NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1180 of 2023

IN THE MATTER OF:

Fabtech Technologies International Ltd. ...Appellant(s)

Versus

Buildmighty Techno Pvt. Ltd. ...Respondent(s)

Present:
For Appellant : Mr. Pulkit Kapoor, Advocate.
For Respondents : None

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 10.07.2023 by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Appellant bearing CP (IB) No. 1303/MB-V/2022 against Buildmighty Techno Pvt. Ltd. (Corporate Debtor) for the resolution of an amount of Rs. 5,96,33,275/- alongwith interest calculated till 11.05.2022, has been dismissed.

2. Brief facts of this care are that the Corporate Debtor which was initially incorporated as Fabtech Sterling Technologies Pvt. Ltd. but w.e.f. 27.11.2014 its name was changed to FTS Buildtech Pvt. Ltd. and ultimately w.e.f. 09.08.2021 again changed its name as Buildmightly Techno Pvt. Ltd., availed financial assistance from the Financial Creditor, namely, Fabtech Technologies International Limited at several intervals since calendar year 2012 which was duly accepted and acknowledged by the CD.

3. The Financial Creditor filed the application under Section 7 in which the date of default is mentioned in part IV as 12.05.2022 and had also filed

the NeSL report dated 11.05.2022 in which the amount of Rs. 5,96,33,275/- is shown as outstanding. It also filed the Bank Statement from 01.09.2019 to 30.09.2019 and 01.04.2020 to 07.04.2020. There was no written agreement between the parties but the CD agreed to pay outstanding amounts to the Appellant as and when called upon by the Appellant. It is further alleged that the CD was honouring the repayments till financial year 2018 -19 but stopped making the repayments. It is alleged that the Appellant issued a demand notice on 09.04.2022 for repayment of long outstanding unsecured loan by providing 30 days' time to the CD and when it failed to repay the same, filed the present application under Section 7 of the Code. The CD/Respondent did not file the reply to the application. However, during the pendency of the application, on 16.05.2023, the Respondent through Amjad Adam Arbani accepted that the company is liable and they have not paid the Appellant/Petitioner. On the same date, the matter was reserved for orders. The order dated 16.05.2023 is reproduced as under:-

> "Ms. Simran Kasat Ld. Counsel appearing for the Petitioner and Mr. Amjad Adam Arbani, Representative / one of the Director of the Corporate Debtor are present through virtual hearing. On the last date of hearing, the Corporate Debtor was given two weeks 'time to file its reply with a stipulation that if it fails to file its reply, its right to file reply shall stand forfeited. No reply has been filed till date. Heard the oral submissions of Mr. Amjad Adam Arbani. During the course of the hearing, Mr. Amjad Adam Arbani accepted that the company is liable and stated that they have not paid the Petitioner. Heard both the parties, the matter is reserved for orders."

4. The Appellant also filed the additional affidavit dated 15.05.2023 vide diary no. 270913805182022 before the order was reserved. The appellant with the additional affidavit enclosed the updated record of NeSL and demand notice dated 09.04.2022, however, the Tribunal dismissed the application on

the ground that in the absence of loan agreement it is not possible to determine the date on which the default took place. It is also observed that the Financial Creditor has failed to demonstrate as to how and when the loan was repayable by the CD. The Tribunal has further observed that no demand notice was shown to have been served by the Appellant asking for the repayment of dues from the CD and further observed that the event of default would take place only when the loan was not paid after it becomes due and since no due date of the alleged loan has been mentioned, therefore, it was imperative on the part of the Financial Creditor to have issued a notice for recalling the loan. On this premise that the Appellant has failed to prove the factum of default, the petition was dismissed.

5. In the appeal, notice was issued on 26.09.2023 but despite delivery of notice, the Respondent did not appear, therefore, it was proceeded against ex-parte on 04.03.2024 and the matter was listed for ex-parte argument on 16.04.2024.

6. During the course of hearing, the Appellant submitted that it is the holding company of the Respondent (CD) and admitted that Mr. Amjad Adam Arbani is the Key Managerial Personal of the companies. He was asked to file an affidavit as to why the holding company is trying to pushits 100% owned subsidiary company into CIRP because in that situation there would be various claims by other financial creditors and operational creditors for which it was submitted by the Appellant that the application under Section 7 has been filed for the purpose of resolution of their own amount which has not been paid. However, the Appellant filed the additional affidavit in terms of the order passed by this Court. In the said affidavit dated 13.11.2024 which was

taken on record, the Appellant has averred that he has attached list of creditors of the Appellant as well as respondent company.

