



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 347(ND)/2021**

Order 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:

M/s. CAPITAL TRADE LINKS LIMITED & Anr.

1. M/s. Capital Trade Links Limited

Having Its Registered Office at:

Capital House, B-4, LGF,
Ashok Niketan, Delhi-110092.

..... Applicant No. 1 /Financial Creditor No. 1

2. M/s. Endless Services Private Limited

Having Its Registered Office at:

F-2, First Floor, 90,
New Rajdhani Enclave, Delhi-110092.

..... Applicant No. 2 /Financial Creditor No. 2

VERSUS

M/s. RUDRA BUILDWELL CONSTRUCTIONS PRIVATE LIMITED

Having Its Registered Office at:

Flat No. 118A, G.F. Pocket-6, MIG Flat,
Mayur Vihar, Phase-III, East Delhi, Delhi-110096.

..... Respondent/ Corporate Debtor

Order Pronounced On: 17.10.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

**M/s. Capital Trade Links Ltd. & Anr. vs. M/s. Rudra Buildwell Constructions Pvt. Ltd.
(IB) – 347(ND)/2021**

Date of Order: 17.10.2023

APPEARANCES:

For the Applicants : Mr. Bal Kishan Sharma, Adv.

For the Respondent : Mr. Gourav Joshi, Company Secretary

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by M/s. Capital Trade Links Limited & 1 Anr., the Financial Creditors (FC)/Applicants on 13.06.2021, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against the Corporate Debtor (CD)/Respondent viz., M/s. Rudra Buildwell Constructions Private Limited on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 13,48,54,511/- [5,80,58,031+7,67,96,480] (Rupees Thirteen Crore Forty Eight Lakh Fifty Four Thousand Five Hundred Eleven Only) being the Principal amount along with 3% interest.
2. On 15.07.2016, the Corporate Debtor approached the Financial Creditor No. 1 ("FC - 1") and Financial Creditor No. 2 ("FC-2") for availing Loan facility of Rs. 2 Crore (Rs. 1 Crore each from FC- 1 & 2), the FC - 1 & FC-2 disbursed the loan of Rs. 2 Crore (Rs. 1 Crore each by FC -1 & FC- 2) at an interest @ 3% per month compounded on agreed Terms and Conditions for construction and development of multi-storied residential project on land admeasuring 20,000 sq. Metre, Plot No. 5B, Sector 16, Greater Noida, West (Noida Extension), District Gautam Budh Nagar, U.P project namely "KBNOWS APARTMENT". In the discharge of liability for repayment of the loan along with interest, the Corporate Debtor issued EMI cheques and confirmation letters.



3. To securitize the loan amount, the Corporate Debtor had signed executed and registered two separate Agreements to Sell (without possession) of their land situated in Village Pipia Bandpur, Pargana Dasna, Tehsil Dhaulana, Distt. Hapur in favour of FC-1 & FC-2 on 22.07.2016. The agreements were for a period of 21 months, which were later on extended for a further period.
4. The Corporate Debtor further requested FC -2 for a loan of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) on 20.10.2016. Accordingly, the FC-2, disbursed a further loan of Rs. 50,00,000/- (Rupees Fifty Lakhs only) at an interest @ 3% per month compounded monthly. Thus, the FC-2 had advanced a total loan for a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) to the Corporate Debtor.
5. In view of the initiation of CIRP in terms of Section 7 of the Code *vide* order dated 16.02.2021 passed by this Adjudicating Authority (Court-III) in the matter of (IB)-928(ND)/2020 titled as "M/s. Sivanah International vs. M/s. Rudra Buildwell Construction Private Limited", the CIRP against the Corporate Debtor was initiated, the Financial Creditors have filed their respective claims before the IRP. Later on 02.03.2021, the Suspended Directors of the Corporate Debtor approached the Financial Creditors and requested to settle the matter by signing of MOU dated 02.03.2021 and an addendum dated 03.03.2021. Further, the Corporate Debtor entered into the settlement agreement with the Financial Creditor and in view thereof, (IB)-928(ND)/2020 was disposed of *vide* order dated 05.03.2021 and the affairs and the management of the Corporate Debtor was handed over to its Directors.
6. In terms of the MOU, the cheques tendered by the Directors of the Corporate Debtor were presented by the Financial Creditors for clearance and the same were dishonoured with remark due to insufficient funds on 15.04.2021 and on 16.04.2021.
7. The Respondent/Corporate Debtor has raised various objections with respect to the MOU dated 02.03.2021 in which the Applicants



entered into a new agreement with Mr Rajkumar (Director of the Corporate Debtor) and Mrs Manju Director of the Corporate Debtor) wherein it was agreed that in the discharge of the entire liability of the Corporate Debtor, Mr Rajkumar and Mrs Manju shall execute the lands detailed in Annexure 8 of the main application in favour of the Applicants. Consequently, the agreement dated 02.03.2021 entered into between the parties resulted in novation/alteration of the contract wherein the liability of the Corporate Debtor herein stood discharged.

