

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.4016/MB-IV/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

Birla Projects Private Limited

[CIN: U45200PN2011PTC139769]

...Financial Creditor/Applicant

V/s

**Bhandari Infrastructure and Construction
Development Private Limited**

[CIN: U45203PN2004PTC019753]

...Corporate Debtor/Respondent

Order Dated: 27.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Rohann Cama a/w
Mr. Prasad Sarvankar, Advocates.

For the Respondent(s) : Mr. Shyam Kapadia i/b
Mr. Vishvas Deo, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 4016/MB/C-IV/2019 filed by Birla Projects Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against

Bhandari Infrastructure and Construction Development Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Rahul Birla, Director of the Financial Creditor duly authorised vide its Board Resolution dated 01.11.2019, claiming total default of Rs.1,95,36,004/- (Rupees one crore ninety-five lakh thirty-six thousand four only) up to 31.10.2019.
3. The Date of Default is stated to be 31.03.2017. The Petition is filed on 13.11.2019.
4. The case of the Financial Creditor is as under:
 - a) Upon request of the Corporate Debtor, the Financial Creditor on 19.03.2016 disbursed by way of RTGS, loan of Rs.1,30,00,000/- (Rupees one crore thirty lakh only) to the account of the Corporate Debtor at the agreed rate of interest of 15% p.a.
 - b) The Corporate Debtor has paid interest amount in the following manner
 - i. Rs.57,699/- (Rupees fifty-seven thousand six hundred ninety-nine only), interest from 19.03.2016 to 31.03.2016, 10% TDS, on 30.06.2016 by way of Cheque bearing No. 001433;
 - ii. Rs.48,616/- (Rupees forty-eight thousand six hundred sixteen only) for period of 01.04.2016 to 30.06.2016, TDS of 10% on the amount of payable interest.
 - iii. The Corporate Debtor on 01.04.2016 shared the confirmation of accounts and Ledger confirming the said

loan transaction of Rs.1,30,00,000/- (Rupees one crore thirty lakh only) @ 15% p.a.

- iv. Thereafter, the Corporate Debtor paid TDS of 10% on the amount of payable interest which comes to Rs.48,616/- (Rupees forty-eight thousand six hundred sixteen only) for period of 01.04.2016 to 30.06.2016;
- v. Rs.81,740/- (Rupees eighty-one thousand seven hundred forty only), TDS of 10% of the payable interest for the period of 01.07.2016 to 30.11.2016 on 07.12.2016; and
- vi. Rs.64,830/- (Rupees sixty-four thousand eight hundred thirty only), TDS of 10% of the payable interest for the period of 01.04.2016 till 31.03.2017.

c) Since 31.03.2017 the Corporate Debtor has not paid any part of the Principal Amount or interest to the Financial Creditor.

5. The Financial Creditor has submitted the Ledger of the Corporate Debtor as maintained by the Financial Creditor for period from 01.04.2015 to 31.10.2019. The Financial Creditor also submitted the Ledger Accounts shared by the Corporate Debtor for period from 01.04.2016 to 31.03.2017 which shows that the amount received by the Financial Creditor has been considered as Unsecured Loan by the Corporate Debtor in its Books of Account. Further, the Financial Creditor has filed Balance Confirmation for an amount of Rs.1,30,57,699.00 (Rupees one crore thirty lakh fifty-seven thousand six hundred ninety-nine only) for period from 01.04.2015 to 31.03.2016.

6. The Corporate Debtor has filed its Affidavit-in-reply dated 07.01.2020 and contested the present Petition submitting that the amount in question was in nature of investment in one of its real estate projects and not a loan. Further, in March 2019, it was agreed to transfer a land situated in Belgaum, Karnataka to the Financial Creditor in satisfaction of its claim. The Corporate Debtor has filed on copy of undated Sale Deed in this connection which is between Corporate Debtor and Vijayalakshmi Ventures LLP.

Findings/Observations:

7. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
8. It is observed by the Bench that the Corporate Debtor has accounted for the amount in question as loan in its Books of Account; made periodical payments towards interest; and deducted tax thereon. The copy of Undated and Unsigned Sale Deed relied upon by the Corporate Debtor to advance its arguments on nature of transaction is between the Corporate Debtor and the Vijayalakshmi Ventures LLP. Further, the consideration details stated in this Sale Deed does not match with the amount paid by the Financial Creditor. Hence the reliance on the Sale Deed is untenable. In our opinion the Corporate Debtor has failed to prove that the amount in question is not a financial debt.
9. The quantum of debt is not disputed by the Corporate Debtor. The present transaction had taken place without any written understanding. In such case the amount in question becomes repayable on demand. On perusal of the records and submissions of the Financial Creditor it is noticed the Financial Creditor has not placed any

evidence/communication suggesting when the amount alleged to be in default became due and payable by the Corporate Debtor. Needless to say, the default occurs on failure to pay when it is due and payable. The Corporate Debtor has raised this issue in its reply 07.01.2020 that the Financial Creditor has not issued any written communication highlighting any part of this alleged amount in default.

10. Though the existence of debt is not in dispute, yet the debt not having become due cannot be said to be in default. In view of this, the present Petition is not admissible under section 7 of the Code in the absence of default.

ORDER

11. This Application being C.P. (IB) No. 4016/NCLT/MB/C-IV/2019 filed under Section 7 of I&B Code, 2016, filed by Birla Projects Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Bhandari Infrastructure and Construction Development Private Limited, Corporate Debtor, is **Rejected**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.

Sd/-

Prabhat Kumar
Member (Technical)
27.01.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)