

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH -I

CP (IB) No.634/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016

*In the matter of*

**RT Advisory Services LLP.**

Plot No. A-49, H-Block, MIDC, Pimpri, Pune-411018.

... Financial Creditor /Petitioner

Versus

**Sardesai Engineering Private Limited**

**[CIN:U452 00PN2011PTC141520]**

Plot No.8, 3<sup>rd</sup> Floor, Madhav Vilas,  
Setalwad Road, Mumbai-400036.

...Corporate Debtor / Respondent

**Order Delivered on :19.07.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)  
Hon'ble Member (Technical) : Mr. Prabhat Kumar

***Appearances:***

For the Financial Creditor : Mr. Aman Kacheria, Advocate.  
For the Corporate Debtor : Mr. Charles Dsouza, Advocate

**ORDER**

***Per: Justice V.G. Bisht, Member (Judicial)***

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) filed by **RT Advisory Services LLP** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Sardesai Engineering Private Limited** ("the Corporate Debtor").

**Facts:**

2. The Petitioner submits that the amount claimed to be in default is Rs.5,19,97,608.21/- comprising of Rs.4,69,60,513/- and interest amounting to Rs.50,37,095/- as on 05.06.2023.
3. It is stated that the Financial Creditor is a Limited Liability Partnership duly incorporated under the LLP Act, 2008 and Corporate Debtor are incorporated under Companies Act, 2013. The Corporate Debtor is a private limited company incorporated under the Companies Act, 2013 engaged in the business of industrial engineering.
4. On 05.05.2019, the Financial Creditor entered into a Memorandum of Understanding (“MOU”) with the Corporate Debtor wherein it was agreed between the parties that the entire shareholding of the Corporate Debtor would be sold and transferred to the Financial Creditor. The shares of the Corporate Debtor were then valued at Rs. 14.50 Crores, which amount was payable in tranches to the existing shareholders of the Company. Subsequently, a Loan Agreement was entered into between the Corporate Debtor and the Financial Creditor on 08.05.2019 in pursuance to the MOU. As per the Loan Agreement, the Corporate Debtor was entitled to request for a disbursement of an amount upto Rs. 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs Only) at an interest rate of 12% p.a from the Financial Creditor.
5. Additionally, Loan Agreement allowed the Financial Creditor to convert the outstanding loan amount into equity shares of the Corporate Debtor. It is submitted that in terms of the Loan Agreement, the Financial Creditor has disbursed an aggregate amount of Rs. 10,26,31,513.36/- (Rupees Ten Crores Twenty-Six Lakhs Thirty-One Thousand Five Hundred and Thirteen and Paise Thirty-Six Only) to the Corporate Debtor on its requests. Out of the said sum disbursed by the Financial Creditor, the Financial Creditor has only

received back a sum of Rs. 5,56,71,001/- (Rupees Five Crores Fifty-Six Lakhs Seventy-One Thousand and One Only) from the Corporate Debtor.

6. In January 2021, disputes arose between the Financial Creditor and the Corporate Debtor under the MoU. More particularly due to the Corporate Debtor and its existing shareholder's obstinate refusal to take on record share transfers made to the Financial Creditor and/or the Financial Creditor's associates/affiliates. In light of the above, the Financial Creditor issued a Demand Notice 06 June 2023 for the repayment of Rs. 5,19,97,608.21/- (Rupees Five Crores Nineteen Lakhs Ninety-Seven Thousand Six Hundred and Eight and Paise Twenty-One Only) which was received by the Corporate Debtor on 08 June, 2023. However, the Corporate Debtor has replied to the same vide their letter dated 21 June, 2023 alleging falsely that the Corporate Debtor has not entered into a Loan Agreement with the Financial Creditor. Pursuant thereto, the Financial Creditor vide its letter dated 06 July 2023 allowing an inspection of the physical copies of the Loan Agreement on 08 July 2023 at the registered office of the Advocate on behalf of the Financial Creditor. However, the Corporate Debtor did not appear on the said date and has not reverted to the letter dated 06 July 2023.

**Submissions advanced by the Respondent:**

7. At the outset the Corporate Debtor has given a brief overview of the facts leading to the filing of the present Petition. It is stated that Sardesai & Co., a partnership firm comprising of Vinaykumar Sardesai (Vinaykumar) and Jayant Advant (Jayant), held the leasehold rights to a significant parcel of the Land. Due to insolvency orders against Vinaykumar and Jayant, the leasehold rights in the Land vested with the Official Assignee of the Bombay High Court. In 2017, Raviraj Takwane (Raviraj), approached the heirs of Vinaykumar viz Shriprakash Sardesai (Shriprakash), Amarnath Sardesai (Amarnath) and

Ushamanjari Advant (Usha), proposing to annul the insolvency orders with an intention to acquire the rights in the Land. The insolvency orders were eventually annulled on September 17, 2019 and September 19, 2019.

