

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Ins.) No. 713 of 2020

IN THE MATTER OF;

Mr. Praful Nanji Satra

S/o Nanji Bhanj Satra,
R/o of 701/702, Rehana Heights,
6, Chapel Lane, SV Road, Santa Cruz West
Mumbai-400054.

....Appellant

Versus

Vistra ITCL (India) Limited,

IL&FS Financial Centre,
Plot No. C 22, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai-400051.

...Respondent No. 1

Mr. Mayank Shah,

801, Sudharmaa Apartment, 8th Floor,
N.S. Road, No. 5, JVPD Scheme,
Vile Parle (West),
Mumbai-400056.

...Respondent No. 2

Mrs. Shruti Mayank Shah,

801, Sudharmaa Apartment, 8th Floor,
N.S. Road, No. 5, JVPD Scheme,
Vile Parle (West),
Mumbai-400056.

...Respondent No. 3

M/s. Satra Properties (India) Limited,

Through its Interim Resolution Professional
Mr. Devarajan Raman bearing registration no.
IBBI/IPA-02/IP-N00323/2017-18/10928
F-27, Prime Mall, Irla Church Road,
Vile Parle, (West), Mumbai-400056.

...Respondent No. 4

PRESENT

For Appellant: Mr. Ravindra Kumar, Sr. Advocate with Mr. Malak Bhatt, Mr. Arun Srivastava, Ms. Devanshi Singh, Mr. Rajat Bector, Advocates.

For Respondent: Mr. Prakash Shinde, Mr. Pulkit Sharma, Mr. Nishit Dhruva, Ms. Aalisha Sharma, Advocates for R.1-3, Mr. Devarajan Raman, Advocate for R-4, IRP

**JUDGMENT
(02.08.2022)**

[Per.: Dr. Alok Srivastava, Member (Technical)]

This appeal has been filed by the Appellant (Praful Nanji Satra) against Vistra ITCL India Ltd. and Ors. under section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called 'IBC') aggrieved by the order dated 3.8.2020 passed by the Judicial Member of the National Company Law Tribunal, Mumbai Bench (Adjudicating Authority) in company petition CP (IB) No. 1632 /MB/2019 (hereinafter called the 'Impugned Order') and the order dated 10.2.2022 in C.P 1632/I&B/MB/2019. The Appellant is aggrieved by the Impugned Order which allowed the initiation of Corporate Insolvency Resolution Process (in short 'CIRP') on the basis of documents namely Secured Redeemable Non-Convertible

Debentures Subscription Agreement dated 1.3.2014 and Debenture Trust Deed dated 1.3.2014, both of which are insufficiently stamped and under the Maharashtra Stamps Act which could not be admitted as evidence of debt and default.

2. It is the case of the Appellant that the Corporate Debtor M/s. Satra Properties (India) Ltd. (in short 'SPIL') is engaged in the business of real estate and development of residential and commercial properties, and in order to execute some projects of the corporate debtor it proposed to raise finances up to Rs. 56 crores by way of issuing non-convertible debentures (in short 'NCDs'). He has stated that Respondents No. 2 and 3, namely, Mr. Mayank J. Shah and Mrs. Shruti Mayank Shah had an ongoing business relationship with the corporate debtor through corporate entity Vistra (ITCL) India Ltd. and they agreed to subscribe to 5600 secured redeemable non-convertible debentures (NCDs) having face value of Rs.1,00,000/- i.e. Rupees one lakh each for a total consideration of Rs. 56 crores. Furthermore, he has stated that the debenture holders were to be secured with first equitable mortgage charge of corporate debtor's leasehold rights in a commercial plot in Jodhpur (Rajasthan) admeasuring 4,141 square yards (in short 'Jodhpur Plot'), a personal guarantee of the Appellant Mr. Praful Nanji Satra

and deposit of title deeds of the said Jodhpur Plot. All the monies received from execution of the Jodhpur project were to be deposited in a newly-setup escrow account. In furtherance of this objective, a Secured Redeemable NCD Subscription Agreement was executed on 1.3.2014 (in short called “Debenture Subscription Agreement”) in favour of Respondents No. 2 and 3 for 5400 debentures and in favour of Mr. Shreyans Shah for 200 debentures and consideration of Rs. 56 crores were paid by the NCD holders through various bank transactions to the corporate debtor.

