



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB) 26/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016

In the matter of

Noma Infrastructure Private Limited

Having registered office at :- 307, Sumit Business Bay, A.K. Road, Andheri East, Mumbai – 400059.

..... Applicant/ Financial Creditor

Versus

G.S. Constro & Infra Pvt. Ltd.

Having registered office at: - 301, 03rd Floor, Divine Tej, Thatte Marg, Opp. Kilbill School, College Road, Nashik-422005.

..... Corporate Debtor

Order Delivered on :- 20.10.2023

Coram:

**Mr. Anuradha Bhatia
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Financial Creditor: Counsel B.S. Nagar.

For the Corporate Debtor: Adv. Ranjit Basu a/w Adv. Maitri Malde.



ORDER

Per: - Shri. Kuldip Kumar Kareer (Judicial Member).

1. The present Petition is being preferred under Section 7 of the Insolvency Bankruptcy Code, 20 I 6 (hereinafter referred to as "IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Noma Infrastructure Pvt Ltd (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely G.S. Constro & Infra Pvt Ltd. (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 8,91,83,046/- (Rupees Eight Crore, Ninety-One Lakhs, Eighty-Three Thousand and Fourty Six only) as on 17.07.2022.

The submissions of the Financial Creditor are as follows:

2. The Financial Creditor is a company registered under the Companies Act 2013 and they are the pioneers in the field of logistics and infrastructure related works. That the Corporate Debtor represented to the financial creditor that they have undertaken a project "The Basil" at Worli and have got all the required permissions and sanctions from the concerned authorities. The Corporate debtor persuaded the Financial Creditor and induced them to invest in the said property as they needed initial money for getting their sanctions etc to start the project, without which they even cannot launch and sell the units in their upcoming project. The Corporate debtor further assured that the construction would start in full swing within a maximum period of



two months and the entire building will be finished within a maximum period of two years and the building will be ready for possession in a maximum period of three years in any case. The Corporate debtor assured the Applicant that once the project was officially announced and launched, the Corporate debtor would get enough money to give the returns assured to the Applicants on their investment and that the same shall be immediately paid by the Corporate Debtor to the Applicants.

3. Accordingly, the Financial Creditor agreed to lend a sum of INR 8,01,00,000/- (Rupees Eight Crores and One Lakh Only) since the project was not officially launched. The Corporate debtor represented that the cost of flat will jump manifold once the project was duly announced and registered under RERA. The Corporate debtor gave the financial creditors an option of either getting their money back with the interest at the rate of 24% per annum or in lieu thereof, accepting a flat admeasuring 3500 sq. ft at a cheaper rate than the prevailing market rate. The Corporate debtor further assured to pay penalty at the rate of 24% p.a. over and above the interest payable for any period of delay caused in refunding the payment once demanded by the financial creditor. That accordingly, the financial creditor paid a total sum of Rs.8,01,00,000/- by way of account transfers as well as by way of cash payments as per the specific demands made by the Corporate Debtor. The Corporate debtor have issued a demand promissory note to cover the amount of money paid in cash by the financial creditor to the corporate debtor hereinabove.
4. That sometime in April 2022, as the Financial Creditor came to know that there was no progress in the said project whatsoever, they confronted the corporate debtor with these doubts. However, the corporate debtor refused to execute the documents and gave evasive responses as to when the project



would actually start on the site. The Financial Creditor, therefore, decided to demand back the investments made by them and informed the corporate debtor about the same.

5. That after much negotiations and representations, the Corporate debtor agreed to an OTS amount of Rs. 8,91,83,046/- in case the same was paid within a month and accordingly, a cheque bearing No. 000589, drawn on Bank of Baroda, Worli Branch, for a sum of Rs. 8,91,83,046/- dated 26.04.2022 was issued by the Corporate debtor. The said cheque was deposited with the bankers which bounced upon presentation for reasons 'funds insufficient' and upon intimating the corporate debtor, they reassured that they will get the same honoured shortly.
6. That on 20.07.2022, the corporate debtor instructed the Financial Creditor to deposit the same cheque again on 21.07.2022, but however, to their shock and surprise the same once again bounced for reason-"insufficient funds". The Corporate debtor has defaulted in repayment of the money which was in the nature of investment/loan advanced by the Financial Creditor and as a result, the Financial Creditor is constrained to file the present application against them. The financial creditor states that they have already file a complaint under section 138 of the Negotiable Instruments Act with regards to the bouncing of the said cheque.
7. As the Corporate Debtor has still not paid back the loan amount; this necessitated the filing of the present petition.



