IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V

C.P. 1206/IB/MB/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Mrs. Neeta Navin Nagda

13, Vasant Breeze Chambers, Opp. Maheshwari Udyan, Matunga (C.R.), Mumbai – 400019

..... Financial Creditor/ Petitioner

Vs

Balan and Chheda Developers Private Limited

A.F.F. 83/A, N. G. Acharya Marg, Chembur, Mumbai - 400 071

..... Corporate Debtor/ Respondent

Order Reserved On: 15.12.2022

Order Pronounced On: 03.02.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Adv. Jayom Shah a/w Ms. Maitri Malde i/b Mr. Ranit Basu.

For the Corporate Debtor: Adv. Nausher Kohli a/w Adv. Rajan Agarwal i/b RDA Law Office

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The Company Petition is filed by "**Mrs. Neeta Navin Nagda**" (hereinafter referred as 'Petitioner') seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Balan and Chheda Developers Private Limited** (hereinafter referred as 'Corporate Debtor') by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter referred "Code" read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for claiming an unsecured Financial Debt of Rs. 1,08,62,693/-.

2. Succinctly put, the case of the Petitioner/ Financial Creditor is that she herself is a shareholder of the Corporate Debtor holding 10% equity share capital but has not been involved in the affairs of the Company in any manner. The Corporate Debtor was in need of funds to carry on the construction work at its ongoing Chembur Project named as Anusmera Residents. Accordingly, the Petitioner disbursed an amount of Rs. 1,72,50,000/- to the Corporate Debtor as loan depicted as under:

Sr No.	Date	Amount (in Rupees)
1.	03.10.2011	5,00,000/-
2.	11.10.2011	20,00,000/-
3.	25.11.2011	9,50,000/-
4.	01.12.2011	3,00,000/-
5.	15.12.2011	12,50,000/-
6.	28.12.2011	7,00,000/-

7.	05.01.2012	8,00,000/-
8.	09.02.2012	1,20,000/-
9.	09.02.2012	6,80,000/-
10.	09.03.2012	8,00,000/-
11.	09.04.2012	8,00,000/-
12.	10.04.2012	10,00,000/-
13.	23.04.2012	5,00,000/-
14.	10.05.2012	6,00,000/-
15.	18.05.2012	5,00,000/-
16.	08.08.2012	20,00,000/-
17.	25.08.2012	25,00,000/-
18.	10.09.2012	12,50,000/-
	Total	1,72,50,000/-

Out of the aforesaid aggregate amount Rs. 1,72,50,000/-, the Corporate Debtor repaid the same of Rs. 1 Crore on 15.04.2013 leaving a balance amount of Rs. 72,50,000/-.

3. It was agreed between the Petitioner and the Corporate Debtor that on the aforesaid amount of the loan, interest would started accumulating from 1st April, 2016 @12% per annum and further that the interest would be payable annually from 31st March, 2017 onwards on the credit balance as on the first day of the Financial Year. However, the Corporate Debtor started defaulting in the payment of interest from April, 2019 onwards and did not pay any interest despite repeated reminders sent by the Petitioner. Eventually, the Financial

Creditor through letters dated 04.11.2019 and 26.11.2019 called upon the Corporate Debtor to return the outstanding balance principle amount along with interest. In reply, the Corporate Debtor through its letter dated 18.12.2019 acknowledged the receipt of the letter saying that they would reply to both the letters, but no reply was received from the Corporate Debtor at any point of time. It is further claimed by the Petitioner that she got sent a notice dated 21.01.2020 through her Advocate calling upon the Corporate Debtor to pay the outstanding amount of Rs. 72,50,000/- being the principle amount along with interest @ 12% per annum till 31st January, 2020 amounting to Rs. 36,12,600 and the total amount aggregating to Rs. 1,08,62,693/-. Therefore, the date of default is 31.01.2020 as in the demand notice dated 21.01.2020, the Corporate Debtor was asked to repay the outstanding loan amount with interest by 31st January, 2020.

4. The Petitioner has further claimed that the Corporate Debtor raised certain false and frivolous defences relying on some fictitious documents but when the Petitioner requested the Corporate Debtor to allow her inspection of documents through letter dated 7th February, 2020, she was not allowed to inspect the documents. Therefore, in the given circumstances, the Petition is liable to be admitted and CIRP be initiated against the Respondent/Corporate Debtor.

