

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

Company Petition No. 1118/(IB)-MB-V/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Manjulaben Madhulal Karelia,

A-15, Shakti Sadan, Opp Navjivan Society,

Falkland Road, Lamington Road,

Mumbai – 400007

.... Petitioner/Financial Creditor

Vs.

Pooja Land and Premises Private Limited,

B-101, Eastern Court Jn of Tejpal

Road & amp; Parleshwar Road, Vile Parle (East),

Mumbai - 400057

...Corporate Debtor/Respondent

Order Reserved on: 28.02.2022

Order Pronounced On: 20.04.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Mr. Nausher Kohli a/w Rishabh
Dhanuka, Aashvi Shah Advocates
i/b A&D Legal, Advocates

For the Respondent : Mr. Akshay Petkar a/w Aniket
Malu Advocates

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'Manjulaben Madhulal Karelia' (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Pooja Land and Premises Private Limited' (hereinafter as '**Corporate Debtor**').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 2,00,00,000/- including interest of Rs. 3,92,49,046/-. Total amount sum of Rs. 5,92,49,046/- The date of default is stated to be 18.12.2019.

Brief Facts-

3. The Application is made by Mrs. Manjulaben Karelia against Pooja Land and Premises Private Limited. The Financial Creditor entered into a Loan Agreement by way of Agreement dated 31.012.2010 with Corporate Debtor, as Corporate Debtor needed funds to acquire a plot of land situated at Dahisar East, Taluka, Borivali, Mumbai- 400068, and also for paying certain business debts and liabilities. Interest on the said loan was required to be paid on an annual basis @ 12% p.a.

4. The following documents categorically demonstrate the financial debt due and payable by the Corporate Debtor to the Financial Creditor, being:
 - i. Agreement dated 31st December 2010;
 - ii. Financial Creditor's Bank Statements, evidencing payment of money to the Corporate Debtor for the Financial years 2015 to 2019;
 - iii. Balance Sheet of the Corporate Debtor for the year ending 31st March 2011;
 - iv. Balance Sheet(s) filed for the Corporate Debtor for the year ending 31st March 2012 till 31st March 2018, which reflect long term borrowing(s) availed by the Corporate Debtor;
 - v. Certificate issued by the Information Utility, National E-Governance Services Limited;

5. As per the Terms of Loan agreement a Loan of Rs 2,00,00,000/- were given by the Petitioner to the Corporate Debtor, who had to the pay the interest on annual basis. Since no amount was received till 18.12.2019 Mr. Dilip Karelia and Mrs. Manjulaben Karelia sent a letter dated 18.12.2019 to the Corporate Debtor, for the payment of their loan along with interest. No reply is received till date from the Corporate Debtor. Hence the Application u/s 7 is filed before Hon'ble Tribunal.

Submissions by the Corporate Debtor

6. The Corporate Debtor submits that the present Company Petition is not maintainable, and it is barred by Limitation. The Petitioner has filed the present proceedings claiming a debt amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) along with interest of Rs. 3,92,49,046/- (Rupees Three Crore Ninety-Two Lakh Forty-Nine Thousand Forty-Six Only). The Petitioner has not provided any document, record or evidence which acknowledges the alleged debt by Corporate Debtor three years prior of filing of this Petition. Therefore, in view of Article 137 of Limitation Act, 1963 read with Section 238A of IBC, the present Petition is barred by limitation and is not maintainable.
7. The present Petitioner alleges execution of a purported Loan Agreement dated 31.12.2010, between the Petitioner along with her relatives, and Corporate Debtor. However, the Corporate Debtor submits that the said document is a forged and fabricated document as no such document ever existed. The Corporate Debtor claimed this to be an afterthought of the Petitioner.

