

## **Rajender Prasad Mittal Vs Jaikrishan Estates Private Limited**

**Court:** National Company Law Tribunal, New Delhi Bench, Court-III

**Date of Decision:** Jan. 16, 2025

**Acts Referred:** Insolvency and Bankruptcy Code 2016 " Section 5, 7, 8

**Hon'ble Judges:** Atul Chaturvedi, Member (T); Bachu Venkat Balram Das, Member (J)

**Bench:** Division Bench

**Advocate:** Kunal Godhwani

**Final Decision:** Dismissed

### **Judgement**

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application i.e. (IB)-850(ND)/2024 has been filed by Mr. Rajender Prasad Mittal, the Applicant/Financial Creditor before this

Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC",-) r/w Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules",-), for initiating the Corporate Insolvency Resolution Process

("CIRP",-), against M/s. Jaikrishan Estates Private Limited, the Respondent/Corporate Debtor.

2. It is submitted that the Applicant, who was the Director of the Corporate Debtor Company, advanced a loan of Rs. 6,86,44,042/- to the Corporate

Debtor during the year 2014-2015. The loan was disbursed by the Applicant/Financial Creditor from his personal bank account maintained with Axis

Bank, bearing Account No. 913010031810470. On 30th March 2015, the Corporate Debtor repaid an amount of Rs. 3,00,00,000/- out of Rs.

6,86,44,042/-. Therefore, an amount of Rs. 3,86,44,042/- towards principal is still outstanding in the books of the Corporate Debtor under the head of

"long-term borrowing",-

3. The Applicant issued notice to the Corporate Debtor on 22.10.2021 for repayment of the outstanding amount of Rs. 3,86,44,042/-. The Corporate

Debtor issued a reply on 20.12.2021. It is stated that the Applicant resigned as a Director of the Corporate Debtor on 21.10.2022.

4. Mr. Kunal Godhwani, Learned Counsel for the Applicant/Financial Creditor, admitted that there were no written agreements between the parties

for the loan amount and that the advance was an interest-free loan. He further submitted that the loan amount was disbursed to the Corporate

Debtor's account, and the Corporate Debtor's books of accounts indicate that the amount is still outstanding under 'long-term borrowing.' Additionally,

he mentioned that the Axis Bank statement also confirms the disbursement of the amount.

5. During the course of arguments, this Adjudicating Authority called upon the Applicant to file an affidavit with respect to the maintainability of the

present application. However, Learned Counsel appearing for the Applicant/Financial Creditor refused to place on record all relevant documents and

expressed that he would like to argue the issue of maintainability.

6. We have heard the submissions made by Mr. Kunal Godhwani, Learned Counsel appearing for the Applicant/Financial Creditor and also perused

the bank statement of the Axis Bank, balance sheet of the Corporate Debtor for the year 2016-2017, 2018-2019, 2020-2021, 2022-2023 and the ledger

statement of the Corporate Debtor maintained by the Applicant/Financial Creditor.

7. We have perused the bank statement of Axis Bank and found that certain amount has been credited in the account of the Corporate Debtor.

However, there is no material to show that the said amount was given as a loan to the Corporate Debtor. Similarly, the ledger account of the

Corporate Debtor maintained by the Applicant for the period 01.04.2010 to 16.01.2023 does not disclose that the amount in question was disbursed to

the Corporate Debtor towards the loan.

8. Mr. Kunal Godhwani, Learned Counsel further submitted that the Applicant issued a legal notice dated 22.10.2021 to the Corporate Debtor

demanding payment of the default amount. The Respondent/Corporate Debtor vide its reply dated 20.12.2021 has denied the allegations made in the

legal/demand notice dated 22.10.2021 that any loan was advanced.

9. The demand notice clearly states that the Applicant advanced a credit facility in the nature of an interest free loan to the tune of Rs. 3,86,44,042/- to

the Respondent/Corporate Debtor. The legal notice further states that the Applicant advanced the interest free loan in favour of the Corporate Debtor

with the sole objective of amplifying its working capital and to further utilize the working capital smoothly to undertake its business activities and

perform its professional obligations. It is further submitted that the Corporate Debtor gave a reply to the legal/demand notice on 20.12.2021. The

Respondent/Corporate Debtor in the said reply has categorically stated that to meet the working capital requirements of the Corporate Debtor, it was

agreed that all Promoters/Directors of the Wadia Group, Singla Group and Mittal Group shall augment the working capital of the Corporate Debtor

and infuse funds in the proportion of their shareholding in the Corporate Debtor and the said funds were meant to be utilized towards the working

capital requirements of the Corporate Debtor.

10. The Applicant/Financial Creditor has not placed on record any document to show that any Board Resolution was passed for infusing funds

required for utilizing towards working capital requirements of the Corporate Debtor.

11. From the perusal of the documents and contentions raised by the Applicant/Financial Creditor, we are unable to satisfy ourselves that the

Applicant has met the conditions laid down in Section 5(8) of the Code and to qualify the debt in question as a financial debt. It is the admitted case of

the Applicant that the loan in question is an interest-free loan, and there is no evidence on record to demonstrate that the element of time value of

money was considered and that the loan was disbursed against the time value of money.

12. Mr. A. A. Kunal A. A. Godhwani, A. A. Learned A. A. Counsel A. A. appearing A. A. for A. A. the Applicant/Financial Creditor relied

upon a judgment passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 756/2024 in the case of M/s. Mobile A.

Constructions A. Private A. Limited A. versus A. M/s. A. Apple A. Land Development Private Limited and submitted that even if there is no loan

agreement between the parties at the time of advancing the loan if the amount was disbursed and established from the bank account statement in such

a case, it can be held that Section 7 application is maintained. In our considered view, the facts of the case in the judgment passed by the Hon'ble

NCLAT in M/s. Mobile Constructions Private Limited (supra) are distinguishable from the facts of the present case and therefore, the ratio of the said

judgment will not be applicable to the present case.

13. We are, therefore, of the considered view that the present application filed under Section 7 of IBC, 2016 is not maintainable and accordingly

dismissed.

A.