8. In the interregnum one Mr.Nikesh Takwane (Nikesh), an associate of Raviraj, executed a Memorandum of Understanding on October 23, 2017 with Shriprakash and Amarnath to purchase a portion of the land for Rs. 30,00,00,000/- plus Rs. 9,50,00,000/- and a Power of Attorney was executed by Shriprakash and Amarnath, in favor of Nikesh. Shriprakash, Amarath, and Usha obtained an heirship certificate as heirs of Vinaykumar, facilitating the incorporation of the Corporate Debtor on February 26, 2019, with an initial shareholding viz Amarnath (20%), Shriprakash (20%), and Jayant (60%). Subsequently, on March 2, 2019, Jayant transferred 20% equity shares to Usha, altering the shareholding structure. Thereafter, on March 12, 2019, MIDC acknowledged the CD's entitlement to the land post-conversion of Sardesai and Co.
9. On March 22, 2019, Mukund Nimhan (Mukund), the maternal uncle of Raviraj and Mahadeo Jagtap (Mahadeo), the father-in-law of Raviraj were appointed as the first Directors of the CD. Subsequently, a Memorandum of Understanding was signed on May 5, 2019, with the Financial Creditor valuing the shares of the Corporate Debtor at Rs. 14.5 crores, to be paid to the existing shareholders. Despite the Acquisition MOU, the consideration was not received, yet shares held by Amarath and Shriprakash were fraudulently transferred in favour of Amruta Takwane (Amruta) and Raviraj respectively. Further, Raviraj's shares in tum were transferred to Amruta, Shradha Takwane (Shradha) and Mukund. Therefore, on July 12, 2020, Amarath, Shivprakash, Usha and Jayant issued a public notice terminating the Acquisition MOU and Shriprakash filed a FIR against the Financial Creditors for fraudulent activities. A Settlement Agreement was executed in

January, 2021 for retransfer of the wrongfully transferred shares to facilitate withdrawal of the FIR against certain individuals.

10. It is submitted that the Financial Creditor and Raviraj filed Commercial Suit No. 14 of 2021 (Suit) in the Bombay High Court against the CD, Shriprakash, Amarnath, Jayant and Usha for specific performance of the Acquisition MOU. The loan agreement dated May 8, 2019 (Alleged Loan Agreement) which forms the basis of the Company Petition does not find mention in the Suit. On the contrary the Suit admits that the Financial Creditor was always in control of the Corporate Debtor and Interim reliefs in the Suit were declined on 9th July, 2021.
11. On merits, the Respondent submits that no authority in favor of the Shradha authorizing her to institute the present proceedings has been produced along with the Company Petition.
12. Secondly, the amount in dispute does not qualify as a financial debt. The alleged debt was not advanced against any "time value of money". It is averred that the Financial Creditor has misrepresented the investment as a debt via a bogus, ante dated and got up Loan Agreement dated May 8, 2019 created by the Financial Creditor. The Financial Creditor intended to acquire and develop the Land owned by the Corporate Debtor and invested monies therein. The Alleged Loan Agreement is not supported by requisite corporate resolutions, reflected in the financial records of either the Corporate Debtor or the Financial Creditor and most significantly, the Alleged Loan Agreement is signed by one Mr. Mahadeo, the father-in-law of Raviraj, acting on behalf of the Corporate Debtor.
13. Thirdly, it is submitted that the captioned Company Petition is not a genuine insolvency petition and is not aimed at resolving any genuine insolvency of the Corporate Debtor, which is not under financial difficulty. It is a counterblast by the Financial Creditor due to

their failure to obtain reliefs in the Suit. It is submitted that the Company Petition does not specify the date of Non-Performing Asset (NPA), date of default, or produce any bank statements to substantiate the dates of the alleged loan disbursements.

