
Karamjyoti Sales Pvt. Ltd Vs Goose Shares And Securities Private Limited

(IB) No. 2111(ND) Of 2019

Court: National Company Law Tribunal New Delhi Bench

Date of Decision: March 19, 2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 " Section 3(6), 3(11), 5(8), 5(8)(a), 5(8)(b), 5(8)(c), 5(8)(d), 5(8)(e), 5(8)(f), 5(8)(g), 5(8)(h), 5(8)(i), 7#Real Estate (Regulation And Development) Act, 2016 " Section 2(d), 2(zn)

Hon'ble Judges: Abni Ranjan Kumar Sinha, J; Kapal Kumar Vohra, Member (Technical)

Bench: Division Bench

Advocate: Praveen Bahadur, Ashish Chaudhary, Dhruv, Kamal Kumar Baid, Pramod Sachdeva, Rahul Baid

Final Decision: Dismissed

Judgement

Abni Ranjan Kumar Sinha, J

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the ""Code""), praying for

initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. The Applicant/Financial Creditor were incorporated on 29.03.1995. The Corporate debtor was incorporated on 15.05.2009.

3. Vide order dated 17.05.2019 passed by National Company Law Tribunal, Kolkata Bench, the Tribunal had sanctioned the Scheme of

Amalgamation of Multiplier Enterprises Private limited, Wizard Commercial private limited and Zircon Vanijya Private limited with Karamjyoti Sales

private limited. Thus, all the rights and liabilities of Multiplier Enterprises Pvt. Ltd. has been transferred to and vested with the Financial creditor herein

and hence the present petition is being filed by the Financial Creditor to recover monies, which were due and payable to Multiplier Enterprises Pvt.

Ltd.

4. The total debt became payable on account of an Oral Agreement between the Multiplier Enterprises Private Limited and the Corporate debtor. By

way of oral Agreement, Multiplier agreed to provide Inter Corporate Deposit for Rs. 1,80,00,000/- at a fixed rate of interest.

5. Applicant stated that a sum of Rs. 1,50,00,000/- was credited from the Bank Account of Multiplier to the Corporate debtor on 28.10.2016 and a

sum of Rs. 30,00,000/- was credited from the Bank Account of Multiplier to the Corporate debtor on 31.10.2016.

6. Further vide letters dated 09.03.2018 and 18.04.2018 issued by Multiplier to the Corporate Debtor demanding payment of Rs. 1,80,00,000/- along

with interest of Rs. 21,60,000/-.

7. The Corporate debtor issued a letter dated 07.05.2018 to the Multiplier Enterprises Pvt. Ltd. stating that there is no outstanding amount as on

31.03.2017 because the corporate debtor has sold the shares to the Multiplier Enterprises Pvt., Ltd.

8. Vide letter dated 31.05.2018. 01.10.2018 and 02.01.2019 issued by the Multiplier to the Corporate Debtor denying the averments made by the

Corporate Debtor in their letter dated 07.05.2018 and demanding payment of Rs. 1,80,00,000/- along with interest.

9. The total amount claimed to be in default as on 31.07.2019 is Rs. 2,24,61,288/- which includes Rs. 1,80,00,000/- and interest calculated @ 9% is Rs.

44,61,288/- and the date of default is 20.03.2018.

10. The Corporate Debtor in its reply dated 14.10.2019 contends that:

i. The Applicant has given the alleged total sum of Rs. 1,80,00,000/- in the month of October, 2016 by way of bank transfer for purchase of shares of

unlisted companies by way of verbal orders on 25.10.2016 as the respondent is in the business of sale and purchase of unlisted shares. However,

applicant has wrongly shown it as a loan for wrongly gains and to harass the Respondent.

ii. On 31.03.2017, the Corporate debtor has delivered to the applicant the total 24800 shares of Minimum Shares & Securities Pvt. Ltd. as per verbal

orders by the applicant. The cost of these shares was equivalent to Rs. 1,80,00,000/- vide its bill No. 2016-17/073/31.03.2017.

iii. The amount was not in the shape of ICD (Inter Corporate Deposit) and there was no communication in this regard. The money was given for the

purchase of shares of the unlisted company as the Multiplier used to trade in the share and commodities frequently with other entities also.

