

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB- 3115/ND/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:****SURAJ HOLDINGS LIMITED****...Applicant/Financial Creditor****VERSUS****BNB INVESTMENT AND PROPERTIES LIMITED****...Respondent/ Corporate Debtor****Pronounced on: 31.05.2021****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (Technical)**

**MEMO OF PARTIES****SURAJ HOLDINGS LIMITED****Registered office at A-92C Taimoor Nagar,****New Friends Colony, New Delhi-110025...Applicant/Financial Creditor****VERSUS****BNB INVESTMENT AND PROPERTIES LIMITED****Registered office at M-56, 3 Floor, M Block Market****Greater Kailash-II, New Delhi-110048****...Respondent/ Corporate Debtor****For the Applicant:** Mr Ashish Mohan, Mr. HemantManjani, advocates**For the Respondent:**Mr. Shaashwat Jindal, Mr. Arpit Kumar Singh, Advocates

**ORDER****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 Suraj Holdings Limited through its Employee, Mr. Deepak Raturi, who has been duly appointed vide Board Resolution dated 06.06.2019 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against BNB Investment and Properties Limited (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated under the provisions of Companies Act, 1956 on 20.04.1992, having CIN U74899DL1992PLC048383. The applicant is having its registered office at A-92C, Taimoor Nagar New Friends Colony New Delhi-110025.
3. The Corporate Debtor is a limited company incorporated under the provisions of Companies Act, 1956 on 01.08.1995, having CIN U74899DL1995PLC071326. The corporate debtor is having its registered office at M-56, 3 Floor, M Block Market Greater Kailash II New Delhi-110048.
4. The applicant submits that in 2016, the Corporate Debtor approached and sought for the loan facility of Rs 25,00,000/- (Twenty Five Lakhs Only) for its business purpose. The applicant agreed to disburse the loan of Rs. 25,00,000/- and transferred the said amount of Rs 25,00,000/-, on 30.03.2016, through RTGS in the Corporate Debtor's HDFC bank

account. Against the said loan, the corporate debtor offered collateral security of 10,000 shares of U-Flex Limited, that are listed on BSE/NSE. The applicant submits that the market value of the 10,000 shares of U Flex Limited at that time was approximately of Rs. 18,00,000/-.

5. The applicant submits that on 08.08.2017, the Corporate Debtor requested the applicant for replacement of the collateral security submitted by it of 10,000 shares of U-Flex limited with 75,000 shares of C & C Constructions Ltd. worth Rs. 45,00,000/- at that time. The applicant based upon the representations made by the Corporate Debtor and the good relations, agreed to modify the prior arrangement and replaced the collateral security of 10,000 shares of U-Flex Limited with 75,000 shares of C and C construction Ltd. However, as a utter shock to the applicant the prices per share of C & C Constructions Ltd. fell from Rs. 60/share as then to Rs. 7/share within a span of 9-10 months and the collateral security was rendered meaningless.
6. The applicant submits that the Corporate Debtor did not make any payment of the outstanding loan and despite several follow ups and reminders. The applicant sent a legal notice dated 09.09.2019 to the corporate debtor calling upon to repay the amount of Rs 25,00,000/- along with interest @10.00% totaling to an amount of Rs 34,67,009.19/-, however, no reply was received nor the outstanding was repaid

by the corporate debtor. Hence, application under section 7 under I & B code was filed.

7. The Corporate Debtor has filed their reply to the application controverting the averments made in the application and has asserted as follows:
  - i. That the corporate debtor was not intimated about the depletion of the value of the share of C and C Constructions Ltd by the applicant any time prior but was informed for the first time only through notice dated 09.09.2019. It is further submitted that applicant had an obligation to exercise its right to recover the debt by selling the shares at proper time but failed to do so. It was discovered that the Applicant had unilaterally transferred the 75,000 shares of C and C Constructions Ltd, in the depository account of the corporate debtor, without the consent.
  - ii. That the Applicant is not a financial creditor under Section 5 (b) of I & B Code, 2016. The Applicant never charged any interest on the loan and the Applicant has failed to provide any evidence of any inflows or outflows distanced by time, where there is a compensation for the time value of money. That in absence of a financial contract, an agreement for charging interest on the loan amount or in absence of any evidence to show that interest was charged periodically or any supporting document to show that the loan amount was transferred against time value of money, the present Application is not maintainable as it does not involve a financial debt having a commercial effect of borrowing or time value of money.