Reply filed by the Corporate Debtor: -

5. In the reply filed by the Corporate Debtor, it has been claimed that the present Petition has been filed by suppressing material facts. According to the Corporate Debtor, the alleged transaction was not a loan transaction nor any loan agreement was ever executed between the parties whereby the Corporate Debtor might have agreed to pay interest @ 12% per annum from 1st April, 2016. In fact, the Petitioner has claimed interest only to inflate her alleged claim to Rs. 1,08,62,693/-. The Corporate Debtor has further pleaded that the husband of the Petitioner namely Mr. Navin Shah *alias* Mr. Navin Nagda is a Chartered Accountant and he has been rendering his services to the Corporate Debtor since its incorporation in the year 1996. Mr. Navin Shah was the Auditor

of the Respondent from 15th May, 1996 to 31st March 2013. Even thereafter he continued to advise the Respondent on all financial and accounting matters. In the year 2011-2012, as the construction business was doing well, the husband of the Petitioner got interested in investing in the business venture of the Respondent. It was agreed that the petitioner's husband would purchase 10% of equity shares of the Corporate Debtor. The then holders of the shares would be paid the face value of Rs. 10 per share and the Petitioner would deposit further sums with the Respondent/Corporate Debtor as contribution to the equity share capital. This arrangement was agreed between the Parties irrespective of the accounting treatment given to the sum invested in company's books of accounts which were prepared as per the advice of the husband of the Petitioner. Moreover, the husband of the Petitioner has been Auditor of the Respondent for 16 years and has been acting in a fiduciary capacity and the directors of the Respondent relied upon his advice. Accordingly, on 15th March 2011, the Petitioner purchased 10,000 shares at a face value of Rs. 10 per share from Hema Trading Company Private Limited and 7740 shares from Alka Diamond Industries Limited. The consideration was paid at the face value of shares and not at the market value of the shares. Thereafter between 3rd October, 2011 and 10th September, 2012, the husband of the Petitioner through the Petitioner invested sum aggregating to Rs. 2,50,50,000/- by way of share premium. Out of the said amount of Rs. 2,50,50,000/-, Rs. 72,50,000/- was the share premium invested in the name of the Petitioner. Therefore, it was not a loan transaction as equity shares were purchased and premium on equity shares was paid and due to this very reason, no loan agreement was executed between the parties.

6. It has further stated in the reply that in April, 2013, the Petitioner and her husband wished to invest in share premium of another Company of the same group, i.e., Anusmera Reality & Infra Private Limited and requested the Respondent to return the sum of Rs. One Crore. Accordingly, the said sum of Rs. 1 Crore was returned to the Petitioner on 15.04.2013 leaving the total sum invested at Rs. 1,50,50,000/- as share premium which includes 72,50,000/- of

the Petitioner. No interest was ever paid by the Respondent on the sum of Rs. 1 Crore nor any interest was demanded by the Petitioner as it was not a loan. Moreover, the husband of the Petitioner through his email dated 28th August, 2014 addressed to the Respondent candidly admitted that the consideration was for acquiring 10% rights in the Respondent Company. It was further stated in the said letter that regardless of the treatment given in the books as Unsecured Loan, the same was to be treated as the premium for acquiring 10% shareholding and was to be accordingly considered at the time of settlement of the account. The copy of the email annexed as Exhibit-R1 with the reply.

7. It is further stated in the reply that when a Director of the Respondent pointed out to the husband of the Petitioner that the figures in the email mentioned in the draft letter were incorrect as the sum of Rs. One Crore was already returned to the Petitioner on 15th April, 2013 and another sum of Rs. 8 lacs had been included towards the share premium of Mrs. Hemlata Shah, nominee of the Petitioner, the husband of the Petitioner corrected the figures and handed over signed letter dated 28th August, 2014 (Exhibit R-2). All this clearly proves that no loan was ever availed by the Corporate Debtor from the Petitioner and as a matter of fact, the Petitioner made the investment for acquiring 10% shareholding in the Company.

