

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(APPELLATE JURISDICTION)

Company Appeal (AT) (Insolvency) No. 1536 of 2023

[Arising out of the Impugned Order dated 02.11.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-V, in CP (IB) 683/MB/2022]

In the matter of:

Mrs. Rita Kedia

Suspended Director of Evyavan Merchantile Private Limited

C-4306, D B Woods

Krishna Vatika Marg, Gokuidham

Goregaon East, Mumbai - 400 063.

...Appellant

Versus

- 1. Ashika Global Securities Private Limited**
Trinity, 226/1, A.J.C. Bose Road, 7th Floor,
Kolkata 700020.
- 2. Evyavan Merchantile Private Limited**
Through Mr. Shailesh Desai
Interim Resolution Professional
708, Raheja Centre, 7th Floor
Free Press Marg, Nariman Point,
Mumbai —400 021.

...Respondents

Present :

For Appellant : Mr. Abhinav Agrawal, Advocate.

For Respondents : Mr. Sandeep Kumar Mahapatra, Mr. Sugam Kumar Jha, Mr. Sreedass K.P., Mr. Raghav Tandon, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by the Suspended Director of M/s Evyavan Merchantile Private Limited against the order dated 02.11.2023 of National Company Law Tribunal, Mumbai Bench, Court-V (hereinafter referred to as **‘Adjudicating Authority’** or **‘AA’**) whereby the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **‘IBC, 2016’**) filed by the M/s Ashika Global Securities Private Limited (hereinafter referred to as **‘Financial Creditor’**) was allowed and M/s Evyavan Merchantile Private Limited (hereinafter referred to as **‘Corporate Debtor’**) was admitted into Corporate Insolvency Resolution Process (hereinafter referred to as **‘CIRP’**).

2. Briefly, the facts of the case as recorded in the said order of Ld. Adjudicating Authority are as under:

- i. The Financial Creditor is a Non-Banking Financial Company and is engaged in the activities of financing and investment in shares/securities. In its ordinary course of business, the Financial Creditor is also engaged in providing loan funding in lieu of interest.
- ii. The Financial Creditor, on being approach by Corporate Debtor had, disbursed a sum of Rs. 7,00,00,000/- (7 crores) on different dates between 18.08.2016 and 31.03.2017. The Corporate Debtor never disputed its liability in respect of the said loan and had in fact repaid an amount of Rs. 1.90 crore during the period 23.08.2016 to 04.07.2018.
- iii. The said repayment was towards the principal amount.

iv. The Corporate Debtor had not paid any amount towards interest though it has deducted TDS which is also reflected in Form 26AS of Income Tax Department as Tax deducted at source on behalf of the Financial Creditor.

v. The total amount of debt and interest payable by the Corporate Debtor as on 31.03.2022 amounts to Rs. 7,81,73,014/-.

3. In its oral and written submissions, the Appellant has submitted that no loan agreement or contract was executed between the parties and there was no agreed date for repayment of amount received from the Financial Creditor. Further there was no demand on behalf of the petitioner in respect of the alleged loan amount. The demand letter issued by the Financial Creditor on 27.01.2019 is only regarding payment of interest, thereby meaning that the demand for repayment of principal amount was never made.

4. It was averred as there was no agreement, the demand for interest is illegal and contrary to the law. It was submitted that the TDS was deducted and deposited by the Corporate Debtor at the request of the Financial Creditor so that they can put their accounts in order. It was also submitted that application under Section 7 is filed on 30.05.2022 which is beyond 3 years of disbursal of funds and is time barred.

5. On the other hand, the Learned Counsel for the petitioner in his oral and written submissions submitted that sum of Rs. 7 crores was advanced and disbursed to the Corporate Debtor between 18.08.2016 to 31.03.2017. The Corporate Debtor had deposited TDS which reflects that the transaction was in fact on loan transaction.

6. The Learned Counsels took us through pages 102, 103 and 104 of the Appeal Paper Book which are confirmation of account for Financial Years 2016-

17, 2017-18 and 2018-19. These ledger accounts have been signed by Director of Highstreet Mercantile Co. Pvt. Ltd., which was the earlier name of the Corporate Debtor for Financial Year 2016-17 and by the Appellant as Director of the Corporate Debtor for Financial Year 2017-18 and Financial Year 2018-19. The Corporate Debtor has confirmed the credit of “interest on loan” in the ledger account relating to the Financial Creditor by signatures of Director.

