

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH**

**Company Appeal (AT) (Insolvency) No. 718 of 2023**

**[Arising out of Order dated 23.03.2023 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, Court -V in C.P. 745/IB/MB/2021]**

**IN THE MATTER OF:**

**Satish Balan**

Director of Balan and  
Chheda Developers Pvt. Ltd.  
Having its Registered Office at:  
A.F.F. 83/A, N.G. Acharya Marg,  
Chembur, Mumbai – 400071.

**...Appellant**

**Versus**

**1. Mrs. Neeta Navin Nagda**

13, Vasant Breeze Chambers, Opp.  
Maheshwari Udyan, Matunga (C.R.)  
Mumbai – 400019  
E-mail :- neetanagda64@gmail.com

**...Respondent No. 1**

**2. Mr. Atul Laxmichand Gala**

Insolvency Professional,  
Regd. No. IBBI/IPA-001/IP-P-01974/2020-  
2021/13130  
1501, Oriana Business Park, Thane,  
Maharashtra – 400604.  
E-mail :- [atulgala.cirp@gmail.com](mailto:atulgala.cirp@gmail.com)

**...Respondent No. 2**

**Present:**

**For Appellant : Ms. Anjali Sharma & Ms. Simmi Bhamrah,  
Advocates.**

**For Respondent : None.**

**J U D G M E N T**

**(04.07.2023)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The present appeal has been filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') against the 'impugned order' *Company Appeal (AT) (Insolvency) No. 718 of 2023*

dated 23.03.2023 in C.P. 745/IB/MB/2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench, Court-V), wherein the Application filed by the 'Respondent' under Section 7 of the Code was admitted by the 'Adjudicating Authority' and the Corporate Insolvency Resolution Process (in short '**CIRP**') was initiated against the 'Corporate Debtor' i.e. Anusmera Realty and Infra Private Limited . Aggrieved by the same, the 'Appellant' has preferred the present appeal.

**2.** Heard the Counsel for Appellant and perused the records made available including cited judgments.

**3.** Learned Counsel for the Appellant stated that the 'Corporate Debtor' was incorporated in the year 2009 and engaged in the business of development and construction of residential and commercial buildings. Learned Counsel for the Appellant submitted that the Mr. Navin Shah alias Mr. Navin Nagda, a Practising Chartered Accountant, is the Husband of Respondent No. 1- Mrs. Neeta Navin Nagda, and was also the Statutory Auditor of the 'Corporate Debtor' from 01.04.2010 to 31.03.2013. Learned Counsel for the Appellant further stated that during this period, the 'Appellant' starting relying heavily on the advice of Mr. Navin Nagda and Mr. Navin Nagda shown his intention to invest in the 'Corporate Debtor'. Learned Counsel for the Appellant stated that as per Mr. Navin Nagda as Practising Chartered Accountant, Mr. Navin Nagda could not invest in his own name as per Regulations of Institute of Chartered Accountant of India, hence, Mr. Navin Nagda decided to invest in the 'Corporate Debtor' through his wife Mrs. Neeta Nagda and their nominees.

**4.** Learned Counsel for the Appellant submitted that the 'Respondent No. 1' contributed towards funds, holding around one-third of the equity shares together with their nominees, in the 'Corporate Debtor'. Learned Counsel for the Appellant stated that as per their understanding each of three investors i.e., Mr. Satish Balan, Mr. Dungarshi Chheda and Mrs. Neeta Nagda, were required to infuse funds in the Corporate Debtor as and when required in accordance with their respective shareholding and were also made entitled to share profits of the 'Corporate Debtor' accordingly.

**5.** Learned Counsel for the Appellant stated that the 'Respondent No. 1' is holding 2463 shares of Rs. 10 each with a total contribution of Rs. 24,830/- to the 'Corporate Debtor' (holding 24.63% shareholdings) and together with her nominees, she holds 31.98% of total shareholding in the Corporate Debtor. Learned Counsel for the Appellant alleged that Mr. Navin Nagda, the husband of 'Respondent No. 1' continued to get involved in the management of the 'Corporate Debtor' and Mr. Navin Nagda structured his investment in the 'Corporate Debtor' through medium of loan to be provided by the 'Respondent No. 1' and their nominees. Learned Counsel for the Appellant further alleged that Mr. Navin Nagda planned and ensured that investment by the Respondent No. 1 and her nominees were reflected as loans in the books of the 'Corporate Debtor', even though it was agreed upon informally and intended to be investment through equity participation in the 'Corporate Debtor'.

**6.** Learned Counsel for the Appellant submitted that no Loan Agreement was executed between the 'Respondent No. 1' and the 'Corporate Debtor' and as such the 'Adjudicating Authority' erred in admitting Section 7  
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application of the 'Respondent No. 1' treating as financial debt which in fact was investment in equity of the 'Corporate Debtor' as per informal understanding between the parties.

