

ST. No. 237/2025

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 98/7/JPR/2020

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016, Read with Rule 4 of the Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

VINAY TAMBI PROPRIETOR OF
AMARNATH ENTERPRISES

...Financial Creditor/ Petitioner

VERSUS

A. GANGWAL REAL ESTATE L.L.P.

...Corporate Debtor/ Respondent

MEMO OF PARTIES

VINAY TAMBI PROPRIETOR OF
AMARNATH ENTERPRISES

R/o- D- 701, Somdutt Landmark, Hawa
Sadak, Jaipur, Rajasthan-302006.

... Petitioner

VERSUS

A. GANGWAL REAL ESTATE L.L.P.

R/o- The Crest, Suit No. 9, Plot No. 4A,
Airport Enclave Scheme, Tonk Road, Jaipur,
Rajasthan- 302018.

...Respondent

For the Petitioner

:

Shivangshu Naval, Adv.

Akanksha Naval, Adv.

For the Respondent

Pradeep Kumar Choudhary, Adv.

Karan Audichya, Adv.

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(Signature)
Assistant Registrar
National Company Law Tribunal
Jaipur

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Order Pronounced On: 22.08.2025

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The instant Petition has been filed by *Mr. Vinay Tambi, Proprietor of Amarnath Enterprises* ('Petitioner'/ 'Financial Creditor') against *A. Gangwal Real Estate LLP* ('Respondent'/ 'Corporate Debtor'/ 'LLP') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor for alleged default of financial debt amounting to Rs. 14,45,52,606/- (Rupees Fourteen Crore Forty-Five Lakh Fifty-Two Thousand Six Hundred Six Only).

2. Brief Facts and Submission of the Financial Creditor

- 2.1. The Corporate Debtor namely, *A. Gangwal Real Estate LLP*, is a Limited Liability Partnership formed under the provisions of Limited Liability Partnership Act, 2008 on 05.08.2014 with Identification No. AAC-5469. Its registered office is located at The Crest, Suite No.9, Plot No. A-4, Airport Enclave Scheme, Tonk Road, Jaipur, Rajasthan-302018.

- 2.2. It is submitted that the Corporate Debtor, as an LLP has undergone various changes since its incorporation, particularly in relation to the

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admission and retirement of designated and nominal partners. *Mr. Vinay Tambi*, the Financial Creditor, was admitted as a designated partner along with *Mr. Nawal Dangayach*, *Mr. Suraj Narain Khatoria*, and *Mr. Mudit Dangayach*, pursuant to a supplementary agreement dated 01.01.2015.

- 2.3. Subsequently, *vide* an LLP agreement dated 31.12.2015, *Mr. Shankar Lal Khandelwal* retired from LLP with effect from 01.04.2016. further, *vide* an LLP agreement dated 15.10.2016, *Mrs. Guman Khandelwal* retired from the LLP and received their entire capital contribution. Simultaneously, *Mr. Narendra Singh Rathore* was admitted as a designated partner under the same LLP agreement.
- 2.4. Further, it is submitted that an LLP agreement dated 25.10.2016 was executed amongst all the then current designated partners of the LLP. This agreement superseded all previous LLP agreements and supplementary agreements entered into by the LLP. As a consequence, *Mr. Naval Kishore Dangayach*, *Mr. Vinay Tambi* (Financial Creditor), and *Mr. Suraj Narayan Khatoria* retired from the LLP with effect from the date of execution of the said agreement.
- 2.5. According to the aforementioned agreement it was agreed and recorded in the agreement that the due amount of all the retiring partner along with the unsecured loans of their sister entities was to be repaid by the LLP by way of monthly instalments of Rs. 1,50,00,000/-

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(Rupees One Crore Fifty Lakh Only), with interest at the rate of 15% per annum until full repayment of the loan.

2.6. However, during the tenure of the Petitioner as a partner of the LLP, he advanced loans to the Respondent LLP in tranches, amounting to Rs. 12,80,70,787/- (Rupees Twelve Crores Eighty Lakhs Seventy Thousand Seven Hundred and Eighty- Seven Only) over the period from 29.10.2014 to 17.10.2016. This loan was acknowledged by the Corporate Debtor in its balance sheet dated 25.10.2016 under the head "*Long-Term Borrowings*".

2.7. It is submitted that the Corporate Debtor is under an obligation to repay the loan amount extended by the Financial Creditor in accordance with the terms of the LLP agreement. Although the Corporate Debtor made partial payments towards the agreed monthly instalments directly to the Financial Creditor up to 01.09.2017, it has ever since that date failed to honour its repayment obligations and has been consistently evading its liability.

