

Sr. no. 266/2019

1

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH (RAJASTHAN)

CP No. (IB)-135/7/JPR/2019

**CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

KHANDELWAL BUILDCON PRIVATE LIMITED

Reg. Off. : 171, Officer Campus Ext.,

Sirsi Road, Near Sanskar School,

Jaipur -302021 (Rajasthan)

...FINANCIAL CREDITOR/APPLICANT

VERSUS


TARUCHAYA COLONIZERS LLP

Reg. Off.: D-701, Diamand Tower,

Plot No 4 & 5, Somdatts Landmark,

Hawa Sadak, Civil Lines,

Jaipur Rajsamand -302006 (Rajasthan)


3/10/19

...CORPORATE DEBTOR/RESPONDENT

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FOR PETITIONER (S) : **Ankit Sareen, Adv.**
Prakul Khurana, Adv.
Hemant Kothari, Adv.
FOR RESPONDENT(S) : **Nivedita R. Sarda, Adv.**
Nitesh Shrivastava, Adv.

ORDER PRONOUNCED ON: -01.10.2019

ORDER

1. This application is filed by Khandelwal Buildcon Private Limited, (for brevity "Applicant"), claiming to be a Financial Creditor, through Mr. Tikam Khandelwal who is duly authorized by Mr. Shankar Khandelwal vide Power of Attorney dated 21.01.2016 and empowered vide Board Resolution dated 15.01.2016 to file this application against the Corporate Debtor, Taruchaya Colonizers a LLP (for brevity "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a Private Limited Company, incorporated under the Companies Act, 1956 on 01.12.2006 and duly registered with the Registrar of Companies, Jaipur having CIN U45201RJ2006PTC023403. The

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Registered Office of the company is at 171, Officer Campus Ext., Sirsi Road, Near Sanskar School, Jaipur -302021 (Rajasthan).

3. The Corporate Debtor is a Limited Liability Partnership, incorporated on 19.11.2014 and duly registered with the Registrar of Companies, Jaipur having LLPIN: AAC-9435. The Registered Office of the Company is at D-701, Diamand Tower, Plot No 4 & 5 Somdatts Landmark, Hawa Sadak, Civil Lines, Jaipur -302006 (Rajasthan).
4. It is the case of the Applicant that the Corporate Debtor has availed a financial assistance of Rs. 2,25,00,000/- from the Applicant in the year 2016 vide Cheque No. 624451 dated 06.02.2016 which is reflected in Bank Statement of the Applicant and also in the Balance Sheet of the Corporate Debtor for Financial Year 2015-2016 under the head Unsecured Loan. Copy of Bank Statement and Balance Sheet are annexed with the Application as Annexure- 4 and Annexure-5 with the Application. The Applicant submits that in the Balance Sheet of year 2016-17 of the Corporate Debtor the name of the Applicant had been changed to "Khandelwal Enterprises" for outstanding Loan of Rs. 2,25,00,000/-. Copy of Balance Sheet for year 2016-17 is annexed. Subsequently in the Balance Sheet of Financial Year 31.03.2018 the name of the Applicant was removed. It is further stated that FIR was also filed against the Corporate Debtor and investigation is still



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pending. During an investigation the police was informed by the Corporate Debtor that they have paid the money and nothing is left.

5. As a consequence, this Application is filed. As claimed by the Applicant, the Corporate Debtor is liable to pay an amount Rs. 3,91,46,774.75/- as on 31.03.2017 as an outstanding amount, as reflected in Part IV of the Form-1 filed.

S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted.	Rs. 2,25,00,000/-
2.	Amount claimed to be in default and the date on which the default occurred	The total amount claimed to be in default is Rs. 3,91,46,774.75/- (Rs. 2,25,00,000/- as principal + Rs. 1,66,46,774.75/- as Interest @18 %)

6. The Corporate Debtor has filed its reply along with Application for Condonation of Delay of 12 days in filing of the reply vide Dairy No. 1671/2019 on 27.08.2019. The Corporate Debtor states that neither any financial debt was granted nor any amount is due and payable to the Applicant. The Applicant has not placed on record any loan agreement or understanding to show that that the amount as shown in the balance sheet under head "unsecured loan" has been paid against time value for money or interest. Moreover, neither the Corporate Debtor has paid any interest nor



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the Applicant has claimed any interest for the FY 2015-16 to 2016-17. Thus, the Applicant cannot be called as Financial Creditor.

7. The Corporate Debtor states that it is an LLP and was formed by Mr. Vinay Tambi and Mrs. Sarika Tambi and later Mr. Naval Kishore Dangayach was appointed as Designated partner until 16.02.2019. That Mr. Naval Kishore Dangayach, Mr. Vinay Tambi, partners of Corporate Debtor were also partners with Mr. Shankar Lal Khandelwal and Mrs. Guman Khandelwal, directors and shareholders of Applicant in a separate LLP in the name of A. Gangwal Real Estate LLP. Copy of supplementary LLP agreement is annexed as Annexure R-2 with reply. The said LLP had availed secured Loan from Rajasthan State Industrial Development and Investment Corporation Limited (RIICO) vide Agreement dated 18.11.2015 of Rs. 40,00,00,000/-, which was disbursed on 24.11.2015. Copy of Loan Agreement is annexed with the Reply. That Mr. Shankar Lal Khandelwal has transferred almost whole loan amount from 24.11.2016 to 26.11.2016 in his and his relatives personal account and in the account of his sister concerns without the consent of other partners. On being questioned he assured that funds will be transferred back.
8. It is further stated in the reply filed by the Corporate Debtor that Mr. Shankar Khandelwal had released an amount of Rs. 2,25,00,000/- in the account of the Corporate Debtor from the Applicant Company without any interest and



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sought time to release the balance share reimbursed by RIICO. It is further stated that Mr. Shankar Lal Khandelwal was arrested by the CBI in year 2018 and is still under judicial custody. The properties of Mr. Shankar Lal Khandelwal and his family members were attached by Enforcement Directorate on account of criminal prosecution under Prevention of money Laundering Act (PMLA).

