

**(2023) 08 NCLT CK 0004**  
**In the National Company Law Tribunal**  
**Case No : (IB) 136(ND)/2023**

**South Indian Bank Limited Vs Magic Info Solutions Private Limited ?**

**Date of Decision :** 11-08-2023

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 3(11), 5(8), 7  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 4

**Citation :** (2023) 08 NCLT CK 0004

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

**Bench :** Division Bench

**Advocate :** Gautam Singhal, Ravikant Sharma, Preeti Chauhan, Mayank Goel, Manav Gupta

**Final Decision :** Dismissed

## **Judgement**

Bachu Venkat Balaram Das, Member (Judicial)

1. This Application has been filed by M/s. South Indian Bank Limited, the Financial Creditor (FC)/Applicant on 15.02.2023, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code") 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"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against the Corporate Debtor (CD)/Respondent viz., M/s. Magic Info Solutions Private Limited, on the ground that the Corporate Debtor has committed default in repaying the Financial Debt of a sum of Rs. 1,91,91,056.55/- (Rupees One Crore Ninety One Lakh Ninety One Thousand Fifty Six and Paise Fifty Five Only) [along with @9.30% p.a. monthly interest and penal Interest @2% p.a.] as on 13.02.2023 till realisation. The Date of Default in the present matter is 26.12.2021.

2. It is the admitted case of the parties that one Mr. Amit Tyagi, S/o Mr. Rajesh

Tyagi, R/o 14/404, East End Apartment, Mayur Vihar, Phase-I, East Delhi – 110091 and Mrs. Priyanka Tyagi, W/o Mr. Amit Tyagi, R/o 14/404, East End Apartment, Mayur Vihar, Phase-I, East Delhi – 110091 requested the Applicant-Bank (Financial Creditor) in the month of March, 2019 to grant finance facilities for the purchase of Residential Apartment No. C-1703, admeasuring to 457.54 Sq. Mt. (4925 Sq. Ft.). The Applicant-Bank sanctioned a loan of Rs. 2,50,00,000/- under the Home Loan Scheme of the Bank after execution of the Loan Agreement dated 10.05.2019 by Mr. Amit Tyagi and Mrs. Priyanka Tyagi (Home Buyer/Principal Borrower) vide Loan Account No. 0584655000000016. In lieu of the said loan facility, the property in Residential Apartment No. C-1703, admeasuring to 457.54 Sq. Mt. (4925 Sq. Ft.), in Tower C along with proportionate undivided interest in the common area and exclusive right to use and occupy to the covered car parking space, in Godrej Summit, Sector 104, Gurgaon was mortgaged.

3. A Tripartite Agreement dated 10.05.2019 was executed between M/s. Magic Info Solutions Private Limited (Builder), Mr. Amit Tyagi (Borrower) and M/s. South Indian Bank Limited (Bank). The Builder agreed that as soon as the registration formalities are completed, the Registry documents will be sent to the Applicant Bank. The Builder also undertook to note the lien of the Applicant Bank on the aforesaid residential premises and to hand over the original sale deed of the said flat to the Applicant Bank directly as and when it is registered. Thus, the Applicant Bank and Borrower executed the following documents:

S. No.

Particulars

Executed

Between

Dated

1

Loan Application

Applicant &

Principal Borrower

26.03.2019

2

Home Loan Agreement

Applicant &

Principal Borrower

10.05.2019

3

Letter (LD2298)

Applicant &

Homebuyer

10.05.2019

4

Agreement to Mortgage

for the purchase of subject property

Applicant & Homebuyer

10.05.2019

5

Tripartite Agreement

Corporate Debtor,

Applicant & Homebuyer

10.05.2019

6

Letter of Consent

Homebuyer & Applicant

10.05.2019

4. The Applicant Bank disbursed the loan amount of Rs. 2,51,96,750/-vide Demand Draft bearing No. 754607 favouring Godrej Summit MISPL Escrow A/C No. 13452240000011 to the Corporate Debtor on the basis of the Tripartite Agreement and other documents.

5. However, despite receipt of the consideration from the Applicant Bank, the Corporate Debtor failed to execute and register the sale deed in favour of the Home buyer and/or hand over the sale deed to the Applicant Bank as per the terms of the tripartite agreement. The Corporate Debtor failed to adhere to the terms of the tripartite agreement and other documents executed amongst the parties in favour of the Applicant Bank.

6. On 09.02.2021, the Homebuyer sent an email to the Corporate Debtor stating inter-alia, to revoke his Provisional allotment and to refund the loan amount to the Applicant Bank to foreclose the loan account as per the tripartite agreement

dated 10.05.2019.

