



SL. No.4

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 31.10.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/114/2021
NAME OF THE COMPANY	Benita Industries Ltd
NAME OF THE PETITIONER(S)	PV Potluri Ventures LLP
NAME OF THE RESPONDENT(S)	Benita Industries Ltd
UNDER SECTION	7 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Company Petition (IB) 114/7/HDB/2021 is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.114/07/HDB/2021
U/s. 7 of IB Code, 2016

In the matter of:

M/s. PV Potluri Ventures LLP,
Door No.39-1-57, M.G. Road,
Vijayawada – 520 010.

....the Petitioner

Vs

M/s. Benita Industries Limited,
D 203, Aditya Elite,
B.S. Maktha, Somajiguda,
Hyderabad – 500 082.

....the Respondent

Date of order: 31.10.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. M. Surender Rao, Advocate

For the Respondent : Mr. Maharshi Viswaraj, Advocate

Heard on : 10.10.2023

Per : Sanjay Puri

ORDER

1. This application is filed by the Petitioner M/s. PV Potluri Ventures LLP, against the Respondent M/s. Benita Industries Limited, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the



Respondent for the default committed in discharging the debt that is due to the Petitioner.

The Application:

2. It is submitted that, the Respondent through its authorized bank signatory and management representative Mr. T. Satish Kumar and authorized representative Mr. U. Kondal Rao approached the Petitioner on 29.08.2019 to lend an amount of Rs.4,00,00,000/- (Rupees Four Crores only) on interest @ 36% p.a. (unsecured) with an assurance that the Respondent will repay the amount to the Petitioner within a period of 4 days from the date of receipt of the said amount. Accordingly, the Petitioner had lend an amount of Rs.4,00,00,000/- to the Respondent on 29.08.2019 and had transferred the said amount of Rs.4,00,00,000/- from its Bank Account i.e. The Federal Bank Limited, Branch: Hyderabad bearing Account No. 11240200023355 to the Bank Account of the Respondent i.e. Andhra Bank, Branch: Proddutur, bearing Account No.043731100000201.¹
3. It is further submitted that, after lapse of 4 days, the Petitioner had contacted and requested the authorized representatives of the Respondent for repayment of the said amount. However, authorized representatives of the Respondent have intimated the Petitioner that they would pay the entire amount of Rs.4,00,00,000/-with accrued interest in the month of October 2019.
4. It is submitted that, the Respondent instead of repaying the amount of Rs.4,00,00,000/- together with its accrued interest, had again approached the Petitioner through above mentioned personnel in the first week of October 2019, to lend further amount of Rs.15,00,00,000/- (Rupees Fifteen Crores only) on interest @ 36% p.a. (unsecured) with an assurance that the Respondent will repay with interest within a period of 3 months from the date of receipt of the said amount to the Petitioner

¹ Pg 104 of the Application (Annexure-6).



including the earlier due amount of Rs. Rs.4,00,00,000/- with accrued interest. Also, the Respondent promised the Petitioner that the entire accrued interest due to the Petitioner, would be paid at the end of clearing the complete outstanding amount due. Upon such inducement, the Petitioner had transferred the said amount of Rs.15,00,00,000/- in three (3) tranches to the above said Respondent's Bank Account on 04.10.2019, 10.10.2019 and 11-10-2019² and in total the Petitioner had lent an amount of Rs.19,00,00,000/- to the Respondent.

5. It is submitted that, the Respondent had repaid an amount of Rs.3,82,00,000/- in intervals towards the Principal Amount leaving the balance of Principal amount of Rs.15,18,00,000/- plus accrued Interest as on 24.12.2020³.
6. It is submitted that, since the Respondent was not repaid the outstanding amount of Rs.15,18,00,000/- together with its accrued interest, the Petitioner was compelled to send umpteen emails⁴ to repay the outstanding amount of Rs.22,87,00,000/- which included accrued interest as on 02.11.2021. In reply, the Respondent through its authorized bank signatory and management representative Mr. T. Satish Kumar had sent an email Dated 17.11.2020 communicated to the Petitioner as under:

"Anna, as discussed, am sending the plan on return of the loan amount.

