

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 47 of 2024

IN THE MATTER OF:

Meehika Buildcon LLP

...Appellants

Versus

City Star Infrastructure Ltd.

...Respondent

Present:

For Appellants : Mr. Sujoy Datta, NPS Chawla, Vibhor Kapoor, Jasjeet Singh, Adv.

For Respondent : Mr. Swarnendu Chatterjee, Niloy Sengupta, Sujit Banerjee, Deepak Shi Garg, Mugdha Malik, Adv.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 20.10.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in CP (IB) No. 1239 of 2020 by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Appellant against the Respondent for the resolution of an amount of Rs. 2,77,98,630/-, has been dismissed.

2. The brief facts of this case are that a term sheet was executed by the parties on 05.05.2024. Since, the term sheet is bedrock of the litigation between the parties, therefore, the same is reproduced as under:-



Term Sheet

Terms and conditions agreed between City Star Infrastructures Limited, the First Party and Meehika Buildcon LLP, the Second Party for development of 352.28 (three hundred and fifty two point two eight) decimal land at Mouza Badehooghly, within Ward No. 22 (formerly) of Rajpur Sonarpur Municipality as appearing below:

| 1. | Parties | |
|-----|-------------|--|
| 1.1 | First Party | City Star Infrastructures Limited, a company incorporated under the Companies Act, 1956; having its registered Office at 5 Gorky Terraco, Kolkata-700017, being represented by its |

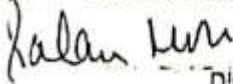
For CITYSTAR INFRASTRUCTURES LTD.

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| 1.2 | Second Party | Meehika Bulldcon LLP, a limited liability partnership firm incorporated under the Limited Liability Partnership Act, 2005, having its registered Office at Room No. 18, 5th Floor, 20B, British India Street, Kolkata-700069, being represented by its Partner, Mahesh Periwal, son of Late Bijay Periwal. |
| 2. | Said Property | Land measuring (i) 68 (sixty eight) decimal, more or less, comprised in R.S./L.R. Dag No.3 And (ii) 12 (twelve) decimal, more or less, comprised in R.S./L.R. Dag No.4 (iii) 23 (twenty three) decimal, more or less, comprised in R.S./L.R. Dag No.5 And (iv) 25 (twenty five) decimal, more or less, comprised in R.S./L.R. Dag No.6 And (v) 98 (ninety eight) decimal, more or less, comprised in R.S./L.R. Dag No.7 And (vi) 28 (twenty eight) decimal, more or less, comprised in R.S./L.R. Dag No.9 And (vii) 2 (two) decimal, more or less, comprised in R.S./L.R. Dag No.18 And (viii) 46.28 (forty six point two eight) decimal, more or less, comprised in R.S./L.R. Dag No.19, all in Mouza Mahinagar, J.L. No. 79, within Ward No. 22 (formerly) of Rajpur Sonarpur Municipality And (ix) 14 (fourteen) decimal, more or less, comprised in R.S. Dag No.1559, And (x) 36 (thirty six) decimal, more or less, comprised in R.S./L.R. Dag No.1560, both in Mouza Badehooghly, J.L. No. 80, within Ward No. 22 (formerly) of Rajpur Sonarpur Municipality, totaling to 352.28 (three hundred and fifty two point two eight) decimal, more or less (collectively Said Property). |
| 3. | Background | |
| 3.1 | Ownership of First Party | By 3 (three) Deeds of Conveyance (i) dated 21st September, 2007, registered in the Office of the Additional District Sub-Registrar, Sonarpur, South 24 Parganas, in Book No. 1, being Deed No. 7486 for the year 2007 And (ii) dated 9th August, 2007, registered in the Office of the Additional District Sub-Registrar, Sonarpur, South 24 Parganas, in Book No. 1, CD Volume No. 1, at Pages 5095 to 5111, being Deed No. 0317 for the year 2012 And (iii) dated 22nd January, 2013, registered in the Office of the Additional District Sub-Registrar, Sonarpur, |

INFRASTRUCTURES LTD.



