NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1540 of 2023

[Arising out of order dated 08.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court – I), in C.P. (IB) No. 327/KB/2022]

IN THE MATTER OF:

Sushil Kumar Bajaj
(Suspended Director and Shareholder)
Flat No. 301, Satyam Block,
Mansarovar Garden, Sinha Library Road,
Opp. Hotel President, Fraser
Road G.P.O., Patna – I
Email : sushilbajaj1965@gmail.com **...Appellant**

Versus

1. Mandyati Dealcomm Private Limited,
A Company incorporated as per the provisions of the Companies Act 1956.
Having its registered Office at:
Flat 4B, Maa Mangal Chandi Apartment,
Navyapatty, Sector V, Kolkata 700102.
Through its Managing Director
Email: mandyatidealcomm@gmail.com **...Respondent No. 1**

2. Kanika Buildcon Private Limited
(Represented through Interim Resolution Professional),
Having its registered Office at:
203, N.P. Centre, New Bunglow Road,
Patna Road, Patna 800001.
Email : kanikabuildcon@gmail.com **...Respondent No. 2**

Present:

For Appellant	**:**	**Mr. A.K. Thakur, Mr. Santosh Kumar, Mr. Shekhar Kumar and Mr. Rishi Raj, Advocates.**
For Respondents	**:**	**Mr. K. Datta, Sr. Advocate with Mr. Awnish Kumar, Advocate.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor has been filed against an Order dated 08.11.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court – I) in C.P. (IB) No. 327/KB/2022, by which Order, Adjudicating Authority has admitted Section 7 Application filed by the Financial Creditor, Respondent herein.

2. Background facts and sequence of events necessary to be noticed for deciding the Appeal are:

i. Appellant, Sushil Kumar Bajaj and his brother Ajay Kumar Bajaj were running various Companies which were family Companies between the Parties.

ii. Corporate Debtor as well as the Financial Creditor were family run Companies between the Parties. According to the family dispute, the Parties entered into Memorandum of Understanding (`MoU') on 07.02.2021 under which 12 Family Companies were evenly distributed between Sushil Kumar Bajaj, the Appellant, the Elder Brother and Ajay Kumar Bajaj, the Younger Brother.

iii. The Corporate Debtor came into the share of Appellant, Sushil Kumar Bajaj, whereas Financial Creditor came into share of Younger Brother, Ajay Kumar Bajaj.

iv. Before the partition between the family Companies run by families were helped each other by financially. Corporate Debtor took assistance from the Financial Creditor.

v. An amount of ₹9,13,00,000/- was availed by Corporate Debtor from the Respondent Company between September 2010 and April 2017.

vi. Corporate Debtor has paid the amount from time to time and by 2021 principal amount of ₹1,22,50,000/- was due. There was no Agreement of payment of any interest by the Corporate Debtor.

vii. A Letter dated 17.08.2022 was sent by the Respondent to the Corporate Debtor demanding an amount of ₹18,06,20,352/- being principal amount of ₹1,22,50,000/- along with interest till 31.07.2022. Interest amount claimed in the Letter was ₹16,83,70,352/-.

viii. Again Demand Notice was issued on 10.09.2022 by the Respondent to the Corporate Debtor, claiming an amount of ₹18,06,20,352/- till 31.07.2022.

ix. An Application under Section 7 was filed by the Respondent in December 2022, claiming an amount of ₹18,37,51,400/- which included principal amount of ₹1,22,50,000/- and the interest of ₹17,15,01,400/- till 31.07.2022. Date of default was mentioned as 02.08.2021.

x. In the Section 7 Application, Appellant claimed that conditions of loans were set out in writing in Letter dated 20.09.2010 written by Director of the Corporate Debtor Company to the Financial Creditor.

xi. The Application came for consideration before the Adjudicating Authority on 28.12.2022 Adjudicating Authority directed Financial Creditor to produce the original record of receipt of Letter dated 20.09.2010 mention in Paragraph 5 of the Petition. Original record of receipt was never produced by the Respondent. Notices were issued in

