

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-213(PB)/2018

IN THE MATTER OF:

M/s Cadillac Info- Tech Private Limited

.....Petitioner

vs.

M/s. Navjeevan Associates Private Limited

.....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy
Code, 2016**

Order delivered on: 25.09.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner

:Mr. Pulkit Deora & Ms. Nandini Sinha,
Advts.

For Respondent

: Mr. Ashish Virmani, Mr. Vaibhav Thakuria,
Advts.



ORDER

M.M.KUMAR, PRESIDENT

The Petitioner claiming to be the 'financial creditor' has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent M/s Navjeevan Associates Private Limited (for brevity the 'corporate debtor').

2. The Respondent Company - Corporate Debtor - M/s Navjeevan Associates Pvt. Ltd. was incorporated on 22.10.1999. The identification number of the Corporate Debtor given is CIN U7010DL1999PTC102115 and its registered office is situated at B-14, Third Floor, Chirag Enclave, New Delhi - 110048. The authorised share capital of the company is Rs. 80,00,000/- (Rupees Eighty Lacs only)



and the Paid-up share capital is Rs. 76,27,000/- (Rupees Seventy Six Lacs Twenty Seven Thousand only), respectively.

3. It is appropriate to mention that the Petition is filed by Mr. Anil Mahindra on behalf of the Petitioner – M/s Cadillac Info-Tech Private Limited, being its Authorized Representative. The Petitioner is a company with the identification number CIN U72200DL2005PTC139095 and the date of incorporation is 27/07/2005. The Registered office of the company is situated at E-4, Defence Colony, New Delhi – 110024.

4. The Petitioner has proposed the name of Mr. Ajay Gulati as the Insolvency Professional with the address C – 66, Shivalik, 1st Floor, New Delhi – 110017 and email-id ajaygulati.ca@gmail.com. His registration number is IBBI/IPA-001/IP-P00943/2017-18/11547. He has filed his written communication as per the requirement of Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Mr Ajay Gulati has agreed to accept appointment as the Interim Resolution Professional if an order admitting the present application is passed. He has

declared that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosure has been made as per the requirement of the IBBI Regulations.

5. The precise case of the Petitioners is that a short term loan amounting to Rs. 3,00,00,000/- (Rupees Three crores Only) for a period of one year was granted to the Respondent-Corporate Debtor. The said amount was disbursed by way of RTGS through Cheque bearing No. 000225 dated 23.09.2014 drawn on the HDFC Bank account No. 02712320001524, HDFC Bank Ltd., Kalkaji, New Delhi.

6. The details of the payments made to the corporate debtor along with the date of disbursement, the respective amount of disbursement and the total amount in default till the filing of the Petition have been specified in Part – IV of the petition. Copy of the relevant Financial Statements supporting the amount of disbursement has also been placed on record.



7. The Petitioner has also placed on record the audited balance sheets of the Respondent – Corporate Debtor for the year ending on 31.03.2015 which reveals the amount of Rs 3,00,00,000/- as 'other long term liability'. The petitioner has also placed on record the Ledger Account of the Respondent at Annexure II of the petition to show the outstanding amount as Rs 3,00,00,000/- as per the account maintained by the respondent company.

8. In Part-IV of the petition, the petitioner has claimed that the total amount in default is Rs.5,43,41,918/- as on the date of filing the petition which is inclusive of interest @ of 24% p.a.

9. The Respondent – Corporate Debtor has filed its reply on 02.05.2018 and has raised various objections against the admission of the present petition.

10. First and foremost, the primary and main objection raised by the respondent is that the petitioner has wrongly claimed itself to be a Financial Creditor and has also wrongly claimed



that there is a financial debt due against the Respondent Company. It is further submitted that a transaction can be covered under financial debt only if it has the time value of money, inter alia, in other words there is element of "interest". In the present case, the factor of time value of money is absent, which is the essence of any transaction to fall under Section 5(7) read with Section 5(8) of the IBC, 2016.

11. Therefore, before proceeding into facts and merits of the Petition it becomes necessary to deal with the primary objection raised by the Respondent company as the basic statutory requirement needs to be fulfilled by the Petitioner company in order to pursue the case as a 'financial creditor' in accordance with Section 5(7) read with Section 5(8) of the IBC.

12. In this regard it is contended that in order to be covered by the expression 'Financial Debt' a necessary element of interest or time value of money is required to be shown.

According to the learned counsel all the statement of accounts and ledger accounts attached by the petitioner along with the petition do not reflect any entry showing any interest paid.

13. In connection with the maintainability of the petition, it is necessary to note the scheme of the Code which provides for triggering the insolvency resolution process by three categories namely:

- a)** Financial Creditor
- b)** Operational Creditor, and
- c)** Corporate Debtor itself.

14. The procedure in relation to the initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code wherein only a “Financial Creditor”/ ‘Financial Creditors’ can file a petition. As per Section 7(1) of the Code a petition could be maintained by a Financial Creditor either itself or jointly with other Financial Creditors.

15. A creditor in order to come within the meaning of “Financial Creditor” has to fulfil the following essential criteria:

- i. A person to whom a ‘financial debt’ is owed and includes a person to whom such debt has been legally assigned or transferred;
- ii. The debt along with interest, if any, is disbursed against the consideration for time value of money and includes any one or more mode of disbursed as mentioned in Section 5(8)(a) to (i).

16. Mere disbursement of money debited from the said account of the Petitioner and credited to the account of the Respondent Company would not treat the petitioner as ‘Financial Creditor’ within the meaning of Section 5(8) of the Code.



17. In the present Petition at Part-IV pertaining to 'particulars of financial debt', petitioner has claimed that the total amount in default is Rs. 5,43,41,918/- inclusive of the interest @24% per annum.

18. However admittedly the petitioner has not produced any loan agreement nor there are details and particulars of any applicable interest mutually agreed between the parties. There is nothing on record to show that the respondent company ever agreed to pay any such interest at any point of time.

19. It is well settled by the various orders of this Bench and the NCLAT that the onus lies on the petitioner to establish that the loan was given against the consideration for time value of money to come within the purview of 'financial debt'. When the respondent disputes that *there is no question of payment of interest at any point of time* on the debt in question, it becomes more onerous on the part of the applicant to prove



that the amount was disbursed against the consideration for time value of money. Admittedly, no document in respect of the loan and to support the pleading that 'interest' is payable has been furnished by the petitioner.

20. A similar petition namely M/s Cadillac Info-Tech Pvt Ltd vs. M/s Hallow Infrastructure Pvt Ltd (IB-212 (PB)/2018) was dismissed on the similar grounds that the petitioner could not prove the debt to be a 'financial debt'.

21. Therefore, neither the present claim can be termed to be a 'financial debt' nor does the petitioner come within the meaning of 'financial creditor'. Once the petitioner fails to answer the description of a 'financial creditor' as defined under Section 5(7) and 'financial debt' as defined under Section 5(8) of the Code, it is ineligible to file a petition under Section 7 of the Code.

22. A perusal of the documents attached with the Petition and for the reasons stated above, this petition fails and the same stands dismissed as not maintainable.



23. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Petitioners before any other forum shall not be prejudiced on account of dismissal of the instant petition.

Let the copy of the order be served to the parties.

Sdl —
(M.M.KUMAR) 25.9.2018
PRESIDENT

— S/D —
(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

25.09.2018
(VIDYA)