

**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.3  
CP(IB)/23(MP)2023

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Fortune Land Holdings LLP  
V/s  
SPG Macrocosm Ltd

.....Applicant

.....Respondent

**Order delivered on 29/02/2024**

**Coram:**

P. Mohan Raj, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**CP(IB)/23/MP/2023**

*(Application under section 7 of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

**Fortune Land Holdings LLP**

Registered address:  
No. 383, 9<sup>th</sup> Cross, 2<sup>nd</sup> Block,  
R T Nagar, Bangalore,  
Karnataka- 560032

**.....Petitioner/Financial Creditor**

**Versus**

**SPG Macrocosm Limited**

Registered Address:  
408, Anish Heritage,  
Flat No. 203, Indrapuri Colony,  
Bhwarkuan, Indore,  
Madhya Pradesh- 452001

**.....Respondent/Corporate Debtor**

**Order pronounced on: 29.02.2024**

**Coram: P. Mohan Raj, Member (J)**

**Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For Applicant: Ld. Adv. Mr. Rajiv K. Virmani

For Respondent: Ld. Adv. Mr. Abhishay Jain

**ORDER**

1. This application has been filed on 17.02.2023, by Mr. Hansraj Rathore, Authorized Representative of M/s Fortune Land Holdings LLP (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s SPG Macrocosm Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 1,14,62,500/- (Principle amount Rs

70,00,000/- and interest amount Rs 44,62,500/-). The date of default stated by the financial creditor is 01.10.2021.

2. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) The corporate debtor approached the financial creditor for a loan amount of Rs 70,00,000/- for general corporate purposes. Subsequently, a loan agreement dated 01.10.2018 was executed between the financial creditor and the corporate debtor with an interest of 15% per annum. Further, a Demand Promissory Note (DPN) dated 01.10.2018, was signed between the parties.

(ii) The following payments were made to the corporate debtor by the financial creditor in respect of the loan agreement:

<b>Amount</b>	<b>Through</b>	<b>Date</b>
Rs 15,00,000/-	R.T.G.S.	09.10.2018
Rs 20,00,000/-	R.T.G.S.	09.10.2018
Rs 35,00,000/-	R.T.G.S.	10.10.2018

(iii) The said loan was to be repaid on 01.10.2021, with interest. However, the corporate debtor failed to repay the same. In pursuance of which several reminders and requests were made to the corporate debtor by the financial creditor through telephonic calls.

(iv) A demand notice dated 31.12.2022, was served to the corporate debtor by the financial creditor for a total amount of Rs 1,14,62,500/-. However, till date, no reply or payment has been received from the corporate debtor.

3. In this context, defense placed by the corporate debtor in its affidavit in reply and submission made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) The loan amount mentioned in the loan agreement is not disputed, however, the interest levied on the same is questionable and denied in totality.

(ii) The petition is not maintainable and is liable to be dismissed since the interest component has been added to the principal amount with the *mala fide* intent of initiating CIRP against the corporate debtor.

(iii) As per notification no. S.O. 1205 (E) by the Central Government dated 24.03.2020, the minimum threshold for admission of cases before the Adjudicating Authority has been raised from Rs 1,00,000/- to Rs 1,00,00,000/-. Accordingly, after the deduction of the interest amount from the claimed amount i.e. 1,14,62,500 – 44,62,500 = 70,00,000/-, the remaining amount is not maintainable since the disputed amount does not meet the threshold limit.

4. We have heard the learned counsel for the financial creditor as well as the learned counsel for the corporate debtor on the issue of admission of petition filed under section 7 of the Code and have perused the relevant records and documents. It is noted that in response to the clarification sought by this Adjudicating Authority vide order dated 12.10.2023 in respect of stamp duty payable on the Promissory note dated 01.10.2018 (Annexure-3) of the present petition, the financial creditor filed an additional affidavit and his counsel submitted his submission that the loan amount was solely disbursed on the basis of loan agreement dated 01.10.2018 (Annexure 2) and the promissory note was executed only as security. He accordingly submitted that even without promissory note, the financial creditor's claim is sustainable against the respondent. For this submission, the financial creditor relies upon clause 4 of the agreement.

