

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-2479/(PB)/2019**

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

**In the matter of:**

- 1. M/S. RAJ KUMAR TAYAL HUF**  
At: A-237, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 2. MS. MAMTA TAYAL**  
At: A-237, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 3. MS. REENA TAYAL**  
A-73, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 4. M/S. SHREE BANKEY BIHARI METALS  
THROUGH MR. RAJ KUMAR TAYAL**  
At: A-237, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 5. MR. RAKESH TAYAL**  
At: A-237, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 6. MS. GEETA AGGARWAL**  
At: 5/450, MOHALLA MAHARAN STREET NO. 1, SHAHDARA  
EAST, DELHI – 110032
- 7. M/S. RAKESH TAYAL HUF**  
At: A-237, BLOCK A, SURAJMAL VIHAR, DELHI – 110092
- 8. GHANSHYAM DASS & SONS HUF**  
At: 29/27, STREET NO. 10, VISHWAS NAGAR, SHAHDARA,  
DELHI -110032

**9. MR. HIMANSHU TAYAL**

**At:** A-237, BLOCK A, SURAJMAL VIHAR, DELHI -110092

**...FINANCIAL CREDITORS**

**VERSUS**

**M/s. ANGEL PROMOTERS PVT. LTD.**

**At:** D-848, DEFENCE COLONY,

**NEW DELHI — 110024**

**... CORPORATE DEBTOR**

**Coram:**

**Shri. P.S.N Prasad, Member (Judicial)**

**Shri. Rahul Bhatnagar, Member (Technical)**

**Counsel for Petitioner:** Mr. Abhimanyu Mahajan, Advocate

**Counsel for Respondent:** RSA Law Consultants

**ORDER**

**PER: P.S.N PRASAD, MEMBER (JUDICIAL) &**

**RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Date: 20.12.2023**

1. This is an application filed by M/s. Raj Kumar Tayal HUF & others to initiate corporate insolvency resolution process (“CIRP”) against M/s. Angel Promoters Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for

the alleged default on the part of the Respondent in settling an amount of Rs. 3,34,07,686/- (Rupees Three Crore Thirty-Four Lakhs Seven Thousand Six Hundred and Eighty-Six) including interest. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Financial Creditors agreed to give financial facility to the tune of Rs. 3,25,00,000/- (Rupees Three Crores Twenty-Five Lakhs) at rate of interest of 8% per annum to the Corporate Debtor ("said loan"). The Corporate Debtor undertook to repay the said loan within one month from the date of demand by the Financial Creditors.
- ii. That the Financial Creditors made a demand of the said loan, on the due date, the Financial Creditors informed the Corporate Debtor that they were depositing cheque no. 140851 for Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) towards payment of interest, however, the Corporate Debtor pleaded with the Financial Creditors not to encash the cheque as its account did not have sufficient funds to honor the same. The Financial

Creditors agreed to the request of the Corporate Debtor and did not deposit the cheque.

iii. That On the failure of the Corporate Debtor to pay the said loan, the Financial Creditors were constrained to file a Petition under Section 7 of the Code being CP No. IB-258(PB)/2018 before this Tribunal.

iv. That during the pendency of the said Petition, the Financial Creditors and the Corporate Debtor entered into a Settlement Agreement dated 26.07.2018. The Parties filed a joint application in the said Petition placing on record the said Settlement Agreement and prayed for withdrawal of the said Petition and by Order dated 27.07.2018, this Tribunal disposed of the said Petition.

v. That as on 31.08.2019, Rs. 3,34,07,686/- is due and payable.

**2.** Consequent to the notice issued by this Tribunal, the Respondent filed reply in which the following contentions were made:

- i. That unpaid instalment as per settlement agreement cannot be treated as debt and breach of settlement agreement cannot be a ground to trigger CIRP.
- ii. That even if it is assumed that the Petitioner is entitled in law to initiate CIRP against breach of Settlement Agreement, the Petitioner has approached this Adjudicating Authority prematurely. It was consciously agreed between the parties as per clause 9 of the Settlement Agreement dated 26.07.2018, the Petitioner had to pay arrears of Principal and Interest as on or before 30.08.2020. Thus, 30.08.2020 was the sacrosanct date. The instant Petition was filed on 25.09.2019, when there was no default.
- iii. That it was a tacit understanding between the parties that the Petitioner would not approach this Adjudicating Authority. There is no clause in the agreement that in event of any default the parties could approach this Adjudicating Authority. Even in the order of 27.07.2018 when the earlier Petition was withdrawn by the Petitioner, no liberty was sought.

