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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-III

C.P.No.IB-571/(ND)/2017

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

SUSHANT ANEJA

S/o Sh. Naresh Kumar,
R/o 3-a-22, Jawahar Nagar,
Sri Ganganagar - 335001
Rajasthan.

NARESH KUMAR ANEJA (HUF)

Through its Karta Sh. Naresh Kumar Aneja,
R/o 3-A-22, Jawahar Nagar,
Sri Ganganagar – 335001,
Rajasthan.

.....Financial Creditors/Applicants

VERSUS

M/s J. D. ANEJA EDIBLES PRIVATE LIMITED

Through its Authorized Representative
Registered Office at:
335-336, Phase-II,
Udyog Vihar,
Sriganga Nagar – 335002,
Rajasthan.

.....Corporate Debtor/Respondent

IB-571/(ND)/2017

Sushant Aneja & Anr. vs. JD Aneja Edibles Pvt. Ltd.



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Coram:

**R.VARADHARAJAN,
Hon'ble Member (Judicial)**

**Dr. V.K. SUBBURAJ
Hon'ble Member (Technical)**

Counsel for the Applicant: Mr. Bharat Arora, Advocate

Counsel for the Respondent: Ms. Varsha Banerjee, Mr Milan Singh, Mr. Kunal
Godwani, Ms. Swati Sharma, Mr. Gaurav Rana,
Mr. Ashutosh Gupta, Advocates



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ORDER

Date: 04.06.2018

1. This is an application which has been filed by the Applicants under the provisions of Insolvency and Bankruptcy Code, 2016 who claim to be the Financial Creditors of the Respondent Company which has been termed as the Corporate Debtor. The transaction leading to filing of the present Application as reflected in the application is stated to be as under:

- a. During F.Y. 2004-05 to 2012-13 Applicant No. 1 and Applicant No. 2 advanced loans to the Respondent Company amounting to an aggregate sum of Rs.28,05,245/- and Rs. 27,68,941/-, respectively, by the end of F.Y. 2012-13.
- b. During the F.Y. 2012-13 the Respondent Company deposited TDS for the interest due to the Applicants but failed to remit the interest amounts after deduction of TDS to the Applicants' accounts.
- c. During the F.Y. 2013-14 to 2016-17 the Respondent Company neither paid the interest not deposited the TDS, however, the original loan



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amounts were reflected in the balance sheets of the Respondent Company.

- d. Applicant No. 1 as well as Applicant No. 2 wrote demand letters dated 16.11.2016 demanding outstanding loan of Rs. 51,27,532/- and Rs. 50,16,258/-, respectively. The Applicants also sent legal notices dated 26.11.2016 for remittance of the outstanding amounts. However, there was no reply or repayment, according to the Applicants.
- e. The Applicants sent two separate notices dated 15.09.2017 calling upon the Respondent Company to repay outstanding debts amounting to a sum of Rs. 58,89,342/- to Applicant No. 1 and Rs. 58,13,110/- to Applicant No.2. However, the acceptance of these notices was refused by the Respondent Company.
- f. In November 2017 the Applicants filed the present application before this Tribunal in which the total amount due from the Respondent Company has been shown to be Rs.1,20,53,525/-, including interest.



2. After due service of notice it is seen from the records of this Tribunal that the Respondent had entered appearance on 11.01.2018 on which date an opportunity was given by this Tribunal to the Respondent to file its reply to the Application as filed by the Applicants and the same was filed. Thereafter, a rejoinder was filed by the Applicant to the Respondent's reply.

3. The contentions made by the Respondent in the reply are as follows:

- a. The Respondent has denied that the amount stated in the application is financial debt. The Respondent contends that the funds were infused by the applicants in the Respondent Company in the capacity of promoters/shareholders for running of operations of the Respondent Company. Thus, the amount was a contribution to the capital structure of the Respondent Company as quasi-capital and the mere recording of the fund under the head of loans and advances in the books of the Respondent Company does not convert the same into financial debt.
- b. The Respondent also states that the loan purportedly extended by the Applicants to the Respondent Company has been set off. The Respondent submits that a dispute arose between the Applicants and



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their brother Mr. Pawan Kumar Aneja in 2013 which was settled in 2015 and a settlement agreement dated 08.09.2015 was entered into between the applicants and Pawan Kumar Aneja.

c. It is submitted that according to the settlement agreement Applicant No. 2 inherited three properties – Aneja Industries, Udyog Vihar, Shri Gangapur; Solanki Bhawan Lakkad Mandi; 2 bigha agricultural land, Padampur Road, Shri Ganganagar; 14 bigha agricultural land (restricted to 60%) – and Pawan Kumar Aneja inherited the Respondent Company. Further, all the loans and advances standing in the accounts of both parties as cross entries were settled. In other words, loan given by Naresh Kumar Aneja to the Respondent Company was set off with the loan given by Pawan Kumar Aneja's owned Respondent Company to Aneja Industries (which is now owned by Naresh Kumar Aneja due to the settlement agreement).

d. It is submitted that since the amount was given as quasi-capital there were no terms and conditions for repayment, and no date was specified as to when the amount would become due and payable and thus, there is no default in repayment of the said amount.



