

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI SPECIAL BENCH**

**Company Petition No. IB-1458/PB/2019**

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

**IN THE MATTER OF:**

**M/S PASHUPATI JEWELLERS**

Through Power of Attorney Holder: Mr. Rajesh Kumar  
Of its Sole Proprietor: Ms. Sumedha Kanodia

...Applicant/ Financial Creditor

**VERSUS**

**MARIGOLD OVERSEAS LIMITED**

...Respondent/ Corporate Debtor

*Judgment Pronounced on: 20.09.2019*

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SH. S.K. MOHAPATRA**

**HON'BLE MEMBER(Technical)**

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**MEMO OF PARTIES****M/S PASHUPATI JEWELLERS**

Through Power of Attorney Holder: Mr. Rajesh Kumar  
Of its Sole Proprietor: Ms. Sumedha Kanodia

**Registered office at:** 10174, Vasudev Tower  
Gurudwara Road, Karol Bagh  
New Delhi-110005

**...Applicant/Financial Creditor**

**VERSUS****MARIGOLD OVERSEAS LIMITED**

**Registered office at:** B-143, First Floor  
B-6 Market, Preet Vihar  
New Delhi-110092

**...Respondent/ Corporate Debtor**

**For the Applicant:** Mr. UK Chaudhary, Sr Advocate with Ms. Manisha Chaudhary,

Mr. Mansumyer Singh, Advocates

**For the Respondent:** Mr. Vidit Gupta, Mr. Prakash Pandey, Advocates

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**JUDGEMENT**

**Per- Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC', 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Rajesh Kumar through Power of Attorney dated 18.05.2019 on behalf of its Sole Proprietor Ms. Sumedha Kanodia of the company M/s Pashupati Jewellers (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Marigold Overseas Limited (for brevity 'Corporate Debtor').
2. The proprietorship concern M/s Pashupati Jewellers having PAN-AQWPP9875A, having its office at 10174, Vasudev Tower, Gurudwara Road, Karol Bagh New Delhi-110005. The Corporate Debtor is a limited company incorporated under the provisions of the Companies Act, 1956 on 02.07.2008 having CIN-U51109DL2008PLC180375 as per Master Data and having registered office at B-143, First Floor, B-6 Market, Preet Vihar, New Delhi-110092. The Authorized Share Capital of the Corporate Debtor is Rs. 41,00,000/- (Forty-One lakhs) and Paid Up Share Capital is Rs. 40,92,500/- (Forty Lakhs and Ninety-Two Thousand Five Hundred Only) as per Master Data of the company.

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3. The Applicant has stated that in around March, 2017, one Mr. Balkaran Singh Bhullar, (for brevity the Principal Borrower) had availed an unsecured loan of Rs 2,60,00,000/- (Rupees Two Crore Sixty Lakhs) from the applicant in order to carry on his business of proprietorship firm M/s B & B Wines vide Loan Agreement dated 07.04.2017. The Principal Borrower after taking loan from the applicant, had assured to repay the loan amount within 2 to 4 months. The applicant has submitted that the Principal Borrower is a majority shareholder and director of the Corporate Debtor who has a substantial asset base in the property situated at Anchor No. 9 (Banquet Hall, In Hotel Radisson Blu, Dwarka) on Plot No. 4, Dwarka City Center Sector-13 Dwarka, New Delhi ("**Radisson Property**").
4. It is submitted that the said loan given to the principal borrower was secured by way of corporate guarantee vide Corporate Guarantee and Undertaking dated 07.04.2017. The corporate debtor stood as the guarantor for any damage/loss incurred by the principal borrower. It is further submitted that the principal borrower handed over the original title deed of the Radisson Property as well as share certificates of the property owned by the corporate debtor along with signed SH-4 Forms (securities transfer forms) to the applicant as security for the said loan for garnering the trust

of the applicant. However, soon thereafter the principal borrower requested the applicant to handover the original title deed and other documents for some time on the pretext that they intend to raise further finance which will be then utilized to repay the applicant. Believing the assurances of the principal borrower, the applicant handed over the original title deed and other documents to the principal borrower. Thereafter the principal borrower or guarantor neither repaid the due amount nor handed over the original documents to the applicant.

5. It is submitted by the Applicant that upon expiry of the stipulated term of repayment of one year, as per the loan agreement, the applicant approached the principal borrower and sought repayment of the said loan amount. A legal notice dated 28.05.2018 was sent to the corporate debtor demanding payment of the unpaid loan amount. The corporate debtor replied to the said notice vide letter dated 05.06.2018, raising issue of genuineness of said resolution through which the corporate guarantee was signed and blanket denial of the due amount as claimed by the applicant. It is further submitted that the corporate debtor filed a civil suit bearing C.S (SCJ) No. 1958/18 seeking declaration and injunction qua the board resolution dated 03.04.2017 based on which the corporate guarantee agreement was signed on behalf of the corporate debtor.

