BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

CP No. 1168/IBC/NCLT/MB/MAH/2020
Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
Manglam Vanijya Private Limited
Office No. 14, 1st Floor, Plumber House, 557, J. S. S. Road, Chira Bazar, Mumbai – 400002

….. Financial Creditor
(Petitioner/Applicant)

Vs.

Reward Business Solutions Private Limited
A-413, Floor - 4, Plot-711, A, Byculla Services Premises Industrial Estate, D KRd, Ghodapdeo, Byculla, Mumbai –400027

….. Corporate Debtor
(Respondent)

Heard on: 10.02.2020
Pronounced on: 18.02.2021

Coram:
Hon’ble Suchitra Kanuparthi, Member (J)
Hon’ble Chandra Bhan Singh, Member (T)

For the Petitioner: Mr. Ryan D’Souza, Mr. Vikrant Singh Negi, Mr. Ekta Tyagi, Mr. Pratik Thakkar, Ms. Anjali Shah i/b DSK Legal
For the Respondent: Adv. Jash J. Dalia

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'ManglamVanijya Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Reward Business Solutions Private Limited' (hereinafter as 'Corporate Debtor').

BRIEF HISTORY OF THE CASE

2. The petitioner is the Non-Banking financial company registered with RBI, the petitioner had granted a loan of Rs. 45 crores to the Corporate Debtor under the loan agreement dated 03.12.2018 repayable in 6 months by 2ndJune 2019 subject to inter alia payment of interest @ 2 % p.m. compounded monthly and additional interest of @ 1 % p.m. in the event of default the principal amount was disbursed on 03.12.2018.
3. The loan was secured by English mortgage under the intention of mortgage deed on 29.03.2019 over the Corporate Debtor property situated at Unit No. 201 and 802, Tower B, Peninsula Business Park. Ganpat Rao Kadam Marg, Lower Parel. The intention of mortgaged interalia provided for a covenant to repay the principal amount with applicable interest as agreed under the loan agreement.
4. The debt became due and payable on 02.06.2019, however, the Corporate Debtor failed to repay the principal amount along with the interest on the specified date of repayment.
5. On September 24, 2019 the Petitioner issued legal notice seeking repayment of principal amount along with the interest on 04.11.2019, the Petitioner sent another legal notice to remind for the repayment of loan. The Corporate Debtor fails to repay the loan but admitted the liability to repay the loan vide letter dated 26.09.2019 and 03.03.2020. thus, the Corporate Debtor defaulted the payment of Rs. 80,66,41,462/-.

Contentions of the Corporate Debtor

The Corporate Debtor in his reply raised the objections is as follows;

6. The validity of the loan agreement is entirely initiated on the ground that the deficient stamp duty. In view of the provisions of the Maharashtra Stamp Act, 1958. The Maharashtra Stamp Act, 1958 levied stamp duty on creation of any obligation, right or interest and having monetary value and prescribes a stamp duty of 0.2 % on the amount agreed in the contract. Therefore, the Petitioner has failed to establish that the document has duly stamped.

Given the above, the document matrix to ascertain payment of stamp duty is set out below:

Particulars	Stamp duty paid (in rupees)	Applicable stamp duty as per provisions of the Stamp Act (in rupees)
Loan Agreement dated 3rd December, 2018	500/-	9,50,000/-

7. The Corporate Debtor further relied upon on the judgement of the Hon’ble Supreme Court in the case of Garware Wall Ropes Ltd. vs. Coastal Marine Constructions and Engineering Ltd, (2019) 4 Supreme Court Cases 2019 dated 10.04.2019 wherein the Hon'ble Apex Court directed for the concerned insufficiently stamped instrument to be impounded and handed over to the authority under the Maharashtra Stamp Act to be tried accordingly first.

8. The Corporate Debtor also relied upon the Judgment of the Hon'ble National Company Law Tribunal, Chandigarh Bench in CP (IB) NO.291/Chd/CHD/2018 dated 17th March 2020 wherein it has held:

> *"28. In SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited, (2011) 14 Supreme Court Cases 66 and Garware Wall Ropes Limited Vs. Coastal marine Constructions and Engineering Limited, (2019) 4 Supreme Court Cases 2019 or inChilakuri Gangulappa Vs. Revenue Divisional Officer, Mandanpalle, Decided on 14.03.2001, Case No. Appeal (Civil) 1800 of 2001 and another, the Hon'ble Supreme Court of India while holding that an insufficiently stamped instrument cannot be relied upon for any purpose ,however, observed that the concerned court has to follow the*

procedure under the Indian Stamp Act, 1899 for impounding the instrument before permitting a party to enforce the said insufficiently stamped instrument.

