

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 470 of 2022

IN THE MATTER OF:

- 1. Vipul Himatlal Shah**
- 2. Tushar Himatlal Shah**

**Directors and authorized representatives of
M/s. Superdrawn Wire Industries Pvt. Ltd.
(Now in suspension)**

CIN No. U28112GJ2011PTC066953

Registered Address at

**21, Kamal Co-operative Industries Estate,
Rakhial, Ahmedabad, Gujarat-380023.**

Factory Address:

**Plot No. 1401, Kerela GIDC,
NH-8, Near SKF Bearings,
Gujarat-380023.**

.... Appellants

Versus

- 1. Teco Industries,
Partnership registration no.BA-90, 449,
Registered Office at: 1st Floor, 101,
Joshi Chambers, Ahmedabad Street,
Carnac Bunder, Masjid Bunder E,
Mumbai, suburban, Maharashtra,
Pin-400009 **...Respondent No.1****
- 2. Mr. Dilipkumar Natvarlal Jagad,
Interim Resolution Professional,
Having his office at 803/804, Ashok Heights,
Opposite Saraswati Apartment,
Old Nagardas X Road, Gundavali,
Andheri-East, Mumbai 400069.
Maharashtra. **...Respondent No.2****

Present:

For Appellant: Ms. Natasha Dhruman Shah, Mr. Areeb Amanullah, Ms. Prutha Bhavsar, Advocates

For Respondent: Mr. Arun Kathpalia, Sr. Advocate with Mr. Varun Singh, Mr. Gaurav Nair, Ms. Pranati Bhatnagar, Advocates for R-1.

Mr. Pulkit Kapoor, Mr. Dilipkumar Natvarlal Jagad, IRP, Mr. Aditya Vdeshi, Ms. Shraddha Swarup, Advocates for IRP/R-2.

JUDGMENT

(Date: 18.05.2022)

(Virtual Mode)

[Per.: Dr. Alok Srivastava, (Member Technical)]

This appeal has been preferred by the Appellants under section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called 'IBC') challenging the order dated 16.3.2022 (hereinafter called 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad) in CP(IB) No. 177/NCLT/AHM/2020 dismissing application under section 7 filed by the Respondent No.1.

2. The Appellants are ex-directors and authorized representatives of the corporate debtor M/s Superdrawn Wire Industries Pvt. Ltd., which is in the business of manufacturing of highly specialized steel wires used in wide range of applications in *Company Appeal (AT) (Insolvency) No. 470 of 2022*

stones cutting, wire ropes, springs, galvanized wires, etc. The Appellants have stated that Respondent No. 1/Teco Industries has given an amount of Rs.26,49,46,085 including interest to the corporate debtor which was given as part payment towards an investment of a total of Rs.50 crores in the corporate debtor in which the Appellants were directors.

3. The Appellants have claimed that Mr. Ambrish L. Shah promised to invest Rs.50 crores in the Corporate Debtor and in return 49% of the total shareholding of the corporate debtor was to be transferred to him. They have further stated that Mr. Ambrish L. Shah informed that funds would be transferred from his account and that of various firms including Respondent No. 1/Teco Industries to the corporate debtor for the investment. The Appellants have further claimed that Respondent No. 1 transferred a part amount of Rs. 19, 40, 81,000/- to the corporate debtor and Mr. Ambrish L. Shah also transferred an amount of Rs. 25,00,000 through his sole proprietorship firm ALS South West Steel. as a result the corporate debtor made plans for expansion and invested in development of infrastructure and other capital goods of the corporate debtor. The Appellants have further claimed that the Respondent No. 1 went back on its promise and invested just a partial amount against the promised total amount of Rs. 50 crores,

and therefore the appellants' company (corporate debtor) filed a Civil Suit No. 977 of 2018 before Hon'ble City Civil Court at Ahmedabad for declaration and damages, which is pending adjudication.

4. The Appellants have also claimed that Respondent No. 1 issued a demand notice under section 8 of the IBC to which the corporate debtor responded vide communication dated 11.1.2020 refuting the claim for repayment of loan. Thereafter Respondent No. 1 filed an application under section 7 of IBC against the corporate debtor regarding the default in repayment of financial debt on 4.2.2020 which after due consideration by the Adjudicating Authority was admitted vide the Impugned Order.

5. We heard the arguments of the Learned Counsel for Appellants and Learned Senior Counsel for Respondents and also perused the record.

