



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

Company Petition (IB) No. 60/KB/2024

***A Petition 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:

IDBI Bank Limited

... Financial Creditor/ Petitioner.

Versus

Saumya Mining Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: August 20, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

**For the Petitioner: Mr. Shaunak Mitra, Adv.
 Mr. Arun Kumar Mishra, Adv.
 Mr. Shantanu Mishra, Adv.**

**For the Respondent: Mr. Rohit Das, Adv.
 Ms. Kishwar Rahman, Adv.
 Ms. Divya J. Tekriwal, Adv.
 Ms. Sristi Roy, Adv.**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court congregated through a blended mode.

- 2.** The Learned Counsel Mr. Shaunak Mitra, appearing on behalf of the Petitioner and the Learned Counsel Mr. Rohit Das appearing on behalf of the Respondent were heard at length.

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

Company petition (IB) No. 60/KB/2024

3. This is a petition preferred by IDBI Bank Limited, hereinafter referred to as “Financial Creditor”/ “Petitioner” under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” against Saumya Mining Limited, hereinafter referred to as “Corporate Debtor”/ “Respondent” seeking a direction to commence the Corporate Insolvency Resolution Process, for brevity “CIR Process” in respect of the Corporate Debtor herein.

4. The total amount claimed to be in default is Rs. 1,61,10,69,200/- as on May 01, 2023, along with interest. The date of Default is claimed as on June 03, 2015.

Factual Matrix:

5. That, at the request made by the Corporate Debtor, the Financial Creditor sanctioned the financial assistance of cash credit facility of Rs. 2 Crore and the bank guarantee/ letter of credit facility of Rs. 30 Crore, aggregating an amount of Rs. 32 Crore on 11.12.2009, and the same was modified on 11.12.2009 and 21.07.2010. The same were duly accepted by the Corporate Debtor.

6. That, the Corporate Debtor vide its board resolution on 21.07.2010, accepted the borrowing and authorized the board of directors to execute the necessary loan and security documents on behalf of the Corporate Debtor. Further, in the said board resolution, the Corporate Debtor requested the directors to furnish personal guarantee and requested Padmavati Abasan Private Limited and Omega Knitfab Private Limited to create pledge of share equivalent to 30% of the shares held by them in the Corporate Debtor Company respectively to secure the financial facility.

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

Company petition (IB) No. 60/KB/2024

7. That, to secure the financial facility, the Corporate Debtor modified the charge in favour of the Financial Creditor under Section 125 of the Companies Act, 2013, with the Registrar of Companies on 06.07.2013.

8. That, the Corporate Debtor further approached the Financial Creditor for renewal of the financial assistance availed by the Corporate Debtor and accordingly the Financial Creditor on 05.09.2014 renewed the credit facilities with an aggregated limit of Rs. 51.83 Crore, which includes a cash credit account limit of Rs. 13.72 Crore and bank guarantee limit of Rs. 38.11 Crore, subject to the terms and conditions. The Corporate Debtor through its board resolution on 06.09.2017 duly accepted the renewal of the financial facility by the Financial Creditor and authorized its directors to convey the acceptance of the said sanction to the Financial Creditor.

9. That, after renewal of the financial facilities, the Corporate Debtor started defaulting the payment of the interest and the same was communicated to the Corporate Debtor on 26.12.2014, 29.12.2014, 22.01.2015, and 02.03.2015, and asked the Corporate Debtor and its directors to regularize the account, as otherwise the financial facility would turn into Non- Performing Asset (NPA).

Contentions of the Petitioner:

10. The Learned Counsel Mr. Mitra appearing on behalf of the Petitioner would submit that leaving no stone unturned, the account of the Corporate Debtor was classified as NPA on 30.01.2015 in terms of the guideline catered to by the Reserve Bank of India. The Financial Creditor issued a loan recall notice on 03.06.2015, annexed at pages 100-104 to the Petition, demanding a sum of Rs. 37,56,38,847/- as on

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

Company petition (IB) No. 60/KB/2024

01.06.2013, which includes the total outstanding in the said loan facility with interest at the contractual rates, due and payable by the Corporate Debtor. The Corporate Debtor was also advised to substitute the Bank Guarantee/ Letter of Credit to the tune of Rs. 5,00,20,983/- or deposit the equivalent amount with the Financial Creditor to mark a lien on the same during the validity of the said BG/LC.

