



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI  
COURT - IV**

**Item No. 504**

**IA/1120/PB/2022 IN IB/267/(PB)/2021**

**IN THE MATTER OF:**

Deva Shree Developers Pvt Ltd

...

Applicant

Vs.

M/s Aravali Cylinders Pvt Ltd.

Respondent

**Order under Section 7 of IBC, 2016.**

**Order pronounced on 29.08.2023**

**Coram:**

**MR. P.S.N. PRASAD,**

**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets

C.P.(IB)-267/PB/2021 stands dismissed.

I.A./1120/PB/2022 stands dismissed.

Sd/-

**DR. BINOD KUMAR SINHA  
MEMBER (TECHNICAL)**

Sd/-

**P.S.N. PRASAD  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**COURT-IV**

**Company Petition No. (IB)-267/ND/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:**

Devashree Developers Private Limited & Ors.

... Financial Creditors

VERSUS

Aravali Cylinders Private Limited

...Corporate Debtor

**CORAM**

**SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order delivered on:29.08.2023**

**ORDER**

**PER: SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)**

The instant company application is jointly filed by M/s. Devashree Developers Private Limited and 5 others ('applicants'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Aravali Cylinders Private Limited bearing CIN: U28121DL1981PTC012656 on the ground that the Corporate Debtor committed a default in payment of Rs.2,31,00,000/- (Rupees Two Crore Thirty One Lakh only).



2. The Corporate Debtor i.e., M/s. Aravali Cyclinders Private Limited bearing CIN: U28121DL1981PTC012656 is incorporated on 19.11.1981 under the provisions of the Companies Act, 1956 having its registered office situated having office at 2527, Outside Turkman Gate near LIC Building Delhi - 110006. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
  
3. Briefly stated, the averments made by the applicants in the application are that the Corporate Debtor has approached the Applicants with the purpose of availing loan facilities for business purpose and the applicants had sanctioned several loan facilities to the Corporate Debtor in the years 2017 and 2018 as unsecured loans repayable on demand. The details of the loan disbursement by the applicants are as follow:-
  - a) The Applicant No.1 i.e., M/s. Devashree Developers Private imited has advanced loan facility of Rs. 1,00,00,000/- (Indian Rupees One Crore only) as unsecured loan on applicable interest vide cheques number 11359, 11363, 30298, 12478 and 12477 on 18.04.2017, 29.07.2017, 15.03.2018, 13.02.2019 and 15.02.2019 respectively.
  - b) The Applicant No.2 i.e, M/s. Radha Krishna Associates Private Limited has advanced loan facility of Rs. 35,00,000/- (Indian Rupees Thirty Five Lacs Only) as unsecured loan on applicable interest vide cheques number 003367 and 003368 on 22.05.2018 and 23.05.2018.
  - c) The Applicant No.3 i.e., M/s. Murari Lal Aggarwal (HUF) has advanced loan facility of Rs.50,00,000/- (Indian Rupees Fifty Lacs Only) as unsecured loan on applicable interest vide cheques number 003437 on 02.06.2017.



- d) The Applicant No.4 i.e., Mr. Murari Lal Aggarwal has advanced loan facility of Rs. 10,00,000/- (Indian Rupees Ten Lacs Only) as unsecured loan on applicable interest vide cheques number 00093 on 10.08.2017.
- e) The Applicant No.5 i.e., Mr. Vijay Aggarwal has advanced loan facility of Rs.15,00,000/- / (Indian Rupees Fifteen Lacs Only) as unsecured loan on applicable interest vide cheques number 036120 on 27.04.2017.
- f) The Applicant No.6 i.e., M/s. Mahendr Kumar Aggarwal (HUF) has advanced loan facility of Rs.20,00,000/- (Indian Rupees Twenty Lacs Only) as unsecured loan on applicable interest rate vide cheques number 002683 and 002684 on 18.08.2017 and 24.08.2017.
4. The applicants further stated that the applicants were constrained to issue demand notice dated 31.08.2019 upon the corporate debtor for repayment of the loan amounts aggregating to Rs.23,00,000/- along with applicable interest. The applicants had again issued a demand notice dated 25.02.2021 to the Corporate Debtor vide email and speed post demanding the outstanding payment of Rs.2,31,00,000/- along with the applicable interest.
5. The applicants stated that the demand notices dated 25.02.2021 were not delivered to the address of the Corporate Debtor and the same were returned with an endorsement 'Door Locked'. The applicants stated that the Corporate Debtor had failed to repay the debt of the Applicants and in view of the default committed by the Corporate Debtor, the applicants have preferred the instant application under Section 7 of the Code, 2016.
6. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor submitted that the alleged claim amount is not a Financial Debt as defined under Section 5(8) of the Code, 2016 as no loan agreement or any other document is annexed with the present application to prove that there is



disbursal of loan amount to the Corporate Debtor for time value of money or that the amount became due and payable or that there is a default committed by the Corporate Debtor.

