

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP- IB-558(PB)/2021**

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

In the matter of:

Mr. Saroj Kumar Poddar

31, BBD Bagh (South),

Hongkong House,

Kolkata -70001

....Petitioner/Financial Creditor

Vs.

M/s. Growth Techno Projects Limited

3917, Ganesh Building, Naisarak,

Roshan Pura, Delhi-110006

.... Corporate Debtor

Order delivered on: 27.04.2022

Coram:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the FC: Mr. Amitabh Agarwal, Adv.

For the CD:

ORDER

PER: AVINASH K. SRIVASTAVA MEMBER (TECHNICAL)

1. This is an application, filed on 25.08.2021, by Mr. Saroj Kumar Poddar (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), against the Respondent/Corporate Debtor namely, M/s. Growth Techno Projects Limited (GTPL).

2. The Corporate Debtor is a Public Limited Company, incorporated on 16.01.1985, having Company Identification Number (CIN) U74210DL1985PLC019849 and is situated at 3917 Ganesh Building Nai Sarak Roshan Pura, North Delhi- 110006, and the CD is engaged in the Building and Construction work since 16/01/1985. They had started one project at Karkardoma Delhi as Growth Park in 1997.

3. The Petitioner/Financial Creditor Mr. Saroj Kumar Poddar has submitted that:

- The Petitioner had given an advance of Rs. 50,00,000 in 1997 for 2,45,000 sq. feet residential project of Growth Park along with two other creditors i.e. M/s. Adventz Finance Pvt Ltd and erstwhile M/s. Adventz Investments and Holdings Ltd. (now merged with M/s Adventz Finance Pvt. Ltd.) totaling Rs. 1,49,00,000/- and details is as follows:

S. No.	Name of Lender	Amount in Rs.
1.	<i>Mr. Saroj Kumar Poddar</i>	<i>50,00,000</i>
2.	<i>Advertz Finance Private Limited (Formerly Known as Poddar Heritage Finance Pvt. Ltd.)</i>	<i>69,00,000</i>
3.	<i>Intergral Commercial Private Limited (merged with Sonali Projects Limited and name changed to Adventz Investments and Holdings Limited which got merged to Adventz Finance Private Limited</i>	<i>30,00,000</i>
	<i>Total amount</i>	<i>1,49,00,000</i>

- The financial creditor along with other two companies together had advanced Rs. 1,49,00,000/- for purchase of 245000 sq. feet in CD residential project Growth Park situated in Karkardoma Delhi. But this project could not be started as the Land was ultimately acquired by the Delhi Development Authority (“DDA”) in 2004 and curative petition filed by the CD was dismissed in the year 2008.
- It is further stated that in pursuant to the acquisition, the CD had filed for enhancement of compensation of the award for its 324 bighas acquired land in Karkardoma Delhi in 2007 and further represented that it is continuing to pursue the enhancement of compensation under section 18 of the Land Acquisition and they expect a substantial increase in the

compensation of acquired land. Based on the representation, the financial creditor herein entered into a settlement agreement dated 28.07.2014 on the terms and conditions mentioned in the aforesaid agreement annexed as Annexure-5 at page 53-58 of the petition.

- Further, it is pertinent to mention that in terms of clause 3 of the settlement the settlement amount shall not be less than Rs. 5 crores. The settlement agreement dated 28.07.2014 has crystalized the liability to be paid as per terms of the agreement.
- It is further submitted by the petitioner that the financial creditor herein was assured that CD was diligently pursuing the enhancement of compensation proceedings pending in Karkardooma Court and that the matter is still pending. The CD has yet to get award and in the agreement, it was confirmed that atleast in total Rs. 5,00,00,000/- (Rs. Five crores) will be paid to the said three persons against financial debt given in 1997 of Rs. 149,00,000 and the petitioner's share of the above comes to Rs. 1,67,75,000/- (Rupees One Crore Sixty-Seven Lacs, Seventy-Five Thousand Only).
- The GTPL has admitted these liabilities under the head of other long-term liabilities in the Balance Sheets in 2019-20 showing the acknowledgement of debt, annexed as Annexure-7 at page 101. It is further submitted that it is coming under Trade Payables of the amount given by two companies Adventz Finance Pvt. Ltd. Adventz Investments and Holdings

Ltd. (merged with Adventz Finance Private Limited) and the applicant herein for Rs. 149,00,000/- and as per the settlement agreement 28.07.2014 it has been agreed that the CD (GTPL) will pay around Rs. 5 Crores to Rs. 10 Crores, depending upon the amount of compensation.