**7.** Learned Counsel for the Appellant summarised his arguments that the 'Respondent No. 1' is an investor of the 'Corporate Debtor' as equity contributor and not a 'Financial Creditor' of the 'Corporate Debtor' and therefore the 'Appeal' deserve to be allowed and the 'impugned order' need to be set aside.

**8.** From the above facts, the only issue which has been raised and need to be decided by this 'Appellate Tribunal' is that whether money contributed by the 'Respondent No. 1' along with her nominees was in nature of financial debt or investment by way of equity in the 'Corporate Debtor'.

**9.** From the perusal of the record especially part IV of the application filed by the 'Respondent No. 1' before the 'Adjudicating Authority', it is seen that Rs. 4,41,25,000/- was disbursed to the 'Corporate Debtor' from time to time starting from 05.12.2012 to 03.12.2018 and total amount claimed to be in default as on 30.06.2021 was Rs. 7,57,56,215/-, which included the interest from 01.04.2016 @ 12% p.a. We also note that the 'Respondent No. 1' is a shareholder of the 'Corporate Debtor' holding 24.63% of equity capital.

**10.** We also observe that admittedly by the 'Appellant' and evidently from the records made available before us, the 'Corporate Debtor' paid interest @ 9% to the 'Respondent No. 1' for the Financial Year 2016-17 and for the Financial Year 2017-18 the 'Corporate Debtor' paid interest @ 12% to the Respondent No. 1 and a statement of confirmation of account was also

issued accordingly by the 'Corporate Debtor' to the 'Respondent No. 1'. It is evident that on failure to receive due money on time, the Respondent No. 1 wrote a letter on 19.09.2020 to the 'Corporate Debtor' calling upon to return the outstanding principal amount along with interest and the same was replied by the 'Corporate Debtor' on 27.10.2020 denying the liability and stating that payment was made towards share premium.

**11.** On a pointed query, by this 'Appellate Tribunal', the 'Appellant' could not present any details regarding share application money along with premium towards the alleged investment deemed to have been made by the 'Respondent No. 1' in the 'Corporate Debtor', which does not substantiate the claims of the Appellant that money invested by the 'Respondent No. 1' was not a financial debt and was merely equity infusion along with share premium.

**12.** This 'Appellate Tribunal' observe that the Corporate Debtor has paid interest to the 'Respondent No. 1' and also deducted TDS for two financial years as discussed earlier. The plea taken by the 'Appellant' that since no Loan Agreement was entered into between the parties, the said loan cannot be treated as financial debt in terms of Section 5 (7) and 5(8) of the Code. However, on further query put by this 'Appellate Tribunal' to the 'Appellant', the 'Appellant' could not give any reason as to why interest was paid to the 'Respondent No. 1' for two financial years and why TDS was deducted along with confirmation letter to the Respondent No. 1. The only feeble submission was that Mr. Navin Nagda, persuaded the 'Appellant' to structure the financial investments as loan in the books of the 'Corporate Debtor' with the informal understanding that all three investors will participate in the profits

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of the 'Corporate Debtor' in equal ratio of one-third each. The averments made by the 'Appellant' is not convincing at all.

**13.** It is observed that a 'Financial Creditor' may file an application under Section 7 for initiating CIRP against the 'Corporate Debtor' when the default has occurred. It is for the 'Financial Creditor' to file an application along with the proof of default. If there is a financial debt, which is more than the prescribed amount of Rs. 1 Crore and there is a default and if the application is complete, the application is required to be admitted by the 'Adjudicating Authority'. It is for the 'Adjudicating Authority' to look into the various documents, records and evidence of default as furnished in part V of Form 1 of the application filed under Section 7 of the Code.

**14.** This 'Appellate Tribunal' observe that the Code nowhere prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the 'Corporate Debtor' and where the statements of accounts of the 'Corporate Debtor' are in position to prove disbursement of loan and payment of interest, the absence of formal written agreement would not bar the 'Financial Creditor' (the Respondent No. 1 herein) from initiating the CIRP.

**15.** We take note from the record made available that there have been clear acknowledgments which have been issued by the 'Corporate Debtor' for the money received from the Respondent No. 1 which also mentioned the quantum of interest payment to be made by the 'Corporate Debtor' to the Respondent No. 1. Similarly, we also take into account the fact that TDS was deducted regarding interest paid and the name of the Appellant as

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‘dedutor’ and the name of the Respondent No. 1 as ‘deductee’ is clearly evident. This does not give any scope for benefits of the ‘Appellant’.

**16.** We are therefore convinced that there was clear financial debt in form of loan given by the ‘Respondent No. 1’ to the ‘Corporate Debtor’ and this could not have been treated in any way as equity infusion/ share premium in ‘Corporate Debtor’.

**17.** After careful consideration of all the facts, averments made, by all parties cited judgments, we do not find any error in the ‘impugned order’. The ‘Appeal’ being devoid of any merit is dismissed. No costs. Interlocutory Applications, if any, are closed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Naresh Salecha]  
Member (Technical)**

Simran