



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-V  
(SPECIAL BENCH)**

**Company Petition No. (IB)-334(ND)/2022**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**In the matter of:**

**Mr. Ishap Sharma**

**.... Applicant/ Financial Creditor**

**VERSUS**

**M/s. SMID Infrastructure Private Limited**

**.... Respondents/ Corporate Debtor**

**CORAM:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. SINGH, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 27 .04.2023**

**ORDER**

**PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

The instant company application is filed on behalf of Mr. Ishap Sharma ('applicant') whole-time Director & Shareholder of M/s. SMID Infrastructure Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. SMID Infrastructure Private Limited



bearing CIN: U45400DL2014PTC264995 on the ground that the Corporate Debtor committed a default in payment of Rs.1,45,03,369/- (Rupees One Crore Forty Five Lacs Three Thousand Three Hundred Sixty Nine only).

2. The Corporate Debtor i.e., M/s. SMID Infrastructure Private Limited bearing CIN: U45400DL2014PTC264995 is incorporated on 18.02.2014 under the provisions of the Companies Act, 1956 having its registered office situated at 55, 2<sup>nd</sup> Floor, Lane-2, Westend Marg, Saidullajab, Near Saket Metro Station, New Delhi- 110030. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code. The Corporate Debtor is engaged in the business of construction and sale/purchase/rent of movable and immovable properties.
3. Succinctly, stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question and averred by the applicant is that the Applicant is the whole-time director and shareholder of the Corporate Debtor along with Mr. Kiran Pal and is liable for day-to-day affairs & business operations of the Corporate Debtor. The Applicant being the whole-time director of the Corporate Debtor had started infusing funds in the form of unsecured loan from time to time in the Corporate Debtor. It is submitted that as on 31.03.2022, the Corporate Debtor owns an outstanding Financial Debt of Rs. 1,45,03,369/- which was disbursed from the personal saving account of the Applicant maintained at HDFC Bank and Standard Chartered Bank Account.



4. Further, it is submitted that the Applicant vide Demand Notice dated 19.03.2021, had demanded the repayment of Interest Free Unsecured Loan, however, the applicant have neither received any response nor the outstanding amount has been repaid by the Corporate Debtor. It is submitted that despite the infusion of huge unsecured loan amount, the Corporate Debtor is unable to run its business operations in recent years and its revenue from operations has gone considerably down in the past due to various factors including COVID-19. It is also submitted that the liability of the Corporate Debtor towards the unsecured loan disbursed by the Applicant is also reflected in the Audited Balance Sheet of the Corporate Debtor as on 31.03.2021.
  
5. This Adjudicating Authority vide its order dated 11.08.2022 had held that the unsecured loan given by the Applicant being the director of the Corporate Debtor is to be treated as Financial Debt under Section 5(8) of the Code, 2016. Further, this Adjudicating Authority vide order dated 11.08.2022 had directed to issue notice to the Corporate Debtor and also direction to the Corporate Debtor to file the reply within a period of two weeks. The applicant had placed on record affidavit of service dated 26.08.2022, showing the proof of service of the present application to the Corporate Debtor through e-mail as well as via speed post and courier.
  
6. This Adjudicating Authority after considering the fact that despite giving sufficient opportunities to the Corporate Debtor, the Corporate Debtor had failed to appear in the present application, resultantly this Adjudicating Authority vide its order dated 16.09.2022, had set Corporate Debtor ex-parte.



7. As a preface to our analysis to the facts of the present case, we observe that the applicant namely Mr. Ishap Sharma is the shareholder of the Corporate Debtor holding 2,55,000 equity shares since incorporation of the Corporate Debtor which constitutes 50% of the total shares of the Corporate Debtor. Moreover, the applicant is the whole-time director of the Corporate Debtor since its inception and responsible for the management of the Corporate Debtor.
  
8. It is a trite law that the company, once incorporated, holds a separate legal entity in the eyes of law where company act under its own name, have a seal of its own and sue or get sued in the same manner as an individual. A company is governed by the Board of Directors who are primarily responsible to manage the affairs of the Company. The Corporate Veil is a shield that protects the members from the action of the company. However, it is to be remember that the separate legal entity of a company is a statutory privilege that must be used for legitimate purposes only but with advantages comes the disadvantages as well. The Court will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil” where the court is of the opinion that the statutory privilege of separate legal entity is being misused by the Company.
  
9. It is beyond comprehension as to how the director of the Corporate Debtor, who is the applicant herein is completely unaware that an application under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor is pending for adjudication before this



Adjudicating Authority. The Director of the Company has a fiduciary duty towards the Company and is always expected from the director of the Company to act in bona fide and good faith.

10. From the factual conspectus of the case before us, the startling fact which came out is that the Mr. Ishap Sharma who had unequivocally admitted that he is the whole time director and shareholder of the Corporate Debtor since its incorporation, even at the time of filing the present application under Section 7 of the Code, 2016 and continuing is seeking the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the Code, 2016, where the Corporate Debtor is proceeded ex-parte for being default in representing before this Adjudicating Authority.
11. This Adjudicating Authority is of the earnest view that the present case is a fit case to lift the Corporate Veil of the Corporate Debtor. The Applicant being in control of 50% of the Board of Director of the Corporate Debtor and holding 50% of the equity shares of the Corporate Debtor is the promoter of the Corporate Debtor. The Applicant for the reasons best known to him instead of taking proactive approach of representing the Corporate Debtor before this Adjudicating Authority has conveniently decided to stay ignorant towards the application and let the Corporate Debtor be pushed in Corporate Insolvency Resolution Process. After piercing the corporate veil, we are of the earnest view that the person behind the Corporate Debtor is one and only the application Mr. Ishap Sharma herein.



12. Thus, from the facts which are borne on record, as narrated above and analyzed by this Adjudicating Authority, we are of the considered view that the present application filed under Section 7 of the Code, 2016 is filed without bona fide purpose of resolution of the insolvency of the Corporate Debtor. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing I.B./334(ND)/2022 being devoid of merits stands dismissed. No orders to costs.

**Sd/-**  
**(SH. K.K. SINGH)**  
**MEMBER (T)**

**Sd/-**  
**(SH. P.S.N PRASAD)**  
**MEMBER (J)**