3. It is further stated by the Appellant that the said NCDs were to be redeemed after the end of 12 months from the date(s) of issue with interest in accordance with redemption schedule annexed to the Debenture Subscription Agreement. Furthermore, a Debenture Trustee was appointed pursuant to the Debenture Trust Deed executed on 01.03.2014 wherein the ‘Events of Default’ in the redemption of NCDs are included in Clause 11. In addition, personal guarantee was executed by Mr. Praful Nanji Satra/Appellant on 15.3.2014, and an escrow agreement was executed on 2.12.2014.

4. The Appellant has stated that the debentures could not be redeemed in accordance with the redemption schedule provided in the Debentures Subscription Agreement due to financial difficulties being faced by him, and hence the date of redemption of debentures was revised on 12.2.2015 and it was decided that 4330 debentures which remained to be redeemed (after some debentures were redeemed) would be redeemed as provided in the revised redemption schedule communicated through letter dated 24.2.2017. He has stated that, in the meanwhile, the escrow account of the corporate debtor was frozen by Maharashtra VAT authorities around November 2017 and thereafter the corporate debtor started depositing the monies due to be deposited in the escrow account, in the current bank account of Satra Properties (India) Ltd. He has further claimed that from October, 2017 onwards the Satra Group (which includes the corporate debtor Satra Properties (India) Limited) entered into negotiations with MJS Group (to which Respondents No. 2 and 3 belong) and IIFL group for amicable settlement of liabilities and a settlement was arrived at (hereinafter called "Settlement"), in the course of a meeting held on 31.1.2018, which is recorded in the minutes of this meeting. He claims that the remaining 4330 NCDs amounting to Rs.43.30 crores which remained to be redeemed were part of the overall settlement between

the Satra Group, MJS group and IIFL. The Appellant has further stated that in accordance with the “Settlement”, the Satra group took various steps, which included appointment of MJS group representatives on the board of Satra Property Developers Pvt. Ltd. (in short ‘SPDPL’), transfer of 49% of the shareholding in SPDPL to MJS Group, and procuring NOC from Airports Authority of India for SPDPL project. Thereafter, in two other meetings held between the representatives of Satra Group and MJS group, some more actions were taken in pursuance of the settlement by the parties. The Appellant has claimed that section 7 application filed by Respondents No. 2 and 3 (petitioners of section 7 application) is not maintainable because the debt relating to redemption of NCDs had been settled as part of “Settlement” and therefore, and moreover the two documents viz. Debenture Subscription Agreement and Debenture Trust Deed were insufficiently stamped, as is required under the Maharashtra Stamp Act, and therefore they could not be considered as evidence of the debt and default on the part of the corporate debtor regarding its payment.

5. The Adjudicating Authority admitted the section 7 application vide the Impugned Order dated 03.08.2022 but the members of the two-member bench differed on the issue of impounding of the

Redeemable Non-Convertible Debenture Subscription Agreement and the Debenture Trustee Deed, both dated 1.3.2014 for proper stamping. The Judicial Member in the two-member bench held as follows :-

“ 35. M.A. 180/2020 is partly allowed to the extent that 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, 1958.”

The Technical Member of the bench, on the other hand, held as follows :-

*“m. It is to be noted that this is not a recovery proceeding but it is only a summary proceeding.
n. In view of the above discussion, the MA No. 180 of 2020 filed by the Corporate Debtor is dismissed.”*

This two-member bench framed the following question of law and referred the matter to the Hon’ble President of NCLT for adjudication by an appropriate bench or a third member :-

“43. The question of law framed is as below – whether Debenture Trust Deed dated 1st March, 2014 and Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March, 201, shall be impounded and be sent for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act.”

