

THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

Appeal (IBC)/07/2022

IN

Company Petition No. (IB) – 1627/(PB)/2019

*Under Section 42 of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

M/s. LIC Housing Finance Ltd.

.... Petitioner

Versus

M/s. Victory Infratech Pvt. Ltd.

.... Respondent

AND IN THE MATTER OF-

M/s Intellicity Business Park Private Limited

.... Applicant/ Appellant

Versus

Aishwarya Mohan Gahrana,
Liquidator of the Corporate Debtor

...Respondent

CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Shaurya Shyam.

For the Liquidator: Mr. Rachit Ranjan, Adv

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 07.12.2023

1. This Company Appeal has been filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by M/s. Intellicity Business Park Private Limited against the Liquidator decision of rejecting the claim of the applicant.

2. The applicant in the present application has prayed for the following relief(s)

- a. Direct the Liquidator to accept the claim of the Applicant and include the name of the Applicant in the list of Stakeholders.;*

b. Any other order or relief as this Hon'ble Bench may deem fit and proper

3. The brief facts of the case as mentioned in the instant application, which are relevant for adjudication, are as follows:

- i. That Corporate Insolvency Resolution Process was initiated vide order dated 21.10.2019 and Mr. Aishwarya Mohan Gahrana was appointed as IRP of the Corporate Debtor.
- ii. That the Applicant filed the claim before the Interim Resolution Professional (IRP) in response to public announcement which was rejected by the IRP with a remark that your claim is time barred.
- iii. That the Applicant filed an application before the Tribunal for seeking direction to RP for accepting the claim of Applicant which was disposed off without providing opportunity to being heard to the applicant.
- iv. That the CD went into liquidation vide order dated 08.12.2021 and Mr. Aishwarya Mohan Gahrana was appointed as Liquidator in the matter.

- v. That the applicant filed its claim in Form-D on 17.12.2021 before the Liquidator which was again rejected on 04.02.2022 on the following grounds: -
- a.No loan agreement or written documents was attached
 - b.Loan amount is time barred as on CIRP Commencement date
 - c.No Acknowledgement of claim amount issued by the CD.
- vi. It is submitted by the applicant that the loan amount of Rs. 6,05,00,000/- (Rupees Six Crore Five Lakh) was disbursed by Intellicity Business Park Private Limited (“Intellicity”) herein to the Corporate Debtor in multiple instalments from 18.12.2013 till 19.03.2014
- vii. Thereafter, there was an acknowledgment of debt by the Corporate Debtor in so far as the loan amount of Intellicity in concerned and the same is evident from the Balance sheet of the Corporate Debtor as on 31.03.2018 which reflects the aforestated amount under the head of ‘other

long term liabilities' of the Corporate Debtor in the year 2016 as well as 2017.

- viii. This amount is further corroborated in the Trial Balance of the Corporate Debtor for the period 01.04.2017 to 31.03.2018 wherein the loan amount of Rs. 6,05,00,000/- by Airwill Business Parks Pvt. Ltd. (which name was later on changed to Intellicity business Park Private Limited) is reflected under the head of 'Loan from Unrelated parties'
- ix. It is pertinent to note that the above stated acknowledgment in the Balance sheet of the Corporate Debtor was within the period of three years from the time of disbursement of the loan in 2013-14 and therefore a fresh cause of action arose for the purposes of calculating the Limitation. Thereafter, Intellicity was admitted into Insolvency by the Hon'ble NCLT vide order dated 27.05.2019 and the Corporate Debtor was admitted into Insolvency vide order dated 21.10.2019. In terms of Section 60(6) of the Code, while computing the period of limitation for the purposes of filing an application against the Corporate Debtor, the period during which moratorium is in place shall be excluded. The Liquidation

order of the Corporate Debtor was passed on 08.12.2021. Thereafter, the Appellant submitted its claim form dated 17.12.2021 which was inter alia rejected by the Respondent as being time barred.

x. That the Liquidator is bound to consider the claim of the applicant. Hence, the present application.

4. The Liquidator has made the following submission with respect to the application: -

I. That the Appellant submitted its claim in FORM D vide email dated 17.12.2021, the same was not accepted by the Respondent and the Respondent sought few information and documents vide email dated 24.01.2022

II. That as the Appellant failed to submit any loan Agreement or any acknowledgement of the debt from the Corporate Debtor and subsequently, the Respondent rejected the said claim vide email dated 04.02.2022.

III. It was submitted by the applicant that the Corporate Debtor had entered into an arrangement with Intellicity Business Park Pvt. Ltd. for availing borrowing from time to time but failed to submit any piece of paper supporting the same.

It is submitted that there was no arrangement or agreement between the parties for extending any loan facility.

IV. Moreover, the Appellant is vouching on balance sheet of the Corporate Debtor for claiming the amount. It is pertinent to mention that under Non-current Liability Other Long-Term Liability for an Amount of Rs 6,55,00,000 is inscribed in the balance sheet without any name. The claim amount as submitted by the Appellant in the FORM D is Rs 6,05,00,000 (Six Crore Five Lakh) with ledger indicating dues in the year 2013-2014. It is important to mention herein that the acknowledgement of the debt should be specific, but the balance sheet is just showing long term liabilities without any name, and this will not qualify for the acknowledgement of any debt as claimed by the Appellant.

V. That Appellant attached a so-called trial balance, claiming it for this Balance sheet. It is pertinent to mention that the trail balance is no public document and is not equated to balance sheet, moreover, it is not qualified as

acknowledgement of debt. It is submitted on behalf of the respondent that the debt is time barred and there is no acknowledgement of any debt from the corporate debtor to enable the Liquidator to accept the claim as per the law VI. That in view of the above, the present application should be dismissed with cost.

5. We have gone through the documents on record filed by both the parties and have heard the parties on merits.

6. It is observed that the applicant has not submitted any document to demonstrate the loan transaction between the applicant and the Corporate Debtor. The applicant relies on the entries of the trial balance and balance sheet. However, the balance sheet does not mention the name of the applicant. Further, solely on the basis of the trial balance, we cannot direct the liquidator to consider the claim of the applicant. The applicant is also silent about the reason why the applicant is unable to produce the loan document. Hence, we see no reason to interfere with the decision taken by the liquidator to reject the claim filed by the applicant.

7. Taking into consideration the facts and circumstances of the present case, this Adjudicating Authority **dismisses** the appeal filed by the applicant.

SD/-	SD/-
(RAHUL BHATNAGAR)	(BACHU VENKAT BALARAM DAS)
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)