



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**  
**IN**  
**(IB)-30/ND/2024**

**IN THE MATTER OF:**

**M/s Kaliber Associates Pvt. Ltd.**

(Presently undergoing Liquidation)

Through its Liquidator,

Mr. Mohan Lal Jain

B-1/12, 2<sup>nd</sup> Floor, Safdarjung Enclave,

New Delhi-110029

**... Applicant/Financial Creditor**

**VERSUS**

**M/s Sanya Hospitality Pvt. Ltd.**

Having registered office at :

D-155, Basement, Defence Colony (South Delhi)

New Delhi - 110024

**... Respondent/Corporate Debtor**

**Section: 7 of the IBC, 2016**

**Order Delivered on: 09.03.2026**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**MS. REENA SINHA PURI, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Anirban Bhattacharya, Adv. Rajeev  
Chowdhary

**For the Respondent** : Adv. Mayank Goel, Adv. Meharpreet Kaur, Adv.  
Diganta Das

**ORDER**

**PER: MS. REENA SINHA PURI, MEMBER (T)**

This Application has been filled by M/s Kaliber Associates Pvt. Ltd.  
through its Liquidator (hereinafter referred to as the Financial Creditor or



FC/Petitioner) against M/s Sanya Hospitality Private Limited (hereinafter referred to as the Corporate Debtor or CD/Respondent), seeking initiation of CIRP<sup>1</sup> under section 7 of IBC<sup>2</sup>. The Petitioner claims that the Respondent has committed a default in the repayment of financial debt amounting to Rs. 2,60,00,000 along with 12% interest.

**2.** The record shows that a sum of Rs. 2,60,00,000 was disbursed to the CD on 31.05.2014 in two tranches of Rs. 1,92,50,000 and Rs. 67,50,000 through RTGS<sup>3</sup>. The audited and provisional financial statements of the FC consistently reflect the amount as outstanding. Correspondingly, the audited financial statements of the CD for the financial years 2014–15 to 2017–18 disclose the said sum as ‘Unsecured Loans’ under ‘Long-Term Borrowings’, thereby evidencing acknowledgment of liability<sup>4</sup>.

**3.** Despite repeated demand letters<sup>5</sup> dated 31.01.2019, 10.05.2019, and 18.07.2019, followed by a legal notice<sup>6</sup> dated 20.07.2020, no payment was made. Pre-institution mediation before the Delhi High Court Legal Services Committee culminated in a Non-Starter Report<sup>7</sup> dated 04.08.2023 due to non-participation by the CD. The debt stands authenticated with NeSL<sup>8</sup>, though marked as ‘Disputed’.

**4.** The CD has raised a preliminary objection contending that the present application filed under Section 7 of the IBC is barred by limitation. Reliance

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<sup>1</sup> Corporate Insolvency Resolution Process

<sup>2</sup> Insolvency and Bankruptcy Code, 2016

<sup>3</sup> Page 48 - Annexure 5

<sup>4</sup> Page 49-176 of Annexure 6-11 of application

<sup>5</sup> Page 177 -Annexure 12; Page 178-Annexure 13; Page 179-Annexure 14

<sup>6</sup> Page 180-Annexure 15

<sup>7</sup> Page 181-212-Annexure 16

<sup>8</sup> Page 213-225-Annexure 17



is placed on Article 137 of the Limitation Act, 1963, read with Section 9 of the General Clauses Act, 1897, and the judgment of the Hon'ble Delhi High Court in *Saipem Triune Engineering Pvt. Ltd. v. Indian Oil Petronas Pvt. Ltd*<sup>9</sup>, to contend that the FC has incorrectly computed the limitation period. It is submitted that the date of default is 18.01.2019 and that the limitation period of three years expired on 17.01.2022.

**5.** The CD has also alleged negligence and lack of due diligence on the part of the Liquidator, contending that despite being appointed on 02.01.2020 and having obtained permission to initiate proceedings on 21.02.2022, the present petition was filed only on 04.01.2024. It is submitted that the said delay reflects professional lapses warranting consideration. In support, reliance is placed on Sections 33 and 34 of the Insolvency and Bankruptcy Code, 2016, read with Section 16 of the General Clauses Act, 1897 and Section 276 of the Companies Act, 2013, as well as the decision of the Hon'ble NCLAT in *V. Venkata Sivakumar v. IDBI Bank Ltd*<sup>10</sup>.

**6.** It is further contended that the bank statement relied upon is neither attested nor certified in accordance with the Bankers' Books Evidence Act, 1891, and is therefore inadmissible in evidence. The CD submits that the alleged disbursal of Rs. 2,60,00,000 has not been proved in accordance with law.

