



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
[Through Physical hearing/VC Mode (Hybrid)]

C.P (IB) No.11/BB/2024
Under Section 7 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 4 of Insolvency and
Bankruptcy (AAA) Rules, 2016

IN THE MATTER OF:

CANARA BANK

Having its Branch Office at:
ARM,-1 Branch;
Having its office at:
Spencer Towers, MG Road,
Bengaluru -560001

.... Financial Creditor/Petitioner

Versus

AVISHKAR INNOVATIVE PVT LTD

Having its registered office at:
No. 970/32, 50 Feet Road, Raghavendra Block,
11th Main, Near Ayyappa Temple,
Srinagar,
Bangalore -560 050

...Corporate Debtor/Respondent

Order delivered on: 01st January, 2025

Coram: 1. Hon'ble Shri K Biswal, Member (Judicial)
 2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present/Counsels Present:

For the Petitioner : Shri Hemant Rao
For the Respondent : Shri Atul Madhavan



ORDER

*Per: **Manoj Kumar Dubey, Member (Technical)***

1. The present petition is filed on 17.11.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/Code**'), read with, Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Canara Bank (for brevity "Financial Creditors/Petitioners") inter alia seeking Corporate Insolvency Resolution Process in respect of M/s Avishkar Innovative Pvt Ltd (hereinafter referred as "Corporate Debtor/Respondent") for defaulting an amount of Rs.60,92,98,736.11/- due and payable by the Corporate Debtor ("CD").

2. The Corporate Debtor, namely Avishkar Innovative Pvt. Ltd. is a Company incorporated on 25.03.2015 with CIN: U72200KA2015PTC079451 having its registered office at No. 970/32, 50 Feet Road, Raghavendra Block, 11th Main, Near Ayyappa Temple, Srinagar, Bangalore -560050 which falls within the territorial jurisdiction of this Adjudicating Authority. The Company is engaged in the business of system integration of industrial automation products and providing allied IT Services to industries. The Authorised Share Capital of the Respondent/CD is Rs. 5,00,00,000/- and Paid Up Share Capital is Rs. 5,00,00,000/-.

3. On the perusal of the incumbent application, the following facts are relevant to the issue in question and is produced herein:
 - a) The present petition by the above Financial Creditor Bank against the Corporate Debtor in respect of the default amount of Rs. 60,92,98,736/- (Rupees Sixty Crores Ninety Two Lakhs Eighty Eight Thousand Seven Thirty Six Only) as on 30.09.2023 payable to the Financial Creditor as per part IV of Form No.1. The Date of Default as per Part IV Form No.1 is given as 26.08.2022.



- b) The Corporate Debtor in order to avail the credit facility, vide the Board Resolution dt.2.09.2015 authorised its directors to take the Loan of Rs.30 crores. Thereafter, the Corporate Debtor availed certain credit facilities from the financial creditor vide a Sanction Memorandum dt.10.09.2015 for an initial amount of Rs.12 Crores and subsequently, vide another Sanction Memorandum dt.15.09.2015 the Corporate Debtor took the entire loan of Rs.30 crores. The parties in furtherance of the credit facilities entered into the following documents:
- Common Hypothecation Agreement dt.15.09.2015
 - Supplemental Common Hypothecation Agreement dt.05.10.2015
 - Counter Indemnity Letter dt.05.10.2015 for Negotiation/ Purchase/Discount of Bills executed by the Corporate Debtor
 - Power of Attorney dt.05.10.2015 executed by the Corporate Debtor.
- c) Pursuant to availing loan, the Corporate Debtor requested the financial creditor to convert the Pre-Shipment Credit in Foreign Currency (PCFC) loan to regular PCFC limit which was done vide sanction memorandum dt.28.11.2016. Further, the Corporate Debtor executed Common Hypothecation Agreement dt.01.09.2016, Counter Indemnity Letter dt.6.09.2016 and Power of Attorney dt.9.09.2016 with the Financial Creditor as per the sanction memorandum dt.28.11.2016.
- d) The Financial Creditor contends that as per the request of the Corporate Debtor, it has once again renewed and converted regular PCFC limit to Project Finance PCFC Limit of Rs.30 Crores vide Sanction Memorandum dt.19.01.2018 for which the Corporate Debtor executed Letter of Renewal of Rs.30 Crores in favour of the FC on 22.01.2018 and Letter of Revival on 22.01.2017 acknowledging its debt.



