

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) (INSOLVENCY) NO.172 OF 2019

(ARISING OUT OF JUDGEMENT AND ORDER DATED 30.11.2018 PASSED BY THE LEARNED ADJUDICATING AUTHORITY (NATIONAL COMPANY LAW TRIBUNAL), NEW DELHI SPECIAL BENCH, NEW DELHI IN COMPANY PETITION NO.(IB)-784(PB)/2018)

IN THE MATTER OF:

Indiabulls Housing Finance Ltd.,
Having its Registered Office at
M-62 & 63, First Floor,
Connaught Place,
New Delhi-110001.

Appellant

Versus

Rudra Buildwell Projects Private Ltd,
D-53, Okhla,
Phase I,
New Delhi-110020

Respondent

Present: Mr. Sumesh Dhawan with Ms Vatsala Kak, Advocates for Appellant.

Mr. P.K. Sachdeva, Advocate for Respondent.

JUDGEMENT

SUDHANSU JYOTI MUKHOPADHAYA, J

Indiabulls Housing Finance Ltd, appellant, (financial creditor) (IHFL) has preferred this appeal challenging the order dated 30.11.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi rejecting the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) filed by the appellant.

2. The question arises for our consideration is whether appellant, Indiabulls Housing Finance Ltd, can claim to be a 'Financial Creditor' of Respondent, Rudra Buildwell Projects Pvt Ltd (Corporate Debtor). The case of the appellant is that as per request of the borrower, Sh Devender Singh and Ms Sushma Rajput, the appellant sanctioned loan of Rs.74,20,160/- on 6th April, 2015. The loan agreement was executed between appellant and the borrower on 6th April, 2015 and the aggregate loan amount sanctioned vide said loan agreement dated 06.04.2015 was for Rs.73,23,391/-.

3. In addition a tripartite agreement dated 6.4.2015 was also executed between the appellant, Corporate Debtor and the Borrower. According to appellant in terms of the tripartite agreement dated 6.4.2015 the borrower and the Corporate Debtor are jointly and severally liable for payment of the Pre-Equated Monthly Instalment interest till commencement of the Equated Monthly Instalment. The Corporate Debtor has repaid a sum of Rs.1,26,940/- vide cheque dated 29th March, 2018 and another sum of Rs.63,470/- vide cheque dated 31st May, 2018. It was alleged that the borrowers and the corporate debtor have failed to maintain the financial discipline and have defaulted in the payment of the Pre-Equated Monthly Instalment interest/Equated Monthly Instalment in terms of loan agreement and tripartite agreement. The Adjudicating Authority taking into consideration the aforesaid fact held that the application filed under Section 7 of I&B Code is not maintainable against M/s Rudra Buildwell Projects Private Ltd, the said respondent having not taken loan from the appellant.

4. From the record and the agreement dated 6th April, 2015, we find that one Mr Davendra Singh son of Shri Rajendra Singh, R/o B-441, Gali No.5,

Majlis Park, Azadpur, Delhi-110033 had taken loan from appellant, Indiabulls Housing Finance Ltd. The said agreement makes it clear that Mr. Davendra Singh is the borrower and the appellant, Indiabulls Housing Finance Ltd is the financial creditor. As per the tripartite agreement dated 6th April, 2015, the borrowers informed the appellant about the scheme of arrangement between the borrower and the builder in terms whereof the builder assumed the liability on account of interest payable by the borrower to the IHFL during the period to be referred to as the "Liability Period" in terms of 24 months i.e. till 30th April, 2017 (Clause 4 of Tripartite Agreement dated 6.4.2015). As the builder in terms of the said agreement assumed the liability of interest payable by the borrower to the IHFL for the period till 30th April, 2017 paid the amount in favour of the IHFL, as noticed above. Section 5(7) of Insolvency & Bankruptcy Code, 2016 defines "financial creditor" whereas Section 5(8) of Insolvency and Bankruptcy Code, 2016 defines "financial debt" which reads as follows:

"5(7) "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;

5(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

a) Money borrowed against the payment of interest;

b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

- c) Any amount raised pursuant to 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 non-recourse basis;***
- f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;***
- g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;***
- h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;***
- i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;***

5. In terms of Clause 5(8) of I&B Code, if disbursement is made for consideration of time value of money, a person can claim to be a financial creditor with regard to amount paid.

6. Admittedly the appellant, IHFL, has disbursed the amount for consideration of time value of money in favour of borrower, Mr. Davender Singh and not to the builder. Therefore, the Adjudicating Authority has rightly held that Rudra Buildwell Projects Pvt Ltd is not the corporate debtor of the appellant and the application under Section 7 of I&B Code is not maintainable.

7. In absence of any merit, the appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

Dated:14-05-2019

New Delhi

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