

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-1929/(ND)/2019

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

In the matter of:

M/s. AVJ Developers (India) Pvt. Ltd

Registered Office at: -

D-248 Office No 106

First Floor, Lakshmi Nagar,

New Delhi 110092, India.

...Applicant/Financial Creditor

Versus

M/s. RIO Heights Pvt. Ltd.

At: S-672, Ground Floor,

School Block Shakarpur,

New Delhi- 110092

...Respondent/ Corporate Debtor

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER

(JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner: Ms. Mani Gupta, Ms. Saumy Upadhyay, Ms. Sreemantini Mukherjee, Mr. Aman Choudhary and Ms. Sonali Jain, Adv.

Counsel for Respondent: Mr. Akshay Sharma Adv.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 22.12.2023

1. This Petition has been filed by M/s AVJ Developers (India) Pvt. Ltd, to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s. RIO Heights Pvt. Ltd under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs 15,46,09,832/- (principal amount Rs. 9,84,90,388 and interest of Rs.

56,119,444). The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Corporate Debtor (hereinafter referred to as CD) approached the Petitioner with a proposal of making joint investments in a project on the land owned by the CD at Khasra 526/1, Village Kanawani, Ghaziabad under the project name "AVJ Amba Homes"
- ii. The CD also assured return of 24% p.a. to the Financial Creditor on the investments made on such project. The project was to be completed in 3 years
- iii. The CD assured that the project will be completed within 3 years.
- iv. The Financial Creditor incurred advertising expenses for the Project to the tune of Rs. 1,98,69,362/-. Financial Creditor also obtained various approvals for the project. The Financial Creditor also transferred sum of Rs. 3,24,01,000/- to CD.

- v. The CD acknowledges receipt of this sum and in its financial statements for Financial Year 2015 – 16, 2016 – 17, and 2017 – 18 has shown these as “unsecured loans”.
- vi. The Financial Creditor paid wages to the labourer employed at the Project and also paid for the diesel and machinery used in the Project. Further, the Petitioner installed RMC machine at site.
- vii. That due to non-co-operation and non-compliance on the part of the CD, the development of the land could not be completed.
- viii. The CD initiated the process of transfer of the said project and assured the Petitioner to return all the above investment with interest of 24% per annum, which has accumulated to Rs. 18,12,09,832/-.
- ix. The CD repaid Rs. 2,66,00,000/- by RTGS as partial liability.

x. That after that the FC was making repeated request to pay the remaining amount but the CD failed to repay the same.

xi. Hence the present Petition is filed to initiate CIRP against the Corporate Debtor.

2. The Corporate Debtor has made following submissions:

i. The present Petition is not maintainable as being defective as the Petition filed by the Applicant did not mention any date of default

ii. The present Petition filed by the Financial Creditor is barred by limitation as admittedly, the last payment was made by the Financial Creditor to the Corporate Debtor on 03.03.2016 (Pg. 332) and therefore, the period of three years as mentioned under Article 137 of the limitation Act, 1963 ends on 02.03.2019 but, the present application is being filed by the Applicant in July 2019 (as per the affidavit) and therefore, the same is beyond the period of three years and thus barred by limitation.

iii. The Settlement agreement dated 16.04.2019 entered between the parties is after the period of

three years from 03.03.2016 and therefore, cannot extend the limitation period as the same was done after the elapse of three years from the last date of payment by the FC to the CD as specifically mandated under Section 18 of the Limitation Act, 2016.

- iv. It is also pertinent to mention that the Petitioner did not place reliance on this settlement agreement as the Petitioner neither mentioned about the same in the Petition nor annexed the same to the Petition.
- v. The FC vide its affidavit dated 19.12.2022 filed the balance sheet of the CD for FY 2016-17, 17-18, 18-19 wherein the CD reflects an amount of Rs. 3.23 crores as dues of FC however, it is pertinent to mention that out of this Rs. 3.23 Crores, the CD already repaid the amount of Rs. 2.66 crores to the FC and the cheque dated 15.07.2019 of Rs. 57.01 Lakhs was also given to FC but the same was not encashed by the FC. Therefore, there is no default

of the amount of Rs. 3.23 Crores acknowledged in the balance sheet by the Corporate Debtor.

vi. It is pertinent to mention that the CD had already forwarded a cheque of Rs. 57 Lakhs to the Petitioner but the same is not being encashed by the Petitioner. The CD is still ready and willing to pay the said amount.

vii. As per the Petitioner's own case, it has allegedly disbursed Rs. 6.6 Crores to third parties and then imposed 24% Interest Compounded on the same and arrived at the figure of Rs. 15.46 Crores. The alleged interest rate of 24% PA (Pg. 432 of Petition) is illusory in nature and there is no documentary evidence to establish quantum of any interest rate between the Corporate Debtor and Financial Creditor.

viii. The present case of the Financial Creditor is based on alleged non-existing understanding between the parties however, the Financial Creditor miserably failed to attach any document/evidence of any such understanding

between the parties as no such understanding ever existed between the parties.

