IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH- BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

CP (IB) No.47/BB/2020
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Sri Jayaram
Registered Office: No. 306,
Magadi Road
North Muddayanapalya
Bangalore – 560 019 ... Petitioner/Operational Creditor

Versus

Golden Gate Properties Limited
Registered Office : No. 820,80 Feet Road
8th Block, Koramangala
Bangalore - 560 095 ... Respondent/Corporate Debtor

Order delivered on: 22nd November, 2023

Coram: 1. Hon'ble Justice (Retd) T Krishnavalli, Member (Judicial)

2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner	:	Shri Siddharth Suman
For the Respondent	:	Shri Tushar Tyagi

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 14.10.2019 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by Sri Jayaram (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Golden Gate Properties Limited, (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 21,51,95,000/- (Rupees Twenty One Crores Fifty One Lakhs Ninety Five Thousand) as on 03.10.2016.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:

a. The Operational Creditor is an individual who was interested and in possession of the converted lands sy. No. 42 and 44, Gubbalalu Village, Uttarahalli Hobli, Bengaluru South Taluk, measuring 3 Acres 06 Guntas, 1 Acre 04 Guntas and another extent of lands in Sy. No. 44 measuring 30 Guntas.

b. It is submitted that the Operational Creditor executed three deeds of confirmation dated 16.08.2006 in favour of the Corporate Debtor, in respect of the aforesaid lands, registered in the Office of the Sub Registrar, Kengeri, Bengaluru. The consideration amount payable by the Corporate Debtor to the Operational Creditor for the same was fixed at Rs. 27,76,95,000/-.

c. It is further submitted the Corporate Debtor made various payment by way of Demand Draft & Cheques issued in favour of the operational creditor on different dates till the year 2013 totalling to Rs. 6,25,00,000/- and the payment of the balance payment was assured by the corporate debtor. However, the balance was not paid and the same was constantly postponed by the Directors of the Corporate Debtor.

d. It is submitted that on 03.10.2016 two cheques were issued by the Corporate Debtor signed by the Managing Director in favour of the Petitioner. However, these cheques when presented on 17.10.2016 and the same were returned dishonoured with reasons “No such account” under two memos both dated 19.10.2016.

e. Further, the petitioner issued legal notice dated 14.11.2016, calling upon the Corporate Debtor to pay total sum of Rs. 21,51,95,000/- under the aforesaid cheques within 15 days from the date of receipt of notice. The legal notice, addressed to the Corporate Debtor and its management was duly received by them and they have acknowledged the same. However, the amount due was not paid and reply notice dated 09.12.0216 was issued by the respondent wherein it is admitted that petitioner had right to the property in question and partial payment having been made to the Operational Creditor by the Corporate Debtor.

f. The petitioner further issued Statutory Demand Notice to the Corporate Debtor under the Code on 20.06.2019 and the respondent issued reply notice dated 12.07.2019 taking up various false contentions. Furthermore, the reply notice was sent after the statutory period of ten days and neither was any repayment made, nor any notice of dispute raised.

3. The Learned Counsel for the Respondent filed his Preliminary Objection, Statement of Objection and Additional Objection and the same is as follows:

a. It is submitted that the alleged debt is arising out of a transaction in relation to immovable property measuring 30 Guntas in sy.no. 44, 3 Acres 6 Guntas in sy.no. 44 and 1 Acre 4 Guntas in sy.no. 42 totally measuring 5 Acres, situated at Gubbalalu Village, UttarahallyHobli, Bangalore South Taluk. Further, one Shri. K.P Champakadama Swamy, the then Secretary to KEB Employees Co-op Society Ltd has acquired the aforesaid extent of lands in Gubbalalu Village and also near to Kasavanahally Village, Varthur Hobli, from various landowners through General Power of Attorney for the benefit of KEB Employees Co-op Society.

b. The respondent purchased the aforesaid lands of 5 Acres in the year 2006 by paying the total sale consideration of Rs. 5 Crore, to KEB Employees Co-op Society represented by its Secretary Sri. K.P Champakadamaswamy. Moreover on the advise of Shri. K.P Champakadama Swamy as part of consideration, the Respondent has also paid a sum of Rs. 8.35 Crores to Jayram(Petitioner) the confirming party and on 16.08.2006 the deeds of confirmation were executed. It is submitted that the parties at their then wisdom decided to record the consideration value only in the notarised confirmation deeds and thus, the consideration value is not mentioned in the registered consideration deeds although both were executed on the same day 16.08.2006

c. Accordingly the respondent paid a sum of Rs. 13,54,39,000/- Crores out of which Rs. 5 Cr to the KEB Society and Rs. 8,54,39,000/- to Jayaram (Petitioner) the alleged Watchman/in illegal possession of land as full and final settlement on 16.08.2006 and thereafter the Respondent as taken the possession of the said lands.

