

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 3163/I&BP/2019

Under section 7 of the IBC, 2016

In the matter of

Ms. Mrudula P. Vora,

203, Shreeji Apartment, MG Cross
Road, Sai Nagar, behind Samtakrida
Bhavan, Kandivali (west), Mumbai –
400 067

....Petitioner

v/s.

Kavya Buildcon Private Limited,
2nd floor, 99 C, Kavya Aura, Sitaram
Ghadigaonkar Marg, Tulsiwadi, Tardeo,
Mumbai – 400 034

....Corporate Debtor

Order delivered on: 25.10.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. V. Nallasenapathy, Member (Technical)

For the Petitioner: Ms. Rubina Khan, Advocate i/b Fortis India Law.

For the Respondent: Mr. Asadullah Shaikh, Advocate i/b K K Associates.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Ms. Mrudula P. Vora, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Kavya Buildcon Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 27.04.2019 in making payment of Rs. 21,31,036/- which is inclusive of

interest @ 12% p.a., by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Corporate Debtor is a partner of a partnership firm viz. Kavya Construction Co. On 12.10.2009, the Petitioner disbursed an amount of Rs. 11,50,000/- by RTGS to the said partnership firm. During 01.04.2009 to 20.05.2019, the said partnership firm has made part-payments to the Petitioner.

3. On 01.04.2016 and on 01.04.2017, the partnership firm confirmed and admitted the liability to the Petitioner. On 27.04.2019, the Petitioner issued demand notice, to the partnership firm, the Corporate Debtor herein, who is a partner in a partnership firm and another partner of the partnership firm Mr. Mansukhlal D. Vora demanding a sum of Rs. 21,31,036/-. The Petitioner then filed this Petition.

4. The Corporate Debtor filed written statement to the petition and raised the following issues;

- (a) The petition is not maintainable under Section 7 of the Code and also barred under Section 137 of the Limitation Act as held by the Hon'ble Supreme Court in the case of "*B. K. Education Services Pvt. Ltd. v. Parag Gupta & Associates*" (MANU/SC/1160/2018)
- (b) The Petitioner has failed to produce any document to show that any financial debt is owed to the Petitioner from the Corporate Debtor.
- (c) The alleged debt i.e. Rs. 11,50,000/- as claimed against the Corporate Debtor has been reflected to be infused in the accounts of the Partnership Firm.
- (d) The Partnership Firm had been making the repayments to the Petitioner directly and the last payment was made by the Partnership Firm on 11.05.2016.
- (e) In respect of this claim only part III of the Code covering the partnership will apply and the same is yet to be notified.

(f) Since there is no debt the question of default does not arise.

5. The counsel for the Petitioner submitted that even though the debt is owed by the partnership firm, in view of the non-payment of the debt by the partnership firm, one of the partner who is a Corporate Debtor herein is jointly and severally liable to pay the debt as provided under Section 25 of the Partnership Act, 1932 and hence this Petition is filed against the Corporate Debtor.

6. The counsel for the Corporate Debtor submitted that the money is owed by partnership firm and not by the Corporate Debtor, the Corporate Debtor is performing well and no CIRP can be initiated against the Corporate Debtor. Further there is no express formal agreement between the parties, which empowers the parties to enforce such loan extended to a partnership firm from the corporate debtor herein.

7. It is beneficial to refer the judgement of the Hon'ble NCLAT in the case of "Gammon India Ltd. Versus Neelkanth Mansions and Infrastructure Pvt. Ltd." (2018 SCC OnLine NCLAT 994) at para 11 held as below:

"It is not in dispute that the amount due to the Appellant is from 'Gammon Neelkanth Realty Corporation'. The bill was raised against the said partnership firm namely— 'Gammon Neelkanth Realty Corporation', 'Neelkanth Realtors Pvt. Ltd.', 'Gammon Housing and Estates Developers Ltd.' and 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' are the partners, therefore, even if one of the partners or more than one partner is the 'Corporate Debtor' as the amount is due from the partnership firm, the application under Section 9 of the 'I&B Code' against one of the partners of such partnership firm will not be maintainable."

8. Even though the above judgement is under Section 9 of the Code the ratio laid down therein will also apply to the present petition under Section 7 of the Code.

9. In view of the above discussions, the petition is dismissed with liberty to the Petitioner to proceed in accordance with law. No cost.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)