

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

**IA(IBC)/1086(CHE)/2021
in
CP/610(IB)/2017**

*(filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w
Rule 11 of National Company Law Tribunal Rules, 2016)*

In the matter of

M.ARUMUGAM.

... Applicant

Vs.

MR. RAMJI,

Liquidator of Antony Projects Pvt. Ltd.

... Respondent

In

In the matter of

**SANJIV GOYAL,
PARTNER RANI SATI IMPEX.**

... Operational Creditor

ANTONY PROJECTS PVT. LTD

... Corporate Debtor

*Order pronounced on **01st February 2023***

CORAM:

Dr. DEEPTI MUKESH MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Memo of Parties

M.ARUMUGAM

No.67/29,
Rosary Church 2nd Lane,
Mylapore, Chennai – 600 004.

... Applicant

-VS-

MR. RAMJI,

Liquidator of Antony Projects Pvt. Ltd.
No.15-Shri Maruthi,
35th Street, Nanganallur,
Chennai – 600 061.

... Respondent

Present

*For Applicant: Mr.Vivekanandh, Advocate
For Respondent: Mr.Vijay Vigneshwar, Advocate*

ORDER

This IA(IBC)/1086(CHE)/2021 was filed by one Mr.**M.ARUMUGAM** under Section 60(5) of Insolvency and Bankruptcy Code, 2016, seeking to set aside the order dated 11.05.2021 passed by the Respondent and to direct the Respondent to accept the claim of the Applicant.

2. Brief Facts of the Case:

2.1. It was submitted by Applicant that the Corporate Debtor has availed Rs.4,85,00,000/- from the Applicant in various periods during the year 2011 and had furnished security to secure a part of the loan amount to the extent of 1 Crore by executing a

Memorandum of Deposit of Title Deed (MOTD) dated 12.12.2011, in respect of property situated at Neelankarai thereafter replaced it with MOTD of property situated at Chengalpattu.

2.2. It was further submitted that the Corporate Debtor failed to repay the loan availed from the Applicant. After repeated requests, the Corporate Debtor issued Cheque dated 25.09.2017 in the name of the Applicant as part payment of the loan. Thereafter, the Corporate Debtor issued a cheque dated 31.12.2019 for a sum of Rs.5 Lakh in the name of the Applicant's wife. While depositing the said cheque dated 31.12.2019, the Applicant learned that a Corporate Debtor was in the liquidation process.

2.3. Subsequently, the Applicant filed a claim before the Respondent on 16.07.2020. Since there was no response, The Applicant moved an IA/55/2021 before this Adjudicating Authority (AA) wherein the AA vide order dated 26.03.2021 condoned the delay of Applicant in filing the claim before the Respondent and directed the Respondent to consider the claim of the Applicant within 3 days.

2.4. It is submitted by the Applicant that Pursuant to that on 29.03.2021, the Respondent sought and received some documents such as balance sheet, IT returns etc., from the Applicant, thereafter raised some queries to vide letter dated 14.04.2021



which was answered by the Applicant vide letter dated 04.05.2021. However, without considering the reply, the Respondent rejected the claim on the following grounds,

The claim submitted is hereby rejected on the following grounds -

1. The transaction between Mr. M. Arumugam and the corporate debtor is in violation of Section 269SS of The Income Tax Act, 1961. The said Section reads as under -

"No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account 11 for through such other electronic mode as may be prescribed], if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more"

From the above it is clear that no loan can be given or taken in cash beyond Rs. 20,000. Therefore the transaction is in violation to Section 269SS of The Income Tax Act, 1961.

