

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

IA (I.B.C) No. 192/MB/2025

in

CP (IB) No. 1046/MB/2023

*[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National
Company Law Tribunal Rules, 2016]*

HIVE CARBON-ZERO DEVELOPERS PRIVATE LIMITED

Ground Floor, Rajpipla
Opp. Standard Chartered Bank
Linking Road, Santacruz (West)
Mumbai- 400054, Maharashtra.

...Applicant

V/s

MR. DINESH KUMAR DEORA

RESOLUTION PROFESSIONAL OF

M/S SNEHANJALI AND S.B. DEVELOPERS PRIVATE LIMITED

B-202, ABT Apartment, Rani Sati Marg
Near Navjivan School, Malad (East)
Mumbai-400097, Maharashtra.

...Respondent/RP

IN THE MATTER OF:

MR. SANTOSH ANANDA SHETTY AND ORS

...Financial Creditor

V/s

**M/s. SNEHANJALI AND S.B. DEVELOPERS
PRIVATE LIMITED**

...Corporate Debtor

Pronounced: 24.01.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)



Appearances: Hybrid

Applicant: Adv. Nausher Kohli, Adv.Sanaya Patel & Adv.Richa Phulwani i/b
Indus Law

Respondent: Adv. Harsh Seth & Adv. Niyati Merchant i/b MDP Legal

ORDER

IA (I.B.C) No. 192/MB/2025

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

- 1.1 This IA (I.B.C) No. 192/MB/2025 has been filed on 03.12.2024 by Hive Carbon-Zero Developers Private Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of the National Company Law Tribunal Rules 2016, to set aside the emails dated 21.08.2024 and 28.10.2024 addressed to the Applicant by the Respondent/Resolution Professional (RP), rejecting the claim filed by the Applicant under Form C dated 30.05.2024 on the ground that the rejection of claim is illegal and in contravention of the provisions of the IBC and to direct the RP to admit the claim of the Applicant.
- 1.2 The Applicant is the majority shareholder of the Corporate Debtor (CD). We admitted the CD into Corporate Insolvency Resolution Process (CIRP) in C.P. (IB) No. 1046/MB/2023 under Section 7 of the IBC for default of amount exceeding One Crore Rupees *vide* order dated



07.03.2024. Mr. Dinesh Kumar Deora was appointed as the IRP and later his appointment as RP was confirmed for conducting CIRP.

2. CONTENTIONS OF THE APPLICANT

- 2.1 The Applicant upon CD's request letter dated 19.07.2023, extended financial assistance to the CD. The CD and the Applicant executed a loan agreement on 28.07.2023 for an amount of Rs.68,00,00,000/- (Sixty-Eight Crore Rupees) with interest at the rate of 15% p.a. from the date of disbursement of amount until repayment. The Applicant disbursed an amount of Rs.52,30,02,640/- on 28.07.2023.
- 2.2 Pursuant to the admission of the CD into CIRP, the Applicant submitted a claim with proof as a financial debt on 11.06.2024 to the Respondent/RP in Form C on 30.05.2024, in electronic form for Rs.52,30,02,640/- (Fifty-Two Crore Thirty-Lakh Two Thousand Six Hundred and Forty Rupees).
- 2.3 However, the Respondent/RP *vide* email dated 18.06.2024 requested the Applicant to resubmit the Claim Form with certain rectifications with respect to the signatures on the Claim Form. The Applicant duly complied with the same and resubmitted the amended Claim Form by email dated 27.06.2024. Despite due compliance, the RP addressed an email dated 22.07.2024 to the Applicant stating that he is unable to treat the Applicant's claim as financial debt for the reason that he could not locate the copy of the Board Resolution passed by the CD with respect to the loan extended by the Applicant as well as authorised signatory of the CD who authorised receipt of the said loan as also on the ground that the Loan Agreement is



not a registered document. Therefore, the Claim Form was not accepted by the RP.