2.8. Further, it is submitted that the joint account as envisaged in the LLP Agreement could not be opened. Instead, based on mutual understanding between the Retiring Partners and the Corporate Debtor, the repayments of the outstanding loan under the LLP Agreement were made directly to the respective bank accounts of the Retiring Partners, in accordance with their instructions. The repayment made by the LLP

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to the Financial Creditor i.e. *Mr. Vinay Tambi*, amounts to Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakh Only). The details of the same are as follows:

<i>Mr. Vinay Tambi Proprietor of Amarnath Enterprises</i>			
<i>S No.</i>	<i>AMOUNT CREDITED</i>	<i>BANK ACCOUNT WHERE THE AMOUNT IS CREDITED BY THE CORPORATE DEBTOR</i>	<i>DATE</i>
<i>1</i>	<i>20,00,000.00</i>	<i>AXIS Bank Ltd. 913030021556931</i>	<i>24.07.2017</i>
<i>2</i>	<i>50,00,000.00</i>	<i>AXIS Bank Ltd. 913030021556931</i>	<i>28.08.2017</i>
<i>3</i>	<i>50,00,000.00</i>	<i>AXIS Bank Ltd. 913030021556931</i>	<i>01.09.2017</i>

2.9. According to the Part IV of the Petition the total financial debt amounts to Rs. 14,45,52,606/- (Rupees Fourteen Crore Forty-Five Lakh Fifty-Two Thousand Six Hundred Six Only) which includes debt amount of Rs. 12,80,70,787/- (Rupees Twelve Crores Eighty Lakhs Seventy Thousand Seven Hundred and Eighty- Seven Only) and interest amounting to Rs. 2,10,98,503/- at the rate of 12% from 29.10.2014 till 25.10.2016. The said amount of Rs. 12,80,70,787/- is repayable along with additional net interest at rate of 15% per annum amounting to Rs. 1,64,81,819/- after adjusting the part amount received calculated up to 31.12.2019. The date of default is 01.09.2017.

2.10. Additionally, the Financial Creditor in support of submissions made in the Petition regarding the acknowledgment of debt under long-term borrowing as “unsecured loan” amounts to be financial debt, has placed reliance on the judgment of Hon’ble NCLAT in the matter of “*Mohd*

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Shadab Versus Colorcity Homes Pvt. Ltd. & Anr vide order dated 09.05.2023.

3. **Submissions of the Corporate Debtor-**

- 3.1. It is submitted that the advances made by the Petitioner along with other partner to the LLP were to be returned as per the LLP agreement dated 25.10.2016. The Petitioner also admitted that these advances were classified in the balance sheet of the Corporate Debtor as "Long Term Borrowings." However, as per accounting practices, the period for long-term borrowings may extend up to 30 years. According to the understanding between the parties, no specific time period or date for repayment of the advances or remittance of interest is provided in the LLP agreement dated 25.10.2016. It was agreed that the amount would be gradually refunded as and when the LLP had funds, following the commencement of the multi-storied building project on the firm's land.
- 3.2. Further, as per the LLP agreement the amount advanced by the retiring partner i.e. the Financial Creditor was to carry a certain interest. However, no default as claimed by the Petitioner has occurred on 01.09.2017 and no such date is provided in the said LLP agreement dated 25.10.2016. Neither has the Petitioner demanded any such amount from the Corporate Debtor, nor has the Corporate Debtor refused to pay the outstanding dues in accordance with the terms of the said LLP Agreement.

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- 3.3. Additionally, as per the aforesaid agreement the partners were to be repaid from the earnings received from the construction of the multi stories residential project on the land. However, the land being the only asset of the Corporate Debtor was already a subject matter of investigation by the Enforcement Directorate and has been attached by it.
- 3.4. Further, it is submitted that the Petitioner has failed to prove that there was any default on the part of the Corporate Debtor and the alleged date of default i.e. 01.09.2017 is entirely a fictitious date as it does not appear in any of the documents annexed by the Petitioner stipulating that the advances were to be repaid by that date.
- 3.5. The Respondent cited the judgement of the Hon'ble NCLAT in the matter of "*Gogia Leasing Ltd. v. Sunanda Polymers LLP Company Appeal (AT) (Insolvency) No. 405 of 2025*" wherein it was held that a loan against the partnership firm is not a 'financial debt' within meaning of Section 5(8) of the IBC. The relevant portion is as follows:

"We have considered submissions of the Appellant and perused the record. The nature of debt has been looked into to find out whether the debt is financial debt or not. The present case is a case where partners of the firm have certain dues against the partnership firm which they converted as a loan against the partnership firm. At the time when the debt arose i.e. a loan against the partnership firm that was not a financial debt within meaning of Section 5(8) of the IBC. The mere fact that the debts were assigned to the Appellant at the time LLP was constituted shall not make it a financial debt within meaning of Section 5(8) of the IBC."