2. There is no executed agreement available with the Financial Creditor and hence the claim cannot be substantiated as per Regulation 18 of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
3. The said loan was given in violation of Section of Section 73 of The Companies Act, 2013 and is therefore ultra vires the company and in case of any liability, the Erstwhile Director is personally liable and not the company.
4. The loan given does not fall under the category of financial debt. As per Section 5(8) of The Insolvency and Bankruptcy Code, 2016 the loan should have been against the consideration of the time value of money. In the present case, there has been no payment of interest for the last 5 years. Neither the company has provided for interest nor has the lender accrued/recognized interest income in his books of accounts.
5. The debt is also time barred as undeposited postdated cheques cannot be treated as acknowledgment of debt.
6. The cheque dated 30-12-2019 is not valid as CIRP process was initiated vide the order of The Hon'ble NCLT dated 15-11-2017 and Mr. Antony Sahayaraj was suspended and was no longer authorized to sign the cheques in the name of the corporate debtor.

Despite specific requests, you have failed to provide clarification with respect to Section 73 of The Companies Act, 2013; and Section 269SS of The Income Tax Act, 1961. You have also failed to provide Income Tax Returns; Loan Agreements; Memorandum of Deposit of Title Deeds of Chengalpet property. Construing that no documents are available, the claim cannot be approved and hence is rejected.

2.5. The Applicant rebutted that the Respondent has erroneously applied Section 73 of the Companies Act, 2013 and Section 269 SS of Income Tax Act, 1961, which can be applicable only to the Corporate Debtor not to the Applicant. Further, substantiated the MOTD dated 12.02.2011 is in favour of the Applicant and still the original title deeds of the Chengalpattu property are lying with the Applicant in addition to that 9 cheques issued by the Corporate Debtor were in favour of the Applicant. In light of the above, the Applicant sought to set aside the claim rejection order passed by the Respondent.

2.6. In the counter the Respondent submitted that the Corporate Debtor did not have any assets other than the partly completed apartments in 'Project Le-Nid' and 'Project Rejoice'. Further, pointed out that in the Applicant's letter dated 10.04.2021, the Applicant had admitted that no loan agreement was available, all payments were made in cash and there is no income tax return available.

2.7. In the financial statements of the Corporate Debtor for the year 2013-14 & 2014-15, no entries as financial debts are shown as loans outstanding towards the Applicant. Further added that the cheques with the Applicant are un-presented and does not proves the existence of the financial debt, and the Cheque dated 30.12.2019 was issued after initiation of CIRP by the erstwhile

director, who has no authority to act on behalf of the Corporate Debtor.

2.8. Further, there is no communication from the Corporate Debtor admitting the debt alleged by the Applicant. The transaction alleged by the applicant are in violation of Section 73 of the Companies Act, 2013 and Section 269 SS of the Income Tax Act, 1961. In addition to above, the Respondent submitted that an application under Section 54 of the Companies Act, for the dissolution of the Corporate Debtor has been filed and is pending adjudication.

3. Having heard both sides and on perusal of the documents on record, it is seen that CIRP in respect of the Corporate Debtor was initiated on 15.11.2017. Vide order dated 22.01.2019 liquidation of the Corporate Debtor was ordered and Mrs.Aruna Ramachandran was appointed as liquidator. Thereafter, vide order dated 21.06.2019, passed in MA/574/2019 the Respondent herein was replaced as a liquidator by this Adjudicating Authority.

4. On 26.03.2021, in an IA/55/2021 filed by the applicant this AA directed the Respondent to consider the claim submitted by the Applicant. It is seen that in compliance with the above the vide letter dated 29.03.2021, the Respondent had sought the below documents,

In this regard you are requested to provide for the following-

- i. The financial contract for providing the loan. No document has been provided supporting the financial loan. The only document provided is the mortgage deed of Rs.1 crore. A mortgage deed is not a financial contract for loan as it does not provide any of the following information-
 1. Total loan involved
 2. Terms of payment
 3. Interest applicable
 4. Consequence of non-payment, etc.

- ii. You are also requested to provide the financial statement evidencing the debt. As per the books of the corporate debtor, no loan is outstanding in the name of Mr. M. Arumugam. We have written a letter asking the auditor to confirm if any amount is due and payable to Mr. M. Arumugam as on the date of the last audited Balance sheet.

