

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT NO. IV**

**Company Petition No. IB 2178/ND/2019**

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**IN THE MATTER OF:**

**AMIT ARYA**

**...APPLICANT/FINANCIAL CREDITOR**

**VERSUS**

**BANYANTREE DEVELOPERS**

**PRIVATE LIMITED**

**...RESPONDENT/ CORPORATE DEBTOR**

**ORDER PRONOUNCED ON: 01.03.2021**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA**

**HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**IN THE MATTER OF:**

**AMIT ARYA**

**S/o Shri. Radhey Shyam Arya**

Registered office:

R/o 234, Priti Nagar

Hisar, Haryana – 125001

**...APPLICANT/FINANCIAL CREDITOR**

**VERSUS**

**BANYANTREE DEVELOPERS PRIVATE LIMITED**

Registered office:

Vardhman Taru Plaza, L.S.C. Block CU

Pitam Pura, New Delhi 110034

**...RESPONDENT/ CORPORATE DEBTOR**

**FOR THE APPLICANT** : Mr. Abhishek, Adv.

**FOR THE RESPONDENT** : Mr. Rajeev, Adv.

**ORDER****Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The present application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Amit Arya (hereinafter referred to as 'Applicant'), who with a prayer to initiate Corporate Insolvency Resolution Process against Banyantree Developers Private Limited (for brevity 'Corporate Debtor').
2. That is an individual having PAN NO. AGXPA2912J, resident of 234, Priti Nagar, Hisar, Haryana, 125001. As per the records shown by the corporate debtor and on perusal of the MCA data it is seen that the name of applicant is mentioned as Director in the MCA master data. The copy of the MCA master data is annexed.
3. The corporate debtor is a company incorporated on 15.03.2012, under the provisions of Companies Act 1956, bearing CIN No. U70200DL2012PTC232945 and having its registered office at 310, Third Floor, Vardhman Taru Plaza, L.S.C. Block -CU, Pitam Pura, Delhi - 110034. The authorized share capital of the company is Rs. 4,00,000/- and the Paid-up share capital is Rs. 2,00,000/-.The corporate debtor is engaged in the business of real estate on fee or contract basis.
4. The applicant states that in and around 2015, Mr. Nikhil Jain, the director of corporate debtor approached the applicant to borrow money and applicant orally agreed to grant a loan of INR 2.20 Crore to the corporate debtor on personal terms. Accordingly, loan was disbursed, in the months of June and July 2015 and the total sum disbursed was Rs. 2.20 Crore. The corporate debtor repaid a sum of INR 1.50 Crore, on 26.11.2015, leaving a sum of INR 70,00,000/- outstanding and payable by the corporate debtor. The applicant states that it was

mutually agreed for repayment of amount of Rs. 70,00,000/- within 3-4 years along with interest @ 18% per annum. In pursuant to the loan the corporate debtor issued confirmation of accounts letter to the applicant vide letter dated 01.04.2016 and 01.04.2017. The copies of the confirmation of accounts letter are annexed.

5. The applicant submits that in April 2019, they approached the corporate debtor to inquire about the repayment of the loan amount. It is further submitted that corporate debtor failed to repay the loan and assured the applicant that they shall repay the loan along with interest @ 18% by June 2019. The applicant stated that in spite of repeated requests, the corporate debtor failed to make payment.
6. The applicant issued demand notice dated 26.06.2019 calling upon the corporate debtor to pay the aforesaid sum of Rs 70,00,000/- along with interest at the rate of 18% per annum. The demand notice was duly served upon the corporate debtor at its registered address and the postal receipts along with tracking report have been annexed.
7. The corporate debtor replied to the demand on 29.07.2019 and admitted the receipt of Rs.70,00,000/- from the applicant. However, denied the liability alleging that that the said amount was towards capital contribution and was not a loan.
8. The applicant further sent a response to the reply of Section 8 notice dated 21.08.2019, denying the contention of the corporate debtor and further raising a demand for the due amount.

