

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1299 of 2022

IN THE MATTER OF:

N.C. Goel & Anr.

...Appellants

Versus

Piyush Infrastructure India Pvt. Ltd.

...Respondent

Present:

For Appellants: Mr. Ashish Garg, Advocate.

For Respondent: Mr. Sanchit Garga, Mr. Kunal Rana, Advocates.

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

06.03.2024: This appeal is directed against the order dated 13.06.2022 passed by Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) by which an application bearing CP (IB) 453/ALD/2019 filed under Section 7 of Insolvency & Bankruptcy Code, 2016 (in short 'Code') by both the appellants, namely, Mrs. Maya Goel and Mr. N.C. Goel has been dismissed on the ground that the application under Section 7 is not maintainable, the appellant has failed to pay the interest and that there is a loan given by the appellant in which a default has been committed in repayment.

2. In short, both the appellants, namely, Mrs. Maya Goel and Mr. N.C. Goel filed the application for resolution of an amount of Rs. 12 lakhs with interest. The Tribunal has recorded the findings in paragraphs 9 to 12 of the impugned order which are reproduced as under:

“9. The first aspect to be considered is one of limitation. Admittedly, Mrs. Maya Goel has given the loan amount in the Financial Year 2011-12, 2012-13 and 2013-14 whereas Mr. N.C. Goel has given loan in the Financial Year 2011-12, 2013-14 and 2015-16. In the absence of any documentation, we are unable to establish the date of default. The date of default can only be calculated when the tenure of the loan is established, or when there is a demand for repayment. In the present case there is nothing to establish this.

10. The petitioners were only happy so long as amounts towards interest was being received. From this, it is not possible to establish the tenure for which the loan was granted, and whether there was any notice demanding payment of the loan in question. As regards the interest, except for two letters of Corporate Debtor, no other evidence showing receipt of such interest has been brought on record. Thus, the claims made regarding receipt of interest remain unsubstantiated.]

11. Copies of the post-dated cheques issued by the Corporate Debtor for repayment of principal amount have been enclosed. However, these cannot be taken to be unqualified admission of debt because the presumptions drawn under section 118 and section 139 of the Negotiable Instruments Act, 1881, are rebuttable presumptions. In any case, the petitioners have already initiated proceedings under the Negotiable Instruments Act, 1881.

12. In summary jurisdiction, without adequate documentation, it is difficult to establish the purpose for which the money was lent and accepted. It is also not possible to establish whether there was any interest required to be paid. The time value of money is an important factor to be considered in order to establish whether this is a financial debt. Ex fucie, this appears to be a petition which has been filed for recovery of money and not for resolution of the

corporate debtor. The Insolvency & Bankruptcy Code, 2016, should not be allowed to be used as an easy way of recovery of money.”

3. In order to challenge the aforesaid findings, it is argued by the appellant that the Tribunal has committed an error observing that there is no demand for repayment on the part of the appellant and in this regard he has referred to the letter written by the Financial Creditor on 23.01.2018 and the letter dated 16.05.2016 by the one of the Financial Creditor i.e. Maya Goel by which she had demanded Rs. 19,38,000/-.

4. We have heard counsel for the appellant and perused the record.

5. On our pointed query to the appellant that as to whether the amount given by the appellant was a loan or an investment, she has referred to the letter dated 16.05.2016 which is annexed as Annexure A-4.

6. From the perusal of this letter, we have found that the appellant himself has submitted that it was an investment and this fact has also been confirmed from the pleadings of the appellant in paragraph 7 (i) in which it is averred that *“In this regard one of the director of the company i.e. Anil Goel approached the appellants herein for investing money in their company and accordingly approached the appellants and advised the appellants to invest in the respondent company. It was assured that respondents would regularly pay interest, the amount so invested shall be utilized by the respondents for their expansion plan. It was assured that the same would be returned upon just making a request for refund of the same which would be processed in no time and amount shall be returned alongwith upto date interest @18%.”*

7. The averments made by both the appellants in the letter and in the appeal are sufficient to hold that the amount paid by the appellant was not towards the loan but was an investment for which the company has to pay interest at intervals. Section 7 of the Code is not attracted as rightly been held by the Tribunal, therefore, we do not find any merit in the present appeal and the same is hereby dismissed.

8. However, before parting of this order, we leave the appellants to pursue their remedy elsewhere in accordance with law.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

sa/rr