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Meehika Bulldcon LLP



Designated Partner

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| | | South 24 Parganas, in Book No. I, CD Volume No. 4, at Pages 4341 to 4361, being Deed No. 01379 for the year 2013, the First Party has purchased the Said Property. |
| 3.2 | Representation by the First Party | The First Party has represented to the Second Party |
| | | (i) The First Party has absolute right, title and interest with respect to the Said Property. |
| | | (ii) The First Party is in that , vacant, peaceful and physical possession of entirety of the Said Property. |
| | | (iii) Save and except the existing Disputes the Said Property is free from all encumbrances and can be purchased with good and marketable title. |
| | | (iv) The First Party hereby confirms that, the First Party shall fill up all discrepancies or gaps , if any, at its own cost and responsibility. |
| | | (v) The Said Property or any part of it is not subject matter of any previous agreement, whether oral or in writing. |
| 4. | Recording of Terms and Conditions | The Second Party has accepted the deal of the First Party and terms and conditions have been finalized between the Parties, which the Parties hereby now recording by this presents. |
| 5. | Details of Said Property | |
| 5.1 | Description and Measurement | Land measuring 352.28 (three hundred and fifty two) decimal, more or less, subject to survey and physical verification by Second Party. |
| 6. | Terms Agreed | |
| 6.1 | Mutation | The First Party shall at its own cost and responsibility mutate its name in the records of the Block Land And Land Reforms Office, Sonarpur and also in the records of Rajpur-Sonarpur Municipality, with respect to entirety of the Said Property, within 4 to 5 months from the date of this present. |
| 6.2 | Conversion | The First Party shall at its own cost and responsibility convert the entirety of the Said Property to homestead land in the records of the Land Reforms Office, Sonarpur, within 3 (three) months after getting the mutation done. |
| 6.3 | ULC Clearance | The Second Party shall obtain ULC clearance with respect to the Said Property, in the name of |

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| | | the First Party, all cost to be born in this regard shall be born by the Second Party. |
| 6.4 | Encroachers and/or Bargarhar | The First Party shall be responsible to settle all claims of encroachers and/or Bargarhar, at its own cost and responsibility and shall also be responsible to rectify the records of Block Land And Land Revenue Office with regard thereto. |
| 6.5 | Boundary Wall | The First Party shall erect brick-built boundary wall around the periphery of the Said Property within 3 (three) months from the date of this Term Sheet. All cost in this regard to be born by the Second Party but the First Party shall render all sorts of assistance to the Second Party. |
| 6.6 | Formal Joint Venture Agreement | The First Party and the Second Party shall enter into formal Joint Venture Agreement at any stage as to be mutually agreed by the Parties, subject to complete satisfaction of the Second Party with regard to the title of the First Party. |
| 6.8 | Sanction of Plan And Completion Certificate | The Second Party shall at its own cost and responsibility cause the plan to be sanctioned in the name of the First Party before the Rajpur-Sonarpur Municipality and shall obtain Completion Certificate in the name of the First Party. |
| 6.9 | Allocation | The First Party shall be allotted 30% of the total sanction area and the Second Party shall be allotted 70% of the total sanction area. The Parties shall mutually demarcate their allotted areas after obtaining the plan sanctioned. Each party shall be entitled to deal with their respective allocations. |
| 6.10 | Commencement of Construction | The Second Party shall commence the construction within Four(4) months from the date of sanction of project plan. |
| 6.11 | Completion of Project | The Second Party shall complete the entire project within 36 (thirty-six) months of Commencement of Construction as per Clause 6.10 and obtain CC/NOC, with a further extension of 6 (six) months, and subject to circumstances of Force Majeure. |
| 6.12 | Covenants of the Second Party | The Second Party shall utilize maximum permissible FAR of the Said Property. |
| 6.13 | Financial | The Second Party will pay to the First Party a sum of Rs.3,51,00,000/- (Rupees three crore and fifty one lac) (Security Deposit) in the following trenches: |
| | | (i) Rs.1,75,00,000/- (Rupees one crore and seventy five lac) on or before execution of this Term Sheet. |