5. The agreement even though titled as Loan agreement, in fact it is only an agreement to give a loan. There is no recital in the agreement, that the

amount was disbursed by the financial creditor and the corporate debtor acknowledged the receipt of amount. The clause 4 & 11 of agreement runs as follows:

**“4. Security**

*A Demand promissory note to be executed by the company for Rs 70, 00,000/- together with interest, cost, charges and expenses and;*

**11. Pre-Disbursement conditions**

*i) The obligation of the lender to make disbursement under this loan agreement shall be subject to the borrower performing all its obligations and undertakings under the loan agreement besides compliance by the company with the disbursement procedure stipulated by the lender such as submissions of necessary information and documents to the satisfaction of the lender.”*

Clause 4 of the agreement made it clear that to disburse the loan amount, the borrower shall execute a promissory note, hence, it is confirmed that the loan was not disbursed independently on the basis of agreement alone. Further, clause 11 titled as Pre-disbursement conditions, shows that the financial creditor by agreement (Annexure- A2), agreed to give loan to the corporate debtor but had not given (disbursement) loan solely on execution of that loan agreement. The financial creditor sent a demand notice dated 31.12.2022 to the corporate debtor demanding repayment of loan. In that letter too, the financial creditor has admitted in para 2 that after the execution of promissory note by the corporate debtor, the loan amount was transferred to the corporate debtor. The loan agreement alone is not sufficient to claim the amount, the promissory note is an integral part of the loan agreement, hence, the contention of the financial creditor that the promissory note was executed only for security, and that even without promissory note, the claim is maintainable is not acceptable.

6. The applicability of the Indian Stamp Act, 1899 for Insolvency and Bankruptcy Code proceeding is upheld by the Apex court in **Committee of Creditors of Essar Steel India Limited Through Authorized Signatory**

**Versus Satish Kumar Gupta & Ors.** in paragraph 99 as follows:

*“99. So far as Civil Appeal No. 7266 of 2019 and Civil Appeal No. 7260 of 2019 are concerned, the resolution professional has rejected the claim of the Appellants on the ground of non-availability of duly stamped agreements in support of their claim and the failure to furnish proof of making payment of requisite stamp duty as per the Indian Stamp Act despite repeated reminders having been sent by the resolution professional. The application filed by the Appellants before the NCLT came to be dismissed by an order dated 14.02.2019 on the ground of non-prosecution. The subsequent restoration application filed by the appellants then came to be rejected by the NCLT through judgment dated 08.03.2019 on two grounds: one, that the applications could not be entertained at such a belated stage, and two, that notwithstanding the aforementioned reason, the claim had no merit in view of the failure to produce duly stamped agreements. The impugned NCLAT judgment, at paragraphs 93 and 94, upheld the finding of the NCLT and the resolution professional. In view of these concurrent findings, the claim of the Appellants therefore requires no interference. Further, the submission of the Appellants that they have now paid the requisite stamp duty, after the impugned NCLAT judgment, would not assist the case of the Appellants at this belated stage. These appeals are therefore dismissed.”*

7. The next contention of the financial creditor is the promissory note (Annexure 3) is “payable on demand” as defined in Schedule I Article 49 (a)(iii) of The Indian Stamp Act, 1899, hence, duty paid thereon is sufficient. For this the financial creditor relied the first two sentences of promissory note “ON DEMAND”. In the last line of promissory note the corporate debtor agreed to pay the amount on due date as per agreement dated 01.10.2018. As per Schedule I of loan agreement under heading Repayment Terms it is recited that the entire loan amount shall be repaid within a period of 36 months from the date of execution of the agreement. The promissory note granted 36 months’ time to repay the amount, so promissory note (Annexure 3) is not payable on demand, it is payable within three years hence promissory note

falls under the category of “Payable otherwise than on demand”. Hence, the stamp duty payable is as per Article 49(b) of the Indian Stamp Act, 1899. In this regard, the Madras High Court held in ***Thenappa Chettiar vs Andiyappa Chettiar on 9 November, 1970 AIR1971MAD290*** as follows:

