IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA

CP (IB) No. 991/KB/2019

A Petition 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:

Rungta Business Private Limited

...Financial Creditor

Versus

Shradha Agencies Private Limited
[CIN: U27108WB1978PTC031498]

...Corporate Debtor

Date of Hearing: 09/01/2023
Date of pronouncement: 13/04/2023

Appearances (through video conferencing):

For the Financial Creditor	: Ms. Aparajita Rao, Advocate
	: Mr. Sanwal Tibrewal, Advocate
	: Ms. Ankana Basu, Advocate
For the Corporate Debtor	: Ms. Sonal Anand, Advocate

<u>Coram:</u>

Rohit Kapoor : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by **Rungta Business Private Limited**, represented by **Subhash Kumar Rungta**, authorized *vide* Board Resolution dated 25th June, 2019[1] seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Shradha Agencies Private Limited** ("Corporate Debtor").

3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.

4. Part –IV of the Petition contains details financial debt for an amount of Rs. 26,80,000/- (Rupees Twenty-Six Lakh Eighty Thousand only) as on 31.03.2019 excluding unapplied interest from 01.04.2019. The default occurred on 01.12.2018 i.e., the date from when the Corporate Debtor failed to pay the interest accrued.

5. The Corporate Debtor was incorporated on 25 May, 1978, having CIN: U27108WB1978PTC031498, under the Companies Act, 1956. Its registered office is at 25 R.N. Mukherjee Road, Mission Court, 4th Floor, Suite-F, Kolkata-700001. Therefore, this Bench has jurisdiction to deal with this petition.

6. The present petition was filed on 04 July 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 26,80,000/- (Rupees Twenty-Six Lakh Eighty

[1] *Annexure-A, Page 11 of the Petition*

Thousand only) as on 31.03.2019 excluding unapplied interest from 01.04.2019.

Submission of Learned Senior Counsel appearing for the Financial Creditor

7. The Learned Counsel for the Financial Creditor submits that on the request of the Corporate Debtor, the Financial Creditor had *vide* RTGS[2] transferred an amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) as Inter Corporate Deposit (ICD) on 16.08.2017. The same is evidenced from a Money receipt dated 16.08.2017[3] signed and stamped by Late Rajeev Arora, Director of the Corporate Debtor and also a Board Resolution[4] sanctioning such Inter Corporate Deposit.

8. The Learned Counsel submits that an interest was charged at the rate of 12% per annum which the Corporate Debtor had paid without any objection over a certain period. The aforesaid can be seen from the Ledger[5] maintained by the Financial Creditor.

9. It is further submitted that after the present petition was dismissed by this Adjudicating Authority on 26.11.2019, the Financial Creditor had filed an appeal before the Hon'ble NCLAT and the matter was sent back to this Adjudicating Authority for deciding the matter after allowing the Corporate Debtor to file a Reply and filing Rejoinder by the Financial Creditor. The Hon'ble NCLAT itself had recorded in its order that the Corporate Debtor had not denied the amount of Rs.25 Lacs was transferred from the account of the Financial Creditor to the Corporate Debtor. The Corporate Debtor had only stated that the transferred amount was not a

[2] *Annexure-C, Page 14 of the Petition*
[3] *Annexure-A, Page 12 of the Rejoinder*
[4] *Annexure-D, Page 97 of the Rejoinder*
[5] *Page 18 of the Petition*

loan which would transform into debt for the purpose of maintaining application filed under Section 7 of IBC.

10. It is submitted that the Corporate Debtor has not given any cogent reason as to why the money receipt is self-created or self-serving. It is also submitted thar the demise of the Director cannot be a reason for alleging that a document is forged and fabricated and the Corporate Debtor is aware of the signature of its demised Director and has not disputed the same.