29. However, this Adjudicating Authority under the summary procedure provided under the Code cannot adopt such a procedure applicable to regular courts of law...".

9. In the above case, the Hon'ble National Company Law Tribunal, Chandigarh Bench rejected the Company Petition since the concerned document was adjudged as unenforceable.

    Hereto annexed and marked as Exhibit A is a copy of the Order of the Hon'ble National Company Law Tribunal, Chandigarh Bench in CP (IB) NO. 291/Chd/CHD/2018 dated 17th March 2020.

10. The Corporate Debtor made genuine efforts to sell the mortgage property but could not sell the same due to prevalent depressed market conditions, the conditions. A valuation of the Mortgaged Properties was also carried out by CBRE South Asia Pvt. Ltd. On 16th April 2019 and the Mortgaged Properties were valued at approx. Rs. 61,65,50,000/- (Rupees Sixty-One Crores Sixty-Five Lakhs Fifty Thousand only).
11. The Corporate Debtor requested the Petitioner to revised the interest of loan from 24 % p.a. to 16 % p.a. with retrospective effect including seeking waiver of penal interest considering the financial crunch of the Corporate Debtor and Market conditions. The Petitioner however did not accept the request of the Corporate Debtor.
12. The Petitioner further submits that vide letter dated 27.11.2019 granted time to clear the loan till 31.01.2020, the Petitioner also granted the NOC to the Corporate Debtor to the lease agreement dated 28.11.2019 and accordingly the Corporate Debtor executed the leave and license agreement on 27.12.2019.
13. The Corporate Debtor further mentions that the matter could not be settled in view of the lockdown.

Both the parties filed their written submission and have relied upon

Written Submission of the Petitioner

14. The counsel for the Petitioner relied upon the judgement of the Innoventive Industries Limited v. ICICI Bank & Anr. [(2018) 1 SCC 407], the Supreme Court had held that:

> *"28. ……. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*
>
> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*
>
> *[emphasis supplied]*

15. The Petitioner further claims that insufficiency of Stamp Duty cannot be the ground of the dismissal under Petition 7 where the Financial Creditor has proved that there is a debt and default. The primary intent of the Code qua Corporate Debtor, was to set up a mechanism for freely effective and time bound resolution of the Corporate Debtor who is unable to pay its debts so as to revive the Corporate Debtor while ensuring the interest of creditors and stake holders are protected. The counsel for the Petitioner also relied upon the judgment of the ***Swiss Ribbons (P) Ltd. v. Union of India, [(2019) 4 SCC 17]***, *which is reproduce ed as below;*

> *"55. Apart from the record maintained by such utility, Form I appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt:*
> *(a) Particulars of security held, if any, the date of its creation, its estimated value as per the creditor;*

(b) Certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company);
(c) Order of a court, tribunal or arbitral panel adjudicating on the default;
(d) Record of default with the information utility;
(e) Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925;
(f) The latest and complete copy of the financial contract reflecting all amendments and waivers to date;
(g) A record of default as available with any credit information company;
(h) Copies of entries in a banker's book in accordance with the Bankers Books Evidence Act, 1891."

[emphasis supplied]

16. In addition to the Loan Agreement dated December 3, 2018, the Financial Creditor / Applicant has brought the following documents on record to ascertain existence of financial debt:

(i) a copy of the Indenture of Mortgage dated March 29, 2019 *(page 34 of the captioned Company Petition)* – it is not the case of the Corporate Debtor that this document is also insufficiently stamped*;*
(ii) a copy of the certificate of registration of charge issued by the Registrar of Companies; *(page 18 of the captioned Company Petition);*
(iii) a certified copy of the Financial Creditor's bank statements showing disbursal of the Principal Amount to the Corporate Debtor *(page 16 of the captioned Company Petition);* and
(iv) correspondence received from the Corporate Debtor unequivocally admitting its liability to repay the loan amount to the Financial Creditor.

