

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.908/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Sushma Paranjpe

...Financial Creditor/Applicant

V/s

Rohan Developers Private Limited

[CIN: U65990MH1992PTC070212]

...Corporate Debtor/Respondent

Order Dated: 03.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Vivek Kantawala, Advocate
For the Respondent(s)	:	Mr. Rohit Gupta a/w Mr. Rohit Jadhav and Ms. Sailee Dixit i/b I.V. Merchant & Co.

ORDER

Per Prabhat Kumar (Member Technical)

1. This is an application bearing C.P. (IB) No. 908/MB/C-IV/2021 filed by Mrs. Sushma Paranjpe, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Rohan Developers Private Limited, Corporate Debtor on 07.05.2021.

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2. The Application is filed by Mrs. Sushma Paranjpe, the Financial Creditor, claiming total default of Rs.6,20,01,000/- (Rupees Six crore twenty lakh one thousand only), which includes:
- i. Rs.4,09,00,000/- (Rupees four crore nine lakh only); and
 - ii. Rs.2,11,01,000/- (Rupees two crore eleven lakh one thousand only) as the Interest @ 12% p.a. till 01.01.2021
 - iii. The date of default is 01.10.2017 as per Part IV of form 1.
3. The late husband of the Financial Creditor had initially deposited an amount of Rs.4,00,00,000/- (Rupees four crore only) as advance consideration towards booking of a flat with the Corporate Debtor from the period of February 2008 until October 2011. However, it is the submission of the Financial Creditor that as the Corporate Debtor could not deliver the said flat and neither refunded the said amount. Later on, this amount was considered as unsecured loan as mutually agreed between her late husband and the corporate debtor. The Corporate Debtor paid interest at the rate of 12% p.a, as is reflected in the books of accounts of the husband of the Financial Creditor. This fact is also confirmed by the copy of Ledger account in the name of her husband for the period from 1.04.2007 to 11.09.2008 as appearing in the books of accounts of Corporate Debtor and confirmation of account for the year from financial year 2011-12 to 2018-19 signed by the Corporate Debtor, which are filed along with the Application. It is further submitted by the Financial Creditor that after the expiry of her husband, the said loan amount was transferred in the name of the Financial Creditor and this fact is confirmed by copy confirmation account for the financial year 2019-20 signed by the Corporate Debtor

reflecting transfer for Rs. 4,09,00,000/- from account of her late husband to her account.

4. The loan amount was remitted to the Corporate Debtor vide 5 cheque payments, in lieu of which a consolidated receipt dated 24.04.2008 was issued by the corporate Debtor. Further, the said amount has also been acknowledged in the ledger account issued by the Corporate Debtor. It is the submission of the Corporate Debtor that the interest paid by the Corporate Debtor was also acknowledged by the Corporate Debtor vide the deduction of TDS on interest liability.
5. The Financial Creditor submitted that vide letter dated 01.02.2021 the Financial Creditor called upon the Corporate Debtor to make good towards the liability owed by them. However, no payment was made by the Corporate Debtor towards the liability of Rs.6,20,01,000/- (Rupees Six crore twenty lakh one thousand only).
6. The Corporate Debtor has filed its Affidavit-in-reply dated 14.10.2022 stating that in the absence of an express/implied allotment letter, Agreement of Sale, the Applicant is a mere speculative investor; as the late husband of the Financial Creditor was looking for assured return on investment. Furthermore, it is submitted by the Corporate debtor that as there was no repayment schedule, the date of default as stated by the Financial Creditor cannot be relied upon. The Corporate Debtor pleaded that the remittance by the Financial Creditor is investment.
7. The Corporate Debtor further submitted that as per the receipt dated 24.04.2008 the remittance by the Financial Creditor was in lieu of an advance to the corporate Debtor in respect of booking of a flat, thus, the Financial Creditor ought to have approached this tribunal in the capacity

of an 'allottee', however, in the event the plea is taken into consideration, it does not meet the threshold limit of neither being one hundred of such allottees under the same real estate project nor forming 10% of the total number of such allottees under the same real estate project to initiate CIRP against the Corporate Debtor. Thus, the Application ought to be dismissed.

Findings/Observations:

8. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
9. It is not disputed that the advance consideration paid by the Financial Creditors for booking a flat was later converted into a loan as can be perused from the letter dated 31.03.2017 sent by the Corporate Debtor addressing the late husband of the Financial Creditor requesting for a waiver of interest and further substantiated by the Confirmation Accounts for financial year 2011-12 till 2019-20 signed by the Corporate Debtor. Since there was no stipulation as to the nature of said amount, the loan partake the character of demand loan repayable on demand. The Financial Creditor called for repayment of the amount due from Corporate Debtor vide letter 01.02.2021 and the said letter did not contain the date or period by which the amount was to be paid by the Corporate Debtor. In case it is considered that the loan was repayable immediately on upon receipt of letter dated 01.02.2021, the default can be said to occur on 04.02.2021, considering that the notice is deemed to have been delivered in 48 hours. This date falls under the period stated u/s 10A, which bars initiation any proceeding under the code for the default occurring during that period. Alternatively, on the

perusal of the demand notice it can be made out that no time period was stipulated in the demand notice for repayment of the amount due from the Corporate Debtor, it cannot be that any default had occurred. Thus, in both the cases the petition is not maintainable.

10. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is not maintainable.

ORDER

1. This Application being C.P. (IB) No. 908/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Sushma Paranjpe, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Rohan Developers Private Limited, Corporate Debtor is dismissed.
2. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-
Prabhat Kumar
Member (Technical)
03.03.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)