11. The Financial Creditor has placed the following documents on record which includes:

    a. A copy of Ledger statement of Corporate Debtor in the books of the Financial Creditor [**Annexure C @Pg 14 of the Company Petition**]

    b. A copy of demand notice dated 10.06.2019 [**Annexure D @Pgs. 15-18 of the Company Petition**]

    c. A copy of certificate from the Bank of Financial Creditor confirming the payment made towards ICD [**Annexure E @Pg 19 of the Company Petition**]

    d. A copy of 26AS taken out from the website of Income Tax Department for the Financial Year 2018-2019 [**Annexure F @Pgs. 20 to 21 of the Company Petition**]

    e. A copy of the money receipt dated 16.08.2017 [**Annexure A @Pg 12 of the Rejoinder**]

Reply & Surrejoinder by the Corporate Debtor

12. The Corporate Debtor states that the Financial Creditor has failed to provide any documentary support to support its claim. There is neither any Board Resolution passed by the Corporate Debtor for allowing the

Inter Corporate Deposit to be advanced or seeking or accepting such amount as loan on a returnable basis carrying some interest. There is also no balance confirmation exchanged between the parties.

13. The Corporate Debtor also states that it is a fact that if the amount as claimed above was an ICD, a proper loan agreement detailing at least the basic terms would have been drawn and, in the petition, also there is no mention as to the term of the alleged loan, date of return, purpose and/or usage or the consequences of the alleged ICD.

14. The Corporate Debtor also denies that the amount of Rs. 87,945/-, Rs.99452/-, Rs. 1,00,000/- are not paid as interest toward the amount advanced and that the amounts are not even equal to each other so as to be regarded as quarterly interest. It is stated that these payments were not paid as interest but form part of a totally separate transaction having no linkage to the alleged loan.

15. The Corporate Debtor states that the money receipt dated 16.08.2017 relied on by the Financial Creditor is a self-created and self-serving document which even if assumed to be true cannot in any manner be regarded as a loan agreement between the parties. It also states that the alleged signatory of such money receipt left for his heavenly abode on 19.10.2020. Taking advantage of the above fact, the Financial Creditor now wishes to derive by bringing this forged and fabricated document even after knowing that the alleged author is dead.

16. The Corporate Debtor states that the Financial Creditor is not interested in the resolution and is using CIRP as a recover proceeding, therefore, it is a fit case of imposition of costs upon the Financial Creditor as envisaged under Section 65 of IBC.

Analysis and Findings

17. Heard the Learned Counsel appearing for both the parties and perused the records.

18. The petition was dismissed by this Adjudicating Authority on 26.11.2019 as the Corporate Debtor neither filed any Reply nor appeared in the proceedings and there was a possibility of collusion between the parties.

19. Thereafter an appeal was preferred by the Financial Creditor against the order dated 26.11.2019 before the Hon'ble NCLAT whereby the Hon'ble NCLAT on 19.07.2022 held:

> *"In view of the observation made above, the present appeal is hereby allowed. The Order dated 26.11.2019 is set aside. The matter is remanded back to the Adjudicating Authority. The Parties are directed to appear before the Adjudicating Authority on 04th August, 2022. The Adjudicating Authority is directed to allow the Respondent to file their reply to the application filed under Section 7 of the Code. The Appellant shall have a right to file their Rejoinder to the Reply filed by the Respondent and on the completion of the pleadings the application filed under Section 7 of the Code shall be decided by the Adjudicating Authority in accordance with law."*

20. Being dissatisfied by the above order as passed by the Hon'ble NCLAT, the Corporate Debtor herein had preferred an appeal before the Hon'ble Supreme Court but the same was dismissed on 14.10.2022 with the observation as reproduced herein:

"2. The appeal is accordingly, dismissed.

3. Since, all contentions are left open to be urged before the National Company Law Tribunal (NCLT), the said liberty, in any event, is *available to the Appellant."*

21. It is significant to note that the Corporate Debtor had not denied the transfer of the claim amount in their account, however the only plea raised by them is that the transferred amount was not given as a loan and that the money receipt relied upon by the Financial Creditor is forged and fabricated. They have not raised any plea regarding the stamp and signature of the deceased Late Rajeev Arora but have contended that the said money receipt on the face of it, is feeble. Further, this plea when seen in the context of the averments contained in paragraphs 8, 9 and 10 of the Reply Affidavit appears to be for the sake of raising it only without any basis thereof.

