

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 577 of 2023
& I.A. No.1902 of 2023**

IN THE MATTER OF:

Mohd Shadab

...Appellant

Versus

Colorcity Homes Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Present but appearance not marked.

**For Respondents: Mr. Rakesh Kumar, Mr. Ankit Sharma, Advocates
with Mr. D.K. Gupta, CS for R-2.**

O R D E R

09.05.2023: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 02.03.2023 passed by the Adjudicating Authority by which order Section 7 application filed by the Financial Creditor has been admitted. The Financial Creditor filed application under Section 7 for a Principal Amount of Rs.1.80 Crore. The application was filed in the year 2020. Notices were issued to the Corporate Debtor. Affidavit of service was filed but none appeared for the Corporate Debtor. The Adjudicating Authority proceeded to hear the application and admitted the Section 7 application. The Financial Creditor relied on the Balance Sheet of the Corporate Debtor, where the amount was shown as unsecured loan. Relying on the said statement, the Adjudicating Authority has directed for admission of the application. In Para 8 of the order, the Adjudicating Authority has made following observations:

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“8. As regards the financial debt, for which default has occurred, it is declared in Sl. No. 1 of Part IV of the amended application in Form I that a total amount of Rs.1,80,00,000/- was disbursed as loan to the Corporate Debtor. Details of disbursement of this loan is supported by the Bank Statements of the Applicant-Financial Creditor maintained with Punjab National Bank, Civil Lines, Meerut Branch, and State Bank of India, Meerut Cantt., Meerut Branch annexed as Annexure A-3 at St. No. 7 of Part V of the Application in Form 1. As per the bank statement, the details of disbursement of loan by the Financial Creditor to Corporate Debtor is as under:

<u>S. No.</u>	<u>Date</u>	<u>Amount (Rs.)</u>	<u>Page No. (relevant pages of amended application)</u>
1.	22.12.2014	50,00,000/-	21
2.	30.12.2014	1,00,00,000/-	22
3.	16.01.2015	30,00,000/-	23

The above-captioned financial debt has also been found to be supported with the ledger account of the Corporate Debtor maintained in the books of the Financial Creditor and the Audited Balance Sheet of the Corporate Debtor for the F.Y. 2016-17 duly signed by its directors and Statutory auditor, annexed as Annexure A-2 and Annexure A-5 respectively at Sl. No. 8 of Part V of the amended application in Form 1. In this Balance-Sheet, while providing the details of the related parties transactions in Notes to Accounts, Rs.1,80,00,000/- is shown in the name of the Financial Creditor at Sl. No. 8 as part of total amount of Rs.11,25,70,488/- declared as Loan and Advances

under the Head of "Long Term Borrowings" of the said Balance Sheet. Thus, we find that this debt is an admitted debt duly reflected in the records of the Corporate Debtor also. As this financial debt remained outstanding the Applicant Financial Creditor computed interest amounting to Rs.1,99,07,506/- shown at Sl. No. 2 of Part IV of the application in Form 1 and total amount claimed to be in default is shown at Rs.3,79,07,506/- including Principal amount of Rs.1,80,00,000/- and interest of Rs.1,99,07,506/-. We have also found that the Financial Creditor on account of failure of the Corporate Debtor to repay the said debt, served a recalling notice dated 15.05.2019, annexed as A-7 of the amended application for recalling the outstanding debt. However, no reply to said recall notice has been filed by the Corporate Debtor. We clearly find that the Corporate Debtor did not make any effort to settle the claims of the Financial Creditor and defaulted on repayment of financial debt. It has not only defaulted in repaying the amount of the financial debt but also defaulted on giving the built-up and complete units at the building construction project (for which the said financial debt was taken) equivalent to the value of the principal amount alongwith interest payable to the Financial Creditor in lieu of repayment of financial debt. Even during the course of proceedings before us, no authorised representative or any counsel on behalf of the Respondent Corporate Debtor appeared and hence, the Respondent is set ex-parte. Such failure on part of the Corporate Debtor clearly demonstrate that it is in default of repaying the financial debt."

2. Learned counsel for the Appellant submits that in fact the amount was only investment and there was no loan and there is mistake in the Balance Sheet of the Corporate Debtor. Learned counsel for the Appellant referred to the lawyer's notice dated 15.05.2019, which was issued on behalf of the Financial Creditor.

3. We have considered the submissions of learned counsel for the Appellant and perused the record. When the Balance Sheet of the Corporate Debtor has mentioned the amount as unsecured loan, the argument of the Appellant cannot be accepted that it was not loan and it was investment. In the application which was filed by the Financial Creditor, although no reference of written agreement was mentioned, it was pleaded that amount was to be refunded with interest. We are of the view that no error has been committed by the Adjudicating Authority in admitting Section 7 application. There is no merit in the Appeal. Appeal is dismissed.

4. We have also heard learned counsel for the Financial Creditor and learned counsel for the Resolution Professional.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

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