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| | | (ii) | Rs.1,25,00,000/- (Rupees one crore and twenty five lac), within seven (7) days from the date of removal of Baragadars from BL&LRO records and correction of records by mutation in the name of the First Party at BL&LRO. |
| | | (iii) | Rs.51,00,000/- (Rupees fifty one lac) within 7 (seven) days from the date of getting conversion certificate of the Said Property. |
| 6.14 | Adjustment of Consideration | of | <p>The First Party shall adjust the entirety of the Security Deposit in the following manner:</p> <p>(i) 50% of the deposit amount i.e. Rs. 1,75,50,000.00 (Rupees One Crore Seventy-five Lacs fifty thousand only) at the time of first sale out of the allocation of the First Party and the Second Party each, by taking the average rate of both the sales (Ascertained Value) and by earmarking out of the Allocation of the First Party in a just and equitable manner such area as is calculated after dividing Rs: 1,75,50,000.00 by the Ascertained Value and allowing the Second Party to exclusively use/sell such area and adjust/retain the consideration thereof as refund of Rs. 1,75,50,000.00 of the Security Deposit. The amount so adjusted shall remain fixed at Rs. 1,75,50,000.00 irrespective of the actual rate at which the Second Party sells this carved out area out of the allocation of the First Party.</p> <p>(ii) 50% of the deposit amount i.e. Rs. 1,75,50,000.00 (Rupees One Crore Seventy-five Lacs fifty thousand only) at the time of Completion of the Project, by taking the prevailing Market Rate and by the Second Party choosing from unsold area out of the Allocation of the First Party such area as is calculated after dividing Rs. 1,75,50,000.00 by the Market Rate and allowing the Second Party to exclusively use/sell such area and adjust/retain the consideration thereof as refund of Rs. 1,75,50,000.00 of the Security Deposit. The amount so adjusted shall remain fixed at Rs. 1,75,50,000.00 irrespective of the actual rate at which the Second Party sells this carved out area out of the allocation of the First Party. In case</p> |

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| | | <p>First Party falls short to ensure refund of the entire balance deposit amount of Rs. 1,75,50,000.00, the First Party shall pay in cash such shortfall to the Second Party within 7 days of the Completion of the Project.</p> <p>The First Party shall provide all necessary cooperation to the Second Party to ensure the proper refund of the Security Deposit.</p> |
| 8. | Miscellaneous | |
| 8.1 | Due Diligence | <p>The Second Party shall cause due diligence with respect to the Said Property and may cause paper publication with respect to the same and the First Party hereby grants its full consent to that effect. The preliminary observation report has already been sent to the First Party the details observation report with complete response to requisition on title of the Said Property shall be sent to the First Party within 45 (forty five) days from the date of execution of this Term Sheet.</p> |
| 8.2 | Title Certification | <p>The Advocate of the Second Party (Advocate) shall certify the title of each and every portion of the Said Property after being satisfied from the result of due diligence. It is to be clarified that the certificates/recommendations of the Advocate shall be accepted by the Parties, without question, according to law. Title Certification by Second Party's advocate shall be considered as one of the essence of this Agreement.</p> |
| 8.3 | No Third Party Interest | <p>Both Parties shall not create any third party interest during the continuance of this understanding without mutual consent.</p> |
| 8.4 | Original Papers & Documents | <p>First Party confirms to Second Party that as and when required the original title papers & documents shall be provided for any financial arrangement for the project and creation of mortgage on the allocation of the Second Party including for corresponding common area and commensurate undivided proportionate share in the land subject to indemnity of the Second Party and total responsibility for repayment.</p> |
| 5 | Further Land Parcels | <p>Both Parties confirm that if any part or parcel of land adjoining to this landed property will be procured by First Party before submission of the sanction plan then, subject to due diligence, that shall be added to this Land Property for</p> |