17. The counsel for the Petitioner also relied upon the judgement of the Hon'ble Supreme Court which overruled the judgement of the Supreme Court in *Garware Wall Ropes (supra)* and *SMS Tea (supra) in M/s NN Global Mercantile Private Limited v. M/s Indo Unique Flame Ltd. & Ors. [Civil Appeal Nos. 3802 and 3803 of 2020 on January 11, 2021]*

"6.8 In our view, the decision in SMS Tea Estates does not lay down the correct position in law on two issues i.e. (i) that an arbitration agreement in an unstamped commercial contract cannot be acted upon, or is rendered un-enforceable in law; and

(ii) that an arbitration agreement would be invalid where the contract or instrument is voidable at the option of a party, such as u/S. 19 of the Indian Contract Act, 1872. We hold that since the arbitration agreement is an independent agreement between the parties, and is not chargeable to payment of stamp duty, the non-payment of stamp duty on the commercial contract, would not invalidate the arbitration clause, or render it un-enforceable, since it has an independent existence of its own. The view taken by the Court on the issue of separability of the arbitration clause on the registration of the substantive contract, ought to have been followed even with respect to the Stamp Act. The non-payment of stamp duty on the substantive contract would not invalidate even the main contract. It is a deficiency which is curable on the payment of the requisite Stamp Duty.

6.9 …We overrule the judgment in SMS Tea Estates with respect to the aforesaid two issues as not laying down the correct position in law.

6.10 The Garware judgment has followed the judgment in SMS Tea Estates. The Counsel for the Appellant has placed reliance on paragraph 22 of the judgment to contend that the arbitration clause would be nonexistent in law, and unenforceable, till Stamp Duty is adjudicated and paid on the substantive contract. We hold that this finding is erroneous, and does not lay down the correct position in law. We have already held that an arbitration agreement is distinct and independent from the underlying substantive commercial contract. Once the arbitration agreement is held to have an independent 36 existence, it can be acted upon, irrespective of the alleged invalidity of the commercial contract."

18. The learned counsel for the Petitioner also relied upon the judgment of the *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited. It is to be noted that as far as the Petition under section 7 of the Code is concerned, the mandate of the Hon'ble Supreme Court, as held in the case of Mobilox* Innovations *Private Limited Vs Kirusa Software Private Limited MANU/SC/1196/2017, is that the adjudicating authority is to see whether debt and default is proved and nothing else.*

19. In the present case, the Financial Creditor has relied on certain other documents viz. the Indenture of Mortgage, the certificate of registration of charge issued by the Registrar of Companies etc. to prove the existence of a financial debt. There is categorical admission of debt and default by Corporate Debtor.

20. The Corporate Debtor has also relied on the judgment of NCLT, Chandigarh Bench wherein the petition under section 7 of *I&B Code was rejected as the document relied upon was prima facie unenforceable. The Petitioner further mentions that the said judgement which was distinguishable on the facts* as in that case there was a prior order of the Court of Chief Controlling Revenue Authority, Punjab. In the instant case, no such order was passed the said order of NCLT, Punjab is under challenge before the Hon'ble NCLAT.

Written Submission of the Corporate Debtor

21. The counsel for the Corporate Debtor relied on the fact that the stamp duty payable all the document is in excess of Rs. 9.5 lakhs whereas the document bears Rs. 900 only. No Rejoinder has been filed by the Petitioner. Therefore, the documents lack legal sanctity and the same deserves to be impounded.

22. The counsel or the Corporate Debtor further relied upon the relevant provision of the stamp which requires the stamp duty to be paid as follows;

"Before examining the pronouncement of the High Court and the Supreme Court of India as well as other forums, it may be necessary to examine the relevant provisions. The relevant provisions of the Stamp Act which requires stamp duty to be paid is as follows:

"CHAPTER II

STAMP DUTIES

(A) Of the Liability of Instruments to Duty

Section 3 Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall bechargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in Schedule I, which, not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;"

23. Article 5 (h) (a) (iv) of Schedule I of the Stamp Act which applies in this case states as follows:

"5. AGREEMENT OR ITS RECORDS OR MEMORANDUM OF AN AGREEMENT –

(h) (A) If relating to, –

(iv) creation of any obligation, right or interest and having monetary value, but not covered under any other article, -

(a) if the amount agreed does not exceed rupees ten lakhs;	One rupee for every rupee 1,000 or part thereof on the amount agreed in the contract subject to minimum of rupees 100.
(b) in any other case	(a) Two rupees for every rupee 1,000 or part thereof on the amount agreed in the contract."

