



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-03
IB-568/ND/2020

IN THE MATTER OF:

M/s. Financial World India Pvt. Ltd.

....Applicant

Vs.

M/s. Khusi Building Solutions Pvt. Ltd.

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 17.04.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-568/ND/2020
is **dismissed**.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 568 of 2020

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**M/s Financial World India Pvt. Ltd.
47/1 & 47/2,
Flat No. G-1 G/F,
Arya Nagar, Delhi
East Delhi DL 110092 IN**

...Applicant/Financial Creditor

Versus

**M/s Khusi Building Solutions Pvt. Ltd.
M-4, Ground & Level 1,
South Extn., Part II,
South Delhi-110049**

...Respondent/Corporate Debtor

Order pronounced on: 17.04.2023

Coram:

**SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

Appearances (through video conferencing):

For the Applicant : Adv. Rishabh Govila

For the Respondent : Adv. Apoorv Rastogi, Adv Harshal
Kumar, Adv Suhas



PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s Financial World India Private Limited (hereinafter referred to as ‘Financial Creditor’) , represented by Mr. Nikshubha Sethi , seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Khushi Building Solutions Pvt. Ltd. [CIN: U70109DL2013PTC254068] (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 18.06.2013, having CIN: U70109DL2013PTC254068, under the Companies Act, 1956. Its registered office is at M-4, Ground and Level 1 South Extn. Part II, New Delhi, South Delhi DL 110049 IN. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 15.02.2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,92,86,418/- (Rupees one crore ninety-two lakh eighty-six thousand four-hundred eighteen only) as on 09.04.2019 (date of default).

Submissions of learned Counsel appearing for the Financial Creditor are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:



- a) In the present case, the Applicant/ Financial Creditor is a Non-Banking Financial Company, without accepting public deposits, registered under the Companies Act, having its registered office at 47/1 & 47/2, Flat No. G-1 G/F, Arya Nagar, East Delhi DL 110092 IN. The Corporate Debtor had approached the Financial Creditor for the purpose of borrowing a loan. The Applicant/ Financial Creditor sent a “sanction of loan” letter sanctioning the loan of Rs. 7,25,00,000/- at the interest rate agreed between the parties, to the Respondent Company and a Memorandum of Understanding containing the Terms and Conditions regulating the loan repayment process was executed between the parties.
- b) However, the Memorandum of Understanding executed between the Financial Creditor and the Corporate Debtor was lost during the shifting activity of Corporate Office of the Financial Creditor. Pursuant to the same, FIR dated 07.01.2019 was registered by the Financial Creditor which has been annexed with this petition. Additionally, a public announcement was also made by the Financial Creditor which is annexed with the petition and intimation was sent to the Corporate Debtor to resubmit the said documents. The said intimation is annexed in this petition.
- c) Since, the Corporate Debtor has admitted to be in receipt of Rs. 7,25,00,000/- the same shall be treated as Debt covered under Section 5(8)(f) of the Code. Further, the Corporate Debtor admitted to have repaid 6,23,23,000/- back to the Financial Creditor, however, an amount of Rs. 1,01,77,000/- plus the interest still



remain unpaid. The Corporate Debtor contends that no interest was ever payable, however, Interest free loans are also considered as a financial debt.

- d) The Corporate Debtor also submitted that the Petition filed by the Financial Creditor is for a Default of Rs. 1,92,86,418/- however, since the Financial Creditor could not establish the interest payable by the Corporate Debtor on the basis of any documents on record, the difference amount remaining is only Rs. 1,01,77,000/-. Further, the Corporate Debtor claims that this deduction was made on the basis of clause 4 of the EOI annexed in the reply. It is stated in this regard that the EOI brought on record by the Corporate Debtor is a frivolous document since the Corporate Debtor has not attached any Power of Attorney by the Financial Creditor authorizing the Corporate Debtor to sign documents on behalf of Financial Creditor. Hence, it is denied that any such EOI was executable on behalf of Financial Creditor.
- e) It is also submitted by the Financial Creditor, that the Adjudicating Authority only has to see whether the amount in default is more than the threshold value that is prescribed in Section 4(1) of the Code and it does not necessarily need to fix the Amount in default. Additionally, the Petition was filed when the threshold limit under Section 4 was Rs. 1,00,000/-.
- f) Moreover, with respect to the question that whether the Financial Creditor has been able to establish the default, It is stated that the Financial Creditor sent three legal Notices Dated 25.03.2018, 12.09.2018, and



09.04.2019. It is pertinent to mention here that after being in receipt of Legal Notice dated 25.03.2018 and 09. 04.2019, the Corporate Debtor deposited an amount of Rs. 2,50,000/- each time in the bank account of the Financial Creditor. Further, the Debt became due and payable by the Corporate Debtor after the legal notice dated 09.04.2019, hence, 09.04.2019 is also the date of default which has been stated as 09.04.2018 due to a clerical error.