**7.** The CD further states that the amount reflected in its balance sheets as 'Unsecured Loans' represents an interest-free loan repayable on demand,

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<sup>9</sup> 2024 SCC OnLine Del 7020 -Para 38,39,40

<sup>10</sup> (2022) SCC OnLine NCLAT 5009



and that the absence of any accretion in the outstanding amount demonstrates lack of time value of money, an essential ingredient of 'financial debt' under Section 5(8) of the Code. It is submitted that the transaction lacks the commercial effect of borrowing. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Phoenix ARC Private Limited v. Ketulbhai Ramubhai Patel*<sup>11</sup> and *EPC Constructions India Limited v. Matix Fertilizers and Chemicals Limited*<sup>12</sup>. It is further contended that, in the absence of a written loan agreement specifying tenure, repayment schedule, or interest, the essential ingredients of financial debt are not satisfied.

**8.** Lastly, it is urged that the burden to establish the existence of a financial debt and occurrence of default lies upon the Financial Creditor, as held by the Hon'ble Supreme Court in *Rajendra Narottamdas Sheth v. Chandra Prakash Jain*<sup>13</sup>. It is contended that mere reliance on a record of default registered with National E-Governance Services Ltd. (NeSL) is insufficient and cannot substitute strict proof of debt and default. In support, reliance is placed on the decision of the Hon'ble NCLT, New Delhi in *IIFL Home Finance Limited v. Bliss Infratech Private Limited*<sup>14</sup>.

**9.** The FC has countered all the objections raised by the CD. It is submitted that the correct date of default is 31.01.2019 and that the petition is within limitation, as the period commencing from 15.03.2020 to 28.02.2022 stands excluded in terms of the binding directions of the Hon'ble Supreme

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<sup>11</sup> (2021) 2 SCC 799

<sup>12</sup> 2025 SCC QnLine SC 2293

<sup>13</sup> 2022) 5 SCC 600

<sup>14</sup> CP. IB No. 434 of 2025



Court in *In Re: Cognizance for Extension of Limitation*<sup>15</sup>, which position is also supported by *Saipem Triune Engineering Pvt. Ltd.* (supra). It is submitted that the allegations against the Liquidator are extraneous to proceedings under Section 7 and do not affect the existence of a legally enforceable debt. The FC further contends that the CD has unequivocally acknowledged the debt in its audited financial statements for multiple years, reflecting Rs. 2,60,00,000 as 'Unsecured Loans', thereby evidencing disbursal. It is also submitted that interest is not essential for a transaction to qualify as a financial debt, and that even an interest-free loan, if disbursed with an obligation to repay, constitutes financial debt under the IBC. Reliance is placed on *Orator Marketing Pvt. Ltd*<sup>16</sup>, *Mrs. Jayanthi G. Ravi*<sup>17</sup>, and *Arunkumar Jayantilal Muchhala*<sup>18</sup>. It is lastly submitted that the FC has discharged its burden by placing on record documentary proof, audited acknowledgments, and the NeSL record of default, and accordingly seeks admission of the petition under Section 7 of the IBC.

**10.** The submissions of the parties were heard and the records carefully perused. The preliminary objection relating to limitation is considered first. The amount is stated to be in default is Rs 2.60 crores, disbursed as loan by the FC to the CD. A demand letter was issued by Sh Vinay Talwar, IRP<sup>19</sup> on 31.01.2019 calling upon the CD to repay the outstanding amount.

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<sup>15</sup> Suo Motu Writ Petition (C) No. 3 of 2020

<sup>16</sup> *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd* 2021 SCC OnLine SC 513

<sup>17</sup> *Mrs. Jayanthi G. Ravi v. Chemizol Additives Pvt. Ltd* Company Appeal (AT) (Insolvency) No. 553/2020

<sup>18</sup> *Arunkumar Jayantilal Muchhala v. Awaita Properties Pvt. Ltd* Company Appeal (AT) (Insolvency) No. 121 of 2023

<sup>19</sup> Annexure -12



Subsequent communications were sent by Ms Ritu Rastogi, RP<sup>20</sup> on 10.05.2019 and by Sh Mohan Lal Jain, RP<sup>21</sup> on 18.07.2019, asking the CD to repay the sum of Rs 2.60 crores. A legal notice<sup>22</sup> was also sent on 20.07.2020 calling upon the CD to repay the outstanding amount along with interest @ 12%. However, the record of default registered with NeSL reflects the date of default as 18.01.2019, which being the earliest recorded date, is taken as the date of default for the purpose of computing limitation. The period from 15.03.2020 to 28.02.2022 is excluded in view of the binding directions of the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation (supra)*. The limitation date, after excluding the Covid period, is calculated as under:

	Date of Default	18 January 2019
<b>A</b>	<b>Limitation Period begins</b>	<b>19 January 2019</b>
A' = A + 3 years	Limitation Period End (Ordinarily)	18 January 2022
T = A' - A	No. of Days available for Limitation	1095
<b>B</b>	<b>Limitation Period stops</b>	<b>14 March 2020</b>
C = B - A	Days elapsed till Covid	420
X	Covid Period begins	15 March 2020
Y	Covid Period ends	28 February 2022
<b>D</b>	<b>Limitation period restarts</b>	<b>01 March 2022</b>
E = T - C	Days available before limitation	675

<sup>20</sup> Annexure -13

<sup>21</sup> Annexure -14

<sup>22</sup> Annexure -15



<b>= D + E</b>	<b>New limitation Date</b>	<b>05 January 2024</b>
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From the computation above, it is evident that considering 18.01.2019 as the date of default, 05.01.2024 is the new limitation date for filing the Application under section 7 of the IBC. Since the Application under consideration was filed on 04.01.2024, it is within limitation. A careful reading of *Saipem Triune* (supra) also supports such exclusion.

**11.** The allegations of delay or professional incompetence against the Liquidator are irrelevant to adjudication under Section 7 of the IBC, where the scope of enquiry under Section 7 is confined to existence of financial debt and default. The audited financial statements of the CD which consistently acknowledge the said amount as '*Unsecured Loans*' constitutes good evidence of its debt and default.

**12.** The contention that the transaction lacks time value of money is untenable. The Hon'ble Supreme Court in *Orator Marketing Pvt. Ltd. (supra)* has categorically held that even an interest-free loan may constitute financial debt if it has the commercial effect of borrowing. The consistent reflection of the amount as '*Long-Term Borrowings*' in the audited financial statements demonstrates that the CD treated the transaction as borrowing. The absence of a formal loan agreement or an interest clause does not negate the commercial character of the transaction, nor does the absence of certification render the bank statement relied upon by the Financial Creditor inadmissible. Further, the NeSL record of default is duly supported by independent documentary evidence.



**13.** We are thus of the view that the FC has discharged its burden by placing on record, proof of disbursal, audited acknowledgments of liability, demand notices, and NeSL authentication. At the stage of admission, prima facie satisfaction regarding existence of financial debt and default is sufficient, which stands met. Accordingly, the application under Section 7 of the IBC is admitted, and CIRP is initiated against the CD.

### **ORDER**

**14.** The Application is admitted and this Adjudicating Authority orders the commencement of the CIRP, which shall ordinarily be completed within the timelines stipulated in the IBC, reckoning from the date on which this order is passed.

**15.** The Applicant has proposed the name of Mr. Saurab Sharma as the Interim Resolution Professional (IRP). The declaration in Form-2, filed in terms of Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, indicates that no disciplinary proceedings are pending against him and that he is eligible to be appointed as IRP in respect of the CD. Accordingly, Mr. Saurab Sharma, bearing Registration No. IBBI/IPA-001/IP-P-02550/2021-2022/13951, whose Authorization for Assignment is valid up to 31.12.2026, is appointed as the Interim Resolution Professional.

**16.** The IRP is directed to file Authorization for Assignment within three days from the date of this order.

**17.** The IRP is directed to take charge of the management of the CD, immediately.



**18.** The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, within three days from the date of receipt of this order, and call for submissions of claims in the manner as prescribed.

**19.** Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the IBC.

**20.** It is hereby ordered that all of the following are prohibited:

- a. The institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal rights or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.

**21.** Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license,



permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

**22.** The supply of essential goods or services to the CD shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the CD and manage the operations of such CD as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such CD has not paid dues arising from such supply during the moratorium period.

**23.** Furthermore, the provisions of Sub-section (1) of Section 14 of the IBC shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and to a surety in a contract of guarantee to a CD.

**24.** The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the IBC. The Directors, Promoters or any other person associated with the management of CD are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 of the IBC for discharging her functions under Section 20 of the IBC.

**25.** The CD as well as the Registry is directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the CD, and comply with this order as per the provisions of the IBC.

**26.** The Registry is directed to communicate this Order to the Corporate Applicant.



**27.** The Registry shall also communicate this Order to the Registrar of Companies, for updating the status of the CD in the website of the Ministry of Corporate Affairs.

**28. Accordingly, this Company Petition is allowed.**

**Sd/-  
(REENA SINHA PURI)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**