Section 7 Application. Corporate Debtor filed a Reply before the Adjudicating Authority. Corporate Debtor in its Reply has stated that Letter relied by the Respondent dated 20.09.2010 is a fabricated Letter which was prepared for the case.

xii. It was pleaded that Ajay Kumar Bajaj was not Director of the Corporate Debtor on the date when Letter was issued since Ajay Kumar Bajaj was Director of the Corporate Debtor from 12.05.2014 to 26.02.2021.

xiii. It was admitted that Corporate Debtor owes the amount of ₹1,22,50,000/-.

xiv. It was pleaded that Respondent has invoked the provisions of Code with the fraudulent intend to use the same as recovery tool which is against the Code.

xv. Adjudicating Authority heard the Parties and by Order dated 08.11.2023, admitted Section 7 Application. Adjudicating Authority held that Corporate Debtor having admitted in its Reply that an amount of ₹1,22,50,000/- is due which was also offered to be paid by authorised representative of the Corporate Debtor within a period of four months which was however, not accepted by Counsel appearing for the Respondent.

xvi. Relying on the admission of the Corporate Debtor, Adjudicating Authority admitted Section 7 Application against which this Appeal has been filed.

3. By Interim Order passed by this Tribunal on 04.12.2023, it was directed that CoC shall not issue `Form-G'.

4. We have heard Mr. Santosh Kumar, Learned Counsel appearing for the Appellant and Mr. Krishnendu Dutta Learned Sr. Counsel appearing for Respondent No. 1.

5. Learned Counsel for the Appellant challenging the Order submits that the transaction between the Parties was not a financial transaction. Both the Companies being run by same family where financial transaction were not of any kind of loan or of any interest payment. Amount transferred were to help the family Company and the amount transferred were repaid from time to time. Letter dated 20.09.2010, which according to the Respondent is the terms and conditions in writing of the loan is a fabricated Letter and has been created only for the purposes of case. Ajay Kumar Bajaj, who has signed the Letter on 20.09.2010 was not even Director of the Corporate Debtor since he was Director of the Corporate Debtor only from 12.05.2014 to 26.02.2021. There was no financial transaction nor there was any Financial Debt. The mention of interest at 12% in the Letter dated 20.09.2010 is with intent to create a document for a loan which transaction was never a loan transaction. Apart from Letter dated 20.09.2010, no other materials have been placed by the Respondent to prove that interest was paid at any time by the Corporate Debtor. Corporate Debtor has categorically admitted receiving of the amount from Respondent in its Reply and has also honestly admitted that amount of ₹1,22,50,000/- are still due to be paid. It is submitted that Adjudicating Authority itself directed the Respondent to produce the receipt of the Letter but without averting to the Letter dated 20.09.2010 admitted the Application on admission of the Corporate Debtor on amount of ₹1,22,50,000/-. It is submitted that admission of debt by the Corporate Debtor towards

Respondent No. 1 was not an admission of any Financial Debt nor there was any proof of any Financial Debt and Adjudicating Authority committed an error. It is further submitted that according to the Respondent, Financial Creditor interest of ₹17,15,01,400/- is due till 31.07.2022 but right from 2010 till 2021, i.e., before the date till the Companies are partitioned between the families not a single Letter or request was made by the Financial Creditor for payment of any interest or any dues because that transaction was never a financial transaction and it was extended by one family Company to other family Company which amount was repaid from time to time as per the Corporate Debtor could pay. It is submitted that the Corporate Debtor was always ready to pay the principal amount of ₹1,22,50,000/- which was offered before the Adjudicating Authority but the same was never accepted by Respondent No. 1 who was using the Insolvency Process as a Process for arm twisting and recovery. As recorded in the Order dated 04.12.2022 of this Tribunal, the Appellant has handed over the draft of ₹1,22,50,000/- to the Counsel for the Respondent in the Court which was received by the Counsel for the Respondent.

