

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P. No. 60/IBC/MB/2021

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

In the matter of

**Sanjay Pagrani alias Raju Pagrani
proprietor of Multifragrance SL.**

B 35617877, Calle Sao Paulo 50,
El Sebadel, 35009, Las Palmas de Gran
Canaria, Spain.

**.....Financial Creditor/
Petitioner**

Vs

U.S. Hospitality Private Limited

Block no. 3, Plot no. 142, Ram Bhuvan,
opp. Kanada high school, Mumbai,
Maharashtra- 400 031

.....Corporate Debtor

Order Reserved on: 14.12.2022

Order Pronounced on: 17.01.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Ms. Rita Bhatia (Advocate)

For the Corporate Debtor/ Respondent: Ms. Jennifer Michael (Advocate)

Per: Shri Kuldip Kumar Kareer, Member (Judicial)

Order

1. The above Company Petition is filed by Sanjay Pagrani alias Raju Pagrani proprietor of Multifragrance SL, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (**CIRP**) against U.S. Hospitality Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 1,85,00,000/-.

Facts of the case

2. The Petitioner has attached following documents which demonstrate the existence of debt:
 - a. Form-C filed with NeSL date 05.10.2020
 - b. Copy of Balance Sheet of the Corporate Debtor for the year ending 31.03.2007
 - c. Copy of Balance Sheet of the Corporate Debtor for the year ending 31.03.2008
 - d. Copy of Balance Sheet of the Corporate Debtor for the year ending 31.03.2018

- e. Copy of Balance Sheet of the Corporate Debtor for the year ending 31.03.2019
 - f. Legal Notice sent by the Petitioner dated 14.09.2017
 - g. Reply dated 18.09.2017, by the Corporate Debtor to the Legal Notice dated 14.09.2017
 - h. Demand Notice issued by the Petitioner dated 24.07.2020
3. The Petitioner submits that it had provided unsecured loan to the tune of U.S. \$ 2,50,000/- (amounting to Rs. 1,11,22,552.50/-) to the Respondent on 09.01.2007.
4. The Petitioner submits that, the Respondent has reflected this liability of Rs. 1,11,22,552.50/- (1 USD = INR 44.49) in the Balance Sheet as on 31.03.2007. The Respondent has further reflected the liability of Rs. 42,22,552.50/- in the Balance Sheet as on 31.03.2008 and continued showing the said liability and as per the latest updated (Annual Filings with ROC), from MCA Portal, till the Balance Sheet as on 31.03.2019.
5. The Petitioner submits that the Respondent has not repaid any amount till date to the Petitioner. Therefore, the Respondent ought to have reflected an amount of Rs. 1,11,22,552.50/- in the Balance Sheet of 2008 and in the Balance Sheets of year 2009 onwards as well.
6. The Petitioner had issued a demand notice dated 14.09.2017. Furthermore, The Respondent has replied to the said demand notice

through its Lawyers vide letter dated 18.09.2017, wherein the Respondent has acknowledged the receipt of US \$ 2,50,000/-. Thus, the Respondent owes the amount to Rs. 1,11,22,552.50/- to the Petitioner and has committed default in repayment of the same.

Reply by the Respondent

7. The Respondent in its reply submits that the Petitioner had served a notice dated 24.07.2020 upon the Respondent wherein the Petitioner has made false and frivolous claims against the Respondent. Thereafter, the Respondent had replied to the said notice on 28.07.2020 but the Petitioner has failed to place the said reply by the Respondent on record.
8. The Respondent submits that the Petitioner's claim is barred by the law of limitation. It is the Petitioner's case that he had purportedly provided an unsecured loan to the Respondent on 09.01.2007. However, the present Company Petition has been filed in October 2020 i.e. after a lapse of 13 years. In this regard, the Petitioner has not given any explanation as to how the present debt is within limitation nor does it even contain a statement as to whether or not the claimed debt, is within limitation.
9. The Respondent submits that the Petitioner claims to have advanced an unsecured loan to the Respondent. However, through a letter dated 14.09.2017, the Petitioner himself had claimed that the monies were

allegedly paid by him **for acquisition of 25% equity interest in the Respondent Company**. Furthermore, a similar stand was taken by the Petitioner through his letter dated 24.07.2020. The Respondent further submits that the Payment Advise dated 13.01.2007, issued by Yes Bank clearly states that the purpose of remittance is “*Investment in Purchasing, Constructing and Operating a Hotel Business in India*” and makes no mention of the transaction being a loan.