6. The Hon’ble President of NCLT constituted a single member bench to consider the issue as framed by the two member bench, as

noted above, regarding the matter of impounding of Redeemable Non-Convertible Debenture Subscription Agreement and Debenture Trust Deed, and the third member gave his opinion on the question of law raised by the original two-member bench as follows:-

“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 a Section 7 Application more so when the ‘debt’ and ‘default’ are provided 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.”

7. We thus note that the original bench which considered the section 7 application filed by Respondent No. 1, admitted it, but differed on the question of impounding of the two above-mentioned documents for payment of requisite stamp duty in accordance with the Maharashtra Stamp Act. The Appellant has challenged the Impugned order in this appeal. The issues that arise in this appeal are two-fold:-

- (i) Whether Redeemable Non-Convertible Debentures Subscription Agreement and the Debenture Trust Deed can be relied upon as valid legal documents, since they are insufficiently stamped as required under the Maharashtra Stamp Act, while considering the section

7 application under IBC? And whether the two above-mentioned documents should be impounded by the Adjudicating Authority and forwarded to the competent judicial authority for adequate stamping.

- (ii) Whether, in view of the settlement arrived at between the Satra Group, MJS Group and IIFL in meeting dated 31.1.2018, the debt relating to NCDs survive of the NCD Subscription Agreement and Debenture Trust Deed stand novated?

8. We heard arguments advanced by the Learned Counsels for the parties and the IRP-in-person, and also perused the record.

9. The Learned Senior Counsel for Appellant has argued that the issue framed by the original two-member bench for adjudication by a third member was regarding the impounding of the two above-mentioned documents and sending them for payment of requisite stamp duty, whereas the third member did not give his opinion on this point, but rather held that the issue of stamp duty is irrelevant and the petitioner/corporate debtor were at liberty to raise the issue of insufficient stamping before the appropriate authority in front of whom the financial creditor would present these documents for

enforcing their claim. He has further argued that there has been novation of the Redeemable Non-Convertible Debenture Subscription Agreement through settlement arrived at between the corporate debtor, MJS Group and IIFL in meeting held on 31.1.2018, which is recorded in the minutes of said meeting (in short 'MoM'), which has not been considered in the Impugned Order. He has explained that the MoM held between the representatives of Satra Group, MJS Group and IIFL clearly establishes a comprehensive settlement regarding the financial loans of the Satra Group received from MJS Group and IIFL and in accordance with the decision taken in the meeting follow-up actions were taken, which are recoded in the minutes of the meetings on 17.9.2018 and 27.9.2018. More specifically, he has referred to the transfer of 49% shares of SPIL in favour of MJS Group or their nominees, providing NOC for release of pledge on 49% equity shares by IIFL and transfer of SPIL's Ghatkopar project to MJS Group as proof of the settlement, which meant that the debenture subscription agreement and debenture trust deed stood novated, a fact which should have been considered by the Adjudicating Authority while admitting the section 7 application.

10. The Learned Senior Counsel for Appellant has vehemently argued that the two documents, namely, Debenture Trust Deed and Redeemable Non-Convertible Debenture Subscription Agreement, which have been relied upon by the Respondents for establishing debt are insufficiently stamped and therefore, as per section 34 of The Maharashtra Stamp Act, any instrument which is insufficiently stamped cannot be acted upon or taken as evidence in a court proceeding. He has further argued that this is not merely a technical defect, but goes to the very root of the legality of the two documents and therefore, the initiation of CIRP on the basis of these documents ought to be set aside. He has referred to the decision of the Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407** wherein it is held that when a debt which is due, is interdicted by some law, the section 7 application should be rejected. He has also argued that since all the existing liabilities including the disputed debt stood settled between the parties owing to the novated contract, the existence of debt could not have been proved through the Debenture Trust Deed and the Redeemable Non-Convertible Debenture Subscription Agreement which stood novated. He has stated that, in case the argument of novation of the two agreement/deed is not accepted, his other contention is that since these two documents were insufficiently

stamped, this deficiency should have been first cured and only thereafter the debt could have been looked into from these documents. Finally, the Learned Senior Counsel for Appellant has prayed that if admission order on the section 7 application is upheld, it may be restricted to the Jodhpur project rather putting all the projects of the corporate debtor under CIRP, as the corporate debtor had raised loan for the Jodhpur project through the NCDs and provided security for the Jodhpur project only.