Meanwhile, you are requested to send the bank statements evidencing the disbursement of loan to Antony Projects. The bank statements shall clearly show the date and amount of disbursement, the amount received as interest and the principal amount received.

- iii. The detailed ledger statements of M/s. Antony Projects Private Limited as maintained by your office.

- iv. You are also requested to provide your Income Tax Returns from 2011 till date wherein the amount receivable from M/s. Antony Projects Private Limited is reflected.

We would also like to state that the cheque issued by the corporate debtor in the year 2019 is in gross violation of the Insolvency Bankruptcy Code, 2016. We have already filed a complaint with the police stating that Mr. Antony Sahayaraj has absconded. TNREERA has already passed orders against Mr. Antony Sahayaraj and has instructed the police to initiate appropriate criminal action against Mr. Antony Sahayaraj.

You are therefore requested to submit how this cheque was collected from Mr. Antony Sahayaraj, including the person from whom the cheque was collected, the time and venue of collection.

Please send us the confirmation of balance as received from the corporate debtor for the amount outstanding as part of your audit. We also request you to send the remainders sent to the corporate debtor for payment of the amount outstanding and the amount received, if any.

We have received the memorandum of deposit of title deeds with respect to the property situated at Neelangarai but not with respect to the property received at Chengalpattu. We hereby also request you to provide

the memorandum of deposit of title deeds in respect of the Chengalpattu Taluk property.

Please note that the corporate debtor is ineligible to accept any unsecured loan as the same will be in violation of Section 73 of the Companies Act, 2013. Even assuming loan was taken by the Managing Director, the same is ultra vires the Company and the contract is not enforceable as the contract is in violation of Section 73 of the Companies Act, 2013. You are requested to submit a legal opinion stating how the loan is enforceable against the company to the extent not-secured.

Once we receive the required information, we will consider the claim and do the needful.

to substantiate the existence of the financial debt.

5. Further it is seen that in reply the Applicant had answered the above query vide letter dated 10.04.2021, para 3 of the letter reads as follows,

3. Towards discharge of loan, the Corporate Debtor issued following cheques:

S.NO	DATE	CHEQUE. NO	AMOUNT
1	02/08/2014	179978	Rs.12,50,000/-
2	25/09/2012	511354	Rs.25,00,000/-
3	25/09/2017	511355	Rs.25,00,000/-
4	25/09/2017	511356	Rs.25,00,000/-
5	25/09/2017	511362	Rs.5,00,000/-
6	25/09/2017	523353	Rs.25,00,000/-
7	25/09/2017	523355	Rs.30,00,000/-
8	25/09/2017	523354	Rs.25,00,000/-
9	30/12/19	643518	Rs.5,00,000/-
		Total	Rs.1,77,50,000/-

On perusing the copy of the above cheques in the record, it is noted that only one Cheque bearing No.643518 dated 30.12.2019 in the name of A. Shanmugavalli (stated as the wife of the Applicant), was deposited in the Bank & dishonoured and the same was issued after the initiation of CIRP of the Corporate Debtor.

6. In para 5 of the letter it was answered by the Applicant as

5. In respect of your queries the same is replied as follows:

- 1) No loan agreement available.
- 2) All payments were made in cash and acknowledged by the Corporate Debtor.
- 3) Ledger statement is attached here with.
- 4) a. Income tax return is not available.
b. The Cheque dated 30/12/2019 was issued when Mr.Antony Sahayaraj came to my house at 11/12/2019 for negotiating settlement in the 2nd week of December 2019.

As per admission of the Applicant himself it clearly shows that no loan agreements were entered into between the Corporate Debtor and the Applicant for the claimed amount of Rs.4,85,00,000/-. It is

also noted that no income tax return or any receipt regarding payment of the above sum is available with the Applicant.