11. It is submitted that upon receipt of the loan recall notice on 03.06.2015, the Corporate Debtor paid a sum of Rs. 11,92,638/-. No further payment after that was made by the Corporate Debtor as well as its Guarantors.

12. Further, it is submitted the Financial Creditor issued a notice on 20.06.2015, annexed at pages 152-155 to the petition, invoking the personal guarantee of the instant financial facility as well as calling upon the said guarantors to repay the outstanding dues.

13. It is contended that the Financial Creditor issued a letter on 20.06.2015, annexed at pages 140-142 to the petition, addressed to Saumya Jain invoking or redeeming the mortgage and called upon him to make the payment of the outstanding dues in capacity as Mortgagors. However, the mortgagors did not discharge their liability and have failed to pay the amount due to the Financial Creditor.

14. The Learned Counsel for the Petitioner would contend that as the financial position of the Corporate Debtor was deteriorating and there was no scope for payment of its dues and the Corporate Debtor was given several reminders and time to repay the debt, the Financial Creditor was constrained to issue a notice on 20.06.2015, annexed at pages 144-146 to the petition, calling upon M/s. Padmavati Abasan Private Limited

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

Company petition (IB) No. 60/KB/2024

to make the payment of the outstanding dues in their capacity as a pledge, otherwise the Financial Creditor would initiate the sale of the shares pledges by M/s. Padmavati Abasan Private Limited.

15. It is further contended that the Financial Creditor in its capacity of secured creditor, initiated proceedings under the SARFAESI Act, 2002, for recovery of a sum of Rs. 37,56,38,847/- as on 01.06.2015, with further interest at the contractual rate till the full realization. The Financial Creditor in terms of the SARFAESI Act, 2002, sold certain properties for the realization of the said debt.

16. It is asserted that after adjustment of the amount realized from the sale of such property, the amount due and payable to the Financial Creditor is Rs. 1,61,10,69,200/- as on May 01, 2023, with interest.

Per contra, submissions made by the Respondent:

17. The Learned Counsel Mr. Das appearing on behalf of the Corporate Debtor would vehemently deny the contentions of the Petitioner and submit that as per the Loan Recall Notice dated 03.06.2015, annexed at pages 100-104 to the Petition, the admitted date of alleged debt is on 01.06.2015, and the present petition has been preferred on 16.10.2023, far beyond the prescribed limitation period. Thus, the petition is time-barred and barred under the principles of waiver, acquiescence, estoppel, delay and laches. That, the Financial Creditor, arbitrarily and without any basis, has inflated the amount of outstanding debt to the tune of Rs. 1,61,10,69,200/- as on May 01, 2023.

18. The Learned Counsel Mr. Das alleged that the amount claimed under the Loan Recall Notice on 03.06.2015, was recovered by

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

Company petition (IB) No. 60/KB/2024

the Financial Creditor by illegally selling the mortgaged properties which had been mortgaged by the Corporate Debtor to secure the loans or financial facilities, in gross breach of the statutory provisions of the SARFAESI Act, 2002, and the Security Interest (Enforcement) Act, 2002, without providing any notices of the date and time of any auction/ tender/ bid for the purposes of the alleged sale of the mortgaged properties. It is submitted that pursuant to the illegal selling of the mortgaged properties, the loans/ credit facilities availed of long back by the Corporate Debtor stood fully satisfying upon sale of the mortgaged properties and at any event, if any balance amounts were due to the Financial Creditor from the Corporate Debtor under the said Loan Recall Notice dated June 03, 2015, such claims are hopelessly barred by limitation.

19. It is contended that the Financial Creditor has failed to show any breakup or any detailed calculation of the said outstanding amount in the Loan Recall Notice dated June 03, 2015. Further, all the loans/ credit facilities alleged herein were availed by the Corporate Debtor long back from the Financial Creditor were terminated and recalled through the said Loan Recall Notice dated June 03, 2015, whereby the Financial Creditor had already terminated the entire facilities/ loans and recalled the same availed of by the Corporate Debtor. Since then, no further loans/ credit facilities have been availed by the Corporate Debtor from the Financial Creditor. Further, the amount demanded through the said Loan Recall Notice dated June 03, 2015, was already recovered by the Financial Creditor illegally selling the properties that had been mortgaged by the Corporate Debtor to secure the loans/ financial facilities. It is further alleged that the properties were arbitrarily sold without following the due process of law and till date, the Financial Creditor has not



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

Company petition (IB) No. 60/KB/2024

disclosed the details of the assets or properties sold or adjusted to the outstanding amount of debt claimed in the present petition. It is claimed that the said Loan Recall Notice dated June 03, 2015, is untenable in the eye of law.