- 2.4 The Applicant by email dated 30.07.2024, extended complete co-operation to the RP by clarifying the points raised by him and provided an extract of the Board Resolution for the meeting held on 14.07.2023, passed by the CD relating to the loan availed by it from the Applicant.
- 2.5 In spite of the clarifications provided by the Applicant, the RP *vide* another email dated 21.08.2024, raised frivolous objections as regards the said Board Resolution shared by the Applicant to assist the process of verification of its Claim Form, and for the first time, observed that the financial statements of the CD do not contain any interest expense. On 28.10.2024, the RP informed the Applicant that the Claim Form was not admitted. In response, the Applicant *vide* its email, on the same day, provided a detailed and satisfactory explanation to the RP and requested him to reconsider his actions as the rejection is without any basis. However, the email dated 28.10.2024, rejecting the Claim Form is without any valid reasons and without considering the Applicant's response.
- 2.6 Rejection of its Claim Form by the RP is erroneous and vitiated by non-application of mind. The RP has rejected the Claim Form on mere technicalities that no response was provided by the Applicant to his email dated 21.08.2024 even though the Applicant duly answered the queries through the email dated 28.10.2024. The RP failed to consider that the Applicant has already produced the proof of disbursement of loan amount



given to the CD. The receipt of loan amount has not been contested by the CD and, accordingly, the Applicant is a financial creditor. Therefore, the Respondent/RP may be directed to admit its claim.

3 CONTENTIONS OF THE RESPONDENT/RP

- 3.1 The Applicant is a related party of the CD and that the Applicant is a 100% shareholder of the CD. The unregistered Loan Agreement dated 28.07.2023 between the Applicant and the CD was signed by the same person i.e., Mr. Jia Wei on behalf of the both the Applicant and the CD. The Board Resolution dated 14.07.2023 submitted by the Applicant was also signed by the same Mr. Wei. The monies have moved from one hand to another creating a huge liability on the CD to the prejudice of the creditors. Thus, the entire transaction appears to be dubious and that is the reason for not admitting the claim of the Applicant.
- 3.2 The RP upon his appointment specifically requested on 11.06.2024, to provide details of the secretarial records of the CD for the Financial Year (FY) 2023-2024, including the Board Minutes. Reminders were also sent to the Applicant by the RP on 13.06.2024 and 17.06.2024. However, the Applicant responded that all documents had been handed over and that the Applicant is not in possession of any other documents. On perusal of the documents, it was noticed that the Applicant had not provided secretarial records. It was reasonably assumed that no board meeting of the CD took place during the FY 2023-2024. The RP *vide* email dated 21.08.2024, called upon the Applicant to provide reasoning as to why the Board Resolution ought to be



treated as authentic. A follow-up email was also sent on 28.10.2024 by the RP for which the Applicant in its email dated 28.10.2024 failed to clarify.


- 3.3 The purported debt is not a financial debt under the provisions of IBC. The financial statements provided by the Applicant do not contain any interest expense on the loan granted to the CD. The Claim Form submitted by the Applicant does not contain any interest amount and had only claimed the amount transferred by the Applicant. The Applicant has acknowledged that no interest is due on the amount so transferred. Therefore, it is settled law that monies disbursed for time value of money only constitute essential ingredient for being a financial debt.
- 3.4 The claim of the Applicant arising out of the Loan Agreement ought not to be admitted as the Loan Agreement is insufficiently stamped under the provisions of the Maharashtra Stamp Act, 1958, and is unregistered. Any instrument which is insufficiently stamped and unregistered cannot be enforced by law.
- 3.5 Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (CIRP Regulations), the format for Claim Form C has been specified. The Applicant deliberately deleted the declaration in paragraphs 6 and 7 where the Applicant had to declare whether the Applicant is related party and that he is eligible to be part of the CoC or not. Hence, the Applicant's claim is not admissible as a financial debt.

4 ANALYSIS AND FINDINGS

- 4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the Applicant and the Respondent/RP.




4.2 The first issue to be considered is whether the Applicant is a related party to the CD, and therefore, whether it is ineligible to make the claim under the IBC. On 21.08.2024 the RP made an observation that the true copy of the Minutes was signed by the same Director who has been given authority for the same in the Board Meeting. The same Director also had signed the Loan Agreement as lender, thus giving an impression to the Respondent/RP that the lender and the borrower are the same. It is admitted by the parties that the Applicant is a 100% shareholder of the CD and thus it is a related party within the meaning of Section 5(24) of the IBC. The Applicant submitted its claim as a financial creditor in Form C in terms of Regulation 8 of the CIRP Regulations. According to the Respondent/RP, the Applicant is an alter ego, who acted as the borrower and lender at the same time. However, we find that the Applicant acted as a lender when the Applicant Company transferred money through Mr. Jia Wei, in his capacity as its Director. In his capacity as also the Director of the CD, Mr. Wei borrowed the facility from the Applicant Company. It is in evidence that the Board Minute for accepting the loan facility from the Applicant was signed by Mr. Wei for and on behalf of the CD, the borrower. Mr. Jia Wei was a common Director of both the Applicant Company and the CD. In view of the above, we do not consider the Loan Agreement between the Applicant Company and the CD as also the Board Minutes of the CD signed by Mr. Wei, the individual Director defective. He is not ineligible either to represent the Applicant that offered