24. The loan agreement purporting to be an amount of Rs. 45 crores would require the payment of stamp duty to the extent of Rs. 9,50,000/- lakhs. The statutory embargo placed on the Financial Creditor relying upon the Loan Agreement and on the Hon'ble tribunal from taking into evidence or acting upon the same flows from Sections 33 and 34 of the Stamp Act which are similar to Sections 33 and 35 of the Indian Stamp Act, 1899. The same is set out below:

"33. Examination and impounding of instruments.— (1) Subject to the provisions of section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

*(2) ***************************

34. Instruments not duly stamped inadmissible in evidence, etc. – No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument:

Provided that, -

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:

Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court,

other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid."

25. The plain language of the section makes it clear that unless the document placed before the Authority is stamped in accordance with law, it can neither be taken into evidence nor be acted upon in any manner whatsoever. Meaning of "acting upon" or "receiving in evidence" for purpose of the Insolvency and Bankruptcy Code, 2016 (IBC).

26. The counsel for the Corporate Debtor also relied upon the judgment of Hon'ble Supreme Court in the case of SMS Tea Estate Private Limited Vs. Chandmari Tea Company Private Limited, (2011) 14 Supreme Court Cases 66, the Hon'ble Supreme Court was of the opinion that, 'if the document is not duly stamped, then the court should proceed to impound the document'. Relevant paragraphs from the Judgment are reproduced as follows–

"20. …Section 33 casts a duty upon every court, that a person having by law authority to receive evidence (as also every arbitrator who is a person having by consent of parties, authority to receive evidence) before whom an unregistered instrument chargeable with duty is produced, to examine the instrument in order to ascertain whether it is duly stamped. If the court comes to the conclusion that the instrument is not duly stamped, it has to impound the document and deal with it as per section 38 of the Stamp Act

…The court cannot act upon such a document or the arbitration clause therein. But If the deficit duty is paid in the manner set

out in section 35 or 40 of the Stamp Act, the document can be acted upon or admitted in evidence.

22. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped:

22.1 The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.

22.2 If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under section 33 of the Stamp Act and follow the procedure under section 35 and 38 of the Stamp Act.

22.3 If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in section 35 or 40 of the Stamp Act), and the defect with 9 reference to the deficit stamp is cured, the court may treat the document as duly stamped.

32. In view of the above this appeal is allowed, the order of the High Court is set aside and the matter is remitted to the learned Chief Justice of Guwahati High Court to first decide the issue of stamp duty, and if the document is duly stamped, the appoint an arbitrator in accordance with law. Enclosed herewith as Exhibit-'A' is a copy of the said order of the Hon'ble Supreme Court dated 20th July, 2011.

27. The counsel also relied upon the judgement of Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineering Ltd., (2019) 9 Supreme Court Cases 209, the Hon'ble Supreme Court after considering the aforesaid judgment and the Maharashtra Stamp Act, 1958 was of the opinion that-

"22. When an arbitration clause is contained "in a contract", it is significant that the agreement only becomes a contract if it is enforceable by law. We have seen how, under the Indian Stamp

Act, an agreement does not become a contract, namely, that it is not enforceable in law, unless it is duly stamped…

37. One reasonable way of harmonizing the provisions contained in Sections 33 and 34 of the Maharashtra Stamp Act, which is a general statute in so far as it relates to safeguarding revenue, and Section 11(13) of the 1996 Act, which applies specifically to speedy resolution of disputes by appointment of an arbitrator expeditiously, is by declaring that while proceeding with the Section 11 application, the High Court must impound the instrument which has not borne stamp duty and hand it over to the authority under the Maharashtra Stamp Act, who will then decide issues qua payment of stamp duty and penalty (if any) as expeditiously as possible, and preferably within a period of 45 days from the date on which the authority receives the instrument. As soon as stamp duty and penalty (if any) are paid on the instrument, any of the parties can bring the instrument to the notice of the High Court, which will then proceed to expeditiously hear and dispose of the Section 11 application. This will also ensure that once a Section 11 application is allowed and an arbitrator is appointed, the arbitrator can then proceed to decide the dispute within the time frame provided by Section 29A of the 1996 Act.

