka Haveli, District Pune.
- 1.3 The Corporate Debtor proposed the Applicant/Financial Creditor to invest a total amount of Rs.4,85,00,000/- (Four Crore Eighty-Five Lakh Rupees) with an advance payment of Rs.2,60,00,000/- (Two Crore Sixty Lakh Rupees) to the Corporate Debtor which was to be transferred on execution of JVA and the remaining amount of Rs.2,25,00,000/- (Two Crore Twenty-Five Lakh Rupees)



was to be paid within a period of six months from the execution of the JVA between the parties or as and when required by the Corporate Debtor.

- 1.4 The Applicant/Financial Creditor had already paid an ad hoc amount of Rs.2,59,78,540/- (Two Crore Fifty-Nine Lakhs Seventy-Eight Thousand Five Hundred and Forty Rupees) to the Corporate Debtor through RTGS from 19.05.2017 to 13.06.2017. It was agreed that on failure to comply the terms of the JVA, the Corporate Debtor would be entitled to cancel/terminate the same and liable to refund the invested amount to the Financial Creditor without any interest.
- 1.5 On being asked about the updates of the ongoing project, the Corporate Debtor always remained silent and failed to provide details of stage of construction and development. As a result, the Applicant/Financial Creditor stopped the balance payment and issued letter dated 18.08.2018 to the Corporate Debtor seeking refund of the ad hoc amount. Finally, on 05.10.2018, Advocate notice was sent by the Corporate Debtor in reply to the reminders sent by the Financial Creditor. It was claimed by the Corporate Debtor that it had not received the amount in the form of loan but as a token of investment under the JVA dated 12.01.2017 and still an amount of Rs.2,25,00,000/- was unpaid. If balance amount of Rs.2,25,00,000/- Crore was not paid, the Corporate Debtor would terminate the JVA.
- 1.6 The total amount due from the Corporate Debtor as on 13.06.2017 is claimed at Rs.3,46,04,839/- (Three Crore Forty-Six Lakhs Four Thousand Eight



Hundred and Thirty-Nine Rupees) including the principal amount of Rs.2,59,78,540/- and interest at 12% p.a.

2. AVERMENTS OF APPLICANT/FINANCIAL CREDITOR

- 2.1. The Corporate Debtor and the Applicant/Financial Creditor had entered into the JVA dated 12.01.2017 to develop and construct 'Runwal Manjari Township' in the land measuring 2.75 acres located at Manjari Khurd, Taluka Haveli, District Pune.
- 2.2. All the piece and parcel of the said land was affirmed to be seized and taken into possession by the Corporate Debtor before signing the JVA.
- 2.3. The Corporate Debtor proposed the Applicant/Financial Creditor to invest a total amount of Rs.4,85,00,000/- with an advance payment of Rs.2,60,00,000/- to the Corporate Debtor which would be transferred on execution of JVA and the remaining amount of Rs.2,25,00,000/- would be paid within a period of six months from the execution of the same between the parties or as and when required by the Corporate Debtor.
- 2.4. It was agreed that on failure to comply the terms of the JVA, the Corporate Debtor would be entitled to cancel/terminate the Agreement. However, the Corporate Debtor shall refund the invested amount to the Applicant/Financial Creditor without any interest, thereby deducting the expenses incurred by the Corporate Debtor.
- 2.5. The Applicant/Financial Creditor had already paid an ad hoc amount of Rs.2,59,78,540/- to the Corporate Debtor through RTGS from 19.05.2017 to 13.06.2017.



- 2.6. The Applicant/Financial Creditor had sought updates from the Corporate Debtor about the progress of the ongoing project. However, the Corporate Debtor remained silent and failed to provide a proper plan and detail of the future proceedings of the construction and development. Therefore, the Applicant/Financial Creditor stopped the rest of the payment which was agreed to be transferred within six months from the execution of the JVA.
- 2.7. The Applicant/Financial Creditor on 18.08.2018 issued 1st reminder letter to the Corporate Debtor requesting the latter to refund the *ad hoc* amount of Rs.2,59,78,540/-. Subsequently, on 28.08.2018, 01.10.2018 and 27.10.2018, similar reminder letters were sent by the Applicant/Financial Creditor to the Corporate Debtor.
- 2.8. On 05.10.2018, Advocate notice was sent by the Corporate Debtor claiming that it had not received the amount from the Applicant/Financial Creditor in the form of loan but as token of investment for the JVA dated 12.01.2017 and an amount of Rs.2,25,00,000/- was unpaid till date due to which the Corporate Debtor would terminate the JVA as agreed.
- 2.9. The Corporate Debtor is unable and/or unwilling to pay the Applicant/Financial Creditor, and hence, it is just and equitable that CIRP be initiated against the Corporate Debtor under the provisions of Section 7 of the Code.
- 2.10. In its Written Submissions, the Applicant/Financial Creditor has referred to the judgment of Hon'ble Supreme Court in the matter of ***Global Credit Capital Limited and Another Vs. Such Marketing Pvt. Ltd. and Another***, [(2024) SCC OnLine SC 649], wherein it has been held that the nature of the debt must be determined from a careful perusal of each clause of the agreement. In the