loan facility to the CD or to represent the CD as its Director in signing the Board Minute. We, therefore, hold that Section 5(24) or 5(24A) of the IBC relating to related party is not in respect of ineligibility to make claims as financial creditor under the IBC or the Regulations with the resolution professional. Hence, this issue is held in favour of the Applicant.


- 4.3 As regards rejection of the Applicant's claim on account of wrong Form under the CIRP Regulations, on 11.06.2023, the Respondent/RP asked the Applicant to provide details of secretarial records for the FY 2023-2024 relating to the Board Meeting as proof for disbursement of amount by the Applicant to the CD. The Applicant informed the RP that all the documents were already handed over to the CD. However, the Applicant later provided Board Resolution dated 14.07.2023 to the Respondent/RP. In the email dated 21.08.2024, the Respondent/RP observed, *inter alia*, that there were no secretarial records for FY 2023-2024 because of which he came to a "*reasonable assumption*" that no Board Meeting took place during 2023-2024. The Respondent further informed the Applicant that the financial statements provided by the Applicant did not contain any interest expense. According to the RP, in order for a claim to be classified as financial debt, the funds should be interest-bearing. The RP then asked the Applicant to provide reasoning as to why the true copies of the Board Minutes should be treated as authentic record of the CD. The RP also advised the Applicant to submit the claim under Form F of the CIRP Regulations as 'Other Creditor'. On



receiving reply from the Applicant, the Respondent/RP by email dated 28.10.2024 stated that since the Applicant did not submit Form-C as per option given by the Respondent, he was declining to admit the claim.


4.4 During the final argument, the Respondent/RP was asked a specific question as to whether the loan payable to Kotak Mahindra Investments Limited (Kotak) was paid off from the amount of Rs. 52,30,02,640.58/- advanced by the Applicant, to which the Ld. Counsel for the Respondent fairly submitted to the affirmative. Moreover, the bank statement of the Applicant shows the disbursement of Rs. 14,57,290; Rs. 25,00,00,000; 27,15,45,350 (Totalling Rs. 52,30,02,640/-) all on 28.07.2023 into the account of the CD. This has not been disputed by Respondent/RP. Further, during the arguments the Ld. Counsel for Respondent/RP also submitted that presently the CD does not have any financial creditor since the loan payable to Kotak was already cleared by the CD. At present, the Financial Creditors of the CD only comprise of home buyers and other creditors.

4.5 Another objection raised by the Ld. Counsel for the Respondent/RP during the arguments is that Form-C (submission of claim by Financial Creditors) submitted by the Applicant dated 30.05.2024 is incomplete and that the Applicant deliberately deleted paragraphs 6 & 7 under the declaration part and hence, the Form is defective and their claim cannot be accepted. Paragraphs 6 & 7 of Form-C relate to declaration that the Applicant is not a related party to the CD and is eligible to join the



Committee of Creditors (COC) even though, the Applicant is a related party. However, we find that the request for assistance in the repayment of credit facilities availed from Kotak dated 19.07.2023 by the CD addressed to the Applicant; the Board Resolution dated 14.07.2023 of the CD to avail of certain loan from the Applicant and the actual disbursement of Rs. 52,30,02,640/- indicate the related party position of the Director of the Applicant and the Director of the CD. The individual who signed the loan agreement for and on behalf of the borrower is also a Director of the CD. The same Director signed the minutes of the Board Resolution. The Ld. Counsel for the Respondent/RP contended that the same individual signed on behalf of the Applicant and the CD in the Loan Agreement. On a close scrutiny of the Board Resolution shows that the Board further resolved that a certified copy of the resolution be furnished under the signature of any of the Directors of the CD. Hence, we hold that there is nothing wrong in Mr. Jia Wei, Director of the CD signing the Minutes.