7. The Corporate Debtor further stated that the alleged claim of the Applicant No.1 was towards the earnest money deposited by the Applicant No.1 as per the Agreement to sell dated 25.01.2019 executed between the Applicant No.1 and the Corporate Debtor for the sale of the half of proportion of built up property bearing no. SP499, RICCO Industrial Area, Bhiwadi District, Alwar, Rajasthan – 201019. The Corporate Debtor stated that as per the terms of the said agreement, the Applicant No.1 had agreed to purchase the said property of the Corporate Debtor for a total consideration of Rs. 6.5 Crores and amount of Rs. 50,00,000/- was paid by the Applicant No.1 towards earnest money.
8. Moreover, the Corporate Debtor stated that the Applicant was liable to make payment as per the schedule provided under the said agreement, but failed to do so, consequent to which the earnest money of Rs.50,00,000/- was forfeited by the Corporate Debtor in terms of Clause 9 of the Agreement.
9. The Corporate Debtor stated that the separate claims of each of the Applicants have to be treated as separate and distinct under Section 7 of the Code, 2016 to stand the test of the pecuniary jurisdiction in its independent capacity.
10. Further, the Corporate Debtor stated that the alleged demand notice dated 31.08.2019 was never received by the Corporate Debtor and no proof of delivery of the said notice has been placed on record by the Applicants. Therefore, the date of default i.e., 31.08.2019 as mentioned by the



Applicant in Form I cannot be accepted as no demand notice was received by the Corporate Debtor.

11. On behalf of the Applicants, rejoinder has been filed to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted and it was stated that the provisions of Section 7 of the Code, 2016 allows Financial Creditor to either by itself or jointly with other Financial Creditors or any person on behalf of the Financial Creditor to file an application under Section 7 of the Code, 2016.
12. The Applicants stated that the alleged Agreement of sale dated 25.01.2019 was not an agreement of sale but an agreement for Mortgage. The Applicants stated that the said property of the Corporate Debtor was already mortgaged with Central Bank of India, therefore, the Corporate Debtor requested the Applicant No.1 to enter into a sale purchase agreement to secure the interest of Applicant No.1.
13. Further, the applicant stated that Corporate Debtor in its Audited Balance Sheet has not shown the money received as advances against the sale of property but the money is only shown as a part of the short term advances.
14. The Applicants further stated that there is a Company Petition bearing C.P. 142/2021 under Section 241-242 of Companies Act, 2013 filed by the existing directors of the Corporate Debtor against other existing directors of the Corporate Debtor pending before the Hon'ble National Company Law Tribunal, New Delhi.
15. The Applicants stated that the alleged claim amount is a Financial Debt in terms of Section 5(8) of the Code, 2016 and the term 'Financial Creditor' shall be interpreted in a wider form in order to show that the Corporate Debtor owes a Financial Debt as there exists a debt due and payable by the



Borrower. To support the contention, the Applicants had placed reliance on **Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. (2021 SCC Online SC 513)**.

16. In support of the averments made in the application, rejoinder and written submission, the Applicants had placed reliance on the following documents:

- i. Copy of Bank Statement of Applicant No.1 reflecting disbursement of the amount.
- ii. Copy of the Ledger Account of the Applicant No.1 reflecting disbursement of the amount.
- iii. Copy of the Statement of Accounts and Ledger Account of Applicant No.3 reflecting the disbursement of the amount.
- iv. Copy of the Bank Statement of Accounts and Ledger Account of Applicant No.4 reflecting the disbursement of the amount.
- v. Copy of the RTGS Slip and Bank Statement of Applicant No.5 reflecting the disbursement of the amount.
- vi. Copy of the Bank Statement and Ledger Account of Applicant No.6 reflecting the disbursement of the amount.
- vii. Copy of Form 26AS for the Financial Year 2017-18 of Applicant No.1 and Financial Creditor No.6.
- viii. Copy of Financial Statement of the Corporate Debtor for the Financial Year 2018-2019.
- ix. Copy of the Demand Notices Dated 31.08.2019.
- x. Copy of the Demand Notices Dated 25.02.2021 along with the Tracking Details.

17. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.

