



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT – VI**

**Item No. 2**  
**IB-45/ND/2023**

**IN THE MATTER OF:**

**M/s. B.R.M. Lease and Credit Private Limited**

**...Financial Creditor**

**Versus**

**M/s. CAPL Hotels and SPA Private Limited**

**...Corporate Debtor**

**ORDER UNDER SECTION 7, IBC, 2016**

**ORDER DELIVERED ON 05.07.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IB-45/ND/2023 stands dismissed.

SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-45/(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:**

**M/s. B.R.M. Lease and Credit Private Limited**

Registered office at: M-118, Connaught Circus,  
New Delhi 110001

...Financial Creditor

**Versus**

**M/s. CAPL Hotels and SPA Private Limited**

Registered office at: 5-B, Pratap Bhawan,  
Bahadur Shah Zafar Marg, Darya Ganj,  
New Delhi Central Delhi -110008

...Corporate Debtor

**Coram:**

**SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)  
SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

Counsel for Applicant: Adv. Vinod Chaurasia  
Counsel for Respondent: Adv. Alok Tiwari



**ORDER**

**PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Date: 05.07.2023**

1. The present application is filed by M/s. B.R.M. Lease and Credit Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s. CAPL Hotels and SPA Private Limited for the alleged default on the part of the Respondent in settling an amount of Rs. 02,05,15,597 (Rupees Two Crore Five Lakhs Fifteen Thousand Five Hundred and Ninety-Seven) as on the date of filing this Petition.
2. During the course of proceedings, the Respondent raised a preliminary objection with regard to the limitation. Therefore, whether CIRP should be initiated against the Corporate Debtor or not can only be decided after



deciding the maintainability of the present Section 7 application.

**3.** The brief facts of the case as averred by the Applicant are as follows:

- i. That the cause of action for the present Application first arose on 14.05.2008 when the Financial Creditor disbursed the cash credit of Rs.30,00,000/- (Rupees Thirty Lacs) to the Corporate Debtor and the Corporate Debtor and the Financial Creditor executed the Agreement of Cash Credit dated 07.01.2009. The cause of action then further arose when the corporate debtor issued cheques bearing no. 003001 dated 04.11.2019 for Rs. 25,00,000/-, bearing no. 003002 dated 10.12.2019 for Rs. 25,00,000/-, bearing no. 003003 dated 10.01.2020 for Rs. 25,00,000/-, bearing no. 003004 dated 10.02.2020 for Rs. 25,00,000/- and bearing no. 003005 dated 10.03.2020 for Rs. 18,00,000/- for repayment of dues.



- ii. That the Financial Creditor served a legal notice on the Corporate Debtor dated 02.05.2022 to call upon the Corporate Debtor for repayment of outstanding dues of Rs. 1,82,06,030/- including principle amount of Rs.30,00,000/- within 15 days of receiving the notice i.e. 17/05/2022 but the corporate debtor failed to meet its financial liability.
- iii. That in terms of in section 5(8) of IBC, 2018, i.e., definition of `financial debt', there exist a default on the part of the Corporate Debtor towards the Applicant herein, who is a financial creditor.
- iv. That as per the ledger maintained regularly by the Financial Creditor in due course of its business, an amount of Rs. 2,05,15,597/- (Rupees Two Crores Five Lacs Fifteen Thousand Five Hundred and Ninety-Seven) i.e., Rs.30,00,000/- outstanding as Principal, Rs.88,00,000 crystalized dues including interest, penalties etc. recognized by the Corporate Debtor against which the post-dated cheques were issued as well and Interest @18% p.a. is due against the Corporate Debtor as on 30.11.2022, which CD



has failed to pay despite repeated requests, demands and the settlement arrived at as stated above.

**4.** The Respondent in its reply to the present Application raised the following contentions:

- i. That the present Application is not maintainable on the ground that it is hopelessly barred by the limitation of time.
- ii. That the Applicant, claiming to be an NBFC has alleged that it had given a Loan of INR 30 Lakhs to CAPL on 14.05.2008. The said alleged Loan was purportedly given without any kind of loan application, sanction letter, or other documentation that any NBFC is required by law to execute, obtain and maintain. Therefore, it is clear that the alleged Loan could not have been given in the due course of NBFC business at all.
- iii. That the alleged loan agreement dated 07.01.2009, has been created ex post facto.
- iv. That no loan application, no sanction letter, no other document that otherwise ordinarily accompanies,



and creates and evidences a Loan transaction has been produced by the Applicant.

- v. That even if it were assumed, without admitting, that the alleged Loan Agreement did ever exist, the same, in its own terms, stipulated a period of 36 months for repayment of the Loan. That the 36-month period stipulated under the alleged Loan Agreement expired well over a decade ago, rendering any claim on the basis of the alleged Loan hopelessly barred by time.
  - vi. That not only was the alleged Loan not sanctioned, disbursed or documented in accordance with applicable RBI directives, it was not even classified as an NPA after the date of the alleged default in terms of the RBI Master Circulars and mandatory directives regulating NBFC's.
- 5.** We have gone through the submissions of both the parties and the documents on record. The Applicant has alleged default on the part of the Respondent in settling an amount of Rs. 02,05,15,597 (Rupees Two Crore Five Lakhs Fifteen Thousand Five Hundred and Ninety-Seven)



as on the date of filing this Petition which comprises of principal amount of Rs. 30,00,000/- (Rupees Thirty Lakhs).

- 6.** The alleged Financial Debt for which the present Application has been filed pertains to loan agreement dated 07.01.2009. As per Clause 2 of the loan agreement, the loan was provided for a period of 36 months. It can be safely concluded that the loan was to be repaid on or before 07.01.2012. Therefore, the default occurred in 2012 itself.
- 7.** Per Article 137 of the Limitation Act, 1963, the limitation period for filing an Application u/s 7, IBC, 2016 is three years from the date of default. However, the present Application has been filed in 2023 i.e, after almost a hiatus of 11 years.
- 8.** Section 18 of the Limitation Act, 1963 provides that upon acknowledgement in writing, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The Hon'ble Supreme



Court in the matter of *Laxmi Pat Surana vs Union Bank of India & Anr.* [Civil Appeal No. 2734 of 2020] has settled the issue of the applicability of Section 18 of the Limitation Act, 1963 to applications for initiation of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016. The Apex Court has held that Section 18 of the Limitation Act applies to extend the period of limitation for filing an application under Section 7 of the IBC.

9. In the instant case, the limitation period for the default which occurred in 2012 was to expire in 2015 unless the debt was acknowledged by the Respondent in writing in terms of Section 18 of the Limitation Act, 1963. However, the Applicant has not produced any document to satisfy this Tribunal that the Respondent had acknowledged the existence of the Financial Debt before the lapse of the limitation period, i.e. before January, 2015. The Applicant has relied on some post-dated cheques which were issued by the Respondent but has failed to establish beyond doubt that such cheques were issued while



acknowledging dues per loan agreement dated 07.01.2009.

**10.** In '*Invent Asset Securitization and Reconstruction Pvt. Ltd. vs. Girnar Fibers Ltd.*', Civil Appeal No. 3033 of 2022, the Hon'ble Supreme Court has held as follows: "Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such." In the present case, the intent of the Applicant has only been to invoke the provisions of this Code so as to enforce recovery against the respondent, which is barred under law.

**11.** In light of the above, we are of the view that the present Application filed u/s 7, IBC, 2016 is not maintainable and is therefore dismissed.

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

SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

IB-45/(ND)/2023

SD/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**