

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 120 of 2020

IN THE MATTER OF:

Earth Gracia Buildcon Pvt. Ltd.
(Through its Resolution Professional
Ms. Manisha Rawat

...Appellant

Versus

Connoisseur Infrabuild Pvt. Ltd.

...Respondent

Present:

For Appellant : Ms. Varsha Banerjee, Advocate

O R D E R

30.01.2020 The Resolution Professional of 'Earth Gracia Buildcon Private Limited' moved an Application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016' (**'I&B Code'**, for short) for initiation of the 'corporate insolvency resolution process' against 'Connoisseur Infrabuild Private Limited' (Corporate Debtor).

2. The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench -V, New Delhi, by impugned order dated 9th December, 2019 rejected the Application as the claim is barred by limitation.

3. The learned counsel for the Appellant submitted that 'Connoisseur Infrabuild Private Limited' (Corporate Debtor) is a group company of 'Earth Gracia Buildcon Private Limited' (Appellant). Without a joint 'corporate insolvency resolution process' of 'Earth Gracia Buildcon Private Limited', which is undergoing 'corporate insolvency resolution process' along with 'Connoisseur Infrabuild Private Limited' (Corporate Debtor), there cannot be a resolution. Therefore, the application under Section 7 of the 'I&B Code' should have been entertained. It is further submitted that if it is not allowed then there will be a

liquidation and in such case, there will be no maximization of 'Earth Gracia Buildcon Private Limited' (the Appellant, which is undergoing the 'corporate insolvency resolution process').

4. On the question of limitation, it is submitted that the Application was moved only when the 'Corporate Debtor' defaulted in making the payment after the Demand Notice was issued by the Appellant and, therefore, the Application under Section 7 is not barred by limitation. It is submitted that no Agreement was reached between the parties and there has been no question of declaring the assets 'Non-Performing Assets' (NPA). The amounts were transferred to the Bank or by way of RTGS which are based on record.

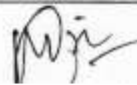
5. Form 1 (application under Section 7) filed by the Appellant shows the following particulars of the 'Financial Debt' at part-IV is as under :

PART - IV	
PARTICULARS OF FINANCIAL DEBT	
1. TOTAL AMOUNT OF DEBT GRANTED	INR 26,23,00,000/- (Rupees Twenty Six Crores Twenty Three Lakhs Only)
DATE(S) OF DISBURSEMENT	<p>1. Bank Transfer dated 22.02.2013 from Indian Bank- Account No. 6068781899 for an amount of INR 1,00,00,000/- (Rupees One Crores Only)</p> <p>2. RTGS dated 06.03.2013 from Indian Bank- Account No. 6068781899 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>3. Bank Transfer dated 15.03.2013 from Indian Bank- Account No.</p>

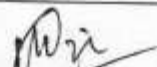
	<p>6068781899 for an amount of INR 3,00,00,000/- (Rupees Three Crores Only)</p> <p>4. Bank Transfer dated 28.03.2013 from Indian Bank- Account No. 6068781899 for an amount of INR 38,00,000/- (Rupees Thirty Eight Lakhs Only)</p> <p>5. RTGS dated 09.04.2013 from Yes Bank- Account No. 023784900000032 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>6. Bank Transfer dated 18.06.2013 from Indian Bank- Account No. 6068781899 for an amount of INR 70,00,000/- (Rupees Seventy Lakhs Only)</p> <p>7. Bank Transfer dated 18.06.2013 from Indian Bank- Account No. 6068781899 for an amount of INR 10,00,000/- (Rupees Ten</p>
--	---

[Handwritten Signature]

	<p>Lakhs Only)</p> <p>8. Bank Transfer dated 29.05.2014 through Cheque no. 351601 dated drawn on Yes Bank- Account No. 023784900000032 for an amount of INR 8,00,000/- (Rupees Eight Lakhs Only).</p> <p>9. RTGS dated 08.07.2014 from Yes Bank- Account No. 023784900000032 for an amount of INR 10,00,000/- (Rupees Ten Lakhs Only).</p> <p>10. Bank Transfer dated 01.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>11. Bank Transfer dated 04.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 50,00,000/- (Rupees Fifty Lakhs Only).</p>
--	---



	<p>12. Bank Transfer dated 04.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>13. Bank Transfer dated 04.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>14. Bank Transfer dated 04.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>15. Bank Transfer dated 04.08.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).</p> <p>16. Bank Transfer dated 04.08.2014 from</p>
--	---



HDFC Bank- Account No.
50200005847210 for an
amount of INR
1,00,00,000/- (Rupees
One Crores Only).