present case, the investment under clause 3 of the JVA is distinct and separate from the other clauses which relate to the joint development of the property. The investment under clause 3 is clearly a transaction having the commercial effect of a borrowing as the Applicant/Financial Creditor is hoping for future gain from the transaction. The money disbursed by the Applicant/Financial Creditor is in the form of investment and even if interest is not payable, it has the effect of a borrowing as there is time value for money. [*Orator Marketing Private Limited Vs. Samtex Design Private Limited (Civil Appeal No.2231 of 2021)*].

2.11. The present Application has been filed well within the period of limitation in terms of the judgment of Hon'ble Apex Court in Suo Motu Writ Petition (C) No.3 of 2020, wherein the period from 15.03.2020 to 28.02.2022 stands excluded for computing the period of limitation. Therefore, it is submitted that the present Application filed under Section 7 deserves to be admitted.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The Corporate Debtor *vide* its Affidavit-in-Reply dated 17.07.2022 has raised the following objections:-

3.2 The Corporate Debtor is a private limited company duly incorporated under the Companies Act, 1956 on 10.06.1993 and is carrying on the business of development of land, construction of buildings and other real estate activities for more than 2 decades. The company solely carries on its business in the Pune region. The present authorised share capital of the Corporate Debtor is Rs.40 Crore and paid-up capital is Rs.34.48 Crore approximately.



-
- 3.3 The Corporate Debtor has over the years executed various projects and built a respectable position in the real estate market. With a view to develop a piece of land presently owned by it, the Corporate Debtor was introduced to the Applicant/Financial Creditor through a chartered accountant, who was looking for a joint venture partner. Therefore, the Applicant/Financial Creditor showed willingness to join the Corporate Debtor in developing a part of the land owned by the Corporate Debtor and accordingly agreed to participate as joint venture partner in the said project.
- 3.4 The Applicant/Financial Creditor has no cause of action to file the instant Application against the Corporate Debtor under Section 7 of the Code as it can be found that the allegations against the Corporate Debtor are false and frivolous. The Application has been filed to arm twist the Corporate Debtor and extort monies by misusing the beneficial provisions of the Code and to malign the image of Corporate Debtor in the business community. Hence, the present Application is liable to be dismissed.
- 3.5 The Applicant/Financial Creditor has filed some frivolous documents to mislead this Tribunal and is trying to make out its case under Section 7 of the Code by claiming the amounts as "financial debt" whereas, the amounts are credited as a part of the joint venture contribution by the Applicant/Financial Creditor in the Corporate Debtor and, therefore, the Financial Creditor is suppressing the real nature of the entire transaction entered into between the Applicant/Financial Creditor and the Corporate Debtor.
- 3.6 The Corporate Debtor has a money claim against the Applicant/Financial Creditor and the same was communicated through its advocates, namely, Mr.



Sanjay T Agarwal much before the filing of the captioned Application, making counter claim and consequently, the captioned Application is liable to be returned at proper forum in accordance with the provisions of the Code of Civil Procedure, 1908, as this Tribunal is not clothed with the jurisdiction to try and entertain the Application.


- 3.7 The alleged amount being shown in the Application as "financial debt" is itself challenged since there are no amounts that are due or recoverable by the Applicant/Financial Creditor from the Corporate Debtor. There is a contractual dispute between the parties and when the transaction itself is disputed, then it cannot be claimed as financial debt. With regard to any dispute on the nature of debt, suit/plaint should be filed before the civil courts and certainly not before this Tribunal. Hence, the Application is liable to be dismissed on this ground alone being not maintainable.
- 3.8 The Applicant/Financial Creditor has failed to perform part of the contract by not contributing the agreed sum of monies to the Corporate Debtor as agreed towards the joint development of land even after repeated requests to them. The Corporate Debtor is solvent with good standing and carrying immovable assets in its balance sheet.
- 3.9 In terms of the JVA, the Applicant/Financial Creditor was to provide an amount of Rs.4.85 Crore to the Corporate Debtor in two instalments of Rs.2.60 Crore, as on the date of execution of the JVA and remaining amount of Rs.2.25 Crore within 6 months from the JVA execution date.
- 3.10 The salient features of the JVA which was agreed between the Applicant/Financial Creditor and the Corporate Debtor are as follows:



-
- i. The development of the Project/Scheduled Land was to be carried out by the Corporate Debtor in terms of the JVA;
 - ii. Clause 2 of JVA provides for constituting a partnership rather than an Association of Persons for development of the project.
 - iii. Clause 3 of JVA provides that the joint venture shall primarily develop and sell the Township project on the scheduled land and other lands which would be acquired.
 - iv. The Corporate Debtor is vested with a right to cancel or terminate the JVA and thereafter refund the amount provided by the Applicant/Financial Creditor without any interest after deducting the expenses incurred by the Corporate Debtor. Therefore, it is abundantly clear that the amounts were transferred by the Applicant/Financial Creditor under the JVA as part of the joint venture contribution and never as loan/financial debt as claimed by the Applicant/Financial Creditor subsequently under the Application.
 - v. In case of practical difficulty in refunding the amount, the refund would only be made on the Corporate Debtor getting a new joint venture partner and not before.
 - vi. As per clause 5 of the JVA, after completion of first round of investment under the JVA, the parties would bring in additional contribution so as to make the joint venture 50:50.
 - vii. As per clause 8 of the JVA, profits, if any, from the JVA, shall be shared only after receipt by the Corporate Debtor of the JVA contribution of Rs.4.85 Crore.



- 3.11 The Corporate Debtor was surprised to receive the communication dated 18.08.2018 from the Applicant/Financial Creditor seeking refund of Rs.2.59 Crore and claiming the joint venture contribution to be a loan. Pertinently, the same was replied by the Corporate Debtor through its Advocates on 05.10.2018 requiring the Applicant/Financial Creditor to contribute the remaining amount under the JVA.
- 3.12 The Applicant/Financial Creditor is neither a money lender nor does it have licence to operate as a non-banking finance company to provide loan to another company when, in fact, the entire transaction is that of the JVA of land development.
- 3.13 The Applicant/Financial Creditor has even failed to show the compliance of provisions of Section 186 of the Companies Act, 2013 and, accordingly, the Applicant/Financial Creditor is put on strict proof to provide detailed evidence to confirm if the Applicant/Financial Creditor is in the business of financing and the manner in which it has complied with the provisions of Section 186 of the Companies Act, 2013.
- 3.14 Further, it is pertinent to note that on the basis of said JVA, the Corporate Debtor had proceeded and taken steps in developing the said parcel of land. However, the same was stopped due to non-availability of requisite funds as committed by the Applicant/Financial Creditor.
- 3.15 There is no documentary evidence in the Application supporting the Applicant/Financial Creditor's claim that the amounts have been advanced to the Corporate Debtor as loan. The Application only contains a copy of the letter unilaterally written/issued by the Applicant/Financial Creditor on the aforesaid



dates almost after a period of more than one year of remitting the first installment of the joint venture contribution, which was an after-thought of the Applicant/Financial Creditor i.e.. to claim monies under a contractual dispute in the garb of a loan transaction by misusing the provisions of the Code.

3.16 In its Written Submissions, the Corporate Debtor has placed reliance on the judgement of the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. and others Vs. Union of India** [MANU/SC/0079/2019] and of the Hon'ble NCLAT in **Jagbasera Infratech Private Limited Vs. Rawal Variety Construction Private Limited** [(2022) SCC OnLine NCLAT 167] in support of its case. It is submitted that the amount invested by the Applicant/Financial Creditor in his capacity as promoter and investor in the joint venture Project does not fall within the definition of 'financial debt' under Section 5(8) of the Code. It has also been held that the Section 7 Application by a joint development partner is not maintainable as the amount cannot be construed as 'financial debt' as defined under Section 5(8) of the Code [**Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd.**, (2020) SCC OnLine NCLAT 237]. The Corporate Debtor has also referred to a few orders passed by co-ordinate Benches of this Tribunal taking similar view. The Corporate Debtor has also relied on an order of co-ordinate Bench at Mumbai in its own case, wherein on identical facts, an application filed under Section 7 of the Code in CP(IB)No.954/MB/2019 was rejected and the action of the Adjudicating Authority was affirmed by the Hon'ble NCLAT in **Gateway Offshore Private Limited Vs. Runwal Realtors Private Limited** [CA (AT) (Ins) No.871 of 2022]. Hence, it is prayed that the instant Application may be dismissed.