9. It is further submitted in reply that the sister concern of the Applicant being M/s Shrikripa Rolling Mills, a LLP, approached the Corporate Debtor with its partner Mr. Tikkam Khandelwal brother of Mr. Shankar Khandelwal and his wife Mrs. Renu Khandelwal seeking financial assistance of Rs. 1,00,00,000/- The Corporate Debtor has disbursed Rs. 1,00,00,000/- as an adjustment against the outstanding advance of Rs.2,25,00,000/-.

10. Later another sister concern of Applicant namely Guman Builders & Developers Pvt. Ltd. approached Mrs. Geeta Devi Dangayach mother of Mr. Naval Kishore Dangayach to seek financial assistance of Rs. 1,00,00,000/-. Considering the directors of Guman Builders & Developers Pvt. Ltd. to be partners of Corporate Debtor, Mrs. Geeta Devi Dangayach has disbursed Rs. 1,00,00,000/- against an interest on 09.03.2015. The principal amount of Rs. 1,00,00,000/- and interest of Rs. 45,90,419/- accrued on 31.03.2018 was adjusted to the extent of Rs. 1,25,00,000/- against the advance of Rs. 2,25,00,000/-.

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11. It is further submitted that the partner of Corporate Debtor has paid other huge sums total amounting Rs. 1,68,40,693/- to Mr. Shankar Lal, Applicant and its sister concerns.
12. The Corporate Debtor further submits that the debt was repaid in full settlement by adjusting entries against the dues payables by sister concerns and related parties of the Applicant to the Corporate Debtor. The Bank Statement attached by the Applicant is not admissible as it is not in compliance with Bankers Books Evidence Act, 1891. It is further submitted that the change in the name of the Applicant in the balance Sheet of Year 2017 was a typographical error.
13. The Applicant has filed a rejoinder vide Dairy No. 1932/2019 dated 16.09.2019 and submitted that the Banker's Book includes a statement of account being a record used in the ordinary business of the bank. It is submitted that just because no interest payment has been paid by the Corporate Debtor it cannot be concluded that the financial assistance was disbursed without consideration in time value for money. It is further submitted that the Corporate Debtor has failed to furnish any documentary evidence to prove that the Applicant had consented to any of the alleged set-off of its receivables from the Corporate Debtor or much less even a document to establish that any intimation was also given to the Applicant regarding such settlement alleged undertaken before 31.03.2018. The



Petitioner as a body corporate neither consented to any of the alleged adjustment of liabilities of third parties against the receivables of the Applicant nor was the Applicant ever informed by the Corporate Debtor of such adjustments before the institution of this Section 7 Application. The Applicant had never been a party to any of the Agreements /transactions.

14. It is seen from documents filed by both the parties that the Applicant is neither a party to the Agreement nor to any of the payment made by the directors of the Corporate Debtor and also the Corporate Debtor has not submitted any proof of payment made to the Applicant with respect to the debt due in the present Application.

15. The Applicant herein has filed written submissions and referred the following decisions in support of its case:

i) The decision of Hon'ble High Court of Delhi reported in MANU/DE/6688/2011 dated 21.11.2011 (Bhajan Singh Samra Vs. Wimpy International Limited).

ii) The decision of National Company Law Tribunal, Mumbai Bench in CP No. 66/IBC/MB/MAH/2018 dated 25.02.2019 (Anchor Leasing Private Limited Vs. Euro Ceramics Limited).



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- iii) The decision of Hon'ble National Company Law Appellate Tribunal, New Delhi in CA (AT) (Insolvency) No. 616 of 2018 (Shailesh Sangani Vs. Joel Cardoso and Another).

These decisions support the case of the Applicant herein.

16. It is apparent from the pleadings of both the parties that the payment of claim amount has been defaulted by the Corporate Debtor to the Applicant.
17. In these circumstances, the claim stands established and prima facie presumption raised that there is default in payment of the amount due to the Applicant. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the Provisions of IBC, 2016. Hence this Application for initiation of Corporate Insolvency Resolution Process is hereby allowed.
18. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, one Mr. Prashant Agarwal having Registration Number IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippagrawal@gmail.com, Mobile No. : 9828355000), duly registered with the Indian Institute of Insolvency Professional of ICAI, as the Interim Resolution Professional. The Applicant has filed consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating

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Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

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

- (i) The Resolution Professional proposed by the Applicant is Mr. Prashant Agrawal who is an IP registered with the Indian Institute of Insolvency Professional of ICAI having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 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 including issue of 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.
- (ii) Further, as a sequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to 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.
- (iii) The said IRP shall act strictly with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on

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account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. 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.

- (iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.
- (v) In the circumstances, this Company Petition No. (IB)-135/7/JPR/2019 is admitted.

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

DR. POONDLA BHASKARA MOHAN
MEMBER (JUDICIAL)

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(के. एल. कौशिक)
(K. L. Kaushik)
कोर्ट ऑफिसर
Court Officer
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
जयपुर, राजस्थान
Jaipur, Rajasthan

3/10/19