In counter, the Petitioner would submit:

20. That, the Financial Creditor sanctioned the credit facilities of Rs. 32 Crore through the sanction letter dated 11.12.2009 and modified sanctioned letters dated 11.12.2009 and 21.07.2010 which was secured by the collaterals and personal guarantee and defaulted in repayment, the account of the Corporate Debtor was classified NPA on 30.01.2015.

21. That, the present petition is well within the prescribed period of limitation as the Corporate Debtor acknowledges the debt due and payable by the Corporate Debtor to the Financial Creditor and the same is apparent in its Balance sheets for the year 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21, which are annexed at pages 762-854 to the petition. The Learned Counsel for the Petitioner would submit that the law is now well-settled that the entries in the balance sheet would amount to an acknowledgement of debt and the limitation period to apply for insolvency is renewed by three years every time a corporate debtor makes an entry in its balance sheet of the debt owed to the financial creditor. Reliance is placed on the judgments rendered by the Hon'ble Apex Court in ***Axis Bank v. Naren Seth & Anr.*** dated 12.09.2023 in CA No. 2085/2022 and in ***ARC (India) Ltd. v. Bishal Jaiswal & Anr.*** dated 15.04.2021 in CA No. 323 of 2021.

22. The Learned Counsel Mr. Mitra further submits that apart from the acknowledgement in balance sheets, the Corporate Debtor has also acknowledged its debt in its letters dated 08.01.2020 and

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

Company petition (IB) No. 60/KB/2024

24.02.2020 to the Financial Creditor offering for a one-time Settlement (OTS) of its dues. The Copies of the said letters are annexed at pages 8 and 9 to the Rejoinder Affidavit dated 26.07.2024.

23. It is further contended that the Corporate Debtor had executed various agreements viz. Facility Agreement dated 21.07.2010, the Deed of Hypothecation dated 21.07.2010, Irrevocable Guarantee Agreements dated 21.07.2010 by the directors i.e., Mr. Ashok Jain and Ajay Jain and Personal Guarantee of Pradnya Jain. Post NPA, the Financial Creditor had issued a Loan Recall Notice on 03.06.2015, a Notice of Invocation of Personal Guarantee on 20.06.2015 and a Demand Notice under Section 13(2) of the SARFAESI Act, 2002 on 29.05.2015. a Recovery Suit being OA No. 306 of 2016 has been preferred before the Learned DRT, Kolkata – I, on 05.05.2016, for recovery of the Bank dues which is public money. The matter is presently under consideration before the Learned DRT Kolkata. The Financial Creditor has preferred this petition for recovery of the entire outstanding amount as per the terms of the said credit facilities from the Corporate Debtor and as per the agreed terms, the total outstanding debt of the Corporate Debtor is Rs. 1,61,10,69,200/- as on 01.05.2023. Thus, the present petition is well maintainable as per law and well within the period of limitation.

24. We have noted and duly considered the rival contentions of the parties and perused the documents available to us.

Moot Points to be considered and discussed:

25. We have noted the foundation of argument made by the Learned Counsel appearing on behalf of the Respondent which covers mainly two moot points as under:



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

Company petition (IB) No. 60/KB/2024

- a) *On Limitation; and,*
- b) *On the debt claimed be in default has already been recovered by selling the properties in mortgaged by the Corporate Debtor illegally.*

Analysis and Findings:

26. On the first issue, i.e., ***on limitation***, the Learned Counsel for the Corporate Debtor has claimed that the present petition is not maintainable, as the same is time-barred. It is claimed that the alleged debt claimed to be in default is on 01.06.2015, as per the Loan Recall Notice dated 03.06.2015. Further, the date on which the debt fell due is also claimed as on June 03, 2015. In response to this contention, the Learned Counsel for the Financial Creditor would submit that the Corporate Debtor in its own balance sheets for the year 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21, has acknowledged its liability towards the debt obtained from the Financial Creditor herein.