- 3.** We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties. The Applicant has claimed that there is a default on part of the Respondent for an amount of Rs. 3,34,07,686/- (Rupees Three Crore Thirty-Four Lakhs Seven Thousand Six Hundred and Eighty-Six) including interest.
- 4.** The Corporate Debtor has contended that the present Petition is liable to be dismissed as the same was filed on the basis of a settlement agreement after withdrawing the previous Petition without liberty to refile and that no default existed on the date of filing of the present Petition as the Corporate Debtor had time till 30.08.2020 to repay the debt.
- 5.** With respect to the first contention of the Corporate Debtor that the present Petition is liable to be dismissed as the same was filed on the basis of a settlement agreement, the Corporate Debtor has itself admitted that the settlement agreement was for settling the Financial Debt of Rs. 4,34,00,000/-. Therefore,

there is no dispute in the fact that the Corporate Debtor owes Financial Debt to the Applicants in this case. If the contention of the Corporate Debtor is believed to be true then the Financial Creditor, entering into a settlement with the Corporate Debtor, will be in a position of disadvantage and consequently in a default of such settlement the Corporate Debtor will easily be able to escape its financial liabilities. Similar view was taken by the Hon'ble NCLAT recently in the matter of *Priyal Kantilal Patel Versus IREP Credit Capital Pvt. Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 1423 of 2022 & I.A. No. 4457 of 2022* held as follows:

*“The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms. Permitting such interpretation shall be giving premium to the corporate debtor who breach the consent terms.”*

- 6.** Therefore, it is concluded that settlement agreement does not bar the Financial Creditors from filing the present petition.

**7.** The second contention of the Corporate Debtor is that no default existed on the date of filing of the present Petition. In this regard, the Applicants have stated that the contention of the Corporate Debtor that in terms of Clause 9 of the Settlement Agreement, it had time till 30.08.2020 to repay the loan is incorrect and misconceived. A bare perusal of Clause 2(i) the Agreement dated 26.07.2018 makes it clear that the Corporate Debtor had to pay the debt as per the dates of the postdated cheques starting from 0.10.2018 till 17.07.2020. The Corporate Debtor has relied on Clause 9 of the agreement to state that it had time till 30.08.2020 to repay the loan. However, Clause 9 states that the Corporate Debtor shall clear all the arrears of principal as well as interest on or before 30.08.2020. Clause 9 can in no way be interpreted as a shield to the Corporate Debtor to not pay the debt as per dates of cheques. Further, the Corporate Debtor despite accepting its liability to pay has failed to clear the debts of the Financial Creditors till date.

**8.** The documents submitted by the Financial Creditor substantiate the Financial Creditor's claim that the Corporate Debtor was in

debt and defaulted the repayment of debt. Further, the Corporate Debtor has nowhere denied the existence of debt.

**9.** We are of the considered view that in the present application the financial creditor has established its entitlement for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor.

**10.** Since the acceptance of the existence of debt and its default by the Corporate Debtor is proved beyond doubt, this Adjudicating Authority hereby **admits** the present Section 7 application and initiates CIRP on the Corporate Debtor with immediate effect.

**11.** Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant/Financial Creditor has proposed the name of Mr. Abhay Kumar for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00504/2017-2018/11559. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be

appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Abhay Kumar has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 19.09.2019. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

**12.** Mr. Abhay Kumar having registration number IBBI/IPA-002/IP-N00504/2017-2018/11559 is hereby appointed as an Interim Resolution Professional.

**13.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

**14.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

**15.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

**16.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in

accordance with the provisions of the Code, Rules and Regulations.

**17.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible 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 to the public at large.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(P.S.N PRASAD)**  
**MEMBER (JUDICIAL)**