

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 663/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

- 1. Surendera Kumar Gupta**
3rd Floor, 15, Poorvi Marg, Vasant Vihar, New Delhi – 110057.
- 2. Meena S. Gupta**
3rd Floor, 15, Poorvi Marg, Vasant Vihar, New Delhi – 110057.
- 3. Surendera Kumar Gupta HUF**
Through its Karta, Surendera Kumar Gupta
3rd Floor, 15, Poorvi Marg, Vasant Vihar, New Delhi – 110057.

... Financial Creditors/Petitioners

Versus

Sonal Realty Buildcon LLP.
[LLPIN: AAI - 3306]
109/111, Goregaon Pagrav CHS Ltd, 56, S. V. Road,
Goregaon (W), Mumbai - 400062.

... Corporate Debtor/Respondent

Order Delivered on 08.09.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Financial Creditor : Ms. Prashansa Agrawal,
Counsel.
For the Corporate Debtor : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Surendera**

Kumar Gupta and Ors. ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Sonal Realty Buildcon LLP** ("the Corporate Debtor").

2. The present Petition was filed on 10.08.2023 before this Adjudicating Authority claiming a sum of Rs.1,93,69,727/- (Rupees One Crore Ninty-Three Lakh Sixty-Nine Thousand Seven Hundred and Twenty-Seven Only) along with gross accrued interest up to 22.02.2022 at the rate of 15 % p.a. interest amounting to Rs. 58,69,727/- (Rupees Fifty-Eight Lakh Sixty-Nine Thousand Seven Hundred and Twenty-Seven Only) and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.1,93,69,727/- (Rupees One Crore Ninty-Three Lakh Sixty-Nine Thousand Seven Hundred and Twenty-Seven Only). The date of default stated to be is 01.04.2019.
4. The Corporate Debtor is a LLP incorporated on 29.01.2017 under the Companies Act, 2013, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 109/111, Goregaon Pagrav CHS Ltd, 56, S. V. Road, Goregaon (W), Mumbai - 400062. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Financial Creditor:

5. The Petitioner submits that the Corporate Debtor approached Petitioner in April, 2014 and sought financial assistance to the tune of Rs.25,00,000/- (Rupees Twenty-Five Lakh Only). That accordingly, the Financial Creditor No. 1 transferred a sum of

Rs.25,00,000/- (Rupees Twenty-Five Lakh Only) to the bank account of the Corporate Debtor vide RTGS made on 09.04.2014. The Corporate Debtor issued an Acknowledgement Receipt dated 09.04.2014 in favour of the Financial Creditor No. 1.

6. That again the Corporate Debtor approached the Financial Creditor No. 1 during the month of October, 2014, for a financial assistance to the tune of Rs.25,00,000/- (Rupees Twenty-Five Lakh Only) and accordingly, the Financial Creditor No. 1 transferred a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakh Only) to the bank account of the Corporate Debtor vide RTGS made on 09.10.2014. The Corporate Debtor issued an Acknowledgement Receipt dated 09.10.2014 in favour of the Financial Creditor No. 1.
7. That likewise, the Corporate Debtor approached the Financial Creditor No. 2 during April, 2014 and October, 2014 and sought financial assistance to the tune of total sum of Rs.75,00,000/- (Rupees Seventy-Five Lakh Only). Accordingly, the Financial Creditor No. 2 transferred a total sum of Rs.75,00,000/- (Rupees Seventy-Five Lakh Only) to the bank account of the Corporate Debtor vide RTGS on 09.04.2014 and 09.10.2014 and vide Cheque No. 000059 dated 14.10.2014 on 16.10.2014 respectively. In pursuance of the same, the Corporate Debtor issued Acknowledgement Receipt dated 09.04.2014, 09.10.2014 and 16.10.2014 in favour of the Financial Creditor No. 2 for total amount of Rs.75,00,000/- (Rupees Seventy-Five Lakh Only).
8. That similarly, the Corporate Debtor approached the Financial Creditor No. 3 during October, 2014 and sought financial assistance to the tune of Rs.10,00,000/- (Rupees Ten Lakh Only).

Accordingly, the Financial Creditor No. 3 transferred a sum of Rs.10,00,000/- (Rupees Ten Lakh Only) to the bank account of the Corporate Debtor vide Cheque No. 000002 dated 14.10.2014 on 16.10.2014. the Corporate Debtor issued Acknowledgement Receipt dated 16.10.2014 in favour of the Financial Creditor No. 3 for an amount of Rs.10,00,000/- (Rupees Ten Lakh Only).

9. That the Corporate Debtor has been paying the interest due on the principal amount consistently and the same is evident from Form 26AS for the Assessment Year 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20.
10. The Corporate Debtor failed to honour the terms of the loan facility and accordingly, defaulted in paying the said loan amounts to the Financial Creditors within the relevant time period.
11. Till the date of filing of the present Application on 22.02.2022, the Corporate Debtor has committed a default of Rs.1,93,63,726/- (Rupees One Crore Ninty-Three Lakh Sixty-Nine Thousand Seven Hundred and Twenty-Seven Only) including Rs.58,69,726/- (Rupees Fifty-Eight Lakh Sixty-Nine Thousand Seven Hundred and Twenty-Seven Only) interest being calculate at the rate of 15% per annum from the date of default i.e. 01.04.2019 till the date of filing of the present Application on 22.02.2022.

Submissions made the Corporate Debtor:

12. Records reveal that matter was listed on matter was listed on multiple occasion. Thereafter, though matter was listed for hearing on 07.08.2023 none was present for the Corporate Debtor. As the matter was listed on multiple occasion the Corporate

Debtor chose not to represent. Hence the matter is set *ex-parte* against the Corporate Debtor and taken on merits.

Findings:

13. Heard the Ld. Counsel for the Financial Creditors and perused the records.
14. Primarily it is noted that the Corporate Debtor entity i.e. Sonal Realty Buildcon LLP was incorporated on 29.01.2017 and the loan acknowledgement receipt were of year 2014 which was given by entity namely Sonal Realty and not the Corporate Debtor.
15. As per Section 7(3) of the Code the Financial Creditor shall furnish the record of default, the name of the resolution professional and any other information as may be specified by the Board for the reference Section 7(3) is reproduced:

“7(3) The financial creditor shall, along with the application furnish-

(a) Record of the default recorded with the information utility or such other record or evidence of default as may be specified

(b) The name of the resolution professional proposed to act as an interim resolution professional; and

(c) Any other information as may be specified by the Board”

16. This bench vide order dated 04.08.2023 and 07.08.2023 specifically ordered the Financial Creditor to place on record the Copy of Demand Notice, pursuant to which the petitioner recorded date of default in the petition. The Petitioner failed to comply with the said order.

17. Upon perusal of records, this Bench is of the considered opinion that the Corporate Debtor does not owe money to the Financial Creditor.
18. The application made by the Financial Creditor is incomplete in respects of as required by law. Therefore, it can be concluded that the Financial Creditors failed to prove the debt and default of the Corporate Debtor.
19. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 663/MB/C-IV/2023** filed by **Surendera Kumar Gupta And Ors.**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Sonal Realty Buildcon LLP [LLPIN: AAI - 3306]**, the Corporate Debtor, is **rejected**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

08.09.2023
SAM

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)