11. The Applicant in its rejoinder dated 25.10.2019 contends that there was no verbal order of purchase of shares. The Invoice does not bear the

signature of the Financial Creditor. The alleged Share Certificate enclosed with the reply also does not substantiate that there was any transaction in

respect to purchase or sale of shares.

12. We have heard the Ld. Counsel for the applicant as well as the Corporate debtor ("hereinafter referred as CD") and perused the averments made

in the application, reply and rejoinder to the reply filed on behalf of the respective parties as well as the documents enclosed with the application.

13. Ld. Counsel for the applicant submitted that on the basis of order dated 17.05.2019 passed by National Company Law Tribunal, Kolkata Bench,

when the Tribunal had sanctioned the scheme of amalgamation, the applicant has acquired rights and liabilities of Multiplier Enterprises Pvt. Ltd. He

further submitted that earlier the Multiplier Enterprises Pvt. Ltd. by way of oral agreement agreed to provide respondent inter-corporate deposit for

Rs. 1,80,000/- at a fixed rate of interest. Accordingly, through two RTGS transactions, Rs. 1,50,00,000/- and Rs. 30,00,000/- were credited on

28.10.2016 and 31.10.2016 respectively in the bank account of the Corporate Debtor and that was unconditionally accepted and appropriated by the

Corporate Debtor. He further submitted that the Corporate Debtor fails to make payment of interest in terms of settlement agreement, therefore, vide

letter dated 09.03.2018 and reminder dated 18.04.2018, the said Multiplier Enterprises Pvt. Ltd. demanded the unpaid amount but in reply to that later

on 07.05.2018, although the CD has admitted the amount but claimed that amount was paid by the Multiplier Enterprises Pvt. Ltd. for the purpose of

purchase of shares but subsequently, Multiplier vide order dated 31.05.2018. 01.10.2018 and 02.01.2019 denied the said transactions. He further

submitted that since the said payment has not been made, therefore, the Multiplier Enterprises Pvt. Ltd. was entitled to get the amount together with

the interest @ 9 per cent per annum and accordingly, the present application is filed for default of that amount.

14. He further submitted that there was no oral agreement made for the purchase of the shares and so the contention of the CD that the said amount

was paid for the purchase of the shares is not liable to be accepted. He further submitted that since the receiving of amount is admitted by the

applicant, therefore, CIRP against the CD may be initiated under Section 7 of the IBC. He further claimed that the date of default is 20.03.2018.

15. On the other hand, Ld. Counsel for the CD submitted that of course the CD has received the same amount, but same is for the purpose of

purchase of share of unlisted companies by way of verbal order dated 25.10.2016. He further submitted that main object for which the CD was

incorporated is to acquire, hold, buy, sell, underwrite dispose of or deal in shares, stocks, debenture, debenture stock, units, bonds, obligation and

securities of any kinds issued or guaranteed by any company constituted or carrying on business in India or elsewhere and subscribe or underwrite,

acquired, hold and sell, shares, stocks, Debenture stock, units, bonds, obligation and securities of any kinds issued or guaranteed by any Government,

firm or person whether in India or elsewhere and that is the reason the applicant transferred the said amount in the bank account of the CD for the

purpose of purchase of the shares of unlisted company and accordingly, the shares certificates were issued and shares were also issued in the name

of Multiplier Enterprises Pvt. Ltd. on 31.03.2017, which is at page No. 15 of the reply. He further submitted that he has also enclosed the share

certificates, which are from page No. 16 to 19 of the reply. He further submitted that the contention of the applicant that the same was not given for

the purpose of purchase of share is false because the CD is doing the business of sale and purchase of the shares. He further submitted that nowhere

in the application, the applicant mentioned these facts that the said amount was deposited and the depositor was entitled to get interest @ 9 per cent

per annum and therefore, the application filed by the applicant is liable to be dismissed.