- 4.6 The next issue to be decided is whether the claim made by the Applicant constitutes 'financial debt' under the IBC. On perusal of Form-C submitted by the Applicant, we observe that the Applicant first submitted proof of claim in Form-C on 30.05.2024. Although, paragraphs 6 & 7 under the declaration are missing in the Form-C, the fact that the Applicant is 100% shareholder of the CD is evident from other documents as made available to the Respondent/RP. There is no bar in a related




party making a claim of financial debt before the RP. The RP is also justified in admitting such a claim if there is evidence to show that there existed a financial transaction between the parties. In the instant case, the Loan Agreement and disbursement indicate that certain monies have been transferred to the account of the CD by the Applicant. It is also admitted by the Respondent/RP that the liability of the CD towards Kotak was discharged by also utilising the amount transferred by the Applicant into the CD's account. Considering the above facts and circumstances only lead us to the conclusion that the amount of Rs.52,30,02,640/- received in the account of the CD by the Applicant deserve to be admitted as a financial debt by the Respondent/RP.

- 4.7 The law is already settled that role of a resolution professional is to collect, collate and verify the claims as received from creditors and that he does not possess any adjudicatory functions under Chapter II of the IBC. A resolution professional need not take the burden of inferring things and coming into “reasonable” and “probable” “assumptions” and “presumptions” regarding existence or otherwise of board meetings or similar fact-finding exercise. Rather, his duty is to submit all the claims collected, collated and verified and submit to the CoC for its consideration. There is no evidence to suggest that the RP has done that exercise and that the Authorised Representative (AR) did apply any commercial wisdom in taking a call for acceptance or otherwise of the claim. Hence, we feel that the RP exceeded his jurisdiction of collecting,



collating and verifying the claims received from the Applicant but attempted to adjudicate the eligibility or otherwise of the Applicant to make a claim. The Respondent/RP further contends that the claim made by the Applicant does not constitute 'financial debt' within the meaning of Section 5(8) of the IBC. According to him, there is no commercial transaction between the Applicant and the CD as the agreement dated 28.07.2023 did not contain any provision for payment of interest. Further, he contends that the CD's balance sheet does not reflect the component of payment of interest, and hence the amount cannot be regarded as 'financial debt'. However, we observe that the Loan Agreement dated 28.07.2023 clearly provided for "an interest at the rate which shall provide the Lender" an IRR of 15% per annum compounded annually from the Disbursement Date until the Repayment Date by the Borrower (CD). Further, it is not necessary to have any interest component for a debt disbursed against the consideration for the time value of money. In other words, a debt may still be financial debt even without any interest component. In the instant case, the transaction between the Applicant and the CD, which are two corporate persons, is for business purposes and not for any personal reasons. Admittedly, amounts have been disbursed by the Applicant to the account maintained by the CD on 28.07.2023. This position has been clarified by the Hon'ble Supreme Court in *Orator Marketing Private Limited Vs. Samtex Desinz Private Limited* [(2023) 3 SCC 753], wherein it was held that if the outstanding



principal due in respect of a loan is without any interest payable, the outstanding principal would qualify as 'financial debt' under Section 5(8) of the IBC. In any case, we find that the amount paid by the Applicant was raised by the CD under a transaction having commercial effect of borrowing within the meaning of Section 5(8)(f) of the IBC. Hence, we hold that the amount claimed by the Applicant is a financial debt.

4.8 In view of the above discussions, we direct the Respondent/RP to admit Rs.52,30,02,640/- disbursed by the Applicant to the CD as a financial debt.

4.9 One of the objections raised by the Respondent/RP is that the agreement dated 28.07.2023 is under-stamped and cannot be regarded as legal. According to him, an under-stamped document is illegal and does not create any right or obligation between the parties. However, law is settled that sufficiency or otherwise of stamp duty paid on a document is not to be decided by the Adjudicating Authority under IBC and the same should be left to the authorities authorised to determine the same. This Bench has also considered the issue in *DBS Bank India Limited vs Parakkott Investment India Private Limited [CP (IB) No. 790 of 2020]*. In view of the above, this argument of the Respondent/RP is unsustainable.

ORDER

In the result, IA 192/2025 is allowed and disposed of in terms of the above.



The designated Registrar is directed to forward electronic version of this Order to the IBBI, only for the purposes of information and record.

Ordered accordingly.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

/Vani/