

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Insolvency) No. 111 of 2020

IN THE MATTER OF:

RITA KAPUR

Resident of Flat No. 381,
A.T.S Village, Sector 93-A,
Noida, U.P. Pin 201304

... Appellant

Versus

1. INVEST CARE REAL ESTATE LLP

Registered Office:
307-308, Roots Tower,
Laxmi Nagar District Centre,
New Delhi – 110092

... Respondent No. 1

2. SH. SAMAR VIJAY,

Promoting Partner,
Registered Office:
307-308, Roots Tower,
Laxmi Nagar District Centre,
New Delhi – 110092

... Respondent No. 2

3. SH. AJIT SINHA

Designated Partner,
Registered Office:
307-308, Roots Tower,
Laxmi Nagar District Centre,
New Delhi – 110092

... Respondent No. 3

4. SH. AJIT KUMAR MISHRA

Designated Partner,
Registered Office:
307-308, Roots Tower,
Laxmi Nagar District Centre,
New Delhi – 110092

... Respondent No. 4

Present:

For Appellant:

Mr. Ranvir Singh, Advocate

For Respondent:

**Mr. Amit Sinha, Mr. Akash Swami, Advocates for R1
and 3**

J U D G E M E N T

Per: Justice Rakesh Kumar Jain.

This appeal is directed against the order dated 26.11.2019 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court No. VI) by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') was dismissed, inter alia, on two grounds, firstly, that the application filed under Section 7 was not maintainable for want of valid authorization and secondly, the loan advanced by the Appellant was converted into equity by her own act and conduct and as such it does not fall within the definition of financial debt which is due and payable.

2. Initially the Appeal filed by the Appellant against the impugned order was dismissed by this Appellate Tribunal vide order dated 02.09.2020 in which the issue of maintainability of the petition was decided in favour of the Appellant by holding that "This Tribunal has noticed the submissions advanced on both the sides meticulously and is of the view that the Application under Section 7 of the Code cannot be rejected on the ground that the same set was filed by the Power of Attorney Holder. The delay has also been condoned by this Appellate Tribunal vide its order dated 24.01.2020." But the second issue as to whether the amount advanced was a loan or converted into equity was decided against the Appellant by observing that "from the above provisions of law, it is latently and patently clear that once the 'Debt' is converted into 'Capital' it cannot be termed as 'Financial Debt' and the Appellant cannot be described as 'Financial Creditor'

3. Aggrieved against the order dated 02.09.2020, the present Appellant filed Civil Appeal No. 3511 of 2020 before the Hon'ble Supreme Court. It was allowed on 25.02.2022 with the observation that "apart from narrating the facts and the finding of the NCLT, there has been no independent application of mind by the NCLAT to the submissions which were urged on behalf of the Appellant" and finding the order of this Appellate Authority as non-speaking, the matter was remanded back for fresh disposal with the clarification that no observation has been made by it on the rival contentions of the parties.

4. It is pertinent to mention that in the Appeal i.e. CA (AT) (Ins) No. 111 of 2020 filed against the order dated 26.11.2019 of the Adjudicating Authority, one out of two findings recorded in favour of the Respondent was reversed by the Appellate Authority about the maintainability of the application under Section 7 which was not challenged by the Respondent by way of an Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also referred only to the finding of this Appellate Tribunal in regard to the issue as to whether the amount of loan is a debt or has been converted into capital as has been held in the order passed in CA (AT) (Ins) No. 111 of 2020.

5. Counsel for the Appellant has submitted that a loan agreement was executed on 09.07.2013 under Limited Liability Partnership ('In short 'LLP') dated 30.11.2012 between Invest Real Care Estate LLP and the Appellant. The Appellant had advanced a loan of Rs. 40 Lakh, which was promised to be returned in four equal instalments 4th, 8th, 12th and 16th quarter to the tune of Rs. 59,47,820/-.

6. The grievance of the Appellant is that the loan advanced by her has been converted into equity on 25.03.2014 contrary to the terms and conditions of loan agreement dated 09.07.2013. It is argued that there is no

evidence on record to prove that the Appellant had ever consented for the conversion of the loan into capital contribution. It was a decision taken by the designated partners by way of a resolution dated 10.03.2014 in which it was also resolved to amend the clause 6(c) of the LLP supplementary agreement of the LLP executed on 13.04.2013 to convert the loan into capital contribution. It is further submitted that Ajit Kumar Mishra and Ajit Sinha are the designated partners whereas the Appellant is a general partner whose loan has been converted into capital contribution without her consent.

7. On the other hand, Counsel for the Respondent has submitted that the Appellant was a loan provider initially but had become a general partner. It is also argued that Invest Care Real Estate LLP was incorporated on 30.11.2012 and executed its LLP agreement on 22.12.2012 to raise funds for investment in the Real Estate Business. The first agreement titled as LLP agreement was executed on 22.12.2012 between Ajit Sinha and Ajit Mishra, two designated partners. The second agreement dated 13.04.2013 was executed to induct M/s Invest Care (P) Ltd. with Ajit Sinha and Ajit Mishra, designated partners. A supplementary agreement dated 01.12.2013 was also executed between the same parties to invite general partners. The amount of Rs. 15,44,40,000/- which was earlier brought by loan, out of which 13,53,50,000/- has been converted into equity contribution in terms of resolution dated 10.03.2014 by the designated partners. It is, thus, the case of the Respondent that the Appellant being a general partner had agreed voluntarily to convert their shares of loan into equity.

8. We have heard Counsel for the parties.

9. The facts are not much in dispute but, during the course of the hearing, Counsel for the Respondent was pertinently asked to show any document

available on record indicating the consent by the Appellant for converting her loan into capital contribution. It is pertinent to mention that no such document was shown by Counsel for Respondent. Thus, in view of the fact that the loan advanced by the Appellant has been converted into capital contribution without her consent cannot be treated as a capital contribution in order to dismiss the application filed under Section 7 of the Code by her. No other point has been raised.

10. In view of the aforesaid facts and circumstances, we are of the considered opinion that this appeal is meritorious and the same is hereby allowed and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority for further proceedings after formally admitting the application filed under Section 7 of the Code by the Appellant. The parties are directed to appear before the Adjudicating Authority on 10th October, 2022.

The registry is directed to send this order to the concerned Adjudicating Authority for information.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi

01st September, 2022

Sheetal