16. Now, in the light of submissions raised by the parties, we have gone through the averments made in the application, reply and rejoinder as well as

the documents enclosed and from the perusal of the application, which is at page No. 6 of the paper book, we find that nowhere in the application, the

applicant used the word ""debt"" rather used the word ""corporate deposit"" instead of using the word ""debt"". We further find that nowhere in the

application, the applicant stated that what was the agreed rate of interest, of course, in column 8 at page 15 of the paper book, he claimed that he is

entitled to get interest @ 9 per cent per annum but in that para, nowhere he has mentioned that it was the agreed rate of interest as per the oral

agreement. We further find that both the applicant and CD submitted that they deposited the amount on the basis of oral agreement, similarly, the CD

submitted that he received the amount for purchase of share on the basis of oral agreement, therefore, it can be said that both the parties are claiming

that the transactions are on the basis of oral agreement. We further find that as mentioned earlier, nowhere in the application, the applicant used the

word ""debt"" rather he used the word deposit therefore, at this juncture, we would like to refer the definition of debt which is defined in Section 3(11) of

the IBC and the same is quoted below:-

(11) ""Debt"" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

17. From the perusal of that definition, we find that debt means of liability or obligation in respect of a claim which is due from any person and it

includes a financial debt or operational debt. Therefore, at this juncture, we would also like to refer the definition of claim Section 3(6) and same is

quoted below:-

(6) ""claim"" means--

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not

such right is reduced to judgment, fixed, matured, un-matured, disputed, undisputed, secured or unsecured;

18. If we shall read both the definition together then we are of the view that, only those claim comes under the definition of debt, which is due and

which the debtor is under the liability or obligation to pay under the IBC, either as a financial debt or operational debt.

19. Here, in the case in hand, the applicant claim that he is the Financial Creditor and the amount, which he has deposited comes under the definition

of financial debt therefore, at this juncture, we would like to refer Section 5(8) which deals with the definition of financial debt and the same is quoted

below:-

Section 5(8): financial debt means a debt along with 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;

Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the

Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

(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;

20. Mere plain reading of the provision shows that the said amount comes under the definition of financial debt, if same is disbursed against the

consideration for the time value of money and includes any of the conditions mentioned in Section 5(8)(a to i) of the IBC and when we shall consider

the claim of the applicant, in the light of aforesaid provision then we find, the applicant claim that he deposited the amount against the payment of

interest but as we have already said in the aforementioned the applicant nowhere in its application claim that what was the agreed rate of interest

therefore, in our opinion, the case of the applicant does not come under the purview of Section 5(8) (a) of the IBC. We further find that since the

applicant fails to convince us on the point that there was any agreed rate of interest therefore, the amount which he claim deposited, in our considered

opinion, cannot said to be disbursed against the consideration for the time value of money.

21. In the light of the submissions made on behalf of the applicant, now we shall also consider Section 5(8) (b to i) and we find, the claim of the

applicant also does not come under any of the clause b to i of Section 5(8) of IBC therefore, we are of the view that the amount which the applicant

claim deposited and same is credited in the account of corporate Debtor does not come under the definition of financial debt.

22. On the other hand, we find that corporate debtor claimed that he received that amounts for the purpose of the purchase of the share of the unlisted

company and accordingly, he purchased the share of the unlisted company and issued the letter, which he enclosed in page 15 of the reply and the

share certificate from page 16 to 19 of the reply.

23. At this juncture, we would also like to refer the contention raised on behalf of the Ld. Counsel for the applicant that the certificate shown by the

respondent is forged one. In our considered view, while considering the application under Section 7, we are not required to decide this question

whether the document filed by the corporate debtor is forged or not or the contention of the parties on that document is liable to be accepted or not

rather that would be considered by the court of competent jurisdiction only.

24. Here in the case in hand both the parties are claiming the transaction on the basis of the oral agreement and there is no averment in the application

that the deposit amount was made against the interest therefore, under such circumstances we have no option but to hold that claim does not come

under the definition of financial debt and the applicant is not the financial creditor. Hence we are unable to accept the contention of the applicant that

he is the financial creditor and amount deposited by Multiplier Enterprise Pvt. Ltd. comes under the definition of financial debt. Hence we are of the

considered view, the present application filed under Section 7 of the IBC, is not maintainable. Accordingly, the present application is dismissed.