**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**NEW DELHI**
**BENCH - II**
**IB-825/ND/2019**

**IN THE MATTER OF:**

**M/s Aadhar Infraholding Limited**
**Through It's Director,**
**Harish Kumar Sharma,**
**R/o C-44, Sector 20 Noida 20130** **...Financial Creditor**

**VERSUS**

**M/s L V Global Private Limited**
**Having it's Registered Office at:**
**C-II/111, Basement Floor,**
**Lajpat Nagar 2**
**New Delhi -110024**

**... Corporate Debtor**

**Order Pronounced on: 28.02.2019**

**CORAM**

**MS. INA MALHOTRA, MEMBER(JUDICIAL)**
**MR. L.N GUPTA, MEMBER (TECHNICAL)**

PRESENT- Mr. P.V Kapur Senior Advocate with Mr. Anivban Bhattacharya Advocates for the Petitioner

Mr. K Datta Mr. Alishan Naqvee, Advocates for the Respondent.

## ORDER

**Per Ms. Ina Malhotra (Member Judicial)**

This is a Petition filed by M/s Aadhar Infraholding Ltd. ("Applicant") invoking the provision of Section 7 of Insolvency and Bankruptcy Code, 2016 ("the Code") against M/s. L V Global Pvt. Ltd. ("Respondent") for initiating their Corporate Insolvency Resolution Process ("CIRP") for their inability to liquidate a claim of Rs. 5,87,00,000/-.

2. That the Petitioner has averred as follows:

a. That at the request of the Corporate Debtor they had granted various loan facilities to the Corporate Debtor, which are evidenced by banking transactions, details whereof are as under:

| Date of Transfer | Name of the Bank | Amount (Rs) |
|---|---|---|
| 22.07.2014 | Axis Bank | 2,50,00,000.00 |
| 03.09.2014 | Axis Bank | 47,00,000.00 |
| 09.03.2015 | Andhra Bank | 25,00,000.00 |
| 11.03.2015 | Andhra Bank | 25,00,000.00 |
| 11.12.2014 | HDFC Bank | 2,500,000.00 |

| | | |
|---|---|---|
| 31.12.2014 | HDFC Bank | 2,500,000.00 |
| 02.01.2015 | HDFC Bank | 2,500,000.00 |
| 16.02.2015 | HDFC Bank | 2,500,000.00 |
| 18.02.2015 | HDFC Bank | 2,500,000.00 |
| 20.02.2015 | HDFC Bank | 2,500,000.00 |
| 23.02.2015 | HDFC Bank | 2,500,000.00 |
| 26.02.2015 | HDFC Bank | 2,500,000.00 |
| 03.03.2015 | HDFC Bank | 2,000,000.00 |
| 04.03.2015 | HDFC Bank | 2,000,000.00 |

b. The petitioner has further placed reliance on the Corporate Debtor's Independent Auditor's Report in their Balance Sheet for the FY 2016-17, wherein the debt of Rs. 5.87 Crores from to the petitioner has been reflected as a short term borrowing.

c. The aforesaid loan, which was payable on demand was recalled by the Petitioner vide its letter dated 07.02.2019, demanding a sum of Rs. 10,35,74,099/- as dues from the Respondent together with interest.

d. The Respondent vide its letter dated 21.02.2019 has denied its liability, constraining the Petitioner to invoke the provisions of the Code.

3. On putting in appearance, the Respondent in its reply has submitted that the claim of the Financial Creditor is barred by limitation since the transactions pertain to the period 22.07.2014 to 11.03.2015. The petitioner has failed to place any correspondence/communication exchanged between them between 11.03.2015 to 10.03.2018 acknowledging the debt, thereby enhancing the limitation.
4. The claim of the petitioner is further resisted by the Respondent on grounds that there is no loan agreement executed between the parties. In addition, the respondent has objected to the interest being levied. It is argued by the Ld. Counsel for the respondent that no interest, muchless at the rate levied, is payable in the absence of any agreement to pay the same. The respondent denies being in default. Further, the debt has not accrued with the time value for money, which is a necessary condition under section 5(8) of the Code for being construed as a financial debt.
5. The financial transaction between the parties was subsequently described by the CD/respondent in the supplementary affidavit as an advance towards the purchase of the property. It is submitted as such it does not fall within the ambit of a financial debt. It is argued that the payment of interest is a necessary component of a

Financial debt in terms of the provisions of the code, Ld. Counsel for the Respondent has placed reliance on the Judgment passed by the Hon'ble NCLAT in the matter of **"Vishwa Nath Singh Vs. Visa Drugs & Pharmaceuticals Pvt. Ltd**. wherein it was held: "there may be a loan taken by the Corporate Debtor from the Applicant but that does not mean that such loan amount can be termed a money borrowed against the payment of interest."

6. Per contra the Ld. Counsel for the financial creditor has placed reliance on the Judgment passed by **Hon'ble NCLAT** in the matter of **Shailesh Sanghani Vs. Joel Cardoso and Priority Marketing Private Limited** wherein it was held that: "that the interest is not a sine qua non for bringing the debt within the fold of a Financial Debt.

7. With regard to the nonexistence of any loan agreement between the parties, it is submitted by the Ld. Senior Counsel appearing for the petitioner that notwithstanding the same, the transaction has not been denied by the respondent and the same is evident from Banking Transaction. Apart from the same, it is also recorded in the audited Financial Statement of the Corporate Debtor.