- e) Additionally, the period of existing PCFC limits were extended by the FC as per the Canara Credit Support (CCS) vide Sanction Memorandum dt.27.07.2020 pursuant to which, the parties executed the following documents to secure the loan amount which are:
- Supplemental Hypothecation Agreement covering CCS Limit dt.05.08.2020,
 - Subordination Agreement dt.05.08.2020
 - Counter Indemnity Letter dt.05.08.2020
 - Power of Attorney dt.05.08.2020
 - Undertaking Letter dt.05.08.2020
 - Letters of Revival dt.05.08.2020
- f) It is contended that as per the Guaranteed Emergency Credit Line (GECL) Scheme issued by the Government of India, the FC offered the pre-approved loan facility GECL to the CD vide Offer Letter for GECL dt.31.03.2021 which was accepted by the CD by executing the following documents:
- Supplemental Hypothecation Agreement dt.31.03.2021 for GECL facility
 - Counter Indemnity dt.31.03.2021 executed by the CD
 - Power of Attorney dt. dt.31.03.2021
 - Supplemental Hypothecation Agreement dt.07.04.2021 executed by CDR for Additional PCFC of USD 586370 (approx. 4.25 crores)
 - Subordination Agreement dt.07.04.2021
 - Letter of Renewal dt.31.03.2021
- g) The Corporate Debtor once again sought for restructuring the credit facilities by submitting Loan Application dt.20.07.2021 which was considered by the Financial Creditor pursuant to which a Sanction Letter was executed between the parties dt.29.07.2021 for continuation of PCFC limit of USD 4720315, restructuring CCS Limit and GECL facility by carving out interest overdue of CCS and



GECL into FITL Limit of Rs.21.87 Lakhs. Pursuant to the sanction letter, the CD has executed the following loan documents:

- Draft Letter of Undertaking from Borrower/Guarantor for relief under Resolution Framework 2.0
- Debt Restructuring Agreement dt.06.08.2021
- Debtor creditor Agreement dt.06.08.2021

h) Thereafter, the parties have again extended the limit of GECL of Rs.1.10crores vide Sanction Memorandum dt.30.09.2021 for which other allied agreements have been entered upon which are enlisted below:

- Supplemental Common Hypothecation Agreement dt.30.09.2021
- Subordination Agreement dt,30.03.2021
- Counter Indemnity Letter dt.30.09.2021
- Letter of Undertaking dt.30.09.2021

i) The Applicant submits that the CD has defaulted in servicing the debt on 26.08.2022 and all the accounts of the CD has been classified as Non-performing Assets. Further, the Applicant has also initiated proceedings under SARFAESI Act, 2002 on 2.08.2022 and also filed Diary No.680/2023 before DRT-2 Bengaluru on 16.03.2023 for recovery of sun of Rs.60,92,98,736.11/- which is pending adjudication. Thus, the Counsel for the Petitioner/FC submits that there exists a debt which is due to the applicant by the CD which has not been paid despite granting sufficient opportunity and falls under the definition of “financial debt” under Section 5(8) of the Code.

4. Pursuant to the issue of notice vide order of this Tribunal dt.23.01.2024, the Respondent/CD has filed its statement of objections dt.13.02.2024 in Diary No.983 by inter alia contending as under:

a) That the CD has filed an application under Section 10 of the Code before this tribunal on 19.08.2023 under the Case No. C.P (IB)



124/BB/2023 which is 3 months before the incumbent application filed under section 7 of the Code. The CD contends that despite having full knowledge of this application filed by CD itself as the copy of the same was served on the FC, the intent of the FC to file a subsequent CIRP application under Section 7 of the Code is an unwarranted and meaningless action. Thus, the application of the CD takes precedence over the incumbent application.

- b) Regarding the declaration of CD's account as NPA on 26.08.2022, the CD submits that it was due to the untoward events which occurred in Covid-19 and that the CD has receivables to the tune of Rs.47.70 crores and the inventory to the tune of Rs.183.88 crores which will be converted into revenues by executing the pending orders. Additionally, in Para-4 of the objections, the CD has admitted its liability towards the financial creditor by unequivocally stating that the CD could not meet its obligations to the financial creditor.
- c) The CD contends that it is a solvent company and capable of reviving the operations through a resolution plan and since it is an MSME Registered Enterprise, the promoters are eligible to submit the resolution plan. This was the sole intent of the CD for filing under Section 10 of the Code.
- d) The CD avers that as per the sequence of litigation the CD has filed u/s 10 of the Code on 19.08.2023 which was followed by Section 7 application filed by the applicant against the CD on 15.11.2023. Additionally, the Applicant has also initiated proceedings against the CD and its guarantors before the Hon'ble Debt Recovery Tribunal, Chennai under Diary No.680/2023 on 17.03.2023 (case yet to be numbered as defects are yet to be cured).



