



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH-VI

C.P. (IB) No. 689/ND/2023

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

IN THE MATTER OF:

FASHION SUITINGS PRIVATE LIMITED

Registered Office At:

SPL-6, RIICO, Growth Centre,

Swaroopganj, Bhilwara

Rajasthan- 311025

...APPLICANT/

FINANCIAL CREDITOR

VERSUS

SHRIYA OVERSEAS PRIVATE LIMITED

Registered Office At:

4677, Gali Mohar Singh,

Jat Pahari Dhiraj

North Delhi- 110006

...RESPONDENT/

CORPORATE DEBTOR

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)



APPEARANCES:

Counsel for Petitioner:

Adv. NPS Chawla, Adv. Sujoy
Datta, Adv. Vibhor Kapoor, Adv.
Shubham Raghuwanshi,

Counsel for Respondent:

Adv. Kartik Malhotra

ORDER

PER: BENCH

Date: 09.05.2025

1. This petition has been filed by Fashion Suitings Private Limited, Financial Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Shriya Overseas Private Limited (hereinafter referred to as "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of **Rs. 2,70,33,417/-** as on 31.03.2023 inclusive of Interest at the rate of 15% per annum compounded quarterly from the date 01.04.2019.
2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:
 - a. An unsecured loan of ₹ 1.5 crores was disbursed to the Corporate Debtor on 22.03.2016 through Cheque No. 85155.
 - b. The petitioner emphasizes that these loans were advanced without any security and were repayable on



demand. The Corporate Debtor has acknowledged the liability by issuing balance confirmations, and the Financial Creditor has enclosed the same to establish the admission of debt.

- c. The Corporate Debtor paid interest from 18.05.2016 until 31.03.2019 and deducted TDS, which is evidenced in Form 26AS. The ledger of accounts and the Corporate Debtor's balance sheet for FY 2017-18 also reflect the said loan under "Long-Term Borrowings
- d. No payments were made after 31.03.2019. In April 2021, the Corporate Debtor's Director, Mrs. Ruby Mehra, issued a letter acknowledging the outstanding debt and assured repayment by 30.09.2021. A confirmation of accounts for the period 01.08.2015 to 31.03.2021 was also provided.
- e. The Financial Creditor submits that the Corporate Debtor has neither disputed the claim nor proposed any restructuring or settlement plan. No part-payment or admission of part-payment has been made since the date of default.
- f. Furthermore the entry in long term borrowings of the balance sheets of the Corporate Debtor also establish a clear acknowledgement of liability.



- g. Default is alleged to have occurred on 01.10.2021, and the petition was filed on 21.09.2023, within three years from the date of default

3. The Corporate Debtor filed its reply in which the following contentions were made:

- a. There was no written loan agreement evidencing the terms of disbursement or interest, and the transaction was not routed through formal channels. It is claimed that the financial affairs of the company at the relevant time were managed solely by late Shri Rajan Mehra, who passed away on 26.02.2018.
- b. The demand raised does not constitute a “Financial Debt” (Section 5(8)), since there was no lending “against consideration for the time value of money” (i.e., interest).
- c. The death of Mr. Mehra severely curtailed operations and cash flows, affecting the ability to repay immediately. The Corporate Debtor affirms ongoing bona fide efforts to discharge all liabilities, including those claimed

4. The Petitioner made the following averments in its Written Arguments dated 11.09.2019:

- a. Regulation 8(2)(a) of the Insolvency and Bankruptcy Board of India (CIRP) Regulations, 2016, arguing that a written financial contract or a loan agreement is not



mandatory. A financial debt can be proved by any document listed under Regulation 8(2), including financial statements, ledger accounts, and tax records such as Form 26AS. Payments towards interest appear in the Financial Creditor's **ledger** and corroborate the exercise of the "time- value of money" element of a "financial debt.

- b. The Corporate Debtor's audited balance sheet for the year ending 31 March 2018 categorizes the ₹ 1.50 Crore loan under "Long-term borrowings". The subsequent FY 2018–19 balance sheet shows the amount growing to ₹ 1.81 Crore (inclusive of accrued interest) under "Unsecured Borrowings"
- c. Citing *Agarwal Polysacks Ltd. v. K.K. Agro Foods & Storage Ltd.*, 2023 SCC OnLine NCLAT 624, and *Jaiprakash Agarwal v. Alka Prakash Agarwal*, 2024 SCC OnLine NCLAT 761, it is contended that acknowledgment of debt through account confirmations, balance sheets, and Form 26AS entries is sufficient to establish a financial debt.
- d. **Satish Balan v. Neeta Navin Nagda** (2023 SCC OnLine NCLAT 1999) and **Agarwal Polysacks v. K.K. Agro Foods** (2023 SCC OnLine NCLAT 624, paras 21, 29) hold



that Form 26AS entries, ledger records, and balance-sheet disclosures suffice to establish financial debt .

