

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III
SPECIAL BENCH

1. M.A. 180/2020
IN
C.P.(IB)-1632(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **10.02.2022**

NAME OF THE PARTIES: VISTRA ITCL INDIA LIMITED

V/s

SATRA PROPERTIES (INDIA) LIMITED

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

M.A. 180/2020

Mr. Nausher Kohli a/w. Krushi Barfiwala, i/b Parinam Law Associates, counsel appearing for the Applicant and Mr. Pulkit Sharma, a/w. Mr. Nishith Dhruva, Ms. Pratiksha Agarwal i/b MDP Partners, counsel appearing for the respondent are present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above Miscellaneous Application is dismissed.

Sd/-
H.V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
SPECIAL BENCH**

**M.A. 180/2020
IN
C.P. 1632/I&B/MB/2019**

Under Section 7 Of the Insolvency and Bankruptcy Code, 2016

In the matter of

Satra Properties (India) Limited

Dev Plaza, 2nd Floor,

Opp. Andheri Fire Station, S.V. Road, Andheri (West),

Mumbai- 400058

.....Applicant in M.A/Corporate Debtor

1. Vistra ITCL India Limited

(Formerly known as IL&FS Trust Company Limited and ors)

IL & FS Financial Centre, Plot No. C22, G Block, Bandra

Kurla Complex, Bandra (East), Mumbai- 400051

2. Mayank Shah

3. Shruti Mayank Shah.

801, Sudharma Apartment, 8th Floor, N.S. Road No. 5, JVPD

Scheme, Vile Parle (West), Mumbai- 400056

Respondents in M.A/(Financial Creditor)

Order pronounced on: 10.02.2022

Appearance:

For the Applicant: Mr. Nausher Kohli, Advocate

For the Respondents: Mr. Pulkrit Sharma, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. The above Misc. Application has been referred to me by the then Acting President, vide reference Letter dated 23.09.2021 of the Registrar NCLT, New Delhi for my opinion as a third Member on

the following question of law in view of the difference of opinion between the Judicial Member, Smt. Suchitra Kanuparthi, Member (Judicial) and V. Nallasenapathy, Member (Technical) on the following issue.

The question of law as framed for reference to a third Member by the Technical Member at para 43 of the order is as follows:

43. The question of law framed is as below- whether the Debenture Trust Deed dated 1st March, 2014 and Redeemable Non-convertible Debenture Subscription Agreement dated 1st March, 2014, shall be impounded and be sent for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act.

2. Before going into the point of reference, it is important to briefly mention the facts that led to referring the above matter to a third Member. The main Company Petition bearing No. 1632/2019 has been filed by M/s Vistra ITCL (India) Limited and Ors. as Financial Creditors against M/s Satra Properties (India) Limited who is the Corporate Debtor under Section 7 of the Code for initiation of insolvency proceedings against the Corporate Debtor. During the pendency of the admission of the above Company Petition, the Corporate Debtor filed the above Misc. Application bearing No. 180/2020 praying the following reliefs:

- a. The dismissing the present Company Petition bearing No. 1632 of 2019;*
- b. That pending the hearing and final disposal of the present Application, impound the (i) Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March 2014 and the (ii) Debenture Trust Deed dated 1st March 2014;*

- c. Pending the hearing and final disposal of the present Application, stay the proceedings in the present Company Application and/or to defer and / or to keep in abeyance the hearing of the present Company Application;*
- d. For interim and ad-interim reliefs in terms of prayer clauses () to () above;*
- e. Further and other reliefs as this Hon'ble Tribunal may deem fit and proper;*
- f. Costs of this Application be provided for.*

It is the contention of the Petitioner / Corporate Debtor that the (i) Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March 2014 and the (ii) Debenture Trust Deed dated 1st March 2014 filed in the Company Petition cannot be looked into nor relied upon by the Financial Creditors till the deficit stamp duty payable on the above two instruments is paid in accordance with the provisions of the Maharashtra Stamp Act.

3. Both the members after simultaneously hearing the arguments in the above Misc. Application and the Company Petition, ordered initiation of CIRP against the Corporate Debtor vide order dated 03.08.2020 by concurring with each other and by observing that the 'debt' and 'default' stands proved even without relying on the Debenture Trust Deed and NCD Subscription Agreement. However, they have deferred on the issue of impounding and payment of deficit stamp duty on the above referred two documents.
4. The Learned Judicial Member, Smt. Suchitra Kanuparthi after analysing the provisions of the Maharashtra Stamp Act, Indian Stamp Act and various rulings submitted by both parties went one step ahead and partially allowed the above Misc. Application

holding that the Debenture Trust Deed and Redeemable Non-Convertible Debenture Subscription Agreement shall be impounded and be sent for payment of requisite Stamp Duty in accordance with Maharashtra Stamp Act and issued necessary directions to the Registrar to that effect.

5. However, the Learned Technical Member without expressing any opinion on the issue of stamp duty directed the Registry to immediately place the record before the President for constituting appropriate bench for opinion so that the order in M.A is rendered in accordance with the opinion of majority.

Therefore, the above M.A. was referred for independent opinion of third member.

