

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

CP (I&B) 586/NCLT/MB/MAH/2018

Under Section 7 of the I&B Code, 2016

In the matter of

**Good Value Financial Services Private
Limited**

...Financial Creditor/ Petitioner

v/s

ARK Landscapes LLP

...Corporate Debtor/ Respondent

Order dated 1/11.02.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr Pulkit Sharma and Mr Abhishek Adke

For the Respondent: No representation.

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) by Good Value Financial Services Private Limited, Financial Creditor against ARK Landscapes LLP, Corporate Debtor or Respondent to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the ground that as on 31.03.2018, the Corporate Debtor has defaulted in making repayment of ₹17,00,000/- against principal and ₹15,45,255/- against interest. The date of default in repayment of the debt by the Corporate Debtor is mentioned as 12.08.2017.
2. The Petition was rejected on 01.02.2019 by a short order at the time of argument, and this is the detailed order with reasoning.

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3. The brief facts of the case are that the Petitioner paid a sum of ₹17,00,000/- on 30.07.2014 to the Corporate Debtor. As per the Form-I Part-V, there is neither any security for the said loan nor any financial contract relating to the debt so provided. The Petitioner has relied upon a certificate from the Bank of India dated 08.11.2017 that states as follows:

"We hereby confirm that a payment of Rs 17,00,000/- has been made from the account of Good Value Financial Services Private Limited, being Account No 003127110000072 in favour of ARK Landscapes LLP on July 30, 2014.

This certificate is issued by the bank at the specific request of Good Value Financial Services Pvt Ltd under the Bankers Book Evidence Act, 1891."

4. The Petitioner has filed its bank statement maintained by the Bank of India that reflects the payment of ₹17,00,000/- on 30.07.2014.
5. The Petitioner has annexed a Confirmation of Accounts dated 01.04.2015, confirmed by the authorised representative of the corporate debtor for the period 01.04.2014 to 31.03.2015. The said letter shows an amount of ₹17,00,000/- being debited to the account of the corporate debtor.
6. The Petitioner has also filed its letter dated 08.06.2017 whereby request was made with the Corporate Debtor to send a duly signed loan confirmation letter for the F.Y. 2015-16 and 2016-17.
7. The Petitioner sent a notice dated 02.08.2017 to the Respondent Company stating that it has advanced a loan of ₹17,00,000/- on 30.07.2014 on the condition of repayment within three months from 30.07.2014 at 18% interest, on quarterly basis and in case of default, repayment @ 24% p.a. The Petitioner called upon the Respondent Company to pay ₹34,34,242/- as on 02.08.2017.

8. The Petitioner has proposed the name of Mr Arun Kapoor as proposed Interim Resolution Professional and has filed his written communication in Form 2.
9. We heard the arguments of the Ld Counsel for the Petitioner and perused the documents submitted.
10. On perusal of the record, it is clear that the Petitioner has filed this Petition for the amount transferred to the Corporate Debtor totalling to ₹17,00,000/-. However, the Petitioner has not filed any agreement or document to show that the amount was transferred on the condition of the repayment with interest.
11. This petition has been filed under Section 7 of the I&B Code. CIRP process can only be initiated under Section 7 of the I&B Code, if the Financial Creditor either by itself or jointly with other Financial Creditors or any other person on behalf of the Financial Creditor as may be notified by the Central Government, file an application for initiation of CIRP against the Corporate Debtor before the Adjudicating Authority when a default has occurred.
12. On perusal of provision of Section 7 of the I&B Code, it is clear that for initiation of CIRP under Section 7, the Financial Creditor is to apply under sub-clause (1) in such form and manner and accompanied with such fees as may be prescribed.
13. Financial Creditor is defined in section 5(7) of the I&B Code, 2016 which provides that Financial Creditor means "any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."
14. Financial Debt is defined under Section 5(8) as:

"Financial Debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes

 - (a) the money borrowed against the payment of interest;*
 - (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;*

- (c) any amount raised under any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing."*

15. In this case, money has been transferred to the Corporate Debtor's account, but no evidence is given to show that the transfer was a loan transaction, i.e. debt with interest. It is important to point out that in order to ascertain that debt is financial debt, there is pre-condition that debt should be disbursed against the consideration for the time value of money. If there is **no time value of money**, then only on transfer of amount, which is either advanced or in any other manner given to the Corporate Debtor, alleged debt cannot be treated as Financial Debt.
16. It is also important to point out the law laid down by Hon'ble NCLAT in the matter of **Nikhil Mehta and Sons vs. AMR Infrastructure Ltd** (Company Appeal (AT)(Insolvency) No.07 of 2017 decided on 21.7.2017. The Hon'ble NCLAT has held as follows:

"a perusal of definition of expression 'Financial Creditor' would show that it refers to a person to whom a Financial Debt is owed and includes even a person to whom such debt has been legally assigned or transferred to. To understand the expression 'Financial Creditor', the requirements of expression 'financial debt' have to be satisfied which is

*defined in Section 5(8) of the IBC. The opening words of the definition clause would indicate that **financial debt is a debt along with interest which is disbursed against the consideration for the time value of money** and it may include any of the events enumerated in sub-clauses (a) to (i). Therefore, **the first essential requirement of financial debt has to be met viz. that the debt is disbursed against the consideration for the time value of money** and which may include the events enumerated in various sub-clauses."*

17. In the present case, there is nothing on record to establish that the amount transferred to the corporate debtor was a loan, which was to be refunded with interest. Thus the element of the time value of money is absent in the transaction. In the absence of the element of the time value of money, the alleged debt cannot be treated as financial debt, as per the definition given under Section 5(8) of IBC.
18. The Petitioner has relied upon the Certificate from the Bank of India and the Confirmation of Accounts duly acknowledged by the Corporate Debtor. It is noted that none of these documents shows anything more than the fact that an amount of ₹17,00,000/- is transferred by the Petitioner to the Corporate Debtor. These documents cannot be taken as evidence to establish a Financial Debt as defined under the I&B Code.
19. The Petitioner has also sought to rely upon its letter dated 08.06.2017 and its notice dated 02.08.2017 wherein the transaction is shown as a loan. However, there is no acknowledgement or admission of the debt from the Corporate Debtor as mentioned in the said letters.
20. Here, undoubtedly, the amount is transferred to the Corporate Debtor. However, there is no document to establish the element of the time value of money in this transfer. Therefore, the

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alleged debt cannot be treated as financial debt under the definition of section 5(8) of the Code and the Creditor to whom such debt is owed cannot be treated as Financial Creditor.

21. Therefore, this Petition under Section 7 of I&B Code is not maintainable, given the law laid down by Hon'ble NCLAT in the matter of Nikhil Mehta and Sons vs. AMR Infrastructure Ltd (Company Appeal (AT)(Insolvency) No.07 of 2017). On the above basis, the Petition is rejected as not maintainable.
22. This order will have no bearing on initiation of the proceedings for recovery before the appropriate forum.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

11th February 2019