The Submissions of the Corporate Debtor: -

8. The Petitioner has filed the present Company Petition just to arm twist the Respondent, damage the reputation of the Respondent company in the business community, to malign the image of the Respondent and to exploit the beneficial provisions of the Code and, therefore, the instant Company Petition is liable to be rejected. The Petitioner has not approached this Hon'ble Tribunal with clean hands, has attached incomplete and false documents to mislead this Hon'ble Tribunal to bring this case within the purview of section 7 of the Code, and is claiming an amount as financial debt by suppressing the real nature of the entire transaction entered between the Petitioner and Respondent.
9. The nature of transaction is not of a financial debt as defined u/s 5(8) of the Code. The Petitioner has not produced a single document to establish that the transaction is in the nature of purported financial debt. There is no loan agreement or document to establish that any amount as alleged, was disbursed against the consideration for time value of money. On this ground alone, the Company Petition is liable to be dismissed. The Petitioner is also put to strict proof to establish how the purported debt is a financial debt and provide documentary evidence to substantiate the same.
10. There is no agreement between the Petitioner and Respondent with respect to purported loan or interest. There is not a single written communication between the Petitioner and the Respondent regarding the alleged financial debt, and there is no confirmation of loan statement. On this ground alone, the Company Petition is liable to be dismissed. The Petitioner has failed to establish that it was authorized to grant the alleged loan to the Respondent as board resolution mandated u/s 179(3)(f) of the Companies Act, 2013 for granting loans is not annexed with the Company Petition. If the alleged transaction was indeed in the nature of a loan, the Petitioner would have



passed a board resolution u/s 179(3)(f) of the Companies Act, 2013 and the same would have been annexed with the Company Petition. There is no loan agreement or agreement for interest, and there is no board resolution authorizing the Petitioner to grant a loan to the Respondent. There is no documentary evidence to substantiate the allegation of the Petitioner that the alleged transaction was a loan or financial debt. The Respondent also denies the receipt of any money in cash whether on purported execution of promissory note or otherwise.

11. Therefore, in light of the facts stated hereinabove, the Respondent has pleaded that the Petitioner has failed to prove that the alleged debt or obligation is a financial debt u/s 5(8) of the Code, and therefore this Company Petition u/s 7 is not maintainable and liable to be rejected.

Rejoinder of the Financial Creditor

12. The Respondent has at least admitted his signature on the promissory note though vainly claiming that he has never seen the said promissory note or that he has not received the sum of Rs. 1.5 crores in cash since he is prevented from doing so under Income Tax Law. The Respondent has unconditionally admitted receipt of Rs. 6 crores as well as his signature on the promissory note showing receipt of Rs. 1.5 Crore.
13. The contentions of the Respondent in their reply affidavit are nothing but a cock and bull story and an afterthought made with the sole intention of avoiding repayment of the debts due by the Respondent to the Petitioner. Normally after a cheque is lost, the first thing that is done is to intimate the bank and to stop payment of the same. In this case, the Respondent has allegedly complained to the police and understandably so, the said complaint has gone missing too. The Respondent has not even bothered to make these contentions as and by way of reply to the demand notice while the Respondent has admittedly received by the same. As such it is clear that the



entire contentions in the paras under reply is only a false, baseless and illogical concoction created by the Respondent and an afterthought. The said sum of Rs. 8,91,83,046/- is considered to be the principal due in spite of the sum of Rs. 8,01,00,000/-. That the sum of Rs. 1,50,00,000/- paid in cash being a short-term loan was agreed to be given at the agreed interest rate of 1 % per day while the entire loan was given at the Interest rate of 24% per annum with default clause providing for penalty at the further 24% per annum.

