



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

**C.P. (IB) NO. 28/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:**

**STATE BANK OF INDIA**

**... Financial Creditor**

**Versus**

**M/S. S.R. WORTH LIMITED**

**... Corporate Debtor**

**Date of Pronouncement : 30<sup>th</sup> August, 2024**

**Coram:**

**Smt. Bidisha Banerjee, Member (Judicial)  
Shri. D. Arvind, Member (Technical)**

**Appearance:**

**For the Financial Creditor**

Mr. Debasish Chakrabarti, Adv.  
Mr. Subhasish Chakraborty, Adv.

**For Corporate Debtor**

Mr. Dripto Majumdar, Adv.  
Mr. Saurav Jain, Adv.

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The Court congregated through hybrid mode.
2. Learned Counsels of both the parties were heard.
3. The instant petition has been filed by State Bank of India, (hereinafter referred to as the “**Financial Creditor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity “**Code**” against M/S. S.R. Worth Limited, (hereinafter referred to as the “**Corporate Debtor**”) to seek the following reliefs:

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**4. FACTUAL MATRIX**

- 4.1** The Corporate Debtor has availed diverse credit facilities from the Financial Creditor since 2008. The last sanction has been made on 28.03.2014 with an aggregate limit of Rs. 5720 Lacs.
- 4.2** The Corporate Debtor did not clear the outstanding dues within the time as specified and has defaulted in repayment of interests or instalments in its loan account from 31.03.2014 and subsequently the loan accounts became irregular.
- 4.3** Pursuant to the default committed by the Corporate Debtor, a Demand Notice was issued on **09.02.2015** upon the Corporate Debtor and called upon to pay a sum of **Rs. 56,52,54,407.45** inclusive of interest calculated up to 31.12.2014 with further interest at the contractual rate from 05.01.2015 till full and final payment.
- 4.4** The Corporate Debtor in its balance sheet filed before the ROC Kolkata for the year 31<sup>st</sup> March, 2016, 31<sup>st</sup> March, 2018, 31<sup>st</sup> March 2020, 31<sup>st</sup> March, 2021 admitted the default in repayment of the loan lying with the Financial Creditor.
- 4.5** By an order dated **24.06.2022**, the Learned Debts Recovery Tribunal-1, Kolkata has passed a money decree in favour of the Financial Creditor wherein it has been decreed to recover from the Corporate Debtor total amount of **Rs. 64,94,05,751.45/-**.

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- 4.6** The said money decree passed in favour of the Financial Creditor has given rise to a fresh cause of action to the financial Creditor to initiate the instant proceedings under Section 7 of the Code. Hence the present application is filed for initiating Corporate Insolvency Resolution Process, hereinafter referred to as the “**CIRP**” of the Corporate Debtor.

**5. SUBMISSIONS ON BEHALF OF PETITIONER**

- 5.1** It is submitted that the date of default is the date on which the loan accounts turned NPA which is on **31<sup>st</sup> March, 2014**. For the proposition that the date of NPA may be taken as the date of default, reliance has been placed on **Reliance Asset Reconstruction Company Ltd. Vs. Narendra Plastics Pvt. Ltd, Company Appeal (AT) (Ins) No. 779 of 2021**, dated 22<sup>nd</sup> Feb, 2022, NCLAT New Delhi (Para 11 (d)) and **Jagdish Prasad Sarada Vs. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020**, dated 28<sup>th</sup> August, 2020, NCLAT New Delhi (Para 10,11)
- 5.2** That the acknowledgement of Debt as well as the default in the balance sheet of the Corporate Debtor constitutes an “acknowledgement in writing” within the meaning of Section 18 of the Limitation Act, 1963 for which reliance is placed on **Asset Reconstruction Company (India) Ltd Vs. Bishal Jaiswal and Another- 2021 SCC Online SC 321**, Paragraph 14 onwards.
- 5.3** That the Learned Debt Recovery Tribunal has passed a money decree in favour of the Financial Creditor, and it is a settled position of law that “a money decree and /or recovery certificate against the Corporate Debtor shall give fresh cause

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of action to initiate CIRP Proceedings against the Corporate Debtor. Reliance is placed on **Dena Bank (Now Bank of Baroda) Vs. V.C. Shivakumar Reddy and Another reported in (2021) 10 SCC 330**, Relevant Paras 126, 136, 141.

**5.4** That after taking into account all the money paid by the Financial Creditor, a sum of **Rs.119,54,66,826.19** remain due and payable by the Corporate Debtor to the Financial Creditor inclusive of interest up to **31.03.2023**.

**5.5** That the present application has been filed within three years from the last acknowledgement of debt and default of the Corporate Debtor in its balance sheet for the year in 31<sup>st</sup> march, 2021 as well as within three years from the money decree passed by the Learned DRT, Kolkata on 24.06.2022.

**6. SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

**6.1** It is submitted that no sums are due and payable by the Corporate Debtor and that the Financial Creditor has failed to show any document which can demonstrate that there has been any fresh disbursement of amounts pursuant to 2008 and hence it is ex-facie time barred.

**6.2** That the date of default as alleged by the Financial Creditor is the date on which the loan accounts turned NPA which is on 31<sup>st</sup> March, 2014 and hence the whole premise of the Financial Creditor's claim is erroneous and misconceived.