38. Arguments taken of prejudice, namely, that on the facts of this case, the appellant had to pay the stamp duty and cannot take advantage of his own wrong, are of no avail when it comes 10 to the application of mandatory provisions of law. Even this argument, therefore, must be rejected.

39. We, therefore, allow the appeal and set aside the judgment of the Bombay High Court. The matter is remitted to the Bombay High Court to dispose of the same in the light of this judgment." Enclosed herewith as Exhibit-'B' is a copy of the said order of the Hon'ble Supreme Court dated 10th April, 2019.

28. In the case of Dharmaratnakara Rai Bahadur Arcot Narain swamy Mudaliar Chattram & Ors. Vs. Bhaskar Raju & Brothers & Ors., (2020) 4 Supreme Court Cases 612, the Hon'ble Supreme Court, in considering the view laid down in the case of SMS Tea Estate (supra), was of the opinion that 'the Court is required to consider at the outset, whether the document is properly stamped or not'. Relevant paras from the Judgment are reproduced as follows –

"18. It can thus clearly be seen, that this Court has in unequivocal terms held, that when a lease deed or any other instrument is relied upon as containing the arbitration agreement, the Court is required to consider at the outset, whether the document is properly stamped or not. It has been held, that even when an objection in that behalf is not raised, it is the duty of the Court to consider the issue. It has further been held, that if the Court comes to the conclusion, that the instrument is not properly stamped, it should be impounded and dealt with, in the manner specified in Section 38 of the Stamp Act, 1899. It has also been held, that the Court cannot act upon such a document or the arbitration clause therein. However, if the deficit duty and penalty is paid in the matter set out in Section 35 of Section 40 of the Stamp Act, 1899, the document can be acted upon or admitted in evidence. It is needless to state, that the provisions that fell for consideration before this Court are analogous with the provisions of the. provisions of Sections 33 and 34 of the Karnataka Stamp Act, 1957. In this view of the matter, we are of the considered view, that in view of the law laid down in the case of SMS Tea Estates Private Limited (supra), that the lease deed containing the arbitration clause which is required to be duly stamped, was not sufficiently stamped and though the Registrar (Judicial) had directed the respondent Nos. 1 and 2 to pay deficit stamp duty and penalty of Rs.1,01,56,388/- (Rupees One crore One lakh fifty-six thousand Three hundred and Eighty-eight only), the respondents failed to do so, the High Court has erred in relying on the said lease dated 12.3.1997.

19. Though the appellants deserve to succeed only on the aforesaid question of law, we find, that even on equity the respondents are not entitled to any relief.

24. In that view of the matter, we find, that the High Court has totally erred in relying on the lease deed dated 12.3.1997, which was found to be insufficiently stamped and brushing aside the report of the Registrar (Judicial), when the respondents had failed to pay the insufficient stamp duty and penalty as determined by the Registrar (Judicial) of the High Court of Karnataka.

25. In the result, the appeal is allowed. The impugned judgment and order dated 1.12.2014 passed by the High Court of Karnataka in CMP No.167 of 2013 is quashed and set aside. The petition/application filed by the respondents under Section 11 of *the Arbitration Act is rejected. There shall be no order as to costs."*

29. Reliance is also placed on the recent Judgment of the Hon'ble National Company Law Tribunal, Chandigarh Bench in the matter of Edelweiss Asset Reconstruction Company Limited v. M/s Winsome Yarns Limited, CP (IB) NO. 291/Chd/CHD/2018 dated 17th March 2020 wherein it has held:

"28. In SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited, (2011) 14 Supreme Court Cases 66 and Garware Wall Ropes Limited Vs. Coastal marine Constructions and Engineering Limited, (2019) 4 Supreme Court Cases 2019 or in Chilakuri Gangulappa Vs. Revenue Divisional Officer, Mandanpalle, Decided on 14.03.2001, Case No. Appeal (Civil) 1800 of 2001 and another, the Hon'ble Supreme Court of India while holding that an insufficiently stamped instrument cannot be relied upon for any purpose, however, observed that the concerned court has to follow the procedure under the Indian Stamp Act, 1899 for impounding the instrument before permitting a party to enforce the said insufficiently stamped instrument.

29. However, this Adjudicating Authority under the summary procedure provided under the Code cannot adopt such a procedure applicable to regular courts of law. Once the respondent-corporate debtor by placing reliance on the orders of the relevant Revenue Authorities able to show that the Annexure P-1 Assignment Agreement dated 10.12.2015 is unenforceable and when the petitioner not disputed the existence of said orders and not able to produce any stay order thereof, this Adjudicating Authority has no other option except to reject the CP.