- e) The CD contends that the Applicant is using the Code as a recovery tool and has approached this Hon'ble Tribunal for purpose other than for insolvency resolution, especially when the CD has already filed an application u/s 10 of the Code.
- f) The CD has highlighted that as per Section 10 (4) of the Code, the Adjudicating Authority shall within a period of 14 days of the receipt of the application by an Order admit the application if it is complete and no disciplinary proceeding is pending against the proposed resolution professional. The CD submits that there are no disciplinary proceedings pending against him and proposed Dr.Madhurai Shanmugham as the resolution professional. He submits that had this Tribunal adhered to the timeline, the same would have prevented the Applicant from filing the instant application u/s 7 of the Code.
- g) The CD places reliance on the decision in the case of *Aeromech Technologies Pvt. Ltd. v. Indian Overseas Bank (CA (AT) (IB) No. 53/2018)* to reiterate the importance of adhering to the timelines by the Adjudicating Authority in admitting or rejecting the application filed u/s 10 of the Code.
- h) Thus, in light of the pending proceeding against the CD under S.10 of the Code, the CD prays for dismissal of the application under S.7, IBC.

5. Heard the Ld. Counsel for the Petitioner and the Respondent and perused the pleadings on record. Additionally, no rejoinder has been filed by the Learned Counsel for the Petitioner.

6. In this case, notice was issued on 23.01.2024 which was accepted by the Authorised Representative on behalf of the Respondent and two weeks' time was granted to file objections and the same was filed on 13.02.2024 vide Dy.No.983, the contents of which has been narrated above at Para-



4. The matter was next listed on 21.02.2024 when no one appeared on behalf of the Respondent, therefore another opportunity was granted on 05.03.2024. When again no one appeared on behalf of the Respondent on 05.03.2024, the matter was reserved for Orders, when the Petitioner Counsel pointed out that the Respondent had admitted the debt and default at Para-4 of the objections filed by them on 13.02.2024.
7. However, the Respondent filed the Writ Petition No. 12029 of 2024 before the Hon'ble High Court of Karnataka and the Hon'ble High court vide order dated 25.04.2024 stayed the proceedings in the present case. Later, the Hon'ble High Court disposed of the matter on 04.09.2024, quashing the daily order dated 05.03.2024 of reserving for Orders passed by this Adjudicating Authority; and directed the Tribunal to provide an opportunity of being heard to the Respondent herein and thereafter to ***proceed in accordance with law.***
8. Accordingly, this Adjudicating Authority granted an opportunity of being heard to the Respondent on 16.10.2024, on which, the Counsel appearing on behalf of the Respondent requested for time to make his submissions. Another opportunity was granted on 22.10.2024, however, the Counsel for the Respondent again requested for adjournment seeking permission to file some more submissions/ documents which was allowed by this Adjudicating Authority.
9. On 08.11.2024, while taking on record the filing by the Respondent vide Dy.No.6217 dated 05.11.2024, the following documents were asked from the Petitioner:
- i) *Copy of the OTS offer letter dated 06.04.2023;*
 - ii) *An affidavit along with the detailed Bank Account Statement of the Corporate Debtor linking with the Form-1 which matches with the amount mentioned in the Form-D of the NeSL.*



