



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 172/7/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

AMIT BHANDARI

...Financial Creditor

Versus

COLUMBUS OVERSEAS LLP

...Corporate Debtor

MEMO OF PARTIES

Mr. Amit Bhandari

80, Usha Colony, Malviya Nagar,
Jaipur, Rajasthan- 302017

...Financial Creditor/Applicant

VERSUS

M/s Columbus Overseas LLP

Shivgyan Luxora, P. No. G-2
Rajmahal Scheme, Parivahan Marg,
C-Scheme, Jaipur-302001

...Corporate Debtor/Respondent

For the Applicant : Sandeep Taneja, Adv.
Karan Pratap Singh, Adv.
Ankit Juneja, Adv.

For the Respondent : Sandeep Pathak, Adv.

CP No. (IB)- 172/7/JPR/2019



Order Pronounced On: - 16.11.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This application is filed by Mr. Amit Bhandari ('Applicant' / 'Financial Creditor') against the Corporate Debtor namely M/s Columbus Overseas LLP ('Respondent' / 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is one of the legal heirs of Mr. Shanti Lal Bhandari ("Father of Applicant") who has died and executed a Will in favour of the Applicant. A copy of the Will is annexed as Annexure-A/6 in the Application at Page No. 37-39C.
3. The Corporate Debtor is a Limited Liability Partnership ("LLP") firm registered under The LLP Act, 2008, having its registered office at Shivgyan Luxora, P. No. G-2 Rajmahal Scheme, Parivahan Marg, C-Scheme, Jaipur-302001. Copy of the Corporate Debtor's Master data along with details of Signatory as extracted from the portal of Ministry of Corporate Affairs (www.mca.gov.in) are annexed as Annexure- A/2 and Annexure-A/3 respectively in the Application at Page No. 23-24.



4. The details of the transactions leading to the filing of this Application averred by the Applicant are as follows:
- a) The father of the Applicant (the “Deceased”) has given a loan of Rs. 10,00,000 (Rupees Ten Lakh Only) to the Corporate Debtor on 24.01.2017 carrying an interest @15% per annum through NEFT No. AXISF17024059714 *vide* instrument/cheque no. 503943 from a savings bank account no. 433010100034779.
 - b) In order to repay the alleged amount, the Corporate Debtor has drawn a cheque post-dated 04.02.2019 in HDFC Bank, Raja Park, Jaipur.
 - c) Subsequently, the father of the Applicant died on 12.07.2017 and it was mutually agreed between the Corporate Debtor and the deceased that the Corporate Debtor will pay 15% interest annually till 31.12.2017.
 - d) In addition to that the Corporate Debtor shall perform the following statutory duties and obligations: -
 - i. Deduction of Tax Deducted at Source (“TDS”) under the provisions of Section 194A of the Income Tax Act, 1961 and the deposit of the interest against PAN-AAYPB1171F.
 - ii. Credit the balance interest amount to the deceased bank account held with Axis Bank, Sanganer, Jaipur in account no. 433010100034779



The details for the TDS booked and paid are as mentioned hereunder:

Sr. No.	Financial Year	Transaction Date	Date of Booking	Total Amount Paid/ Credited	Total Tax deducted	Total TDS Deposited
1.	2016-17 (Q-4)	31.10.2017	25.06.2017	27917	2792	2792
2.	2017-18 (Q-1)	20.04.2017	04.08.2017	38750	3875	3875
3.	2017-18 (Q-2)	20.07.2017	09.11.2017	35650	3565	3565
4.	2017-18 (Q-3)	01.11.2017	05.02.2018	37200	3720	3720

- e) The Applicant mentions that the deceased has executed a will, under which all the rights to hold, recover and collect the alleged loan amount i.e., Rs. 10,00,000/- (Rupees Ten Lakh Only) and its interest dues from the Corporate Debtor have been bequeathed in favour of the Applicant.



- f) It is also pertinent to mention that the Corporate Debtor has also mentioned the alleged amount in its financial statement filed for the year ended on 31.03.2017 to 31.03.2018 with the Registrar of LLPs, Rajasthan in the respective e-form “LLP Form no. 8” pursuant to rule 24 of the Limited Liability Partnership Rules, 2009.
- g) It is submitted by the Applicant that the Corporate Debtor has not paid the alleged loan amount till the end of January 2019. Subsequent to that the Applicant has presented the cheque for encashment which was issued by the Corporate Debtor on 04.02.2019. The Cheque was dishonoured by the banker on 06.02.2019 with the remark “*Payment Stopped by the Drawer*” and returned to the Applicant.
- h) Further, the Applicant also mentions that the Corporate Debtor has failed to book the interest and deduct the TDS in order to deposit with the Income Tax Department.
- i) Since the Corporate Debtor has defaulted in the payment of the alleged amount, the Applicant has issued a Legal Notice Cum Demand Notice dated 29.05.2019 to make the payment of Rs. 12,20,469/- (Rs, Twelve Lakh Twenty Thousand Four Hundred Sixty-Nine Only) along with the interest calculated from 01.01.2018 to 27.05.2019.
5. As a consequence of the aforementioned default, this application has been filed for seeking initiation of CIRP against the Corporate Debtor. The



Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

Particulars of Financial Debt		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Rs. 10,00,000/- (Rs. Ten Lakh Only) Dates of disbursement: 24.01.2017
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The total amount claimed to be in default is Rs. 10,00,000/- + Rs. 2,20,469/- (15% Interest Per Annum). Total Debt: Rs. 12,20,469/- (Rs. Twelve Lakh Twenty Thousand Four Hundred Sixty-Nine Only) The date on which Default Occurred: 01.01.2018. The date from which there has been default in payment of interest. Subsequent default occurred on 06.02.2019 when the cheque for repayment of the principal amount was dishonoured.



6. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 1617/2019 dated 21.08.2019 whereby stated the following:
- a) The Corporate Debtor has submitted that the Applicant herein has relied on the Will in support of the alleged claim however the said Will is neither registered nor does it bear any date.
 - b) It is also contended by the Corporate Debtor that the Will is not free from suspicion, hence cannot be taken as valid proof of assignment of the Debt.
 - c) The Corporate Debtor states that as per Part V of Form 1, particulars of the debt claimed to be owned are to be submitted. Para 4 of Part V categorically states as under:

<i>Particulars of Financial Debt [Documents, Records and Evidence of Default</i>	
...	..
4.	<i>Details of Succession Certificate, or probate of a will, or Letter Of Administration, or Court Decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925)</i>

However, no such document has been produced by the Applicant herein in support of the Application. In absence of all the aforementioned documents, the assignment of the alleged debt in favour of the Applicant is not valid and cannot be termed as legally payable debt.



- d) It is submitted that the Corporate Debtor herein does not have any outstanding debt payable to the Applicant as the Applicant is not a Financial Creditor in terms of the definition of Financial Creditor under section 5(7) of the IBC.
7. The Applicant has filed Rejoinder *vide* Diary No. 1894/2019 dated 13.09.2019 whereby stated the following:
- a) The Applicant submitted that the deceased father of the Applicant before his death had bequeathed his right, title and interest regarding the alleged amount by way of will in the name of the Applicant by virtue of that the Applicant is entitled to claim the right towards payment of the principal loan amount and interest due thereon.
 - b) The Applicant further contends that the said Will is duly executed by the deceased father of the Applicant and not disputed by any of his survivors/legal heirs/blood relatives. Precisely, the said Will is valid proof and authenticates the transfer of the rights in favour of the Applicant for claiming the alleged due amount against the Corporate Debtor.
 - c) Further it is pertinent to mention that there is no requirement under the provisions of the law that the Will has to be registered.
8. The Corporate Debtor has filed written submissions *vide* diary No. 3034/2022 dated 13.10.2022 whereby it reiterated that: a) The Applicant is



not a Financial Creditor; b) The Will shall be required to be proved genuine as it is undated. Additionally, the Corporate Debtor has relied on the following Judgements:

a) Jahan Singh Vs State of U.P. and Ors. Civil Misc. Writ Petition No.

1570 of 2017 in Hon'ble High Court of Allahabad dated 18.05.2017

b) Benga Behera and Ors. vs Braja Kishore Nanda and Ors. Civil

Appeal No. 3467 of 2003 in Hon'ble Supreme Court of India dated

15.05.2007

c) Invent Asset Securitisation and Reconstruction Pvt. Ltd. Vs Girnar

Fibres Ltd. in Hon'ble Supreme Court of India dated 25.04.2022

d) Raj Kumari and Others Vs Surinder Pal Sharma in Hon'ble

Supreme Court of India dated 17.12.2019

9. We have gone through the pleadings presented before us and documents filed by both the parties and heard the arguments made by the counsels, the Applicant has filed the present application stating default of loan amount of Rs. 10,00,000 (Rs. Ten Lakh) + interest of Rs. 2,20,469/- (Two Lakh Twenty Thousand Four Sixty-Nine) calculated from 01.01.2018 to 27.05.2019.