6. Mr. Krishnendu Dutta Learned Sr. Counsel appearing for the Respondent refuting the submissions submits that transaction was a Financial Debt. Learned Counsel for the Respondent has referred to the Balance Sheet of the Corporate Debtor as on 31.03.2020 in which unsecured loan to Financial Creditor was mentioned. Corporate Debtor having admitted the debt and offered to repay the same is the clear proof of debt and default. Adjudicating Authority in Section 7 Application has only to see whether there is a debt and default and when the debt and default is proved, Adjudicating

Authority has no option but to admit Section 7 Application. Learned Counsel for the Respondent has referred to the Order of the Adjudicating Authority where Adjudicating Authority has noted the willingness of the Corporate Debtor to make payment of debt of ₹1,22,50,000/-. It is submitted that Respondent has filed the documentary proof of disbursement of fund, there was admission in form of Reply filed before the Adjudicating Authority as well as admission by way of oral submission. In the above facts, Adjudicating Authority did not commit any error.

7. Learned Counsel for the Appellant in its Rejoinder submitted that the Balance Sheet which was relied by the Financial Creditor in Section 7 Application is now being sought to discredited in its Reply filed in the Appeal where the Respondent No. 1 pleads that explanation in the Balance Sheet was purposely with the malicious and a mala fide intent to not pay the interest which is legally due. It is submitted by the Appellant that Respondent himself being challenging the Balance Sheet which is not open for Respondent to rely on the Balance Sheet for any acknowledgement of the debt.

8. We have considered the submissions of the Counsel for the Parties and perused the record.

9. In Paragraph VII (2) of the Appeal, Appellant has clearly pleaded that both the Companies i.e., Corporate Debtor and Financial Creditor were run by same family and, however, due to some family dispute, the Parties entered into MoU on 17.02.2021 and out of 12 Companies run by family, 6 Companies came in the share of Sushil Bajaj, the Appellant and 6 Companies came in the share of Younger Brother, Ajay Bajaj. Pleading in Paragraph VII (2) of the Appeal is as follows:

> *"2. That both of these companies herein were run by the same family. However, due to some family disputes, the parties entered into a Memorandum of Understanding/Family Partition on 17.02.2021. There were around 12 companies run by the Family, which were evenly distributed, 6 of them came in the share of Sushil Bajaj Family, the elder brother, while 6 went to the share of younger one, i.e. Mr. Ajay Bajaj. True copy of Memorandum of Understanding/Family Partition dated 17.02.2021 is being annexed and marked as* ***Annexure-A/2."***

10. The Financial Creditor has filed the Reply to the Appeal and in Reply to Paragraph 7(ii) following has been pleaded in Paragraph 3 of the <u>Reply</u> (Reply on Merits). Para 3 of the Reply is as follows:

> *"3. With reference to the contents and allegations contained in Para No. VII.2, save what are expressly admitted, the contents and allegations contained in the same are vehemently denied and disputed. That the contents in Para no. VII.2 are additional facts which were never pleaded by the Corporate Debtor before the Adjudicating Authority, Kolkata bench and the Appellate is trying to give in the present appeal a colour of family disputes, which is not permissible at the time of Appellate Jurisdiction as the matter pertains to Insolvency Proceedings. It is submitted that no shred of evidence had been disclosed in the pleadings and/or during arguments during the adjudication stage. It is further submitted that the same is being brought in as an after-thought to mislead this Hon'ble Appellate Tribunal by diverting the view of the Tribunal to non-consequential issues which do not merit any link to the matter at hand. The fact is that a debt was owed by the Corporate Debtor which it defaulted thereby committing a default which was admitted and accepted in the form of affidavits, financial statements and oral submissions recorded in the form of orders. Now to digress from the main issue in question, the Appellant is trying to divert into baseless facts which are irrelevant to the adjudication and/or appeal currently. It is submitted that this Hon'ble Tribunal lacks jurisdiction to adjudicate and/or investigate over new facts or documents being brought for the first time. Furthermore, the additional concocted facts do not bear any relevance at all with respect to the question of law before this Appellate Jurisdiction. Furthermore, it is pertinent to note that the documents as annexed by the*

appellant in the present paragraph is an additional document and not the part of the records and is in the nature of civil issues, the appellant is intentionally not averred the true facts of the matters rather the appellant are trying to give the colour of family disputes and an impression has been sought to be given that such documents are necessary to prove the IBC case. Therefore, the answering respondent submits that the documents as annexed by the Appellant cannot be taken on the record as has no connection with the present Appeal."