11. In support of his arguments, the Learned Senior Counsel for Appellant has cited the following judgments of the Hon'ble Supreme Court to claim that insufficiently stamped documents cannot be taken as evidence and relied upon in judicial proceedings: -

- (i) **Garware Wall Ropes Limited v. coastal Marine constructions and Engineering Limited (2019) 9 SCC 209.**
- (ii) **SMS Tea Estates Private Limited v. Chandmari Tea company Private Limited (2011) 14 SCC 66.**

12. The Learned Counsel for Respondents No.1 and 2 (in short 'Respondents') has referred to the minutes of the meeting dated

31.1.2018 (attached at pp.497-498 of the appeal paperbook, Vol.III) to emphatically argue that the adjustments through larger settlement arrived at in meeting dated 31.1.2018 only related to liabilities of Rs. 200 crores relating to the MJS Group and full and final settlement with the IIFL Group. He has pointed to the para 29 of the Impugned Order (at pgs. 132-133 of the appeal paperbook, Vol.I) wherein the date of resetting of interest rate of the Non-Convertible Debentures at the request of the corporate debtor has been revised vide letter dated 14.2.2018 (attached at pg. 67 of Reply of Respondents No. 1 to 3) and 27.3.2018 (attached at pg. 60 of Reply of respondents No. 1 to 3) which is regarding consent of Debenture Trustee to resetting of interest. He has also referred to a letter dated 21.1.2019 sent by MJS Infra LLP (attached at page 532 of the appeal paperbook, Vol.III) and another letter dated 24.1.2019 (attached at pg. 533 of appeal paperbook, vol. III) to show that the parties to the letter agreement dated 1.10.2018 and supplemental letter agreement dated 16.10.2018 failed to fulfill their obligations, holding that the transaction as contemplated therein was not executable and therefore the agreement is *non-est* and void. He has thus claimed that letter dated 14.2.2018, which was sent after the meeting dated 31.1.2018 wherein the proposed settlement was discussed, to show that a request for reduction of interest on

Non-Convertible Debentures from 12% to 9% was made even after the “Settlement” that the corporate debtor purports to be an all-encompassing settlement covering the NCDs and their redemption. He has contended that it is obvious that if the “Settlement” was all-encompassing, there was no need for the corporate debtor to send a letter requesting for resetting the interest rate for the NCDs.

13. The Learned Counsel for Respondents has further argued that the original redemption schedule was extended and the same were redeemable in 5 tranches from 2/4/2019 to 2/12/2019 and this time schedule is much after the date of purported “Settlement”. He has contended that if the NCDs were purported to be part of the overall, all-encompassing settlement, there was no reason or need to change the schedule for their redemption to the year 2019. He has argued that since the redemption schedule was breached and there was default in repayment, Respondents No. 2 and 3 sent letter dated 12.4.2019 to the Debenture Trustee/Respondent No. 1 setting out the Events of Defaults that had occurred in respect of the NCDs’ redemption. Therefore, section 7 application was filed as a result of the default in payment of redemption value of the debentures. He has also argued that the debentures were secured with first equitable mortgage of the corporate debtor’s rights in the Jodhpur