- iii. That the Application is time-barred and beyond limitation. The loan amount of Rs. 25,00,000/- was disbursed by the Applicant on 30.03.2016. It is submitted that the Applicant for the very first time raised the demand for payment of the loan amount vide notice dated 09.09.2019 i.e. after a period of three years. Hence, the three years' limitation time from the date of disbursement of the alleged loan amount has lapsed, rendering the present Application time-barred.
8. The applicant has filed rejoinder and has asserted as follows:
    - i. That the corporate debtor who proposed to transfer 75000 shares of C&C Constructions Ltd and not the Applicant. Further the corporate debtor was duly aware that the share value of C&C Construction would decrease thereby lending the collateral security redundant and the Applicant being unable to claim the loan amount. The Applicant could not have sold the shares as they were held as collateral and if the corporate debtor wanted the applicant to sell its share before its devaluation, the corporate debtor should have made such a request, where no such requests/instructions were received by the corporate debtor. The corporate debtor was duly aware of all the transactions in DEMAT account as a statement of account is sent periodically. However, the fact that the corporate debtor was unaware of the devaluation of the share value of C and C constructions Ltd. is wrong as the said company is a publicly listed company and the value of shares is publicly known to all.

- ii. The definition of Financial Creditor under the Insolvency and Bankruptcy Code, 2016 read as under:

*"Section 5(7)- Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."*

The corporate debtor itself has reflected the applicant in its financial statements of the year 2017-18 under the heading Current Liabilities. Therefore, the Claimant is clearly covered under the definition of Financial Creditor as defined under the I & B Code, 2016. The corporate debtor has itself admitted that it had taken a loan from the Applicant therefore the Applicant is covered under the definition of Financial Creditor as defined under sub-clause 7 of section 5 and the said objection does not hold good.

- iii. That the application is filed well within time as the financial statement of the corporate debtor for the year ending 31.03.2018 clearly reflects the financial debt of the applicant under the heading current liabilities, shown as advance as received from the applicant. Therefore, the application is filed within the period of three years from the date of the said admission of liabilities and the debt is not time barred.
- iv. That an interest of 10% p.a. is debited each year into the account statement of the corporate debtor and is clearly reflected in the statement of account, which is confirmed by the corporate debtor. Thus, the loan was given without interest is incorrect. Further even if the component of

interest is not to be considered, the principal amount is still due and outstanding.

9. The corporate debtor has filed the written submissions and retreated same arguments which are the averments made in their reply.
10. Heard both the parties, and perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the financial debt due to the Applicant. The disbursement of loan by the applicant is nowhere denied and the same is received and admitted by the corporate debtor. The confirmation of the statement of account by the corporate debtor reflecting the debit of the interest payable, on the said loan amount as agreed @10%p.a, confirms the receiving of the financial debt by the corporate debtor. Moreover, in their audited financial statements for the year ending 31.03.2017 & 31.03.2018, the said position of the financial debt is confirmed. The corporate debtor has taken shelter of frivolous defense that the applicant could have acted vigilantly and exercised its right to recover debt by disposing the collateral security given by the corporate debtor.
11. As per the latest judgment passed by Hon'ble Supreme Court in the matter of '*Asset Reconstruction Company (India) Limited Vs Bishal Jaiswal & Anr*', the Supreme Court has held that the entry reflecting in the balance sheet shall amount to admission of debt. Hence in present case, the question of limitation as well as admission of debt both are covered in view of the above decision of the apex court. The admission of debt in financial statement as on 31.03.2018 amounts to admission of financial debt by corporate debtor as well as giving period of limitation of three years from 31.03.2018. We are satisfied that the financial debt

has become due and default has occurred and application being complete needs to be admitted.

12. As per Part IV Form 1 it is submitted that the date default is 09.09.2019 and the application is filed on 21.11.2019, which is well within the period of limitation and not barred by law.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. In the present application, the Applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In the light of above facts and records the present application is admitted.
15. The Applicant has proposed the name of Mr. Gaurav Katiyar as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P00209/2017-18/10409 (email –cagauravkatiyar@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.

16. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr.Gaurav Katiyar 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 three days for 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.
17. 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 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 vogue.
18. In terms of above order, the Application stands admitted in terms of Section 7(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**