10. The Respondent submits that the present Petition is motivated with mala fide intentions. In this regard, the Respondent states that the Petitioner claims to have advanced some money to the Respondent in 2007, but the Petitioner is making a claim on such advancement in the year 2020. The said claim is made by the Petitioner is due to the fact that the relationship between the Petitioner and his wife Ms. Simi Jagtiani has deteriorated, resulting in numerous legal proceedings between them in various Courts in Spain. The Respondent also mentions that Ms. Simi Jagtiani is the daughter of Mrs. Rita Jagtiani and Mr. Daljit Jagtiani who are the shareholders and directors of the Respondent Company. The Respondent further submits that the legal proceedings between the Petitioner and Ms. Simi Jagtiani commenced in 2017. Ms. Simi Jagtiani has filed a divorce petition and an application for domestic violence against the Petitioner and has also sought alimony from him. This Petition is nothing but a counter blast to the said proceedings initiated by Ms. Simi Jagtiani. The Petitioner despite attending the existing

litigation never came forward with his purported claim of USD 250,000/- . The Petitioner, in his legal notices, claims to have been coerced into 'investing' whereas in the present Petition claims the said amount as 'Unsecured Loans'. The Respondent states that the Present Petition is initiated for the purpose of threatening and extorting money from Ms. Simi Jagtiani.

11. It has been denied that any "loan" was advanced by the Petitioner to the Respondent Company. The Respondent further submits that, in fact the Petitioner was interested in acquiring 25% stake in one of the Respondent's property development project in Pune, and not an equity stake in the Respondent Company and for the reason, the Petitioner had invested an amount of Rs. 1,11,22,552/- (USD 250,000/-) transferred by the Petitioner to the Respondent in the year 2007. The amount transferred by the Petitioner was an ad-hoc payment. The Petitioner was thereafter required to make further payments, as the project was worth Rs. 100 Crores but the Petitioner had failed to make any further payments. The Petitioner could not have acquired 25% stake by merely paying Rs. 1,11,22,552/-. Moreover, the investment was subject to risks and no guaranteed return was assured.

12. The Respondent submits that the Petitioner had remitted the amount of Rs. 1,11,22,552/-. Subsequently, on 11.02.2008 the Petitioner took back a sum of Rs. 20,00,000/- out of the said amount. This is duly

reflected in the Bank Statement (Exhibit-G) of the Respondent. The Petitioner further requested the Respondent to transfer an amount of Rs. 40,00,000/- to another investor in the same project as the Petitioner owed monies to such other investor, i.e. his uncle Mr. Rajesh Ahuja, and the said transfer is reflected in the financial statements of the Respondent. Furthermore, various amounts aggregating to more than Rs. 50,00,000/- were to be adjusted towards various expenses paid off or required to be paid off by the Respondent Company on behalf of the Petitioner. According to the Respondent, it is the Petitioner who owes money to the Respondent Company since the adjustments were made on the basis of the instructions given by the Petitioner. Therefore, the amount as received from the Petitioner in the year 2008 in the Respondent's books is reflected as Rs. 45,22,553/-. The Respondent further submits that the amount claimed by the Petitioner is neither due nor payable by the Respondent.

Rejoinder by the Petitioner

13. The Petitioner in the rejoinder has denied that the present case is barred by Limitation, as alleged or that the Petitioner has received back any monies from the Respondents. In fact, Respondent No. 2 has categorically admitted the fact that the sum of \$2,50,000/- was received by transfer of funds by the Respondent Company from the account of Multifragrances which is the sole proprietorship firm of Sanjay Pagrani, i.e. the Petitioner. The amount transferred to the account of the Respondent No. 1 is also set out in the

Balance Sheet of the Respondent Company as on 31.03.2007. The said amount, which was invested in the Company on false assurances of issuing a 25% equity share in the Respondent No.1 Company, has been surreptitiously reduced to Rs.42,22,552.50/- in the following Balance Sheets till 31.03.2019.