FINDINGS

14. We have heard the counsel for the parties and have gone through the record.
15. During the course of arguments, the learned counsel for the petitioner has argued that the financial creditor advanced a loan of Rs 8.01 crores to the corporate debtor. The Counsel for the financial creditor has further argued that though no loan agreement was executed, the corporate debtor executed a demand promissory note which proves the nature of the transaction. The learned counsel for the petitioner has further contended that the corporate debtor also issued cheque in respect of the outstanding amount of Rs. 8.91 crores in favor of the financial creditor. Therefore, the factum of existence of the financial debt stands proved on record.
16. The Learned Counsel for the financial creditor has further argued that the cheque issued by the corporate debtor was dishonored which gave the cause of action to the financial creditor to file the present petition. The counsel for the financial creditor has further pointed out that the date of dishonor of the cheque issued by the corporate debtor is the date of default for the purposes of the filing the presentation petition. the Learned Counsel for the petitioner has further argued that a notice under section 138 of the Negotiable Instruments Act was also served upon the corporate debtor to which no reply



was sent which means that the averments made in the notice were not disputed at all on behalf of the corporate debtor.

17. On the other hand, the counsel for the corporate debtor has argued that the Petitioner has miserably failed to prove the factum of existence of a financial debt in this case. In this regard, the Learned Counsel for the corporate debtor has pointed out that the cheque in question was not issued by the corporate debtor. The petitioner has also not relied upon any loan agreement to prove the existence of the financial debt. According to the counsel for the corporate debtor, in fact, the alleged cheque was misplaced and, in this regard, a police complaint was also lodged with regard to the fact that the cheque was misplaced and the financial creditor has misused the said cheque to file a false complaint under section 138 of the Negotiable Instruments Act, 1881 and the present petition.
18. The counsel for the corporate debtor has further argued that the petitioner has not placed on record any board resolution which has might have been passed by the board of directors of the petitioner company before granting the alleged loan to the corporate debtor. Further, the provisions of section 179 of the Companies Act are also not shown to have been followed by the financial creditor which further belies the claim of the petitioner and on this ground alone the instant petition is liable to be dismissed.
19. We have weighed the contentions raised by the learned counsel for the parties and have also gone through the record.
20. The petitioner in this case has claimed that it advanced a loan of Rs. 8.1 crores to the corporate debtor on the assurance that either the money would be refunded with interest at the rate of 24% interest or a flat measuring 3500 sq. ft would be allotted at a much cheaper rate than the market rate. Admittedly, no loan agreement was executed between the parties. The petitioner has relied upon the demand promissory note dated 8.03.2022 executed by the corporate debtor promising to repay a sum of Rs1.5 crores. The petitioner has



further relied upon statement of account Exhibit-A7 which proves that a payment of Rs 1 crore was disbursed to the corporate debtor on 10.03.2022 and another sum of Rs 5 crores was disbursed on 30.03.2021. The corporate debtor has not denied having received the amount of Rs. 6 crores through bank transfer nor has furnished any plausible explanation as to on what account the amount of Rs. 6 crores were received by it.

21. In our considered view, merely because no loan agreement was executed cannot be said to be sufficient to hold that it was not a loan transaction. The corporate debtor has not furnished any reasonable explanation as to in what context and circumstances the promissory note was executed. Apart from that, the corporate debtor issued cheque in favour of the financial creditor which was dishonoured. In this regard, Counsel for the Petitioner has relied upon *Shantilal Javerchand Jain vs. Varsha Corporation Limited Company Appeal (AT) (Insolvency) No. 719 of 2022* decided on 02.11.2022 whereby it has been held that when the cheques were dishonoured, the date of dishonour of the cheque can be considered date of default. The Counsel for the Petitioner has further relied upon *Pradeep Tayal vs. Essbert Fashion Private Limited 2023 SCC Online NCLAT 43*, whereby it has been held that the existence of financial debt can be proved even if there is no MoU executed between the parties containing the terms and conditions of the transaction and further that financial debt can be proved from documents as contemplated in column 8 of part IV of form 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
22. Considering the law laid down in the afore-sited cases and the fact that a sum of Rs. 6 crores was transferred by way of banking transaction and further the Corporate Debtor executed a demand promissory note agreeing to pay interest and also issued a cheque of the amount of Rs. 8,91,83,046/- which was dishonoured and as stated above the date of dishonoured of the cheque can be considered to be a date of default. Therefore, in our considered view



the factum of existence of a financial debt and its default stands proved on record.

