



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH COURT-I

C.P. (IB) No. 972/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

Dharmil Mehta & Ors.

...Financial Creditor/ Applicant

Versus

M/s Eknath Developers LLP & Ors

...Corporate Debtor/Respondent

Order Delivered on: 26.06.2025

Coram:

Sh. Prabhat Kumar

Sh. Justice V.G Bisht

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Adv. Kapil Shah Ld. Counsel

a/w Adv. Vatsal, Advocate

For the Corporate Debtor:

Adv. Vaibhav Kishna a/w

Adv. Tahiv Prande



ORDER

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**IBBI Rules**”) by Dharmil Rasiklal Mehta and Others (“**Petitioner/Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against M/S Eknath Developers LLP (“**Respondents/Corporate Debtor**”) for the total default of **Rs. 2,43,97,659/- (Rupees Two Crores Forty Three Lakhs Ninety Seven Thousand Six Hundred and Fifty Nine)** only, inclusive of 15% p.a. interest on the principal amount payable quarterly.

Brief Facts of the case:

1. The **Financial Creditors, Dharmil Rasiklal Mehta (“Applicant 1”)** {Aadhar No: 93240245441}, **Harshana Dharmil Mehta (“Applicant 2”)** {Aadhar No: 475419651101}, **Rasiklal C. Mehta (“Applicant 3”)** {Aadhar No: 768494034706}, are Indian residents having residential address at Flat No. 801/802, Adinath CHSL, F.P. No. 62018, Kastur Park, Shimpoli, Borivali (West), Mumbai-400 092. **Dharmil Raskilal Mehta HUF (“Applicant 4”)** {Pan No: AAGHD6403C}, and **Rasiklal C. Mehta HUF (“Applicant 5”)** {Pan No: AANHR6910F}, is a Hindu Undivided Family incorporated on 17.04.2002 and 13.03.1977 respectively. Applicant 1 is acting as the authorized person on behalf of all the aforesaid applicants as per Power of Attorney dated 28.03.2024 and the address is same as above.
2. The **Corporate Debtor, M/S Eknath Developers L.L.P** is a Limited Liability Partnership company {(LLPIN)AAC-8306} incorporated on 20.10.2014, under Section 12(1) of the Limited Liability Partnership Act, 2008 (“**Act**”), having its registered office at Ground Floor, Naman Centre, Plot No. C - 31, G - Block, Bandra Kurla Complex, Bandra East,


Mumbai - 400051. This Bench has territorial jurisdiction to deal with this petition.

Submissions made by the Petitioners:

3. In and around January 2018, the designated partners of the Corporate Debtor, Mr. Jayesh Shah & Mr. Girish Limbachiya, approached the Financial creditors for financial support for the working of Corporate debtor to the tune of Rs. 1,60,00,000 along with 15% interest p.a. to be paid quarterly. The Corporate debtor, which is a group company of Naman Group/ Naman Builder, was given Rs. 1,60,00,000/- through the bank accounts of the Financial creditors. The financial assistance provided by the Financial creditors is summarized as below:

Date	Name	Amounts (Rs.)	Bank & Branch
20.01.2018	Dharmil Rasiklal Mehta	40,00,000	SBI, Shimpoli
20.01.2018	Harshana Dharmil Mehta	40,00,000	SBI, Shimpoli
20.01.2018	Rasiklal C. Mehta	35,00,000	SBI, Shimpoli
13.04.2018	Rasiklal C. Mehta	5,00,000	SBI, Shimpoli
20.01.2018	Dharmil Rasiklal Mehta HUF	20,00,000	SBI, Shimpoli
20.01.2018	Rasiklal C. Mehta HUF	20,00,000	SBI, Shimpoli
Total		1,60,00,000	

4. The Corporate debtor initially paid the interest amount, payable quarterly for the initial 2-3 quarters, and thereafter the Corporate debtor started paying the interest in lump sum amount at the end of 2 quarters or the year. This untimely payment of interests continued till 31.03.2021, after which the Corporate debtor stopped paying the interest or principal amount to the Petitioners.
5. The Corporate debtor deducted the TDS on the interest paid to the



Financial creditors. Every year i.e. from 01.04.2017 to 31.03.2021, the Corporate debtor issued the Ledger confirmation. The Ledger confirmation issued on FY 20-21 showed closing balance in the books of the Corporate debtor.


