



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

COMPANY PETITION (I.B.) NO. 411 OF 2024

**(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)**

IN THE MATTER OF:

DYNAMIC FINVEST SERVICES PRIVATE LIMITED

...APPLICANT/FINANCIAL CREDITOR

VERSUS

AKSHAJ ESTATES PRIVATE LIMITED

...CORPORATE GUARANTOR

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 10.01.2025

PRESENT:

For the Applicant : Adv. Nakul Gandhi, Adv. Mujeeb

For the Respondent :

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)



1. The Instant Application is filed on behalf of the Dynamic Finvest Services Private Limited (hereinafter referred to as "Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against Akshaj Estates Private Limited ("Respondent") having CIN U70200DL2012PTC230158 on the ground that the respondent had committed a default in payment for an amount aggregating to Rs. 1,94,11,439.90/-.
2. The Corporate Guarantor i.e. Akshaj Estates Private Limited is a Private Limited Company registered under the Companies Act, 1956, bearing CIN: U70200DL2012PTC230158 having its registered office situated at 911/19, Surya Kiran Building, KG Marg, Central Delhi, New Delhi - 110001, India. Since the registered office of the Corporate Guarantor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-
 - a) The Applicant submitted that Pursuant to the request of the Corporate Debtor, the Financial Creditor agreed to extend financial assistance to which Corporate Debtor agreed for a Loan Agreement dated 18.06.2012. The said financial assistance was required for the purpose of investment so as to provide the Corporate Debtor a growth



- capital for its expansion plans. Vide the Loan Agreement Financial Creditor granted the Corporate Debtor a Term Loan of Rs. 7.00,000/- (Rupees Seven lakhs only), and subject to terms and conditions enumerated therein.
- b) The Applicant stated that the said credit facility was secured by a Deed of Personal Guarantee duly signed by Mr. Rajiv Goyal, S/o Mr. Budh Ram Goyal R/o H. No 64, Sector 9 A, Chandigarh i.e. the Personal Guarantor. Accordingly, on 23.06.2012, the Financial Creditor disbursed the loan amount.
- c) As per Clause 1.7 of the Loan Agreement, the Corporate Debtor was required to repay the principal loan amount in 48 equal monthly instalments following a 12-month moratorium period, as outlined in the Amortization Schedule (Schedule III). Interest was set at 24% per annum, payable on 15th monthly. In case of default, Clause 1.4 stipulated compound interest at the higher of 30% per annum or the applicable interest rate, along with liquidated damages of 2% per annum from the due date.
- d) The Applicant submitted that the Corporate Debtor, after obtaining financial assistance, persistently defaulted on repayment of the principal amount, interest, and other charges under the loan terms. Consequently, on 15.06.2014, the Financial Creditor classified the Corporate Debtor as a Non-Performing Asset (NPA).
- e) It further submitted that the Corporate Debtor neglected and failed to clear the overdue sum in connection with the Loan Agreement and vide letters dated 31.03.2020, 31.03.2021 and 31.03.2022,



31.03.2023 the Corporate Debtor duly acknowledged the outstanding balance in their books of account.

- f) The Financial Creditor issued a Demand Notice on 21.08.2023 to the Corporate Debtor and the Personal Guarantor, Mr. Rajiv Goyal, seeking repayment of the full loan amount along with the applicable contractual interest and charges. On the same date, the Financial Creditor also invoked the Personal Guarantee through a Notice of Invocation, demanding payment of the Corporate Debtor's outstanding debt with interest and other applicable charges.

ANALYSIS AND FINDINGS

4. On perusal of the record, it is noted that the Financial Creditor, **Dynamic Finvest Services Private Limited**, a Non-Banking Finance Company, agreed to extend financial assistance to which Corporate Debtor agreed for a Corporate Loan Agreement dated 18.06.2012. Under this agreement, the Financial Creditor extended a Term Loan of Rs. 7,00,000/- (Rupees Seven Lakhs) to the Corporate Debtor.
5. To secure the credit facility, a Deed of Personal Guarantee was duly signed by Mr. Rajiv Goyal, son of Mr. Budh Ram Goyal, residing at H. No. 64, Sector 9A, Chandigarh. Simultaneously, an irrevocable and unconditional Deed of Corporate Guarantee ("Corporate Guarantee Deed") was executed between the Corporate Debtor and M/s Akshaj Estates Private Limited.
6. With regard to the question of the limitation period applicable to the Personal Guarantee concerning the debt owed by the Corporate Debtor, for which the guarantor has stood as a surety, reference must be made to



Section 238A of the Insolvency and Bankruptcy Code (IBC). This provision stipulates that:

Section 238A: Limitation.