6. The Learned Counsel for Appellant has argued that the record of information utility National E-Governance Services Limited (in short 'NESL') on whose basis the financial debt in question was taken to be due for payment to the financial creditor and in default contained incorrect e-mail ID of the corporate debtor. He has argued that regulation 21 of the Insolvency and Bankruptcy Board of India

(Information Utilities) Regulations, 2017 stipulates the process of authentication and verification of information of debt and default. He has further argued that in accordance with regulation 21(2)(c), the debtor has to deliver the information of default or reminder, either by hand, post or electronic means at the postal or e-mail address of the debtor, which was not done by the information utility. He has further claimed that the e-mail ID of the Corporate Debtor is present in the MCA records but instead of using the correct email id of the corporate debtor the e-mail ID used by the information utility was tushar.shah@superwireex.com and vipul.shah@superwireex.com, both belonging to directors of the corporate debtor whose email IDs were different than that of the corporate debtor. He has also urged that the amount of Rs. 19,40,81,000 transferred by the Respondent No. 1 to the corporate debtor was actually part advance of a total promised investment of Rs. 50 crores in the corporate debtor by Mr. Ambrish L. Shah and since he did not invest the full amount, the shares were not transferred in his name against the invested amount. He has thus claimed that the amount due to the corporate debtor is certainly not a financial loan as it was meant to be an investment and also, therefore, did not have any interest levied on it, something which the information utility has assumed on the basis of wrong and misleading information provided by the financial creditor Teco

Industries. He has buttressed his argument of the said amount not being a financial loan by stating that since Respondent No. 1 did not invest the full promised amount of Rs. 50 cores, the corporate debtor which had made extensive plan for expansion of infrastructure and capital goods suffered severe financial stress. He has claimed that, therefore, the corporate debtor filed a civil suit in the year 2018 bearing Civil Suit No. 977 of 2018 before Hon'ble City Civil Court of Ahmedabad for declaration and damages, which is pending. He has, therefore, claimed the transaction entered into between the parties is not covered under the definition of 'financial debt' under section 5(8) and any of the nine clauses of section 5(8) to be in the nature of financial debt.

7. The Learned Counsel for Appellant has referred to the judgment dated 11.1.2022 of this tribunal in the matter of **Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (MANU/NL/0031/2022)** to claim that any debt which is disputed cannot form the basis for admission of section 7 application.

8. The Learned Senior Counsel for Respondent No. 1 has argued that in the reply of the corporate debtor in response to section 7 application (attached at pp.83-93 of the appeal paperbook vol.I), the corporate debtor has nowhere stated that it did not receive the e-

mail sent for authentication and verification by the Information Utility ((NeSL). Therefore, the lack of reply by the corporate debtor to information utility's email has led to deemed conformation of the financial debt. He has referred to regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 to claim that once an e-mail is sent to the corporate debtor regarding the information of default or a reminder thereon, there is three strike rule and if the debtor does not respond even after three reminders, the information available with the Information Utility is deemed to be authenticated and verified by the corporate debtor. He has clarified that the notice was sent to both the directors of the corporate debtor, namely Vipul Himatlal Shah and Tushar Himatlal Shah, who are owners of the corporate debtor and they did not respond to the e-mail of Information Utility and hence the authentication of the loan by the respondent no. 1 to the corporate debtor was established.

9. The Learned Senior Counsel for Respondent No. 1 has further referred to Part II of section 9 application (attached at pg. 78 of the appeal paperbook, vol.I), wherein the authorized share capital of the corporate debtor is stated as Rs. two crores only and the paid up share capital is stated as Rs.1,99,95,540/- only, and therefore it is completely illogical that when the share capital is almost fully

subscribed a fresh investment of Rs. 50 crores could be made. He has also pointed out that in the ledger account of the financial creditor maintained by the corporate debtor (attached at pgs. 50-51 of the copy of section 7 application filed vide dy. No. 35553 dated 30.4.2022), the corporate debtor has itself shown that the account of Teco Industries is a loan account. He has referred to para 28 of the judgment of Hon'ble Supreme Court in the matter of **Innoventive Industries vs. ICICI Bank [2018 1 SCC 407]** to underline that in the face of authenticated record of Information Utility, the fact of financial debt is established.

10. The Learned Senior Counsel for Respondent No. 1 has also argued that in case the corporate debtor had any grievance regarding any record/entry in Information Utility's record, it could have taken appropriate action under the Grievance Redressal Policy, which is provided in Regulation 12 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, and since it was not resorted to by the corporate debtor the deemed authentication of the loan record is established. He has finally urged that the claim that the said money was not given on loan but as part payment against the investment in the corporate debtor is a figment of imagination created by the Appellants to escape from the corporate debtor's liability.

11. The relevant provisions relating to definition of 'financial debt' as given in section 5 (8) of the IBC is as follows:-

“5(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only

the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;”

12. The regulations relevant to this appeal are Regulations 20 and sub-regulations (2) and (3) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which are reproduced below:-

“20. Acceptance and receipt of information –

(1) An information utility shall accept information submitted by a user in Form C of the Schedule.