Plot, personal guarantee of the Appellant and deposition of title deeds of the Jodhpur Plot and the monies received from the Jodhpur project with the Escrow Agent/Escrow account. The minutes of the meeting dated 31.1.2018, which the Appellant has claimed to record the overall settlement, has no specific mention about either the debentures or release/discharge of mortgage rights of Jodhpur Plot, personal guarantee of the Appellant and return of title deeds of the Jodhpur Plot. He has further argued that the Corporate Debtor continued to address letters to the debenture holders requesting for reduction in interest rate payable on the outstanding NCDs even after the date of purported “Settlement” and therefore, it is incorrect for the Appellant to say that the NCDs are covered in the larger settlement and that the NCD Subscription Agreement was novated. His further argument is that even if the larger settlement is considered without prejudice to the Respondents’ rights, the so-called larger settlement was withdrawn vide letter dated 24.1.2019 of Respondent No. 2 and an earlier e-mail dated 18.12.2018 sent by IIFL to the appellant/corporate debtor. Furthermore, in view of the default in compliance of the corporate debtor’s obligations set out in the MoM of “Settlement” entered into on 31.1.2018, MJ Shah Infra LLP (a group company of the respondent No.2) vide its letter dated 21.1.2019 addressed to Escrow Agent M/s. Samir Sanghvi and

Associates (who were appointed as Escrow agent consequent to the “Settlement”) stating that the transaction as contemplated in the Minutes of Meeting held on 31.1.2018 stood cancelled and the Escrow agent vide his letter dated 8.8.2019 returned back all the documents kept with them in escrow. He has claimed that the stand taken by the Appellant that the amount due and payable as a result of default in redemption of NCDs were part of the “Settlement” does not stand to any reason in view of the circumstances and actions of all the related parties including the corporate debtor.

14. With regard to the payment of insufficient stamp duty with respect to the two documents viz. Debenture Trust Deed and Redeemable Non-Convertible Debenture Subscription Agreement, the Learned Counsel for Respondents has claimed that the proceedings under IBC code are in the nature of summary proceedings and the Adjudicating Authority does not have to receive or record evidence in such proceedings in accordance with the provisions of the Evidence Act. Moreover, he has claimed, the insufficiency in the payment of stamp duty is attributable only to the corporate debtor and the corporate debtor cannot take advantage of his own wrong by setting up the defence of insufficient stamping of the documents which is basically his failing.

15. Finally, the Learned Counsel for Respondents has argued that Article 8 of the Debentures Subscription Agreement sets out the 'Events of Default' and the consequences thereof, whereby the debenture holders are entitled to call for the debentures to be redeemed and requisite amount to be paid. According to him, this admittedly shows existence of debt and also the existence of default in repayment of this debt, and this fact is acknowledged by the corporate debtor in its Audited Balance Sheet and Note to Financial Settlements for the year ending 31.3.2018 and therefore, section 7 application filed by the Respondents has been correctly admitted by the Adjudicating Authority.

16. The Redeemable Non-Convertible Debenture Subscription Agreement (attached at pp. 383-414 of the appeal paperbook, Vol.II) and the Debenture Trust Deed (attached at pp.415-481 of appeal paperbook, vol. III) have been executed between Satra Properties India Limited, Mayank J. Shah, Shreyans J. Shah, Shruti Mayank Shah and Praful N. Satra. It is noted from this document that it was executed to raise funds for the purpose of project at Borivali – Rs. 8 crores, Project at Jodhpur – Rs. 6 crores, and for General Corporate Purposes – Rs. 42 crores, for a total of Rs. 56 crores to be raised by

issuing 5600 secured NCDs of face value Rs. 1 lakh each. As per Article 3 of the Debentures Subscription Agreement, the redemption of the debentures has to be done by SPIL after the end of 12 months from the date of allotment along with interest and redemption schedule given in Schedule 1 of the agreement. The Debenture Trust Deed has been entered into by SPIL and Praful N. Satra in favour of IL&FS Trust Company Limited, wherein the 'Event of Default' is given in clause 11 of the Debenture Trust Deed. More specifically clause 11(A) gives 'Events of Default' as follows :-

Clause 11: EVENTS OF DEFAULT AND REMEDIES

Xx xx xx xx xx xx

(A) The continuous occurrence of any one or more of the following events, shall constitute an Event of Default:

- (i) Default is committed in payment of the Debenture Amount or any other amount in respect of the Debentures on the due date (s) and such default continued for 30 days.*
- (ii) Default is committed in the payment of any interest on the Debentures; and such default continued for 30 days."*