7. Further, in para 4(e) of the said letter it was replied as follows,

e) In respect of Memorandum of Deposit of Title Deeds the Corporate Debtor executed the Memorandum of Deposit of Title Deeds dated 12/12/2011 in respect of property at Neelangarai. In October 2012, the Corporate Debtor approached the Applicant and stated that he got the buyer to buy the property at Neelangarai which was already mortgaged to the Applicant. It is further submitted that the Corporate Debtor requested the Applicant to release the title deeds of the Neelangarai property and in that place deposited the original title deeds of the property at Chengalpattu Taluk to secure the Financial security. Since the market value of the Chengalpattu property was higher than the Neelangarai Property, the Applicant agreed to receive the title deeds of the property at Chengalpattu Taluk in the place of Neelangarai property and released the Neelangarai property. The Corporate Debtor vide Letter dated 31.12.2021 has also acknowledged the receipt of the title deeds of the Neelangarai property. Thus the original title deeds of Chengalpattu property is in possession of the Applicant as a security.

From the above it is understood that MOTD was entered into between the Corporate Debtor and the Applicant with respect to the property at Neelangarai, later swapped the deeds of property at Chengalpattu, without altering the existing MOTD or executing new MOTD, this is being the case the existing MOTD is treated to be extinguished in the eyes of law. Moreover, it is seen that MOTD was signed by an erstwhile director of the Corporate Debtor but, there are no documents on record to show that the above properties are in the name of the Corporate Debtor.

8. Noting the above findings, we may now look into Regulation 18 of IBBI (Liquidation Process) Regulation 2016, which prescribes as follows,

"18. Claims by financial creditors:

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

(2) The existence of debt due to the financial creditor may be proved on the basis of-

(a) the records available in an information utility, if any; or

(b) other relevant documents which **adequately establish the debt**, including any or all of the following-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; and

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."

On seeing this case in the light of the above provision, we did not find any financial contract between the Applicant and the Corporate Debtor; there are no records to evince that the Corporate Debtor has drawn Rs.4,85,00,000/- from the Applicant; there is no financial statement recording the existence of alleged debt; and there is no order of any court or tribunal in favour of the Applicant.

9. Further, it was appraised by the Respondent that the Application IA(IBC)/577(CHE)/2022 for dissolution of the Corporate

Debtor is pending before this Adjudicating Authority, in the final report of the Liquidator in the said application is recorded as follows,

There were no receipts in the account of the Corporate Debtor during the Liquidation Period.

As part of the liquidation process, payment was effected towards liquidator's fees, other out of pocket expenses and fee for support professional services were made by the Financial Creditors.

Payments effected are as under:

Sl.	Details of assets as per the books of accounts / claims received	Amount of asset / claim received (Rs.)
1	Cash and bank balances	0
	Total Assets	0
2	Total Payments /Claims Received	
	Liquidator's fee	3,80,100
	Out of pocket expenses	21,962
	Engagement of Advocate	45,000
	TOTAL	4,47,062

The Liquidation cost as per the Preliminary Report was Rs. 2,00,000/- (Rupees Two Lakhs Only)

However, due to extension of the Liquidation Process and the pending litigations involved, a sum

of Rs. 4,40,738/- (Rupees Four Lakh Forty Thousand Seven Hundred and Thirty Eight) was incurred

and the same was paid by the Financial Creditors / Home Buyers of the Corporate Debtor.

From the above it is understood that there are no assets left Corporate Debtor. In such circumstances, we conclude that the order dated 11.05.2021 passed by the Respondent rejecting the claim of the Applicant is reasonable and does not require any interference of this Adjudicating Authority.

10. In view of the above discussion, this IA(IBC)/1086(CHE)/2021 is **disposed of**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Gopishankar. D

- Sd

Dr. DEEPTI MUKESH
MEMBER (TECHNICAL)