7. Counsel for the appellant has submitted that the CD is 82% subsidiary of the Appellant but the subsidiary is separate legal entity from holding company and in this regard, he has relied upon a decision of the Hon'ble Delhi High Court in the case of S.A.R.E. Public Company Ltd. vs. Avon Infracon Pvt. Ltd. & Ors.. He has further submitted that the Tribunal has failed to consider the report of NeSL in which it has been categorically mentioned that the date of default is 10.05.2022 and the amount of default is 59633276.00. He has further submitted that the notice of demand dated 09.04.2022 has also not been considered though it had already been filed with additional affidavit dated 15.05.2023 and was already on record when the judgement was reserved on 16.05.2023.

8. We have heard Counsel for the appellant and perused the record with their able assistance.

9. The Tribunal has dismissed the application of the Appellant solely on the ground that since there was no agreement between the parties regarding the loan and there were no terms and conditions for repayment of loan, therefore, the default is not established. In this regard, the argument of the Appellant is that it was an unsecured loan which was given from time to time. The Respondent was servicing the loan till 2018 but thereafter stopped the same. The loan was recalled by the Appellant by way of demand dated 09.04.2022 and the factum of default has been made part of the information utility, namely, NeSL. The affidavit dated 15.05.2023 which was filed before the judgment was reserved on 16.05.2023 is reproduced as under:-

I, Sumit Kumar Drolia, aged 32 years, authorized signatory of the Financial Creditor, having my office at 717, Janki center, Off Veera Desai Road Andheri West Mumbai – 400053, state as under:

1. I say that the Applicant extended several loans to the Respondent from FY 2012-13 to FY 2020-21. Initially the Respondent was timely repaying the loan with interest, however, since late 2019, the Respondent started citing reasons of business difficulty and the pandemic for delays in repayment. Subsequently, after several verbal follow ups and assurances, the Applicant issued a final notice dated April 9, 2022, to the Respondent, for the outstanding amount of INR 5,96,33,275 (Indian Rupees Five Crores, Ninety-Six Lakhs, Thirty-Three Thousand, Two Hundred and Seventy-Five Only) (**"Outstanding Amount"**). Hereto annexed and marked as **Exhibit A** is the notice dated April 9, 2022.

2. Pertinently, though the same amount was payable as per the books of the Corporate Debtor, and the Corporate Debtor had assured the Financial Creditor of repayment, the Corporate Debtor failed to repay the Outstanding Amount.

3. Accordingly, the Applicant registered a record of default of the Corporate Debtor with National e-Governance Services Limited ("NeSL") in May 2022 under Form C, with the date of default being **May 10, 2022**. However, due to an oversight, a wrong document filed with NeSL was annexed with the captioned Petition at Annexure-3, and did not reflect the date of default. Hereto annexed and marked as **Exhibit B** is a copy of the correct Form C, downloaded from the NeSL website.

4. Pertinently, the final notice dated April 9, 2022, was also not earlier brought on record, but in order to clarify and corroborate the date of default, the same ought to be brought on record.

Solemnly declared at Mumbai)
This 15th day of May 2023)

10. The notice dated 09.04.2022 which was issued for recalling the amount from the Respondent is also reproduced as under:-

Date: 09th April, 2022

To,
The Director
Buildmighty Techno Private Limited.
(Formerly known as FTS Buildtech Private Limited),
302, Vishakha Arcade, Off. Veera Desai Road,
Next to MVM School, Andheri West,
Mumbai 400058, Maharashtra.

Kind Attn.: Mr. Amjad Arbani - Director.

Sub.: Long Overdue Unsecured Loan of Rs.7,10,30,467/-

Dear Sir,

This is in connection with the unsecured loan given to your company M/s. FTS Buildtech Private Limited, which stands unpaid since a very long time.

We wish to inform you that despite our several friendly reminders given to you from time to time, you have not made payments to us since a very long time. As on date, an amount of Rs.7,10,30,467/- (Rupees Seven Crore Ten Lakhs Thirty Thousand Four Hundred Sixty-Seven Only) is receivable from you, which has already been reconciled between us. You have always been giving us false commitments and hollow promises, which are never honoured from your end. Your such act demonstrates your unprofessionalism attitude on the subject matter, which is not acceptable to us.

Further, please note we are making heavy interest payouts to our lenders, whereas you are not considering our payments, having said that we are facing severe challenges on managing our working capital because of your non-payment.