7. Thereafter the Applicant Bank vide its notices dated 31.03.2021 and 08.04.2021 recalled the said loan/credit facility and called the Principal Borrower to regularize and pay forthwith the entire outstanding balance together with interest and all sums payable under the said agreement to the Applicant Bank.

8. Pursuant to the issuance of the demand notices and several meetings wherein the Corporate Debtor admitted its liability, the Corporate Debtor vide email dated 13.04.2021 proposed a timeline for the repayment of the total outstanding loan amount.

9. Subsequently the Corporate Debtor visited the office of the Applicant Bank on 05.06.2021 wherein the Corporate Debtor acknowledged its liability and assured to repay the amount to the Applicant Bank. The Corporate Debtor also provided the reasons for which it could not adhere to its earlier repayment schedules. Pursuant to the meeting held on 05.06.2021, the Corporate Debtor sent an email dated 08.06.2021 to the Applicant Bank whereby the Corporate Debtor again acknowledged its liability to repay the loan amount to the Applicant Bank and proposed a new repayment schedule. The revised repayment schedule proposed by the Corporate Debtor read as follows:

The Repayment Schedule:

25th -30th June 2021: Rs. 20 Lakh

25th -31st July 2021: Rs. 100 Lakh

25th-31st August 2021: Rs. 100 Lakh

25th -30th September 2021: Rs. 100 Lakh

Besides the amount incurred against the accrued interest during the period would be paid in the month of October 2021 as per the SOA provided by the Bank.

10. The Applicant Bank has filed the present application under Section 7 of the Code seeking initiation of CIRP against M/s. Magic Info Solution Pvt Ltd., who is the Builder presumably on the ground that Mr. Amit Tyagi and Mrs. Priyanka (Home Buyer/Principal Borrower) revoked the provisional allotment vide email dated 09.02.2019 and requested to refund the loan amount to the Applicant Bank and close the loan account as per the Tripartite Agreement dated 10.05.2019 and also because of the reason that the Applicant Bank vide notices dated 31.03.2021 and 08.04.2021 recalled/credit facility because of which the Corporate Debtor while admitting its liability sent an email dated 13.04.2021 to the Applicant Bank proposing a timeline for repayment of the outstanding loan amount.

11. The Respondent raised a preliminary objection as to the maintainability to the present application under Section 7 of IBC, 2016 on the ground that the

Applicant Bank sanctioned the loan to Mr. Amit Tyagi and Mrs. Priyanka Tyagi (Home Buyer/Principal Borrower) vide loan application dated 26.03.2019 and sanctioned letter dated 18.04.2019 and consequent to which a loan agreement has been executed between the Applicant Bank and Mr. Amit Tyagi and Mrs. Priyanka Tyagi (Home Buyer/Principal Borrower) to which the Corporate Debtor is not a party. The Corporate Debtor is a signatory to the Tripartite Agreement dated 10.05.2019 only.

12. It is submitted that the Corporate Debtor only gave an assurance to the effect that in case the first party before the creation of equitable mortgage violates any of the terms and conditions of the agreements between the Applicant Bank and the Principal Borrower, the Corporate Debtor shall be obliged to return the money received on behalf of the Principal Borrower from the Applicant Bank. It is submitted by the Corporate Debtor that as per provisions of the Code, only financial debt which is legally recoverable will only entitle an Applicant to file an application under Section 7 of the Code. Since, no financial debt is owned by the Corporate Debtor to the Applicant Bank, the present petition is not maintainable and is liable to be rejected.

13. The debt in question may be considered as a debt defined under Section 3(11) of the Code and cannot be called as a Financial Debt. Learned Counsel for the Corporate Debtor has relied on a judgment in the case of Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited versus Axis Bank Limited (2020) 8 SCC 401 wherein the Hon'ble Supreme Court of India distinguished a financial debt from other type of debts and has held that only institutions directly disbursing loan against consideration of time value of money is entitled and has the locus standi to prefer a petition for invoking the CIRP as such financial institution will invariably be interested in resurrection of such Corporate Debtor as against any other financial institution not having any financial debt, who shall only be interested in recovery of its dues. We have come to view that the principal creditors in the present case are Mr. Amit Tyagi and Mrs. Priyanka Tyagi (Home Buyer/Principal Borrower) to whom the Financial Debt is owned and not the Corporate Debtor, M/s. Magic Info Solution Pvt Ltd.

14. We are of the considered view that the amount involved in the present case cannot be considered as a Financial Debt within the definition of sub-section 8 of Section 5 of the Code.

15. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record. We hold that the present application under Section 7 is not maintainable.

16. The Application bearing (IB)-136(ND)/2023 filed by the Applicant/Financial Creditor, under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/Corporate Debtor is dismissed.