10. Further, Ld. Counsel for the Respondent was directed to produce the copy of the e-mail dated 01.07.2023, sent by the Respondent to the Petitioner Bank.
11. In response to the same, the Petitioner filed Additional documents vide Dy.No.6837 dated 03.12.2024 and the Respondent vide Dy.No.6832 dated 03.12.2024. On 04.12.2024 the matter was heard and reserved for orders by granting liberty to both the parties to file brief Written Submissions in 3-4 pages within one week. In response to the same, the Respondent Counsel filed a lengthy Written submissions on 19.12.2024 vide Dy.No.7156 along with a Memo vide Dy.No.7155 enclosing the daily order dated 16.12.2024 of the Hon'ble High Court of Karnataka in W.P No. 24466 of 2024.
12. The above sequence of events have been discussed to show that more than adequate opportunity has been granted to the Respondent to present their case; subsequent to the order dated 04.09.2024 of the Hon'ble High Court of Karnataka.
13. In the present case, the Petitioner has filed petition under Section 7 against the Corporate Debtor for defaulting in payment of the outstanding dues amounting to Rs.60,92,98,736/-. The Corporate Debtor has vehemently contested the admission of the instant company petition solely on the ground that another application under Section 10 bearing **CP (IB) No. 124/BB/2023** was filed by the Corporate Debtor itself which was pending adjudication. It is noticed from the objections filed by the Corporate debtor/Respondent on 13.02.2024 that it has been repeatedly emphasised by the Respondent that they have already filed an application under Section 10 of the IBC, 2016 on 05.09.2023 in C.P (IB) No.124/BB/2023, which is prior to the filing of Section 7 petition and therefore it should be taken up first. The same contentions have been reiterated in Para 2,5,7,8,9 and 10 of the reply i.e., repeatedly emphasis



is placed on the petition filed under section 10 filed by the Respondent, Corporate Debtor herein.

14. On the otherhand, it was the CD itself which sought permission from this Tribunal for withdrawing the Petition filed under Section 10 of the IBC on 23.04.2024 which was allowed by this Tribunal. This was after the Corporate Applicant in Section 10 petition being the Corporate Debtor herein, remained unrepresented before this Tribunal on 30.11.2023, 05.01.2024, 21.02.2024 and 05.03.2024. Since the petition bearing CP (IB) No.124/BB/2023 stands withdrawn by the CD, therefore, the CD cannot press for the dismissal of instant petition under Section 7 on the ground of pendency of section 10 petition. Moreover, on perusal of the Section 10 petition bearing C.P No. (IB) 124/BB/2023, we note that the CD filed the same only on the basis of default in paying of outstanding liabilities to Canara Bank, which is the Petitioner herein. The CD in its Section 10 petition mentioned that the reason that CD should be admitted under CIRP is because ***“Requests to Canara Bank for re-alignment of bank facilities vis-à-vis the changed scenario and efforts to regularise the dues through OTS has not yielded any result and today, the Corporate Debtor has no other option but to resolve the debt-ridden situation through the support of outside investors.”*** The CD has itself admitted in Section 10 petition the existence of debt and default as against the Petitioner by producing the relevant documents such as *Copy of Demand Notice dt.30.08.20222 issued by Canara Bank u/s 13(2) of the SARFAESI Act, 2002, Copy of Certificate of Registration of Creation of Charge dt. Jan 13, 2016 for Rs.12 crore in favour of Canara Bank* and other such documents which unequivocally establish the debt and default of the CD against the Petitioner i.e. Canara Bank. In such circumstances, it is evident that the Corporate Debtor has itself admitted to the debt and default and the objection taken by the CD is not tenable. To emphasize this point, the provisions of Section 10 (1) of the Code, is reproduced below:

Section 10: Initiation of corporate insolvency resolution process by corporate applicant.

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

Therefore, the admission of the debt and default is established by the Corporate Debtor by filing of petition under Section 10 of the Code.

- 15.** During the course of proceedings before this Tribunal, the Petitioner Counsel pointed out to the submissions of the restructuring proposal for the overdue debts by the Respondent/Corporate Debtor, vide letter dated 06.04.2023 which was in the nature of an OTS proposal. A perusal of the same states that this letter is addressed to the Canara Bank, the Financial Creditor herein issued by the Respondent; in which it has been stated as under:

“However due to various reasons, mainly to Covid-19 related business disruptions and impacts, which are beyond the control of management, the Borrowings with your Bank has become irregular since 26th August 2022. Though, we took several measure to regularize the Credit limits and tried to continue the business uninterruptedly, we failed to take up the revival proposal well in advance, while the credit limits were under stress or getting irregular. Due to our lack of knowledge out Bank’s internal Creditor policies and information with regard to take necessary corrective actions to restructure the credit limits and regularize the bank borrowing in phased manner was delayed.

Further, due to working capital/cash flow mismatches caused by COVID 19 pandemic related business disruptions and other factors which were beyond the control of the Management, the business suffered. Therefore, for the last Six to seven Months, were unable to furnish detailed Resolution plan to resolve the current irregularity in the credit limits.