6. I have heard the arguments of Mr. Nausher Kohli, counsel appearing for the Applicant in the above Misc. Application and Mr. Pulkit Sharma, counsel appearing for the Respondent and perused the material including the order passed by both the Members. In the light of the above circumstances, the core issues that needs to decide in the above Application are:

- i. *Whether the pleas of deficit stamp duty, non-payment of stamp duty can be raised by a Corporate Debtor in a Section 7 application more so when the 'debt' and 'default' are proved even without relying on those documents ?*
- ii. *If so at what stage and before whom?*

7. Similar issue fell for consideration before the Division Bench of the Hon'ble Bombay High Court headed by Hon'ble Chief Justice, Manjula Chellur, and Hon'ble Justice M.S. Sonak, J. in Appeal (L) No. 911 of 2015 in Company Petition No. 317 of 2012 while dealing with a winding up petition. The following are the observations of the said Division Bench in para 8 of the judgement

with regard to the plea of deficit stamp duty payable on the documents raised by the appellant.

Para-8:- *In the State of Gujrat where the document of corporate guarantee was executed, it was based an adequate stamp duty payable on the instrument so far as that State. According to the appellant, when this document comes to the State of Maharashtra in the light of sections 18 and 19 of Bombay Stamp Act which are applicable in the State of Maharashtra, there is deficit of stamp duty required to be paid on the documents, in accordance with the laws applicable in the State within the stipulated period. If that stamp duty is not paid, according to the appellant, the document cannot be admitted in evidence, and cannot be acted upon. We fail to understand this stand of the appellant in the present Appeal, since we are not concerned with the insufficiency of stamp duty payable on documents of corporate guarantee, but we are concerned with the issue whether the appellant Company deserves to be wound up or not. The Company Court definitely is not required to act upon any particular document while considering whether or not to wind up a Company. It is necessarily considers whether the Company is unable to pay its debts.*

With the above observation, the Division Bench of Hon'ble Bombay High Court in the above judgement dismissed the Writ Appeal. Similarly, the NCLAT, Chennai Bench in Company Appeal (At)(CH)(Insolvency) No. 22 of 2021 in *Ashique Ponnamparambath Vs. The Federal bank Limited* rejected the appeal with the observations that even if the loan documents are insufficiently stamped and it cannot be accepted in evidence, then also the debt and default are proved beyond doubt and therefore dismissed the appeal.

Similarly, the coordinate benches of NCLT in the similar circumstances adopted the same procedure in the following cases: NCLT (Mumbai benches) in (i) *Bennet Property Holdings Company Limited Vs. Brick Eagle Affordable Housing Advisory LLP*; (ii) *Edelweiss Asset Reconstruction Co. Ltd. Vs. Sejal Glass Ltd.* (iii)

Bank of India Vs. Gupta Infrastructure India Pvt. Ltd. (iv) *Allahabad Bank Vs. Gujrat Foils Ltd.* (Ahmedabad Bench); (v) *Mr. John Varghese Vs. M/s Value Designbuild Private Limited (Bengaluru Bench)*.

8. In this scenario it is appropriate to mention here that a Section 7 application under the IBC can be filed in a simple form prescribed in the Code even without any pleadings. Similarly, the 'debt' and 'default' can be proved through the records of 'debt' and 'default' maintained by the "information utility" even without filing any documents by the party. When once the Adjudicating Authority is satisfied with these two legal requirements and if the application is complete in accordance with the code, the Adjudicating Authority has no option except to admit the Company Petition without going into any other trivial technical issues raised by the Corporate Debtor as held by Hon'ble Supreme Court in various rulings. Therefore, in view of the above, I am of the opinion that the above plea of Stamp Duty is not available to the Corporate Debtor in the present case when once the debt and default are proved without looking into the above documents and accordingly the first issue is answered in negative. It is also pertinent to mention here that as per the terms and conditions of the NCD Subscription Agreement it is the Petitioner/Corporate Debtor that shall bear all documentation charges (including stamp duty) legal and valuation charges. Therefore, the Petitioner shall not be permitted to take advantage of his own wrong. It is also important to mention here that it is the very case of the petitioner in para 2 of the above M.A that the above documents upon which the Financial Creditors are relying in the present proceedings have been novated and the respondent stood discharged of the liability thereunder in view of the larger understanding and overall

settlement. Therefore, the petitioner having taken the above stand has no legal right to insist for impounding of the above document.

9. The next issue is when and before whom the above issue of stamp duty has to be raised. It is very clear from the plain reading of the provisions of Maharashtra Stamp Act and Indian Stamp Act, that a duty is cast upon the authority before whom the document is sought to be used as evidence by the party for the purpose of enforcing the contractual rights and obligations.
10. Now coming to the decisions of the Hon'ble Supreme Court in Action Ispat and Power Pvt. Ltd. Vs. Shyam metalics and Energy Ltd. and NN Global mercantile Vs. Indo Unique Flame relied upon by the petitioners, I am of the considered opinion that all the decisions relied by the petitioners are rendered while dealing with the issue of appointment of arbitrator under the Arbitration Act and none of the decisions are rendered while dealing with the present circumstances under IBC and all the decisions are distinguishable from the facts.
11. For the foregoing reasons, I am of the considered opinion that the proper course of action that needs to be adopted is to dismiss the above Misc. Application without getting into the issue of stamp duty as it is irrelevant and uncalled for in a Section 7 Application more so when the 'debt' and 'default' are proved otherwise without looking into those documents. However, the Petitioner/Corporate Debtor is at liberty to raise the above issue before the appropriate authority before whom the Financial Creditors relies on the above documents as evidence for enforcing their rights under the above documents.
12. Accordingly, the above M.A 180/2020 is **DISMISSED** with the above observations.

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)