

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH (RAJASTHAN)

CP No. (IB)-262/7/JPR/2019

Coram: SHRI P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

S J SERVICES PRIVATE LIMITED
8D, Hansalaya 15, Barakhamba Road,
New Delhi- 110001

...FINANCIAL CREDITOR/APPLICANT

VERSUS

M/S RG BUILDESTATE PRIVATE LIMITED
204, R-7, Park Saroj, Yudhistra Marg,
C-Scheme, Jaipur, Rajasthan- 302001

...CORPORATE DEBTOR/RESPONDENT

FOR PETITIONER (S) : Siddhant Jain, Adv.

FOR RESPONDENT(S) : Prabhansh Sharma, Adv.



ORDER PRONOUNCED ON: - 30.01.2020

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This application is filed by S J Services Private Limited, (herein also referred to as "Applicant"), claiming to be a Financial Creditor, through Shri Sunil Kumar Jain, its Authorised Signatory, who is duly authorized in this regard vide board resolution dated 28.08.2019. The Applicant has filed this application against the Corporate Debtor, M/s RG Buildestate Private Limited (herein also referred to as "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 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, constituted under the Companies Act, 1956, on 28.12.1988 and duly registered with the Registrar of Companies, Jaipur with CIN U74140DL1988PTC034427. The Registered Office of the Applicant Company is at 8D Hansalaya 15, Barakhamba Road, New Delhi- 110001.



3. The Respondent is a Private Limited company, incorporated under the Companies Act, 1956, on 17.01.2012 and duly registered with the Registrar of Companies, Jaipur with CIN: U45201RJ2012PTC037634. The Registered Office of the Respondent Company is at 204, R-7, Park Saroj, Yudhistra Marg, C-Scheme, Jaipur- 302001 (Rajasthan). The authorized share capital of the Respondent company is Rs. 1,00,000/- (Rupees One Lakh Only) and paid up share capital is Rs. 1,00,000/- (Rupees One Lakh Only).
4. It is the case of the Applicant that the Respondent has availed Term Loan Facility of Rs. 1,00,00,000 in the year 2014 and in respect of the said loan had executed Term Loan Agreement dated 20.11.2014 initially for a period of 6 months with interest at the rate of 3 % per month. It is inferred from the agreement that it was agreed between both the parties that the applicant shall be entitled to charge from the Respondent penal rate of interest at the rate of 3% per month on the outstanding dues or any portion thereof for any delay in repayment of the advances and/or interests as agreed or in material default/irregularity in observing the terms and conditions of the agreement. The said facility has been renewed from time to time by the Applicant as per the request of the Respondent. The parties had also executed a Mortgage Deed dated 20.11.2014 whereby the respondent had mortgaged and created a charge on his residential land situated at Gailpur, Tehsil Tijara, District

Alwar, Rajasthan. The respondent was regular in payment of interest till 12.10.2015. However, cheque issued by respondent for payment of interest on 13.10.2015 of Rs. 6,00,000/- and on 21.10.2015 of Rs. 1,00,00,000/-, when presented for repayment were dishonoured with remarks "Funds Insufficient". Consequently, the applicant had filed complaint under Section 138 of the Negotiable Instrument Act, 1881 vide case No. Ct Cases/0032875/2016 before the Chief Metropolitan Magistrate, New Delhi, and the said matter is still pending.

5. As a consequence of non-payment of due amount and interest this application was filed. As claimed by the applicant, the Corporate Debtor is liable to pay an amount Rs. 4,24,87,195/- as on 20.08.2019 as an outstanding amount, as reflected in Part IV of the Form - 1 filed.

Part IV

S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Rs. 10000000/- on 20 th Nov. 2014
2.	Amount claimed to be in default and the date on which the default occurred	Rs. 42487195/- Date of default- 20 th August, 2015



6. The Respondent has filed reply on 19.11.2019 and admits that he had availed loan of sum of Rs. 1,00,00,000/- vide the Term Loan Agreement dated 20.11.2014. It is submitted by the respondent that he was regular in payment of interest to the applicant till 20.07.2015 and thereafter a payment of Rs. 75,000 was disbursed in 2018. Copy of the ledger account showing payment of interest by the respondent is annexed with reply vide Annexure- R-2. The said ledger account clearly reflects opening balance of Rs. 1,00,00,000/- in the relevant financial year as due and payable to the Financial Creditor/ Applicant. It is also submitted that the respondent, due to financial crisis, had approached the applicant to grant some time for repayment of loan. It is further submitted that the respondent had also tried to settle the matter with the applicant and in view of same had requested for six months' time for the payment of overdue amount along with interest as a lump-sum payment.
7. Upon a detailed consideration of the application and documents filed by the Applicant, it is apparent that the payment of claim amount has been defaulted by the Corporate Debtor and the same is admitted in the pleadings of the Corporate Debtor.
8. The Registered Office of the Corporate Debtor is situated in Jaipur and therefore this Tribunal has jurisdiction to entertain and try this Application. It is an admitted fact that the Corporate Debtor had made payment of interest

upto year 2015 to the Applicant and thereafter made payment of Rs. 75,000/- on 10.07.2018 and again admits liability in the reply. Thus, in terms of the provisions of the Limitation Act, 1963 and Section 25 (3) of the Indian Contract Act, 1872, the matter is within the purview of Law of Limitation.

9. Hence, this Tribunal is inclined to initiate the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
10. The Applicant has named one Mr. Chander Shekhar having Registration No. IBBI/IPA-001/IP-P01760/2019-20/12706 (email: ca.cssuneja@gmail.com, Mobile No.: 9971073795), duly registered with Indian Institute of Insolvency Professionals of ICAI, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.
11. Consequences of initiation of CIRP shall be inter-alia as follows:
 - (i) The Resolution Professional proposed by the Applicant, Mr. Chander Shekhar, an IP registered with Indian Institute of Insolvency Professional of ICAI with Registration No. IBBI/IPA-001/IP-

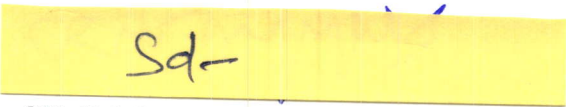
P01760/2019-20/12706, is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and discharge duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016, and calling for the claims from the creditors of Corporate Debtor and collation of the same.

- (ii) Further, as a sequel 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 in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on 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 from time to time apprising this Tribunal about the progress of CIRP unfolding 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 is admitted.



Sd-

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)



Sd-

SH. P.S.N PRASAD,
MEMBER (JUDICIAL)

Mansi J.