

**THE NATIONAL COMPANY LAW TRIBUNAL  
JAIPUR BENCH, JAIPUR  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP No. IB 291/7/JPR/2019**

**Under Section 7 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**Sh. Shankar Khandelwal through  
Sh. Tikam Khandelwal**

171, Officer Campus Extension,  
Near Sanskar School, Sirsi Road  
Jaipur, Rajasthan-302012.

...Petitioner-Financial Creditor

Vs.

**A. Gangwal Real Estate LLP,**  
The Crest, Suite No.9, Plot No. A-4,  
Airport Enclave Scheme,  
Tonk Road,  
Jaipur, Rajasthan-302018.

...Respondent-Corporate Debtor

**Judgement delivered on: 13.10.2021**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

**Present through Video Conferencing:-**

For the Financial Creditor: 1. Mr. Prakul Khurana, Advocate  
2. Mr. Ankit Sareen, Advocate

For the Corporate Debtor: 1. Mr. Pradeep Kumar Chaudhary, Advocate  
2. Mr. Gaurav Choudhary, Advocate.

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGMENT**

1. The present petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**) read with Rule 4 of CP No. IB 291/7/JPR/2019

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Sh. Shankar Khandelwal, through his attorney holder Mr. Tikam Khandelwal (**for brevity 'Financial Creditor'/'Petitioner'**), with a prayer to initiate Corporate Insolvency Process against A. Gangwal Real Estate LLP (**for brevity 'Corporate Debtor'**). Sh. Shankar Khandelwal (Petitioner-Financial Creditor) has executed a special power of attorney dated 21.01.2016 authorising Mr. Tikam Khandelwal to sign, and verify and to do all acts related to filing of present petition. There is an affidavit of Mr. Tikam Khandelwal in support of the contents of the application at page Nos.16 to 18 of the petition.

2. The Corporate Debtor namely, A. Gangwal Real Estate LLP, is a Limited Liability Partnership formed under the provisions of Limited Liability Partnership Act, 2008 on 05.08.2014 with Identification No. AAC-5469 having its registered office at The Crest, Suite No.9, Plot No. A-4, Airport Enclave Scheme, Tonk Road, Jaipur, Rajasthan-302018 which falls within the State of Rajasthan. Hence, the jurisdiction lies with this Adjudicating Authority. The total obligation of contribution of the partnership is ₹1,00,000/-. Copy of Master Data of corporate debtor is found at page No.27 of petition.

3. The facts of the case, briefly, as stated in the petition are that financial creditor was one of the partners of the corporate debtor and has advanced money to the corporate debtor as an unsecured loan. It is further submitted that the corporate debtor has issued six post dated cheques totalling to ₹6,07,00,000/- against the unsecured loan which were dishonoured in the month of April, 2017. Copy of cheques issued by

corporate debtor is attached as Annexure-7 (Colly). The financial creditor has submitted the copy of bank statements (Annexure-5) showing transfer of funds to the bank account of corporate debtor.

4. It is stated in Part-IV of Form No. 1 that the corporate debtor has been granted a total debt of ₹18,84,74,920/-. The total amount claimed to be in default is ₹38,73,94,501/- (being principal sum of ₹18,84,74,920/- plus ₹19,89,19,581/- being interest @18% p.a.). The date of default is stated to be 17.04.2017. Computation of amount of default, days of default in tabular form is attached as Annexure-4.

5. In Part-III of Form No. 1, Mr. Prashant Sharma, Registration No. IBBI/IPA-001/IP-P00290/2017-18/10534 has been proposed as Interim Resolution Professional (IRP). Form No. 2 dated 31.10.2019 submitted by the proposed IRP is found at Page Nos. 28-31 of the petition.