- That the CD is bound as per the settlement agreement dated 28.07.2014, which has crystalized the liability to be paid as per the terms of agreement. In the settlement agreement it was confirmed that, atleast in total Rs. 5,00,00,000/- will be paid to the said three persons against financial debt given in the year 1997 in their ratio of loan amount but till date nothing has happened. The amount given on loan in 1997 of Rs. 149,00,000 could have got interest in over crores but the settlement agreement has crystalized the liability to only Rs. 5 crores for the applicant and the other two lenders.
- Further it is submitted that, the CD had sent an email on 07.05.2021 annexed as Annexure-3 at page 39 of the petition, about the adverse developments with regard to the company. The CD further informed the financial creditor that, CD cannot pursue the compensation proceedings and other legal proceedings at present due to paucity of funds and that the CD is trying to arrange funds to pay the legal fee of the Lawyers etc. That this has shaken the confidence of the Financial Creditor herein and now the financial creditor has no hope that the CD will be able to comply with the settlement agreement dated 28.07.2014. That already the Financial

Creditor has waited for more than 22 years from time the amount was first granted to the CD.

- That in the above view the statutory demand notice was issued by Financial Creditor upon Corporate Debtor on 15.05.2021 and the same has been received by the Corporate Debtor, annexed as Annexure-4 at page 40 to 52 of the Petition.
- That in reply to the statutory demand notice as mentioned above, the CD vide its letter dated 28.05.2021 has acknowledged the financial debt of Rs. 1,67,50,000 and has shown his inability to repay the financial debt, annexed as Annexure-6 at page 59 to 61 of the petition.
- Further the CD has indirectly admitted in para 9 of the said letter dated 28.05.2021, that at present it cannot comply with the settlement agreement dated 28.07.2014.
- That the financial creditor has now filed application for claiming the financial debt of Rs. 1,67,75,000/- (Rupees One Crore Sixty-Seven Lacs, seventy-five thousand) as per the agreement dated 28.07.2014 annexed at page 53 to 58 of this petition.
- It is further submitted by the petitioner that; the CD has not raised any objection or dispute with respect to the statutory demand notice. In fact the CD has acknowledged the said financial debt vide its letter dated 28.05.2021.

- The Financial Creditor has contended that, since corporate debtor has acknowledged the receipt of financial debt by confirming the same by letter dated 28.05.2021 and despite receiving the demand notice of 10 days, the CD has failed to repay the debt or produce any proof of payment of the financial debt to the financial creditor. Further, despite several calls and requests made by the petitioner, the CD is unable to repay the financial debt. The petitioner submits that this petition is complete as filed with all the relevant documents as per section 7 of the IBC, 2016.

4. This Bench has issued a notice to the Respondent/Corporate Debtor on 29.09.2021, however CD counsel has appeared on various dates but did not file any reply till today.

5. It is further submitted that, the Petitioner has filed this petition on 25.08.2021 and after perusal of the records annexed with this petition, this Bench vide order dated 31.01.2022, raised the query and asked the Petitioner to furnish the documents supporting the disbursement of loan in the year 1997 to the Corporate Debtor and satisfy this bench on the issue of Limitation.

6. The Petitioner has filed certain documents in the form of supplementary affidavit on 21.03.2022 and annexed two letters date 03.01.1997 and 13.09.2002. and annexed a Memorandum of Understanding executed on 03.01.1997 between the Petitioner and the Respondent, where the loan amount of Rs, 50,00,000/- (Rupees Fifty Lakhs Only) has been agreed to give to the

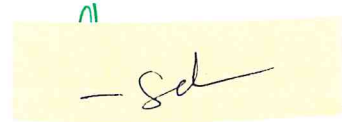
Respondent at the rate of 24% p.a. for the period of two years beginning from 03.01.1997.

7. Further, on the point of limitation as per the MOU dated 03.01.1997, the loan has been agreed to be given for two years. As per the MOU executed between the parties, as per clause 1 at page 14 of the Supplementary Affidavit, the 1st default occurred on 03.01.1999. The letter dated 13.09.2002 has been given by the Respondent admitting the loan has been obtained from the Petitioner is annexed at page 17 of the supplementary affidavit. However, if we consider that, due to letter dated 13.09.2002, the fresh limitation has been started, then also there is no document placed on record, which shows any continuity after 13.09.2002 till the execution of Settlement Deed dated 28.07.2014. There is no explanation as to what happened between 14.09.2002 upto 27.07.2014 - almost (12) twelve long years. Thereafter, from 28.07.2014 upto the date of demand notice i.e. 28.05.2021, there is a long period that has elapsed which will be approx, seven (07) years. The petitioner is repetitively showing the recent acknowledgements submitted by the Respondent in the form of Reply to the demand notice dated 28.05.2021 annexed at page 59 of the petition in which the Respondent has admitted its inability to repay the loan.

8. On perusal of petition along with supplementary affidavits, filed by the Petitioner, this bench is of the view that, Petitioner has not filed any Record of default recorded with the Information Utility, as per section 7(3)(a), nor the Petitioner has filed the

certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 and nor an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired, as per Regulation 2A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. Hence on the point of proof of debt and limitation the petitioner has failed to establish a case on merits.

9. Therefore, for the reasons stated above, in our considered view we find no case on merit and the petition stands dismissed.

A handwritten signature in black ink on a yellow rectangular background. The signature appears to be 'sd' with a horizontal line above it.

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

A handwritten signature in black ink on a yellow rectangular background. The signature appears to be 'sd' with a horizontal line above it.

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**