6. The Corporate debtor had stopped completely payment of interest amounts to the Petitioners since the month of 01.04.2021. The Corporate debtor further requested to continue to pay the same in timely manner. However, the Corporate debtor has till date not made payments of the aforesaid interest amount.
7. On 02.12.2021 & 22.12.2021, the Applicant issued notices calling upon the Corporate debtor to refund the entire loan amount along with the accrued interest at the rate of 15% p.a. which was pending since 01.04.2021 within 7 days in full or to come up with an amicable solution for settlement. The Corporate debtor replied to the legal notice of the Petitioner on 29.12.2021. Subsequently, the Petitioner issued the Demand Notice dated 29.01.2024 as per the Section 8 of the Code. The Corporate debtor replied to the demand notice as on 16.02.2024.

Submissions made by the Corporate debtor:

8. The Petitioners had around 11.07.2022 filed 5 mediation applications i.e. Mediation Application nos. 1238 of 2022, 1239 of 2022, 1240 of 2022, 1241 of 2022 and 1242 of 2022 before the Mumbai District Legal Services Authority wherein the Petitioners herein had claimed to have advanced a friendly loan to Mr. Rajesh Manharlal Desai, who was an associate of Eknath Developers LLP. The Petitioners, despite having claimed the same subject loan in the mediation proceedings is now claiming that the loan disbursed was a debt of the Respondents, Eknath Developers LLP. Also, the Petitioners have not executed any written contract with the Corporate debtor to validate the loan disbursement. Hence, it is clearly an afterthought, contradictory and inconsistent petition. The summarised table is given as below:

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Sl. N.	Name	Mediation. Case No.& date	Notice	Principal + interest Rs. Ps.	Amount Rs. Ps.
1.	Dharmil Rasiklal Mehta	1242/22 dated 12.7.22	2.12.21	40 lacs + 1364151/	53,64,151/-
2.	Harshna Dharmil Mehta	1241/22 dated 12.7.22	2.12.21	40 lacs + 1364151/	53,64,151/-
3.	Rasiklal Chunilal Mehta	1240/22 dated 12.7.22	2.12.21	40 lacs + 1364151/	53,64,151/-
4.	Dharmil Mehta HUF	1238/22 dated 12.7.22	2.12.21	20 lacs + 432074/	24,32,074/-
5.	Rasiklal Mehta HUF	1239/22 dated 12.7.22	2.12.21	20 lacs + 432074/	24,32,074/-

9. The Petitioners have not provided coherent and consistent account of their financial claims, which is an essential element to prove disbursal against consideration of time value of money. The Corporate debtor denies the confirmation of account holding it suspicious and doubtful. Therefore, the claim cannot be said to be a Financial debt.
10. Also, the Petitioners have not impleaded the necessary part of the mediation proceedings, wherein the loan is claimed to be disbursed to Mr. Rajesh Manharlal Desai, therefore the petition suffers from the defect of non-joinder of proper and necessary parties.
11. The Corporate debtor is a solvent company and is capable of paying of its debts as by way of their valuable assets and orders for work which will sufficiently generate the funds for repayment of the debts, hence there is no requirement of initiation of CIRP against the Corporate debtor.
12. The Petitioners have filed this petition to recover monies which is not due and payable by the Corporate debtor.
13. In the event of this Tribunal views this petition as maintainable and the

debt payable to the Petitioners then the Corporate debtor without prejudice to the contentions put forward in the Affidavit in reply dated 16.07.2024 shall be permitted to make the payment in 8-12 months to clear the dues by payment of monthly instalments.

Findings:

14. Heard learned Counsel for the Financial Creditors and perused the records.
15. Section 5(8) of the Code reads as,

8) "**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) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

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

²[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of [section 2](#) of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