- g) The date of default has inadvertently been stated as 09.04.2018, however, it is based on the demand letter dated 09.04.2019, hence being a clerical error, the Hon'ble Adjudicating Authority may consider 09.04.2019 as the date of default since the Ld. Bench was not pleased to grant liberty to file an application to rectify the same on the ground that the Ld Bench would then have to rehear the matter and that the rectification is proposed to be made after the Corporate Debtor has raised its objection. It is submitted here in this regard that the date of default can be rectified even after the Objection of the Corporate Debtor.
- h) Therefore, in view of the facts and circumstances narrated above, the Financial Creditor submits that the respondent Corporate Debtor is unable to pay its debts and therefore in such circumstances, it is just and equitable that the corporate debtor is liable to be declared insolvent. Hence, the applicant submits this application to initiate a corporate insolvency resolution process against M/s Khushi Building Solutions Pvt. Ltd.



5. The Financial Creditor has placed the following documents on record:
 - a. Copy of Bank's Statement.
 - b. Copy of FIR lodged by the Applicant on 07.09.2019.
 - c. Copy of letter sent to respondent asking resubmission of lost documents.
 - d. Copy of Legal Notice sent by the Applicant for repayment of debt amount.
 - e. Copy of NBFC Certificate of Financial Creditor.
6. The Financial Creditor has proposed the name of Anil Tayal, registration number IBBI/IPA-001/IP-P01118/2018-19/11818, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submissions of learned Counsel appearing for the Corporate Debtor

7. The details of the submissions made by the Corporate Debtor are as follows:
 - a) It is submitted by the Corporate Debtor that the Financial Creditor in around August 2014 approached the Corporate Debtor for purchase of residential units of Rs. 20 Crore for investment purpose in the Project named "The Hemisphere" on 01/10/2014 and



Expression of Interest was executed for 80:20 payment plan (80% payment i.e. Rs. 16,00,00,000/- on or before 30/11/2014 and rest at the time of possession.

- b) Financial Creditor has paid an amount of Rs. 7,25,00,000/- in installments from 19.08.2014 to 01.12.2014 to the Corporate Debtor towards the booking of Residential Units in the said project. Thereafter Financial Creditor failed to pay the balance amount as agreed by the Financial Creditor and thereafter Corporate Debtor immediately started repaying the amount from 16.12.2014 and till date Corporate Debtor has repaid an amount of Rs. 6,23,23,000/- after deducting 10% as per clause 4 of E.O.I dated 01.10.2014. Financial Creditor has also admitted about receiving of the above said amount in the Section 7 application.
- c) The Financial Creditor has failed to establish a relation with Corporate Debtor to be of lender and borrower as Financial Creditor has failed to place on record any loan document highlighting money was borrowed for time value of money by the Corporate Debtor against the payment of interest in terms of Section 5(8) of IBC.
- d) Financial Creditor has failed to establish a case that Corporate Debtor has defaulted under Section 3(12) of IBC in making payment of the amount allegedly due and payable as no document has been placed on record which identifies the amount of debt that has become due and payable. There was no mention of date of default supporting with the document in the entire section 7 Petition.



- e) Financial Creditor in its Legal Notices dated 25.03.2018, 12.09.2018 and 01.04.2019 is silent about details of alleged loan agreement, sanction letter, rate of interest and date of default or repayment date.
 - f) Financial Creditor to mislead the Hon'ble Tribunal has made a story of lost loan documents and filed a general FIR dated 07.01.2019 which is silent about lost loan documents with respect to Corporate Debtor. From the general FIR it cannot be said that there was a Loan Agreement between the Financial Creditor and Corporate Debtor, which got lost.
 - g) Financial Creditor has filed a forged document with respect to balance confirmation and auditors report. The Balance Confirmation email are fabricated and is not of the auditor of the Corporate Debtor. It is evident from seeing the email mentioned in the Audited Balance sheet.
 - h) The Financial Creditor has placed on record 26 AS Form Annexure I (C) to establish a case in support of TDS Deduction to be paid on the interest as an admitted Debt. In view of the facts and circumstances, the present petition under Section 7 is liable to be dismissed.
8. The Corporate Debtor has placed the following documents on record:
- a) Copy of entire transaction including the amount received and refunded by the Corporate Debtor
 - b) Copy of Expression of Interest dated 01/10/2014.



Analysis and Findings

9. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
10. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt.
11. According to the Applicant, the present case, the Applicant/ Financial Creditor sent a “sanction of loan” letter sanctioning the loan of Rs. 7,25,00,000/- at the interest rate agreed between the parties, to the Respondent Company and a Memorandum of Understanding containing the Terms and Conditions regulating the loan repayment process was executed between the parties.
12. However, the said Memorandum of Understanding executed between the Financial Creditor and the Corporate Debtor has not been placed on record stating that the same was lost during the shifting activity of Corporate Office of the Financial Creditor and pursuant to the same, FIR dated 07.01.2019 was registered by the Financial Creditor which has been annexed with this petition. Additionally, a public announcement was also made by the Financial Creditor



which is annexed with the petition and intimation was sent to the Corporate Debtor to resubmit the said documents which is annexed in this petition.

