



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 43/KB/2023

A Company Petition filed 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:

UCO BANK

... Financial Creditor/ Petitioner

Versus

M/S. SARITA STEEL & POWER LIMITED

... Corporate Debtor/ Respondent.

Date of Pronouncement: December 19, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Financial Creditor: Mr. Santosh Kr. Ray, Adv.
Ms. Rituparna Sanyal, Adv.
Ms. Zeba Khan, Adv.
Ms. Muskan Saha, Adv.

For the Corporate Debtor: Mr. Shaunak Mitra, Adv.
Mr. Snehashish Sen, Adv.

ORDER

Per Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.
2. UCO bank, being Financial Creditor (Petitioner) has preferred this company petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" against M/s. Sarita Steel & Power Limited, being Corporate Debtor (Respondent)



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praying for initiation of corporate insolvency resolution process (CIR Process) in respect of the corporate debtor.

3. The total amount claimed to be in default is Rs. 178,00,81,925/- which includes the principal amount due is Rs. 88,01,53,707/- and the interest of Rs. 89,99,28,217/- as on 31.05.2022. The date of default is claimed as on 31.05.2014.

4. Brief facts of the case are that M/s. Sarita Steel & Power Limited, the corporate debtor herein is a corporate guarantor to the principal borrower M/s. Ankit Metal and Power Ltd who was granted certain credit facilities by the financial creditor UCO Bank in 2010. On default of such facilities, the account of the principal borrower was classified as Non-Performing Asset (NPA) on 28.08.2014. the UCO Bank had proceeded against the principal borrower and the corporate guarantors by issuing a demand notice under Section 13(2) of the SARFAESI Act, 2002, on 07.04.2018, for an outstanding dues amounting to a sum of Rs. 105,45,00,000/- as on 07.4.2018. However, both the principal borrower and the corporate debtor (corporate guarantor) herein had failed to pay and as such were jointly and severally liable to repay the outstanding dues. On such failure, the UCO Bank preferred this petition against the corporate debtor on 23.02.2023.

Submissions of the Financial Creditor:

5. Ld. Counsel appearing on behalf of the Petitioner UCO Bank (Petitioner) would submit that after default on part of the principal borrower, the financial creditor received several payments from the principal borrower from 2014 to 2018. Last payment by the principal borrower was made on 23.08.2018 for an amount of Rs.



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2,49,157/-. Further, the principal borrower has acknowledged its debt towards the financial creditor in its audited balance sheet for the years 2019-20, 2020-21, and 2021-22. Copies of the audited balance sheets are annexed at pages 553-924 to the petition.

6. Ld. Counsel appearing on behalf of the Petitioner would further submit that on 11.03.2019, the financial creditor filed an original application before the DRT-I, Kolkata under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, against the principal borrower and its guarantors including the corporate debtor herein, being O.A. No. 72 of 2021. The application is pending for adjudication. Further, the financial creditor approached this Adjudicating Authority by preferring a company petition under Section 7 of the I&B Code, 2016 being C.P. (IB) No. 236/KB/2022 against the principal borrower on 16.08.2022.

7. It is stated that the Financial Creditor has provided a detailed chart in respect of credit facilities granted in favour of the principal borrower and its guarantors including accrued interest and penalty, as under:

Nature of Facility	Outstanding	Accrued Interest	Total Dues
Cash Credit	471931697.72	467843116.16	939774813.88
FITL	99831425.14	105667187.00	205498612.14

WCTL	308390584.66	326417914.34	634808499.00
Total	880153707.52	899928217.5	1780081925.02



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8. It is therefore urged that the petition be admitted.

Submissions of the Corporate Debtor:

9. *Per contra*, Ld. Counsel appearing on behalf of the corporate debtor Sarita Steel & Power Limited would submit that the claim of the petitioner is barred by limitation as the corporate guarantee was invoked over three years back and an application for recovery of the alleged debt under Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was filed by the Petitioner before the Ld. DRT on or about March 2019.

10. Ld. Counsel appearing on behalf of the corporate debtor would further submit that the Section 7 petition against the principal borrower has been preferred by the petitioner which is pending adjudication before this Adjudicating Authority. In view of such, this present petition is not maintainable as law does not promote multiple debt resolution arising out of the same cause of action in respect to the same debt.

11. Ld. Counsel for the corporate debtor would contend that the alleged date of default as indicated in this petition is 31.05.2014 and this petition has been preferred on 23.02.2023, much beyond the statutory period of three years as enumerated under Article 137 of the Limitation Act, 1963.

12. Further, Ld. Counsel for the corporate debtor would contend that the present petition has purportedly been filed on the strength of a Deed of Corporate Guarantee dated 09.12.2014, which stood invoked over three years prior to the institution of the instant



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petition and is being pursued before a competent forum. The said guarantee agreement is a separate and an independent contract and having been invoked then for initiation the recovery proceeding before the Ld. DRT, cannot now be reagitated before another competent forum after expiry of the limitation period.