6. The corporate debtor has filed reply vide Diary No. 218 dated 29.01.2020 in which the corporate debtor has submitted that financial creditor has not furnished any proof related to sum advanced. Moreover, no notice of demand has been raised by the financial creditor to the corporate debtor for the said amount. It is further submitted that as per balance sheet of Financial Year 2015-16 (Annexure-8 of application) the balance due and payable to applicant was ₹5,16,55,842/- and same was signed by Smt. Guman Khandelwal who is wife of the applicant. The financial creditor was one of the partner who retired from the LLP w.e.f. 01.04.2016 and LLP Agreement dated 31.12.2015 was executed in this regard. Thereafter, Smt. Guman Khandelwal was retired from the LLP vide agreement dated 15.10.2016. Copy of LLP Agreement dated 31.12.2015 and 15.10.2016 are

attached as Annexure A-1 and A-2 respectively (Diary No. 1246 dated 29.06.2021). It is also added that the said amount was paid off by the applicant in the Financial Year 2016-17. The details of the payment made to the financial creditor is mentioned in the Tabular Form at Page No. 3 to 6 of the aforesaid additional affidavit. The corporate debtor has also attached a copy of bank statements maintained with Syndicate Bank of the LLP from 01.04.2015 to 31.03.2016 as Annexure A-5. The ledger account of the financial creditor maintained by corporate debtor for the financial year 2015-16 and 2016-17 is attached as Annexure R1 and R2 respectively of the reply.

7. In response to the additional affidavit filed by the corporate debtor, financial creditor has filed a counter affidavit vide Diary No. 1408/2021 dated 20.07.2021 wherein it has been stated that the LLP agreements are not the admitted documents and the same are the subject matter of the FIR filed in the year 2017 bearing No. 270/2017 dated 15.04.2017 before Jaipur East, Police Station. The copy of the same is attached as Annexure-1 of the aforesaid affidavit. The financial creditor has also denied the amount given by the corporate debtor. It has been submitted that a payment of ₹30 crores has been made to the Guman Builders & Developers Pvt. Ltd. Since the financial creditor has given the loan in his individual capacity to the corporate debtor and it must be repaid back to him and it cannot be set off against the distinct transactions.

8. It is the case of the respondent-corporate debtor that as per its balance sheet of the Financial Year 2015-16 the balance due and payable to the applicant was only ₹5,16,55,842/-. It is the further case of the

respondent-corporate debtor that the same was repaid to M/s Guman Builders and Developers Private Limited wherein the petitioner and his wife are the shareholders and thereby there is no debt due and payable as on date by the corporate debtor to the petitioner. On the other hand, it is the case of the petitioner that the claimed amount was given as a loan by him in his individual capacity to the respondent-corporate debtor and even as per the respondent-corporate debtor itself an amount of ₹5,16,55,842/- was due and payable by it to the petitioner, in his personal capacity and that the respondent-corporate debtor failed to show any proof of payment of the said amount to him even after permitting him to file an additional affidavit along with the proofs, if any. Even according to the respondent-corporate debtor the amount of ₹30 crores has been paid only to M/s Guman Builders and Developers Private Limited, but not to the petitioner. He further submits that if any amount paid to any company or to any individual other than the petitioner cannot be treated as the due discharge of the debt payable to the petitioner.

9. We find force in the submissions made on behalf of the petitioner, since the respondent-corporate debtor failed to show any valid proof that the debt due and payable to the petitioner in his individual capacity is paid to him in his individual capacity.

10. The facts of the case further shows that the CP is filed within the period of limitation.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial Debt for the default amount being above ₹1,00,000/-, the petition is admitted

in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.”

12. The Law Research Associate of this Tribunal has checked the credentials of Mr. Prashant Sharma and there is nothing adverse against him. In view of the above, we appoint Mr. Prashant Sharma, Registration No. IBBI/IPA-001/IP-P00290/2017-18/10534, E-mail: [psharmafca@gmail.com](mailto:psharmafca@gmail.com), as the Interim Resolution Professional subject to the condition that he shall file Form 2 within a period of one week from the date of this order if not filed. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his

appointment, and shall convene the first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

October 13<sup>th</sup>, 2021  
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