The present Bank liabilities are as under:

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount –Rs. In crores</i>
1.	<i>PCFC Limited – Crystallised</i>	<i>40.10</i>
2.	<i>GECL-1</i>	<i>2.72</i>
3.	<i>GECL-2</i>	<i>6.94</i>
4.	<i>Other Loan Balances</i>	<i>1.32</i>
	<i>Total</i>	<i>51.08</i>

.....Hence we request the Bank to give us an opportunity to submit a detailed “Resolution Plan” to liquidate the Bank liability in a phased manner.”

The Counsel for the Petitioner, therefore, stated that this restructuring/ settlement proposal submitted by the Corporate Debtor dated 06.04.2023 amounts to the admission of the debt and default to the tune of Rs.51.08 crores as on 06.04.2023.

- 16.** It is also noted that subsequently, on 01.07.2023, the CD sent an email to the Petitioner in continuation of the email regarding finalization of the restructuring proposal which was submitted by the CD on 13.06.2023. However, vide email dt.04.07.2023 the Petitioner Bank has declined to accept the OTS proposal of the CD as it was way below the expectation of the Bank. The relevant extract of the email sent by the Petitioner Bank declining the OTS proposal of the CD is stated below:

“Subsequently an OTS offer of Rs.22.30 crs (approximately 37% of contractual dues in M/s Avishkar Innovative Private Limited) and Rs.51.00 crs (approximately 44.60 % of contractual dues) in M/s Cadryche Automation and Office Solutions Private Limited was made to the bank which is way below the expectation of the bank considering the securities available and net worth of the promoters and hence not acceptable.”



17. During the course of hearing, it was submitted by the Counsel for the Petitioner that the restructuring/settlement proposal by the Corporate Debtor dated 06.04.2023 and subsequently on 13.06.2023/ 01.07.2023 was rejected by the Petitioner Bank after continues negotiations, which itself amounts to the acknowledgement of debt and default and the Respondent now cannot make various arguments in this regard. The contention of the Petitioner in this regard is acceptable since the correspondence stated above clearly shows that vide letter dated 06.04.2023 addressed to the Petitioner Bank, the Corporate Debtor has acknowledged the outstanding amount of Rs.51.08 crores. It is also noticed that subsequently, the Corporate debtor has submitted an OTS offer of Rs.22.30 crores which was rejected by the Petitioner Bank vide letter dated 04.07.2023 addressed to the Corporate Debtor. Therefore, the existence of the debt and default is clearly established on this basis, and the amount is also above the threshold requirement of Rs.1 crore as required under Section 4 of the Code. Reliance is placed on the decision of **Hon'ble Apex Court in Dena Bank vs. C.Shivakumar Reddy and Anr. (2021) ibclaw.in 68 SC and Hon'ble NCLAT decision in Tejas Khandhar v. Bank of Baroda (2022) ibclaw.in 496 NCLAT** which state that an OTS proposal is construed as an acknowledgement of debt by the Corporate Debtor.

18. The fulfilment of the requirement of the existence of debt and default is also on the basis of the Record of Default in Form-D issued by the NeSL. The summary of the Form-D filed by NeSL is shown as under:

Default amount	Date of Default	State of Authentication	Date of Authentication
7528734.62	02.06.2022	Authenticated (Colour Code: GREEN)	12.09.2023
19596397.24	02.06.2022	Authenticated (Colour Code: GREEN)	12.09.2023



1318423.12	30.05.2022	Authenticated (Colour Code: GREEN)	12.09.2023
1318687.93	18.06.2022	Authenticated (Colour Code: GREEN)	12.09.2023

Therefore, it is noticed that in the Record of Default issued by the NeSL for all the above four loan accounts submitted by the Petitioner, the default amount and the date of default is mentioned and all four have been clearly Authenticated (Colour Code: GREEN). This Authentication is done by the NeSL after giving an opportunity to the Corporate Debtor, and only after receiving an acknowledgement by the Corporate Debtor, the same is treated as Authenticated (Colour Code: GREEN); otherwise there are other categories like “Disputed” and “Deemed to be Authenticated”. However, here it has been categorised as “Authenticated”.