8. It is submitted that in the year 2014, following was the shareholding pattern to the Corporate Debtor.

Sr. No.	Name of Shareholder	Number of Shares	% holding
Shah Family			
1.	Kapesh Shah	3,500	17.07%
2.	Rahul Shah	3,500	17.07%
3.	Suketu Shah	3,500	17.07%
		10,500	51.22%
Dubey Family			
4.	Prakashchand Dubey	2,500	12.20%
5.	Pushpa Dubey	2,500	12.20%
6.	Chandramani Dubey	2,500	12.20%
7.	Rajkumari Dubey	2,500	12.20%
		10,000	48.78%

9. It is submitted that in the year 2014, following person were Directors of the Corporate Debtor

Sr. No.	Name of the Director
Shah Family	
1.	Kalpesh Shah
2.	Rahul Shah
3.	Suketu Shah
4.	Nehal Shah
5.	Mayur Shah

6.	Ankur Shah
7.	Harshad Shah
Dubey Family	
8.	Prakashchand Dubey
9.	Pushpa Dubey
10.	Chandramani Dubey
11.	Rajkumari Dubey
12.	Vishal Dubey
Other Director	
13.	Prabhakar Shetty

10. On 29.11.2014, the Shah Family i.e. Kalpesh Shah, Rahul Shah and Suketu Shah transferred their entire shareholding (10,500 Equity Shares representing 51.22% shares only) in favour of Romell Real Estates Private Limited. The said transfer was entered by way of executing a Share Purchase Agreement dated 29.11.2014. The copy of the Share Purchase Agreement dated 29.11.2014 with Shah Family is annexed to the Petition.

11. On 26.04.2015, Dubey Family i.e. Prakashchand Dubey, Pushpa Dubey, Chandramani Dubey and Rajkumari Dubey transferred their entire shareholding (10,000 Equity Shares representing 48.78% shareholding) in favour of Romell Real Estates Pvt. Ltd. The said transfer was made by executing a Share Purchase Agreement dated 26.04.2015. The copy of the Share Purchase Agreement dated 26.04.2015 with Dubey Family is annexed to the Petition.

12. On 26.04.2015, all the 13 Directors resigned from the Company by duly submitting their signed resignation letters. The said resignations were duly filed in the Registrar of Company by uploading relevant forms on the Web-Portal of Ministry of Corporate Affairs, Govt of India. The copy of the Resignation Letters of the erstwhile Directors is annexed to the Petition.

13. The abovementioned Share Purchase Agreements clearly state that the erstwhile Director/Shareholders have not contracted any debts on behalf of the Corporate Debtor and in any case, any liability arising on account of any such contract /agreement or any of the documents, executed by the Sellers (erstwhile promoter/directors), they will be held personally liable to make good the loss to the Acquirer/Purchaser.

14. The said purchase agreement provides that the erstwhile shareholders and Directors have represented that the Corporate Debtor Company or its erstwhile Shareholders/Directors have not obtained term loans or any other loans and/or working capital loans on behalf of Corporate Debtors. Further, it was also represented that they have not created any charge on any assets of the Corporate Debtor.

15. The said Share Purchase Agreement also provides that the erstwhile Shareholders and Directors indemnify and keep the purchasers indemnified against any claim or demand that may be made against them arising out of the liabilities of the Corporate Debtor.

16. The resignation letter submitted by the erstwhile Directors categorically record that there is no agreement or arrangement pursuant to which the

Corporate Debtor has any obligation, debt or liabilities due to on account of the action of the said respective Directors.

17. That the alleged Loan Agreement is insufficiently stamped as it appears to have been prepared on a Rs. 100 stamp paper and is executed by Kalpesh Shah, Rahul Shah and Suketu Shah on behalf of Corporate Debtor. The said signatory directors were also shareholders of the company and have transferred their entire shareholding by way of a Share Purchase Agreement. The said Share Purchase Agreement categorically states that there is no liability on the Corporate Debtors and if any claim to arise in future, the outgoing promoters and directors would keep the Corporate Debtor indemnified from all liabilities.

18. It is alleged that the said loan document is supported by the Board Resolution of the Corporate Debtor dated 17.05.2010. However, no such resolution is annexed to the Petition. It is categorically submitted that no such Loan Agreement is exist in the record of the Corporate Debtor nor any Board Resolution dated 17.05.2010 is available in the Minute Book maintained at the registered office of the Company.

19. Therefore, in view of the above, it is absolutely clear and evident that the present Petition u/s 7 is nothing but a mischievous attempt to extract moneys from the Corporate Debtor by false and bogus documents.