*"Instrument payable on demand: A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand." it will follow by necessary implication that, if time for payment is specified, it cannot be said to be payable on demand. In this case, a period of two years for payment is specified and hence it cannot be said to be payable on demand. This is also the view taken by Horwill J. in [Alamelu Ammal v. Rangai Gounder](#), AIR 1945 Mad 42 = 1944-2 Mad LJ 180. The wording of the promissory note [in that case](#) was " I shall pay to you or to your order within two years the said sum". The learned Judge held that within the time of two years the promise could not enforce the debt and that, therefore, the promissory note was not one payable on demand. The learned Judge held that consequently the promissory note would be liable to stamp duty under [Art. 49\(b\)](#) of [Schedule I to the Stamp Act](#), that is, the duty would be the same as on a bond. Hence it was insufficiently stamped. In our opinion, the decision is correct."*

8. As per Schedule I Article 49(b) of the Indian Stamp Act, 1899 the stamp duty payable on the promissory note payable other than on demand is as per Article 13 of the Indian Stamp Act, 1899. As per Article 13 (iv)(c) where the amount payable period is more than one year the duty payable is Rs 5/- per thousand. As per schedule I Article 49(b) r/w 13(iv)(c) last entry the stamp duty payable on the promissory note (Annexure 3) is (5X70,00,000/1,000) =Rs 35,000/-. In the subject promissory note (Annexure 3) Re.1 (not legible) value revenue stamp has been affixed as stamp duty. Thus, the promissory note is insufficiently stamped. The effect of insufficiently stamped instrument (promissory note) is explained in section 35 of the Indian Stamp Act, 1899 as follows:

*"35. Instruments not duly stamped inadmissible in evidence, etc. No instrument chargeable with duty shall be admitted in evidence for any*

*purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that-*

*(a) any such instrument" [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion."*

The supra section made it clear that insufficiently stamped instruments should not be admitted in evidence for any purpose. The proviso (a) of the section imposes a precondition to admit the insufficiently stamped instrument that deficit stamp duty is to be paid with ten times penalty. In our case as arrived in previous paragraph the stamp duty payable on the promissory note (Annexure 3) is Rs 35,000/-, the actual stamp duty paid on the promissory note is Re.1 the deficit stamp duty payable is Rs 34,999/-. The ten times penalty payable is Rs 3,49,990/. The total deficit stamp duty and penalty payable is Rs 3,84,989/-.

9. The financial creditor in the additional affidavit alternatively prayed that if the direction is given to pay the penalty, in terms of section 35(a) of the Indian Stamp Act, 1899, the financial creditor will abide by the direction. The financial creditor is once asked to produce the original instrument, if ready to pay the stamp duty and penalty, then the financial creditor expressed their desire to adjudicate and pay the stamp duty and penalty before the Collector (Stamps) as provided under section 40 of the Indian Stamp Act, 1899. The financial creditor did not produce the original instrument, only if the original instrument is produced this Adjudicating Authority can impound the document under section 33 of the Indian Stamp Act, 1899 and collect the stamp duty and penalty under section 35 of the Act, and send it to collector as required under section 38 of the Indian Stamp Act, 1899. The Hon'ble Supreme Court of India held in ***Hariom Agarwal vs Prakash Chand***

**Malviya 2008(3) CTC 457** that a photocopy of an instrument that is not duly stamped cannot be validated by impounding and cannot be admitted as secondary evidence, instrument under Section 2(14) means only original and does not include a copy thereof. This citation made clear that original documents alone can be impounded, the photocopies cannot be impounded. In the present case, Annexure 3 is only photocopy of the promissory note.

10. In this case, the matter was listed for clarification on 19.12.2023, till date the financial creditor has not produced the original instrument, hence, his alternative request is not conceded. In these circumstances, the petition filed on the basis of invalid and unenforceable instrument is not maintainable in consequence the petition is **dismissed**.

11. Accordingly, the application in CP(IB)/23/MP/2023 is dismissed and rejected.

-sd-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-sd-

**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**

KN