d. It is submitted that the Petitioner has received the total amount of Rs. 8,54,39,000/- as full and final settlement as mentioned in the last para of all three Notarised Confirmation Deeds, which is evident that he had relinquished his interest, claims over the aforesaid land as on the date of confirmation deeds. It is only later that the respondent came to know that petitioner was the Assistant/Benami of Sri. K.P Champakadama Swamy.

e. It is submitted that with reference to part- iv para 1(vi) of the petition it has been alleged that on 3rd October 2016 Shri. K.Prathap the Managing Director of the Respondent Company had issued two cheques bearing no. 184618 and 184619 in favour of Petitioner for a total amount of Rs. 21,51,95,000/- is denied as Shri K. Parthap has submitted his resignation on 2nd May 2013 from the position of Managing Director of the Respondent Company . Further, the Respondent vide its board resolution dated 02nd May 2013 has accepted the resignation and the same was updated with the Registrar of Companies vide Form 32.

f. Hence it is petitioner's own case that the cheque in question is dated 03rd October 2016 and Shri. K. Pratap was not the Managing Director of the respondent company, even on the date when the cheque purports to have been issued. Further there is no way Shri. K.Prathap could have issued the alleged cheque in 2016 for the transaction which was settled in 2006 and that too after his resignation in 2013. Thus the entire case of the Petitioner is false and liable to be dismissed.

g. Further, it is submitted that the respondent replied to the demand notice and raised dispute dated 12.07.2019 upon receipt of the Petitioner's demand notice dated 20.06.2019, wherein the claims raised by the Petitioner were denied in toto. However, the Petitioner proceeded to initiate the present proceedings despite existence of a genuine and bonafide dispute.

4. The Learned Counsel for the Petitioner filed his rejoinder and the same is as follows:

a. It is submitted that there is no notarised confirmation deeds entered into between the Petitioner and the Respondent and the only Confirmation

Deeds are the registered confirmation deeds. The notorised confirmation deeds are concocted documents created by the respondent and the signatures on these documents are forged and fabricated ones.

b. It is submitted that towards payment of the consideration amount for the Petitioner having relinguished his possession, interest, claims and demands in the said three extent of lands in Gubbalalu Village, and for all the services rendered by the petitioner as stated in the main petition, two cheques both dated 03.10.2016 were issued by the Corporate Debtor duly signed by the Managing Director i.e Sri. K Prathap, in favour of the Operational creditor and the said cheques were dishonoured. However, in the additional statement of objection filed by the respondent it is stated that the said MD have submitted his resignation on 02.05.2013 and that there is no liability on the part of the Respondent. It is submitted that the petitioner emphatically denies that Sri K.Prathap has resigned with effect from 02.05.2013 and the cheques in question have been admittedly signed by the said MD and he has affixed his seal and signature to the said cheques dated 03.10.2016, be it by continuing as Managing Director or resuming the position as the Managing Director after his alleged resignation on 02.05.2013.

c. Further, the said MD had filed a Criminal Petition No. 4206/2020 before the Hon'ble High Court of Karnataka alleging the same grounds that he has resigned as Director of the Respondent Company with effect from 02.05.2013 and that therefore he cannot be prosecuted for the dishonour of the cheques and for having committed an offence punishable under section 138 of NIC Act.

d. It is submitted that when the petitioner issued legal notice regarding the dishonour of the cheques to the respondent and its directors including the said MD, a common reply was sent on 09.12.2016 wherein there is no whisper of the fact that the said Sri .K.Prathap has resigned from the position of the MD of the respondent company with effect from 02.05.2013. further, the Hon'ble High Court of Karnataka on 22.03.2021 has rejected the Criminal Petition No. 4026/2020 filed by the said MD for quashing the criminal proceedings in C.C No. 409/2017 pending on the file of the XIII

Additional Chief Metropolitan Magistrate, for the offence punishable under Section 138 NIC.

5. On 16.12.2022 it was observed by this Tribunal that the Date of Default mentioned in Form 5 is 03.10.2016 and the present petition is filed on 14.10.2019 hence the present petition is out of limitation and therefore directed the petitioner to explain how the limitation period is satisfied. The same was complied vide diary No. 1677 dated 24.03.2023 submitting that two cheques dated 03.10.2016 were issued by the Corporate Debtor duly signed by its Managing Director in favour of the Petitioner both drawn on Central Bank of India for certain services rendered by the Petitioner to the Corporate Debtor.

