



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

(IB)-755/(ND)/2022

**IN THE MATTER OF:**

**Kotak Mahindra Prime Ltd.**

Registered office at:  
27 BKC, Plot No. C-27  
G-Block, Bandra-Kurla Complex,  
Bandra (E),  
Mumbai – 400051

... **Petitioner /Financial Creditor**

**VERSUS**

**M/s. Blaze Promoters Private Limited**

Registered Office at:  
102, Antriksh Bhawan,  
22, K. G. Marg, Connaught  
Place, New Delhi – 110001

... **Respondent/Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 25.04.2023**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Petitioner** : Adv. Amit Mahaliyan

**For the Respondent** : None



## ORDER

### PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

Kotak Mahindra Prime Limited (for brevity, the **'Petitioner/ Financial Creditor'**) has filed the present Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, **the 'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Blaze Promoters Private Limited (for brevity, the **'Respondent/ Corporate Debtor'**).

2. The Respondent namely, M/s Blaze Promoters Private Limited is a Company incorporated on 16.01.2006 in terms of the provisions of the Companies Act, 1956, with CIN U45201DL2006PTC144856 having its registered office at 102, Antriksh Bhawan, 22, K.G. Marg, Connaught Place, New Delhi-110001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 14,00,00,000/- and its Paid-up Share Capital is Rs. 1,00,000/-.

3. It is stated by the Petitioner/FC that it a sanctioned Term Loan Facility of Rs. 20,00,00,000/- (Rupees Twenty Crores Only) to the borrower M/s. Universal Buildwell Private Limited (for brevity, **'UBPL'**), in terms of the sanction letters dated 14.06.2012 and 17.07.2012. According to the Petitioner, the said term loan facility was secured by way of the creation of charge by way of hypothecation on the current assets and movable assets of the Respondent which included goods, machinery, etc. of the Respondent and also by way of



creation of mortgage with respect to the immovable property in the land for the project namely “Universal Business Park” situated at Village- Badshapur, Gurgaon, Haryana alongside unsold super built-up area admeasuring 1,00,387.13 sq. feet out of total super built-up area admeasuring 2,15,913.13 sq. feet and all appurtenances thereto alongwith development rights and existing and future FAR and TDR – 20% share again owned by the Respondent who stood as corporate guarantor to the said Term Loan Facility for the borrower viz. M/s. Universal Buildwell Private Limited.

4. As has been captioned in the Petition, the loan and security documents were executed between the Petitioner and the Respondent by way of Deed of Guarantee on 12.07.2012, thereby irrevocably and unconditionally guaranteeing payment of loan advanced by the Petitioner to UBPL. It is further stated by the Petitioner that default in payment by UBPL occurred and the Petitioner issued a notice dated 09.12.2016 to call upon it to repay the overdue amount of debt under the Loan Agreement which UBPL failed to comply with. The Respondent also failed to pay the outstanding due amount and thus, the loan account was declared NPA in accordance with RBI guidelines on 19.11.2014. Further, a notice dated 09.12.2016 under Section 13(2) of the SARFAESI Act, 2002 was issued to the Respondent.

5. It is submitted by the Petitioner that the dispute between the parties was referred for Arbitration and the Arbitral Proceedings could take place vide **Arbitration Case No. 103/2017**. The dispute involved the default which occurred qua UBPL and the guarantors including the Respondent. Mr. K.K. Nangia, who was appointed as Sole Arbitrator in the arbitration proceedings held principal borrower i.e., UBPL and Respondent jointly and severally liable



for the default and an arbitration award was passed on 18.10.2018, in terms of which UBPL and Respondent were directed to pay the awarded amount to the Petitioner. The Arbitrator made the copies of the Award available to all the parties including the Respondent, vide Letter dated 20.10.2018. As has been espoused by the Petitioner, no amount as per award has been paid to it till date, either by the principal borrower i.e., UBPL, or the Respondent.