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e. It has been further submitted that the purported debt has not crystallized and is a matter of dispute which is pending before three arbitrators.

4. The Applicants in the rejoinder have denied the execution of the settlement agreement which according to paragraph 3 of the settlement agreement was to be executed by 30.09.2015. It is also submitted that the Respondent Company has not addressed the loans extended by Applicant No. 1 Sushant Kumar Aneja and Applicant No. 2 Naresh Kumar Aneja (HUF). It is further submitted that absence of a written agreement prior to extension of credit does not entitle the Respondent Company to escape liability.

5. We have perused the Application and the subsequent responses filed by the Applicants as well as the Respondent and the following issues seem to arise which have to be addressed for adjudication of the present application:

I. Whether there exists a financial debt owed by the Respondent Company to the Applicants?



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II. Whether there has been a default in payment of the financial debt, if any?

Issue I

6. The advancement of the amount from the Applicants to the Respondent Company is not in dispute as the Respondent in its reply admits that the Applicants advanced funds to the Respondent Company. However, the nature of the money advanced is disputed.
7. The Applicants have placed on record Customer Account Ledger Report of Sushant Aneja maintained by the Oriental Bank of Commerce for the period 01.01.2005 to 26.10.2017 and the Customer Account Ledger Report of Naresh Kumar (HUF) maintained by the Oriental Bank of Commerce for the period 06.04.2007 to 26.10.2017. The Applicants have also placed on record the audited balance sheets of the Respondent Company for the years ended 31.03.2015 and 31.03.2016. The balance sheets reflect the amounts of Rs. 27,66,941/- and Rs. 28,05,245/- under the heading 'Unsecured Loan' as loan owed to Naresh Kumar Aneja HUF and Sushant Aneja. Further, the Applicants have also filed the income tax returns of the Applicants for the



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A.Y. 2013-2014 wherein the payment of TDS by the Respondent Company on behalf of the Applicants is reflected.

8. The Respondent Company on the other hand has made a bald submission that the funds were advanced as a contribution to the capital and was thus, not a financial debt and the categorization of the amount under the head of 'Unsecured Loan' in the balance sheet will not change the nature of the amount advanced. The Respondent Company has also placed on record the order of the National Company Law Appellate Tribunal passed in *Dr. B.V.S. Lakshmi vs. Geometrix Laser Solutions Private Limited*, Company Appeal (AT) (Insolvency) No. 38 of 2017, in which the Hon'ble Appellate Tribunal interpreted the definition of 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code ("the Code"). After discussing the law laid down in *Nikhil Mehta & Sons vs. AMR Infrastructure*, Company Appeal (AT) (Insolvency) No. 7 of 2017, the Appellate Tribunal held that for coming within the definition of 'financial debt' as defined under sub-section (8) of Section 5, the Claimant is required to show that (i) there is a debt along with interest, if any, which has been disbursed and (ii) such disbursement has been made against the 'consideration for the time value of money'. The Appellate Tribunal further held as follows:

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“In the present case, the Appellant has failed to bring on record any evidence to suggest that she disbursed the money has been made against ‘consideration for the time value of money’. There is nothing on the record to suggest that the Respondents borrowed the money. In absence of such evidence, the Appellant cannot claim that the loan if any given by the Appellant comes within the meaning of ‘financial debt’ in terms of sub-section (8)(a) of Section 5 of the ‘I&B Code’.”

9. A close perusal of the order in *B.V.S. Lakshmi* shows that the facts in that case were very different from the facts of the present case insofar as the advancement of the amount is concerned. In *B.V.S.Lakshmi* there appears to be no document to show that the Respondent had actually borrowed the money from the Appellant. Further, the reflection of the amount in the balance sheet as unsecured loan was also doubtful as the amount appeared in the balance sheet for one year and did not appear in the balance sheet for the subsequent years. Even the veracity of the balance sheets was doubted. Further, the Appellate Tribunal also observed that there was nothing to show that the amount had been extended against the time value of money.