20. In so far as the claim of the interest is concerned, the same is without any basis whatever. The Petitioner vide Annexure IV to the Petition itself admits that no payment of any interest was made to her. Further, the Petitioner also admits that no payment of TDS was made towards any interest amount after the year ending on 31st March 2013. Therefore, the

said claim towards the interest is absolutely without any basis whatsoever. In any event, the entire claim of the principal amount along with interest, if any, is time barred.

Rejoinder filed by the Financial Creditor:

21. The Petitioner has recorded the default with the Information Utility on 18.05.2020 and therefore the contention of the Corporate Debtor is false. As the Information Utility has been set up recently, the record of default could not be filed with it before the time of filing Application and it was subsequently done. Even otherwise if the default is not recorded with the Information Utility, the order no. 25.02.2020- NCLT dated 07.09.2020 clearly clarifies that filing of default record in the Information Utility is not mandatory. Further, a procedural provision cannot override or affect the substantive obligation of the Adjudicating Authority to deal with Applications under Section 7 merely on the ground that Board has not stipulated or framed Regulations with regard to Sub-Section 3(a) of Section 7 and therefore the contention of the Corporate Debtor that the mandatory requirements u/s 7(3)(a) of the IBC, 2016 is not complied with is false and baseless. Further the Petitioner have placed on record sufficient records to prove that the presence of default u/s 7 of IBC, 2016 and has also complied with clause 3(a) of Section 7 before hearing.

22. The reply mentions about certain terms and condition of the Share Purchase Agreement entered between erstwhile Director/shareholder and the new shareholders/ Directors of the Corporate Debtor and is trying to distort the fact and usurp the rights of the Petitioner by giving wrongful

interpretation to the clauses to avoid liability under the loan agreement and under equity. The mere reading of the clause 3 of the Share Purchase Agreement states that:

Clause 3- “The Acquirer has given to understand that the Target Company is not contracted any debts and that the Company M/s/ Pooja Land and Premises Private Limited owes no liability whatsoever as on date otherwise shown in the Audited Balance Sheet as at March 31st, 2014.”

23. From the above it is clear that the acquirer in the above case agrees that they are taking over the liability which is shown as per the audited balance sheet as at March 31st, 2014. The loan was given by the Petitioner on 24.06.2010 which is reflected in the account statement of the Corporate Debtor maintained with HDFC Bank, and forms part of the Petition at pg no. 32. The loan is also reflected in the audited balance sheet for the year ended 31.03.2011 and is also shown in the audited balance sheet for the year ended 31.03.2014. The Corporate Debtor in his reply while relying on the Share Purchase Agreement has not at all referred to the audited balance sheet for the financial year ended 31.03.2014 and is trying to mislead this Hon’ble Tribunal by not giving the true factual position and is trying to avoid its liability on some vague statements contained in the Share Purchase Agreement. In fact, the Balance Sheets of the Corporate Debtor for the subsequent years 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017, 31.03.2018 are also annexed and shows that the loan taken by the Corporate Debtor, from the Petitioner, is still outstanding and hence the stand of the Corporate Debtor is false and untenable in law. If the

statement of the Corporate Debtor were true, then the loan would not have shown outstanding in its books.

24. It is pertinent to note that the Corporate Debtor's new management in their reply have nowhere denied that they are liable to make the payment of the liability which is shown in the Audited Balance Sheet as on 31.03.2014 and therefore, by their own statements they have accepted the liability. The Corporate Debtor cannot now wriggle out of the same.
25. The Corporate Debtor while replying has not once denied that the loan was received from the Petitioner and that the said loan was not repaid, which are clearly seen from all the evidences, bank statements, books of the accounts of the Corporate Debtor and thus the debt is proved and the default is also proved which are the key factors for admitting an Application under Section 7 of the IBC, 2016.
26. The Corporate Debtor has pointed about the Loan Agreement being insufficiently stamped. The Petitioner states that it is the responsibility of the Corporate Debtor to get the loan agreement stamped and therefore even assuming without admitting that the agreement is insufficiently stamped, this insufficiency is attributable only to the Corporate Debtor and the Corporate Debtor cannot seek to take advantage of its own wrong and the Petitioner reiterates that the Corporate Debtor has defaulted in financial debt. In fact, the Petitioner has sufficiently placed documents other than the loan agreement viz; balance sheets of the Corporate Debtor, bank statements of the Petitioner to substitute the debt and therefore the debt is proved even without the loan agreement and hence the matter can

be decided without going into the details whether the loan agreement is insufficiently stamped.