6. The particulars of the total unpaid financial debt claimed and the date of default are mentioned in Part IV of the Petition, which read thus:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURRED  (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM	As on 31.08.2022  An amount of Rs. 59,93,29,440.82 (Rupees Fifty nine crores ninety three lakhs twenty nine thousand four hundred forty and paise eighty two only) is due and outstanding including interest at 12% per annum as per the Hon'ble Arbitration award dated 18-10-2018  The corporate debtor failed to honour the payment of outstanding dues and default was committed by Corporate Debtor on 18-10-2018 (date of recovery certificate).
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7. From a perusal of the Part IV of the Petition (ibid), it is observed that the Petitioner has claimed an amount of Rs. 59,93,29,440.82/- (Rupees Fifty Nine Crores Ninety Three Lakhs Twenty Nine Thousand Four Hundred Forty and Paise Eighty Two only) as the “unpaid financial debt” and has referred to the date of Arbitration Award i.e., 18.10.2018 as “date of default”.

8. In order to prove the existence of the financial debt, the Petitioner has relied upon the following documents:



- a) Copy of Term Loan Facility Agreement dated 12.07.2012.
- b) Copy of Final General Conditions dated 12.07.2012.
- c) Copy of Demand Promissory Note dated 12.07.2012 alongwith Take Delivery Letter dated 12.07.2012.
- d) Copy of Hypothecation dated 12.07.2012.
- e) Copy of Deed of Guarantee dated 12.07.2012 executed by M/s Blaze Promoters Private Limited.
- f) Copy of Undertaking dated 12.07.2012.
- g) Copy of creation of Mortgage dated 12.07.2012.
- h) Copy of Mortgage Deed and MOE dated 09.08.2012 and 05.07.2016 with Title Deeds.
- i) Copy of Arbitration Award dated 18.10.2018.

9. In the wake of the aforementioned, the Petitioner has prayed for initiation of CIRP against the Respondent.

10. Despite service of notice upon the Respondent, no appearance was entered on its behalf, thus in terms of the order dated 24.02.2023, this Adjudicating Authority proceeded against the Respondent ex-parte. Again on 12.04.2023, no one appeared on behalf of the Respondent, thus the matter was heard ex-parte. Indubitably, the Arbitrator passed the award dated 18.10.2018 in favour of the Petitioner herein. The Respondent herein was Respondent No. 6 before the Arbitrator. In terms of the award, it was held liable jointly along with other Respondents as also severally to pay inter alia an amount of Rs. 27,24,22,473.10/- as on 31.08.2017 to the Petitioner herein. The relevant excerpt of the award reads thus:



11. In the light of the facts of the case at hand and the aforesaid discussion, I am of the view that the Claimant has succeeded in establishing its claim for a sum of Rs.27,24,22,473.10/- (Rupees Twenty Seven Crores Twenty Four Lakhs Twenty Two Thousand Four Hundred Seventy Three and Paise Ten Only) as on 31.08.2017 and the same is accordingly awarded in favour of the Claimant and against the Respondents. The Claimant is also entitled to pendente lite and future interest at the rate of @24% p.a. on the claim amount till its final realization which is accordingly awarded in favour of the Claimant and against the Respondents. On the question of cost of Arbitral Proceedings, the Tribunal is of the view that the Arbitral Proceedings have been foisted on the Claimant for no fault on their part. The Respondent has failed to make the payment in favour of the Claimant for no reason whatsoever and hence, the Tribunal holds that the Claimant will be entitled to Rs.7,00,000/- (Rupees Seven Lakhs Only) towards costs of Arbitral Proceedings as incurred by them in the present Arbitration proceedings and the same are accordingly awarded in favour of the Claimant and against the Respondents.