11. When we look into the aforesaid Reply within the Financial Creditor it is clear that there is no specific denial of MoU/family partition on 17.02.2021, in which the Corporate Debtor Company came in the share of the family of the Appellant and the Financial Creditor Company came in the share of Ajay Bajaj, the Younger Brother. There being no specific denial to the said fact can be treated as proved by the Appellant.

12. The Financial Creditor has filed Section 7 Application claiming an amount of ₹1,22,50,000/- as principal amount and interest of 17,15,01,400/- . Date of default was mentioned as 02.08.2021. In Part IV at Column 2 details of the amount due principal and interest Part IV at Column 2 up to Paragraph 5 in second Column is as follows:

"PART IV

Particulars of Financial Debt

2.	*Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default (in tabular form)*	*1. Total amount claimed to be in default is Rs.18,37,51,400/- only comprising of principal amount of Rs. 1,22,50,000/- and interest of Rs. 17,15,01,400/- computed upto 31 July 2022.* *2. The date on which the default occurred was*

		on 02.08.2021 when the Corporate Debtor stopped paying the repayment amounts. The debt was admitted in the Balance Sheet of the Corporate Debtor for FY 2019-2020 and 2020-2021. *3. The Applicant/Financial Creditor prefers the instant Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code"0 for initiating a Corporate Insolvency Resolution Process against the Corporate Debtor-the Respondent, for the Respondent failed/omitted to remit payment of the financial debt of Rs.18,37,51,400/- with interest calculated from 22-09-2010 till 31-07-2022 for the loans availed working capital requirements of the Corporate Debtor company and the same has not been paid despite several follow-ups of the Financial Creditor. There is no existence of any dispute with respect to the Financial Debt. It shall be pertinent to note that the Corporate Debtor has admitted the financial debt in the Balance Sheet for the year ending 2019-*

		2020 and 2020-2021 which is also a part of public records. 4. *The association of the Corporate Debtor with the Financial Creditor starts right after the incorporation of the Corporate Debtor in 2005 when the two companies shared a very cordial relationship with each other. On or about 2009, the Corporate Debtor company approached the Financial Creditor to fund its working capital.* 5. *Accordingly, in 2010, the Financial Creditor agreed to provide financial assistance to the Corporate Debtor company. The director of the Corporate Debtor company issued a letter on 20 September 2010 to the Financial Creditor wherein the conditions of the loan were set out in writing. A copy of the said letter is annexed herewith and marked as Annexure F."*

13. The facts as given in Part IV by the Financial Creditor relies on the Letter dated 20.09.2010, which is claimed to be written by Director of the Corporate Debtor which according to the Financial Creditor contains conditions of loan were set out in the writing. Letter dated 20.09.2010 is thus relevant for the present case i.e., the only written document which according to the Financial Creditor contains the terms and conditions of the loan. Letter dated 20.09.2010 has been filed by Financial Creditor itself along with the Section 7 Application as Annexure-F. The said Letter has been brought on record at Page 70 of the Appeal which is to the following effect:

> *"Date-20-09-2010*
>
> *To*
>
> *Shashi Bajaj, Director,*
>
> *Madhyati Dealcomm Private Limited*
>
> *I Ajay Kumar Bajaj, Director of Kanika Buildcon Private Limited, do hereby confirm our oral understanding of availing loan facilities of Rs. 10,00,00,000/- (Rupees Ten Crores Only) for working capital requirements in such tranches as may be require by my Company.*
>
> *I state that my Company shall be liable to pay interest to you @ 12% per annum simple interest being compounded annually on the amount being calculated and accrued from the date of disbursements and repayable upon demand.*
>
> *I further state that the Company shall endeavour to make full and final payment of the entire loan alongwith interest quantum to Mandhyati Dealcomm Private Limited.*
>
> *I issue this letter as the director of the Company being duly authorised to issue the letter by the Board."*