8. It is further stated in the reply that due to certain delay in the real estate project and in obtaining commencement certificate, it was also decided that some dividends should be paid and, therefore, it was agreed that a dividend of 12% would accrue for the years 2016-2017 and 2017-2018 which was reduced to 9% for the year 2018-2019 due to the downward trend in the real estate sector in particular and economy in general and from April onwards, it was discontinued altogether. The other averments made in the Petition have been denied wrong and a prayer for dismissal was also been made.

9. The Petitioner filed rejoinder controverting the averments made in the reply and reiterating those made in the Petition. According to the Petitioner, the purchase of 10% equity shareholding of the Respondent Company by the

Petitioner is a separate and distinct event which has nothing to do when the loan advance to the Respondent. The Petitioner has further stated that there were no such regulations which prevented her from investing in the Respondent Company by way of equity or debt simply because her husband as a Chartered Accountant had rendered certain services to the Respondent Company. Even otherwise, the husband of the Petitioner rendered professional audit services to the Respondent only till March 2013 and thereafter, he was merely filing TDS, GST, ROC and VAT returns of the Respondents based on the data and inputs given by it. The Petitioner had lent Rs. 1,72,50,000/- to the Respondent/Corporate Debtor and in the letter in question, it is shown that the husband of the Petitioner had advanced Rs. 2,50,50,000/- to the Respondent. Moreover, a bare perusal of the financial returns of the Respondent shows that no amount has been credited in the security premium account after the Petitioner became a shareholder. The Petitioner further stated that no email dated 28th August, 2014 was ever sent by the husband of the Petitioner to the Respondent nor the Respondent has got any such email inspected from the Petitioner, though a request was made in this regard.

Findings: -

10. We have heard the Counsel for the Parties and gone through the records.

11. It has been pointed out by the Counsel for the Petitioner that the instant case is a fit one to be admitted under Section 7 of the Code. The Counsel for the Petitioner has further pointed out that the Petitioner had advanced loan of rupees 1,72,50,000/- to the Corporate Debtor from 3rd October onwards out of which sum of Rs. 1 crore was returned by the Respondent on 15th April 2013 leaving a balance of rupees 72,50,000/-. It was also agreed that the interest would be paid on the loan amount starting from 1st April 2016 @12% per annum which was paid annually by the Respondent/Corporate Debtor. However, the Respondent/Corporate Debtor stopped paying the interest amount from April 2019 onwards which forced the Petitioner to call for the refund of the outstanding balance through letters dated 04.11.2019 and

26.11.2019 which were never replied to by the Respondent. Eventually, a notice dated 21st January 2020 was got served upon the Corporate Debtor calling upon it to repay the amount of Rs. 72,50,000/- along with interest of Rs. 36,12,600/- up to 31st January 2020 aggregating to Rs. 1,08,62,693/-.

12. On the contrary, the defence raised on behalf of the Corporate Debtor is that no loan was advanced and as a matter of fact, the amount in question was invested by the Petitioner to acquire equity stake of 10% of the Corporator Debtor and the extra amount in addition to the shares acquired by the Petitioner was to be adjusted towards Share Premium Account. Therefore, there was no question of any loan having been raised by the Corporate Debtor nor the question of payment of any interest could ever arise. In this regard, the Counsel for the Respondent/Corporate Debtor has pointed out to the letter Exhibit- R2 dated 28th August 2014, which was addressed by the husband of the Petitioner to the Corporate Debtor stating that the unsecured loan of Rs. 1,50,50,000/- in the books of the Corporate Debtor was an investment to acquire 10% shareholding in the company in the name of his wife Neeta Naveen Nagda i.e. the Petitioner. According to the Counsel for the Respondent, this clinches the issue and no inference can be drawn that any loan was ever advanced to the Corporate Debtor by the Petitioner and the Petition under Section 7 of the Code is liable to fail on this ground alone.

13. We have thoughtfully considered the above contentions raised by the Counsel for the Parties and have carefully gone through the record.

