

**IN THE NATIONAL COMPANY LAW
TRIBUNAL
DIVISION BENCH - I, CHENNAI**

CP/IB/69/2021

*(Filed under Section 7 of the Insolvency and Bankruptcy Code,
2016 and Rule 4 of the Insolvency and Bankruptcy [Application to
Adjudicating Authority], Rules, 2016)*

In the matter of **DAKSHIN CONSTRUCTIONS PRIVATE LIMITED**

Mrs. Komal Varma

W/o Mr. Hemant Varma
Flat No. 1603, Tower 23,
North Town Apartment,
No 4,5,6& 7, Stephenson Road
Perambur, Chennai -600 012

... Applicant

- Vs -

M/s Dakshin Constructions Private Limited
No.1 Railway Border Road,
Kodambakkam,
Chennai- 600 024.

... Respondent/Corporate Debtor

Order Pronounced on 17th December 2021

CORAM:

**R.SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant: Mr. Krishna Ravindran, *Advocate*
For Corporate Debtor: Surana and Surana, *Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed under Section 7 of the
Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as

IBC, 2016”) by Mrs. Komal Varma(hereinafter called as “Financial Creditor”)for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz, Dakshin Constructions Private Limited(hereinafter called as “Respondent”).

2. Part – I, of the Application discloses the fact that the Petitioner is filing this application in her capacity as an ‘individual’, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter “IBC, 2016”).

3. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U45201TN1995PTC031625 which was incorporated on 31.05.1995 under the Companies Act, 1956 and that its Authorized and Paid up share Capital is ₹2,00,00,000/- and ₹1,63,53,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No 1. Railway Border Road, Kodambakkam, Chennai – 600 024.

4. Part – III of the Application discloses the fact that the Financial Creditor had proposed the name of one Ms. Deepa V. Ramani, as the Interim Resolution Professional, who has also filed his consent in Form 2.

5. From Part-IV of the Application, the total amount claimed in default is inclusive of 18% interest as on 31.03.2021 is Rs. 1,14,91,030/- (Rupees One Crore Fourteen Lakhs Ninety One Thousand and Thirty only). The computation dates of the debt claimed for a period of 1009 days i.e. from 27.06.2018 to 31.03.2021, as averred in the Application is extracted hereunder:-

S.No	Date	Amount	Mode of Payment
1.	02.11.2017	₹1,28,812/-	Cheque No.189 drawn from Bank of Baroda
2.	04.01.2018	₹1,28,812/-	Cheque No 191 drawn on Bank of Baroda
3.	30.01.2018	₹1,28,812/-	NEFT through Bank of Baroda
4.	07.03.2018	₹1,28,812/-	Cheque No 193 drawn on Bank of Baroda.
5.	03.04.2018	₹1,28,812/-	NEFT through Bank of Baroda
6.	27.04.2018	₹1,30,000/-	NEFT through Bank of Baroda
7.	20.06.2018	₹50,00,000/-	RTGS Chq No 196 drawn on Bank of Baroda.
8.	25.06.2018	₹13,00,000/-	RTGS Chq. No 197 drawn on Bank of Baroda.
9.	27.06.2018	₹5,98,960/-	RTGS Chq No 178 drawn on Bank of Baroda.
	Principal	₹76,73,020/-	
	Interest at 18% for 1009 days	₹38,18,010/-	
	Total	₹1,14,91,030/-	

6. Further Part-IV of the Application, shows the date of default is not mentioned. Part-V enlisted the following documents in order

to prove the existence of a Financial debt, the amount claimed and the Date of Default and the same is extracted hereunder:-

- i. *Copy of the Board Meeting Minutes dated 14.11.2014.*
- ii. *Copy of the ECS Cheques.*
- iii. *Copy of the Cheque dated 29.11.2014 bearing No: 568334 issued by ICICI Bank in favor of Corporate Debtor Loan Account bearing No 1213716000001183 in Karur Vysya Bank.*
- iv. *Copy of Memorandum of Deposit of Title Deeds dated 01.12.2014 between Applicant and ICICI Bank- Document dated 5083 of 2014 on the file of Purasawakkam SRO.*
- v. *Copy of the Mortgage Reciept dated 24.07.2018, Document No.4491 of 2018 on the file of Purasawakkam SRO.*
- vi. *Copy of the Sale deed dated 31.10.2018 registered as Document No.6488 of 2018 on the file of Purasawakkam SRO.*
- vii. *Copy of Annual Returns of the Corporate Debtor for the year ended on 31.03.2020.*
- viii. *Copy of the Account Statements of the Applicant herein.*

7. The Applicant herein has come before this Tribunal through filing an Application under section 7 of the IBC, 2016. The Respondent/ Corporate Debtor had filed the Counter statement on 24.08.2021, for which the Applicant herein had filed a Rejoinder to the effect on 09.09.2021.

8. Heard, the submission made by the Learned Counsel for the parties and perused the documents including the pleadings placed on record. This present Application came before this Tribunal for final hearing and disposal on 02.12.2021, and on comprehensively hearing both the parties, a question was posted to the Applicant as to the 'Financial contract' based on which the debt is being claimed. However the Ld. Counsel failed to produce any document evidencing the debt amount claimed.

9. It is well settled now, for an Application under Section 7 of IBC, 2016 to be admitted by the Adjudicating Authority, (i) there must be a debt and (ii) the said debt must be due and payable either in law or on facts and (iii) the said debt should partake the character of a 'Financial Debt' and (iv) upon non-payment of the said 'debt' would amount to default. Only if the above conditions are satisfied then this Adjudicating Authority can admit an Application filed by the Financial Creditor under Section 7 of IBC, 2016.

10. The instant petition has been filed under Section 7 of the IBC, 2016 r/w Rule 4 of the IBBI (Application to Adjudicating Authority) Rules, 2016. The Rule 4 of the said rule is extracted hereunder;

4. Application by financial creditor.— (1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. In this context it is relevant to refer to attendant Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

8. Claims by financial creditors. (1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with

proof to the interim resolution professional in electronic form in Form C of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of –

(a) the records available with an information utility, if any; or

(b) other relevant documents, including –

(i) **a financial contract supported by financial statements as evidence of the debt;**

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been paid; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

12. The term 'Financial contract' is defined in clause (d) sub-section 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

(d) **"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;

13. Referring to the aforementioned Rule, it becomes clear that it is incumbent upon the Financial Creditor while filing this petition to place on record before this Authority, 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.

14. In this context it is relevant to quote the decision made by the Hon'ble NCLAT in **Pawan Kumar -Vs- Utsav Security [Company Appeal (AT) (Ins) No. 251 of 2020]**.

"20. On the other hand, as per the Corporate Debtor in absence of a Financial Contract defined in Rule 3 (1) (d) the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 between the Corporate Debtor and Financial Creditor, the transaction cannot be termed as Financial Debt....."

15. Thus, in view of the dispositive facts and reasons set out supra, the Applicant herein failed to demonstrate that the 'debt' has become due and payable and there's default, due to the lack of a 'Financial contract' in consonance to the present case and as such the Applicant does not qualify to be the Financial Creditor in relation to the Corporate Debtor and a result thereof we are constrained to dismiss the Application. As a consequence thereof, CP/IB/69/2021 stands **dismissed**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

VinitaVarshini