

IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

CP (IB)-161(PB)/2022

*Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016.*

In the matter of:

SHAKUNTLAM SECURITIES PRIVATE LIMITED

130, 1st Floor, D Mall, Netaji Subhash Place,
Pitampura, North West Delhi-110034

....Petitioner/ Financial Creditor

Vs

QUTAB REALCON PRIVATE LIMITED

52/13 (Basement) Back Side, Ramjas Road,
Karol Bagh, New Delhi-110005

.... Corporate Debtor

Order delivered on: 05.05.2022

Coram:

**SHRI DHARMINDER SINGH,
HON'BLE MEMBER (JUDICIAL)
SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearance

For the Petitioner: Mr. Iswar Mahopatra, Advocate
For the CD: Mr. Rishi Singhal, Advocate

ORDER

Per: Shri Dharminder Singh Hon'ble Member (Judicial)

1. This is an application, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), 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 Process (IRP), against the Corporate Debtor viz., M/s. Qutab Realcon Private Limited (Corporate Debtor), for default in repayment of Rs. 1,44,15,000 (Rupees One Crore Forty Four Lakhs fifteen Thousand).

2. The stand taken by the Petitioner is as follows: -

A. The notice of the Petition was ordered on 28.02.2022. The Petitioner M/s. Shakuntalam Securities Private Limited (Petitioner) is a Non-Banking Financial Company engaged inter-alia in the business of loans and advances. The directors of the Corporate Debtor, in the month of November, 2015 approached the Petitioner, seeking a loan of Rs. 75 Lakhs for a period of six Months and an agreement dated 05.11.2015, was executed in this respect, which provides that the loan carries interest @ 18% P.A., to be paid on quarterly basis. Subsequently, the Corporate Debtor requested an additional loan of Rs. 10 lakhs

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for a period of 10 days and another loan of Rs 10 Lakhs for six months @ 18% P.A. which was given on 30.12.2015.

B. The Corporate Debtor issued two cheques, bearing number 000056, dated 05.05.2016, for a sum of Rs. 75 Lakhs (Rupees Seventy Five Lakhs) and bearing number 000058, dated 30.06.2016 for a sum of Rs 10.81 Lakhs, towards the loan, which got dishonored on presentation, due to insufficient funds. The Corporate Debtor having failed to refund the loan amount Rs. 85 Lakhs (Rs.75 Lakhs + Rs. 10 Lakhs), made several follow-ups and filed case under Section 138 of the Negotiable Instruments Act, 1881 for recovery.

C. The Directors and the authorized person of the Corporate Debtor agreed to refund the total due through a Memorandum of Settlement (MoS) dated 01.06.2021, within a period of three months from the date of settlement with interest @ 12% P.A. instead of 18% P.A. The Corporate Debtor failed to refund the loan amount within three months in terms of the MoS, therefore, reminder letters dated 06.09.2021 and 04.10.2021, were sent by the Petitioner to refund the loan amount alongwith the outstanding interest.

D. The Corporate debtor defaulted in repaying and the total amount of debt as stated in the Part IV of the Form 1 is Rs. 1,44,15,000 (Rupees One Crore Forty Four Lakhs fifteen

Thousand) as on 31.08.2021, which comprises of the principal debt of Rs 85 Lakhs plus interest @ 12% i.e., Rs. 59,15,000.

3. The Corporate Debtor through its duly authorized signatory has filed its reply dated 17.03.2022, to the Petition. It is stated that the petition is based on vague, misconceived notions and baseless assumptions and therefore, denied in its entirety. Further, it is stated that the Petition is not maintainable as the principal loan amount is less than Rs. 1 Crore and is barred by limitation.

4. It is stated that the MoS dated 01.06.2021, cannot be relied upon by the Petitioner, as the said document is not the loan agreement and the stamp duty is not paid, which indicates that the present document was created subsequently, in order to file the present petition. The Corporate Debtor has relied on the judgment passed by the Hon'ble Supreme court in the matter of *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates*, and submitted that the default has occurred over three year prior to the date of filing of the Petition, thus, barred under Article 137 of the Limitation Act, 1963.

5. The respondent denied that the contents of para no. 2 of Part IV and stated that the debt due against the amount advanced is Rs. 14,44,15,000 as on 31.08.2021 with interest @12% P.A.

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6. We have heard the parties at length and perused carefully the case records.

7. At this juncture, the objection raised by the Corporate Debtor w.r.t. the petition being barred under the Limitation Act, 1881, needs to be considered, therefore, the Section 25 (3) of the Contract Act, 1872, is referred, which reads as under:

“25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

....

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.”

A bare perusal of the provisions shows that when a promise to pay the debt which is barred by limitation law is made by the person against whom it is claimed in writing and is also signed, then the Creditor can claim that debt. In the present case, the Corporate Debtor signed the MoS dated 01.06.2021, due to which the Petitioner received a fresh cause of action. In other words, it can be said that the language of the MoS indicates something more than acknowledgement of debt and in this regard the para 1 and 4 of the MoS can be referred, which reads as under:

1. That the second party shall refund the entire advanced amount of Rs. 85 Lakhs along with upto date interest thereon @ 12% p.a. total amounting to Rs. 1,44,15,000/- to the first party on or before 31.08.2021.
4. That in case the second party fails to make the payment of the aforesaid settled amount on or before the committed date, then the first party has unfettered and unrestrictive right to not only continue the aforesaid litigations against the second party but would have also the right to initiate other litigation as permissible in the law against the second party.

From the perusal of the above paras, it is clear that the Corporate Debtor entered into a fresh obligation with the Petitioner and unconditionally promised to pay the debt and therefore, the conditions laid down in section 25(3) of the Contract Act, 1872 are satisfied.

8. The Corporate Debtor failed to pay the amount borrowed as agreed, hence, there was intentional default on the part of the Corporate Debtor. There was no pre-existing dispute between the applicant and the respondent/Corporate Debtor.

9. Even otherwise the Corporate Debtor had issued a letter dated 06.12.2018 to the Financial Creditor wherein the Corporate Debtor had acknowledged the debt and requested for a further period of 6 months for repaying the loan amount including the interest

@18%p.a. Therefore, a fresh period of limitation would begin from the date of this letter. Again, the Corporate Debtor signed the MoS on 01.06.2021, acknowledging the debt giving rise to a fresh period of limitation from this date. Hence, this Petition, which was filed on 14.02.2022, is well within the period of limitation, resultantly, the petition under Section 7 of IBC, 2016, stands **admitted**.

10. In view of the above stated reasons, Mr. Dharm Vir Gupta, is **appointed** as the Interim Resolution Professional (IRP). The details of the IRP are as follows:

Registration No: IBBI/IPA-001/IP-P01492/2018-19/12342

Email Id: dvgupt@gmail.com

Address: D-701, Antriksh Apartments, Plot No. 26, Sector 4,
Dwarka, Delhi-110078

Mobile No.:9871777133

11. Further, the Financial Creditor has filed a written communication in FORM 2, in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or Indian Institute of Insolvency Professionals of ICAI.

12. In pursuance of Section 13 (2) of the Code, we direct that IRP to make public announcement immediately with regard to admission of

this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

14. We direct the applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional Mr. Dharm Vir Gupta meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the applicant. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.

15. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the Corporate

Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP, as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

16. The Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of IBC, 2016.

17. The registry is directed to communicate a copy of the order to the Applicant, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

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AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)

5/5/2022

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5/5/2022

DHARMINDER SINGH
MEMBER (JUDICIAL)