Xx xx xx xx xx

17. As per the Escrow Agreement (attached at pp 482 – 496 of appeal paper book, Vol. III), Axis Bank Limited is the escrow bank and IL&FS First Company Limited is the differential trustee and the

escrow account has to be opened by SPIL in the name of "Satra Properties (India) Ltd-Escrow A/c " and the escrow bank is given the responsibility of operating the escrow account. Furthermore, clause A of the recital mentions that 'one of the terms of the issuance of debentures is that the Receivables from the proposed project at Jodhpur, shall be routed through/deposited in the Escrow Account'. Moreover, the said debentures is to be secured through first equitable mortgage of a commercial plot in Jodhpur ad-measuring 4,141 square yards, personal guarantee of Mr. Praful N. Satra and deposit of title deeds of Jodhpur plot.

18. The minutes of the meeting dated 31.1.2018 (attached at page 497 of appeal paper book, Vol. III) shows that Mr. Praful Satra and/or his different entities have availed finance from MJS Group across several entities, out of which only INR 200 crore is recorded to be adjusted against the Ghatkopar Project. Similarly, the MoM also state that Mr. Praful Satra and/or his entities availed certain credit facilities from IIFL which would be settled fully and finally through this settlement. The MoM of "Settlement" dated 31.1.2018 goes on to mention that a new SPV shall acquire development rights of project Satra Hills and Satra Group shall ensure transfer of the development rights of project Satra Hills to the new SPV. It also

mentions that Satra Group shall procure a no-objection certificate from Airport Authority of India (AAI) to construct upto a height of 103 meters (Phase A), and upto a height of 150 meters (Phase B) and once the NOC towards phase A has been procured by Satra Group, release of the security over the entire Kalina Project ad-measuring 8300 square meters will be released and furthermore, once NOC towards phase B has been procured by Satra Group. security over (Borivali and Washi project receivables, along with all funds received after 1 January 2018) will be released. It is noted that the MoM dated 30.1.2018, which according to the Appellant purports to establish a larger settlement covering the Debenture Subscription Agreement and the Jodhpur Project is not supported by the recording in the said minutes where neither the Debenture Subscription Agreement and Jodhpur project find any mention. The “Settlement” record mentions the Satra Hills project in Ghatkopar and security related to Borivali and Washi Projects receivables but nowhere it mentions the Jodhpur Project for which money was raised to issuance of non-convertible debentures. Moreover, even this settlement (which does not cover the NCDs) was cancelled vide letter dated 17.1.2019 of IIFL informing of default in compliance of the corporate debtor’s obligations and a letter dated 21.1.2019 of the MJ Shah Infra LLP addressed to M/s Sameer Sanghvi and

Associates, (the escrow agent) stating that the transaction as contemplated under the purported “Settlement” stood cancelled. All these developments and circumstances/actions are very clear indication of the fact the Debenture Subscription Agreement and Debenture Trust Deed were not supposed to be part of the purported overall settlement dated 31.1.2018.

19. We, therefore, find force in the argument of the Learned Counsel of Respondents that the settlement entered into by SPIL and Praful Satra with the MJS Group and IIFL only covered loan taken from MJS Group upto Rs. 200 crores only and it did not cover the non-convertible debentures and that there was no novation of the NCD subscription agreement as a result of the larger settlement.

20. Our inference is also supported by the fact that pursuant to various requests by the Corporate Debtor, the original redemption schedule of the NCDs which was 12 months after the issue of debentures, was extended and the same were to be repaid in five tranches from 2nd April 2019 to 2nd December 2019. We also accept the argument that if the NCDs were to be a part of the overall ‘larger settlement’ dated 31.1.2018, why would the corporate debtor offer redemption of NCDs to be made in five tranches from 2nd April 2019

to 2nd December 2019 as these dates are much after the purported “Settlement”. We also note that the corporate debtor made a request to the debenture holders for resetting the interest rate from 12% to 9% vide letter dated 14.2.2018 (attached at page 69 of reply of Respondent Nos. 1 to 3). This request for resetting of the interest rate on redemption of NCDs was also done on a date after the date of “Settlement”, which also supports the inference that the “Settlement” did not cover the NCDs and that the NCD Subscription Agreement was novated. Further, our view about the NCDs being kept out of the overall settlement is strengthened by the balance sheet for the year ending 31.3. 2018, (attached at page 558 of the appeal paper book, volume III) wherein under the heading "the Standalone Notes to Financial Statements for the year ended March 31, 2018" a specific mention has been made as follows –