Before November 30, 2020 - 5

Before January 5th, 2021 - 5 to 7

Before February 5th, 2021 - 5 to 7

Before March 5th, 2021 - 7

Will surely stick to above schedule, by God's grace, if some chunk comes in by way of advances or investments, will clear before the above schedule. Will meet you once am back from Ananthapur, am planning to be there by Thursday."

² Pg 104 & 105 of the Application (Annexure-6).

³ Pg 107,110, 118-120 & 122-123 of the Application (Annexure-6 & 7).

⁴ Pg 130 to 137 of the Application (Annexure 8 to 15).



7. It is submitted that, despite the above email of 17.11.2020, the Respondent failed to honor the promise and in-fact breached the trust on the Respondent. As such, the Petitioner was again compelled to send umpteen emails⁵ seeking repayment of the outstanding amount of Rs.25,04,00,000/- (Principal amount of Rs.15,18,00,000/- plus Interest Rs.9,86,00,000/-) as on 01.03.2021, but the Respondent did not repay.
8. It is submitted that, under these circumstances, the Petitioner issued Legal Notice Dated 18.03.2021⁶ to the Respondent as well as to its authorized bank signatory and management representative Mr. T. Satish Kumar and also to its authorized representative U. Kondal Rao, calling upon the Respondent to pay the Petitioner a sum of Rs.25,04,00,000/- within 15 days of receipt of the said notice, else the Petitioner would be compelled to initiate appropriate legal action against the Respondent and others, including initiating proceedings under Insolvency and Bankruptcy Code, 2016. The Legal Notice which was sent to the Registered Office of the Respondent returned with a postal endorsement "Left without intimation" vide return Postal Cover, while the Legal Notices that were sent to the Respondent and its Representatives at the Corporate Office of the Respondent were served on 20.03.2021.⁷
9. It is submitted that, the Respondent despite receipt of the said Legal Notice Dated 18.03.2021 on 20-03-2021, neither repaid the outstanding sum of Rs.25,04,00,000/- nor replied to the said Legal Notice. Instead, the Respondent lodged a Caveats against the Petitioner before the Court of the Hon'ble Additional District Court at Vijayawada, Andhra Pradesh

⁵ Pg 138 to 141 of the Application (Annexure 16-19).

⁶ Pg 142-149 of the Application (Annexure-20).

⁷ Pg 150-154 of the Application (Annexure 21-23).



and before the Hon'ble Chief Judge, City Civil Courts at Hyderabad.⁸
Hence, this Petition.

10. It is stated that, a copy of Ledger Account of the Respondent as maintained by the Petitioner in its books of accounts, a copy of workings for computation of amount and days of default in tabular form as on 01.03.2021 and a copy of Petitioner's Limited Liability Partnership Agreement Dated 19.11.2018 are enclosed along with the application.⁹

The Counter:

11. The Respondent has denied that through authorized signatory and authorized representative it had approached the Applicant and induced them for lending four crores with interest repayable within four days.
12. It is pointed out that the Applicant is a limited liability partnership (LLP) established for the purpose of carrying on healthcare services and advisory services in domestic and global markets. An LLP cannot be incorporated to carry on the business in the field of banking, insurance, venture capital, mutual fund, stock exchange and such other activities including non-banking financial activities without having the in-principle approval of the respective regulatory authority.
13. It is further stated that as per the Annual Return as at 31st March 2020 and 31st March 2021 and Statement of Account & Solvency filed by the Applicant as on 31st March 2020 will show that the total capital contribution made by the partners of the Applicant was only Rs.1 lakh and their total turnover does not exceed Rs.5 Crores. In fact, in the financial year ending 31st March 2020 the Statement of Account & Solvency declares that the Applicant's turnover does not exceed Rs.40 lakhs and the obligation of contribution by partners does not exceed Rs.25 lakhs.

⁸ Pg 155-162 of the Application (Annexure 24 & 25).

⁹ Pg 163-191 of the Application (Annexure 26-28).