4. ANALYSIS AND FINDINGS

- 4.1 Upon perusal of pleadings and the documents available on record and hearing both the Ld. Counsel for the Applicant/Financial Creditor and the Corporate Debtor, our findings are as under:
- 4.2 This matter was transferred from Court-V to this Court. The Application was previously dismissed on 14.09.2022 for non-prosecution as none appeared on behalf of the Applicant/Financial Creditor. The same was restored on 27.06.2023 in I.A. No.1878 of 2023 filed under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 by the Applicant/Financial Creditor.
- 4.3 The only question for determination is whether the debt in question owed by the Respondent/Corporate Debtor to the Applicant/Financial Creditor is a 'financial debt' within the meaning of Section 5(8) of the Code and if so, whether a default has occurred on the part of the Corporate Debtor in repayment thereof. For this purpose, it is necessary to ascertain the real nature of the transaction as reflected in the JVA. It is observed that the parties entered into a JVA dated 12.01.2017 to develop and construct the "Runwal Manjari Township" in the land measuring 2.75 acres. It was agreed between the parties that the Applicant/Financial Creditor would invest a total amount of Rs.4,85,00,000/- with an advance payment of Rs.2,60,00,000/- to the Corporate Debtor. The remaining amount of Rs.2,25,00,000/- would be paid within a period of six months from the execution of the JVA or as and when required by the Corporate Debtor.
- 4.4 Recital (B) to the JVA states that the Applicant/Financial Creditor and the Corporate Debtor "have decided to jointly develop" the said land belonging to



the Corporate Debtor. Recital (C) specifies that the parties have agreed to form into a joint venture under the name and style of “Runwal Manjari Township” for the purpose of development of the project. Recital (D) states that the Corporate Debtor “has agreed to make available the rights obtained” in respect of the land while the Applicant/Financial Creditor has agreed to acquire in its right and at its costs lands so as to form a contiguous piece of land. Both parties were to undertake development of the property and construct thereon the permissible tenements and buildings in accordance with the approved scheme and plans sanctioned by the concerned authority from time to time. Clause 2 of the JVA makes it clear that it constitutes a partnership and not an AoP. Consequently, each party shall be entitled to represent the other as an agent of the other so as to bind the other party.

- 4.5 As per clause 3, the joint venture shall primarily evolve, develop and sell the Township Project. Under Clause 4 of the JVA, the Applicant/Financial Creditor was required to make its own arrangements and further acquire the lands within 6 months from execution of the agreement. The entire township project was estimated to be completed in a span of 10 years from the execution of the JVA. Both parties agreed to share net profit in 51%:49% proportion in the said project. Clause 18 of the JVA states that if the project has not commenced or is not in a position to commence due to any reason like approvals, permissions, consolidation of lands, the Applicant not performing its part in time, the Corporate Debtor shall be entitled to cancel/terminate the JVA and shall refund the invested amount without any interest to the Applicant after deducting the expenses incurred by it. However, in view of practical aspects of the project,



such refund shall be made after the Corporate Debtor gets a new JV partner or proceeds from the project.

- 4.6 Thus, what emerges from perusal of the JVA is that the Applicant and the Corporate Debtor entered into this agreement dated 12.01.2017 for joint development of “Runwal Manjari Township” Project by way of partnership and that the JVA is an agreement of reciprocal rights and obligations where the parties are required to perform their respective part of obligations so as to earn profit jointly. We thus find that the Applicant was not a financial creditor of the Corporate Debtor within the meaning of Section 5(7) of the Code but both the Corporate Debtor and the Applicant were to share the profit of the joint venture in the ratio of 51%:49%. The amount invested by the Applicant was not disbursed against consideration for the time value of money but represented its joint venture contribution in terms of the JVA for joint development of the land. The Applicant was even required to acquire contiguous pieces of land within 6 months from the execution of the agreement for the purpose of the township project. Having regard to the nature of the transaction as evident from analysis of terms and conditions of the JVA, it is crystal clear that the Applicant and Corporate Debtor were joint development partners who entered into the JVA for developing the said project.
- 4.7 Had the Applicant been a financial creditor of the Corporate Debtor, it would not have been concerned about the details of the stage of construction and updates on development of the ongoing project. It is only because the Applicant was a joint venture partner of the Corporate Debtor that it sought updates about the progress of development and construction of the project.