18. On a perusal of the pleadings and the submissions of the parties, the issue to be adjudicated by this Adjudication Authority is that, **“whether the loan claimed in default of payment in the application under section 7 of**



**IBC filed by the Applicants, are loans that could qualify as ‘financial debt’ under IBC and appropriate for initiation of CIRP against the corporate debtor?”**

19. We may first notice the averments made in the Application under Section 7 of the Code. Point 2 of Part-IV of the Section 7 Application is as follows:

CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Two Crores and Thirty-One Lakhs Only) as on 25.02.2021.			
	Financial Creditor	Amount (Rs.)	Due Date	Date of Default
	Devashree Developers Private Limited (Financial Creditor No. 1)	1,00,00,000	31.08.2019	31.08.2019
	Radha Krishna Associates Private Limited (Financial Creditor No. 2)	35,00,000	31.08.2019	31.08.2019
	Murari Lal Aggarwal (HUF) (Financial Creditor No. 3)	50,00,000	31.08.2019	31.08.2019
	Murari Lal Aggarwal (Financial Creditor No. 4)	10,00,000	31.08.2019	31.08.2019
	Vijay Aggarwal (Financial Creditor No. 5)	15,00,000	31.08.2019	31.08.2019
	Mahender Kumar Aggarwal (HUF) (Financial Creditor No. 6)	20,00,000	31.08.2019	31.08.2019

20. A perusal of the requirements of sub-sections (2), (3), (4) and (5)(a) of section 7 of the Code, 2016 shows that an application under section 7 has to be submitted in a given format, which is Form 1, where the financial creditor has to furnish record of default recorded with either the Information Utility or such other record or evidence of default as may be



prescribed. A perusal of Part V of the Form 1 application provided in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 gives a list of eight documents, which can be submitted as proof of financial debt and evidence of default. Quite surprisingly, the Applicants had annexed mere Bank Statements and Ledger Account to show that the amount was disbursed to the Corporate Debtor. It is also pertinent to note that no Bank Statement, Ledger, or any proof showing disbursement of the amount by Financial Creditor No.2 is placed before this Adjudicating Authority.

21. We observe that the present Company Application filed under Section 7 of the Code, 2016 seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor is bereft of any pleading or documentary evidence regarding the basic terms of the disbursement of Financial Debt including the date of repayment, applicable interest rate and date of default.
22. Thus, we find that the Applicants did not place on record either any document or record regarding the financial loan and/or its disbursement, but only relied on the Bank Statement and two demand notice(s) dated 31.08.2019 and 25.02.2021 ostensibly sent by the financial creditors individually demanding repayment of the alleged loan wherein no tracking report was annexed with the Demand Notice dated 31.08.2019.
23. Furthermore, this Adjudicating Authority cannot accept the Applicant(s) contention that the Tracking Report with the Demand Notice dated 31.08.2019 was not available owing to the outbreak of Covid-19 pandemic and nationwide lockdown in the month of March, 2020. It is pertinent to note that as per the averments of the Applicant(s) in Part-IV of Form I, the Loan is payable on demand and since, the loan was demanded to be repaid vide notice dated 31.08.2019, the date of default is 31.08.2019. However,



as noted above, the alleged demand notices sent to the Corporate Debtor were unsupported by any Tracking Report and it further took a year and a half for the Applicants to issue another demand notice on 25.02.2021. Thus, in our considered view the alleged debt has not become due and the date of default i.e., 31.08.2019 as averred in Pt. 2 of Part IV of the Form-1 is questionable. It is settled that in a proceedings under Section 7 of the Code, 2016, the Corporate Debtor is entitled to point out that a default has not occurred in the sense that the debt is not due. In the present facts, the debt had not become due in the sense that admittedly it was payable only after the demand and the Applicant has failed to establish that the demand notice was properly served on the Corporate Debtor. As per the averments of the Applicants themselves, demand was at first made on 31.08.2019 but it remains unsupported by Tracking Report, therefore, it cannot be corroborated if the demand was actually made to the Corporate Debtor vide notice dated 31.08.2019 so as to make the debt due and payable. The second demand notice(s) were issued on 25.02.2021 which are squarely covered under Section 10 A of the Code, 2016 and any default arising out of these demand notice(s) cannot give rise ever to a cause of action for initiation of insolvency process under IBC, 2016.

24. Further, in the absence of any document evidencing the loan agreement placed on record by the applicants, the only indirect proof of purported loan is contained in the Demand Notice(s) dated 31.08.2019 and 25.02.2021 sent by the applicants to the corporate debtor, wherein no specific amount of interest payable to the applicants or the rate of interest is mentioned. When we look at the content of these Demand Notice(s) in conjunction with the fact of absence of any loan agreement whatsoever or any related proof from any other document including balance sheet from the side of the financial creditor, we are not convinced that there exists a 'Financial Debt'.