In the circumstances and for the aforesaid reasons, the CP is rejected."

The facts of the above judgement of the co-ordinate bench are distinguishable on facts, for the simple reason that, there was a prior order of the Court of Chief Controlling Revenue Authority, Punjab. In the instant case, no such order was passed and the said order of NCLT, Chandigarh is under challenged before the Hon'ble NCLAT.

Findings:

30. It is evident from the factual matrix of the case that the Petitioner has granted a loan of Rs. 45 crores to the Corporate Debtor under a loan agreement dated 03.12.2018 and repayable in 6 months i.e. on 02.06.2019 along with the interest @ 2 % p.m. additional interest @ 1 % p.m. The loan was further secured by the mortgage deed dated 29.03.2019.

31. The debt became due and payable on 02.06.2019, the Corporate Debtor failed to pay the principal amount along with interest on the due date. The Petitioner issued legal notice seeking repayment of the principal amount along with interest on 24.11.2019. A subsequent reminder for the repayment of the said loan was sent on 04.11.2019. The Corporate Debtor admitted his liability for the repayment on 26.09.2019. The letter dated 26.09.2019 is reproduced as below;

EXHIBIT J 70

Reward Business Solutions Private Limited

1102 Lodha Supremus, 11th Floor, Dr. E. Moses Road, Worli Naka, Worli, Mumbai 400 018.
CIN NO: - U74999MH2004PTC190748. Tel :- 24938502.

26th September 2019
To,
DSK Legal
C-16, Dhanraj Mahal, 3rd Floor,
Chhatrapati Shivaji Marg,
Apollo Bunder,
Mumbai 400 001

CC
Manglam Vanijya Private Limited
5th Floor, Technopolis Knowledge Park,
Mahakali Caves Road, Chakala,
Andheri(E) Mumbai 400093

Dear Sir,

Sub: Letter dated 24th September regarding failure to repay loan

We are in receipt of your letter No 2005 dated 24th September 2019. As informed to you on a regular basis, we are making all possible efforts to sell the property Unit Number 801 and Unit number 802 Tower B- Peninsula Business Park, 8th Floor, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013, mortgaged to you and repay the loan. We had appointed reputed real estate brokers Cushman Wakefield for the sale process on 5th June 2018.

Unfortunately, due to extreme market conditions prevalent in the commercial real estate demand, despite obtaining LOI from prospective buyers, the sale transaction has not been consummated as yet. The prospective buyer had progressed substantially including giving the customary newspaper advertisement on the purchase but failed to progress ahead to consummate the purchase. We have been diligently updating you of our efforts to monetise the collateral security to repay the loan.
Against the backdrop of our honest & sincere efforts to monetise the property and keeping you updated regularly on the progress, we humbly request you to kindly waive the breach as per the agreement and grant us a further time of 6 months to complete the sale process i.e. till 31st March 2020.

Due to the extremely adverse liquidity situation and our fragile financial position, we also humbly request you to revise the loan interest from 24% P.A to a more reasonable 16% P.A with retrospective effect and waive the penal interest.
We hope you will appreciate our honest & sincere efforts and look forward to a favourable reply.

For **Reward Business Solutions Private Limited**

Authorised Signatory

Reward Business Solutions Pvt. Ltd.

32. They have been further communication to the Corporate Debtor and the Petitioner with regard to the extension of time to repay the term loan facility and there has been clear admission of obligation to pay the letter of 03.03.2020. The letter of 03.03.2020 is reproduced as below;

Reward Business Solutions Private Limited

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A, 413, 4TH Floor, Plot No 711 A ,Byculla Services Industries, Dadoji Konddeo Road, ,Ghodapdeo, Mumbai 400 027.
CIN NO: - U74999MH2004PTC190748. Tel :- 24938500

3 March 2020

EXHIBIT P

DSK Legal, Advocates and Solicitors.
C-16, Dhanraj Mahal, 3rd Floor,
Chhatrapati Shivaji Marg,
Apollo Bunder, Mumbai – 400001.