“9% Redeemable non-convertible debentures of INR 1 Lakh each

Note 1: *Non-convertible debentures (NCD) are secured against first equitable mortgage over the leasehold rights on plot at Jodhpur and charge over 4eswcrow account on receivables from the project situated at Jodhpur. The interest on NCD is 9% p.a. with 9 months compounding, payable at the time of redemption, the NCDs are redeemable from April 2019 to December 2019.”*

21. We are, therefore, not persuaded by the argument of the Learned Senior Counsel of the Appellant that the Debenture Subscription Agreement and the Debenture Trust Deed, both

executed on 1.3.2014, stood novated through the “Settlement”.

22. The second issue that has been emphatically raised by the Learned Senior Counsel for Appellant relates to the inadmissibility of the Debenture Trust Deed and the Non-Convertible Debenture Subscription Agreement as valid and legal documents which could be relied upon in the admission of the section 7 application as they are not sufficiently stamped as required under the Maharashtra Stamp Act.

23. We peruse the affidavit-in-reply submitted by the Appellant in response to the section 7 application (refer Diary No. 25774 dated 1.3.2021). It is revealed in the reply, that the Appellant (Applicant of section 7 application) has not denied the execution of the Non-Convertible Debenture Subscription Agreement and Debenture Trust Deed, rather they admit execution of the documents. The para 6 of the Reply of Corporate Debtor to the section 7 application (at pg. 378 of the Reply of Corporate Debtor, Dy. No. 25774 dated 1.3.2021) us noted in this context :-

“It would not be out place to mention that the Petitioner No. 2 including the MJS Group and Petitioner No. 3 have breached and resiled from their obligations under the novated Contract/Agreement between the parties, and the Respondent is in the process of taking steps to file a suit for recovery of

damages for breach of contract, against the Petitioner Nos. 1 and 3 and their associate entities forming part of the MJS Group. The Respondent submits that the facts elucidated hereinafter, clearly establish that the debt and liabilities under the loan agreements that are the subject matter of this Petition stood discharged and the agreements stand novated in view of the overall settlement and larger understanding and therefore, there cannot be any default, as alleged or otherwise.”

(emphasis supplied)

24. The Corporate Debtor has, in his reply as above, only raised the issue of these agreements being novated in light of the ‘settlement and larger understanding’ having taken place between the Appellant and the MJS Group. Thus, admittedly, he has not raised the question of execution of the said documents.

25. The Learned Senior Counsel for Appellant has referred to the judgments of Hon’ble Supreme Court in **Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited (2019) 9 SCC 209** and **SMS Tea Estates Private Limited v. Chandmari Tea company Private Limited (supra)** to claim that documents that are insufficiently stamped cannot be admitted as evidence, and therefore, the Redeemable Non-Convertible Debenture Subscription Agreement and Debenture Trust Deed should not have been considered by the Adjudicating Authority while adjudicating the section 7 application. On the other hand, the

Learned Counsel for Respondents has claimed that the Hon'ble Supreme Court has overturned the above two judgments in **Garware Wall Ropes Limited (supra)** and **SMS Tea Estates Private Limited (supra)** by its judgment in **N.N. Global Mercantile Pvt. Ltd. (supra)** holding therein that there is no requirement for stamping and registration of arbitration agreement, which constitutes a separate agreement under the theory of separability and *kompetenz – kompetenz*. We are of the view all the three judgments relate to the question of arbitration in relation to a contract. In our view, the corporate debtor has not raised any issue about the execution of the two documents in question in this case and hence we do not consider that these judgments (supra) will be applicable in the present case.