14. It is further argued that advancing loans was not a purpose with which the Financial Creditor was incorporated and the present transaction/Alleged Loan Agreement is thus beyond the stated objects of the Financial Creditor. Moreover, it is stated that the control of the Corporate Debtor vested with the Financial Creditor. The Board of Director of the Corporate Debtor was appointed and controlled by the Financial Creditor and during such time the Alleged Loan Agreement was executed. The control of the Financial Creditor over the Corporate Debtor is admitted in the Suit and despite Shivprakash, Amarnath, Usha, and Jayant holding both rights in the Land and shares in the CD, their exclusion from the Board of Directors signifies the transfer of control to the Financial Creditor. This absence of representation, coupled with the subsequent actions of fraudulent transfer of shares by the Financial Creditor, illustrates manipulative control of the Financial Creditor over the Corporate Debtor, with the ultimate aim of a complete takeover.

**Findings:**

15. Heard learned Counsel for the Financial Creditors and Learned Counsel for the Corporate Debtor. Perused the record.
16. At the outset, it is essential to examine the underlying transaction resulting in accrual of the alleged Financial Debt claimed by the Petitioner. The Financial Creditor states that the amount in default arises out of a Memorandum of Understanding and a Loan Agreement executed between the parties. Per contra, the Corporate Debtor pleads that transaction was in the nature of an investment made by the Financial Creditor to acquire the land and in fact the Corporate Debtor was incorporated for this purpose. It is apposite

to note that the MOU envisaged that the Financial Creditor will acquire the entire shareholding of the Corporate Debtor for consideration of Rs.14,50,00,000/-. The main asset of the Corporate Debtor is the land situated at Pimpri Chindwad, Pune. The recital f of the MOU reads as under:

*“F. SEPL is required to Incur substantial expenses and outgoings in terms of efforts and energy, and the Shareholders do not have the requisite resources (financial and physical) to withstand the same and in view thereof and based on mutual, understanding between the Shareholders and RTA, the Shareholders have agreed to sell their share in SEPL to RTA and RTA has agreed to purchase the share of the Shareholders in SEPL, on the terms and conditions which are more particularly stated in this MOU.*

*7. In order to give effect to the transaction consummated under this MOU the Shareholders agree and covenant to execute the following:*

*7.1. Share Purchase Agreement or any other necessary document to transfer their shareholding in SEPL to RTA,*

*7.2. Any other necessary document to transfer the said Leasehold Rights from M/s. Sardesal & Co. to SEPL,*

*7:3. Such other instruments of sale, transfer, conveyance and assignment. as RTA may reasonably request to give effect to the transaction contemplated under this MOU.”*

17. On a combined reading of recital F and clause 7 of the MOU, we find that the transaction for purchase of shares was in fact intended to acquire the immovable property in the Corporate Debtor which was to be released from the erstwhile insolvency proceedings.
18. Thereafter, the parties herein entered into a Loan Agreement dated 08.05.2019, the tenure of the said agreement was for 3 years and the amount disbursed was Rs.7,50,00,000/-. At this juncture, it is relevant to iterate the following clauses of the loan agreement:

- A. *“By and under Memorandum of Understanding dated May 05, 2019, the Lender herein (therein referred to as RTA) and one Mr. Shriprakash Sardesai, Mr. Amarnath Sardesai, Mr. Jayant Advant and Mrs. Ushamanjeri Advant (therein together referred to as Shareholders) and the Borrower (therein referred to SEPL), the Lender has agreed to acquire 100 percent shareholding in the Borrowing company for value consideration from the shareholders therein and on terms and conditions mentioned therein.*
- B. *The Borrower company is in possession and ownership of leasehold land of plot admeasuring 93,715 sq. mtrs equivalent to 112028.21 sq. yds or thereabout in Block D1, MIDC Industrial area of Pimpri Chinchwad, Village Akurdi, Taluka Havelia, District of Pune, within the limits of Pimpri Chinchwad Municipal Corporation and under the jurisdiction of sub-registrar Haveli, Pune, together with the building standing thereon ("said Land") and is in requirement of funds to develop the said land and meet with the operational expenses of the Borrower company.*
- C. *In view of the above, the Lender has agreed to disburse monies upto the extent of Rs. 7,50,00,000/- (Rupees seven crores and fifty lakhs only) as and when required by the Borrower company.”*

19. The recital B of the purported loan agreement clearly shows that the money was raised from the Petitioner by the Corporate Debtor to develop the land owned by the Corporate Debtor, the indirect acquisition of which through purchase of shares of the Corporate Debtor was contemplated by way of the aforesaid MOU. It is the case of the Corporate Debtor that the said loan agreement was created by the Petitioner’s nominee directors on the board of the Corporate Debtor who came to be appointed pursuant to the aforesaid MOU for transfer of 100% shareholding, in other words the Petitioners advanced the money for development of land to the Corporate Debtor of which was acquired by them



under aforesaid MOU for the ultimate objective of acquisition of land of the Corporate Debtor. It is not disputed that the said loan agreement has been executed by the Directors who were nominee of the Petitioners herein and came to be appointed pursuant to aforesaid MOU. In substance, this transaction of subsequent lending having been undertaken for the development of the land of the Corporate Debtor, particularly when the Corporate Debtor was not having any financial resource except piece of land, was in nature of investment in the land and development of project thereon initiated initially from execution of the aforesaid MOU.

