



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 509/IBC/MB/2022

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

In the matter of

M/s. Phoolchand Bhagatsingh

A partnership firm through
its partner Mr. Sanjiv Khandelwal,
Premises No. 20, HI Life Mall,
1st Floor, P.M. Road, Santacruz (W),
Mumbai – 400054, Maharashtra

.....Financial Creditor

Vs

Radius Project Developers LLP

Having registered office at: ONE BKC,
A Wing 1401, Plot No. C – 66,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400051

.....Corporate Debtor

Reserved for order on: 11.01.2023

Order Pronounced on: 02.02.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)



Hon'ble Smt. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Nausher Kohli, Advocate

For the Respondent: Mr. Vibhav Krishna, Advocate

Per: Madhu Sinha, Member (Technical)

1. This Company petition is filed by *M/s Phoolchand Bhagatsingh* (hereinafter called "Financial Creditor"), a partnership firm seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Radius Project Developers LLP* (hereinafter called "Corporate Debtor") for an unresolved Financial Debt of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only).
2. The brief facts of case stated in the petition are as follows:-
 - I. The present Application is filed by M/s Phoolchand Bhagatsingh under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process of Radius Project Developers LLP (hereinafter referred to as "Corporate Debtor") on account of default in repayment of outstanding dues.
 - II. It is stated that in the month of January and February 2020, the Corporate Debtor, through Mr. Sanjay R. Chhabriaa (the designated partner of the Corporate Debtor), requested the Financial Creditor for a short-term loan of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) (hereinafter referred to as the said "Loan Amount").
 - III. As per the Applicant the Corporate Debtor represented that the aforementioned Loan Amount would be utilized



by them for their working capital requirement for conducting business i.e. to pay certain interest liability of Neuzen Realtors LLP, which was a group entity of the Corporate Debtor managed by Mr. Sanjay R Chhabriaa, towards Dewan Housing Finance Limited ("DHFL"). It was assured and represented that the Corporate Debtor would repay the Loan Amount within 6 (six) months time i.e., by 20.08.2020.

- IV. The Applicant further mentions that the said group firm Neuzen Realtors LLP was developing and constructing a real estate project named '64 Greens' at Santacruz West in Mumbai wherein one of the partners of the Financial Creditor, i.e. Mr. Sanjiv Khandelwal, was acquiring a flat. It was informed to the Financial Creditor that in order to be able to sell the said flat to Mr. Sanjiv Khandelwal, Neuzen needed to pay an amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) to DHFL towards certain interest liability. It was further stated that the aforementioned amount be loaned to the Corporate Debtor who will transfer the same to Neuzen or utilize it directly to repay the interest liability.
- V. On representations of the Corporate Debtor and Mr. Sanjay Chhabriaa, the Financial Creditor on 20.02.2020, transferred the amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) to the Corporate Debtor via RTGS dated 20.02.2020 drawn on HDFC bank. Simultaneously, the Corporate Debtor handed over a copy of its subsidiary ledger dated 22.03.2020 demonstrating that they had accounted for the loan in their financials as an "Unsecured Loan".



- VI. Thereafter on 20.08.2020, the Financial Creditor along with their representative met the Corporate Debtor at their office. In the meeting, the Corporate Debtor promised that the Loan Amount would, instead of being paid in August, 2020, would be paid between 01.09.2020 to 07.09.2020. The Corporate Debtor further agreed to provide a cheque of the Loan Amount on 17.08.2020. Accordingly, the Financial Creditor issued an email dated 16.08.2020 recording the discussions in the meeting.
- VII. Further the Corporate Debtor failed to provide the cheque which was promised. Even after expiry of the stipulated time, the Corporate Debtor failed to repay the Loan Amount to the Financial Creditor. Upon the Financial Creditor urging the Corporate Debtor to repay the Loan Amount, the Corporate Debtor on one excuse or the other continued to represent that the payment would be made in a few days time.
- VIII. Since the Corporate Debtor did not repay the Loan Amount to the Financial Creditor, the representatives of the Financial Creditor were constrained to hold several meetings in the months of August to December 2020 to plead with the Corporate Debtor to repay the amounts.
- IX. To assuage the concerns of Financial Creditor and to demonstrate that the Loan Amount was in the process of being re-paid, the Corporate Debtor, on 30.12.2020, provided the Financial Creditor with a photocopy of RTGS form, along with a photocopy cheque dated 30.12.2020, issued to IDBI Bank apparently requesting the said bank to remit a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) in favour the Financial Creditors. Even



after promising to pay the amounts via RTGS no funds were paid by the Corporate Debtor.