Dear Sir/ Ma'am,

Sub: **Extension of time to repay the term loan facility aggregating up to INR 45,00,00,000 (Indian Rupees Forty Five Cores only) ("Term Loan Facility") extended by Mangalam Vanijya Private Limited ("Lender") to Reward Business Solutions Private Limited pursuant to the term loan agreement dated 3rd December 2018 ("Term Loan Agreement").**

Ref: (i) **Your Letter dated 24th September 2019 bearing No. VK/2019;**

(ii) **Our Reply dated 26th September 2019;**

(iii) **Your Letter dated 4th November 2019 bearing No. VK/2019;**

(iv) **Our Reply dated 7th November 2019;**

(v) **Your Letter dated 27th November 2019 bearing No. VK/2019; and**

(vi) **Your Letter dated 14th February 2020 bearing No. VK/2020 ("said Letter").**

We are in receipt of the said Letter. In this regard we would like to state the following

1) We state that we availed the Term Loan Facility pursuant to the Term Loan Agreement. One of the conditions of the Term Loan Agreement was that we were under an obligation to create a first ranking exclusive charge by way of mortgage over Unit No. 801 admeasuring 933.74 sq. mtrs. carpet area and Unit No. 802 admeasuring 953.35 sq. mtrs. carpet area situated on the 8th Floor of "Tower B" in the Peninsula Business Park (**"said Units"**).

2) In order to honor our obligations under the Term Loan Agreement, we created a first ranking exclusive charge by way of mortgage over the said Units in favour of the Lender under the Indenture of Mortgage dated 29th March 2019 duly registered with the Sub-Registrar of Mumbai City-III under serial No. 2272 of 2019.

3) We state that on account of commercial difficulties, we could not repay the Term Loan Facility in accordance with the Term Loan Agreement. You may appreciate the fact that we have apprised the Lender on a regular basis regarding the repayment of the Term Loan Facility.

4) *Vide* our earlier correspondence, we had requested the Lender to reduce the rate of interest in relation to the Term Loan Facility from 24% p.a. to 16% p.a. and we had further requested the Lender to waive off the penal interest levied on us. However, the same was not considered by the Lender.

5) *Vide* our Letter dated 7th November 2019, we had informed the Lender that we were in the process of granting a license in respect of the said Units for a long tenure. In order to ensure that the instalments towards that repayment of the Term Loan Facility are paid to the Lender at regular intervals, we have granted a license in respect of the said Units for a period of 60 (sixty) months to Sporta Technologies Private Limited (**"Sporta"**) pursuant to the Leave and License Agreement dated 27th December 2019 duly registered with the Sub-Registrar of Mumbai City III under serial No. 12041/50 of 2019 (**"said Leave and License Agreement"**). The Lender had issued its No-Objection Certificate dated 28th November 2019 in this regard.

6) We state that pursuant to the said Leave and License Agreement, Sporta is under an obligation to pay us an amount of INR 49,83,636/- (Indian Rupees Forty Nine Lakhs Eighty Three Thousand Six Hundred and Thirty Six only) per month for a period of 36 (thirty six) months commencing from 27th March 2020. Thereafter, for the remaining period of 24 (twenty four) months, Sporta is under an obligation to pay us an amount of INR 57,31,181/- (Indian Rupees Fifty Seven Lakhs Thirty One Thousand One Hundred and Eighty One only).

Reward Business Solutions Private Limited **80**

A, 413, 4th Floor, Plot No 711 A, Byculla Services Industries, Dadoji Konddeo Road, Ghodapdeo, Mumbai 400 027.
CIN NO: - U74999MH2004PTC190748. Tel :- 24938500

The amounts to be received from Sporta pursuant to the said Leave and License Agreement shall hereinafter be referred to as the **"License Fees"**.

7) We propose to transfer the License Fees (net of TDS), which will be received from the Sporta, to the Lender towards repayment of the Term Loan Facility in the manner as maybe agreeable to the Lender. Accordingly, the License Fees shall be paid to the Lender at regular intervals towards repayment of the Term Loan Facility.

8) We have apprised the Lender that we are in the process of transferring the said Units by way of sale to a third party. We state that the monies that maybe realised from the sale of the said Units shall be utilised by us towards the repayment of the Term Loan Facility to the Lender. Needless to say, the sale of the said Units shall be undertaken by us only with the prior consent of the Lender.

