

3. The Applicant submitted that he had advanced an amount of ₹3,74,38,800/- (Rupees Three Crore Seventy Four Lakh Thirty Eight Thousand and Eight Hundred Only) to the Corporate Debtor, between the years 2009-2010, in anticipation of joint development by the Applicant and the Corporate Debtor of two societies by entering into a Joint Venture Agreement. However, the condition precedent for entering into Joint Venture Agreement was not fulfilled by the Corporate Debtor and therefore, no Joint Venture Agreement was executed between the parties.
4. The Applicant further submitted that, as no Joint Venture Agreement was executed between the parties, the Corporate Debtor, in the circumstances, made part payment of ₹1,50,00,000/- (Rupees One Crore and Fifty Lakh Only) to the Applicant on 28.08.2010. Further, the Corporate Debtor vide Letter of Understanding dated 31.12.2017, declared, confirmed and undertook to pay the balance amount of ₹6,65,00,000/- (Rupees Six Crore and Sixty Five Lakh Only), inclusive of interest, to the Applicant within 180 days from 31.12.2017. Copy of Letter of Understanding dated 31.12.2017 is annexed to the application.
5. The Applicant submitted that, the debt amount as promised vide Letter of Understanding dated 31.12.2017 was not repaid by the Corporate Debtor within 180 days i.e. on or before 30.06.2018. Therefore, the Applicant vide his letter dated 04.07.2018 called upon the Corporate Debtor to pay the outstanding amount of ₹6,65,00,000/- along with interest at 12% p.a. The Applicant further submitted that, vide Supplemental Letter of Understanding dated 16.07.2018, the Corporate Debtor replied to the letter dated 04.07.2018 and agreed and confirmed the Letter of Understanding dated 31.12.2017 and further requested the Applicant to extend the date of payment by six months i.e. till 31.12.2018. The Corporate Debtor vide the Supplemental Letter of Understanding also agreed and undertook to pay the entire outstanding amount of ₹7,44,80,000/-, inclusive of interest, to the Applicant. The Corporate Debtor also passed a Board Resolution dated 13.07.2018 and ratified

and confirmed the Letter of Understanding dated 31.12.2017 and further resolved to pay ₹7,44,80,000/- on or before 31.12.2018 to the Applicant. However, the Corporate Debtor failed to adhere to the agreements dated 31.12.2017 and 16.07.2018 and failed to pay the debt amount before 31.12.2018. The copy of documents mentioned supra are annexed to the application.

6. The Applicant submitted that the Corporate Debtor has confirmed and acknowledged the said debt vide "Statement of Confirmation of Accounts" dated 01.04.2018, reflecting an outstanding balance of ₹6,84,67,670/- (Rupees Six Crore Eighty Four Lakh Sixty Seven Thousand Six Hundred and Seventy Only) as on 01.04.2018. Copy of the Statement of Confirmation of Accounts is annexed to the application.
7. The Applicant filed present application on 13.02.2019. The Corporate Debtor, vide its written submissions dated 06.09.2019, contended that the Applicant is not a financial creditor and the alleged debt does not amount to financial debt as the Applicant is seeking to recover monies expended towards Joint Venture. The Corporate Debtor also contended that the application is barred by limitation because the period of three years has been elapsed as the period of credit and part debt repayment was done during the year 2009-2010 i.e. on 28.08.2010. Further, the Corporate Debtor, relying upon Hon'ble Supreme Court's judgement in the case of Sampuran Singh & Ors. Vs. Niranjana Kaur & Ors., contended that its confirmation and acknowledgement vide Letter of Understanding dated 31.12.2017, Supplemental Letter of Understanding dated 16.07.2018 and Statement of Confirmation of Accounts on 01.04.2018 would not revive the limitation period, as the said acknowledgement is made after the expiry of limitation period i.e. after three years from 28.08.2010. Therefore, on these grounds the application deserves to be dismissed.