- e. **Jaiprakash Agarwal v. Alka Prakash Agarwal** (2024 SCC OnLine NCLAT 761, paras 21–22) further confirms that interest payment records in Form 26AS, coupled with on-demand repayment terms, satisfy the IBC definition without a written contract
- f. In April 2021, the Corporate Debtor’s director, Mrs. Ruby Mehra, issued a letter on the Triumph Motors letterhead (one of Shriya Overseas’s trading units), expressly acknowledging the principal of ₹ 1.50 Crore plus accrued interest and promising repayment by 30 September 2021. This letter constitutes a clear admission of liability and restarts the limitation period under Section 18 of the Limitation Act, 1963.
- g. the loan satisfies the definition of “financial debt” under Section 5(8): money was disbursed, interest was paid (consideration for the time value of money), and the debt was repayable on demand



Analysis and Findings

5. We have perused the documents filed by the Financial Creditor as well as Corporate Debtor and have heard the arguments made by the Ld. Counsels appearing for both the parties.
6. The Financial Creditor has pleaded that the amount of Rs. 2.70 Cr. qualifies as a financial debt under **Section 5(8)** of the Code. It is material to note that the Corporate Debtor has not disputed the existence of the debt as acknowledged under the Letter dated 01.04.2021 and the Reply of the respondent wherein the C.D stated that efforts are being made to repay the said debt.
7. Prior to adjudication of the present application, it is pertinent to refer to **Section 3(12), Section 5(8)(a) and 5(8)(b)** of the IBC, 2016, which have been reproduced below–

Section 3(12): *“debt means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;*

Section 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;*
- (b) *any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*



8. In respect of the establishment of financial debt, the petitioner's case satisfies the requirements of **Section 5(8)** of the Code. Although there is no written loan agreement in the present case, the disbursal of ₹ 1.50 crores by way of Cheque No. 85155 dated 22.03.2016 is not in dispute. The Corporate Debtor regularly paid interest at the agreed rate of 15% per annum until 31.03.2019 and deducted TDS thereon, which is corroborated by entries in Form 26AS and the petitioner's ledger account.
9. Further, the Corporate Debtor's audited balance sheet for the financial year 2017-18 reflects the said sum of ₹ 1.50 crores under "Long-Term Borrowings," thereby acknowledging the liability in its financial statements. This is reinforced by a letter dated April 2021 issued on the letterhead of Shriya Overseas Pvt. Ltd. (specifying the company's CIN), wherein the Director, Mrs. Ruby Mehra, unambiguously acknowledged the loan and assured repayment by 30.09.2021. The letter was accompanied by a confirmation of accounts for the period from 01.08.2015 to 31.03.2021, reflecting the principal and accrued interest.
10. Judicial precedents have consistently held that absence of a formal written agreement does not preclude the establishment of a financial debt. In **Satish Balan v. Neeta Navin Nagda, 2023 SCC OnLine NCLAT 1999**, relevant portion of which has been reiterated below:



“14. This 'Appellate Tribunal' observe that the Code nowhere prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the 'Corporate Debtor' and where the statements of accounts of the 'Corporate Debtor' are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the 'Financial Creditor' (the Respondent No. 1 herein) from initiating the CIRP.

15. We take note from the record made available that there have been clear acknowledgments which have been issued by the 'Corporate Debtor' for the money received from the Respondent No. 1 which also mentioned the quantum of interest payment to be made by the 'Corporate Debtor' to the Respondent No. 1. Similarly, we also take into account the fact that TDS was deducted”

11. Similarly in ***Jairakash Agarwal v. Alka Prakash Agarwal, 2024 SCC OnLine NCLAT 761, and Agarwal Polysacks v. K.K. Agro Foods (CA(AT)(Ins) No.1126 of 2022)*** the NCLAT upheld the maintainability of Section 7 petitions based on documentary evidence such as Form 26AS, TDS deductions, and acknowledgments, and it was reiterated that documents like financial statements and repayment assurances could validly establish a financial debt, even in the absence of a loan agreement.
12. The Hon'ble Supreme Court in ***Global Credit Capital Ltd. v. Sach Marketing Pvt. Ltd., (2024) 9 SCC 482***, reaffirmed the



position laid down by the NCLAT, the relevant portion of which has been reproduced below:

“17. It is also held that the amounts were treated as long-term loans and advances in the financial statement of the corporate debtor for the Financial Year 2015- 2016. Moreover, in the financial statement of the corporate debtor for the Financial Year 2016-17, the amounts paid by the first respondent were shown as “other long-term liabilities”. Therefore, if the letter mentioned above and the financial statements of the corporate debtor are considered, it is evident that the amount raised under the said two agreements has the commercial effect of borrowing as the corporate debtor treated the said amount as borrowed from the first respondent.”

13. In the present case, the Petitioner has produced a comprehensive set of documents- banking instruments, tax records, financial statements, and written acknowledgments- which together create a clear evidentiary trail demonstrating that the loan was disbursed for consideration of time value of money and remains unpaid. Therefore, the elements of “financial debt” as contemplated under Section 5(8) of the Code are fully satisfied.
14. The issue of limitation in the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 is governed by Article 137 of the Limitation Act, 1963, which prescribes a period of three years from the date of default. The Financial Creditor, Fashion Suitings Pvt. Ltd., disbursed a loan of ₹ 1.50 crores to the



Corporate Debtor on 22.03.2016, which carried an agreed rate of interest at 15% per annum, compounded quarterly. Interest was regularly paid until 31.03.2019, as evidenced by Form 26AS and ledger entries, after which no further payments were made. The cause of action, therefore, prima facie arose either from cessation of interest payments or the mutually agreed repayment date of 31.03.2021.

15. Crucially, the Corporate Debtor's Director, Mrs. Ruby Mehra, issued a signed letter in April 2021 acknowledging the liability, both principal and interest, and sought time until 30.09.2021 to repay the entire outstanding dues. This acknowledgment was accompanied by a confirmation of accounts for the period from 01.08.2015 to 31.03.2021, clearly recording a continuing liability. The Petitioner has accordingly computed the date of default as 01.10.2021, being the day after the agreed repayment deadline.
16. As per settled law, particularly the Hon'ble Supreme Court's rulings in ***Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330*** and ***Asset Reconstruction Co. (India) Ltd. v. Tulip Star Hotels Ltd., 2022 SCC OnLine SC 944***, a valid acknowledgment of liability under Section 18 of the Limitation Act extends the limitation period by three years from the date of such acknowledgment. These decisions affirm that acknowledgments made through letters, balance sheets, or account confirmations are sufficient to revive limitation. Moreover ***in ARCIL v. Uniworth***



Textiles (Company Appeal (AT)(IB) 991/2020), the NCLAT recognized that acknowledgment of debt in the balance sheets and via the acknowledgement letter would extend limitation, and is sufficient prima facie proof of default for Section 7 admission.

17. Applying this to the present facts, the acknowledgment made in April 2021 squarely falls within three years from the cessation of interest payments (March 2019), thereby resetting the clock. The petition, having been filed on 21.09.2023, is within the extended limitation period and is not time-barred. The Petitioner has thus discharged the burden of establishing that the claim is within limitation by relying on contemporaneous and admissible documentary evidence.
18. This Adjudicating Authority, being limited to the determination of debt and default within the framework of a summary trial, finds that the other submissions advanced by the parties fall beyond its jurisdiction. Consequently, this Authority refrains from delving into them. However, liberty is granted to the concerned parties to approach the appropriate forum for redressal.
19. In light of the above and in terms of the fact that existence of debt and its default by the Corporate Debtor has been established by the virtue of the material placed on record, this Adjudicating Authority **admits** this petition and initiates CIRP on the Corporate Debtor for a default of **Rs. 2,70,33,417** with immediate effect.



20. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sourabh Malpani for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P01265/2018-2019/12047 and (Email- malpanijpr@gmail.com). The proposed IP has a valid AFA. Therefore, this Adjudicating Authority, appoints him to act as Interim Resolution professional in the matter. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.
21. We direct the Applicant to deposit a sum of Rs. 2 Lakh with the Interim Resolution Professional, namely Mr. Sourabh Malpani to meet out the expenses 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.
22. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.



23. We also declare moratorium in terms of Section 14 of the Code.

The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

- “(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.”

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended



or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

25. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section



20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

26. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

27. Let copy of the order be served to the parties.

-SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)