25. On a perusal of the Audited Balance Sheet of the Corporate Debtor for the Financial Year 2018-19, we observe that as on 31.03.2019, the Corporate Debtor had Unsecured Loan of Rs.97,114,714.89/- only. The bifurcation of the Unsecured is as follow:-

5.5 Unsecured Loan includes:

	31st March 2019	31st March 2018
i) From Related Party (interest Free)	32,621,997.89	40,038,136.47
ii) From Others (interest Free)	64,492,717.00	40,188,459.40
iii) From Others (interest Bearing)	-	15,880,284.60
Total	97,114,714.89	96,106,880.47

26. It is evident from the above extract of the Balance Sheet as on 31.03.2019 of the Corporate Debtor that the Corporate Debtor had no interest bearing Unsecured Loan as on 31.03.2019. Therefore, the claim of the Applicants of the disbursal of the Unsecured Loan during 2017 and 2018 at a specified interest rate is not corroborated from the Audited Financial Statements for the Financial Year 2018-19 of the Corporate Debtor.

27. We have considered the argument of the Applicants that the Adjudicating Authority has to merely see whether there is a default in repayment of debt and that is the trigger for initiation of CIRP and the reliance placed on the **Hon'ble Supreme Court's judgment in the matter of Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd. (2021 SCC Online SC 513)**. We are of the view that the cited judgment lays down what a financial debt is, but does not answer the question as to the status of financial debt when the basis or substratum of the financial debt is missing. Therefore, the relied judgment is of no help to the Applicants in the present case where the disbursal of the Financial Debt for time value of money is itself in question.

28. At this juncture, it is relevant to refer the Judgement of the Hon'ble NCLAT, New Delhi in **Pawan Kumar Ex-Director and Shareholder Vogue Clothiers Pvt. Ltd. Vs. Utsav Securities Pvt. Ltd [(2021) ibclaw.in 368 NCLAT]** wherein it was held that, "In absence of a Financial Contract



defined in Rule 3(1)(d) the IBBI (AAA) Rules, 2016 between the Corporate Debtor and Financial Creditor, a transaction cannot be termed as Financial Debt.” The relevant para of the judgement is reproduced herein below:-

“21. We have considered the submissions; the Financial Creditor has not furnished any document to show that the transaction in question is a loan transaction. So far as the section 10 of Indian Contract Act and Rule 3(1)(d) of the Rules is concerned we again refer the **Prayag Polytech (supra)** in which this Tribunal held that:

“7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The ‘Financial contract’ is defined in “Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules ,2016” Rule 3(1)(d) requires setting out the terms of the financial debt including tenure etc. We find that Appellant has failed to show any record showing financial debt to be there. As such, we are unable to find any fault in the impugned order while rejecting Section 7 application.”

22. With the aforesaid, we **are of the view that the Financial Contract as per the Rule 3(1)(d) is must between the corporate debtor and the financial creditor for setting out the terms of a Financial Debt including the tenure of the Debt, interest payable and the date of repayment.** In the absence of such Financial Contract, the Financial Creditor has failed to satisfy that when the debt and interest become due and payable.”

29. Adverting back to the facts of the present case, we observe that there is no loan agreement between the parties, a fact which remains undisputed. Moreover, there is no adequate material on record to prove the disbursal of money as a financial debt. The terms, tenure and due date of repayment remain unknown to us. Demand Notices were sent separately by all the Applicants to the Respondent. The Demand Notices dated 31.08.2019 had only crystalized the principal amount, whereas the amount of interest or rate of interest is never crystalized which creates serious doubts as to the terms of the disbursal and the purpose of the disbursed amount. Thus, we



conclude that the conditions required to be fulfilled for a debt to be 'financial debt' were not satisfied in the present case.

30. We would like to emphasize that the primary legislative intent behind the IBC is insolvency resolution so as to bring the corporate debtor back to its feet. It would militate against this legislative fiat if we allow the IBC forum to be used as a substitute for money recovery proceedings.
31. Having regard to the conspectus of fact and circumstances of the present case and the material placed on record, this Adjudicating Authority is not satisfied as to the existence of a 'Financial Debt' and the 'default' therein. Accordingly, the present Application i.e. **(IB)-267/ND/2021 being devoid of merits stands dismissed. No orders as to costs.**

**Sd/-  
(DR.BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-  
(SH. P.S.N PRASAD)  
MEMBER (J)**