[238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.] As per Article 137 of the Limitation Act, 1963 read with Section 238A of IBC the Petition time period for filing the present application is '3 years' from "When the right to apply accrues"

7. Clause number 2, 3, 4, 18 and 19 of the guarantee deed dated 18.06.2012 are relevant, which are reproduced below:

2. The Borrower shall duly and punctually repay the Loans together with all interest, additional interest, liquidated damages, commitment charges and other moneys payable in accordance with the Loan Agreement and perform and comply with all other terms, conditions and covenants contained in the Corporate Loan Agreement.

3. In the event of any default on the part of the Borrower in payment / repayment of any of the moneys referred to above or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Loan Agreement, the Guarantor shall, upon demand, forthwith pay to the Lender without demur all the amounts payable by the Borrower under the Loan Agreement.

4. The Guarantor shall also indemnify and keep the Lender indemnified against all losses, damages, costs, claims and expenses whatsoever which the Lender may suffer, pay or incur by reason of or in connection with any such default on the part of the Borrower including legal proceedings taken against the Borrower and / or the Guarantor for recovery of the moneys referred to in Clause 2 above.



18. This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Borrower repays in full the Loans together with all interest, liquidated damages, commitment charges, costs, charges and all other moneys that may from time to time become due and payable and remain unpaid to the Lender under the Corporate Loan Agreement.

19. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantor or his/ their personal representative(s), as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor, even though it was returned unserved on account of refusal of the Guarantor or otherwise.

8. Since no particular provisions of the Limitation Act, 1963 apply to the proceedings against the Corporate Guarantor, the residuary provisions would apply as explicitly stated by the Limitation Act. “An application for which no limitation period is provided anywhere else in the Schedule to the Limitation Act is governed by Article 137 of the Schedule to the said Act.”
9. An application under the Code before this Adjudicating Authority is governed by Article 137 of the Limitation Act, 1963, which prescribes a limitation period of three years from the date when the right to apply accrues. In the present case, the date of default by the Corporate Debtor,



as stated in Part IV of the application, is 23.03.2024. Since the Loan Agreement was signed between the parties dated 18.06.2012, and there has been no repayment or communication in the interim, and the Corporate Debtor was declared a Non-Performing Asset on 15.06.2014 therefore by no stretch of imagination the date of default can be construed as 23.03.2024. Consequently, the Financial Creditor must file the application within three years from this actual date of default. The Personal Guarantor should be treated on an equal legal footing with the Corporate Debtor, as it is clearly established by the law that the liability of Corporate Debtor and Personal Guarantor are co-extensive in nature. Therefore, the provisions of the Limitation Act must be applied consistently to both the Corporate Debtor and the Corporate Guarantor. The limitation period for both the parties will commence from the same date.

10. The Financial Creditor submitted that it had sent a Demand Notice, dated 21.08.2023, to the Corporate Debtor and the Personal Guarantor i.e. Mr. Rajiv Goyal and demanded the entire loan amount along with the applicable/contractual rate of interest, and other charges due and payable. Simultaneously, the Financial Creditor, vide Notice of Invocation dated 08.03.2024, invoked deed of corporate guarantee to clear the Corporate Debtor's unpaid debt along with the applicable rate of interest, and other charges due and payable.
11. In the present case, the Corporate Debtor, i.e. Akshaj Infra Pvt. Ltd., had acknowledged the debt to the tune of INR. 7,00,000/- (Rupees Seven Lakhs Only) vide acknowledgement letters dated 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023. Therefore, Applicant has submitted that



liability of a Corporate Guarantor to pay begins from the date of invocation of deed of guarantee i.e. 08.03.2024.

12. Further, taking into consideration if there was any acknowledgment of the liability giving rise to fresh limitation as per Section 18 of the Limitation Act, reliance can be placed upon **Dena Bank v. C. Shivakumar Reddy** ((2021) 10 SCC 330), wherein it was held by the Hon'ble Supreme Court that an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years

13. The essentials under Section 18, are: -

1) "An acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right or avers that the time for payment, delivery, performance, or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right.

2) The word "signed" means signed either personally or by an agent duly authorised in this behalf.

3) An application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

4) The acknowledgment must be made before the relevant period of limitation has expired."



14. In view of the judicial pronouncements referred above, this Authority reviewed the sequence of events related to the Deed of Guarantee dated 18.06.2012. The Principal Borrower was classified as a Non-Performing Asset (NPA) on 15.06.2014, while the notice invoking the Corporate Guarantee was issued much later, on 08.03.2024, well beyond the prescribed three-year limitation period. Further the acknowledgement was of date 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023. There has been no communication or acknowledgment between the actual date of default and first acknowledgment i.e. on 31.03.2020. The lack of acknowledgment bars the fresh limitation period after the default. Hence, the present application is barred by limitation under Article 137 of the Limitation Act. Accordingly, instant application **Company Petition (I.B.) No. 411 of 2024** stands **dismissed and disposed of**.

Sd/-

(DR.SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)