8. No one appeared on behalf of the Corporate Debtor at the time of hearing. We have heard the submissions of the Applicant and perused the records.
9. The Counsel for the Applicant at the time of arguments submitted that though the Applicant had advanced the amount to the Corporate Debtor between the years 2009-2010, the present claim of the Applicant comes within limitation. The Counsel for the Applicant placed reliance on the provisions of Section 25(3) of the Indian Contract Act, 1872 which is reproduced below:

"25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.— An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1 [documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract." (Emphasis Supplied)

The Counsel for the Applicant argued that even if the original claim in the present case is time barred, only the remedy of the financial creditor is extinguished but the debt is not extinguished even after limitation period is over. He further submitted that, in a situation where the debtor approaches the creditor and makes a fresh promise to pay the debt, there is no law which bars the debtor from

discharging its debt to the creditor and cause of action accordingly arises from the date when such fresh promise is made. The Counsel submitted that, in the present case, the Letter of Understanding dated 31.12.2017 and Supplemental Letter of Understanding dated 16.07.2018 supported by Board Resolution dated 13.07.2018, all constitute fresh cause of action enforceable against the Corporate Debtor and on their default, the present Petition is filed which is therefore within limitation. The Counsel for the Applicant cited – **AIR 1958 SC 328 – Bombay Dyeing and Manufacturing Ltd. Vs. State of Bombay and Ors.** wherein following observations are made:

"(14)...

On this, the question arises for consideration whether a debt which is time-barred can be the subject of transfer, and if it can be, how it can benefit the Board to take it over if it cannot be realised by process of law. Now, it is the settled law of this country that the statute of Limitation only bars the remedy but does not extinguish the debt. Section 28 of the Limitation Act provides that when the period limited to the person for instituting a suit for possession of any property has expired, his right to such property is extinguished. And the authorities have held – and rightly, that when the Property is incapable of possession, as for example, a debt, the section has no application, and lapse of time does not extinguish the right of a person thereto. Under Section 25(3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount"

The Counsel for the Applicant also relied upon – **1996 (5) Bom C R 338 Canara bank vs. Vijay Shamrao Gokhale & Ors. (DB)** wherein it was observed as follows:

"(B)...

It is, thus, clear from the perusal of section 25(3) of the Contract Act that when there is a promise to pay the time barred debt made in writing as envisaged therein, it is treated as a contract and therefore such promise would furnish a fresh cause of action to the creditor."

Finally, the Counsel for the Applicant concluded that, the present financial debt is within the limitation as the cause of action arose on

31.12.2018 due to the default of the Corporate Debtor to pay the financial debt to the Applicant.

10. Therefore, in a nutshell what we precisely mean and conclude is that, whenever a debt is barred by limitation and subsequently if the debtor chooses to acknowledge the same or promises in writing to pay the very same debt, then the clock again starts ticking and the creditor gets fresh lease of life for the outstanding debt. In the present case on hand as contended by the Ld. Counsel for the Applicant that debt acquired fresh lease of life and the application is maintainable, is perfectly in tune with the established legal position. This proposition compels us to admit this application.
11. Also, on perusal of the documents submitted by the Parties, it is evident that amount advanced by the Applicant of ₹3,74,38,800/- to the Corporate Debtor was against the consideration for time value of money, as interest was payable on the said amount. The Corporate Debtor also did not dispute the Letter of Understanding dated 31.12.2017 or Supplemental Letter of Understanding dated 16.07.2018 and further, nowhere raised a contention that it did not receive any amount as stated in the application. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of debt. Hence, the contentions of Corporate Debtor are not tenable and rejected.
12. The debt and default of the Corporate Debtor have been established, and the application deserves to be admitted.
13. The Applicant has proposed the name of Mr Paras Khimji Savla, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00365/2017-18/10623] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.

14. The application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh is due and payable against the corporate debtor and its default is also proved. Application is within limitation. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, filed by **Mr Nipun Thakkar (sole proprietor of M/s Ami Corporation)**, Financial Creditor / Applicant, against **Shivam Parivar Developers Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to –
- (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) a surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Paras Khimji Savla**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00365/2017-18/10623]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA

Member (Technical)

13th December 2019

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)