The JVA does not contain any provision for payment of interest to the Applicant @ 12% p.a. as claimed in the Application. Nor does it specify the tenure of the alleged loan, security for loan, repayment terms, events of default and consequences of default which are the essential ingredients or elements of a financial contract. This clearly shows that the JVA embodies a business or joint venture arrangement or agreement rather than a financial arrangement or agreement.

- 4.8 As held by the Hon'ble Supreme Court in **Global Credit Capital Ltd.** (supra), the test to determine whether a debt is a financial debt within the meaning of Section 5(8) of the Code is the existence of a debt with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by sub clauses (a) to (i) of sub-section (8) of Section 5 must satisfy the said test laid down by the earlier part of Section 5(8) of the Code. In the present case, we find that the Applicant has failed to discharge the onus of proving that the money invested by him in the joint venture for development of "Runwal Manjari Township" project was disbursed against the consideration for the time value of money. As a matter of fact, the Applicant invested the money for developing the project in its capacity as partner of the Corporate Debtor for sharing profits and hence such investment would not fall within the definition of 'financial debt' under Section 5(8) of the Code. It is well settled that all clauses of an agreement between parties are to be read together in order to ascertain the true nature of the agreement and the intention of the parties. Therefore, the Applicant's plea to treat clause 3 of the JVA as distinct and separate from the remaining part of the Agreement is untenable and



unacceptable. In view of above, we find that the amount invested by the Applicant in the project, being its joint venture contribution, cannot be construed as 'financial debt' even under Section 5(8)(f) of the Code as it does not have the commercial effect of a borrowing. We are of the view that the dispute between the parties is a contractual dispute and application under Section 7 of the Code would not be maintainable for any breach of the terms of the JVA.

- 4.9 It is observed that the Corporate Debtor has placed reliance on the judgment of the Hon'ble NCLAT in **Jagbasera Infratech Private Limited** (*supra*) wherein it has been held that the amount invested in the 'Joint Venture Project' by the Appellant in its capacity as a 'Promotor' and 'Investor' does not fall within the ambit of the definition of 'Financial Debt' under Section 5(8) of the Code. It is also noted that in the own case of the Corporate Debtor in **Gateway Offshore Private Limited** (*supra*), the Hon'ble NCLAT upheld the order of the Adjudicating Authority in rejecting Section 7 Application on the ground that the amount was disbursed not for time value of money but towards the joint venture for development of land and that the financial creditor in that case failed to bring on record any document to substantiate its claim that there was a financial debt and a default of the same. In view of the ratio of aforesaid judgments, we can safely conclude that the amount invested by the Applicant in the present case for joint development of land represents its joint venture contribution in terms of the JVA rather than a financial debt owed to the Corporate Debtor. On the other hand, reliance of the Applicant on the judgment of Hon'ble Apex Court in **Orator Marketing Private Limited** (*supra*) will be of



no avail, because unlike that case, the present case is not one where the Applicant has given interest-free term loan to the Corporate Debtor for its working capital requirements. As a matter of fact, the Applicant herein is a joint venture partner of the Corporate Debtor and has made its joint venture contribution for the development and construction of the Township Project which can by no stretch of imagination be treated as a 'financial debt' within the meaning of Section 5(8) of the Code.

4.10 Therefore, from the above discussions, it is clear that the Application filed by the Applicant under Section 7 of the Code is not maintainable as the Applicant has failed to establish the existence of a financial debt and default in repayment thereof by the Corporate Debtor. The Applicant has failed to adduce credible evidence to substantiate its claim that the transaction was, in fact, a financial debt owed by the Corporate Debtor to the Applicant and that there was a borrower-lender relationship between the Corporate Debtor and the Applicant which is mandatory for an application under Section 7 of the Code to succeed. In other words, the basic ingredients for invoking the provisions of Section 7 of the Code for triggering CIRP in case of the Corporate Debtor are absent in the present case. Hence, we are of the considered view that the instant Application is not fit for admission under Section 7 of the Code.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.963/MB/2021 filed under Section 7 of the Code by Bridge and Building Construction Co. Pvt. Limited, the Applicant, for initiating CIRP in respect of Runwal Realtors Private Limited, the Corporate Debtor is **rejected**.



However, the rejection of this Application shall not cause any prejudice to the right of the Applicant to pursue such other remedies as may be available in accordance with law.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

Vani & JNK