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| | | the rate of Rs. 1,13,830/- per decimal of additional land. This additional security deposit shall also be subject to refund and adjustment in the same manner and ratio as the original security deposit of Rs. 3,51,00,000/-. The time of completion shall also stand extended proportionately. |
| 8.6 | Compensation | If Second Party fails to develop, built the allotted area of First Party within the stipulated completion period then Second Party is liable to pay interest @ 15% on legitimate unrealized/unrealizable Sale Value of unconstructed area of sold/unsold units, as the case may be. In case of totally unsold units, the market value shall be ascertained and the Second Party may make full payment to the First Party and the First Party, unless it has justifiable necessity, shall accept such payment and discharge the Second Party from its liability to pay compensation to the extent of unsold units under consideration. |
| 9. | Termination | <p>Title Defects: If the title of the Said Land, either in part or in full, appears to be defective and incurable in nature then the Second Party shall have the option to cancel this Term Sheet and on such cancellation/termination the First Parties shall refund the entirety of the Advance along with an interest @15% (eighteen) per annum, within 15 (fifteen) days from the date of demand.</p> <p>No Termination: Neither of the Parties shall be liable to cancel this Agreement or opt out from the Project, save and except the circumstances mentioned herein.</p> |
| 10. | Further Documentation | The Parties hereby confirm and agree that, the Parties shall execute all other documents including but not limited to the Joint Venture Agreement etc, at mutually agreed stage and as to be necessary to give better and further effect of their understanding. |
| 11. | Arbitration | All disputes and differences by and between the Parties hereto in any way touching this Term Sheet or relating hereto or arising out herefrom shall be referred by the Parties to the arbitration |

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| | in accordance with the Arbitration and Conciliation Act, 1996 with all modifications thereof made from time to time. The seat of arbitration shall be Kolkata. The award of the Arbitrator shall be final and binding on both the Parties. |
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Executed and Delivered at Kolkata on 5th May, 2014

STAR INFRASTRUCTURES LTD.
[Signature]
 (City Star Infrastructures Limited)
 [First Party]

Meehika Buildcon LLP

[Signature]
 Designated Partner
 (Meehika Buildcon LLP)
 [Second Party]

Witnesses:

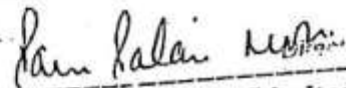
| | |
|--|---|
| Signature <u>[Signature]</u> | Signature <u>[Signature]</u> |
| Name <u>RAJESH KUMAR JAIN</u> | Name <u>UNECH PURDHY</u> |
| Father's Name <u>LATE HIRALAL JAIN</u> | Father's Name <u>Sr. Anand Kumar Bhatia</u> |
| Address <u>8, COMD C Street, 1st Floor</u> | Address <u>40/13 G. T. Road (1)</u> |
| | <u>Handwritten: 2</u> |

Receipt

Received from Meehika Buildcon LLP the within mentioned sum of Rs. 1,75,00,000/- (Rupees one crore seventy five lacs as Security Deposit for development of 352.28 (three hundred and fifty two point two eight) decimal land at Mouza Badehooghly, within Ward No. 22 (formerly) of Rajpur Sonarpur Municipality in the following manner:

| Mode | Date | Amount (Rs.) |
|------------------|--------------------------|---------------|
| RTGS, ICICI Bank | 2 nd May 2014 | 1,75,00,000/- |
| Total: | | 1,75,00,000/- |

CITYSTAR INFRASTRUCTURES LTD.



(City Star Infrastructures Limited)
[First Party]

Witnesses:

Signature Rajesh Signature Unesh Purohit
Name UNESH PURHIT
Name Rajesh Kumar Jain Father's Name Shri Anand Kumar Jain
Other's Name Keta Hivalal Jain Address 493/B G.T. Road (1)
Honah. 2
Address 8, Carnac Street, 1st floor
Room No 12 Kolketa - 12


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3. The case set up by the Appellant is that a sum of Rs. 2.77 Cr. was disbursed to the Respondent in terms of the term sheet and since the term sheet has been cancelled, therefore, the Appellant is entitled to the refund of the entire amount of advance alongwith interest @ 18%. It is submitted that the amount in question given to the Respondent was loan, therefore, the Tribunal has committed a patent error in treating the said amount as investment on the part of the Appellant while dismissing the application. In this regard, he has drawn our attention to the finding recorded by the Tribunal which read as under:-

“44. We refer to clause 6.96 of the Term Sheet headed as ‘Allocation ’ which is reproduced hereinbelow:

“The First Party shall be allotted 30% of the total sanction area and the Second Party shall be allotted 70% of the total sanction area. The Parties shall mutually demarcate their allotted areas after obtaining the plan sanctioned. Each party shall be entitled to deal with their respective allocations”