14.The Petitioner further submits that the Respondent has further admitted in its letter dated 18.09.2017, that the Company had received the payment from the firm of Multifragrances in the year 2007. It is pertinent to note that in spite of clarification sought from the Respondent, the Balance Sheets of the Respondent Company were not disclosed and no details of the status of the investment was furnished.

15.The Petitioner submits that, it is an admitted position that the amount of USD 2,50,000/- was remitted through the firm account of the Petitioner to the Respondent account on 09.01.2007, but for several years the Respondent kept on assuring the Petitioner that he would be given an equity share in the company. Since Respondents are the father-in-law and mother-in-law respectively of the Petitioner, the Petitioner did not doubt their integrity at all. Thereafter, the relationship between the Petitioner and Ms. Simi Jagtiani became strained, culminating in several proceedings in Courts in Spain for divorce and custody of the minor children with the result the Respondent stopped communicating any details to the Petitioner

regarding the investment made by the Petitioner in the Respondent company.

16. The Petitioner submits that the conduct of the Respondent in the year 2014-2015 evoked suspicion in the mind of the Petitioner and therefore, he issued letter dated 14.09.2017 to the Respondent who, through its letter dated 18.09.2017, for the first time admitted as follows:

"In fact, the \$2,50,000 payment referred to in your letter was paid by Pagrani's company Multifragrances in Spain to Mr Jagtiani's company US Hospitality Private Ltd, in India. Furthermore, this payment was not to entitle your client to a 25% equity interest in Mr Jagtiani's company, but rather was an investment in a specific project US hospitality was involved, namely a project to lease real estate in Pune, India, with the hopes to build a hotel on the said property."

The Petitioner submits that, on account of this admission made by the Respondent that the Respondent company had received "investment," a fresh cause of action arose to the Petitioner to file the present proceedings to recover the amount invested in the Respondent company with which the Respondent had purchased property situated in Pune which is under litigation. It is, therefore, denied that the above Petition has been filed after a lapse of 13 years.

17. The Petitioner submits that in the notice dated 14.09.2017, the Petitioner had claimed that the money paid by him from his firm's account to the Respondent's account was towards acquisition of a 25% equity interest in the said company. The said submissions had been made on the basis of assurances given by the Respondent to the Petitioner. Thereafter, the Respondent telephonically took a contrary stand and refused to give the 25% equity interest to the Petitioner and admitted that the same was in the nature of an unsecured loan to the company and not a personal transaction between the Petitioner with the Respondent. The Petitioner submits that, Respondent in their email sent to the Petitioner in the year 2014 admitted that they had given Ms. Simi Jagtiani a 25% equity share in the Company. The Petitioner further submits that the Respondent, after learning about the strained marital relationship between the Petitioner and their daughter which led to matrimonial litigations and started making excuses with a view to deprive the Petitioner of his 25% equity share in the Company, thereafter, the Petitioner sent letter dated 14.09.2017, asking the Respondent to issue clarifications and documents relating to his investment in the Company. The Petitioner, has denied the present Petition is a counter to the legal proceedings which had been initiated by Ms. Simi Jagtiani against him.

FINDINGS:

18. We have heard, the Counsel for the Parties and gone through the record.
19. By way of this Petition under Section 7 of the Code, the Petitioner claims himself to be a Financial Creditor having an advance unsecured loan

equivalent to Rs. 1,11,22,552.50 as on 31st March 2007 and presently Rs. 1.85 Crores considering the enhanced value of USD. However, the Petitioner has not relied upon any loan document which might have been executed between the Petitioner and the Corporate Debtor with regard to the terms and conditions of the said loan transaction along with any repayment schedule or the rate of interest. However, surprisingly, the Petitioner has relied upon the notice dated 14th September, 2017 (Annexure -E) which was served upon Mr. Daljeet Jagtiani (a Director of the Corporate Debtor) wherein it was stated that the Petitioner wired USD 2,50,000/- and further that the Petitioner was entitled to obtain 25% equity interest in the Corporate Debtor, i.e., U.S. Hospitality Private Limited in exchange for the said sum of money. In response to the notice dated 14.09.2017, reply (Annexure -F) dated 18.09.2017 was sent on behalf of Mr. Daljeet Jagtiani stating that the payment of USD 2,50,000/- was not towards 25% equity interest but was rather an investment in a specific project of U.S. Hospitality Private Limited as the said Company was involved in the Project to lease Real Estate in Pune, India with a hope of building a hospital on the said property. The Petitioner has further relied upon notice dated 24.07.2020 got served by the Petitioner upon the Corporate Debtor and its Directors and in Para No. 3 of the notice, it has been reiterated by the Petitioner that on 1st September, 2007, he wired a sum of USD 2,50,000/- from his Bank Account Multi Fragrances to the Corporate Debtor and further that the Petitioner was coaxed and coerced by his wife to invest huge amount in her father's project