Moreover, our bankers are continuously chasing us for the concrete recovery plan to recover the said loan given to your company.

Finally, we hereby call upon you to repay the balance outstanding loan amount of Rs.7,10,30,467/- (Rupees Seven Crore Ten Lakhs Thirty Thousand Four Hundred Sixty-Seven Only) along with interest thereon within 30 (thirty) days from the date of receipt of this letter failing which, we shall be forced to initiate legitimate action against your company for the recovery of our loan amount, which please take a strict note.

Thanking you.

Yours truly,
For Fabtech Technologies International Limited

Fabtech Technologies International Ltd.
Fabtech

Authorised Signatory

Kasturi G. Karkera
GREATER BOMBAY
NOTARY

Recd
Amjad A

11. Similarly, the record of the financial information from NeSL is also reproduced as under:-

NeSL India's First Information Utility NATIONAL E-GOVERNANCE SERVICES LIMITED

Record of Financial Information - Form C

Submission Details			
Unique Debt Identifier	AAACF5671R_0	Submission ID	1
Submitted by	Fabtech Technologies International Limited	Submitted Date & Time	11/05/2022 21:32:28
Submission Type	Default	Information as on	11/05/2022

Authentication Status
No authentication done by any parties till now

Submitter Information			
Name	Fabtech Technologies International Limited	UIN (PAN)	AAACF5671R
Relationship	creditor	Comm. Address PIN	400053
DOI / DOB	20/11/1995	Telephone No.	9xxxxxxxx4
Billing / Comm. Address	717 Janki Centre Off Veera Desai Road Andheri West Mumbai, Maharashtra 400053 INDIA	Email ID	**@fabtechnologies.com
Email ID - Dispute Alert	**@fabtechnologies.com	Email ID - Default Alert	**@fabtechnologies.com

Other Party Details Debtor			
Name	Buildmighty Techno Private Limited	Relationship	debtor
Regd. / Permanent Address	UNIT NO. 302, VISHAKA ARCADE, OFF VEERA DESAI ROAD, AMBOLI, NEXT TO M.V.M. SCHOOL, ANDHERI (WEST), MUMBAI, Mumbai City, Maharashtra, India, 400058	Regd. Address PIN	400058
Billing / Comm. Address	UNIT NO. 302, VISHAKA ARCADE, OFF VEERA DESAI ROAD, AMBOLI, NEXT TO M.V.M. SCHOOL, ANDHERI (WEST), MUMBAI, Mumbai City, Maharashtra, India, 400058	Comm. Address PIN	400058
Legal Constitution	PVTL	DOI / DOB	11/06/2010
CIN/LLPIN	U45203MH2010PTC204045	PAN	AABCF5525B
MSME Flag	N	Email ID	amjmails@gmail.com
Party Sanctioned Currency	INR	Party Sanctioned Limit	59633275.00

Debt Information			
Type of debt	financial	Debt Reference No.	0
Debt Start Date	01/01/2012	Debt Currency	INR
Sub Type - Debt	OTHL	Funded Type	Non-fund
Security Flag	unsecured	Facility Name	Loan
Lending Arrangement	others	Total Outstanding Amount	59633275.00
Amount Overdue	59633275.00	Account Closed Flag	no

Default Details			
Date Of Default	10/05/2022	Default Amount	59633275.00
Total Outstanding Amount	59633275.00		

12. It has also been brought on record that the Respondent had admitted its debt when the statement was suffered by it through Amjad Adam Arbani on 16.05.2023 which has already been reproduced hereinabove.

13. Thus, from the aforesaid facts and circumstances, it is clear that there was a debt which has been admitted and established with the record of NeSL and default i.e. after the notice was issued on 09.04.2022 by which 30 days time was given to the Respondent to pay i.e. up to 09.05.2022 and these facts were brought to the notice of the Tribunal by way of an additional affidavit dated 15.05.2023. All these facts indicates that the Tribunal has committed an error in not considering the affidavit dated 15.05.2023 which the Appellant had placed on record with demand notice as well as the record of the NeSL about the amount in default.

14. Thus, in view of the aforesaid facts and circumstances, since the debt and default both have been admitted and proved, the application filed under Section 7 could not have been dismissed. As a result of the aforesaid discussion, the present appeal is thus allowed and the impugned order is hereby set aside. No costs.

I.As, if any, pending are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
14th May, 2025
Sheetal