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4. Findings

- I. We have examined all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the state of Rajasthan; therefore, this Adjudicating Authority has the jurisdiction to entertain this Petition.
- II. At this stage, it is pertinent to determine whether the Petition falls within the ambit of Section 7 of Code. For this purpose, it deserves to be appreciated whether there exists a 'financial debt' owed to the Petitioner Financial Creditor and whether there has been a 'default' in relation to such debt, if any? In the present Petition, it is undisputed fact that the LLP agreement dated 25.10.2016 was executed amongst all the then-designated partners (including the Petitioner) of the LLP i.e. Corporate Debtor. As per the terms of the aforementioned Agreement it was agreed that the outstanding dues of all retiring partners, along with the unsecured loans of their sister entities were to be repaid by the Corporate Debtor by way of monthly instalments of Rs. 1,50,00,000/- per month with interest, until the full repayment of the loan.
- III. It is further submitted that Petitioner being a partner of the Corporate Debtor has advanced loans to the Corporate Debtor in tranches, amounting to Rs. 12,80,70,787/- (Rupees Twelve Crores Eighty Lakhs Seventy Thousand Seven Hundred and Eighty- Seven Only) over the

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period from 29.10.2014 to 17.10.2016. This loan was acknowledged by the Corporate Debtor in its balance sheet dated 25.10.2016 under the head "*Long-Term Borrowings*". Therefore, it is evident from both the balance sheet and the LLP Agreement dated 25.10.2016 that there is a 'debt' and the said debt is owed to the Petitioner.

- IV. Additionally, the Corporate Debtor has not denied the existence of the 'debt' as reflected in its Reply to the Petition. Instead, it has contended that under the LLP Agreement, the amounts advanced by the retiring partners including the Petitioner were to carry interest. These amounts were to be repaid gradually subject to the availability of sufficient funds with the LLP. This condition was particularly relevant after the commencement of a multi-storied building project on the firm's sole asset, namely, its land.
- V. The Corporate Debtor has submitted that based on mutual understanding between the parties no specific timeline or fixed date for repayment of the advances or remittance of interest was provided in the LLP Agreement dated 25.10.2016. However, the Petitioner has stated that repayments were in fact made directly into the respective bank accounts of the retiring partners in accordance with their instructions.
- VI. At this juncture, it is important to refer to the LLP Agreement dated 25.10.2016 in order to understand the terms and conditions related to the 'default' of debt and the commencement of repayment. For sake of

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clarity, relevant paras of LLP Agreement dated 25.10.2016 are reproduced here:

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shall protect the continuing partners in smooth running of the business.

- (iii) The outgoing partner has further agreed not to do any act or deed which will harm the continuing partners in any way in the smooth running of the business.
- (iv) The continuing partners hereto are desirous to release the outgoing partner from all future claims and demands whatsoever in respect of the business of the LLP.
- (v) The profit sharing ratios of the outgoing partner, in the said LLP, as per the Agreement dated 15th October, 2016 stands surrendered from the date of retirement as mentioned above. The Outgoing Partner shall have no share, right, title, interest or claim, of any nature whatsoever, to or in the said LLP or business or assets in its name or its properties, whether tangible or intangible, including in the outstanding liabilities etc. whatsoever but shall have claim towards their settled outstanding dues like unsecured loans etc. being claimed by retiring partners and nominal partners. Further, M/s Tirupati Warehouse Private Limited and Taruchaya Colonizers LLP are sister concerns of the outgoing partners and upon which their outstanding unsecured loans shall be liable to be paid off along with the settlement made in this LLP Agreement between the Outgoing Partners, Fifth and Seventh Part together. The outstanding dues of the retiring partners, (M/s Tirupati Warehouse Private Limited and Taruchaya Colonizers LLP shall carry an interest @ 15% per year being payable towards principal Rs. One Crore Fifty Lac per month and interest @ 15% additional to the principal amount together being the total installment being payable at monthly rest. The payment shall be made by the LLP to the Account maintained for the retiring partners jointly. The division of the amount amongst the joint account holders

ATTESTED
NOTARY Jaipur
29 OCT 2016

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VII. A bare perusal of the LLP Agreement dated 25.10.2016 reveals that it was agreed and recorded therein that the due amount payable to all retiring partners, along with the unsecured loans of their sister entities was to be repaid by the LLP by way of monthly instalments of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only), with interest at the rate of 15% per annum until full repayment of the loan. However, the statement of accounts submitted by the Petitioner shows that the following repayments were made: Rs. 20,00,000/- on 24.07.2017, Rs. 50,00,000/- on 28.08.2017, and Rs. 50,00,000/- on 01.09.2017, amounting to Rs. 1,20,00,000/- in total.