8. On the issue of limitation and commission of default, Ld. Senior Counsel for the petitioner submits that in the absence of any

tenure for the loan, limitation shall commence from the date of demand which in this case has been made vide Recall notice dated 07.02.2019. To support his contention he placed reliance on the Judgement passed by the Hon'ble Delhi High Court In the matter of Virendar Kumar Jain Vs. Aluminate (India) Pvt. Ltd. RFA No. 153/2004 wherein it was held:

> *"In my opinion, the suit of the appellant/plaintiff cannot be said to be barred by limitation inasmuch as the averments in the plaint show that the loan was given without fixing any date of repayment. Once that is so, the loan would be a loan which would be repayable on demand. The demand in this case is alleged to have been made upon the respondent/defendant for the first time by the notice dated 14.12.2001. The period of limitation therefore will be three years from 14.12.2001, and therefore the suit which was filed on 8.2.2002 would be within limitation. Suit for recovery of loan without a fixed period or a date of repayment is a suit governed by Article 113 of the Limitation Act, 1963 as per which the suit has to be filed within three years of arising of the cause of action. The cause of action in this case will*

*arise on sending of the legal notice dated 14.12.2001. I therefore hold that the suit was not barred by limitation."*

9. To rebut the respondent's contention that the transaction was devoid of any time value for money and therefore could not be considered as a financial debt, Ld. Senior counsel for the Petitioner had relied upon the Judgement passed by the Honble Supreme Court in the matter of Pioneer Urban Land and Infrastructure Ltd. & Ors. Vs. Union of India (2019) 8 SCC 416.

10. We have heard the Ld. Counsel's for both sides and perused the documents on record. The transfer of the money from the petitioner to the respondent is evidenced by the Banking record. Further, its receipt is not denied by the respondents. They only seek to resist it on the point of limitation and the fact that no formal agreement was executed categorizing it as a "Loan". This Bench is of the opinion that there need not be an agreement in writing to ascertain a financial transaction. The liability to pay interest, and if so, at what rate, may be debatable in the absence of a written contract, but a financial claim may be one with or without interest. The Corporate Debtor has acknowledged the same as a borrowing in their financial statements. Vide their supplementary affidavit, the amount received by them is stated

as an advance towards purchase of land. We are of the opinion that holding the financial creditor's money without delivering, gives rise to a financial debt and should be returned. Section 3(6) of the code defines a claim as a right to payment, non payment of the same gives rise to a default. This Bench is of the view that the objection raised by the respondents with respect to absence of a loan agreement is not fatal to the case of the financial creditor as the transaction itself is admitted. The Hon'ble NCLAT In the matter of Mack Softtech Pvt. Ltd. Vs. Quinn Logistics India Limited Company Appeal (AT) Insolvency No. 143/2017 has further held that the disbursement of loan to get benefit of development will be considered as time value of money. It is further submitted on behalf of the petitioner that the aforesaid precedent applies to the present case since the petitioner had granted loan to the CD to get the benefit of land aggregation.

3. Further, we hold that the interest is not a sine qua non for bringing the debt within the fold of Financial Debt. With respect to the issue of time value of money we feel that the amount was disbursed to gain benefit from development of land, which tantamount to time value of money. The advance given for purchase of land and reflecting the same in the balance sheet of the CD as a short term borrowings has given the transaction the

effect of a commercial borrowing, encompassing it within the ambit of Section 5(8) (f) of IBC, 2016.

4. To establish the financial debt under section 5(8) (f) of IBC, 2016. The proposition has been classified by the Hon'ble Supreme Court in its Judgment of Pioneer Urban land and Infrastructure Ltd. & Ors. Vs. Union of India (2019) 8 SCC 416, vide the below mentioned observation

   *"75...... And now to the precise language of Section 5(8) (f). First and foremost, the sub-clause does appear to be a residuary provision which is "catch all" in nature. This is clear from the words "any amount" and "any other transaction" which means that amounts that are "raised" under "transactions" not covered by any of the other clauses, would amount to a financial debt if they had the commercial effect of a borrowing........"*

5. Given the facts of this case, this bench is of the view that, the objections raised by the respondents with respect to absence of loan agreement is not fatal to the case of Financial Creditor since the transaction has not been denied by the Respondent. Further, this bench finds merit in the arguments made by the Ld. Senior Counsel appearing for the petitioner on the issue of limitation and commission of default. The law on this point is

very clear that in matters where the term of the loan has not been fixed, the same is payable on Demand and the limitation shall commence when the loanee fails to respond, giving rise to a cause of action. The Demand in this case was made on dated 07.02.2019 and therefore, this petition which has been filed on 28.03.2019 is within the period of limitation.

6. The Petition is accordingly Admitted in terms of Section 7(5) of IBC 2016. As proposed by the Financial Creditor this bench appoints Sh. Darshan Singh Anand IBBI/IPA-002/I[-N00326/2017-18/10931 as the IRP. This consent and copy of certificate of registration with the IBBI are on record.

7. The IRP is directed to takes steps in accordance with law and file his report. Order be communicate to both parties as well as the IRP within 7 days be listed on 24 April 2020 for the progress report.

-Sd-

**(L.N GUPTA)**
**Member (T)**

-Sd-

**INA MALHOTRA**
**Member (J)**