17. Bank Transfer
dated 04.08.2014 from
HDFC Bank- Account No.
50200005847210 for an
amount of INR
50,00,000/- (Rupees Fifty
Lakhs Only).

18. Bank Transfer
dated 19.09.2014 from
HDFC Bank- Account No.
50200005847210 for an
amount of INR
17,00,000/- (Rupees
Seventeen Lakhs Only).

19. Bank Transfer
dated 06.10.2014 from
HDFC Bank- Account No.
50200005847210 for an
amount of INR
1,00,00,000/- (Rupees
One Crores Only).

20. Bank Transfer
dated 06.10.2014 from
HDFC Bank- Account No.
50200005847210 for an

	amount of INR 1,00,00,000/- (Rupees One Crores Only).
21.	Bank Transfer dated 06.10.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 1,00,00,000/- (Rupees One Crores Only).
22.	Bank Transfer dated 06.10.2014 from HDFC Bank- Account No. 50200005847210 for an amount of INR 75,00,000/- (Rupees Seventy Five Lakhs Only).
23.	Bank Transfer dated 12.01.2015 through Cheque no. 000023 drawn on HDFC Bank- Account No. 50200005847210 for an amount of INR 3,75,00,000/- (Rupees Three Crores Seventy Five Lakhs Only).
24.	Bank Transfer dated 08.07.2015 through Cheque no.



Copy

68

	<p>000057 drawn on HDFC Bank- Account No. 50200005847210 for an amount of INR 4,20,00,000/- (Rupees Four Crores Twenty Lakhs Only).</p> <p>25. Bank Transfer dated 29.12.2015 through Cheque no. 000130 drawn on HDFC Bank- Account No. 50200005847210 for an amount of INR 5,00,000/- (Rupees Five Lakhs Only).</p> <p>26. Bank Transfer dated 29.12.2015 through Cheque no. 038705 drawn on Yes Bank- Account No. 023784900000032 for an amount of INR 3,00,000/- (Rupees Three Lakhs Only).</p>
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE	<p>INR 34,01,60,021/- (Rupees Thirty Four Crores One Lakh Sixty Thousand Twenty One Only)</p> <p style="text-align: right;"><i>AW</i></p>

69

<p>WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>Along with <i>pedente lite</i> and future interest @18% per annum</p> <p>which includes:</p> <p>I. Principal Amount of INR 26,23,00,000/- (Rupees Twenty Six Crores Twenty Three Lakhs Only)</p> <p>II. Interest component of INR 7,70,60,021/- (Seven Crores Seventy Lakhs Sixty Thousand Twenty One Only)</p> <p>Details of computation of default is annexed as Annexure A16.</p>
--	--

6. Particular evidence of default has been shown at Part-V, which is required to be given in Part V and no evidence has been brought on record except the 'Audited Balance-sheet' of the financial year ending 31st March, 2015, ledger of the 'Corporate Debtor' prepared by the 'Financial Creditor' and 'extract of Books of Account' extracted below:

PART - V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR	Not Applicable
----	---	----------------

Wm

70

	OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	
2.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)	Not Applicable
3.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)	Not Applicable
4.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)	Not Applicable
5.	THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)	None as of now.
6.	A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT	Not Applicable

Wm

71

	INFORMATION COMPANY (ATTACH A COPY)	
7.	COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)	Not Applicable
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT	(i) Audited Balance sheet of the corporate debtor for financial year ending 31 st March, 2015. (ii) Ledger of the Corporate Debtor prepared by the financial Creditor (iii) Extract of Books of Account of Corporate Debtor.

7. In *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407* the Hon'ble Supreme Court observed and held :

“27. *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that*

a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

- 28.** *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the*

applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be

satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

8. In Part – IV of Form 1, we find that the amounts were transferred by the Appellant to the ‘Corporate Debtor’ in the years 2013, 2014 and 2015. The last transfer was made on 29th December, 2015 and before completion of the three years i.e. 28th December, 2018, the ‘Corporate Debtor’ has not acknowledged the ‘debt’ in terms of Section 18 of the Limitation Act, 1963. It is also not the case of the Appellant that the ‘Corporate Debtor’ made a part-payment to get advantage of Section 19 of the Limitation Act, 1963. We hold that the claim of the Appellant is barred by limitation and, therefore, the claimed amount is not payable in law.

9. Part-V of 'Form 1' shows that no evidence of default and no date of default was shown therein. It was also shown that default date had crossed more than 3 years. In this background, the Adjudicating Authority (National Company Law Tribunal), New Delhi has rightly rejected the Application under Section 7 and we find no ground to interfere with the same.

The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

/ns/gc/