- 19.** In this connection, it is pertinent to mention here that the date of default as mentioned in Form-D NeSL Report is a valid proof to establish debt and default as observed by the Hon’ble Supreme Court in in ***Innoventive Industries Ltd. v. ICICI Bank and Ors, Reported in (2018) 1 SCC 407*** wherein the Hon’ble Supreme Court with regards to admission of cases under Section 7 held as under:

“30. On the other hand, as we have seen, in the case of corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.”

In the present case, the date of default given by the Information Utility shows that the CD has defaulted in payment of outstanding dues on multiple occasions for different Loan accounts. It is also noticed that the



entire set of dates of default which are falling between the period of May-June 2022, are therefore within the limitation period.

20. Accordingly, from the above discussions, it is seen that there is a debt and default, which is above the threshold requirement of Rs.1 crore which clearly establishes the case against the Corporate Debtor on the following four points:

- i) Admission made by the Corporate Debtor in Para-4 of the objection filed by the Corporate Debtor vide Dy.No.983 dated 13.02.2024; in which it is stated that the Corporate Debtor did not meet its obligations to the Financial Creditor on account of COVID-19;*
- ii) Filing of petition under Section 10 of the IBC by the Avishkar Innovative Private Limited, the Corporate Debtor herein, which is in itself an admission of debt and default;*
- iii) Series of restructuring/OTS proposal submitted by the Respondent specifically on 06.04.2023, 13.06.2023 and 01.07.2023 and the rejection of the OTS proposal by the Petitioner Bank vide letter dated 04.07.2023 as discussed above;*
- iv) The Record of Default in Form-D submitted by the NeSL in which the default amount and date of default for the above mentioned loan accounts have been confirmed along with marking the same as “Authenticated”.*

The above discussions also clearly establishes that the petition has been filed within the limitation period.

21. This Tribunal has also considered the Memo filed by the Respondent vide Diary No.7155 dt. 19.12.2024 enclosing the order dated 16.12.2024 of Hon’ble High Court of Karnataka. Further, Written Submission vide Diary No.7156 dt. 19.12.2024 in which it was contended as under:

“40. It is submitted that the Respondent has challenged the classification of its account as NPA before the Hon’ble High Court of Karnataka in W.P. No. 24466/2024 as the FC is also pursuing remedies under SARFAESI Act by selling the properties of the



Respondent. The Hon'ble High Court vide order dt.16.12.2024 has passed an order wherein the Hon'ble DRT has directed the FC not to confirm any sale on the impugned sale notice as any action taken by the Bank will be subject to the outcome of the Writ Petition. In this context it is submitted that any order passed by this Hon'ble Tribunal will have be subject to the outcome of the Writ Petition as in the event the Hon'ble High Court of Karnataka holds the declaration of NPA as null and void and quashed the same the present application will have to be dismissed."

WHEREFORE, in light of the aforesaid contentions, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the application of the FC or in the alternative keep the matter in abeyance till such time the Writ Petition in W.P No.24466/2024 is decided by the Hon'ble High court of Karnataka in the interest of justice and equity".

22. We have considered the above submissions of the Respondent. However, the prayer of dismissal of the instant company petition by the Respondent relying on the High Court order dt. 16.12.2024, is untenable, as the same relates to the proceeding in DRT and under the SARFAESI Act, and does not have impact on the proceedings under IBC 2016. Therefore, we do not find any merit in the contention of the CD. Additionally, the Hon'ble High Court of Karnataka had already directed this Tribunal to proceed with the instant petition in **accordance with law** vide order dt.04.09.2024 in W.P No. 12029/2024 filed by the Corporate Debtor; and there is no direction with regard to the proceedings under IBC, 2016 with the NCLT in the Hon'ble High Court's order dt. 16.12.2024 in W.P. No. 24466/2024.

23. In this connection, it is pertinent to mention the recent judgement of **Hon'ble NCLAT, New Delhi dated 02.07.2024 in Company Appeal (AT) (Insolvency) No.690 of 2023 filed by State Bank of India vs. Abhijeet Ferrotech Limited (2024) ibclaw.in 428 NCLAT**. This was a



matter in which the proceedings under Section 13 (2) of SARFAESI Act, 2002 and the proceedings before the DRT was pending, whereas, the Financial Creditor filed petition under Section 7 of the IBC, 2016 for initiation of CIRP against the Corporate Debtor. The Hon'ble NCLAT held as under:

“16. Section 238 of the IBC as extracted above, gives overriding effect to the proceedings under Section 7..... Insolvency resolution of the Corporate Debtor has to be detected at the earliest and remedial measures are to be taken to bring back the Corporate Debtor on its feet. The statute under the IBC never contemplated that proceedings under IBC to await outcome of any previously instituted proceedings under any other statute..... In view of the overriding provision of Section 238, the proceedings under Section 7 shall not be barred by any proceeding initiated under Section 19. As noted above, Section 19 proceedings are for the purpose of recovery of dues by the Bank and Section 7 proceedings are for insolvency resolution of the Corporate Debtor. Both proceedings covers entirely different filed and rejection of proceedings under Section 19 by DRT on 17.06.2022 cannot operate as any bar for Application under Section 7.

