IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

CP (IB) 2832/MB/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Parul A Vora
B-506, Rahul Classic, Opp. Kale College, Near Sai Baba Garden, Sai Baba Nagar, Borivali (West), Mumbai- 400092

… Financial Creditor /Petitioner

Versus

Kavya Buildcon Private Limited
2nd Floor, 99C, Kavya Aura, Sitaram Ghadigaonkar Marg, Tulsiwadi, Tardeo, Mumbai- 400034

… CorporateDebtor/Respondent

Order Delivered on 27.06.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Kapal Kumar Vohra

Appearances:

For the Financial Creditor	:	Mr. Dhruva Gandhi, Advocate.
For the Corporate Debtor	:	Mr. Shanay Shah, Advocate.

ORDER

Per: Kapal Kumar Vohra, Member (Technical)

1. This Company Petition filed under section 7 (“**the Petition”**) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by Parul A Vora ("the Financial Creditor or FC"), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **Kavya Buildcon Private Limited** ("the Corporate Debtor or CD").

2. The Corporate Debtor is a Private Limited Company limited by shares and incorporated on 29.03.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 2nd Floor, 99C, Kavya Aura, Sitaram Ghadigaonkar Marg, Tulsiwadi, Tardeo, Mumbai- 400034. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions on behalf of the Financial Creditor:

3. The Financial Creditor submits that on 12.10.09 he had disbursed vide RTGS an amount of Rs.5,25,000/- (Rupees Five Lakh Twenty Five Thousand Only) in favor of M/s Kavya Construction Co. (hereinafter referred to as "borrower firm") of which Corporate Debtor is a partner and to corroborate the same the Financial Creditor has submitted the bank statement of the Financial Creditor evidencing the transfer of loan to borrower firm, which is attached to petition as Exhibit III (***Pg 13 of CP***).

4. The Financial Creditor has stated in part IV Form 1 that the total outstanding amount due and payable by the Corporate Debtor to the Financial Creditor as on 31.03.19 is Rs.9,72,876/- where interest has been calculated @12%p.a. (***page 80 of CP)***.

5. The Financial Creditor submits that on 01.04.12 a confirmation of accounts was received from Kavya Construction Co. (partnership firm in which the Corporate Debtor is a partner), which is annexed to petition as Exhibit IV ***(Pg 14 of CP).*** Another confirmation of accounts were received from Kavya Construction Co. on 01.04.16

and 01.04.17, which are annexed to petition as Exhibit V ***(Pg 15 of CP)*** and Exhibit VI ***(Pg 16 of CP)***.

6. The Financial Creditor has relied on a copy of Deed of Retirement from partnership dated 31.12.15 to establish that Corporate Debtor is a partner of M/s Kavya Construction Co. (borrower firm) and thus Corporate Debtor is personally and jointly liable for repayment of the amount borrowed by the borrower firm.
   The same has been annexed in Exhibit VII ***(Pg 17-28 of CP).***

7. The Financial Creditor has submitted ledger accounts from 01.04.12 to 31.03.16 and from 01.04.16 to 31.03.19, the same are annexed hereto and marked as Exhibit VIII ***(Pg 29-30 of CP).***

8. Financial Creditor has submitted bank account statement of Financial Creditor for the period 01.04.09 to 20.05.19, evidencing receipt of interest amounts with respect to the said loan, which is annexed hereto as Exhibit IX ***(Pg 31-68 of CP).***

9. The Financial Creditor has also relied on Form 26AS which reflects that TDS (Tax Deducted at Source) has been deducted by the borrower firm and the same has been annexed to the Petition as Exhibit X ***(Pg 69-79 of CP).***

10. A copy of demand notice sent by Financial Creditor to the borrower firm and its partners dated 27.04.19 has been submitted by the Financial Creditor, which has been annexed hereto as Exhibit XI ***(Pg 80 of CP)***.

Submissions on behalf of the Corporate Debtor:

11. The Corporate Debtor submits that the claim of the Financial Creditor does not fall under the definition of financial debt under Section 5(7) of the Code and thus the petition under Section 7 is not maintainable. It is the claim of the Corporate Debtor that the Financial Creditor has not provided any loan to the Corporate Debtor. Also, the Financial Creditor has not produced any document to show that the financial debt is owed to the Financial Creditor from Corporate Debtor. The Corporate Debtor submits that the provisions with respect to proceedings to be initiated against the Partnership firms have not been notified. Hence, in absence of any provision under the Code, the present Petition needs to be dismissed.