14. Through these contentions it is asserted by the Respondent, that the Applicant is not an entity engaged in the business of financial transactions or services, and that the entire application according to the Respondent, lacks bona fides, where not a single averment has been made with supporting evidence.
15. It is further submitted that the Applicant had never granted the money in order to be treated it as loan transaction. There was no relationship of creditor and debtor between the Applicant and the Respondent, not to speak about the existence of any relationship between the parties as a financial creditor lending money by way of loans to constitute a financial debt.
16. It is submitted that the Respondent is engaged in mining and quarrying and mining of metal ores. It was their understanding was that the Applicant was desirous of participating in future mines that may be allocated to the Respondent so as to be benefitted from day one from the outcome of such mining. It was submitted that such outcome will never be known until new mining licenses are actually granted and mining actually takes place not to speak about prospecting.
17. Another contention made is about 36% rate of interest, of which there is basis how the said exorbitant interest claim was made by the Applicant. The computation of interest rate for the default amounts by the Petitioner is thus without any basis and has been computed in an ad-hoc and arbitrary manner. It is submitted that under law no such lending is possible and therefore the transaction was an illegal transaction without any legs to stand in the eyes of law.
18. Referring to section 3(1)(d) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which defines the term “financial contract” to mean



“a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment”

it is argued, that it is incumbent upon the Respondent to place before the Tribunal the ‘Financial Contract’ and demonstrate without any ambiguity from the "Financial Contract”, the amount disbursed as per the loan/debt, the tenure of the loan/debt, the interest payable and the conditions of repayment. Since the Petitioner as Financial Creditor has not placed on record any such Financial Contract or Financial Agreement in order to establish the relationship between the Financial Creditor and the Respondent, the default as alleged by the Financial Creditor cannot be determined. On this count alone, the application is prima-facie liable to be dismissed, is averred by the Respondent.

The Rejoinder

19. In the Rejoinder, the Applicant has assailed the Counter on the ground that the person who claimed to have read, signed and submitted the same had no locus to sign such counter on behalf of the Respondent, as there was no valid authorization in his favor. It is therefore contended that the counter reply of the Respondent be rejected. Rest of the averments in the rejoinder are mostly re-iteration of the contentions made in the Application by the Petitioner. Few whatsapp messages have also been adduced to show exchange between the persons representing respectively the Petitioner and the Respondent, about the outstanding sums.

Name Change Application

20. During the pendency of this Application a Miscellaneous Application No. 7/2022 was filed by the Petitioner to amend the cause title of the Petition, by changing the name of the Petitioner from “PV Potluri Ventures LLP” to “PV Potluri Ventures Private Limited, which was allowed on 15.12.2022. Nevertheless the Respondent filed a counter to this amendment petition also. , Essentially it has been argued on



behalf of the Respondent that the amended application has been filed by the Petitioner to escape from the rigours of the RBI Act which prohibits carrying out any financing business without meeting the preconditions set by RBI. It is presented that since only a company can register with RBI prior to commencement business of finance, the Petitioner has sought to change its status from an LLP to a Company. This according to the Respondent is an evidence that the Petitioner at the material point of time was not in the financing business and thus could not have lent money to the Respondent.

The Decision

21. The narrative outlined in the present Application contains some peculiar aspects. The fundamental facts presented are as follows: On 29.08.2019, the Petitioner extended an unsecured loan of Rs.4 crores to the Respondent. This loan was ostensibly meant for a brief period of four days and carried interest rate of 36% per annum. The loan remained unpaid until 04.10.2019, when the Petitioner extended another unsecured loan of Rs 5 crores. Subsequently, on 10.10.2019 and 11.10.2019, the Petitioner provided two more tranches of unsecured loans, each amounting to Rs 5 crores, totaling Rs 10 crores. In sum, the Petitioner claims to have extended an unsecured loan of Rs 19 crores to the Respondent, all with an interest rate of 36% per annum. It is noteworthy that this substantial unsecured loan was granted without any formal documentation or agreements.
22. Despite the absence of formal paperwork, the Respondent did repay a sum of Rs.3.82 crores to the Petitioner between 13.11.2019 and 24.12.2020, resulting in a remaining balance of Rs.5.18 crores. In certain emails¹⁰ provided as evidence along with this petition, these returned amounts were mentioned as interest received from the Respondent. However, in the petition, the entire sum of Rs.3.82 crores has been classified as repayment toward the "principal amount."

