

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 468 of 2019

IN THE MATTER OF:

Jagdambey International

...Appellant

Vs

Visa Powertech Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Manish Verma, Advocate

**For Respondent: Mr. Bishwajit Dubey and Ms. Surabhi Khattar,
Advocates**

ORDER

02.12.2019 Heard learned Counsel for both the sides. This appeal has been filed by the Appellant- Jagdambey International claiming to be Financial Creditor who filed Application CP(IB) 4023/I&BP/MB/2018 under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') against the Visa Powertech Pvt. Ltd.- Corporate Debtor before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai. The application came to be dismissed on 06.03.2019. Hence the present appeal.

2. It is the case of the Appellant and it has been argued that in September/October, 2015, the Director of the Corporate Debtor- Mr. S.B. Agarwal had met Mr. Amit Goel- the partner of the Appellant and requested for extending financial help. It is stated that accordingly the Appellant, on 20.10.2015 transferred Rs. 28 lakhs through Banking channel and on 23.10.2015 Rs. 17 Lakhs through Banking channel to the Corporate Debtor. Learned Counsel submits that the amounts transferred were towards Financial loan. Learned Counsel further states that on 26.11.2015, the Corporate Debtor

had returned Rs. 5 lakhs and Rs. 40 lakhs were still to be recovered. It is submitted that the Financial Creditor had requested on phone for return of the money and when the same was not returned, a Demand Notice dated 25.09.2018 (page 96 of the Paper Book) was sent. The argument is that the Respondent has replied notice vide Exhibit-C dated 23.10.2018 (page 147 of the Paper Book) and claimed that the amount forwarded was on behalf of R.K. Singh and Sai Ysh Solar for commissioning of Solar Power Project and that it was not towards loan. Learned Counsel submits that when the matter was filed before the Adjudicating Authority, different stand was taken by the Corporate Debtor that the amount was towards equity contribution for the Solar Project and thus it was stated that there were contradictory stands.

3. The Adjudicating Authority heard the parties and observed:

...

“12. It is unclear why the Petitioner was keeping quiet for three years without asking for the principal or interest when Rs. 40 lacs is advanced to the Corporate Debtor as a financial debt except the only Demand Notice dated 25.09.2018. No document was produced in support of the loan showing this amount as a financial debt except saying that there is an oral agreement.

13. The Petition submitted that the payment made to the Corporate Debtor was accounted by them under the heading “other current assets” for the year 2015-16 the same was accounted under the heading “loans and advances”. It is not even the contention of the Petitioner that

interest has been charged to the Corporate Debtor and the same was debited to the account of the Corporate Debtor. The same amount of Rs. 40 lacs was only shown in the Balance Sheet for both the years which means that no interest was charged. Hence the Petition cannot say that the money is given for interest but subsequently also in the amended Form-1, the claim for interest was given up by the Petitioner and hence the transaction cannot fit in the definition of "Financial Debt" as defined under the Code. It is not the case of the Petitioner that they are the shareholders/directors/promoters of the Corporate Debtor and had given interest free loan to the Corporate Debtor, so that they will get some indirect benefit by increase in the earning of the Corporate Debtor or by a saving in interest expense since there is no outgo on account of interest payment and ultimately there is some indirect monetary benefits to the stake holders so that the amount advanced can be considered as "Financial Debt".

14. *Per contra the Corporate Debtor claims that the amount paid by the Petitioner is towards the equity contribution for the solar project, on behalf of Sai Ysh Solar and accordingly the payment made by the Petitioner was credited to the account of Sai Ysh Solar on 05.12.2015 and produced the ledger account to that effect. Further, the Corporate Debtor as early as on 04.08.2015 requested the*

partner of the Petitioner to pay a sum of Rs. 67,85,575/- for commissioning the solar project. Hence, the contentions of the Corporate Debtor in this regard cannot be ignored totally considering the relationship between the parties and the correspondence between the Corporate Debtor and the partner of the Petitioner.”

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4. Learned Counsel for the Appellant further states that it was an oral transaction and he is unable to show from the documents that the amount advanced was by way of a Financial Loan for time value of money. Learned Counsel submits that he was only relying on ledger entries and balance sheet of its partnership firm to show that it was Financial debt. There is no document to show that there was any interest paid or recovered or claimed. Appellant is unable to show that money transferred created a Financial debt.

5. Going through the reasons recorded by the Adjudicating Authority, we are unable to accept the appeal that there was Financial Debt and default. We agree with the Adjudicating Authority.

6. There is no substance in the appeal. The appeal is dismissed. No costs.

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

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc/Md.