7. It was fairly admitted by the Learned Counsel for the Financial Creditor that vide demand letter dated 22.01.2019, the Financial Creditor had demanded only payment of interests.

8. Further it was submitted the total interests outstanding, the demand for which was made through letter dated 22.01.2019 was itself more than 1 crore and meets the threshold required under Section 4 of the IBC, 2016. In the details given in Part IV of Form 1 filed with the application under Section 7 of IBC 2016 the outstanding shown is principal Rs. 5,10,00,000/-, interest Rs. 2,71,73,014/- and total Rs. 7,81,73,014/-.

9. We have heard the Learned Counsels and have perused the records of the case. There is no denial of the fact that the Corporate Debtor had received Rs. 7 crores from the Financial Creditor in seven transactions as listed below:

| Date of Disbursal | Amount Disbursed |
|--------------------------|-------------------------|
| 18.08.2016 | Rs. 1,00,00,000/- |
| 19.08.2016 | Rs. 1,00,00,000/- |
| 19.08.2016 | Rs. 1,00,00,000/- |
| 14.03.2017 | Rs. 1,00,00,000/- |
| 29.03.2017 | Rs. 1,00,00,000/- |
| 31.03.2017 | Rs. 1,00,00,000/- |
| 31.03.2017 | Rs. 1,00,00,000/- |

| | |
|-------|-------------------|
| Total | Rs. 7,00,00,000/- |
|-------|-------------------|

10. The Corporate Debtor had repaid a sum of Rs. 1.90 crore which details are listed below:

| Date | Amount |
|------------|-------------------|
| 23.08.2016 | Rs. 1,00,00,000/- |
| 15.06.2018 | Rs. 25,00,000/- |
| 20.06.2018 | Rs. 25,00,000/- |
| 04.07.2018 | Rs. 40,00,000/- |
| Total | Rs. 1,90,00,000/- |

11. The entire transactions are reflected in the books of account of the Corporate Debtor and the ledger accounts of the concerned parties appear at page 102 to 104 of the Appeal Paper Book.

12. As per provisions of Section 5(8) of IBC, 2016, financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money. In the present case money has been disbursed to the Corporate Debtor towards time value of money and interest is shown as due in the ledger accounts of the Corporate Debtor. The total interest due is more than Rs. 1 crore and was demanded by the Financial Creditor through letter dated 22.01.2019 which was not paid by the Corporate Debtor. Thus, the debt of above Rs. 1 crore was due, was demanded and was payable which was not paid by the Corporate Debtor. The ingredients of petition under Section 7 of the IBC, 2016, mainly existence of debt, and default are established in this case, and the Corporate Debtor was eligible to be admitted in CIRP on application under Section 7 of IBC, 2016.

13. The Learned Counsel for the Appellant had also raised defence regarding limitation. The application under Section 7 of the IBC, 2016 was filed on 30.05.2022. The Appellant itself as Director of the Corporate Debtor had acknowledged the debt in the ledger accounts of Financial Year 2016-17, 2017-18 and 2018-19 through confirmation of accounts including the last dated 01.04.2019 appearing at page 104 of the Appeal Paper Book. The three year period, since the acknowledgement, expired on 31.03.2022. However, as per the direction of the Hon'ble Supreme Court in **Suo Moto Writ Petition No. 3 of 2020 decided on 10.01.2022**, the period from 15.03.2020 till 28.02.2022 is to be excluded for counting of limitation under any law. Excluding the said period, the present petition under Section 7 was filed within the limitation period by the Financial Creditor.

14. Considering the facts of this case, we find that the Ld. NCLT has rightly admitted the Corporate Debtor in CIRP on an application under Section 7 of IBC, 2016 filed by the Financial Creditor. We do not find any reason to interfere in the impugned order of Ld. NCLT. The appeal, devoid of merit, is dismissed. All related IAs, if pending, are closed. No order as to costs.

**[Justice Yogesh Khanna]
Member (Judicial)**

**[Mr. Ajai Das Mehrotra]
Member (Technical)**

Place: New Delhi
Dated: 29.11.2024
Ram N.