12. The Corporate Debtor relied on the Hon'ble NCLAT in the case of *Gammon India Ltd Versus Neelkanth Mansions and Infrastructure Private Limited* (2018 SCC Online NCLAT 994) wherein at para 11 it has been held that "It is not in dispute that the amount due to the Appellant is from 'Gammon Neelkanth Realty Corporation'. The bill was raised against the said partnership firm namely- 'Gammon Neelkanth Realty Corporation.' 'Neelkanth Realtors Private Limited.', 'Gammon Housing Estate Developers Ltd.' and 'Neelkanth Mansions and Infrastructure Private Limited' are the partners, therefore, even if one of the partners or more than one partner is the 'Corporate Debtor'; as the amount is due from the partnership firm, the application under section 9 of the 'I&B Code' against one of the partners of such partners firm will not be

maintainable". The above order dated 19.12.18, has been annexed to reply as Annexure 1.

13. The Corporate Debtor submits that the Tribunal in identical matters, wherein similar issues were involved, has dismissed the Company Petitions. The details of the said matters and the orders passed therein are as follows:

Sr. No.	Company Petition No.	Name of Parties	Date of Order
i.	3163/I&BP/2019	Mrudula Vora Vs. Kavya Buildcon Private Limited	25.10.2019
ii.	2076/NCLT/IB-IV/2019	Anil Vora HUF Vs. Kavya Buildcon Private Limited	07.01.2022
iii.	2077/NCLT/IB-IV/2019	Anil Vora Vs. Kavya Buildcon Private Limited	07.01.2022
iv.	2078/NCLT/IB-IV/2019	Anil Vora Vs. Kavya Buildcon Private Limited	07.01.2022

The Corporate Debtor has annexed to the reply the said orders as Annexure 2 to 5 respectively.

14. The Corporate Debtor further submits that the Hon'ble Supreme Court in the case of M/s. Innoventive Industries Limited Vs. ICICI Bank & Anr., has settled that IBC is a complete code in itself and the remedies provided by it holistically cover all the matters under it. Thus, IBC cannot be guided by other legislative enactments.

Findings:

15. We have heard the arguments of Financial Creditor and Corporate Debtor and perused the records.

16. We have taken into consideration Section 5(7), Section 5 (8) read with Section 7 of IBC. When the Financial Creditor approaches this Adjudicating Authority under section 7 of the Code, the Financial Creditor must prove that the alleged loan amount was disbursed to Corporate Debtor and such disbursal was made for a consideration for time value of money. Lastly, the Financial Creditor must be able establish a default.

17. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that borrower firm i.e. M/s Kavya Construction Co. owes money to the Financial Creditor. The debt (whole or any part or installment) had become due and payable and was not paid by the borrower firm, hence default was committed. However, the Bench observes that the default was not committed by the Corporate Debtor, but by the borrower firm.

18. According to the definition of Corporate Debtor as given in Section 3(8) of the Code, ***"corporate debtor means a corporate person who owes a debt to any person."*** This Bench is of the view that referring to the said section, the Corporate Debtor does not owe any debt to the Financial Creditor and hence proceedings against Corporate Debtor under this Code would be inappropriate.

19. This Bench also relies upon the judgement of the Hon'ble NCLAT in the case of "Gammon India Ltd. Versus Neelkanth Mansions

and Infrastructure Pvt. Ltd." (2018 SCC Online NCLAT 994) at para 11 held as below:

> *"It is not in dispute that the amount due to Appellant is from 'Gammon Neelkanth Realty Corporation.' The bill was raised against the said partnership firm namely-- 'Gammon Neelkanth Realty Corporation'. 'Neelkanth Realtors Pvt. Ltd.', 'Gammon Housing and Estates Developers Ltd.' And 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' are the partners, therefore, even if one of the partners or more than one partner is the 'Corporate Debtor' as the amount is due from the partnership firm, the application under Section 9 of the 'I&B Code' against one of the partners of such partnership firm will not be maintainable."*

Even though the above judgement is under Section 9 of the Code the ratio laid therein will also apply to the present petition under Section 7 of the Code.

20. There was no evidence of any agreement between Financial Creditor and Corporate Debtor.

21. Tribunal also relies upon the decisions of the Hon'ble Supreme Court in ***Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited [C.A No. 9597/2018 dated 23.10.2018 (2018) 147 CLA 112 [SC] para 15***, wherein the Supreme Court had observed as under:

> *"In a recent judgment of this Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353, this court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever*

there is existence of real dispute, the IBC provisions cannot be invoked…"

22. In the background of facts narrated in the Petition and above legal provisions, this Bench is of considered view that the IBC does not protect the interest or claim of the partner against another partner or the Firm as such though, the Financial Creditor may be entitled to the claims against the Corporate Debtor under any other law in force which may provide the legal recourse to the Financial Creditor.

23. It is, accordingly, hereby ordered as follows: -

    The petition bearing **CP (IB) 2832/MB/2019** filed by **Parul Vora,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Kavya Buildcon Private Limited [CIN: U45200MH2004PTC145368],** the Corporate Debtor, is **rejected**.

Sd/-
KAPAL KUMAR VOHRA
Member (Technical)

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)

27.06.2022

SAM