16. Upon perusal of the records it can be observed that the Financial creditor has not placed on record any written agreement deliberating the terms of disbursal of the amount in question. However, the Financial creditor has placed on record, the Bank statements, which clearly shows the disbursal of, Rs. 40,00,059/- on 20.01.2018 through *CHQ TRANSFER-RTGS UTR to Eknath Developers LLP* from the account of Mr. Dharmil Rasiklal Mehta, from the account of Mrs. Harshna Dharmil Mehta to Eknath developers, from the account of Mr. Rasiklal Chunilal Mehta of Rs. 35,00,059/- to *Eknath Developers LLP* on 20.01.2018, from the account of Mr. Rasiklal Chunilal Mehta of Rs. 5,00,000/- to *Eknath Developers LLP* on 13.04.2018, from the account of Dharmil Rasiklal Mehta HUF to *Eknath developers LLP* of Rs. 20,00,059/- on 20.01.2018 and from the account of Rasiklal Chunilal Mehta HUF to *Eknath developers LLP* of Rs. 20,00,059/- on 20.01.2018.
17. Further, the confirmation of ledger account of the Financial creditors in the books of the Corporate Debtor for the period from 01.04.2017 to 31.03.2021 clearly acknowledges the amounts received from Financial Creditor; and credit of interest accrued thereon and TDS deducted on interest debited to the account of Financial Creditors. These ledger accounts are duly signed by the Corporate Debtor confirming the position stated therein. Accordingly, it is clear admission of the Corporate debtor in relation to outstanding debt as on 31.03.2021 for an

aggregate sum of Rs. 1,78,85,916/-, the breakup of which is given as below:

Name	Date of Issue	Closing Balance (Rs.)
Dharmil Mehta	11.08.2021	45,96,480
Harshana Mehta	11.08.2021	45,96,480
Rasiklal Mehta	11.08.2021	45,96,480
Dharmil Mehta HUF	09.08.2021	20,48,238
Rasiklal Mehta HUF	09.08.2021	20,48,238

18. The Bank statements of the Financial Creditors clearly evidence that the amount of loan was disbursed to the Corporate Debtor and the same is also confirmed by way of Ledger confirmation and the TDS certificates for FY 20-21 issued by the Corporate Debtor. Further, it is clearly averred in the Mediation application that a friendly loan of Rs. 20,00,000 was advanced to Respondent No. 1 on the request of Mr. Rajesh Manharlal Desai requesting such loan for Corporate Debtor in view of its working capital requirement. Accordingly, the contention of Corporate Debtor in relation to claim of financial creditors in mediation proceedings that the amounts were given as loan to Mr. Rajesh Manharlal Desai has no substance.
19. The Financial creditors have placed on record, a Certificate under Section 9(3)(c) of the insolvency and Bankruptcy Code 2016 dated 22.03.2024 by the respective bank, stating non-receipt of amounts claimed to be due in the present petition. It reads as, “...*This is to confirm that as per the records available with the Bank an amount of Rs. 62,48,535/- (Rupees Sixty-Two Lakh Forty-Eight Thousand Five Hundred Thirty-Five only) amount due/claimed has not been credited to the above account from Mis Eknath Developers during the period of 01.04.2021 to 21.03.2024. For details please refer to the statement of Account...*”
20. These facts clearly indicate that there was a disbursement of loan from the

Financial creditor to the Corporate Debtor and the said loan is still outstanding along with interest accrued thereon.

21. During the course of hearing, the Corporate debtor had initiated for the amicable settlement by sharing a proposal/consent terms vide email dated 31.05.2025 and a reminder email dated 02.06.2025. These Consent terms stipulate payment of Rs. 2.22 crores {(inclusive of applicable TDS) i.e. Rs.1,60,00,000/- towards principal and Rs.62,00,000/- towards interest)} in 9 equal monthly instalments towards the claim of all the Financial creditors in the present petition. The Corporate Debtor had also tendered detailed working of these amounts along with 50 cheques (10 cheques issued in name of each financial creditors towards monthly obligations to discharge the debt), payable on 1.6.2025, 1.7.2025, 1.8.2025, 1.9.2025, 1.10.2025, 1.11.2025, 1.12.2025, 1.1.2026 and 1.2.2026. It Is noticed that the Corporate debtor has sought some adjustment towards interest for moratorium under Covid-19.
22. It is also observed that the Financial creditor upon receipt of the said proposal had refused the Proposal/consent terms and vide letter dated 02.06.2025 had given a counter offer that said that:
- a) The payment of the Principal amount, Rs. 1,60,00,000/- should be paid as single installment on or before 05.06.2025.
 - b) The aggregating interest Rs. 1,07,04,225/- shall be payable up till 31.05.2025 at 15% p.a. in 3 equal monthly installments.
 - c) The aggregate TDS to the tune of Rs. 11,89,360/- to be payable to the account of the Corporate debtor.
 - d) The Corporate debtor shall pay 25 lakhs in 3 installments towards the mental distress and legal expenses incurred by the Financial creditor.
 - e) The proposal shall be valid till 06.06.2025.