with an assurance that he would be given a 25% stake in all assets of the Company.

20. If the notices dated 14.09.2017 and 24.07.2020 are taken into account, it emerges that it is the specific and definite case of the Petitioner that he transferred the amount of USD 2,50,000/- with an intent to buy a 25% stake in the assets of the Corporate Debtor.
21. It is well settled that an investment cannot be equated with a loan. In the commercial word, equity financing and debt financing are altogether different modes of finance which are distinct from each other. Equity financing carries no repayment obligation while debt financing involves borrowing of money which is often repayable along with interest or other charges as may be settled between the parties. Therefore, a sum of money invested with an intent of requiring equity stake in a Company or some other interest in some of the properties of the Company cannot be dubbed as a financial debt or for that matter a loan transaction.
22. The Counsel for the Petitioner has referred to the reply dated 18.09.2017 sent on behalf of Mr. Daljeet Jagtiani to the Petitioner, wherein it has been denied if the impugned payment of USD 2,50,000/- was towards acquisition of 25% equity interest in the Corporate Debtor and further that it was an investment in a specific project of the Corporate Debtor. The Counsel for the Petitioner claims that the Respondent, in a way, has admitted that it was a loan transaction, not an equity investment. However, from whatever has been mentioned in the reply dated 18.09.2017, no definite inference can be

drawn that the transaction in question was a loan transaction or that the amount in question was borrowed by the Corporate Debtor from the Petitioner. If the reply dated 18.09.2017 is read carefully, it transpires that even though a denial has been put forward in respect of proposed 25% equity interest, yet the Respondent has stated that it was an investment and the so-called admission made in the reply cannot be said to be an admission on the part of the Corporate Debtor that it was a loan transaction.

23. Besides, one cannot be oblivious of the facts that in the notices dated 14.09.2017 and 24.07.2020, the Petitioner himself has claimed that the payment in question was made with intent to buy 25% equity stake in the Respondent's Company, on the basis of which, it could be safely concluded that the money was given as a loan. In this regard, a reference can be made to the Remittance Certificate Exhibit whereby the money was wired by the Petitioner from Spain to the account of the Corporate Debtor and in the Bank note, it is specifically mentioned that the purpose of remittance was an investment in purchasing, constructing and operating a hotel business in India.

24. Therefore, looking at the case from any angle, it cannot be said to be a case of money having been borrowed by the Corporate Debtor from the Petitioner nor the transaction can be dubbed as a loan transaction. The so-called admission made by the Corporate Debtor in the reply dated 18th September, 2017 that the transaction was invested is of no consequence. In this context, it is further pertinent to mention that the Respondent has claimed in the

reply that an amount of Rs. 20 lacs were paid back to the Petitioner as on 11.02.2008 as is evident from the statement of account (Exhibit G) attached with the reply. So far as the Petitioner is concerned, in the rejoinder filed by him, the transfer of an amount of Rs. 20 lacs as on 11.02.2008 has not been specifically denied and it has only been stated that it was a personal transaction not relating to the transaction which took place in the year 2007. Even this plea raised on behalf of the Petitioners seems to be a tentative one and does not really explain the exact position and circumstances under which a sum of Rs. 20 lacs were paid to the Petitioner.

