

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP (IB) No. 330/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Vinsari Fruitech Limited

[CIN:L01130AP1994PLC018503]

77/2, Guvarajupalla Village, Renigunta
Srikalahasti Road, Renigunta, Andhra Pradesh-
517520.

... Financial Creditor /Petitioner

Versus

Effort BPO Private Limited

[CIN: U74300MH2004PTC147649]

F-44A, First Floor Sector-30A, Nano Wing,
Fantasia Business Park, Next to Inorbit Mall,
Navi Mumbai-400705.

...Corporate Debtor / Respondent

Order Delivered on : 05.12.2023

Coram:

Hon'ble Member (Judicial)	:	Hon'ble Member (Technical)
Justice V.G. Bisht, (Retd.)	:	Mr. Prabhat Kumar

Appearances:

For the Financial Creditor	:	Mr. Agam Maloo, Advocate
For the Corporate Debtor	:	Mr. Yash, Advocate

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. This is a Company Petition filed under section 7 (“the Petition”) of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Vinsari Fruitech**

Limited ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Effort BPO Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is company incorporated on 22.07.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai.

Facts:

3. The Financial Creditor submits that one Modesto Logistics & Cargo Private Limited ("**Modesto**") had availed a loan for an amount of Rs.1,10,00,000/- (Rupees One Crore Ten Lakh Only) from the Financial Creditor. Since, Modesto was unable to repay the said loan amount, somewhere in April 2021, Modesto approached the Corporate Debtor inter alia requesting the Corporate Debtor to take over the said loan. The understanding was that the Financial Creditor was to be repaid back the outstanding amount within a period of 6 months alongwith 18% interest thereon and in turn the Corporate Debtor would recover the said amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only) alongwith interest at the 24% within a period of 12 months from Modesto.
4. Accordingly, a Deed of Assignment dated 01.04.2021 was executed between Modesto being the Assignor), the Corporate Debtor (being the

Assignee) and the Financial creditor (being the Consenting Party) vide which Modesto assigned all its right, title and interest in the financial facility availed by itself from the Financial Creditor to the Corporate Debtor.

5. As per the terms of the said Assignment Agreement, the assigned outstanding debt of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only) was repayable by the Corporate Debtor to the Financial Creditor within a period of 6 months from date execution of the Deed of Assignment dated 1 April 2021 (i.e. 1 October 2021).
6. However, the Corporate Debtor failed to repay the outstanding dues as on 01.10.2021. Thereafter, the Financial Creditor issued a demand notice dated 05.10.2021 and the Corporate Debtor even after admitting its liability vide letter dated 06.10.2021 once again failed to pay the outstanding dues. The Financial Creditor has further issued demand notices dated 29.11.2021, 10.02.2022 and 20.05.2022 calling upon the Corporate to repay the outstanding dues. However, the Corporate Debtor has failed to repay the outstanding amount despite of repeated acknowledgements vide letters dated 06.10.2021 30.11.2021 and 12.02.2022.
7. The date of default stated to be in Part-IV of the Petition is 01.10.2021. The date of e-filing of the Petition is 13.04.2023. Hence, the Petition is

within the period of Limitation as prescribed under Article 137 of the Limitation Act.

8. Further, to prove to existence of debt, the Financial Creditor has placed on record NeSL certificate clearly reflecting the default amount of Rs.1,10,00,000/-.

Submissions advanced by the Corporate Debtor:

9. The primary defence raised by the Corporate Debtor is that the assignment deed dated 01.04.2021 is insufficiently stamped, the stamp duty payable is Rs.10,000 on document whereby a debt of Rs.1,10,00,000/- is assigned. However, a stamp paper of Rs.500 is affixed to the assignment deed.
10. It is submitted that unless the deed of assignment is impounded and adequately stamped, CIRP basis the said deed cannot be initiated.
11. The Corporate Debtor further argues that FORM-5 is not filed in the prescribed format more particularly it is argued that the form does not contain name and designation of the authorized representative at the bottom.
12. Lastly, it is argued that board resolution annexed by the Financial Creditor authorizing Mr. Piyush V Doshi does not authorize him to file the present application before this Tribunal, the said resolution merely

authorizes appropriate legal actions will be taken against the Corporate Debtor.

Findings:

13. Heard Learned Counsels for both sides. Perused the record.
14. Coming to the defences raised by the Corporate Debtor, that the agreement is insufficiently stamped, this Bench is conscious of the law laid down by the Hon'ble Supreme Court in *N.N. Global Mercantile Private Limited v Indo Unique Flame Ltd and Other Civil Appeal NO(S). 3802-3803 OF 2020* requires the Court or Public Authority to impound such instrument, in case it is unstamped or is found insufficiently stamped prima-facie and further mandates the Court or Public Authority to ensure that the Stamp Duty is paid in accordance with the applicable Stamp Act before allowing enforcement of rights arising from such instrument.
15. In this case, the Constitutional Bench, by majority of 3:2, held at para 110 and 115 that “*An instrument, which is exigible to stamp duty, may contain an Arbitration Clause and which is not stamped, cannot be said to be a contract, which is enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. An unstamped instrument, when it is required to be stamped, being not a contract and not enforceable in law, cannot, therefore, exist in law*”

“115. We further hold that the provisions of Sections 33 and the bar under Section 35 of the Stamp Act, applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act, would render the Arbitration Agreement contained in such instrument as being nonexistent in law unless the instrument is validated under the Stamp Act”.

16. From the above proposition, this Bench notices that the Hon’ble Court held that an instrument, which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument, hence is a void contract in terms of provisions of Contract Act. Accordingly, such instrument cannot be taken in evidence by the Court. In the present matter, the debt was assigned to the Corporate Debtor by the principal borrower. Hence, the liability of Corporate Debtor accrues from the said Assignment Deed and if the deed is insufficiently stamped, the debt cannot be said to be due from the Corporate Debtor, as the assignment which are legally carried out are only included in the definition of Financial Creditor under the Code.
17. This Bench finds that the law laid down in N N Global (supra) makes the contract, which is unstamped or insufficiently stamped, void, and the said decision further lays down the principle that such contract gets revived upon payment of duty with penalty under the Stamp Act. It follows therefrom that an instrument, insufficiently stamped or

unstamped, is eclipsed by shadow of insufficiency of stamp duty paid on such instrument and cannot be taken in evidence; and once such shadow gets removed, the contract revives and becomes an enforceable instrument.

18. The affected party can approach the collector of stamps, Mumbai, Maharashtra to adjudicate the quantum of stamp duty payable on the the document and, thereafter upon payment of such stamp duty, the affected party shall be at liberty to file appropriate application in terms of legally enforceable assignment deed.
19. Accordingly, the **CP(IB) No. 330 of 2023** is **dismissed**.

Sd/-

PRABHAT KUMAR
Member (Technical)

05.12.2023
Priyal

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)