However, in the present application the Applicants have placed on record their bank account statements showing the advances made by the Applicants to the Respondent. The reflection of the amounts in the balance sheets under the head of 'Unsecured Loan', the payment of TDS on interest by the Respondent Company on behalf of the Applicants and the fact that interest was to be paid by the Respondent Company to the Applicants point towards the fact that the money was taken by the Respondent Company from the Applicants against the consideration for the time value of money. The Respondent Company has failed to explain why the amount claimed to have been taken as quasi capital contribution was treated as unsecured loan in the balance sheet of the Respondent Company. Further, the Respondent's reply is completely silent regarding the payment of TDS and the legal notices issued by the Applicants to the Respondent.

10. The Respondent has also submitted that the debt extended by the Applicants were set off with the loan given by Pawan Kumar Aneja's owned Respondent Company under the settlement agreement. With regard to setting off of dues the settlement agreement annexed by the Respondent Company with the reply to the application states as follows:



“2. Settlement of the accounts of all debts and liabilities from 01.04.2012 to 30.09.2015 of Sh. Pawan Kumar and Sh. Naresh Kumar shall be done by their Chartered Accountant Pradeep Kumar Aggarwal in the mediation of Sh. Naresh Kumar Sharma, s/o Sh. Kailash Raj Sharma, Angad Singh and Bhupender Singh Barad and any decision taken by them shall applicable to both party.”

11. It is noted that the settlement agreement talks only about the debts due to Naresh Kumar Aneja and is completely silent about the debts owed to Sushant Aneja, Applicant No. 1 or Naresh Kumar Aneja (HUF), Applicant No. 2. Further, there is no explanation or description of the debts to be set off, thus, it cannot be ascertained whether the settlement agreement actually deals with the debts owed to the Applicants by the Respondent Company. Further, nothing has been placed on record to show that the settlement agreement has been actually executed by the parties.

12. For the reasons stated above it is held that a financial debt was owed to the Applicants by the Respondent Company.



Issue II

13. It is the Respondent's contention that since there is no written agreement for the extension of the amount from the Applicants to the Respondent Company and there are no terms regarding repayment of the amount to the Applicants the amount had not become due and payable and thus, there is no default.

14. The Applicants have contended that since no date for repayment has been fixed the amount is repayable on demand. The Applicants have also placed on record a judgment of the Hon'ble High Court of Delhi, *Sh. Virender Kumar Jain vs. M/s Alumate (India) Pvt. Ltd.*, RFA No. 153/2004, where the Hon'ble High Court has held that where no date is fixed for repayment of loan, it would be a loan repayable on demand.

15. The Applicants sent notices demanding repayment of the amount, however, neither replies to the notices nor any proof of payment has been produced before this Tribunal. Thus, the Tribunal concludes that the loan was due and payable when the repayment was demanded and since there has been no repayment till date there is default in repayment of the financial debt.



16. Taking into consideration all the above, this Tribunal is of the view that a default has been committed in terms of Section 3(12) of the Code of financial debt as defined under Section 5(8) of the Code and that the Applicant has rightly invoked the provisions of the Code. From the Application filed it is seen that the Applicant has named an interim resolution professional in Part III of its Application whose details are as follows:

Mr. Mahdusudhan Sharma,
688, Western Wing,
Tis Hazari Courts,
New Delhi – 110012.
Email: madhusudan.ip@outlook.com

17. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointments as IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP as well as the certificate as enclosed therein signed under his hand that he is not a related party to the Corporate Debtor and that



he is eligible to be appointed as an independent director on the Board of the Corporate Debtor. Certificate of registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) has also been enclosed along with the Application and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of the Code and thereby initiate corporate insolvency resolution process as against the Corporate Debtor with the following consequences:

a. Mr. Madhusudhan Sharma, having registration no. IBBI/PA-003/IP-N00046/2017-18/10395, is appointed as the interim resolution professional and he shall strictly act in accordance with the provisions of the Code and the attendant Rules enjoined upon him;

b. In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree



or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

c. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:



(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

d. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under



section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- e. The Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of the Code.
- f. In terms of Section 7(7)(a) of the Code the registry of this Tribunal is directed to communicate the order to both the Financial Creditor and the Corporate at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

Sd/-

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

Sd/-

(R.VARADHARAJAN)
MEMBER(JUDICIAL)

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Registrar
National Company Law Tribunal
New Delhi

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