27. The Audited Balance Sheets of the Corporate Debtor as of 31st March 2018 to 31st March 2021 are available with us and the same are annexed at pages 762-854 to the Petition. It is evident from those Balance Sheets and the Independent Auditor's Report to those Balance Sheets that since 2017 to 2021, the Corporate Debtor has acknowledged its debt and default in repayment of the dues towards the Financial Creditor. For the sake of convenience, we herein provide the details of the Cash Credit with IDBI Bank, Financial Creditor herein and the default in repayment of the same, in a tabular form, which is as under:



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

Company petition (IB) No. 60/KB/2024

SN	Particulars	Cash available with Financial Creditor (IDBI Bank)	Relevant pages of the Petition
1.	Balance Sheet as of 31 st March 2017 <i>Note: 2.5 – Short Term Borrowings [Secure]</i>	Rs. 43,62,12,518/-	Page No. 770
2.	Balance Sheet as of 31 st March 2018 <i>Note: 2.5 – Short Term Borrowings [Secure]</i>	Rs. 43,62,12,518/-	Page No. 770
3.	Balance Sheet as of 31 st March 2019 <i>Note: 2.5 – Short Term Borrowings [Secure]</i>	Rs. 42,14,06,144/-	Page No. 787
4.	Balance Sheet as of 31 st March 2020 <i>Note: 2.5 – Short Term Borrowings [Secure]</i>	Rs. 42,14,06,144/-	Page No. 818
5.	Balance Sheet as of 31 st March 2021 <i>Note: 2.5 – Short Term Borrowings [Secure]</i>	Rs. 42,14,06,144/-	Page No. 846

28. We find that the debt and default on part of the Corporate Debtor towards the Financial Creditor IDBI Bank, acknowledges continuously in the Balance Sheets is far excess to the prescribed threshold limit as per Section 4 of the I&B Code.

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

Company petition (IB) No. 60/KB/2024

29. To determine whether the entries of the cash credit in balance sheet tantamounts to acknowledgement of liability towards the debt obtained from the creditor, we would refer to the judgment rendered by the Hon'ble Apex Court, in **Axis Bank Limited vs. Naren Sheth** reported in **(2024) 1 SCC 679: MANU/SC/1017/2023**, (relied upon by the Petitioner) wherein the Hon'ble Apex Court has observed that:

"24. A balance sheet acknowledging debt is also a document relevant for calculating the limitation. This has already been held in case of Asset Reconstruction Co. India Ltd. (supra). In all the above cases, what has been elaborately discussed is the 'purposive interpretation of the statute' to advance the cause of justice.

xxx

xxx

xxx

27. The case laws relied upon on behalf of the Appellant are on three points as already noted above. The same are briefly discussed hereunder:

(a) First point on which case laws have been referred to is that a time barred application cannot be entertained Under Section 7 IBC. The same would not be relevant or of any help to the Appellant as it has already been held that the application of Respondent No. 2 would be entitled to benefit of Sections 5 and 18 of the Limitation Act and, therefore, was within time.

(b) The second point on which case laws have been referred to was that no benefit could be claimed Under Section 14 of the Limitation Act. These case laws are also not of any relevance as it has been held above that no benefit could be claimed by Respondent No. 2 under the said provision.

(c) The third point on which case law is relied upon is that for benefit Under Section 18 of the



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

Company petition (IB) No. 60/KB/2024

Limitation Act, the acknowledgment should be made within expiry of the limitation provided under law. On this point it has been factually found that taking the date of acknowledgment of debt in Balance Sheet and the three OTS proposals the same were within the limitation under law or the extended limitation due to acknowledgments. Thus the case laws relied upon would have no relevance in the facts of the present case.”

(Emphasis Added)

30. Further, in ***Zest Systems Pvt. Ltd. vs. Center for Vocational and Entrepreneurship Studies*** reported in **2018 SCC OnLine Del 12116: MANU/DE/4093/2018**, wherein the Hon’ble Delhi High Court observed as under:

“5. In ***Shahi Exports Pvt. Ltd. vs. CMD Buildtech Pvt. Ltd. (supra)*** 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 acknowledgement 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.* 185 (2011) DLT 428 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.”

6. In view of the legal position spelt out in judgments noted above, the acknowledgement of the debt in the



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

Company petition (IB) No. 60/KB/2024

balance sheet extends the period of limitation. The acknowledgement is as on 31.3.2015. This suit is filed in 2017. The suit is clearly within limitation The present application is allowed.”

(Emphasis Added)

31. Thus, from the ratio laid down in ***Axis Bank Limited (Supra)***, ***Zest Systems (Supra)*** and ***Shahi Exports (Supra)***, we would infer that a balance sheet indicating the cash credit availed from a lender have an effect of acknowledgement of debt is also relevant for calculating limitation. We find that the Loan Recall Notice was issued by the Financial Creditor on 03.06.2015, and irrefutably as per the record available with us, the Corporate Debtor, since 2017 to 2021, has acknowledged its liability towards the outstanding debt obtained from the Financial Creditor in its own Balance Sheet. Further, this Petition has been filed on 16.10.2023, which is evidently well within the period of limitation. It is established that the debt acknowledged in the balance sheets is more than the prescribed threshold limit. Thus, the present petition is maintainable in terms of limitation and prescribed threshold limit as per Section 4 of the I&B Code.

32. Now, coming to the issue whether ***the debt claimed be in default has already been recovered by selling the properties in mortgaged by the Corporate Debtor illegally***, we find no documents have been placed to substantiate that the alleged mortgaged properties were sold, and recovery of the full amount has been done by the Financial Creditor. The Learned Counsel for the Petitioner submits that the Financial Creditor has initiated as a proceeding against the Corporate Debtor under SARFAESI Act, 2002, before the Learned DRT Kolkata. We find that simultaneous proceedings under SARFAESI Act, 2002, as well



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

Company petition (IB) No. 60/KB/2024

as under I&B Code, 2016, shall not have any bar statutorily. We would refer to the judgment of the Hon'ble NCLAT in ***Harkirat S. Bedi vs. Oriental Bank of Commerce*** reported in **MANU/NL/0207/2019**, wherein it was held that:

*“6. From the aforesaid finding, it is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s. 7 of the I&B Code is maintainable. **Mere pendency of the case before the DRT for adjudicating of such disputed amount cannot be a ground to reject the application u/s. 7 of the I&B Code,** if the Adjudicating Authority is satisfied that there is a 'debt' and 'default' and the application is complete. On the other hand, in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed "during the period of moratorium."*

(Emphasis Added)

Further, in ***Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd*** in **Company Appeal (AT) (Insolvency) No. 854 of 2019**, it was also observed that:

“9. In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force.

(Emphasis Added)



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

Company petition (IB) No. 60/KB/2024

33. Be that as it may, if the recovery would have been done by selling the mortgaged properties of the Corporate Debtor, then there would not have been any acknowledgment in balance sheets concerning the “debt and default” on part of the Corporate Debtor.

34. We find that the petitioner has supplied the bank statement annexed at pages 880-929 to the petition, to substantiate the disbursement of debt and default on part the Corporate Debtor. Further, we note the **NeSL Report dated 01.07.2022**, supplied by the Petitioner in terms of Record of Default registered with Information Utility which clearly shows the ‘debt’ disbursed by the Financial Creditor and ‘default’ on part of the Corporate Debtor. For sake for convenience, we reproduce the NeSL Report as under:



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

Company petition (IB) No. 60/KB/2024



NATIONAL E-GOVERNANCE SERVICES LIMITED

India's First Information Utility

राष्ट्रीय ई-गवर्नेंस सर्विसेज लिमिटेड

Record of Financial Information - Form C

Unique Debt Identifier: AABC18842G_135655100000842

Submission ID: 2

Submitted by IDBI BANK

Information as on 01/07/2022

Submitter Information

Name	IDBI BANK	UIN (PAN)	AABC18842G
Relationship	creditor	Email ID - Default Alert	*****@idbi.co.in

Other Party Details

Debtor

Name	SAUMYA MINING LTD	Relationship	debtor
Regd. / Permanent Address	BJ-311, Sector-II, Salt Lake City, Kolkata	Regd. Address PIN	700091
Billing / Comm. Address	BJ-311, Sector-II, Salt Lake City, Kolkata	Comm. Address PIN	700091
Legal Constitution	PVT	DOI / DOB	01/01/1970
PAN	AADCS5050J	MSME Flag	N
Email ID	ajaysmpl@gmail.com	Alternative Email ID	rewa@saumyaminig.com

