

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**JAIPUR**

**CP No. (IB)-278/7/JPR/2019**

**Coram:**

**SHRI P.S.N. PRASAD,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,  
HON'BLE TECHNICAL MEMBER**

(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:**

**LT. COL. YOGENDRA BHARGAVA  
Goms Defence, Vaishali Nagar,  
Jaipur, Rajasthan**

**...FINANCIAL CREDITOR/APPLICANT**

**VERSUS**

**FLOWER AND TISSUE INDIA LIMITED  
101, Akash Ganga Apartment,  
22 Godam, Civil Lines,  
Jaipur, Rajasthan (302006)**

**...CORPORATE DEBTOR/RESPONDENT**

**FOR PETITIONER (S) : Rohan Agarwal, Adv.  
FOR RESPONDENT(S) : None-appeared**

**ORDER PRONOUNCED ON: 7.9.2020**

Lt. Col Yogendra Bhargava  
Versus  
Flower and Tissue India Limited



## ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This application is filed by Shri Yogendra Bhargava ('Applicant'), claiming to be a Financial Creditor, against Flower and Tissue India Limited ('Respondent'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') of the Respondent, pursuant to default in non-payment of loan amount by the Respondent to the Applicant.
2. The Applicant/ Financial Creditor is an individual, holding PAN No. AALPB9477F and residing at Goms Defence, Vaishali Nagar, Jaipur.
3. The Respondent/ Corporate Debtor is a Public Limited Company, incorporated under the provisions of the Companies Act, 1956, on 07.08.1990 and duly registered with the Registrar of Companies, Jaipur, bearing CIN: U15499RJ1990PLC005531. The Registered Office of the Company is at 101, Akash Ganga Apartment, 22 Godam, Civil Lines, Jaipur-302006, Rajasthan. The authorized share capital of the company is Rs. 12,00,00,000/- (Rupees Twelve Crores Only) and paid up share capital of

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the Company is Rs. 5,24,00,200/- (Rupees Five Crores Twenty-Four Lakhs Two Hundred Only).

4. It is the case of the Applicant that he was appointed as a director of the Respondent Company on 05.07.1998 and had resigned therefrom on 25.04.2011. In the year 1997-1998, the Respondent/ Corporate Debtor had closed its main operations due to which the Corporate Debtor did not have for operation of the Company and for filing of regular returns and to provide funds to the appropriate authorities. Thus, on request of the Respondent/ Corporate Debtor the Applicant had provided short-term loans of various amounts totalling to Rs. 1,41,000/- (One Lakh Forty One Thousand Only) as unsecured loan. The total unsecured loan of Rs. 1,41,000/- was advanced to the Respondent from the period 19.07.2006 to 05.01.2011. The Respondent in lieu of said amount had provided acknowledgment receipts which are annexed with the application. Incidentally, all receipts appear to be identical in format but differ only in amounts and dates. The Respondent had also provided letter of confirmation of accounts dated 31.03.2017 stating the debt of Rs. 1,41,000/- to the Applicant.
5. Furthermore, the Applicant submitted that on various occasions he contacted the Respondent and its other directors and had also sent a legal notice dated 15.07.2019 at the Registered address of the Respondent for payment of outstanding amount of Rs. 1,41,000/- along with interest at 12%

p.a. but all went in vain. The Copy of the letter sent to the Respondent along with the receipt is annexed with the application. Though interest has been claimed, but no agreement for interest has been furnished by the Applicant.

6. As a consequence of default, this application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount Rs. 1,41,000/- as an outstanding amount, as reflected in Part IV of the Form - 1 filed.

Part IV

S. No.	Particulars of Financial Debt	
1.	Total amount of debt granted and date(s) of disbursement.	Rs. 1,41,000/- Dates of disbursement: <ul style="list-style-type: none"> <li>• 19.07.2006: Rs. 15,000</li> <li>• 13.02.2007: Rs. 20,000</li> <li>• 23.08.2007: Rs. 10,000</li> <li>• 05.03.2008: Rs. 13,000</li> <li>• 20.11.2008: Rs. 10,000</li> <li>• 22.06.2009: Rs. 15,500</li> <li>• 17.12.2009: Rs. 13,500</li> <li>• 16.03.2010: Rs. 14,500</li> <li>• 20.10.2010: Rs. 18,500</li> <li>• 05.01.2011: Rs. 11,000</li> </ul>
2.	Amount claimed to be in default and the date on which the default occurred	Rs. 1,41,000/- along with interest @ 12% p.a. from the date of last payment.