9) In order to enable us to repay the Term Loan Facility, we propose to the Lender our one- time settlement offer of **INR 50,00,00,000 (Indian Rupees Fifty Crores only)** towards full and final settlement of our obligations under the Term Loan Agreement (**"One-Time Settlement Amount"**). We shall endeavour to pay the One-Time Settlement amount by 30th June 2020.

10) In the event the Lender is agreeable to our proposal as set out in Paragraph 7) and 8) above and our one-time settlement offer as set out in Paragraph 9) above, we request the Lender to grant us an extension and allow us a reasonable period of 4 months to repay the One-Time Settlement Amount and comply with our obligations under the Term Loan Agreement.]

11) In light of the bonafide steps taken by us to repay the Term Loan Facility, we request you to withdraw the said Letter and your instructions to take possession of the said Units which are held as collateral by the Lender to secure the repayment of the Term Loan Facility.

12) We are committed to our obligations and we are taking all steps as maybe necessary to ensure the repayment of the Term Loan Facility.

All our rights are reserved.

Yours sincerely,
For Reward Business Solutions Private Limited

Reward Business Solutions P...

33. In view of the judgements of the Hon'ble Supreme Court and the provisions of the section 7 of I&B Code, the adjudicating authority is bound to look into the facts of the case which provides a debt and a default. In view of the aforesaid it is clearly established that there was a formal loan agreement on 03.12.2018 wherein the amount of Rs. 45 Crores was disbursed to the Corporate Debtor and the said amount was due to be repaid on 02.06.2019 along with the interest and the said amount was not paid on the date of default as on 02.06.2019. The Petitioner relied upon certain other documents which were executed by the Corporate Debtor in favour of the Petitioner which demonstrate the

confirmation of debt and creation of additional security in favour of financial creditor. The documents are as follows:

a) a copy of the Indenture of Mortgage dated March 29, 2019 *(page 34 of the captioned Company Petition)* – it is not the case of the Corporate Debtor that this document is also insufficiently stamped*;*
b) a copy of the certificate of registration of charge issued by the Registrar of Companies; *(page 18 of the captioned Company Petition);*
c) a certified copy of the Financial Creditor's bank statements showing disbursal of the Principal Amount to the Corporate Debtor *(page 16 of the captioned Company Petition);* and
d) correspondence received from the Corporate Debtor unequivocally admitting its liability to repay the loan amount to the Financial Creditor.

In view of the aforesaid observation, the debt and liability are established and the debt tantamount to a financial debt as defined under section 5 (8) of the Code. Section 5(8) is reproduced as below;

(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

e) The only issue arises for consideration is whether the document of loan is required to be impounded in the judgment of the Hon'ble Supreme Court in Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineering Ltd., wherein the Hon'ble Supreme Court categorically held that the provision of section 33 and 34 of Maharashtra Stamp Act, 1958 needs to be harmonised with regard to the issued regarding the payment of the stamp duty and enforcing of the contract. Hence while admitting the petition under section 7 of the I&B Code, 2016, the Adjudicating Authority needs to impound the document which is insufficiently stamped and sent for payment of adequate duty in the interest of fiscal reforms to the Sub-Registrar of Assurance. However, the Bench also opines that admission of the said petition under section 7 of the Code cannot be stalled in due to the curable defect of the document being insufficiently stamped. The loan agreement was executed by the Corporate Debtor was required to pay the adequate stamp duty, being the beneficiary of the said amount of Rs45 crores lent to the Corporate Duty under the Loan Agreement was under a legal obligation to pay the adequate stamp duty to the extent of Rs. 9, 50,000/- lakhs.

f) The Tribunal orders as follows;
   i. The petition filed is hereby admitted.
   ii. The Loan Agreement dated 03.12.2018 is impounded and sent to Sub-Registrar of Assurances, Mumbai.
   iii. The IRP appointed by the Court shall refer the Loan Agreement dated 03.12.2018 to the Sub-Registrar of assurances for adequate stamping and shall admit the claim upon payment of stamp duty in accordance to law.

g) Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Piyush Kishanlal Jani, having registration No. IBBI/IPA-001/IP-P01439/2018-2019/12164, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

h) Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the

Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

i) That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

j) That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.A liberty is granted to intimate even at an early date, if need be.

k) The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

l) Ordered Accordingly.

Sd/-	**Sd/-**
Chandra Bhan Singh	**Suchitra Kanuparthi**
Member (Technical)	**Member (Judicial)**