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18. Thus, the determination of default in DRT proceedings, which is pending in Calcutta High Court can have relevance for the purposes of Section 19 Application, but cannot be said to be a reason to hold the proceedings under Section 7 barred, as has been held by the Adjudicating Authority.

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21. The Hon'ble Supreme Court in Employees Organisation vs. Jaipur Metals & Electricals Limited (2018) 34 SC clearly held that petition under Section 7 is an independent proceeding



which is unaffected by pending of proceedings in other Court which may be filed by the same Company.

22.....

23.....The above judgement of the Hon'ble Supreme Court clearly lays down that proceedings under Section 7 can neither be held to be barred by any order passed by DRT under the 1993 Act, nor pendency of proceedings at DRT (which is now pending at the stage of Calcutta High Court) shall preclude decision on Section 7 Application on merits...


27....As noted above, the proceedings under 1993 Act for recovery of debt due to Bank and proceedings under Section 7 of the IBC, are entirely different proceedings with different purpose and object. Section 238 having given overriding effect to the proceedings under Section 7, the order passed, cannot operate as issue estoppel between the parties in reference to Section 7 proceedings.....”

- 24.** In above case, the Hon'ble NCLAT had relied upon the judgement of the **Hon'ble Apex Court dated 12.12.2018 in Civil Appeal No.12023 of 2018 filed by Jaipur Metals and Electricals Employees Organisation vs. Jaipur Metals & Electricals Limited; (2018) ibclaw.in 34 SC**, in which the Hon'ble Apex Court has clearly upheld the overriding effect of the proceedings under Insolvency and Bankruptcy Code over the proceedings under the other acts, in view of the provisions of Section 238 of the Code. Further, in the another judgement of the **Hon'ble Apex Court in Civil Appeal No.4750 of 2021 filed by Indian Overseas Bank vs. M/s. RCM Infrastructure Limited and Another (2022) ibclaw.in 39 SC dated 18.05.2022**, it has been held that, IBC is an complete Code in itself and in view of the provisions of Section 238 of the IBC, the provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force.



- 25.** Therefore, following the ratios of the above judgements of the Hon'ble Apex Court and Hon'ble NCLAT, the contention made by the Respondent in the Written submissions filed vide Dy.No.7156 dated 19.12.2024 to either dismiss the petition or for keeping it in abeyance is not acceptable and not tenable in law, since the order dated 16.12.2024 passed by the Hon'ble High Court of Karnataka is in proceedings with DRT under SARFAESI Act, and will not in any way effect these proceedings under Section 7 of the IBC, 2016.
- 26.** It would not be out of the place to mention here about the conduct of the CD. The entire discussion above on the instant petition shows that the CD is intentionally creating various obstacles by initiating multiple litigations and objections to stall the CIRP process under the Code, whereas it is established that there is a debt and a default on the part of the CD as discussed above. It is not just a bare admission from the CD at Para 4 of the objection but the submission of the OTS proposal by the CD itself constitutes acknowledgement of the debt and default. To top it all, the main premise on which petition under Section 10 was filed by the CD was for default in payment of outstanding dues to the Petitioners. In this connection it is pertinent to point out underlining principles and objectives behind the enactment of the Code which are explained by the ***Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. and Anr. V. Union of India and Ors. (2019) ibclaw.in 03 SC, order dt.25.01.2019*** wherein it was held that:

“12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interest of the corporate debtor have, therefore, been bifurcated and



separated from that of its promoters/ those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.....”