3. We have heard the Ld. Counsel appearing for the Petitioner and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.
4. The Corporate Debtor has made following objections to the Petition filed by the Financial Creditor: -
 - i. The Petitioner has not mentioned any date of default in the Petition therefore this Tribunal cannot adjudicate the present Petition.
 - ii. That the present Petition is barred by Limitation.
 - iii. Petitioner did not place reliance on the settlement agreement dated 16.04.2019 in which the parties agreed to settle the matter for an amount of Rs. 3.23 Crores out of which CD already repaid the amount of Rs. 2.66 Crores to the FC and a cheque of Rs. 57.01 Lakhs was also given to FC but the same was not encashed by the FC. Therefore, there is no default by the Corporate Debtor.

a. With respect to the first issue, it is pertinent to refer to judgement on Hon'ble NCLAT in the matter *Manmohan Singh Jain v. SBI, 2021 SCC OnLine NCLAT 5983*, wherein it was observed that the requirement of mentioning or disclosure of date of default is merely directory in nature and the non-mentioning of the date of default in column IV is not fatal to the application and on the sole ground, the application cannot be rejected by merely taking a technical impediment. Since it is not a mandatory requirement to disclose date of default, we are not inclined to accept the contention of the Respondent that the Petition be dismissed on this ground.

b. With respect to the second issue, the Petitioner has placed on record balance sheet of Corporate Debtor for the year 2015-2016, 2016-17 and 2017-18 in which CD has admitted that the amount of Rs. 3.23 Crores as received from the Financial Creditor was shown as "unsecured loan". The Hon'ble SC in *Dena Bank v. C Shivakumar Reddy and Anr. (2021) 10 SCC 330* held that an acknowledgement of liability made in the

balance sheet amounts to acknowledgement of debt. Since the last acknowledgment was made on 31.03.2018, the period of limitation (three years) commence from this date and the Petition was filed on 12.07.2019, therefore, the Petition is clearly within the period of limitation.

c. With respect to the third issue, it is observed that the FC and CD entered into a settlement agreement dated 16.04.2019 that was signed between the FC and CD wherein FC undertakes that on receiving a payment of INR 3.23 Crores, FC will not make any claim against the CD. The fact that the settlement was entered into by and between the FC and CD was also admitted by the FC in its written submissions. Out of the aforesaid amount, the bank accounts produced by the CD show that Rs. 2,66,00,000/- was paid to the Financial Creditor through RTGS. The CD forwarded a cheque of Rs. 57 Lakhs to the Petitioner but the same is not being encashed by the Petitioner. Further on 23.05.2023 following order was passed by this Tribunal: -

“We have heard the submissions made by the Counsel for the Petitioner as well as Ld. Counsel for the Corporate Debtor. It is submitted by the Ld. Counsel for the Parties that the Petitioner Company i.e. AVJ Developers India Pvt. Ltd. is going under CIRP in IB-654/(PB)/2019 vide order dated 21.10.2019 by the Principal Bench. Mr. P Nagesh, Ld. Sr. Counsel appearing for the Corporate Debtor has submitted that there was a settlement entered into between the parties vide settlement agreement dated 16.04.2019 under which an amount of Rs.3,25,01,000/- was to be paid by the Financial Creditor and out of said amount Rs.2.66/- crores has already been paid.

It is submitted that a balance of amount of Rs.57,01,000/- will be paid by way of a Bank Draft in the name of M/s VJ Developers India Pvt. Ltd. and will be handed over to the Counsel appearing for the RP. Ld. Counsel appearing for the Petitioner/Financial Creditor seeks time to take instructions from the CoC to place the matter before the CoC and take necessary approval for the same.”

On 09.08.2023 this Tribunal passed following order: -

We have heard the Counsel for both the parties. Ld. Counsel for the RP seeks the instructions of the CoC for accepting a cheque of Rs.57,01,000/- from the Corporate Debtor without prejudice to their right to claiming the higher amount as sought by them and inform the Court on the next date of hearing and also directed to file a compliance affidavit ss

5. In compliance of order dated 09.08.2023, the FC filed compliance affidavit dated 06.09.2023 stating that pursuant to the order dated 09.08.2023, a meeting of CoC was called by RP of FC on 24.08.2023, wherein the members of CoC rejected the cheque/draft of Rs. 57,01,000/-.
6. It is observed that, following the settlement agreement dated 16.04.2023, only an amount of Rs. 57,01,000/- remained to be paid by the Corporate Debtor. In the written submissions of the Financial Creditor (FC), it was stated that the Corporate Debtor (CD) never came forward to offer repayment or deposit the sum of Rs. 57,01,000/- through RTGS. Although the CD forwarded a cheque, it was not accepted by the FC. No specific reason was provided by the FC for rejecting the cheque tendered by the CD. We are of the view that there is no strength in the submissions of the Financial Creditor and there is no default on the part of Corporate Debtor since the Corporate Debtor is ready and willing to pay the debt amount in terms of the settlement agreement dated 16.04.2019. Hence,

the requirements of section 7 of the Code are not fulfilled. Therefore, this Adjudicating Authority **dismisses** the Petition filed by the Petitioner.

Let copy of the order be served to the parties.

Sd/-

Rahul Bhatnagar
Member (Technical)

Sd/-

(Bachu Venkat Balaram Das)
Member (Judicial)