13. We have considered the rival contentions and perused the records.

Analysis and Findings:

14. We find that the account of the principal borrower was classified on 28.08.2014 and the date of default is claimed as on 31.05.2014. We would note that payments were made in part by the principal borrower, on 08.11.2014, 27.01.2015, 30.06.2015, 05.10.2015, 09.02.2018, 25.06.2018 and lastly on 23.08.2018. The details evincing the payment deposited by the principal borrower in favour of the petitioner are annexed at pages 941-946 to the petition. We also note that the last payment was done by the principal borrower for an amount of Rs. 2,49,157/-.

15. As per Section 19 of the Limitation Act, 1963, “**Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.**”

16. We would note that the principal borrower in its balance sheets for the year ending 2020, 2021 and 2022, has acknowledged the debt and liability towards financial creditor. We would refer the



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relevant pages of the balance sheets for the year ending 2020, 2021 and 2022, as under:

Annexure "A" to the Independent Auditors' Report

There were no other dues of duty which have not been deposited as at 31st March, 2020 on account of dispute.

(viii) Based upon the audit procedures performed and according to the records of the Company examined by us and the information and explanation given to us, the Company has defaulted in payment of interest and repayment of principal on borrowings to banks as follows:

In case of Long-Term Borrowings

Particulars	Nature	Principal	Interest (Net of Reversal)	Period of Default
UCO Bank	FITL	729.00	109.60	October'15 to March'20
Syndicate Bank		189.00	125.65	October'15 to March'20
Corporation Bank		1,125.00	266.46	January'16 to March'20
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		9,640.00	719.65	October'15 to March'20
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		576.00	72.32	October'15 to March'20
TOTAL		12,259.00	1,293.68	
UCO Bank	WCTL-1	750.00	174.48	February'16 to March'20
Syndicate Bank		176.00	278.13	February'16 to March'20
Corporation Bank		4.00	6.32	March'16 to March'20
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		2,743.00	748.61	December'15 to March'20
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		54.00	12.52	November'15 to March'20
TOTAL		3,727.00	1,220.06	
UCO Bank	WCTL-2	288.00	71.42	February'16 to March'20
Corporation Bank		297.00	483.71	March'16 to March'20
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		3,212.00	81.27	January'16 to March'20
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		260.00	60.47	December'15 to March'20
TOTAL		4,057.00	696.87	
Corporation Bank	Term Loan	1,426.00	2,477.50	November'15 to March'20
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		11,855.00	2,124.01	November'15 to March'20
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		714.00	166.04	December'15 to March'20
Financial Institution - Alchemist Asset Reconstruction Company Ltd.		47.74	-	October'14 to March'20
TOTAL		14,042.74	4,767.55	
GRAND TOTAL		34,085.74	7,978.15	



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In case of Long-Term Borrowings

(₹ in Lacs)

Particulars	Nature	Principal	Interest (Net of Reversal)	Period of Default
UCO Bank	FTL	888.72	109.60	October, 15 to March, 21
Syndicate Bank		208.43	164.16	October, 15 to March, 21
Corporation Bank		1,418.17	385.16	January, 16 to March, 21
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		11,875.79	719.65	October, 15 to March, 21
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		705.40	72.32	October, 15 to March, 21
TOTAL		15,096.50	1,450.88	
UCO Bank	WCTL-1	2,018.00	174.48	February, 16 to March, 21
Syndicate Bank		500.00	365.84	February, 16 to March, 21
Corporation Bank		11.00	7.50	March, 16 to March, 21
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		3,918.00	748.61	December, 15 to March, 21
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		77.00	12.52	November, 15 to March, 21
TOTAL		6,524.00	1,308.95	
UCO Bank	WCTL-2	820.00	71.42	February, 16 to March, 21
Corporation Bank		848.00	574.08	March, 16 to March, 21
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		4,587.00	81.27	January, 16 to March, 21
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		372.00	60.47	December, 15 to March, 21
TOTAL		6,627.00	787.24	
Corporation Bank	Term Loan	5,500.00	3,057.18	November, 15 to March, 21
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		16,935.00	2,124.01	November, 15 to March, 21
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		1,020.00	166.04	December, 15 to March, 21
Financial Institution - Alchemist Asset Reconstruction Company Ltd.		104.36	-	October, 14 to March, 21
TOTAL		23,559.36	5,347.23	
GRAND TOTAL		51,806.86	8,894.31	



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In case of Long-Term Borrowings

Particulars	Nature	Principal	Interest (Net of Reversal)	Period of Default
UCO Bank	FITL	889.72	109.60	October, 15 to March, 22
Syndicate Bank		208.43	26.91	October, 15 to March, 22
Corporation Bank		1,418.17	385.16	January, 16 to March, 22
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		11,875.79	719.65	October, 15 to March, 22
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		705.40	72.32	October, 15 to March, 22
TOTAL		15,096.51	1,313.64	
UCO Bank	WCTL-1	2,018.00	174.48	February, 16 to March, 22
Syndicate Bank		500.00	416.25	February, 16 to March, 22
Corporation Bank		11.00	7.50	March, 16 to March, 22
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		5,484.00	748.61	December, 15 to March, 22
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		108.00	12.52	November, 15 to March, 22
TOTAL		8,121.00	1,359.36	
UCO Bank	WCTL-2	820.00	71.42	February, 16 to March, 22
Corporation Bank		848.00	574.08	March, 16 to March, 22
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		6,422.00	81.27	January, 16 to March, 22
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		521.00	60.47	December, 15 to March, 22
TOTAL		6,627.00	787.24	
Corporation Bank	Term Loan	5,500.00	3,057.18	November, 15 to March, 22
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		22,833.50	2,124.01	November, 15 to March, 22
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		1,378.00	166.04	December, 15 to March, 22
Financial Institution - Alchemist Asset Reconstruction Company Ltd.		124.45	-	October, 14 to March, 22
TOTAL		29,835.95	5,347.23	
GRAND TOTAL		61,664.46	8,807.47	

In case of Short-Term Borrowings

Particulars	Nature	Principal	Interest (Net of Reversals)	Period of Default
Corporation Bank	Cash Credit	1,290.59	1,069.63	December, 15 to March, 22
Syndicate Bank		2,276.63	3221.07	November, 15 to March, 22
UCO Bank		4,129.27	590.03	September, 15 to March, 22
Financial Institution - Rare Asset Reconstruction Ltd. (RARE)		1,461.80	141.63	October, 15 to March, 22
Financial Institution - Asset Care & Reconstruction Enterprises Ltd. (ACRE)		25,171.11	2,209.14	September, 15 to March, 22
TOTAL		36,329.50	7,231.50	

17. It is settled principle of law that acknowledgment made by the principal borrower shall tantamount to acknowledgment made by the corporate guarantor and shall extend the period of limitation under Section 18 of the Limitation Act, 1963.



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18. In **Laxmi Pat Surana v. Union Bank of India**, reported in **(2021) 8 SCC 481: 2021 SCC OnLine SC 267 (page 504)**, the Hon'ble Apex Court observed that:

*“44. In the present case, NCLT as well as NCLAT have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor-corporate debtor after declaration of NPA from time to time and lastly on 8-12-2018. **The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee** and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary.”*

(Emphasis Added)

19. Further, in **Pooja Ramesh Singh v. SBI**, in **Company Appeal (AT) (Insolvency) No.329 of 2023**, the Hon'ble NCLAT observed that:

*“24. **The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression ‘due’ occurring in Section 3(11) uses two additional expressions i.e “payable” and “is**”*



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not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. **As laid down by the Hon'ble Supreme Court in "Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra), a guarantor's liability depends on terms of his contract.** There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."

(Emphasis Added)

20. Further, on the proposition that the acknowledgment of debt and liability in the balance sheet extends limitation under Section 18 of the Limitation Act, 1963, we would rely on the ratio held in **Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, reported at (2021) 6 SCC 366**, that:

"40. In CIT v. Shri Vardhman Overseas Ltd. [CIT v. Shri Vardhman Overseas Ltd., 2011 SCC OnLine Del 5599 : (2012) 343 ITR 408] , the Delhi High Court held : (SCC OnLine Del para 17)

"17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31-3-2002. **The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgment in writing.** It says where before the expiration of the



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*prescribed period for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgment was so signed. In an early case, in England, in Jones v. Bellgrove Properties Ltd. [Jones v. Bellgrove Properties Ltd., (1949) 2 KB 700 : (1949) 2 All ER 198 (CA)] , **it was held that a statement in a balance sheet of a company presented to a creditor shareholder of the company and duly signed by the Directors constitutes an acknowledgment of the debt.** In Mahabir Cold Storage v. CIT [Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402] , the Supreme Court held : (Mahabir Cold Storage case [Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402] , SCC p. 409, para 12)*

‘12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt.’