¹⁰ Emails dated 01 May and 01 June 2020: Page 131 & 132 of the Application



23. The Respondent, on the other hand has disputed having received any loan and instead contends that the sum of Rs.19 crores credited to their bank account represented investment capital from the Petitioner. According to the Respondent's claim, their understanding with the Applicant/Petitioner was that the latter intended to participate in future mining projects allocated to the Respondent, with the aim of reaping immediate benefits from the outcomes of such mining ventures. **About the sum of Rs.3.82 Crores 'repaid' to the Petitioner, the Respondent has stated nothing in its counters.**
24. Main argument of the Respondent has been that the Petitioner not being NBFC was ineligible to carry out any form of financing business as per the RBI Act. It is thus implied that any act of the Petitioner to enter any loan transaction would have been illegal, and therefore it did not happen.
25. Another fact brought on record by the Respondent, which has remained uncontroverted, is that total capital contribution made by the partners of the Petitioner's LLP was only Rs 1 lakh and their total turnover did not exceed Rs.40 lakhs in FYE 31.03.2020. The actuals (Pages 9 & 10 of Counter). It has thus been insinuated that the Petitioner never had the capacity to finance Rs.19 crore loan.
26. From the claims and counterclaims as enumerated in the preceding paras, following emerges:
- Without any specific agreement or formal arrangement, a sum of Rs.19 crore was given by the Petitioner to the Respondents
 - While the Petitioner refers to the said payments as (unsecured) loan extended at the interest rate of 36%, the Respondent contests that claim and has declared the same amount as investment made by the Petitioner for some future 'mining operations'



- Repayments to the extent of Rs.3.82 cr have been made by the Respondent. However, it remains unclear whether these repayments were towards interest or principal.
27. One thing is clear after going through the facts of the case, the emails concerning the same and the pleadings here, that the sum of Rs.19 crore was indeed advanced by the Petitioner to the Respondent in a highly laissez-faire manner i.e., without any documentation or any formal agreement. Neither any collateral was taken nor any term was agreed upon for the amount so advanced.
28. However, despite the protestations of the Respondent about the ineligibility of the Petitioner in conducting 'financing business', the amounts transferred to the Respondent's bank account were loans and not investment towards some 'mining project'. This is apparent from the subsequent conduct of the Respondent when it had repaid Rs.3.82 crores (by way of interest/principal).
29. Significantly, during these proceedings, the Respondent has refrained from making any submissions or objections regarding the periodic repayments amounting to Rs.3.62 crores made to the Petitioner's bank account.
30. Nevertheless, as the terms of the loan have remained ambiguous, it is not possible to definitively attribute a default. By their own admission¹¹, until December 24, 2020, the Petitioner had been receiving money from the Respondent in the form of repayments. Therefore, while the timing of the initiation of the contract between the Petitioner and the Respondent, based on the dates when money was transferred from the former's bank account to the latter's, is clear, other details, such as the interest rate and the duration of the loan contract, remain uncertain.

¹¹ Para 8 on page 4 of the application



31. To that extent, this application by the Petitioner is also deficient. In item No. 5 of Part-V of Form-I, which is the specified form in Rule 4 of ‘The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016’ for making application under section 7 of IBC, the Applicant/Petitioner is required to attach a copy of “THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE”. The ‘Financial Contract’ has been defined in Rule 3(1)(d) of the aforesaid Rules in the following manner:

“financial contract” means a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment”

32. As the Rules require a copy of the ‘financial contract’ to be attached, it can be understood to be a formal contract reduced in writing in any valid form (electronically or physically on paper). Even if the implied contract is to be understood, it should be demonstrable through an uncontroverted evidence, so far as the *“terms of the financial debt, including the tenure of the debt, interest payable and date of repayment”* are concerned. In the case in hand, while the existence of a debt is apparent, its terms, tenure, rate of interest and stipulated date of repayment are ambiguous and contentious.

33. In the Application before us, the Applicant has simply recorded ‘NOT APPLICABLE’ against item no. 5 of Part-V of Form-I, and has provided no evidence other than copies of bank statements to show disbursement of the money. Few email/whatsapp exchanges have been attached, but these are neither clear nor conclusive about the terms of this the disbursement of money or its repayment.

34. As copy of the ‘financial contract’ as envisaged in Rule 4 and Form-I has not been attached, no definite conclusions can be drawn in respect of



the terms, the tenure, the interest or the repayment of the money so disbursed to the Respondent by the Petitioner. As per the above discussion, we are not inclined to entertain this application.

As a result, the application is dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL