



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1246/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Sanjiv Gupta & Ors

...Financial Creditor/Applicant

V/s

Anshika Developers Private Limited

[CIN: U45202MH2010PTC206556]

...Corporate Debtor/Respondent

Order Dated: 24.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Gaurav Mitra a/w Mr. Anand
mishra, Advocates
For the Respondent(s) : Mr. Nausher Kohli a/w Mr. Jash
Shah i/b DSK Legal.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 1246/MB/C-IV/2021 filed by Mr. Sanjiv Gupta & Ors, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP)

against Anshika Developers Private Limited, Corporate Debtor on 07.12.2021.

2. The Application is filed by Mr. Sanjay Gupta (“Applicant no. 1”) and Sanjiv Gupta HUF (“Applicant No. 2”), the Financial Creditor, claiming total default of Rs.16,06,20,000/- (Rupees Sixteen crore six lakh twenty thousand only), which includes:
 - i. Rs.11,00,00,000/- (Rupees eleven crore only); and
 - ii. Rs.5,06,20,000/- (Rupees five crore six lakh twenty thousand only) as the Interest @ 12% p.a. till 01.01.2021
 - iii. The date of default is 02.04.2021 as per Part IV of form 1.
3. The Financial Creditors had disbursed an advance by the way of loan of Rs. 15 Crore for a new project (Rs. 4,30,00,000/- by Applicant No. 1 and Rs. 10.70.00.000/- by Applicant No. 2 @ interest 12% p.a. in the period between 2016-2017 It is also submitted that the said loan along with interest is to be repaid on demand. The details of disbursement are annexed with the Application as annexure 3 stating the name of lender, mode of disbursement, date of disbursement, and amount therein. The Financial Creditor has also attached the Ledger Account of Applicant no. 1 and the Bank Statement of Applicant no. 2 to evidence the disbursement of the of the loan amount.
 - 3.1. It is submitted by the Applicants, that pursuant to understanding arrived amongst the parties the Corporate Debtor had repaid Rs. 4 Crore to Applicant No. 2 on 08.10.2018.

- 3.2. It is also submitted by the Applicants, that Applicant no. 1 was appointed as one of the Corporate Debtor to facilitate the advancement of loan on 26.08.2017. Subsequently, the Applicant resigned on 12.09.2019 after the assurance from the corporate debtor that the aforesaid loan along with interest shall be repaid by the Corporate Debtor within a period of 4 months from the date of resignation.
- 3.3. The Financial Creditor submitted that vide letter dated 17.08.2020 the Financial Creditor i.e. Applicant No. 2 called upon the Corporate Debtor to make good towards the liability owed by them. However, no payment was made by the Corporate Debtor towards the liability of Rs.10,70,00,000/- (Rupees Ten crores seventy lakh one thousand only) to which the Corporate Debtor replied stating that the said amount has been written off by the Company and the balance outstanding as on 31.03.2020 is nil.
- 3.4. Furthermore, the Financial Creditors acting through its counsel on 15.03.2021 issued a consolidated demand notice upon the Corporate Debtor to make good the liability. The said notice was also responded vide reply dated 02.04.2021 stating that "*written off and balance outstanding as on 31.03.2020 is Nil*"
4. The Corporate Debtor has filed its Affidavit-in-reply dated 25.04.2022 stating that the pleaded date of default in part IV of the Application is 02.04.2021, however, the Applicant's Demand notice was dated 15.03.2021 wherein the Applicant's called upon the Corporate Debtor to repay the outstanding within 7 days. As the 7 days period would lapse on 22.03.202, therefore, the default occurred prior to 25.03.2021

- 4.1. It is also submitted by the Corporate Debtor that the Application is barred by Section 10A of the Code read with the notification dated 22.12.2020 passed by the Ministry of Corporate affairs which bars the initiation of Corporate Insolvency Resolution Process for default arising between 25.03.2020 and 25.03.2021
- 4.2. The Corporate Debtor submits that the financial creditor is required u/s 7(3)(a) inter alia to furnish record of default recorded with the Information Utility or such other record or evidence of default along with the application. It is also submitted that the essential requirements to prove existence of financial debt and a default thereon such as loan Agreement or any other requisite document, stipulation for interest, repayment date etc.
- 4.3. It is submitted by the Corporate Debtor that the Financial Creditor had approached the Corporate Debtor as an investor and on the oral agreement for the investment, the Applicant No. 1 would invest a sum of Rs. 50 crore in the Corporate Debtor and the said investment would be in two tranches i.e. Rs. 25 Crore on or before 31.03.2017 and remaining Rs. 25 Crore on or before 31.03.2019. Further in lieu of the investment the Applicant No. 1 was entitled to (1) 25% stake in the Corporate Debtor, based on valuation of the Corporate Debtor post receipt of the investment amount; (2) 25% profit share on completion of the project to be distributed on such terms and conditions to be mutually agreed; (3) Applicant No. 1 to be nominated as a director on the board of the corporate debtor,
- 4.4. Furthermore, it is also submitted that to ensure performance of the Applicant No. 1, it was agreed between the parties that in the vent

Applicant No. 1 failed to invest the Investment Amount in the Corporate debtor, he would forfeit its right to recover the amount already invested in the Corporate Debtor. It was also agreed between the parties that there would not be any interest/coupon attached on the investment.

4.5. It is further submitted by the Corporate Debtor that the Applicant no. only invested Rs. 3.5 Crore as opposed to Rs. 25 Crore for the first tranche of the agreed investment amount and thereafter remitted a sum of Rs. 11.50 crore in various tranches.

4.6. It is also submitted that in lieu of the above the parties reached full and final settlement whereby the parties agreed that (1) a sum of Rs. 4 Crore be returned by the Corporate Debtor to the Applicants and (2) the Applicants would forfeit their right to recover the balance 11 Crore. And this understanding was given effect by the parties.

5. The Financial Creditor has filed its Rejoinder dated 06.07.2022 to the Reply filed by the Corporate Debtor and has stated that the audited balance sheet filed by the Corporate Debtor with Registrar of Companies negates any such contention made by the Corporate Debtor in its reply as the balance sheet filed by the Corporate Debtor clearly reflects the amount advanced by the Applicant to the Corporate Debtor as “unsecured loan”.

Findings/Observations:

6. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

6.1. It is not disputed that the amount paid by the Applicants was treated as “unsecured loan” as can be perused from the Audited Balance sheet for the year ending on 2017-18, 2018-19 and 2019-2020. Further as the said loan was a demand loan repayable on demand, the Financial Creditor called for repayment of the amount due from Corporate Debtor vide letter 15.03.2021 and the said letter contained the stipulation that the Corporate Debtor to undertake the repayment of the recalled amount within 7 days. This notice was sent through speed post vide acknowledgment dated 15.03.2021 and also through email dated 17.03.2021. This email has been relied upon by the Applicant. Thus, the amount claimed to be due fell due for payment within 7 days from the receipt of the said letter. The email is claimed to have been delivered by the Applicant accordingly the amount claimed to be due was due for payment on or before 23.03.2021. Hence, the default can be said to have occurred on 24.03.2021. This date falls between the period stated u/s 10A and the initiation of any proceeding under the code for the default occurring during that period is barred thereunder.

6.2. In view of the forgoing, this Bench is of considered view that the Application under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is not maintainable and deserves to be dismissed.

ORDER

1. This Application being C.P. (IB) No. 1246/NCLT/MB/C-IV/2021 filed by Mr. Sanjiv Gupta & Ors, the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking

initiation of Corporate Insolvency Resolution Process (CIRP) against Anshika Developers Private Limited, Corporate Debtor is **dismissed**.

2. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-

Prabhat Kumar
Member (Technical)
24/03/2023

Sd/-

Kishore Vemulapalli
Member (Judicial)