VIII. Accordingly, with regard to the existence of default it is evident that the Corporate Debtor failed to adhere to the agreed repayment schedule qua the monthly instalments of Rs. 1,50,00,000/- liability with interest at the rate of 15% per annum as recorded in the LLP Agreement. The non-payment of the outstanding amount is also corroborated by the statement of account maintained by the Petitioner which represents that the Corporate Debtor had repaid only Rs. 1,20,00,000/-. Thus, it transpires that the Corporate Debtor has failed to make payment of the outstanding amount as provided in the LLP Agreement dated 25.10.2016 and has defaulted in payment of the financial debt owed to the Financial Creditor.

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- IX. However, the plea taken by the Corporate Debtor that the repayment amounts were to be made gradually, subject to the availability of sufficient funds with the LLP after the commencement of a multi-storied building project is ill-founded. This contention finds no support in the LLP Agreement dated 25.10.2016, which is annexed to the Petition.
- X. At this juncture, it is important to refer to landmark judgment of the Hon'ble Supreme Court in *Innoventive Industries Limited v. ICICI Bank and Another* 2017 SCC OnLine SC 1025 wherein it was held that once Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with Adjudicating Authority to refuse admission of the Petition under Section 7 Code, 2016. The relevant excerpts from the judgment are as below:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. The moment the adjudicating authority is satisfied that a default has occurred, the Petition must be admitted unless it is incomplete, in which case it may give notice to the Petitioner to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction

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of the adjudicating authority that the adjudicating authority may reject an Petition and not otherwise.”

(emphasis added)

- XI. In view of the above, upon conclusion of the fact that the debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit of Rs. 1 crore. Once the Adjudicating Authority is subjectively satisfied that there is a debt and a default has been committed by the Corporate Debtor and the Section 7 Petition is complete in all respects, the Adjudicating Authority in the exercise of summary jurisdiction has to admit the Section 7 Petition.
- XII. In the instant case, the Financial Creditor advanced loans to the LLP in tranches, amounting to Rs. 12,80,70,787/- (Rupees Twelve Crores Eighty Lakhs Seventy Thousand Seven Hundred and Eighty- Seven Only) over the period from 29.10.2014 to 17.10.2016 and the same was to be repaid by the Corporate Debtor by way of monthly instalments of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only), with interest at the rate of 15% per annum until full repayment of the loan. Further, as observed above the instant Petition meets the mandatory requirement of Section 7 i.e. debt and default.
- XIII. Moreover, after examining the aforementioned facts and judgments, the present Petition made by the Financial Creditor is complete in all

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respects as required by law. Under such circumstances, the Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority is of the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated. Thus, we are inclined to admit this Petition and accordingly, same is being admitted and the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby initiated.

XIV. Therefore, we appoint *Mr. Asheesh Saxena* having Registration Number *IBBI/IPA-001/IP-P-02337/2021-2022/13737*, duly registered with ICAI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Petitioner has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Petition to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the above-named IRP.

XV. Consequences of initiation of CIRP shall be inter-alia as follows:

- a) The Resolution Professional *Mr. Asheesh Saxena* who is an IP registered with ICAI Insolvency Professional Agency having Registration No. *IBBI/IPA-001/IP-P-02337/2021-2022/13737*, he is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016.

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- b) IRP shall ensure that the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.
- c) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- d) The Petitioner shall deposit an amount of Rs. 1,00,000/- (Rupees One Lakh Only) towards the initial CIRP costs in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- e) In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

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f) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Petitioner, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, within three days.

- XVI. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
- XVII. The Interim Resolution Professional (IRP) is also directed to inform and forward the copy of this Order to all the statutory authorities such as Enforcement Directorate, Employees Provident Fund Organisation (EPFO), Income tax department and concerned Electricity department about the initiation of CIRP against the Corporate Debtor within a period of three days.
- XVIII. In the circumstances, *CP No. (IB) 98/7/JPR/2020* is admitted.



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[Signature]
Assistant Registrar
National Company Law Tribunal
Jaipur

[Signature]
REETA KOHLI
JUDICIAL MEMBER

[Signature]
KAVITA BHATNAGAR
TECHNICAL MEMBER