Debt Information

Type of debt	financial	Debt Reference No.	135655100000842
Debt Contract Date	17/06/2014	Debt Start Date	26/07/2010
Debt Currency	INR	Sub Type - Debt	CCOD
Funded Type	Funded	Security Flag	secured
Sanctioned Amount	137200000	Facility Name	CORP-CASH CREDIT
Rate of Interest	13.15	Lending Arrangement	mba
Total Outstanding Amount	1165686602.53	Amount Overdue	1165686602.53
Principal Outstanding	137200000	Interest Outstanding	1028486602.53
Days Overdue	2709	Account Closed Flag	no
Part-A Remarks	NPA Date: January 30, 2015. Default details are in INR		

Security Information

Security 1

Date of Security Interest Creation	08/01/2014	Type of Charge Created	Guarantee
Assets Type	Not Classified	Security Type	OTHA
Security Category	primary	Description of Security	GUARANTEE



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

Company petition (IB) No. 60/KB/2024

Currency of Security	INR	Value of Security	38200000
Date of Valuation	07/05/2013	Part-B Remarks	Personal Guarantee of Shri Ashok jain, Sh Ajay Jain and Smr Pradnya Jain

Security 2

Date of Security Interest Creation	17/09/2010	Type of Charge Created	Hypothecation
Assets Type	Movable	Security Type	OTHA
Security Category	primary	Description of Security	BOOK DEBTS UPTO 180 DAYS
Currency of Security	INR	Value of Security	11400367285.00
Date of Valuation	15/09/2010	Part-B Remarks	Debtors

Security 3

Date of Security Interest Creation	17/08/2012	Type of Charge Created	Mortgage
Assets Type	Immovable	Security Type	OTFA
Security Category	collateral	Description of Security	FLAT
Currency of Security	INR	Value of Security	34367000.10
Date of Valuation	07/05/2013	Part-B Remarks	Already sold under SARFAESI

Security 4

Date of Security Interest Creation	25/06/2019	Type of Charge Created	Pledge
Assets Type	Movable	Security Type	OTHA
Security Category	collateral	Description of Security	SAUMYA MINING LTD
Currency of Security	INR	Value of Security	24995900
Date of Valuation	12/04/2011		

Default Details

Date Of Default	30/01/2015	Days Past Due	2709
Default Amount	1165686602.53	Date Of Filing Suit	05/05/2016
Total Outstanding Amount	1165686602.53	PART-C Remarks	details as on 01.07.2022

Digitally Signed By:
GAUTAM SARKAR
Date :2022.08.02.12.35.28
IST



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

Company petition (IB) No. 60/KB/2024

35. We are supported by the views of Hon'ble Apex Court to define "Financial Debt" and to initiate Corporate Insolvency Resolution process as under:

(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:

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

(Emphasis added)

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

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

(Emphasis added)

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



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

Company petition (IB) No. 60/KB/2024

(d) *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

“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)

36. We find that this debt qualifies for Financial Debt as per the definition enshrined in Section 5(8) of the I&B Code. The amount claimed to be in default is in excess of the threshold limit described under Section 4 of the I&B Code and the petition has been filed within time period and complies all the parameters for admission under I&B Code.

37. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 60/KB/2024** filed under



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

Company petition (IB) No. 60/KB/2024

Section 7 of the I&B Code, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **IDBI Bank Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Saumya Mining 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);*



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

Company petition (IB) No. 60/KB/2024

- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[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. Subodh Kumar Agarwal”**, Registration no. IBBI/IPA-001/IP-P00087/2017-18/10183, Email ID: subodhka@gmail.com, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure “A-2” at pages 92-95 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that



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

Company petition (IB) No. 60/KB/2024

there are no disciplinary proceedings pending against him with the Board or IIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Subodh Kumar Agarwal”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Subodh Kumar Agarwal”** 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.



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

Company petition (IB) No. 60/KB/2024

- 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 Creditor 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).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate



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

Company petition (IB) No. 60/KB/2024

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.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

38. 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.



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

Company petition (IB) No. 60/KB/2024

39. Post the Company Petition on **01/ 10/ 2024** for hearing the Periodical Progress Report preferred by the IRP/RP as appointed herein.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 20th Day of August 2024.

Bose, R. K. [LRA]