27. The Corporate Debtor itself admits that the loan was taken by the Corporate Debtor and TDS was deducted till 31.03.2013. The loan agreement which was executed for 10 years from 31.12.2010 and therefore, the same is within the limit and not time barred as alleged by the Corporate Debtor.

FINDINGS:

28. Upon perusal of the Petition and after hearing both the parties, it is an undisputed fact that the Petitioner and the Corporate Debtor has entered into a Loan Agreement, wherein the money of Rs. 2,00,00,000/- was disbursed by the Petitioner. However, the Corporate Debtor was not able to repay the amount and an amount of Rs. 5,92,49,046/- (Including Interest) is due and outstanding.

29. In the light of above pleading, the substantial issue that needs to be decided by this Bench, in the matter, is whether the Financial Debt is barred by the limitation and it cannot be recoverable.

30. The Bench in this regard notes that Section 18 of the Limitation Act 1963 mentions the following: -

(18.1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right

is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Further, the explanation of this section mentions

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

31. This Bench is of view of that the there is an acknowledgement of liability by the Corporate Debtor in the Corporate Debtor’s Balance sheet for the year ending 31.03.2018.

32. This Bench relies on the Judgement of Hon’ble Supreme Court in the case of *Dena Bank V. C. Shivkumar Reddy (Civil Appeal No. 1650 of 2020) (2021) 10 Supreme Court Cases 330*, wherein it was held that the acknowledgement of liability gives a fresh cause of action and extends the Limitation Period. Para 113 and 118 of the Judgement are reproduced below:

113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

*118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In **Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr.** (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of **Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff**, [“**Bengal Silk Mills**”] and in **Re Pandem Tea Co.19 Ltd.**, the judgment of the Delhi High Court in **South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana** and the judgment of Karnataka High Court in **Hegde Golay Ltd. v. State Bank of India** and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.*

33. The Corporate Debtor submits that between November 2014 and March 2015, the management and control of the Corporate Debtor was transferred to one Romell Real Estates Pvt. Ltd. The Corporate Debtor has sought to contend that the ‘New Management’ of the Corporate Debtor has not been able to identify either the Subject agreement and or the Board Resolution referred to therein, Accordingly, the Corporate Debtor asserted

that the subject Agreement is forged, fraudulent and vitiated is rejected by the Bench in the terms of the Doctrine of Indoor Management, the Financial Creditor is not concerned with the internal management of the Corporate Debtor and non-availability of the subject Agreement and/or the Board Resolution referred to therein is not sufficient ground to defect the Financial Creditor's rights.

34. The Other Objection raised by the Corporate Debtor is that the Loan Agreement has been executed on a non-judicial stamp paper of Rs.100/- which is insufficient as per the provision of the Maharashtra Stamp Act, 1958 and therefore may be impounded and the said loan agreement cannot be admitted as an evidence.

In this regard the Bench notes that the Section 4 of Maharashtra Stamp Act, 1958 reads as under:-

- 1) *Where, in the case of any development agreement sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-I for the conveyance, development agreement mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.*
 - 2)
 - 3)
- Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be*

chargeable in respect of any of the said instruments employed.

[Emphasis Supplies]

35. The Bench notes that in terms of Section 4 of the Maharashtra Stamp Act, 1958 the said loan agreement is chargeable with a duty of only Rs.100/- and there is no deficiency in the payment of stamp duty as alleged.
36. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. The Petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirement for admission.
37. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The formalities as prescribed under the Code have been completed by the

Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

38. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
39. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Jitendra Palande having registration No. IBBI/IPA-003/IP-N00028/2017-208/10188, having address at 38,5-3/D, New Ajanta Avenue, Paud Road, Kothrud, Pune 411038, having email id: jitendra@7circles.co.in, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
40. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
41. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of

Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

42. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
43. In view of the above, the Bench “**Allows**” the Company Petition No. **1118/(IB)-MB-V/2020** u/s.7 initiating CIRP against the Corporate Debtor Pooja Land and Premises Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be, effective from the date of the Order.
44. Ordered Accordingly.

SD/-
Anuradha Sanjay Bhatia
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)