**XXXXXXXX**

**I, THEREFORE, PASS AN AWARD IN FAVOR OF THE CLAIMANT AND AGAINST THE RESPONDENTS JOINTLY AND SEVERALLY FOR;**

**a.) RECOVERY OF Rs.27,24,22,473.10/- (Rupees Twenty Seven Crores Twenty Four Lakhs Twenty Two Thousand Four Hundred Seventy Three and Paise Ten Only) ON ACCOUNT OF RECOVERY OF THE OUTSTANDING PRINCIPAL LOAN AMOUNT ALONG WITH CONTRACTUAL INTEREST AND CHARGES;**

**b.) RECOVERY OF INTEREST @24% P.A. ON THE AMOUNT OF Rs.27,24,22,473.10/- (Rupees Twenty Seven Crores Twenty Four Lakhs Twenty Two Thousand Four Hundred Seventy Three and Paise Ten Only) FROM 01.09.2017 TILL THE ACTUAL DATE OF PAYMENT BY THE RESPONDENTS.**

**c.) RECOVERY OF COSTS OF RS. 7,00,000/-**

**XXXXXXXX**



11. It is not for us to go into the calculation of the amount claimed by the Petitioner, while examining a petition filed under Section 7 of IBC, 2016. What we need to examine is whether the CD has defaulted in payment of an amount of more than Rs.1Crore to the Petitioner/ FC. As can be seen from the provisions of Section 5(8)(i) of the IBC, 2016, the financial debt includes the amount of any liability in respect of the guarantee for any of the liability referred to in Section 5(8)(a) to (h). In **Laxmi Pat Surana vs. Union Bank of India & Anr. (Civil Appeal No. 2734 of 2020)**, Hon'ble Supreme Court ruled that the status of the guarantor who is a corporate person, metamorphoses into corporate debtor, the moment the principal borrower commits default in payment of debt. Further, in **Kotak Mahindra Bank Limited vs. A. Balakrishnan & Anr. (Civil Appeal No. 689 of 2021)**, Hon'ble Supreme Court ruled that a liability in respect of a claim arising out of a recovery certificate would be a financial debt within the meaning of clause 8 of Section 5 of IBC, 2016 and the holder of a recovery certificate would be a Financial Creditor within the meaning of clause 7 of Section 5 of the Code. Thus, the liability of the Respondent arising out of the arbitral award dated 18.10.2018 would be a financial debt qua it and the Petitioner herein has to be treated as Financial Creditor.

12. The present Petition was filed on 24.09.2022. The period of three years from 18.10.2018 was over on 17.10.2021. Thus, the normal period of limitation was over on 17.10.2021, which date could fall between 15.03.2020 to 28.02.2022. The Arbitrator had not mentioned any date or time limit for making the payment of the awarded amount. When a court or tribunal including the arbitral tribunal does not specify any time limit for implementation of its order/award, the period for the purpose is perceived as six months. Thus, in



view of the judgment of the Hon'ble Supreme Court in **Suo Moto Writ Petition (C) No. 3 of 2020**, the Petitioner had the balance period of limitation to the extent of 1 year and 7 months, which period if reckoned from 01.03.2022 could expire only on 27.09.2023 and the present petition was preferred on 24.09.2023, thus the petition is within the prescribed period of limitation.

13. It is also the case of the Petitioner that on issuance of Recovery Certificate/Arbitration Award, a fresh demand was raised which was not honoured by the Respondent, thus default was committed. The Petitioner has also relied upon judgment of Hon'ble Supreme Court in matter of **Suo Moto Writ Petition (C) No. 3 of 2020** (ibid). The relevant excerpt of the judgment reads thus:

*“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

14. The Petitioner further referred to the judgement in **“Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020”** dated 04.08.2021, wherein Hon'ble Supreme Court ruled thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time*



*settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the Petition by its order dated 21st March, 2019.”*

15. From the bare perusal of the Hon’ble Supreme Court’s judgments (Supra), it can be inferred that the present Petition is within limitation and is not time-barred.

16. Thus, the present Petition being complete and the Petitioner /Financial Creditor having established the default on the part of the Corporate Debtor in payment of the Financial Debt which is above the threshold limit, **the same is admitted in terms of the provisions of Section 7(5) of the IBC. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”

17. As proposed by the Petitioner, Mr. Raj Kumar Dad, having Registration No. IBBI/IPA-001/IP-P00 537/2017-18/10962 (Email: [rajkdad@gmail.com](mailto:rajkdad@gmail.com)) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

*“Mr. Raj Kumar Dad, IRP (Registration No. IBBI/IPA-001/IP-P00 537/2017-18/10962) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”*

18. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will 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.

19. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

20. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER(T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER(J)**