**THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH-I**

**I.A. 307 OF 2022**

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016

Mould- Tip Injection Technology Limited
…Operational Creditor

Vs.

Stiack Engineering Pvt Ltd
…Corporate Debtor

In the matter of

C.P.(IB) No. 4464/MB/2019

Gajendra Investments Limited

**Financial Creditor**

Vs.

Satra Property Developers Private Limited

**Corporate Debtor**

***Order delivered on: 22.11.2023***

***Coram:***

**Shri Prabhat Kumar**
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**
Hon'ble Member (Judicial)

*Appearances*

| | | |
|---|---|---|
| For the Applicant | : | None |
| For the Respondent | : | Adv. Nausher Kohli a/w Adv. Ashish Parwari, Advocate |

**ORDER**

***Per: V.G. Bisht, Member (Judicial)***

1. This Application IA 307/2022 is filed by M/s Gammon Reality Limited ("Applicant") in the Corporate Insolvency Resolution Process ("CIRP") of M/s Satra Property Developers Pvt. Ltd. ("Corporate Debtor"), which commenced on 10.8.2020 to seek directions to Sh. Jayesh N. Sanghrajka ("Resolution Professional") for admission of claim of the Applicant in the category of Unsecured Financial Debt amounting to Rs. 30.00 Crores and induct the Applicant as its member and to stay the process of selection Successful of Resolution Applicant.
2. The Applicant had granted loan/Inter Corporate Deposit (ICD) Rs. 22,00,00,000/- on 5.7.2012 and Rs. 8,00,00,000/- on 15.3.2013 to the Corporate Debtor for its business purpose, and the said loan was repayable on demand. The said loan is stated to be reflecting in the books of the Corporate Debtor.
   2.1. It is stated by the Applicant that the new management of the Corporate Debtor, after its de merger, vide email dated 3.7.2020 has acknowledged its liability towards the Applicant as late as 3.7.2020.
   2.2. The Applicant filed its claim in response to the Public announcement made in the newspaper under the Insolvency & Bankruptcy Code, 2016 ("Code") and after having received no response, enquired an updated status of its claim vide email dated 22.5.2021. The Respondent rejected the claim on the ground that the disbursement

of financial debts against time value of money is absent or unsubstantiated nor backed by the financial contract.

3. The Respondent has filed the reply stating that the claim was rejected citing reasons which reads as "we find that the most critical aspect of a financial debt viz. 'Disbursement against time value of money' is either absent or unsubstantiated. Further, the transaction which is claimed to be a financial debt is not backed by a financial contract. Owing to this, your claim cannot be accepted as a financial debt and consequently, we cannot classify you as a financial creditor". The Respondent has emphasised on the absence of time value of money, as the loan was interest free, and no document/contract evidencing its nature was found on record or submitted by the applicant.
4. We have heard the Counsel, and perused the material on record.

   4.1. We find that the Respondent has not denied existence of the debt in the books of the Corporate Debtor and has rejected the claim on the ground that there is no time value of money and no contract/agreement in support of debt is in place. We find that the Regulation 8(2) of the IBBI (Insolvency Resolution of Corporate Persons) Regulation, 2016 provides mechanism by which existence of the financial debt can be proved and it 'financial statements showing that the debt has not been repaid' is one amongst others. It is not the case of the Respondent that the sums claimed as Financial debt are not reflecting in the financial statements or books of accounts of the Corporate Debtor. The Respondent has rejected that claim can not be admitted as financial debt, but has not stated anything thereafter. However, we find that the conclusion of the Respondent on this ground is against the Regulations and he ought to have decided based on the provisions of the Regulations, which explicitly provides how a financial debt can be proved. We find that the Applicant had placed on record the Certified copy of ledger accounts and copies of the balance confirmation of various periods evidencing existence of debt. We find from the email dated 22.5.2021 that the Respondent has made irrelevant observations while rejecting the claim i.e. (i) purpose of loan is not provided; (ii) terms and conditions of loan while it is stated case that in absence of stipulation as to repayment, the loan is always considered as repayable on demand; (iii) form 26AS to evidence payment of interest, while it is stated case that the loan was interest free. In the case of ***Narendra Kumar Agarwal vs. Monotrone Leasing Private Limited (2021) ibclaw.in 25 NCLAT***, it was held that "*written contract cannot be treated as an essential element to prove the Financial Debt if the transaction's nature is proved otherwise*".

4.2. Further, we find that the Hon'ble Supreme Court in the case of ***Orator Marketing (P) Ltd. vs. Samtex Desinz (P) Ltd., (2023) 3 SCC 753*** settled the proposition that interest free loan also falls under the definition of Financial Debt holding that "*The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial Debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt*".

4.3. Accordingly, we feel no hesitation that the claim of the Applicant is a financial debt, and ought to have been admitted as such. As such, the applicant shall be part of the Committee of Creditors. Since, no stay was granted by this Tribunal in this Application on consideration of plan by CoC, we do not consider it appropriate to deal with this prayer at this juncture unless extraneous consideration are brought on record to taint the decision of rejection of applicant's claim, as the Resolution plan has already been approved by CoC.

4.4. At last, we feel, even if the claim was not admissible under particular category, the Respondent ought to have classified under appropriate category and admit it, if such debt is reflected in the books of accounts. Merely because, a claim has been filed under a particular form, claiming it to be of that nature, does not exclude the admission of claim under correct category.

5. In view of the aforesaid, IA 307 of 2022 is disposed of as allowed.

**SD/-** **SD/-**

**Prabhat Kumar**
Member (Technical)

**Justice V.G. Bisht**
Member (Judicial)