23. It is pertinent to mention that in the reply filed by the Respondent, the factum of disbursement has not been disputed and it has been claimed only that mere disbursement does not constitute a financial debt in the absence of an agreement of loan, interest or any other document to substantiate that the amount disbursed was a financial debt. The Respondent has further stated in the reply that the amount of Rs. 1.5 crores mentioned in the demand promissory note was not received. It has however, been added that though the signature on the demand promissory note are of the Respondent. The Respondent has further denied the existence, validity and authenticity of the demand promissory note. However, the Respondent has not explained as to how and under what circumstances the demand promissory note was signed by him. It is well settled that once a party admit its signatures on a particular document, the onus to prove as to under what circumstances the said document was signed is on the said party. However, the Respondent has miserably failed to discharge the onus and explain the circumstances under which he signed the demand promissory note of Rs. 1.5 crores.
24. In the reply filed by the Respondent it has further been claimed that the transaction of Rs. 6 crores by way of transfer of Rs. 5 crores on 30.03.2021 and Rs. 1 crore on 10.03.2022 was towards regular course of business operation between the Petitioner and the Respondent. However, to support and substantiate this averment made in the reply, the Respondent has not come up with any reasonable operation as to how it was a regular business operation transaction between the parties nor any document has been placed on record by the Respondent even though it was claimed in the reply that documents would be filed to substantiate the same. In our considered view, an adverse inference has to be drawn against the Respondent on this ground.



25. It is further a well settled proposition of law that civil disputes are decided by way of preponderance of probabilities. Once it was claimed by the Petitioner that a loan was advanced to the Respondent and the disbursement of Rs. 6 crores was not disputed by the Respondent. In addition to this, the execution of the demand promissory note was also admitted by the Respondent. In these circumstances, the onus stood shifted heavily on to the respondent to show that the transaction was not in the nature of a financial debt. However, the Respondent has miserably failed to explain that the transaction was not in the nature of a financial debt. Therefore, in our considered view, it can be safely held that the Corporate debtor had taken a financial loan from the Petitioner in respect of which it has committed a default.
26. The Counsel for the Corporate Debtor has relied upon Pawan Kumar v/s Utsav Securities Private Limited and others. Company Appeal (AT)(Insolvency) No. 251 of 2020 whereby the Hon'ble NCLAT has held that it is the duty of the Adjudicating Authority to investigate the real nature of transactions for the success of insolvency regime to prevent any person taking undue benefit of provisions to the detriment of the rights of the legitimate creditors. The Counsel for the Corporate Debtor has further relied upon M/s VRG Healthcare Private Limited v/s M/s VRG Infrastructure Private Limited Company Appeal (AT)(Insolvency) No. 778 of 2020 decided on 23.03.2023.
27. We have gone through the above referred cases cited by the Counsel for the Respondent. However, the law laid down in M/s. VRG Healthcare Pvt Ltd's case cannot be applied to the facts and circumstances of the present case as in the cited case, it was found that no disbursement was made by the Appellant whereas in the instant case the factum of disbursement has been proved on recorded by way of bank entries which have not been refuted by the Corporate Debtor.



28. The Counsel for the Corporate Debtor has argued vehemently that the Petitioner has not relied upon any resolution which might have been passed by the board of directors of the Financial Creditor regarding advancement of loan to the Corporate Debtor in terms of section 179 of the Companies Act, 2013. However, in our considered view, the Petitioner cannot be non-suited on this ground.
29. As a result of above discussion, we hold that the Petitioner has been able to establish the factum of existence of the financial debt and its default having been committed by the Corporate Debtor and therefore, we find the present Petition to be a fit one to be admitted u/s 7 of the Code, 2016. It is ordered accordingly in the following terms.

ORDER

- a. **The above Company Petition No. (IB) 26(MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against G.S. CONSTRO & INFRA PRIVATE LIMITED.**
- b. This Bench hereby **appoints Mr. Sanjay Kumar Lalit, Registration No: IBBI/IPA-002/IP-N00760/2018-19/12370 as the Interim Resolution Professional having his registered office at Off.No.207, United Business Park, 02nd Floor, Road No. II, Wagle Estate, Thane-400604, email:- sanjay@jupiterlegal.in, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.**



- c. The Financial Creditor shall deposit an amount of Rs. Seven Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall



not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

30. **Accordingly, this Petition is admitted.**



31. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANURADHA BHATIA
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**