14. It is not disputed that from 1st April 2012 to 6th September 2012, a sum of Rs. 1,72,50,000/- was transferred by the Petitioner to the Respondent/Corporate Debtor, as is shown in Exhibit-B which is statement of confirmation of account issued by Mr. D.R. Chheda, Director of the Corporate Debtor. Since an amount of Rs. One Crore was returned as on 15th April 2013, the statement of confirmation of account dated 1st April 2016 shows the balance amount of Rs. 72,50,000/-. The Petitioner has further placed on record the similar statements issued on behalf of the Corporate Debtor on 1st April 2017, 1st April 2018 and

1st April 2019, wherein the total amounts due on the relevant dates is shown as Rs. 81,32,083, Rs. 89,13,875 & Rs. 97,14,748 respectively. These amounts also include the interest amount on which TDS is shown to have been admittedly deducted. The Petitioner has further placed on record the ledger account in Exhibit-C which also depicts the outstanding amount at Rs. 1,08,62,693/- on 31st January 2020.

15. The only defence raised on behalf of the Corporate Debtor is that it was not a loan amount but was an investment made by the Petitioner and her husband to acquire 10% equity stake in the Company and the amount in excess of the face value of the shares was to be adjusted towards Share Premium Account. However, in this regard, the Respondent/Corporate Debtor has not been able to substantiate the defence. There is no document which might suggest that any part of the so-called loan amount was to be adjusted or deposited in the Share Premium Account nor any such entry was made in the account books of the Corporate Debtor at any point of time. On the contrary, the confirmation of accounts issued by the Corporate Debtor clearly show that they have been paying interest from 1st April 2016.

16. In the reply, the Corporate Debtor has heavily banked upon two letters purportedly issued by the husband of the Petitioner who has been working as Chartered Accountant/ Auditor of the Corporate Debtor till the year 2013 and even thereafter has been rendering his services as a Financial Consultant to the Corporate Debtor. The Corporate Debtor has relied upon two communications dated 28 August 2014 and which have been attached with the reply as Exhibit R1 and R2. In the first letter, it has been stated that the Unsecured Loan of Rs. 2,50,50,000/- is, in fact, an investment to acquire 10% of the shareholding in the Company. In the second letter Exhibit- R2, it is mentioned that the Unsecured Loan of Rs. 1,50,50,000/- is an investment to acquire 10% shareholding in the Company in the name of the Petitioner and the same should be treated as a premium for acquisition of 10% shareholding. The Petitioner has categorically denied that the said letters were ever issued by her husband, Mr. Naveen Shah. Even otherwise, if the letters dated 28 August 2014 were

issued by the husband of the Petitioner, there appears to be no reason as to why the amount was not subsequently adjusted in the Share Premium Account in the account books of the Corporate Debtor where it continues to be reflected as loan. Not only this, the Corporate Debtor through its Directors kept issuing confirmation of account statements treating the disputed amount as loan and showing payment of interest and as well as TDS. Therefore, the contention raised on behalf of the Corporate Debtor does not appear to be tenable. Even otherwise, merely because, the husband of the Petitioner has been acting as an Auditor of the Company of the Corporate Debtor up to a certain period, it could not have in any way debarred the Petitioner from advancing a loan to the Corporate Debtor. Moreover, no document is shown to have been executed between the parties that any part of the amount advanced to the Corporate Debtor would be treated or adjusted as Share Premium received from the Petitioner. It has also not been clarified as at what premium the shares were allotted to the Petitioner. Therefore, plea raised on behalf of the Corporate Debtor does not appear to be plausible at all. Therefore, the contents raised on behalf of the Corporate Debtor are liable to be rejected.

17. In view of the above discussion, it emerges that the Corporate Debtor owed a sum of Rs. 1,08,62,693/- as Financial Debt to the Petitioner which has failed to pay the same despite demand and, therefore, the instant Petition under Section 7 of the Code deserves to be admitted. It is ordered accordingly in the following terms.

ORDER

A. The above Company Petition No. (IB) 1206 of 2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Balan and Chheda Developers Private Limited.**

B. Since the Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition,

this Bench is hereby appoints **Ms. Nayana Savala**, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00051/2017-2018/10491, having Email id nalinisavala@gmail.com and contact number- 9869043453 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

C. The Financial Creditor shall deposit an amount of Rs. (5) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

D. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

G. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.

H. That the Public Announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.

I. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

K. Accordingly, the **C.P.(IB) 1206 of 2020** is admitted.

L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**