9. That the applicant filed an application under Section 7 of the I &B code, 2016 and as per Form I Part IV the total amount in default is Rs. 70,00,000/- along with interest @ 18% per annum.
10. The corporate debtor filed reply denying the contentions of the applicant raising mainly the following objections:
- a) That the application and claim of the applicant is time barred, as the debt was given in the year 2015.
  - b) Further it is denied that the confirmation of accounts dated 01.04.2016 and 01.04.2017 bears any signature or authentication for and on behalf of the corporate debtor.
  - c) It is further objected on the ground that there is no loan agreement or document sustaining the grant of this loan by the applicant. Further no document is provided to claim interest.
  - d) That the amount as claimed by the applicant was received as capital contribution and not as loan and the same has also been objected to in the reply to Section 8 filed by the corporate debtor.
  - e) The corporate debtor submits that there is a dispute between the parties as the applicant was inefficient in providing services and also failed to obtain environment clearance from the concerned authorities, due to which a sum of approx Rs. 6.50 Crore, the security deposit of the applicant was forfeited, by the Madhya Pradesh State Mining Corporation Limited (MPSMCL). Later, the writ was filed before the Hon'ble Madhya Pradesh High Court and vide order dated 23.01.2017, the said amount was ordered to be refunded in accordance with law.
11. The applicant filed rejoinder to the reply filed by the corporate debtor submitted the following :
- a) It is submitted that application is not barred by limitation and the emails confirming the statement of accounts dated 01.04.2016 and 01.04.2017 are

sent from the email of the corporate debtor. Further, the applicant submits that the balance sheet for FY. 2015-16 reflects the amount received from the applicant.

- b) The applicant states that interest was orally agreed between the parties.
- c) The applicant has stated that he was appointed as a Director of the corporate debtor, in terms of Rule 2(1)(c)(viii) of Companies (Acceptance of Deposits) Rules, 2014, since the company was not eligible to take loan from public as per the provisions of Section 73 of the Companies Act, 2013.
- d) That the writ petitions does not cover any claim against the applicant as alleged by the corporate debtor.

12. It is evident from the record that the application has been filed on the Performa prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. The application under Section 7 is complete.

13. The last balance of confirmation is issued on 01.04.2017, the amount due was payable in the year 2019, the applicant approached corporate for payment of debt in April 2019 and the present application is filed on 04.09.2019. Hence, the application is within in the period and is not barred by limitation.

14. The registered office of the Corporate Debtor is situated at Delhi and therefore this tribunal has jurisdiction to entertain and try this application.

15. During the hearing the counsel for corporate debtor admitted the debt and stated that they have no objection to the application being admitted. The same was recorded vide order dated 06.01.2021 as :

*“...the corporate debtor is in financial difficulty and is unable to pay back debt of its creditors. The corporate debtor does not have any objection if the CIRP is initiated against the corporate debtor.”*

In view of the admission made by the corporate debtor, this application is admitted.

16. As a sequel to the above discussion, since the applicant has proposed the name of IRP, therefore, this bench appoints Mr. Anil Tayal, CA having registration number IBBI/IPA-001/IP-P01118/2018-19/11818, having address at 210, Sagar plaza, District Centre, Laxmi Nagar, New Delhi – 110092 and email address: [caaniltayal@gmail.com](mailto:caaniltayal@gmail.com), as an IRP of the corporate debtor. The certificate of registration along with consent in Form-2 of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 making disclosures as required under IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 has been annexed.
17. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Anil Tayal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the applicant. The amount however is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.

19. In terms of above order, the application stands admitted in terms of Section 7 of IBC, 2016. A copy of the order shall be communicated to the applicant as well as to the Corporate Debtor above named by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**SUMITA PURKAYASTHA**  
**MEMBER (T)**

**Sd/-**  
**DR. DEEPTI MUKESH**  
**MEMBER (J)**