THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.237/Chd/Chd/2021

Under Section 7, IBC 2016
& 5 Limitation Act 1963

In the matter of:
M/s Area Importers And Exporters Private Limited
H.Non 6028, Modern Housing Complex
Manimajra Chandigarh
Chd-160101

…………Petitioner-Financial Creditor

Vs.

M/s Gupta Builders and Promoters Private Limited
Having its Regd. Office at
SCO No. 196-197,
Ground Floor, Sector 34-A,
Chandigarh – 160022
Through its Authorized Representative

…………Respondent-Corporate Debtor

Judgment delivered on:31.05.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Petitioner/Financial Creditor	: 1.	Mr. Puneet Bali, Senior Advocate
	2.	Ms. Eshna Kumar, Advocate
	3.	Mr.Udit Gupta, Advocater.
For the Respondent/Corporate Debtor	:	Ms. Priyal Anand, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4

of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Area Importers And Exporters Private Limited (hereinafter referred to as ‘Petitioner/Financial Creditor’) to initiate the Corporate Insolvency Resolution Process (‘CIRP’) against A M/s Gupta Builders and Promoters Private Limited (hereinafter referred to as ‘Respondent/Corporate Debtor’). The petition is signed by Mr. Ashish Pahwa, Authorized Representative of of the Financial Creditor and the affidavit verifying the contents of the application is on page 18-20 of the petition. The Authorisation by the Board in favour of applicant is attached as Annexure-1 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-3 of the petition. The Corporate Debtor is stated to be incorporated on 24.08.2011and is a doing the business in real estate. The company having its registered address at SCO No. 196-197, Ground Floor, Sector 34-A, Chandigarh-160022. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for disposal of the same are narrated hereunder:

3.1 The corporate debtor in April 2021, through its directors approached the petitioner to secure a short-term loan of Rs. 3,25,00,000/- for a period of 2 months (“the “Financial Debt”).

3.2 The petitioner on 12.05.2021 entered into a loan agreement with the corporate debtor (the “Agreement”) (Annexure A4).

3.3 The corporate debtor had received the entire loan amount on 18.06.2021. The same has also been acknowledged by the corporate debtor. (Annexure A6).

3.4 Under the Agreement, the corporate debtor was to repay the loan with an interest of 2%. The same was to be repaid on or before 20.08.2021 (Clause 2 and Clause 3 of the agreement, Annexure A4).

3.5 The petitioner on 23.08.2021 (Annexure A7), 30.08.2021 (Annexure A8) and 08.09.2021 (Annexure A9), sent demand notices to pay the demand notices to pay the amount due.

3.6 However, no response was received from corporate debtor. Therefore the petitioner filed the present petition under Section 7 of the Code against the corporate debtor.

3.7 In the present case, an amount of Rs. 3,25,00,000/- was disbursed to the corporate debtor. Disbursed amount was against the consideration for the time value of money as the corporate debtor had agreed to pay an interest of 2% per month on the principal amount.

4. In Part-III of Form No.1, Mr. Mukesh Gupta, Registration No.IBBI/IPA-001/IP-Po1494/2018-2019/12254 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 16.09.2021 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professional of ICAI and the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e. Mr. Mukesh Gupta are attached at Annexure-11 the petition.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided loan amount of Rs.3,25,00,000/- (principal). The total amount claimed to be in default is Rs.3,25,00,000/- as on 20.08.2021. Copy of the ledger account of the Financial

Creditor (Annexure A-5). Copy of the same agreement dated 12.05.2021 (Annexure A-4).

6. The notice of this petition was accepted by learned counsel for respondent-corporate debtor as per order dated 24.02.2022 as to why this petition be not admitted. A reply on behalf of respondent-corporate debtor is submitted vide Diary No.01139/3 Dated 02.02.2022 by Mr. Gaurav, affidavit authorizing him on behalf of the respondent is attached at Page No.11-13 of the reply.

7. The corporate debtor through its reply has submitted that the respondent-corporate debtor has faced a financial crises due to the non-conducive circumstances prevailing across real estate business due to which the Corporate Debtor is unable to pay the debts. It is further submitted that this Tribunal may consider the difficulty of the answering respondent and its incapacity to pay the liability to the petitioner.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 20.08.2021 and the present petition is filed vide Diary No. 01139 dated 22.10.2021. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is default in payment or not. As per Section 7 of IBC which is reproduced below :-

> *"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*
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> *(1) A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*
>
> *[2][Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:*
>
> *Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*
>
> *Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]*
>
> *Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. "*

12. It is observed from the record that in the present case, the occurrence of default is evidenced by the copy of the acknowledgement by the corporate debtor and the account statement of the Petitioner/Applicant and the same are attached as Annexure-6 and Annexure-A-5 & A-10 respectively of the petition. The respondent-corporate debtor has also filed a reply wherein it has been admitted

that there is default in respect of financial debt and amount mentioned in the petition is due towards the petitioner and shown its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Mukesh Gupta has been proposed as Interim Resolution Professional.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mukesh Gupta, and there is nothing adverse against him. In view of the above, we appoint Mr. Mukesh Gupta, Registration No.IBBI/IPA-001/IP-P01494/2018-2019/12254, F-1, Milap Nagar, Uttam Nagar, Ne Delhi-110059, Email: camvkeship@rediffmail.com, Mobile No.9818124699, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than threshold limit of one crore. As a necessary consequence of the moratorium in terms of Section 14, 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 corporate debtor 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 corporate debtor 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 corporate debtor 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 corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

May 31, 2022
ASH