14. The Corporate Debtor has filed the Reply in Section 7 Application and in the Reply which was given by the Corporate Debtor, the letter dated 20.09.2010 was categorically denied. It was further pleaded that Ajay Bajaj who claimed to sign the Letter on 20.09.2010 was not even the Director of the Corporate Debtor on the relevant date. In Paragraphs 6 to 8 of the Reply, following has been pleaded:

> *"6. That the Operational Creditor has pressed upon letter dated 20.09.2010 (Page 59 of the petition) which is signed by One – Sri Ajay Kumar Bajaj, in his capacity of director of Corporate Debtor, accepting the*

> *terms for availing loan facilities of Rs 10,00,00,000/- (Rupees Ten crore).*
>
> *7. That upon inspection of MCA portal, it transpired that Sri Ajay Kumar Bajaj was director of Corporate Debtor only for period from 12.05.2014 to 26.02.2021 and not on date of signing of impugned letter dated 20.09.2020, which forms the basis of instant petition. Copy of report generated from MCA portal is being enclosed as **Annexure A/1.***
>
> *8. That, it is in view of this fact that original record of impugned letter dated 20.09.2010 has not been produced before this Hon'ble Tribunal in spite of its directions in this regard."*

15. Corporate Debtor had specifically pleaded that letter dated 20.09.2010 is a forged Letter and the Financial Creditor is liable to be prosecuted. In Paragraph 12 of the Reply following was pleaded:

> *"12. That from above, it is abundantly clear that petitioners are of guilty of perjury and have committed the offence with sole intent of defrauding the Corporate Debtor by wrongly initiating Insolvency proceedings against an otherwise going concern. As such, the petitioners are liable for penal provisions u/s 65 of the code as well as Section 340 of Code of Criminal Procedure, 1973."*

16. It is further relevant to notice that Corporate Debtor in its Reply has also admitted the amount of ₹1,22,50,000/-, in Paragraph 13 which is as follows:

> *"13. That it is undisputed fact that Corporate Debtor owes a sum of Rs 1,22,50,000/- to Operational Creditor and the same is duly noted in the audited financial statements of the Corporate Debtor."*

17. With respect to the Letter dated 20.09.2010, Adjudicating Authority passed an Order on 28.12.2022 directing the Financial Creditor to produce original record of receipt of the Letter dated 20.09.2010. The Order dated 28.12.2022 is as follows:

"1. Ld. Counsel for the Financial Creditor present.

2. Before issuance of notice, we ask the Financial Creditor to produce original record of receipt of letter dated 20th of September, 2010 mentioned in paragraph 5 of this petition.

3. Let the needful be done within 10 days by way of an affidavit.

*4. Post this matter again on **20/01/2023."***

18. The Letter dated 20.09.2010 was neither produced in original before the Adjudicating Authority nor any proof as directed by Adjudicating Authority was produced. The Letter dated 20.09.2010, which was basis of Financial Debt with regard to terms and conditions of the loan being an issue raised before the Adjudicating Authority, Adjudicating Authority, although noted the said submission in Paragraph 14 of the Order, but in the analysis and finding did not advert to the said Letter. In Paragraph 14 of the Order, Adjudicating Authority while noticing the submission of the Corporate Debtor has observed:

"14. Hence, the letter dated 20 September 2010 is a fabricated and forged document."

19. Adjudicating Authority, however, without adverting to the said letter which is the basis of the terms and conditions of the loan as claimed by the Financial Creditor in Section 7 Application held that since Corporate Debtor has admitted the debt, Application deserves to be admitted. In Paragraphs 20 to 22, Adjudicating Authority made following observations:

"20. There is a clear admission on the part of the Corporate Debtor that there is a debt owed to the Financial Creditor.

21. With respect to default, on perusal of the Bank statements filed by the Financial Creditor, the last payment made by the Corporate Debtor was on 02 August 2021.

22. Further, in its own admission, during the course of hearings, the learned Counsel on 28 July 2023 submitted that the Corporate Debtor was to pay an amount of Rs.1,22,50,000/- to the Financial Creditor and time was granted to the Corporate Debtor to do so. Thereafter on 01 September 2023, the Authorized Representative submitted that the Corporate Debtor would be able to pay the amount within a period of four months, however, the learned Senior Counsel appearing for the Financial Creditor was not acceptable to the said proposition."