(2) On receipt of the information submitted under sub-regulation (1), the information utility shall-

(a) assign a unique identifier to the information, including records of debt;

(b) acknowledge its receipt, and notify the user of-

(i) the unique identifier of the information;

(ii) the terms and conditions of authentication and verification of information; and

(iii) the manner in which the information may be accessed by other parties.

21. Information of default.

xx xx xx xx

(2) For the purpose of sub-regulation (1), the information utility shall-

(a) deliver the information of default to the debtor seeking confirmation of the same within the time specified in the Technical Standards;

(b) remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow three days each time for the debtor to respond;

(c) deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

(i) registered with the information utility by him, failing which,

(ii) recorded with any other statutory repository as approved by the Board, failing which,

(iii) submitted in Form C of the Schedule.

(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the Table below:

<i>Sl. No.</i>	<i>Response of the Debtor</i>	<i>Status of Authentication</i>	<i>Colour of the Status</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>1.</i>	<i>Debtor confirms the information of default</i>	<i>Authenticated</i>	<i>Green</i>
<i>2.</i>	<i>Debtor disputes the information of default</i>	<i>Disputed</i>	<i>Red</i>
<i>3.</i>	<i>Debtor does not respond even after three reminders</i>	<i>Deemed to be Authenticated</i>	<i>Yellow</i>

13. We note that the claim put forth by the Learned Counsel for Appellants, that the amount in question of Rs.19,40,81,000/- being actually a part payment against the total investment of Rs. 50 crores, is not supported by any document or record. On the contrary the record maintained by the Information Utility NESL shows that the loan of Rs.19,40,81,000/- was given by the financial creditor to the corporate debtor at 14% rate of interest and an amount of Rs.26,49,46,085/- is outstanding (attached at pp.74-75 of the appeal paperbook, Vol.I). We find that in the section

containing contact details of the debtor, the e-mail IDs of Mr. Tushar Himatlal Shah and Mr. Vipul Himatlal Shah are given. On this fact that the emails were not addressed to the corporate debtor and hence he had no chance to authenticate the information utility's record, we note that the Appellants have not disputed the fact of receiving the e-mails. Additionally, they chose to neither reply to the said e-mail nor forwarded them to the appropriate addressee. Such neglect in the face of the fact that as directors of the corporate debtor they were connected to and in responsible position in management of the corporate debtor, they cannot now take such a weak defense which is wholly untenable. Such an inference also comes out from regulation 21(3) of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 which provides that if the debtor does not respond even after three reminders, the information of default is deemed to be authenticated. Moreover, we note that the corporate debtor or its authorized representative did not take any action under Grievance Redressal Policy under regulation 12 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 to set the record straight in case it found it to be incorrect. On the basis of these facts and analysis we are inclined to hold that the corporate debtor cannot deny the existence of a financial debt as defined in section 5(8) of the IBC as present in the record of the information utility.

14. We have also noted that the authorized share capital of the corporate debtor is Rs. 2 crores (in part II of Section 7 application at page 78 of appeal paperbook, Vol.I) and that the paid up share capital is Rs. 1,99,95,540.00. It therefore belies commonsense, logic and legal provisions that a further investment of Rs. 50 cores and a part payment of over Rs. 19 cores could have been made as investment with a purported transfer of 49% shareholding to the financial creditor as alleged by the Appellants without the authorized share capital of the corporate debtor being in a position to accommodate such an investment.

15. We also note the judgment of Hon'ble Supreme Court in the matter of **Innoventive Industries vs. ICICI Bank (2018) 1 SCC 407**, wherein in para 21 it is held as follows:-

“21. Section 12 provides for a time limit for completion of the insolvency resolution process and reads as follows: “Sec. 12. Time-limit for completion of insolvency resolution process.- (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process. (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares. (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process

Company Appeal (AT) (Insolvency) No. 470 of 2022

cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”

16. In the light of the detailed discussion as above, it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, moreso when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier. We also note that in the judgment of **Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (supra)**, which has been cited by the Learned Counsel for Appellant, the record that formed the basis for financial debt and default was found to be forged and fabricated, which is not the case in the present appeal. Therefore, this judgment does not come to the rescue of the Appellant.

17. In view of the detailed discussion in the aforesaid paragraphs, we are of the opinion that the Adjudicating Authority has not committed any error in admitting the section 7 application filed by the financial creditor M/s. Teco Industries. The appeal is therefore dismissed as being devoid of merit and disposed of accordingly.

Company Appeal (AT) (Insolvency) No. 470 of 2022

18. In the facts of the case, there is no order as to costs.

(Justice Ashok Bhushan)
Chairperson

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
18th May, 2022

/aks/