[Emphasis Supplied]

27. The same principle were reiterated in the judgment of **Arun Kumar Jagatramka v Jindal Steel & Power Ltd, 4 (2021) 7 SCC 474**. In which the **Hon'ble Apex Court** observed as under;

“40.....**Third**, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that **the timely resolution of corporate insolvency** is necessary to ensure the growth of credit markets and encourage investment. **Fourth**, in its diverse provisions, the IBC ensures **that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements....”**

[Emphasis Supplied]



28. Therefore, the underlined principles established in these judgments of the **Hon'ble Apex Court is that the basic principles and objective of enactment of Code is to ensure the revival of Corporate Debtor by protecting it from its own management and the interests of the Corporate Debtor have to be bifurcated from that of the promoters. It is also emphasized that the timeline provided for the resolution process to take place is to ensure that the Corporate Debtor's assets are not dissipated and further diluted so that the interests of the creditors and workers are protected**; ensuring the fast progression of the resolution process. In essence, the resolution process to be carried is not an adversial process for the Corporate Debtor, but in fact a beneficial legislation to protect the Corporate Debtor, its creditors, workers, etc; **however, simultaneously protecting the Corporate Debtor and its assets from its promoters/old management.**
29. The conduct of the CD in this case amply reflects that all the efforts have been made to create obstacles in smooth process of Insolvency proceedings. In the instant petition, when the matter was listed for hearing w.e.f 23.01.2024 and opportunity was granted to the Corporate Debtor, the representative of the CD itself did not appear before this Tribunal on 21.02.2024 and 05.03.2024. However, when the Tribunal reserved the matter for orders on 05.03.2024 in light of the admission of debt and default by the CD at Para-4 of the objection filed by the CD on 13.02.2024, the CD went to the Hon'ble High Court of Karnataka in W.P No. 12029/2024 seeking stay in the instant proceeding which was granted by the Hon'ble High Court vide order dated 25.04.2024. However, the Hon'ble High Court vide order dt.04.09.2024 directed this Tribunal to provide an opportunity to the CD and thereafter **to proceed in accordance with law**, which was duly and adequately granted to the Respondent as discussed above.
30. Further, after the matter was reserved for orders again on 04.12.2024 granting the opportunity to the respective parties to file brief Written



Submission within one week in not more than 3-4 pages, the Respondent has filed a Memo enclosing the order dated 16.12.2024 by the Hon'ble High Court of Karnataka in W.P No.24466/2024, and also requested in the detailed Written Submissions to dismiss the petition under Section 7, or in alternative keep the matter in abeyance till the writ petition decided by the Hon'ble High Court of Karnataka. However, as has already been discussed above, in accordance with various judicial precedents as decided by the **Hon'ble Apex Court in Jaipur Metals & Electricals (supra); Indian Overseas Bank vs. M/s. RCM Infrastructure Limited (supra) and by the Hon'ble NCLAT in State Bank of India vs. Abhijeet Ferrotech Limited (supra)**; the plea of the Respondent herein is not tenable and it is just to delay the proceedings under the I & B Code, which cannot be accepted in view of the above judgements.

- 31.** In view of the foregoing reasons, we are of the considered view that the debt and default are clearly established and therefore, the instant Petition is liable to be admitted. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt exceeding the threshold requirement of Rs.1 crore, the **Petition** is **admitted** in respect of the Corporate Debtor i.e. **M/s. Avishkar Innovative Private Limited** under Section 7 of the I&B Code, 2016. 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 off 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 (54 of 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 the moratorium period.*
- (f) The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, 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 the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority 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.*

32. The Financial Creditor in Part-III of Form-1 has proposed Mr. Ravindra Beleyur, a qualified insolvency professional as Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent of the said IRP in Form-2 dated 10.10.2022 along with Affidavit dated 12.10.2023 is placed on record, wherein, the IRP *inter alia* affirmed that he is eligible to be appointed as IRP in the case of Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

33. In view of the above, the Bench hereby appoints **Mr. Ravindra Beleyur**, bearing Regn. No. IBBI/PA-001/IP-00189/2017-2018/10368 residing at Shreevathsa, 428, 19th B Cross, 3RD Block Jayanagar, Bangalore - 560011, having Mobile: 9448146963, Email: ravi@beleyur.com **as an IRP**



of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. The IRP is also directed to file a copy of valid AFA within seven days from the date of receipt of copy of this Order.

- 34.** The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs 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.
- 35.** The Interim Resolution Professional shall after collation of all the claims received against the 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 Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 36.** A copy of the order shall be communicated to both the Parties. Ld. Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

Sd/-

K.BISWAL
MEMBER (JUDICIAL)