

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

MA 1453/2018 & IA 76/2018 in
CP No.870/IBC/NCLT/MB/MAH/2017

Under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016

In the Application of
Dr. Ramakant Suryanath Pande
.....Applicant
(Financial Creditor)

V.

CS Prakash K. Pandya
....Respondent
(Resolution Professional)

In the matter of

Milestone Real Estate Fund
...Financial Creditor

v.

Chaubey Realities Private Limited
....Corporate Debtor

Pronounced on: 05.02.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

Advocate Amir Arsiwala.

For the Respondent :

CS Prakash K. Pandya, Resolution Professional.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Corporate Insolvency Resolution Process of Chaubey Realities Private Limited (the Corporate Debtor) began on 10.11.2017, pursuant to admission of Section 7 application (CP 870/I&BP/NCLT/MB/2017) filed by a Financial Creditor. The present Miscellaneous Application has been preferred under section 60(5)(c) of I&BC by Dr. Ramakant Suryanath Pande, the Financial Creditor of the Corporate Debtor for the reliefs sought hereunder:

- i. Declare the communication dated 19.11.2018 by the Respondent to the Applicant rejecting his claim as unlawful, illegal and untenable, and to set aside the same;
 - ii. Direct the Respondent to accept the claim of the Applicant as submitted under cover of the claim form dated 01.11.2018;
 - iii. Direct the Respondent to consider the Applicant as a financial creditor for the purposes of the resolution plan approved by the committee of creditors and presented to this Tribunal under section 31 of IBC.
2. The Applicant was a member of the Board of Directors of the Corporate Debtor and is also a major shareholder therein. The applicant is also the **Financial Creditor** to the Corporate Debtor which had provided funding to the tune of ₹11,27,23,771/- (inclusive of interest) to the Corporate Debtor from time to time. The loans were repayable on demand and would bear interest @ 2.06% p.a. However, there was no such express loan agreement to this effect. The Corporate Debtor is engaged in Real Estate sector and has been paying interest to the Applicant upon the amounts advanced by him to the Corporate debtor from time to time.
 3. The Ledger for the account of the Applicant as maintained in the books of the Corporate Debtor for the financial year 2013-14 clearly shows that the Corporate Debtor was paid interest on the business loan to an extent of ₹12,16,666/-. This amount was paid in accordance with section 194A of the Income Tax Act, 1961 and Form 26AS was issued accordingly.
 4. After the initiation of CIRP against the Corporate Debtor, the Applicant submitted his claim on Form C on 12.01.2018 with the Respondent. The respondent replied to the claim form, raised certain objections and ultimately rejected the claim filed by the applicant by a communication dated 26.02.2018. The Applicant challenged his communication by filing MA 470 of 2018 and a reply to the above said MA was also filed by the Respondent. MA 470 of 2018 was dismissed on the ground that the Applicant was unable to prove that the Corporate Debtor had been paying interest upon the loan provided by the Applicant.
 5. Dismissal order of MA 470 of 2018 was challenged in the Hon'ble NCLAT being Company appeal (AT) (Insolvency) No. 525 of 2018 and the appeal was allowed *vide* Order dated 26.10.2018, directing the

applicant to file a fresh claim before the Respondent setting out the details of the TDS amount paid by the Corporate Debtor. The matter was remanded back to the Respondent. The Applicant filed Intervention Application No. 76 of 2018 seeking permission to intervene in the main CP 870/2018 to make submissions regarding the given Miscellaneous Application in hand.

6. Thereafter, the Applicant filed a fresh claim Form C dated 01.11.2018 with the Respondent which enclosed all the relevant documents. The Respondent/RP again rejected the fresh claim filed by the Applicant, setting out the reasons for rejection in the reply letter dated 19.11.2018 from the Respondent to the Applicant. In the above said reply, the Respondent points out some repayments done by the Corporate debtor against certain sums advanced by the Applicant to the Corporate Debtor. He further points out that there was no such agreement or understanding of a *Financial Debt* between the Applicant and the Corporate Debtor.

7. The Respondent has treated the sums advanced by the applicant to the Corporate debtor in the nature of *Quasi-Capital* and not the loan amount. Hence, on 28.11.2018, MA 1453 of 2018 was filed challenging the decision of the Respondent qua rejection of Applicant's claim.

8. It is pertinent to note that the applicant has duly annexed TDS certificates along with his fresh claim form clearly showing that the Corporate Debtor had paid TDS on the interest amounts paid by it to the Applicant from time to time, as directed by the Hon'ble NCLAT. The Ledger account of the Applicant in the books of the Corporate Debtor clearly shows that the Corporate Debtor has paid an interest amounting to ₹12,16,666/- on the business loan advanced by the Applicant to the Corporate debtor. Hence, the claim of the Applicant is duly corroborated by Corporate debtor's own books of accounts.

9. Furthermore, the mere fact that there was no express agreement or understanding as to *Financial Debt* between the Applicant and the Corporate debtor, does not lead to the conclusion that the loan granted by the Applicant is in the nature of *Quasi-Capital*. The Respondent expressly admits that the amounts advanced was for the purpose of a future gain. Merely because the erstwhile directors of the Corporate debtor had refunded some amount of the Applicant does not deny the

fact that the amount granted was for time value of money and interest has also been duly paid on such amount.

10. Furthermore, it is noticed that the scope of a resolution professional (RP) is limited to **verifying** the claims received in the light of regulation 13 & 14 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which are stated as follows:

13. Verification of claims:

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. (2)

The list of creditors shall be –

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor;

(c) displayed on the website, if any, of the corporate debtor;

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee.

14. Determination of amount of claim:

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

11. In view of the above provisions and in view of the decision of Hon'ble NCLAT of remanding back the matter to the Respondent, it can be said that the RP is not an adjudicating authority and is not required to enquire into the factual scenario between parties and determine their rights and liabilities. The task of the RP is to limit itself to confirm that the claims received by him are true and correct.

12. Hence, in my view, the claim of the applicant fall in the definition of *Financial Debt* as per section 5(8) of the Code. The Respondent is hereby directed to consider the claim of the Applicant as a Financial Debt and

treat him a Financial Creditor for the purposes of further proceedings of CIRP.

13. Miscellaneous Application 1453/2018 allowed. Intervention Application 76/2018 accordingly disposed off. To be consigned to records.

Dated : 05.02.2019

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**Sd/-
M. K. SHRAWAT
MEMBER (JUDICIAL)**