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6. The Applicant has submitted that another legal notice was sent dated 22.03.2019 recalling the loan agreement and calling upon principal borrower to repay the due amount of Rs 2,60,00,000/- along with interest @18% per annum amounting to Rs 88,53,000/- within seven days from the date of the notice. The principal borrower chose not to rely to the said notice of the applicant.
7. It is further submitted that the Applicant invoked the corporate guarantee tendered by the corporate debtor vide notice dated 30.03.2019 and called upon the corporate debtor having co-extensive liability as that of the principal borrower to repay the principal amount along with interest within seven days from the receipt of the said notice. The corporate debtor had replied to the said notice vide letter dated 09.04.2019 again raising dispute averments with respect to the payment of the due amount.
8. The Applicant filed Present Application on 29.05.2019 under section 7 of IBC, 2016 and served the copy of this application through speed post which has been duly delivered to the corporate debtor as per the tracking report.
9. The Corporate Debtor has replied to the application and has asserted that the loan agreement dated 07.04.2017 is fabricated and the loan amount is never paid to the corporate debtor. It is further asserted that the corporate

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debtor had never received any money from the applicant and hence does not fall within the definition of 'Corporate Debtor' under section 7 of Insolvency and Bankruptcy Code, 2016.

10. The Corporate Debtor has denied the execution of the corporate guarantee agreement in favour of the applicant and further Sh. Navlesh was never authorized by the corporate debtor to furnish corporate guarantee for the principal borrower.
11. The Applicant has filed a rejoinder by controverting the averments made in the reply and has asserted that the loan agreement dated 07.04.2017 was duly signed and executed by the principal borrower, who is the majority shareholder and also the director of the corporate debtor as per the documents annexed to the reply of the corporate debtor itself. That the terms of the loan agreement have been duly acted upon, and money was disbursed through bank transactions, and thus the said agreement cannot be deemed to be fabricated since its terms have clearly been acknowledged and acted upon by the parties. It is submitted that apart from the corporate guarantee tendered to the applicant, the corporate debtor created a valid charge on the Radisson property in favor of the applicant, which is evident from the board resolution passed on 03.04.2017, the extract of which is reproduced:

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*“RESOLVED THAT Mr. Balkaran Singh Bhullar be and is hereby authorized individually to create a first pari passu charge over the property of the company situated at Anchor No. 9, First Floor, Plot No. 4, Dwarka City Centre, Sector – 13, Dwarka, New Delhi-110019 in favour of the bank to secure the amount of loan as sanctioned by bank.”*

The applicant has relied upon the master data of the corporate debtor and copy of which is annexed and reflects the charge created with respect to the said property against which it is open.

12. The Applicant has submitted that according to Section 5 (8) (i) of the I & B Code, the debt is financial debt and is reproduced hereunder:

“5(8) “Financial Debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes:

- (a) money borrowed against the payment of interest;

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- (i) the amount of any liability in respect of **any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h)** of this clause;”

Therefore, from a bare perusal of Section 5(8)(a) and (i) of I&B Code, the guarantee tendered by the corporate debtor vide Corporate Guarantee

Agreement dated 07.04.2017 falls within purview of section 5(8)(i) of the

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Code and there is a default of financial debt defined under section 3(12) of the I&B Code as the principal borrower and the corporate debtor both are jointly and severally liable, who have defaulted in payment of the loan tendered by the applicant within the time specified under the loan agreement & guarantee agreement.

13. The applicant has submitted that the resolution passed in the board meeting of the corporate debtor held on 03.04.2017 has duly authorized Mr. Navlesh to sign and execute all agreements/other documents required to secure the loan tendered by the applicant to the principal borrower. The applicant has further asserted that the corporate debtor has also produced the pleadings in the civil suit filed by corporate debtor bearing C.S No 1958/18 title “Marigold Overseas Ltd Vs Pashupati Jewelers & Anr.”, inter alia seeking a declaration, declaring the said board resolution as null and void, which is nothing but an attempt on the part of the corporate debtor to scuttle the right of the applicant to seek initiation of CIRP under I &B Code.
14. Reliance has been placed by the applicant on the following observations of the Hon’ble Supreme Court in “*Innoventive Industries Ltd v. ICICI Bank*” (2018) 1 SCC 507, which are as follows:

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“28. When it comes to a financial creditor triggering the process, section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered address of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. Thus it must do within 14 days of the receipt of the application. 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. A debt

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*may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be”.*

15. Having heard the learned counsel for the applicant and having perused the documents on record, it is observed that the corporate debtor has not put on record any document evidencing that corporate guarantee agreement was not executed between the corporate debtor and the applicant. The corporate debtor has tried to challenge the genuineness of the corporate guarantee agreement but the same is a lame excuse. It seems that corporate debtor anticipating the triggering of I & B Code against it, had filed a suit challenging the authority of executant of corporate guarantee agreement and endeavored to defeat the claim of the applicant.

16. The application is complete as per the requirements of section 7 of the code. Further the default occurred on 07.04.2018, hence the debt is not time barred and the application is filed within the period of limitation.




17. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, from the Corporate Debtor, who is liable to pay, being the guarantor of the principal borrower. The default in payment of the financial debt is established beyond doubt. In the light of above facts and records the present application is admitted.
19. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as **Mr. Ashok Kriplani**, with registration number IBBI/IPA-003/IP-N00009/2016-17/10071 (email – ashok.kriplani1956@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

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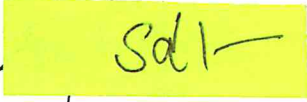
20. We direct the Financial Creditor to deposit a sum of **Rs. 2 lacs** with the Interim Resolution Professional, namely Mr. Ashok Kriplani to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. 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 Financial Creditor.
21. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
22. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy

of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**(S.K. MOHAPATRA)**

**MEMBER(Technical)**



**(DR. DEEPTI MUKESH)**

**MEMBER (Judicial)**