23. Clause I of the Mediation Application states that “*the present dispute involves monetary claim arising out of the commercial transactions and such the present dispute is being referred under the Commercial Courts Act, 2015.*” This clearly indicates that the Financial creditors had initiated recovery proceedings by filing such applications on 12.07.2022, though there is also a non-starter report placed on record stating that, due to the absence of the respondents to appear, the Mediation proceedings could not be started.
24. There is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC) and the application is filed by properly authorized person. However, the intent and object of the court is to resolve the Corporate Debtor and it has consistently been held that the resolution process cannot be resorted with the primary objective of the recovery by the Financial creditors. The initiation of mediation proceedings, a precursor to Civil suit, indicates the intent of the Financial creditor. The disagreement between the parties is only on the quantum of interest and the period over which these payments are to be made to the Corporate debtor. It is trite law that this Tribunal cannot enforce a settlement upon the parties. In case of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors (2023) ibclaw.in 67 SC*, the Hon’ble Supreme Court held that “*The view taken in the case of Innoventive Industries { (2018) 1 SCC 407 } still holds good.*” The Hon’ble Supreme Court had quoted in Para 32 of decision in *E.S. Krishnamurthy and others {(2022) 3 SCC 161}*, which reads as under –

“..32.In Innoventive industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, paras 28 and 30 : (2018) 1 SCC (Civ) 356], a two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a “default” has occurred i.e. whether the “debt” (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a



“default” has occurred, it has to admit the application unless it is incomplete...”

25. Accordingly, we are of considered view that this Tribunal ought not to consider the merits of the offer of settlement made by the Corporate Debtor and grounds of rejection thereof.
26. The Petition is within limitation period in accordance to Article 137 of Limitation Act, 1963 since this company petition was filed on 10.04.2024 and the date of default is given as 31.12.2021 in the Part IV of the petition. Hence, the application falls within the limitation period of three years. On perusal of the IU certificate we notice that the Date of default provided in the IU certificates i.e. 01-04-2022. Considering the date of default, in both the IU certificate and the Part IV of the petition the date of filing and the cause of action lies within the limitation period prescribed by law. Hence, the petition is not barred by limitation.
27. That upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this Company Petition is liable to be admitted.
28. The Financial Creditor has proposed the name of **Mr. Mukesh Verma, Registration No: IBBI/IPA-001/IP-P01665/2019-20/12522**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
29. It is, accordingly, hereby ordered as follows: -
30. We are hereby directing the Suspended Board of Directors to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding

with providing necessary documents/information as required by the RP/IRP.

31. There shall be a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“Code”), in regard to the following:

- (i) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

Notwithstanding the above, during the period of moratorium:

- (i) *The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;*
- (ii) *That the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

32. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Section 31(1) of the Code or passes an order

for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

33. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
34. **Mr. Mukesh Verma, Registration No: IBBI/IPA-002/IP-N00108/2017-2018/10256**, Email-ID: ip.mukeshverma@gmail.com ; Mob. No. 9820789105 having registered address at B1506, Sunteck City Avenue 2 Goregaon West, Mumbai 400104, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India ("IBBI"). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
35. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
36. The following persons/ authorities shall provide access to the books of account, records and other relevant documents and information to the interim resolution professional or the resolution professional, to the extent relevant for discharging his duties under the Code:
- i. depositories of securities;
 - ii. professional advisors of the corporate debtor;



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- iii. information utilities;
 - iv. other registries that records the ownership of assets;
 - v. members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and
 - vi. contractual counterparties of the corporate debtor.
37. The creditor shall provide to the interim resolution professional or resolution professional, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.
38. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC) and the amount deposited by the financial creditor shall be refundable in priority over the other debts out of funds available with the Corporate Debtor.
39. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
40. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.



Order

In the above circumstances the petition bearing CP (IB) 972/MB/2024 filed by **Dharmil Mehta & Ors.**, the Financial Creditor, under Section 7 of the Code r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **M/S Eknath Developers LLP**, the Corporate Debtor, is **Admitted**.

Sd/-

Prabhat Kumar
Member (Technical)
/JJ/

Sd/-

Justice V.G Bisht
Member (Judicial)