



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

IB-381/ND/2022

U/S. 7 of the IBC, 2016 and Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s. Agarwal Agencies (P) Limited & Ors

Registered office at:

D-16/2-3, Okhla Industrial Area, Phase-1

New Delhi-110020

...Financial Creditors

Versus

M/s DOVE Infrastructure (P) Limited

Regg. Office:

D-22 Defence Colony,

New Delhi-110024

...Corporate Debtor

Delivered on 09.06.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Financial Creditor

: Adv. Abhishek Anand, Mr. Pathiv
Chaudhary, Mr. Prateek (Advocates)

Corporate Debtor:

: Adv. Kunal Tandon, Adv. Saurav, Adv. Karan
Singh



Order

Per: Bachu Venkat BALARAM DAS, Member (J)

The present Application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Agarwal Agencies (P) Limited & Others claiming to be the Financial Creditors seeking initiation of Corporate Insolvency Resolution Process against M/s. Dove Infrastructure (P) Limited, the Corporate Debtor.

The Applicants have filed the present Application under Section 7 of IBC, 2016 on the basis of the recovery certificate passed in their favour by the District Magistrate, Faridabad under the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013.

The matter was listed before this Tribunal on 27.5.2022 for hearing on the question of issuance of notice to the respondent.

Mr. Abhishek Anand, Ld. Counsel appeared on behalf of the Applicant. Mr. Kunal Tandon, Ld. Counsel appeared on behalf of the respondent/Corporate Debtor and vehemently opposed issuance of notice in the matter on the ground that the present application under Section 7 of IBC, 2016 is not maintainable. Therefore, the Tribunal heard both the Counsels on the issue of maintainability of the petition. Mr. Anand, Advocate appearing for the Applicants submitted that the Corporate Debtor herein is a land owner of a piece of land situated on the Delhi - Mathura Road.

The Corporate Debtor entered into an Agreement with M/s. ABW Infrastructure Limited (Developer) for developing the said land by constructing a Multi-Storey Centrally Air-conditioned Building (Gateway Tower). The Developer and the present Applicants/Financial Creditors



executed a Memorandum of Understanding (MOU) in which the Developers allotted a Retail and Office space to the Financial Creditors after receiving the full consideration amount and also agreed to pay monthly 'Assured Investment Return' to the Applicant Financial Creditors till the time, the proposed Retail and Office space is leased out.

Since the Developers failed for making the payment of 'Assured Monthly Investment Return' to the Applicant/Financial Creditors, they approached the District Magistrate, Faridabad under the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 wherein the District Magistrate passed an order dated 03.4.2018, 05.6.2018, 09.6.2018 and 07.8.2018 against the Developer/Corporate Debtor, its Directors, Representative and other officials.

It is submitted that the District Magistrate issued a certificate of recovery in favour of the Financial Creditors to recover the Assured Investment along with interest.

It is submitted by the Applicant that the CIRP against the Developers Company i.e. M/s. ABW Infrastructure Limited has already been instituted by the NCLT Delhi, in which, the present Applicant/Financial Creditors have filed their respective case.

Mr. Abhishek Anand, Advocate for the Applicant relied upon the Judgment passed by Hon'ble Supreme Court in the case of DENA BANK (Now Bank of Baroda) vs. C. SHIVAKUMAR REDDY AND ANOTHER, reported in Civil Appeal No.1650 of 2020, decided on August 4, 2021 wherein it has been held that the Judgement or Decree for money in favour of the Financial Creditor passed by the D.R.T. or any other Tribunal or Court or the issuance of certificate of recovery in favour of the Financial Creditor would come rise to a fresh cause of action to the



Financial Creditor to initiate proceedings under Section 7 of IBC, 2016 for initiation of Insolvency Resolution Process within 3 years from the date of Judgment /or Decree or within 3 years from the date of issue of certificate of recovery if the dues of the Financial Creditor/Creditor under the Judgment or Decree or in terms of certificate of recovery or any part thereof remains unpaid.

Mr. Abhishek Anand submitted that the order passed by the District Magistrate, Faridabad which is in the nature of a recovery certificate and the Corporate Debtor has failed to pay the debt. Thus in view of the default committed by the Corporate Debtor, the present Application has been filed under Section 7 of IBC, 2016 and pressed for issuance of notice. Mr. Abhishek Anand has also relied upon the Judgment passed by the NCLAT in Company Appeal (AT)(Insolvency) No.684 of 2020 in the matter of Mr. Mohan Lal Dhakad versus BNG Global India Limited dated 12.3.2020 and in Company Appeal (AT)(Insolvency) No.07 of 2017 in the matter of Nikho Mehta and Sons versus AMR Infrastructure Limited dated 23.1.2017.

Mr. Kunal Tandon, Ld. Counsel appearing for respondent/Corporate Debtor submitted on the contrary that the present Application needs to be dismissed because the Applicant is neither the Financial Creditor nor the respondent is a Corporate Debtor and that the respondent was not a party to the MOU which was executed between M/s. ABW Infrastructure Limited and the present applicant.

Mr. Kunal Tandon further contended that no money has been transferred out of the alleged transaction to the respondent and, therefore, the present respondent is not liable to pay any amount to the



Applicants. He further contended that the order passed by the District Magistrate is in fact is an order of attachment. In support of his submission, he relied upon Section 4 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 which reads as follows:

"4(1) Notwithstanding anything contained in any other law for the time Attachment of properties on default of return of deposit being in force:

(i) where upon complaint received from the depositor or otherwise. the District Magistrate is satisfied that any financial establishments have failed -

(a) to return the deposit after maturity or on demand by The depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) where the District Magistrate has reason to believe that any financial establishment is acting in 3 calculated manner detrimental to the interests of the depositor, with intention to defraud them and if the District Magistrate is satisfied that such financial establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the District Magistrate may, in order to protect the interest of the depositors of such financial establishment, after giving an opportunity of hearing and recording reasons in writing, issue an order by publishing it in the Official Gazette, for attaching the money, property or assets belonging to or believed to have been acquired by such financial establishment either in its own name or in the name of any other person. from and out of the deposits collected by the financial establishment, or if it transpires that such money or other property or assets, is not available for attachment or are not sufficient for repayment of the deposits, may order attachment of such other property or assets of the said financial establishment or the personal assets of the promoters, partners, directors, managers, members or any other person of the said financial establishment, as the District Magistrate may deem fit."

Mr. Kunal Tandon submitted that Section 4 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013

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empowers the District Magistrate only to pass an order of attachment but not for recovery of money. Therefore, the order passed by the District Magistrate cannot be construed to be either a judgment or a Decree for money or a certificate of recovery.

Therefore, the Applicant cannot take the support of the said order for filing an Application under Section 7 of IBC.

We have heard the submissions made by the Counsels appearing for both sides and perused the records. Admittedly, the Memorandum of Undertaking was executed between M/s. ABW Infrastructure Limited and the present Application and the respondent was in no way connected to the MOU. There is no evidence on record to show that the money in question was in fact paid to present respondent out of the said agreement.

Further, the provision in Section 4 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 clearly stipulates that the District Magistrate is empowered to pass only an order of attachment and he cannot pass any order for recovery of the money. We have also perused the orders passed by the District Magistrate which clearly shows that an order of attachment has been passed in terms of Section 4 of the Haryana Act.

In view of the aforesaid reasons, we are of the view that the Applicant has failed to make out a case under Section 7 of IBC, 2016.

We accordingly **dismiss** the Application as not maintainable.

(Bachu Venkat Balaram Das)
Member (Judicial)

(Narender Kumar Bhola)
Member (Technical)