**6.3** Further it is denied that the revival letter dated December 18, 2010, amounts to an acknowledgement of debt within the meaning of section 18 of the Limitation Act, 1963.

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**6.4** That the Financial Creditor has already initiated proceedings against the Corporate Debtor before the DRT and with this present application, the Financial Creditor is attempting to recover sums and is indulging in forum-shopping.

**6.5** That IBC proceedings cannot be used as a tool for recovery of money and hence the present application deserves to be dismissed.

***Analysis and Findings***

7. The issue to be decided here is as follow:- “Whether a final judgment and decree of the DRT in favour of the financial creditor, or issue of a Recovery Certificate, would give rise to a fresh cause of action to initiate proceedings under Section 7 of the IBC?”

8. At this juncture, it will be advantageous to refer the judgement dated 04.08.2021 of the ***Hon’ble Supreme Court in Dena Bank (now Bank of Baroda) v C. Shivakumar Reddy and Anr***, (Civil Appeal 1650 of 2020) wherein while dealing with the issue Whether a final judgment and decree of the DRT in favour of the financial creditor, or a Recovery Certificate, would give rise to a fresh cause of action to initiate proceedings under Section 7 of the IBC, the Hon’ble Supreme Court proceeded to hold that the Recovery Certificate in itself gave a fresh cause of action to the Bank to institute proceedings under Section 7 of IBC. The relevant part of the said judgement is reproduced herein below:

*“To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the*

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Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

**(Emphasis added)**

9. Adverting to the facts of the present case, pursuant to the final order dated 24.06.2022 passed by the Hon'ble Debts Recovery Tribunal – I, a Recovery Certificate dated 12.08.2022 bearing RC No. RC/T/2022 AT Page 733 volume IV of the petition stood issued in the favor of the applicant Bank. In the light of the **Dena Bank judgement (Supra)**, final order dated 24.06.2022 and recovery certificate dated 12.08.2022 passed by the DRT in favor of the Applicant Bank had given rise to a fresh cause of action to initiate CIRP proceedings under Section 7 of the IBC within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery.
10. In the instant case, it is the main case of the Petitioner/ 'Financial Creditor' that the date of NPA is 2014 and hence has to be construed as the 'date of default'. **The Hon'ble Apex Court in**

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**‘Laxmi Pat Surana’ Vs. ‘Union Bank of India & Anr.’** Reported at (2021) 8 SCC 481 has observed as follows:

*“43. Ordinarily, **upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default** to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to nonpayment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the*

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prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.”

**(Emphasis added)**

11. In the aforementioned Judgement, the Hon’ble Apex Court clearly prescribes that the ‘date of default’ has to be the ‘date of NPA’ in fact, the ‘date of default’ defined under Section 3(12) of the Code is to mean ‘non-payment of a date which has become ‘due and payable’ whether in whole or any part and is not paid by the Corporate Debtor.
12. The Judgment also propounds that every time the CD acknowledges its liability within three years of last default, the limitation gets extended to a further period of three years.
13. It is evident that the corporate debtor has acknowledged its liability and admitted its debt in its balance sheets for the year ended 31<sup>st</sup> March 2016, 31<sup>st</sup> March 2018, 31<sup>st</sup> March 2020, 31<sup>st</sup> March 2021 within every three years of last default which extends the limitation to a further period of three years from last acknowledgement.
14. **Sections 18 of the Limitation Act, 1963 reads as under:** “18. **Effect of acknowledgment in writing.**—(1) Where, before the expiration of the prescribed period for a suit or application 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, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. (2) Where the writing containing the acknowledgment is undated, oral



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*evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,— (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right, (b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

15. For all the aforementioned reasons we are of the considered view that the Section 7 Application is not ‘barred by Limitation’, and that there is a ‘debt’ and ‘default’, and the facts of the instant case are squarely covered by the ratio of the Hon’ble Apex Court in ‘Dena Bank (now Bank of Baroda)’ (Supra).

16. In terms of the foregoing discussions, the application bearing **Company Petition (IB) No. 28/KB/2024**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i. The Application filed by the **State Bank of India (Financial Creditor)**, under **Section 7** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/S. S.R. Worth Limited (Corporate Debtor)**.

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- 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.*

*[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;]*

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- 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 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 **“Neeraj Kumar Sureka”**, [Registration no.: **IBBI/IPA-001/IP-P01539/2019-2020/12517**, Address: **Central Plaza, 6<sup>th</sup> Floor, Room No. H, 41, B.B. Ganguly Street, Kolkata - 700012, West Bengal**], Email ID: **ipneerajsureka@gmail.com**, as the “IRP”. We have perused that there is a written communication, annexed as **Annexure “1-D”**, to this Application 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 there are no disciplinary proceedings pending against him with ICAI Institute of Insolvency Professionals. In addition, further necessary disclosures have been made by **“Neeraj Kumar Sureka”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **“Neeraj Kumar Sureka”** 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,

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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 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.
- viii.** During the CIRP 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 IBC. 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.

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- x.** The IRP or the RP, as the case maybe, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP 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).
- 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), West Bengal, Kolkata 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 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,

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with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.

- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 17.** This order is issued under Section 7 of I&B Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.
- 18.** The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
- 19.** Post the matter on **16.10.2024** for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on 30<sup>th</sup> Day of August, 2024.**

Tiwari, V. [LRA]/ Oindrila, K. [LRA]