6. Further, when both these cheques were presented on 17.10.2016 they were returned dishonoured by the bank of the Corporate Debtor with reasons "No such account" under two Memos both dated 19.10.2016. it is submitted that the petitioner issued legal notice dated 14.11.2016, calling upon the Corporate Debtor to forthwith pay total sum of Rs. 21,51,95,000/- under the aforesaid cheques with 15 days from the date of receipt of the notice. The said legal notice addressed to the respondent and its management was duly received by them and they have acknowledged the same. However, the amount was not paid and on the contrary an untenable reply notice dated 09.12.2016, was received by the Petitioner.

7. The Petitioner then issued statutory demand notice to the respondent due on 20.06.2019 and the respondent issued reply notice dated 12.07.2019. Hence it is submitted that the cheques were dishonoured on 19.10.2016 and the default occurred when the respondent failed to make the payment due by them after issuance of Statutory notice on 14.11.2016 UNDER Section 138 readwith Section 141 of the NI Act. Further statutory demand notice was issued to the corporate debtor on 20.06.2019 and the present petition was filed on 14.10.2019 i.e well within the period of limitation.

8. The Learned counsel for the respondent filed notes of submissions on 12.09.2023 alleging that the present petition is barred by limitation since the transaction between the Petitioner and Respondent has taken place on 16.08.2006 and the period of limitation of 3 years in terms of the Limitation Act, 1963 has expired in August 2009. Accordingly, in terms of Section 3(1) of the Limitation Act, 1963, the application warrants dismissal. Further, it is not the case of the petitioner that there was an acknowledgment of debt by the respondent in terms of Section 18 of the Limitation Act, 1963. The respondent has not furnished any evidence to establish that Section 18 of the Limitation Act has been complied with. In the present case, it is acknowledged that the transaction occurred in 2006, there is no on going cause of action and the limitation period expired in August 2009. Between August 2006 and August 2009, the petitioner did not begin any proceedings against the same cause of action and the petitioner's reliance on the acknowledgment dated 03.10.2016 does not support the case of the petitioner's position and does not advance the case of satisfaction of limitation.

9. Both the Learned Counsels has filed convenience compilation as per the direction of this Tribunal and the same is taken on record.

10. Heard both the parties and perused the records available.

11. The present petition was filed on 14.10.2019 by Sri Jayaram against the Corporate debtor M/s Golden Gate Properties Ltd for an unpaid operational debt of Rs. 21,51,95,000/-. It is seen from the petition that both the petitioner and the respondent entered into a deed of confirmation dated 16.08.2006 and the consideration for the same was fixed at Rs. 27,76,95,000/- . Further, the corporate debtor has made various payment on different dates till the year 2013 totalling to Rs. 6,25,00,000/-. Moreover, on 03.10.2016 two cheques were issued in favour of the petitioner by the MD of the respondent, however, both the cheques where dishonoured under two memo dates 19.10.2016 as "No. such account". Legal notice was issued by the petitioner dated 14.11.2016, calling for payment of Operational debt of Rs. 21,51,95,000/- , but no amount was paid by the respondent. And hence the present petition is filed under section 9 of the IBC, 2016.

12. It is seen from Form 5 that the amount in default is Rs. 21,51,95,000/- which is well within the threshold as mandated under Section 4 of the IBC, 2016.

13. Without going into the merits of the nature of the claim, services rendered and whether it could be qualified as an "operational debt"; we have observed that the application fails on the issue of satisfaction of Limitation.

14. It is noted from the petition that the transaction detailed are pertaining to a deed of confirmation that took place on 16.08.2006. However, the cheques in question were issued only on 03.10.2016. Therefore, the transaction pertains to the year 2006 and the period of Limitation of 3 years as per Limitation Act, 1963 expired in August 2009. There are no acknowledgment or any transaction between the period of August 2006 and August 2009 which could have extended the period of limitation beyond August 2009. Moreover, the cheques were issued only in the year 2016. Petitioner has not placed on record any document to show that there was an acknowledgment in term of Section 18 of the Limitation Act, 1963. Therefore, when the limitation has already expired in August 2009, the 'cheques' issued on 03.10.2016, doesn't address the issue of limitation which has already expired. This gap has not been covered by any other acknowledgment. Therefore, notwithstanding the dispute regarding the genuineness of the cheques, the applicant's case fails on the parameter of satisfaction of Limitation. Hence we are of the considered opinion that the limitation is not satisfied in the present petition.

15. Accordingly, this petition, **CP (IB) No. 47/BB/2020** being barred by limitation is hereby **dismissed.** However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd-	**-Sd-**
(MANOJ KUMAR DUBEY) **MEMBER (TECHNICAL)**	**(T.KRISHNAVALLI)** **MEMBER (JUDICIAL)**