20. The present is the case where Corporate Debtor has not denied the debt but has categorically denied Letter under which loan is claimed to have been given with 12% interest which we have already noticed above. It is well settled that there has to be a transaction within a meaning of Section 5(8) of the IBC to treat a debt as a Financial Debt. The Hon'ble Supreme Court in ***`Anup Jain, Interim Resolution Professional for Jaypee Infratech Ltd.' Vs. `Axis Bank & Ors.', (2020) 8 SCC 401,*** has held that transaction stated in Clauses (a) to (i) of Section 5(8) would be falling within the ambit of Financial Debt only carrying the essential element stated in the principal Clause or at least has the feature which could be traced to such element in the principal Clause. In Paragraph 46 of the Judgment following has been held:

"46. *Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become "financial debt" for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view,* *remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of "disbursement" against "the consideration for the time value of money" could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as "financial debt" within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."*

21. Hon'ble Supreme Court in a recent Judgment in the matter of ***`Global Credit Capital Ltd. & Anr.' Vs. `Sach Marketing Pvt. Ltd. & Anr.',*** in ***Civil Appeal No. 1143/2022,*** decided on 25.04.2024 has summarised the law with respect to sub-Section (8) of Section 5. In Para 20, the Hon'ble Supreme Court summarised the law in following words:

"20. *Subject to what is held above, we summarize our legal conclusions:*

a. *There cannot be a debt within the meaning of subsection (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof;*

b. *The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5;*

c. While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and

d. Where one party owes a debt to another and when the creditor is claiming under a written agreement/ arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or corelation with the 'service' subject matter of the transaction."

22. The element of disbursal for time value of money is one essential condition which need to be proved for proving the debt as a Financial Debt. In the present case, the Financial Creditor came up with the case that Letter dated 20.09.2010 contains terms and conditions of the loan which letter was relied and filed along with Section 7 Application. The letter was impeached by Corporate Debtor before the Adjudicating Authority. Adjudicating Authority has also directed Financial Creditor to bring the proof of service of letter.

23. Learned Counsel for the Appellant has filed the details of Companies in which Ajay Kumar Bajaj has been the Director which is filed as Page 71 of the Appeal, which fact was also pleaded in the Reply filed by the Corporate Debtor before the Adjudicating Authority as noted above. The extract from Ministry of Corporate Affairs filed at Page 71 is as follows:

"DIN/DPIN : 01675099 *Date: 03/05/2013 12:14:21 PM*

Name: Ajay Kumar Bajaj

CIN/LLPIN	*Name of the Company /LLP*	*Current designation of the Director/Designated Partner*	*Date of appointment at current designation*	*Original date of appointment*	*Date of cessation*	*Company/LLP Status*	*Defaulting Status*
U00330BR1999 PTC008916	*MOHIT VENTURES*	*Additional Director*	*23/08 /2008*	*23/08 /2008*	*21/07 /2015*	*Active*	-

	PRIVATE LIMITED						
U27100BR2009 PTC014469	*BAJAJ IRON AND STEEL PRIVATE LIMITED*	*Director*	*29/04 /2009*	*29/04 /2009*	*22/03 /2021*	*Active*	-
U27101JH1995 PTC006744	*JHARKHA ND ALLOYS PRIVATE LIMITED*	*Director*	*29/09 /2007*	*29/09 /2007*	*25/03 /2021*	*Active*	-
U27106BR1995 PLC006775	*BAJAJ ELECTRO STEELS LIMITED*	*Director*	*04/11 /2003*	*04/11 /2003*		*Active*	-
U45200BR2005 PTC011502	*KANIKA BYILDCO N PRIVATE LIMITED*	*Director*	*12/05 /2014*	*12/05 /2014*	*26/02 /2021*	*Active*	-
U45200BR2008 PTC013598	*BAJAJ BUILDCO N PRIVATE LIMITED*	*Director*	*29/04 /2008*	*29/04 /2008*		*Active*	-
U51109WB199 6PTC079192	*MANDYAT I DEALCO MM PVT LTD*	*Director*	*01/04 /2013*	*01/04 /2013*	*31/03 /2014*	*Active*	-
U55100BR2011 PTC016841	*BAJAJ REGENCY PRIVATE LIMITED*	*Director*	*15/04 /2011*	*15/04 /2011*		*Strike Off*	-
U70102BR2010 PTC015705	*BAJAJ INFRABUI LD PRIVATE LIMITED*	*Director*	*01/06 /2010*	*01/06 /2010*	*03/08 /2022*	*Active*	-