22. The Corporate Debtor in para 5 of its reply has alleged that there is no proper loan agreement giving details of the loan, date of return or purpose for such loan. In this context we refer to the judgment of the Hon'ble NCLAT in **Narendra Kumar Agarwal & Anr. v. Monotrone Leasing Private Limited & Anr**[6] wherein it was held:

> *"11. Thus, the contention of Financial Creditor is fully authenticated from the Money Receipt and bank transaction statement. The Appellant contends that the transaction may be treated as the 'Inter-Corporate Deposit', but it cannot be treated as the Financial Debt. In case the Inter-Corporate Deposit is made for a certain period, which was to be paid back with interest then such transaction will also fall in the definition of 'Financial Debt'. The interest is the product of instant transaction, which is undoubtedly the time value of money. Thus, such transaction of the inter-corporate deposit is fully covered by the definition of Financial debt as provided under Section 5(8) of the I&B Code. The written contract*

[6] *Company Appeal (AT)(Insolvency) No. 549 of 2020 decided on 19.01.2021*

cannot be treated as an essential element to prove the Financial Debt if the transaction's nature is proved otherwise."

(Emphasis supplied)

23. We have seen the money receipt wherein it is mentioned that a sum of Rs.25,00,000/- was granted as loan against interest @ 12% per annum. Therefore, it is clear that there was a debt. The Financial Creditor had issued a demand notice on 10.06.2019[7] and recalled the loan but the Corporate Debtor neither replied nor made any payment within the prescribed 7 (seven) days period in the notice, therefore the default occurred after the expiry of 7 (seven) days from the date of demand notice which is within three years from the date of such loan/debt. We refer to an order passed by the Hon'ble NCLT, New Delhi, Bench-IV **M/s Kaliber Associates Private Limited v. M/s Kelvin Buildcon Private Limited**[8]**.** Relevant paragraphs of the same are reproduced as hereunder:

"7. …….. We further place our reliance on citation relied by the applicant Virender Kumar Jain v. Alumate (India) Pvt. Ltd. [MANU/DE/0885/2012] wherein it was held that when loan is given without fixing any date of repayment, limitation will commence from the date of the default and not from the date of grant of loan. …….

9. In view of the above, we hold that the limitation began to run not when the loans were disbursed, but on the date of default ie, date of issue of the notice (31.09.2019) for recovery of Rs.4,02,75,000/- when the demand was made by the IRP and the instant petition was filed on 23.07.2021, therefore, the

[7] *Annexure-D, Pages 15 to 17 of the Petition*
[8] *Company Petition No. (IB)-425/PB/2021 on 19.09.2022*

present petition is filed within three years therefrom and the petition is within the period of limitation."

In view of the law laid down in the above judgment, it is clear from a reading of para 9, when no repayment date is specified, the default will occur if the debt is not paid after the demand was made. Admittedly in the present case, the demand was made on 10.06.2019 which is well within the period of limitation i.e., within three years from the date of grant of loan.

24. We therefore find that the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

25. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

   a) This requires admission of petition under Section 7 of the Code.[9]

   b) The application bearing ***CP (IB) No. 991/KB/2019*** filed by Rungta Business Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against ***Shradha Agencies Private Limited***, the Corporate Debtor, is ***admitted***.

   c) There shall be a moratorium under section 14 of the IBC.

[9] *Innoventive Industries v. ICICI Bank (2017)*

d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

f) **Mr. Siddhartha Mukhopadhyay**, registration number IBBI/IPA-001/IP-P01751/2019-2020/12691, email: saptarshi2307@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

h) The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

i) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

j) The Financial Creditor shall deposit a sum of ***Rs 3,00,000/- (Rupees Three Lakh only)*** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

k) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

l) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this

Court within seven days from the date of receipt of a copy of this order.

26. **CP (IB) No. 991/KB/2019** to come up on **28.04.2023** for filing the periodical report.

27. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi	**Rohit Kapoor**
Member (Technical)	**Member (Judicial)**

This order is pronounced on the 13th day of April, 2023.

FA(LRA)