10. This Adjudicating Authority having perused all the relevant papers and finding them in the order notes that the Registered Office of the Respondent is situated in Jaipur, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is



within the purview of the Laws of Limitation, as the date of default on 01.01.2018 and subsequently, the default occurred on 06.02.2019. The Application has been filed before this Adjudicating Authority on 24.06.2019, hence the period of three years after the default occurred had not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

11. The mere plain reading of the provisions under Section 7 of the IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and that the default has been committed in respect of that financial debt by the Corporate Debtor.
12. It is seen that the application has been filed on occurrence of default in repayment of loan which was granted to the Corporate Debtor by the father of the Applicant on 24.01.2017. Subsequently, the father of the Applicant died on 12.07.2017. However, the deceased had executed a will under which all the rights to hold, recover and collect the alleged amount of loan i.e., Rs. 10,00,000/- (Rs. Ten Lakh) has been bequeathed in the favour of Applicant.
13. A bare perusal of the Will shows that there is no date written on the said Will. The Corporate Debtor has failed to provide any legal authority wherein the Will is rendered invalid or illegal in the absence of a date.



14. The execution of the Will governed in India by the Indian Succession Act, of 1925 (“Act”) for persons other than Muslims. The Act defines Will under Section 2(h)

“(h) “will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”

15. The Will must comply with the following requirements as specified under section 63 of the Act in order to constitute a valid Will:

“63. Execution of unprivileged wills.....

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

16. The Will herein is attested by two witnesses and signed by the testator (deceased) in the manner specified under Section 63 of the Act which makes it a valid will as per the Act. However, if there is no date written on



the Will does not constitute it invalid if it fulfils all the requirements of a valid Will under the aforementioned provision of the Act.

17. The said Will has neither been subjected to any dispute nor has been challenged by any of the legal heirs of the deceased. Only the right to sue is being sought from the said Will and not the share in property.
18. The foremost question before this bench in deciding this Application relates to the fact whether the Financial Creditor has any right to sue against the Corporate Debtor. From the facts of the instant case, it is apparent that the Corporate Debtor has availed of loan facilities from the Applicant's deceased father. The Applicant is seeking to initiate the CIRP of the Corporate Debtor on the ground of default as envisaged in the code. However non registration of the Will does not impair his right to contest the case on behalf of his deceased father. It is an established rule of law that non-registration of the will does not take away the right to sue conferred under any general applicable civil laws, as the right to sue survives even if pursued through his legal representative provided that it is within the period of limitation. In the instant case, the Applicant is the son of the deceased Financial Creditor and is claiming the said amount as the legal heir/representative of the Financial Creditor. The Applicant is initiating CIRP against the Corporate Debtor in capacity of Legal Representative of his deceased father as right to sue continues in the favour of the Applicant. This Adjudicating Authority ought not to go



into the question of maintainability of the Will as the Applicant is not claiming Right to Property through the said Will but only Right to Sue.

19. A bare perusal of the documents shows that the cheque which was given to the Deceased against repayment of the loan was dishonoured with the endorsement "*Payment Stopped by the Drawer*" thereby amounting to default on part of the Corporate Debtor. The Corporate Debtor has failed to show any proof of the sums allegedly paid to the Financial Creditor. The default in repayment of the loan is proved on account of dishonoured cheques. Moreover, the Corporate Debtor has nowhere denied the fact that a loan was availed from the deceased Financial Creditor. The only contention being raised by the Corporate Debtor is with respect to the authenticity of the will.
20. Over and above the Applicant is a Legal Representative of the deceased who has stepped into the shoes of his deceased father, in such a manner the Applicant has become the Financial Creditor in the present case. Besides that, Section 305 of the Indian Succession Act, 1925 gives a right to the Applicant to claim the alleged amount of the deceased as the cause of action survives herein. Section 305 of the Act is being reproduced as under:

"305. In respect of causes of action surviving deceased and debts due at death. —An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living."



21. The basic ingredients to be looked into while passing an order under Section 7 of the code are: (i) there must be a disbursal of the loan amount, such disbursal should be made for a consideration of time value of money; (ii) when the debt (whole or any part of instalment) becomes due and payable and; (iii) the same is not paid by the Corporate Debtor i.e., default committed by the Corporate Debtor. In the present case, the loan has been given for the consideration of the time value of money and the default has been committed by the Corporate Debtor.
22. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
23. The Applicant has named one Mr. Deepak Arora having Registration Number IBBI/IPA-002/IP-N00122/2017-2018/10291 (email: aroracs2@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional (“IRP”). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.
24. Consequences of initiation of CIRP shall be inter-alia as follows:
 - a) The Interim Resolution Professional proposed by the Applicant is Mr. Deepak Arora, who is an Insolvency Professional (‘IP’) registered



with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-002/IP-N00122/2017-18/10291. He is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- b) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- c) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit the fees to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the



progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- d) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

25. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

26. In the circumstances, CP No. (IB) 172/7/JPR/2019 is admitted.

DEEP
CHANDRA
JOSHI

Digitally signed by
DEEP CHANDRA
JOSHI
Date: 2022.11.16
18:13:34 +05'30'

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

Digitally signed by
PRASANTA
KUMAR MOHANTY
Date: 2022.11.16
18:32:30 +05'30'

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**