20. Upon plain reading of the aforesaid recitals of the Loan Agreement it clear that the underlying transaction was that of investment for the purpose of acquiring Land belonging to the Corporate Debtor. Pursuant to covenants of the MOU, the shareholding of the Corporate Debtor was to vest in the Financial Creditor, however, it is submitted that the after the transfer of the shares in favour of the Financial Creditor disputes ensued resulting in retransfer of the shares back to the Corporate Debtor vide a Settlement Agreement. In the aforesaid factual backdrop, it is clear that the acquisition MOA and the Loan Agreement was executed for the purpose of the Corporate Debtor gaining control of the company and the investment in the land. The Hon'ble NCLAT whilst deciding a similar issue in the matter of *Ansal Housing Limited vs Samyak Projects Private Limited Company Appeal (AT)(Insolvency) No. 542 of 2023* held as under:

*“12. The brief point that falls for our consideration is whether in the facts of the present case, the financial assistance of Rs.25 crore given by the Appellant to the Respondent by way of an ICD for the purpose of buying land for a real estate project which was being jointly developed under a JVA can be construed as a financial debt in terms of IBC.*

24. *Undisputedly both parties being partners in developing the project together, the purchase and availability of land for the project was an essential ingredient thereof and hence any assistance by the Appellant to the Respondent tantamount to financing the operations of the joint venture. When shared liability for profit is so clearly manifested in the JVA and the ICD and responsibilities well demarcated in the execution of the real estate projects, it cannot be overlooked that both parties are development partners and co-sharers in the real estate projects. The JVA and ICD laid the foundations of a legal and binding relationship with mutual financial obligations towards each other. Given this backdrop, clearly the present transaction is in the nature of investment for profit and not disbursement for time value of money and hence does not fall within the canvas of financial debt as defined under Section 5(8) of the IBC. It may also not be out of place to mention here that the primary intent and object of the IBC is the resolution of the Corporate Debtor and not recovery of a debt of the creditor. It needs no emphasis that the Hon'ble Apex Court in a catena of judgments have observed that the provisions of IBC cannot be utilised by a creditor for recovery of its debt. This Tribunal has also observed time and again that the primary focus of IBC, as a beneficial legislation, is to ensure revival and continuation of the Corporate Debtor and that the provisions of IBC cannot be misused for staging recovery of debt and for treating the Adjudicating Authority as a debt recovery forum.*

25. *In so far as the findings of the Adjudicating Authority are concerned that both the parties being joint venture partners, there was no financial debt in terms of Section 5(8) of IBC and hence the application under Section 7 of the IBC could not be entertained, we see no error in the impugned order. We hold that the Appellant is not a Financial Creditor in terms of Section 5(7) of IBC and the application under Section 7 at the instance of the Appellant was not maintainable and hence the same has been rightly rejected by the Adjudicating Authority. Hence the appeal fails and is dismissed accordingly. We, however, are of the view that the Appellant will have the*

*liberty to exhaust other remedies available in law before any other appropriate forum and raise all pleas as permissible in law to protect their interests. No order as to cost.”*

21. We are of the considered view that, in the present matter the alleged amount in default was disbursed by the Financial Creditor for the purpose of development of the Land and is in nature of investment and not a Financial Debt. It cannot be overlooked that the Financial Creditors were to be in control of the Corporate Debtor under the covenants of the acquisition MOU. Therefore, the aforesaid loan agreement and the acquisition MOU cannot be read independently. The Financial Creditor has failed to establish the fact the debt in question is a financial debt under Section 5(8) of the Code and therefore cannot be entertained.
22. CP(IB) No. 634 of 2023 is dismissed.

**Sd/-**  
**PRABHAT KUMAR**  
**Member (Technical)**

19.07.2024  
Priyal

**Sd/-**  
**JUSTICE V.G. BISHT**  
**Member (Judicial)**