24. From the above, it is clear that Ajay Kumar Bajaj was Director from 12.05.2014 to 26.02.2021 in `Kanika Buildcon Private Limited' i.e., the Corporate Debtor. Letter dated 20.09.2010, which is sheet anchor of the Financial Creditor to contend that there was interest component of 12% p.a. clearly becomes unauthorised and unreliable. Ajay Kumar Bajaj was not Director on the 20.09.2010 of the Corporate Debtor and could not have written to the Financial Creditor, containing the terms and conditions of the loan whereas no loan was ever extended by Financial Creditor to the Corporate Debtor of the terms and conditions as contained in the Letter dated 20.09.2010. Letter dated 20.09.2010 was impeached and termed as fabricated Letter. Adjudicating Authority committed an error in not adverting to such plea and proceeded to admit Section 7 Application on the ground that debt has been accepted.

25. The Corporate Debtor in its Reply has not denied the debt of ₹1,22,50,000/- but there was no admission that the debt was the Financial Debt. Corporate Debtor having impeached the very basis of the claim of Financial Debt by pleading that Letter was forged and fabricated. Learned Counsel for the Appellant is also right in his submission that right from 2010 to 2021 during which period, the Appellant, Corporate Debtor has been making the repayment of the amount received from Financial Creditor time to time there was at no point of time any Letter or demand by Financial Creditor of any interest payment and in Year 2022, the interest claim as per the Financial Creditor has accumulated to ₹17,15,01,400/-.

26. We fail to see that why at no point of time the Financial Creditor demanded any amount towards interest for more than decade. The fact that at no point of time any demand of interest was made from Corporate Debtor by the Financial Creditor fully supports the case of the Corporate Debtor that transaction between the two Companies were out to help each other, which were the family Companies and amounts were given as help to one Family Company by other Family Companies which amount was repaid from time to time. The transaction was never a Financial Debt nor any loan transaction.

27. Learned Counsel for the Respondent has placed much reliance on the financial Balance Sheet of the Corporate Debtor as on 31.03.2020 in which unsecured loans from Financial Creditor has been mentioned. In the Balance Sheet as on 31.03.2020, unsecured loans from Financial Creditor was shown as ₹5,57,00,000/- as on 31.03.2019 and ₹5,38,00,000/- as on 31.03.2020. The Balance Sheet also contains notes, it is useful to extract note 4 of the Balance Sheet as on 31.03.2020, which is as follows:

"Note – 4				
NON CURRENT LIABILITIES				
(a) LONG TERM BORROWINGS				
I. SECURED LOANS				
	Total (I)	***:***	*-*	*-*
II. UNSECURED LOANS				
***a.** Loans from Corporate Body*				
KEMS Services Pvt Ltd			*35,000,000.00*	*35,000,000.00*
Manokamna Enterprises Pvt. Ltd.			*5,000,000.00*	*5,000,000.00*
Mandyati Dealcom Pvt Ltd			*53,800,000.00*	*55,700,000.00*
	Total (II)	***:***	*93,800,000.00*	*95,700,000.00*
***b.** Loans from Others*				
Hansa Devi Garodia			*1,000,000.00*	*1,000,000.00*
	Total (III)	***:***	*1,000,000.00*	*1,000,000.00*
TOTAL NON-CURRENT LIABILITIES (I+II+III)			*94,800,000.00*	*96,700,000.00*

a) Terms of repayments : In the absence of any agreement, the terms of the repayment of the unsecured loan is not ascertainable. But as per the management representation the same would not be repaid within the next 12 months to comply with the provisions of the new Companies Act, 2013
b) The company does not have any continuing default in repayment of loan and interest on the balance sheet date
c) Security Given – NIL"