		Date on which default occurred is <i>not specified in the Form-1.</i>
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7. Perusal of the records of the proceeding before this Tribunal shows that despite service of notice upon the Respondent / Corporate Debtor, as brought out by the order dated 24.01.2020, and in view of non-appearance, this Tribunal was constrained to proceed ex-parte against the Respondent / Corporate Debtor and the submissions of learned counsel for the Applicant were heard on 14.02.2020 and order was reserved.
8. A critical aspect of this case pertains to the issue of limitation. It is to be seen whether the amounts advanced during the period 2006 to 2011, which were shown as outstanding balance in 2017, fall within the ambit of limitation.
9. The Hon'ble Supreme Court in *B.K. Educational Services Private Limited Versus Parag Gupta and Associates (Civil Appeal No.23988 of 2017)* held that

*"It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted.*

*"The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the*

*Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."*

10. Thus, the relevant provisions of the Limitation Act, 1963, need to be seen.

Section 18 of the Limitation Act, 1963 provides:

*18. Effect of acknowledgment in writing. — (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,—*

*(a) 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,*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*

*(c) 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.*

11. Further Section 25 of the Indian Contract Act, 1872 must also be seen, which reads as under:

***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 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.*

12. On bare scrutiny of the documents and paper book filed by the Applicant, it is noted that the last portion of unsecured loan was disbursed and acknowledged by the Respondent on 05.01.2011, which ordinarily takes the matter beyond the threshold of Limitation. However much after expiry of period of three (3) years therefrom, the Respondent had issued a letter dated 31.03.2017 with subject of confirmation of accounts whereby the Respondent had stated to make the payment of Rs. 1,41,000/- as soon as the Respondent would have funds. The letter dated 31.03.2017 is reproduced hereunder:

*Date: - 31.03.2017*

*To,*

***Lt. Col. Yogendra Bhargava***

***Goms Defence, Vaishali Nagar, Jaipur***

***Subject: - Confirmation of Accounts***

*Dear Sir,*

*In connection upon your request to provide the outstanding balance in the company. We would like to inform and confirm that the company is payable to you Rs. 1,41,000/- (Rupees One Lakh Forty One Thousand). The*

*company shall pay you the same as soon as the company shall have funds in respect of same.*

*Thank You for kind cooperation*

*For and on behalf of Flower and Tissue India Limited*

*Vinesh Bhargava*

*(Director)*

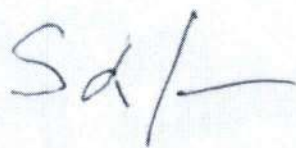
13. The Hon'ble Delhi High Court in the matter of Tulsi Ram vs Same Singh reported in AIR 1981 Delhi 165, 19 (1981) DLT 378 had made following observations:

*"Reading of Section 9 and Clause (3) of Section 25 of the Act makes it clear that though the word 'express' is not used in Clause (3) of Section 25, it is essential that the promise to pay must be clear and express. It also appears to me that otherwise there will be no promise to pay in writing as required under this clause. In other words, an implied promise is not sufficient to satisfy the condition of Clause (3) of Section 25 of the Act. What is required is a clear promise. The language of the document is to be studied to find out if there is a clear and fresh promise. The question thus is whether the writing in suit amounts to an acknowledgment or a promise to pay. If it is only an acknowledgment, it cannot be the basis of the suit. But if it is a promise to pay, the suit would be maintainable. The Privy Council in Maniram. Seth v. Seth Rupchhind, 2nd 33 Calcutta 1047*

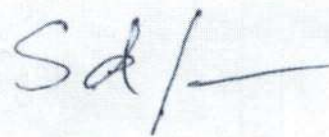
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*observed that an unconditional acknowledgment implies a promise to pay."*

14. Even assuming that the loan amount provided from 2006-2011 were carried forwarded, the cumulative amount did not give rise to cause of action beyond the period of limitation of three (3) years as prescribed under Article 137 of the Limitation Act, 1963. The Applicant has failed to annex any documents confirming the due amounts within the period of limitation so as to give rise for relevant calculations thereof. As per narration of the facts, limitation would have barred any right to sue beyond 2014. Confirmation of amount through letter dated 31.03.2017 is clearly far beyond the limitation period and there is no unambiguous and unconditional clear promise to pay so as to bring it within the ambit of Section 25 of the Indian Contract Act, 1872.
15. In view thereof, the words "The company shall pay you the same as soon as the company shall have funds in respect of same", in the confirmation letter dated 31.03.2017 sent by the Respondent is not an unconditional promise to pay a barred debt.
16. Thus, the present Application bearing CP No. 278/7/JPR/2019 is barred by the Law of Limitation and dismissed with no costs.



**SHRI RAGHU NAYYAR,  
MEMBER (TECHNICAL)**



**SHRI P.S.N. PRASAD  
MEMBER (JUDICIAL)**