25. Another circumstance which militates against the case of the Petitioner is that the so-called Financial Debt, claimed by the Petitioner to be outstanding against the Corporate Debtor was advanced in the year 2007, and therefore seems to be hit by the law of limitation insofar as the Petition under Section 7 pertaining to the said transaction is concerned. In this regard, it is worthwhile to mention that undisputedly, the transaction took place in the year 2007 more precisely 9th January, 2007. The Petitioner claims the date of default as 24th July, 2020. As stated above, there is no document available containing terms and conditions of the alleged loan transaction on the basis of which it could be determined as to when the loan was repayable or whether any interest was to be payable or not, especially when it was admittedly an investment for acquiring an equity stake in the Corporate Debtor. In any case, as per the law of limitation, the claim in respect of the said amount could have been filed within a period of 3 years. Therefore, the Petitioner should have preferred this Petition on or before expiry of 3 years

from 09.01.2007 i.e. any time prior to 09.01.2010. However, the Petitioner has claimed that the date of default was 24th July, 2020 which is the date of the notice sent by the Petitioner to the Corporate Debtor and its Directors stating that he was coaxed and coerced by his estranged wife, Ms. Simi Jagtiani to invest with the assurance that he would be given a 25% stake in the assets of the Company. By no stretch of imagination, the date of issuing said notice can be treated to be the date of default. The date of default in plain language would mean the date when the borrower refuses to pay or commits default in payment of instalment of principle or interest as and when the same fall due. As per record, after the transaction took place on 09.01.2007, the Petitioner issued first notice to the Director, Mr. Daljeet Jagtiani on 14.09.2017. In our considered view, even the date of default is not correctly mentioned in the Petition.

26. Ex facie, the Petition seems to be palpably barred by time. The alleged transaction admittedly took place on 09.01.2007. The Petitioner relied upon balance sheet for the year ending March, 2007, where the sum of Rs. 1,11,22,552.50 is shown to be mentioned as due under the column of advance from customers. Thereafter, in the balance sheet ending 31.03.2008, the reduced amount of Rs. 45,22,552.50 is shown again under the head 'advance from customers'. In addition to this, the Petitioner has also relied upon the balance sheets as on 31st March, 2018 where again the entry of Rs. 45,22,553 is indicated under the column of current liabilities. Even if the entries in the balance sheets are perceived as acknowledgments on behalf of the Corporate Debtor, the same also do not serve the purpose

of the Petitioner so far as the point of limitation is concerned. After the balance sheet of 2008, the Petitioner has relied upon the balance sheet of 2018 and the intervening balance sheets have not been placed on record which means that there is no acknowledgment of liability by the Corporate Debtor from 2008 onwards. It is well settled that an acknowledgment is valid only if it takes place before the period of limitation finally expires. Therefore, if it is presumed from the sake of arguments that the Corporate Debtor acknowledged the liability lastly on 31st March, 2008 as reflected in the balance sheet and the subsequent acknowledgment took place in the balance sheet of 2018, the same is of no consequence as per the provisions of Section 18 of the Limitation Act as the balance sheets of the intervening years have not been produced. The Petitioner has also relied upon the balance sheet for the year ending 31st March 2019 but there is no reference of the amount/ transaction in question in the said balance sheet.

27. During the course of argument, the Counsel for the Petitioner has vehemently argued that the Corporate Debtor and its Directors have deliberately fudged the accounts to grab the money belonging to the Petitioner as is evident from the fact the amount of Rs. 1,11,22,552.50 have been reduced to Rs. 44,00,000/- without any justification and on this account an adverse inference should be drawn against the Respondents.

28. Having thoughtfully pondered over the contentions raised by the Counsel for the Petitioner, we are of the considered view that any inconsistency pointed out by the Petitioner in the balance sheets do not help the case of

the Petitioner. Firstly, the very transaction on the basis of which the present Petition is filed is not a loan transaction as there is ample indication from the record that the Petitioner had made the payment of USD 2,50,000/- with a view to acquire 25% equity stake in the Corporate Debtor or one of its Projects. Therefore, the said claim/transaction does not fall within the four corners of the definition of the Financial Debt in terms of Section 5(8) of the Code, as it has absolutely no connotation or effect of a commercial borrowing. Secondly, the Petitioner has not properly explained the entry in Exhibit-G whereby he alleged received back a sum of Rs. 20 lacs on 11.02.2008. Apart from that, as pointed out above, the Petition is miserably barred by time.

29. As a corollary to the above discussion, on the basis of the averments and allegations made in the Petition, no case is made out to admit the same in terms of Section 7 of the Code to initiate CIRP process. Therefore, the Petition is **dismissed** being devoid of merit.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)