

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.453/ALD/2019

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

N.C. Goel & Maya Goel

Residents of:

C-44/183, Yamuna Vihar

Delhi-110053

...

Financial Creditors

Versus

Piyush Infrastructure India Private Limited

Having its registered office at:

396, WK Road, Chippi Tank,

Near Baccha Park, Meerut 250 002

Uttar Pradesh

...

Corporate Debtor

Coram:

Shri Rajasekhar V.K.

:

Member (Judicial)

Shri Virendra Kumar Gupta

:

Member (Technical)

Appearances (through video conference):

For Financial Creditor

:

Sh. Atul Kumar Singh, Advocate

Sh. Sahil Garg, Advocate

For Corporate Debtor

:

Sh. Sanchit Garga, Advocate

Order reserved on: 25.04.2022

Order pronounced on: 13.06.2022

ORDER

Rajasekhar V.K., Member (Judicial):

1. This application has been filed under section 7 of the Insolvency & Bankruptcy Code, 2016 by the Financial Creditors. Financial Creditors namely Ms. Maya Goel gave a sum of ₹8,00,000/- (Rupees eight lakh only) and Sh. N.C. Goel gave a sum of ₹4,00,000/- (Rupees four lakh only) in the following manner.

—Sd—

Payment by financial creditor	Amount	Date of Disbursement	Cheque No.
Paid by Ms. Maya Goel	₹6,00,000/-	09.11.2011	936584
	₹1,00,000/-	06.11.2012	936585
	₹1,00,000/-	30.10.2013	996582
Sub-total (A)	₹8,00,000/-		
Paid by Mr. N.C. Goel	₹1,00,000/-	04.01.2012	012893
	₹1,00,000/-	07.01.2013	507136
	₹1,00,000/-	03.01.2014	644729
	₹1,00,000/-	31.12.2015	277343
Sub-total (B)	₹4,00,000/-		
Grand Total (A+B)	₹12,00,000/-		

It is claimed that the interest was payable at the rate of interest 18% per annum.

2. It is stated that the Corporate Debtor paid interest to Ms. Maya Goel, lastly on 09.04.2016. The amount of such interest was ₹12,000/-. The last instalment of interest is claimed to have paid to Mr. N.C. Goel on 04.06.2016 which was of the amount of ₹6,000/-. Post-dated cheques were also given for repayment of principal amount starting from 15.01.2018.
3. The learned counsel for the Financial Creditor appeared and narrated these basic facts. He also drew our attention to –
 - (a) The copies of cheques which were issued by the Corporate Debtor for repayment of principal amount of both the creditors;
 - (b) The letter regarding payment of interest by the Corporate Debtor;
 - (c) The letter written by the Financial Creditors on 23 January 2018 regarding the first cheque being dishonoured. In this said letter, it was also claimed that in case of failure to remedy the situation suitable action would be taken;

—Sd—

(d) Letter dated 16th May 2016 letter written by one of the Financial Creditors i.e., Ms. Maya Goel, whereby she demanded the repayment along with accrued interest thereon (aggregating ₹19,38,000/-).

Reply filed by the Corporate Debtor (Respondent)

4. In the reply, it has been claimed by the Corporate Debtor that no interest has ever been paid to the Financial Creditor. It is also claimed that there is no written agreement between the parties to substantiate this fact.
5. It has also been claimed that the transactions pertain to 2012 to 2014. Hence, the present application is barred by limitation. It is also claimed that since no interest was payable, the said transaction could not be considered as being in the nature of a financial debt within the meaning of section 5(8) of the Code.
6. As regards the validity of letter dated 16.05.2016, it has been claimed that the same is false and fabricated. It is also claimed that the said cheques were never presented for payment and no reason therefor has been given for not doing so. The Financial Creditors have approached this Adjudicating Authority with unclean hands. Therefore, the application is liable to be rejected on this score alone.

Rejoinder filed by the Financial Creditor (Applicant)

7. In the rejoinder, it has been claimed that the applicant has already preferred a complaint under section 138 of Negotiable Instruments Act, 1881, which is pending for adjudication before the appropriate legal forum. As regards the aspect of limitation, it is claimed that the cheques were given from January 2018 till December 2018 which were dishonoured. Therefore, from the date of dishonour of these cheques, the application filed under section 7 was maintainable. It is also claimed that the U.P. Money Lending Act, 1976 is not applicable to the present case.

Conclusion

8. We have considered the submissions made by both the sides and material on record.

—Sd—

9. The first aspect to be considered is one of limitation. Admittedly, Mrs. Maya Goel has given the loan amount in the Financial Year 2011-12, 2012-13 and 2013-14 whereas Mr. N.C. Goel has given loan in the Financial Year 2011-12, 2013-14 and 2015-16. In the absence of any documentation, we are unable to establish the date of default. The date of default can only be calculated when the tenure of the loan is established, or when there is a demand for repayment. In the present case there is nothing to establish this.
10. The petitioners were only happy so long as amounts towards interest was being received. From this, it is not possible to establish the tenure for which the loan was granted, and whether there was any notice demanding payment of the loan in question. As regards the interest, except for two letters of Corporate Debtor, no other evidence showing receipt of such interest has been brought on record. Thus, the claims made regarding receipt of interest remain unsubstantiated.
11. Copies of the post-dated cheques issued by the Corporate Debtor for repayment of principal amount have been enclosed. However, these cannot be taken to be unqualified admission of debt because the presumptions drawn under section 118 and section 139 of the Negotiable Instruments Act, 1881, are rebuttable presumptions. In any case, the petitioners have already initiated proceedings under the Negotiable Instruments Act, 1881.
12. In summary jurisdiction, without adequate documentation, it is difficult to establish the purpose for which the money was lent and accepted. It is also not possible to establish whether there was any interest required to be paid. The time value of money is an important factor to be considered in order to establish whether this is a financial debt. *Ex facie*, this appears to be a petition which has been filed for recovery of money and not for resolution of the corporate debtor. The Insolvency & Bankruptcy Code, 2016, should not be allowed to be used as an easy way of recovery of money.
13. In this view of the matter, the present petition cannot be admitted under section 7 of the Code, and the same shall stand dismissed.

—Sd—

14. We hasten to add that the dismissal of the present application shall not come in the way of the petitioners pursuing their remedies under any other law, and this decision is only confined to the present proceedings under the Insolvency & Bankruptcy Code, 2016.
15. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



Virendra Kumar Gupta
Member (Technical)

Md. Zaid
(Stenographer)

Rajasekhar
V K

Rajasekhar V.K.
Member (Judicial)

Digitally signed by Rajasekhar V K
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serialNumber=45120aac9b7979d74f18a3ac75eb09d05d
36c9288c09101c0ed3a8c7396, cn=Rajasekhar V K
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