8. A bare perusal of the MOU makes amply clear that upon execution of the MOU dated 02.03.2021, the entire liability of the Corporate Debtor stood discharged by virtue of the said MOU. Hence, the Applicants cannot go back to the original claim therefore no debt can be claimed against the Corporate Debtor. The said land in fact belongs to a third party namely M/s. Kanchanjanga Buildwell Private Limited ("KBPL"), in which Mrs Manju holds 10% shareholding and directorship. It is an undisputed fact that the said land belongs to KBPL, which is a registered company under the Companies Act, 2013 and can sell or dispose of its assets in accordance with the provisions of the Companies Act, 2013.
9. The Financial Creditors disbursed the loan amount to the Corporate Debtor and no interest rate on the disbursed loan amount was agreed at the time of such disbursement or anytime thereafter between the Applicants and the Respondent. The FC-1 being a Non-Banking Financial Company ("NBFC") is subjected to code of conduct as laid by the Reserve Bank of India ("RBI"). The NBFCs are strictly required to adhere to the norms and code of conduct as laid and amended by the RBI from time to time. The RBI vide its master circular [DNBR (PD) CC.No.054/03.10.119/2015-16] dated 01.07.2015, established the Fair Practices Code which inter-alia deals with the Regulation of excessive interest charged by NBFCs.
10. The relevant extract of the master circular is reproduced below:

“(viii) Regulation of excessive interest charged by NBFCs



(a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as cost of funds, margin and risk premium and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rates of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.”

11. The Respondent/Corporate Debtor has placed heavy reliance that the FC-1 failed to adhere to the norms and the code of conduct which is subjected to and no sanction letter or any other letter was ever communicated to the Corporate Debtor that contained the details/clause of interest. The FC-1 being NBFC clearly failed to communicate the rate of interest to the Corporate Debtor and further, no valid documents to the effect were executed between the parties which prove the nature of the debt of the said transaction.
12. The FC-2 is a company engaged in the business of sale, purchase, construction, development, leasing and renting of real estate, residential properties, commercial properties, etc. However, the Memorandum of Association ("MOA") of the FC-2 does not allow/permit it to engage in the money lending business of any kind. The act done by FC-2 is beyond its MOA and thus not permitted. It is a trite law that any act done which are inconsistent to object clause stated in the MOA of a Company is ultra-vires and non-est in law therefore on this ground, the purported debt stated to be of nature of financial debt being disbursed ultra vires to the object clause stated in MOA of company, can in no stretch of imagination constitute a financial debt under Section 5(8) of the Code.
13. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
14. On perusal of the record of default (FC-2) of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL), we find that this is the record



w.r.t. the status of authentication by the debtor is shown as “Deemed to be Authenticated” (yellow colour code) along with the date of default as 22.01.2019 and 20.04.2019.

On perusal of the record of default (FC-1) of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL), we find that this is the record w.r.t. the status of authentication by the debtor is shown as “Deemed to be Authenticated” (yellow colour code) along with the date of default as 25.02.2021.

15. Opposing the NESL report, the Corporate Debtor contested that the date of submission of records to NESL by the FC-2 is 19.05.2020 whereas the MOU between the parties was executed on 02.03.2021 therefore records of NESL cannot be relied upon to claim default as Financial Creditor and the Corporate Debtor by entering MOU resulted into novation of contract.
16. After Analysing Form- I, Part-IV of Section 7 application, it appears that the said date 01.06.2021 and 15.06.2021 is not the date of default but it is the date in which the said sum is due to the Financial Creditors. Except for this description, the date of default is not mentioned. It is important that the “date of default” ought to be mentioned in Column of Form-I, Part-IV of Section 7 application as per the NCLT Rules, 2016. It is clearly in violation of the same. Be that as it may, the “date of default” is not mentioned in the pleadings. Therefore, we hold that the date of default is omitted from the relevant column. Further, the documents executed as the record of default stated by NESL shows the different date of default i.e. 25.02.2021, 22.01.2019 and 20.04.2019.
17. It is further submitted that the Financial Creditors (FC-1 & FC-2) entered into MoU on 02.03.2021 to which Mr Rajkumar (Suspended Director of the Corporate Debtor) and Mrs Manju (Suspended Director of the Corporate Debtor) was also a party but the Corporate Debtor was not a party. In the said MoU, Mr Rajkumar and Mrs



Manju have been described as a First Party and the Financial Creditors (FC-1 & FC-2) have been described as a Second Party. The relevant clauses of the MoU are extracted below for better understanding of the case:

“Now, the First Party approached the Second Party to settle its claims on the following terms and conditions:

- 1. That First Party shall execute sale deed and give vacant possession to the satisfaction of the Second Party, of following piece and parcel of Land measuring 70 bighas (one Bigha=918 sq yard) owned by him in favour of the Second Party or its associate company within 3 days from the date of this Agreement.*
- 2. That First Party assured to Second Party that the above-mentioned property is free from any other sorts of encumbrances such as mortgage, lien, gift, exchange, dispute, litigation, attachment, legal loss, Court, decrees, Court, injunction, whosoever and no agreement to sell has been executed by the first party prior to this agreement with regards to the said property. That all the expenses of this transaction i.e. stamp paper, registration cost, etc. shall be borne and paid by the first party.*
- 3. That this is full and final settlement on the above terms and conditions and Second party is withdrawing their claim from IRP immediately.*
- 4. That notwithstanding anything mentioned above, both parties agreed that in case of default by the first party of any terms and conditions of this MOU, the second party shall have the right to restore its claim and also have the right to recover the amount as per claim submitted with IRP and to file the same or any petition to any forum or Court of Law or NCLT, etc., and first shall not dispute the said amount of claim under any circumstances.”*

18. The relevant clauses of the addendum dated 03.03.2021 to the MoU are extracted below for better understanding of the case:

M/s. Capital Trade Links Ltd. & Anr. vs. M/s. Rudra Buildwell Constructions Pvt. Ltd. (IB) – 347(ND)/2021
Date of Order: 17.10.2023



“Addendum to MOU dated 3rd March, 2021 Between Mr Raj Kumar, Mrs Manju, Capital Trade Links Ltd., Endless Services Ltd. & Mr Anand Mohan

This document is in reference to a MOU dated 2nd March, 2021 between the following parties that are named below in this document.

May it be known that the undersigned parties, for good consideration, do hereby agree to make the following changes and/or additions that are outlined below. These additions shall be made valid as if they are included in the original stated Memorandum of Understanding dated 2nd March, 2021.

1. That Mrs Manju or Mr Raj Kumar, jointly and/or severally (First Party) shall be responsible to get Mutation of land being given to second party as mentioned in agreement to sell dated 3rd March, 2021 in favour of the Second Party or its associates within 60 days from the date of this Agreement at cost of the first party.

2. That Mrs Manju or Mr Raj Kumar (First Party) shall always be available as and when required by the second party to execute sale deed of the land as mentioned in the agreement to sell dated 3rd March, 2021 owned by M/s. Kanchenjunga Buildwell P. Ltd. And /or Rudra Buildwell Constructions P. Ltd.

3. That Mrs Manju or Mr Raj Kumar, jointly and/or severally (First Party) shall be responsible to get mutation of land sold by M/s. Rudra Buildwell Constructions P. Ltd. (which were purchased by Rudra from Mr. Hira Lal Gata No.280/281, 282, 283, 284, 285 area 1.844 Hec + 1.901 Hec) in favour of Endless Services P. Ltd, and Masatya Technologies P. Ltd. within 60 days from the date of this Agreement.

4. That additionally first party has issued cheques as per the details given below to clear the entire amount of claim filed by second party with the IRP.



19. From the perusal of the abovementioned clauses, it appears that the MoU is in the nature of a settlement agreement in which the Corporate Debtor was never a party. Further, there is no interest element has been provided. From the bare perusal of the provisions/clauses of the MOU dated 02.03.2021 and an addendum dated 03.03.2021, we do not find any clause which would show that any “Financial Debt” is owed to the present Applicants and therefore by no means the present applicant can be called as a “Financial Creditor”.

20. At this stage, it is pertinent to refer to the definition of the expression “Financial Creditor” in sub-section 7 of Section 5 of the Code.

Section 5 of sub-section 7 reads as follows: -

“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”

21. At this stage, it is also pertinent to refer to the definition of the expression “Financial Debt” in sub-section 8 of Section 5 of the Code.

Section 5 of sub-section 8 “Financial Debt” reads as follows: -

“Financial Debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

*(b) ******

*(c) ******

*(d) ******

*(e) ******

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

*(g) ******

*(h) ******

*(i) *****”*



22. We are, therefore, of the considered view that the amount involved in the present case cannot be considered as a Financial Debt within the definition of sub-section 8 of Section 5 of the Code. We are also of the opinion that the Applicants are not Financial Creditors holding any financial debt which is in default of payment by the Corporate Debtor. Therefore, we are satisfied that there exists no debt and no default and the same is corroborated by the averments made within the application. It is therefore clear that the Corporate Debtor has been able to raise a plausible contention regarding that the Corporate Debtor is not in default in respect of the debts due and payable, therefore the application is required to be dismissed.

23. In light of the above facts and circumstances and the foregoing discussion, we are satisfied that the present application fails to fulfil the criteria under Section 7 of the Code. It is accordingly ordered as follows: -

i. The Application bearing **(IB)-347(ND)/2021** filed by the Applicants under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.

ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)