45. Having considered the respective arguments of both the parties, we seek to refer to the judgment passed by the Hon’ble NCLAT in Mukesh N. Desai Shree Darshan Society v. Piyush Patel and Others⁷ in which it was held: -

“16. The MoU entered into is an Agreement of reciprocal rights and obligations. We are of the earnest view that both parties being ‘Joint Development Partners’ who entered into a consortium of sorts for developing the subject land and for any breach of terms of the contract, Section 7 Application filed under the Code would not be maintainable as the amount cannot be construed as ‘Financial Debt’ as there is no sum(s) i.e., owed, assigned

or transferred to in compliance of the provisions of Section 5(8) of the Code. To reiterate, being a profit share owner, who in the event of the success of the Project would receive the residual gain, the amount invested in the land cannot be said to be a 'Financial Debt' as defined under Section 5(8) of the Code. Hence, the ratio of the Judgements relied upon by the Learned Counsel for the Appellant are not applicable to the facts of this case." (emphasis applied)

46. In view of the foregoing paragraphs being para 44 and 45 as mentioned above, we find that the money advanced by the Financial Creditor to the Corporate Debtor does not amount to financial debt as envisaged under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 as upon the successful completion of the obligations contained in the said Term Sheet, the same would lead to execution of a Joint Development Agreement. On this ground alone, we find that the present petition is not maintainable and hence C.P. (I.B.) No.1239/KB/2020 stands rejected. Needless to say, the Financial Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies."

4. Counsel for the Appellant has relied upon a decision of this Court in the case of SAJ Housing Pvt. Ltd. Vs. Ms. Priyanka Chouhan, CA (AT) (Ins) No. 1093 of 2022 and the Hon'ble Supreme Court in the case of Global Credit Capital Limited Vs. SACH Marketing Pvt. Ltd. & Anr. Civil Appeal No. 1143 of 2022.

5. On the other hand, Counsel for the Respondent has submitted that the transaction between the parties was not of the advancement of loan but an investment. It is alleged that at the time when the money was advanced, mentioned in the term sheet,

no rate of interest was fixed nor any time lines was ascertained for the service of interest, therefore, it does not fall within the definition of financial debt as defined under Section 5(8) of the Code. It is also submitted that Respondent was having the land but there were bargadars sitting over it who had barga rights in terms of West Bengal Land Reforms Act, 1955. In simple language, bargadars are called the sharecropper. It is submitted that as far back as on 08.11.2016, the Respondent even took the legal advice from the Solicitor in this regard and it was opined by the Solicitor that as per Section 15(2) of the Act the transfer of barga right by the bargadars is prohibited. It is further submitted that the Tribunal has rightly dismissed the application while referring to clause 6.9 of the term sheet as per which, after the clearance of the title of the Respondent, 30% land was to go to the Respondent and 70% was to go to the Appellant, therefore, it is submitted that it was not a case of advancement of the loan but it was a case of investment in the land as an investor. It is further submitted that none of the judgments relied upon by the Appellant are applicable to the facts of this case. It is further submitted that the sum and substance of the term sheet is that the Respondent had the land but having no clear title over it whereas the Appellant had the money for the purpose of investment with the Respondent to clear

the title of the land by evicting the bargadars. At the time when the money was paid/disbursed, there was no question of any interest to be paid by the Respondent rather it was decided that in case the Respondent fail to clear the title of its land then whatever money has been invested by the Appellant shall be returned with 18% interest which is not the terms and conditions of the advancement of the money to bring it within the provisions of the financial debt.

6. We have heard Counsel for the parties and after perusal of record, are of the considered opinion that the Appellant has not advanced the money as loan rather the money has been given to the Respondent for the purpose of clearing their title over the land in question which was to be shared by both of them in the ratio of 30% / 70%. It is pertinent to mention that the Appellant has not filed any financial statement on record in order to show that the money which has been given as per term sheet has been shown as a loan advanced to the Respondent.

7. In such circumstances, we do not find any reason to interfere with the well-considered findings of the Tribunal whereby the application filed by the Appellant has been rejected. In so far as the judgments relied upon by the Appellant are concerned, there are on different facts and are not applicable to the present case.

8. No other point has been raised.

9. In view thereof, we do not find any merit in the present appeal and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi

09th September, 2024

Sheetal