28. The note further also contains a statement "the Company does not have any continuing default in repayment of loan and interest on the Balance Sheet date". It is further relevant to notice that the Financial Creditor in its Reply himself is describing the Balance Sheet and the explanation given in the Balance Sheets in Para 18 of the Reply of the Financial Creditor in the Appeal states as follows:

> *"18.In the context of interest, it is submitted that the Appellant is trying to deny its liability at a belated stage as an after-thought to frustrate the entire purpose of the money having been lent. It is submitted that the Corporate Debtor had expressly admitted in its own balance sheet that the same was received as a loan/advance. It is submitted that the Respondent is in the business of lending money and it's main business and main source of revenue/income is from earning interest from the money lent. It is preposterous to suggest that no interest is payable and the loan was interest free. The Respondent disputes the contents of the explanation in the balance sheet and it is expressly stated that such an explanation was purposely inserted with a malicious and mala fide motive to not pay the interest which is legally due, both by way of statute and contractually."*

29. Above Balance Sheet was signed both by Sushil Bajaj and Ajay Kumar Bajaj as Directors of the Corporate Debtor. As observed above, when the very basis of the financial transaction between the Parties i.e., Letter dated 20.09.2010 which was claimed by the Financial Creditor in its Section 7 Application could not be proved by the Financial Creditor and Letter becoming unauthorised since Ajay Bajaj was not Director of the Corporate Debtor on the date when he has written Letter, the financial transaction as claimed by the Financial Creditor has to be disbelieved a Party comes before the Court by fabricating a document to take undue benefit is not entitled for relief by the Court.

30. The sequence of the event and transaction between the Parties clearly proves that transfer of the amount by Financial Creditor to the Appellant were transferred by one Family Company to another Family Company and was not by way of loan nor any disbursal for any time value of money has been proved from any material on the record. Essential elements i.e., disbursal for time value of money having not been proved, in the facts of the present case, we are satisfied that Adjudicating Authority committed an error in admitting Section 7 Application without adverting to the real nature of transaction between the Parties and without adverting to the Letter dated 20.09.2010 which was the very basis of the case of the Financial Creditor. It is to be noted that Corporate Debtor has fairly admitted the debt of ₹1,22,50,000/- in his Reply and also has offered before the Adjudicating Authority payment of the said amount which was not accepted by the Financial Creditor. At the time of hearing when this Appeal came for consideration on 04.12.2023, the amount of ₹1,22,50,000/- was handed over to the Counsel for the Respondent by a Bank Draft, which has been noticed by this Court on 04.12.2023 in following words:

> *"Learned counsel for the Appellant submits that the demand draft of amount of Rs. 1,22,50,000/- is being handed over to Counsel for the Respondent in the Court and the same has been accepted by the Learned Counsel for the other side without prejudice to rights and contentions.*
>
> *Issue Notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within two days.*
>
> *Learned Counsel for the Respondents are allowed two weeks' time to file Reply Affidavits. Rejoinder, if any, may be filed within two weeks, thereafter. It has been submitted that CoC has been constituted. In the meantime, CoC shall not issue Form G.*
>
> *List this Appeal on* ***10th January, 2024."***

31. We have found that there was no disbursal for time value of money and the Corporate Debtor having admitted the amount of ₹1,22,50,000/- as debt, which debt having not been proved to be a Financial Debt, we are satisfied that Adjudicating Authority erred in committing an error in admitting Section 7 Application, however, in the ends of justice, where the amount by Draft has been handed over to the Financial Creditor by the Corporate Debtor the amount is allowed to be retained by Financial Creditor, although Counsel for the Financial Creditor during hearing has expressed his willingness to return the Draft. The Corporate Debtor having admitted the debt, even though it was not Financial Debt, to give a quietus to the issue we are directing the amount to be retained by the Respondent.

32. We proceed to close this proceeding by permitting the amount to be retained by the Respondent and setting aside the Order impugned, admitting Section 7 Application.

The Appeal is allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

04th September, 2024

himanshu