In several judgments of this Court, this legal position has been accepted. In Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma [Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma, 1997 SCC OnLine Del 238 : (1997) 67 DLT 13] , S.N. Kapoor, J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgment. In Larsen & Toubro Ltd. v. Commercial Electric



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*Works [Larsen & Toubro Ltd. v. Commercial Electric Works, 1997 SCC OnLine Del 144 : (1997) 67 DLT 387] a Single Judge of this Court observed that **it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgment within the meaning of Section 18 of the Limitation Act.** In Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd. [Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd., 1998 SCC OnLine Del 360 : (1998) 73 DLT 593] , the same view was taken. The last two decisions were cited by Geeta Mittal, J. in S.C. Gupta v. Allied Beverages Co. (P) Ltd. [S.C. Gupta v. Allied Beverages Co. (P) Ltd., 2007 SCC OnLine Del 655 : (2009) 163 DLT 495] and **it was held that the acknowledgment made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act.** In Ambica Mills Ltd. v. CIT [Ambica Mills Ltd. v. CIT, 1963 SCC OnLine Guj 26 : (1964) 54 ITR 167] , **it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgment for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgment is made need not be addressed to the creditors.** In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31-3-2002 of the accounts of the sundry creditors' amounts to an acknowledgment of the debts in their favour for the purposes of Section 18 of the Limitation Act. The*



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assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law."

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44. *In Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies [Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies, 2018 SCC OnLine Del 12116], the Delhi High Court held : (SCC Online Del paras 5-6)*

"5. In Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd. [Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd., 2013 SCC OnLine Del 2535 : (2013) 202 DLT 735] this Court held as follows:

'7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgment of the debt and has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963. However, I may refer to only one decision of the learned Single Judge of this Court (Manmohan, J.) in *Bhajan Singh Samra v. Wimpy International Ltd.* [*Bhajan Singh Samra v. Wimpy International Ltd.*, 2011 SCC OnLine Del 4888 : (2011) 185 DLT 428 : (2012) 173 Comp Cas 455] for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the petitioners. This judgment entirely supports the petitioners on this point.'



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6. In view of the legal position spelt out in judgments noted above, the acknowledgment of the debt in the balance sheet extends the period of limitation. The acknowledgment is as on 31-3-2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed.”

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48. On the facts of this case, NCLT, by its judgment dated 19-2-2020, recorded **that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor.**

As a result, NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of NCLAT dated 12-3-2020 [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417], and the impugned judgment of NCLAT dated 22-12-2020 [Bishal Jaiswal v. Asset Reconstruction Co. (India) Ltd. Company Appeal (AT) (Insolvency) No. 385 of 2020, decided on 22-12-2020 (NCLAT)] in paras 46 and 47. This appeal is, therefore, allowed, and the matter is remanded to NCLAT to be decided in accordance with the law laid down in our judgment.”

(Emphasis Added)

21. Further, it is a settled position of law that to consider a Section 7 petition, the Adjudicating Authority has merely to examine the factors that the ‘debt’ along with the interest if any is disbursed against the time value of money by the creditor and



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‘default’ on part of the debtor. We draw support from the Hon’ble Apex Court’s definition of “Financial Debt” to initiate Corporate Insolvency Resolution process, which is as under:

(a) In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* reported in (2019) 8 SCC 416, it was held that:

“any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money.”

(Emphasis added)

(b) In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited* reported in (2020) 8 SCC 401, it was held that:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) it was held that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) **there should be a 'debt'** (ii) **'default' should have occurred** (iii) **debt should be due to 'financial creditor'** and (iv) **such default which has occurred should be by a 'corporate debtor'...**”

(Emphasis added)

(d) In *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017, it was held that:



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“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

XXX XXX XXX XXX

“30. On the other hand, as we have seen, in the case of a 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. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis added)

22. Thus, in terms of the above discussions, we are of the view that the present petition is complete in all respects and not barred by limitation. There exists a ‘debt’ that is due and payable. Further, the amount claimed to be in default is far in excess to the threshold limit as prescribed under Section 4 of the I&B Code.

23. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 43/KB/2023** filed under **Section 7 of the I&B Code**, and accordingly, we order the



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initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **UCO BANK (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/S. SARITA STEEL AND POWER LIMITED (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (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 into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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 possession of the Corporate Debtor.*



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[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Mr. Kanchan Dutta”**, Address: Chatterjee International Center, 17th Floor, Room No. 13, 33A J.L. Nehru Road, Kolkata – 700071, Email ID: kdutta.ip@gmail.com, having registration no. IBBI/IPA-001/IP-P00202/2017-18/10391, as the **Interim Resolution Professional (IRP)**. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, annexed as Annexure A-3 at Pages 38-40 to this application. There is a declaration



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made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Kanchan Dutta”** as per the requirement of the IBBI Regulations. Hence, we appoint **“Mr. Kanchan Dutta”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B 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 I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



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- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).



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- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, 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.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.



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24. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

25. Post the Company Petition on **04 / 02/ 2025** for hearing the Periodical Progress Report by the IRP/RP as appointed herein.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 19th Day of December 2024.

Bose, R. K. [LRA]