26. The Hon'ble Calcutta High Court in W. P. No. 5595 (W) of 2020 With C.A.N. 3347 of 2020 Univalue Projects Pvt. Ltd. Versus The Union of India & Ors. And W.P. No. 5861 (W) of 2020 With C.A.N. 3937 OF 2020 Cygnus Investments and Finance Pvt. Ltd. & Anr. Versus The Union of India & Ors., while quoting various judgments of the Hon'ble Supreme Court, has held as under:

*“50. The Supreme Court in **Innoventive Industries (supra)**, while considering Section 7 of the IBC, 2016 directed itself to*

the AA Rules, 2016 and observed the following vis-à-vis Rule 4 and its appendage Form-1:

“28. ...[U]nder Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires....documents, records and evidence of default in Part V....[T]he speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of the evidence furnished by the financial creditor, is important.”

“30. On the other hand, as we have seen, in case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred...”

(Emphasis supplied)

Rohinton Nariman, J., relied upon the above quoted paragraphs of **Innoventive Industries (supra)** while authoring his judgment in **Swiss Ribbons (P) Ltd. (supra)**. In addition to this, he also considered the pertinence of the IU in paragraph 31 before quoting the other sources of evidence which evidence a financial debt, in the following words:

“32. **Apart from the record maintained by such utility,** Form I appended to the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt:

- a) Particulars of security held, if any, the date of its creation, its estimated value as per the creditor;
- b) Certificate of registration of charge issued by the registrar of companies (if the corporate debtor is a company);

c) Order of a court, tribunal or arbitral panel adjudicating on the default;

d) Record of default with the information utility;

e) Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925;

f) The latest and complete copy of the financial contract reflecting all amendments and waivers to date;

g) A record of default as available with any credit information company;

h) Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891.”

(Emphasis supplied)

Therefore, all **eight classes of documents enumerated under Part V of Form-1 appended to the AA Rules, 2016** have been held by the Supreme Court to be ‘other sources which evidence a financial debt’. On a close due diligence of the various provisions above, including section 7 of the IBC, 2016 read with Rule 4 of the AA Rules, 2016 and Form-1 therein, and regulation 8 of the CIRP Regulations, 2016, observations of the Supreme Court in paragraph 32 (provided above), it becomes crystal clear that apart from the financial information of the IU, eight classes of documents can be considered to be sources that evidence a “financial debt”.

On a close due diligence of the various provisions above, including section 7 of the IBC, 2016 read with Rule 4 of the AA Rules, 2016 and Form-1 therein, and regulation 8 of the CIRP Regulations, 2016, observations of the Supreme Court in paragraph 32 (provided above), it becomes crystal clear that apart from the financial information of the IU, eight classes of documents can be considered to be sources that evidence a “financial debt”.

(Emphasis supplied)

27. Looking to the facts of the present case, we note that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Regulations, 2016 (hereinafter called 'Regulations') lays down as explained in the above judgment the list of documents in Part V of the Form I which could be used for proving the debt and default in section 7 application.

28. We also consider the judgment in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, wherein Hon'ble Supreme Court has held as follows :-

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

We note that that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which can be cured.

29. Therefore, on the basis of detailed discussion in the aforesaid paragraphs, we are of the view that the Non-Convertible Debentures are clearly outside the purported “Settlement” arrived in the meeting held on 31.3.2018. Therefore, the Non-Convertible Debentures Subscription Agreement and the Debenture Trust Deed are not novated as a result of the “Settlement” and are relevant in establishing the debt of the corporate debtor as claimed in section 7 application, whose repayment is in default as per clause 11 of the Debenture Trust Deed. We, therefore, come to the conclusion that the section 7 application was admitted correctly by the Adjudicating Authority. We do not find merit in the appeal and accordingly dismiss it.

30. There is no order as to costs.

(Justice Ashok Bhushan)
Chairperson

(Dr. Alok Srivastava)
Member (Technical)

(Ms. Shreesha Merla)
Member (Technical)

New Delhi

2nd August, 2022

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