- X. Accordingly, the representatives of the Financial Creditor requested the Corporate Debtor and Mr. Sanjay Chhabriaa to repay the loan, vide their emails dated 09.03.2021 and 15.03.2021 addressed to the Corporate Debtor, the Financial Creditor expressed their regret of loaning the sums to the Corporate Debtor and notified the Corporate Debtor that if the Loan Amount would not be re-paid, the Financial Creditor would initiate legal actions.
- XI. In reply to the aforementioned emails, the Corporate Debtor, on 15.03.2021, addressed an email to the Financial Creditor informing them that the Corporate Debtor was working on resolving the issued and making the payment. Furthermore, the Corporate Debtor requested the Financial Creditor to provide them with 10-15 days for resolution.
- XII. In view of the above, the representatives of the Financial Creditor once again visited the office of the Corporate Debtor to meet Mr. Sanjay Chhabriaa. Instead of making payment of the Loan Amount, the Corporate Debtor handed over a cheque bearing no. 555656 drawn on IBDI bank for a meagre amount of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand Only) dated 24.03.2021 towards part payment of the Corporate Debtor's liability. However, the Financial Creditor was advised not to encash the said cheque. The Corporate Debtor represented that all the amounts would be paid to the Financial Creditor within a week's time.
- XIII. The Corporate Debtor again failed to make any payment, In view thereof, the Financial Creditor finally addressed a



notice dated 15.04.2021 calling upon the Corporate Debtor inter alia to pay the amounts due to them with interest to be calculated at the rate of 18% (eighteen) per annum due to them on or before the expiry of a period of 15 (fifteen) days from the receipt of the said notice. The Corporate Debtor failed to even respond to the notice addressed by the Financial Creditor through their advocates. It is stated that till date the Loan Amount advanced to the Corporate Debtor is due and payable till date.

XIV. Therefore, the Financial Creditor has filed the present application under Section 7 of the Code, 2016 to recover the total debt amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only).

3. The Corporate Debtor filed affidavit in reply of Mr. Anil Chhabria, the authorised signatory of the Corporate Debtor opposing the above Company Petition. In their reply the Corporate Debtor has denied the existence of a loan in favour of the Financial Creditor. The main contentions raised by the Corporate Debtor is on maintainability as the claim is barred by Section 10A of the Code and non existence of Financial Debt.

FINDINGS

4. Heard the counsel appearing on both sides and perused the documents on record.

5. The Counsel appearing for the Corporate Debtor submits that the claim is barred under Section 10A of IBC. In support of their claim they have pointed that the date of default mentioned in Para. 4, Part II of the Company Petition is



20.08.2020 and that there is no financial debt or dealing between the Financial Creditor and the Corporate Debtor. The Financial Creditor is seeking that there is a transfer of debt of a partner to the partnership firm. However, the Financial Creditor has not produced any document to demonstrate indebtedness and has also not produced any document to show assignment of debt from the individual to the Corporate Debtor, or produced any document to show any acknowledgement of such liability or debt by the Corporate Debtor. The Financial Creditor has failed to produce any material to demonstrate any debt and/or financial debt and/or default by the Corporate Debtor.

6. The Counsel for the Corporate Debtor further submits that the claim raised by the Financial Creditor in the petition is false, frivolous and bogus. There is no "default" for the purpose of triggering proceedings under Section 7 of the IBC Code. No cause of action has arisen for filing the present petition. Also there is no date of default as no debt is due from Corporate Debtor to the Financial Creditor.
7. After hearing the submissions it is evident to the Bench that the contentions raised by the Financial Creditor does not fall under the purview of Section 5 (8) of the Code, which is reproduced hereunder for the ready reference hereunder:-

Section 5(8) of the Code defines the 'Financial Debt' in the following terms:-

"(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;



(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

8. On perusal of the Section 5(8) referred supra, it is clear that the very essential requirements for a debt to qualify as a ‘financial debt’ is that it is ‘disbursed against the consideration



for the time value of money'. Financial debt is usually for a sum of money received today to be paid over a time in the future.

9. The second contention raised by the Counsel appearing for the Corporate Debtor submits that the claim is barred under Section 10A of IBC. In support of their claim they have pointed that the date of default mentioned in Para. 4, Part II of the Company Petition is 20.08.2020 and even if the date of default is considered as 15.03.2021 as mentioned in Part IV, Sr. No. 2 of the Company Petition, the revised date of default will also fall within the period barred under Section 10A of the Code.
10. The Counsel for the Corporate Debtor further submits that the moratorium announced by the Government of India and Section 10A of the Code is reproduced hereinbelow:

“...10A. Suspension of initiation of corporate insolvency resolution process...”

Notwithstanding anything contained in Sections, 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of 6 months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period...”

11. On perusal of Part IV of Corporate Debtor, the date of default as per the Company Petition is 20.08.2020. It also mentions that 15.03.2021 can be taken as date of default when Corporate Debtor admitted to repayment of amount.
12. It is evident to the bench that the date of default mentioned in the Company Petition is on 20.08.2020 and even if the date of



default is considered as 15.03.2021 when the Corporate Debtor admitted that they have not repaid the amount the revised date of default also falls under the preview of Section 10A of the Code.

13. The bench therefore considers that this is a fit case for dismissal of the above Company Petition as the existence of any Financial Debt could not be established. Further, the claim is barred by Section 10A of the Code which clearly bars initiation of any CIRP proceedings for default accruing during the notified period. Hence, there is no merit in the above Company Petition and the same deserves to be rejected.
14. Accordingly, the above Company Petition is **dismissed**.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)