13. Moreover, out of the total amount of Rs. 7,25,00,000/- Corporate Debtor admitted to have repaid 6,23,23,000/- back to the Financial Creditor, however, an amount of Rs. 1,01,77,000/- plus the interest still remains unpaid. The bank statements showing the disbursements made by the Financial Creditor and the repayment made by the Corporate Debtor has been attached with the petition.
14. In the present case, the Financial Creditor despite being a NBFC has filed the petition without a loan agreement, without any balance confirmation and without any repayment schedule. We acknowledge the fact that an FIR was lodged on 07/01/2019 stating that some documents were lost during the shifting of the Corporate Office of the Financial Creditor, but the said FIR does not give details of documents lost inclusive of the MOU entered into between the Financial Creditor and Corporate Debtor. Therefore, mere averments without any supporting documents raises serious suspicions against the Financial Creditor that the claims of the Financial Creditor are frivolous and does not hold ground.
15. Moreover, the Corporate Debtor is a real estate service provider and the Financial Creditor approached the Corporate Debtor for purchase of residential units of Rs. 20 Crore for investment purpose. Thereafter, on 01/10/2014 an Expression of Interest was executed for 80:20 payment plan (80% payment i.e. Rs. 16,00,00,000/- on or before 30/11/2014 and rest at the time of



possession). A copy of the said Expression of Interest dated 01/10/2014 has been attached with the reply.

16. Admittedly the applicant did not make the payments towards the outstanding amount as per the payment plan within the above mentioned time further to the builder, as the Financial Creditor informed the Corporate Debtor for cancellation of the provisionally booked residential villas. The Corporate Debtor immediately upon receipt of the said request started refunding the paid amount after making obligatory deductions as per the terms of Expression of Interest dated 01/10/2014. It is not disputed that the Corporate Debtor has already refunded an amount of Rs. 6,23,23,000/- after deducting the forfeiture amount as per the agreed terms.
17. Thus according to the terms of EOI the transactions between the Corporate Debtor and the Financial Creditor are settled and no further amount is due and payable to the Applicant. The amount shown by the Applicant is the deducted amount towards the cancellation of the provisionally booked residential villas which at this stage cannot be claimed. The Corporate Debtor has repaid an amount of Rs. 6,23,23,000/- after deducting 10% as per Clause 4 of E.O.I dated 01.10.2014.
18. In the present case, the Financial Creditor has failed to establish a relation with Corporate Debtor to be of lender and borrower as Financial Creditor has failed to place on record any loan document highlighting that money was borrowed for time value of money by the Corporate Debtor against the payment of interest in terms of Section 5(8) of IBC. From the EOI placed on record by the Corporate



Debtor, it is established that the applicant was a speculative investor rather than a Financial Creditor. Hon'ble NCLAT in the case of ***Subha Sharma Suspended Board of Director Vs. Mansi Brar Fernandes [Company Appeal (AT)(Insolvency) No. 83 of 2020*** have laid down as follows:

“In such circumstances, we are of the considered view that the Respondent No. 1 is a speculative investor and not a person who is genuinely interested in purchasing the apartments. Therefore, she cannot be termed as a allottee as per the explanation attached to clause (f) of Section 5(8) of the I&B Code and the light of observations of the Hon'ble Supreme Court in the case of Pioneer Urban Land & Infrastructure Ltd. (Supra). The Respondent No. 1 is not a genuine allottee, therefore, the amount of Rs. 35 lacs paid to the Respondent No. 2 is not a Financial Debt and the Respondent No. 1 is not a Financial Creditor. We are unable to subscribe of the view of the Learned Adjudicating Authority that the Respondent No. 1 is a Financial Creditor.”

19. The FIR registered by the Financial Creditor dated 07.01.2019 is silent about the lost loan documents with respect to the Corporate Debtor which does not substantiate the fact that there was Loan Agreement between the Financial Creditor and the Corporate Debtor. Therefore, a major essential ingredient of Section 7 i.e. whether there is a debt owed to the Financial Creditor, does not stand substantiated.



20. Therefore, we are of the view that the claims of the applicant does not hold ground as it is without any supporting documents. This Adjudicating Authority therefore dismisses this application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.
21. In view of the above facts and circumstances, the instant petition bearing **CP IB (IBC) NO. 568(ND)2020** is not maintainable and therefore stands dismissed.
22. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
DR. BINOD KUMAR SINHA
Member (Technical)

Sd/-
SHRI P.S. N. PRASAD
Member (Judicial)