



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT – III**

**C.P.(IB)-772(MB)/C-III/2023**

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***

**Canara Bank**

Having its registered office at Canara Bank  
Stressed Asset Management Branch Maker Tower  
“F”, 2<sup>nd</sup> Floor, Cuffe Parade, Colaba, Mumbai –  
400005. **.....Financial Creditor**

**Versus**

**PSK Developers Pvt. Ltd**

Having its registered office at Sheetal Estate,  
opposite Novelty Cinema, M.S. Ali Road, Mumbai –  
400007. **....Corporate Debtor**

**Order pronounced on: 07.10.2024**

**Coram:**

Hon’ble Ms. Lakshmi Gurung, Member (Judicial)

Hon’ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

For Financial Creditor: Adv. Zaman Ali, Adv. Sushila Vichare, Adv. Amin  
Burhan i/b Orbit Law Services

For Corporate Debtor: Adv. Indrajeet Hingane

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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1. The Present **Company Petition (IB)-772(MB)/2023** has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) by **Canara Bank (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“CIRP”) against **PSK Developers Pvt. Ltd. (“Corporate Debtor/Respondent”)** for default in repayment of **Rs. 33,50,50,320.30/-** (*Rupees Thirty-Three Crores Fifty Lakhs Fifty Thousand Three Hundred Twenty and Thirty Paise Only*).

**Brief Facts**

2. In the year 2013, the Corporate Debtor approached Canara Bank and erstwhile Syndicate Bank for part-financing through Term Loans, a real estate development project known as ‘Fashion Index’, a commercial cum residential complex located in Bhawanishankar Road, Dadar (W) Mumbai. The Applicant and erstwhile Syndicate Bank sanctioned the following term loans: -
  - a. Rs. 100 Crore Term Loan vide Sanction Letter Ref No: 107/82/1213/S-/2013 dated 20.08.2013. Subsequently permitted the revalidation of the sanctioned term loan of Rs. 100 Crore vide letter no. PSK/REV/SAN/2014/MGA on 16.04.2014. Annexed at “Exhibit No. “C1-C2” of the Company Petition.
  - b. Rs. 85 Crore Term Loan vide Sanction Letter Ref No: 510/LCB/PSKDPL/2014 dated 07.05.2014. Annexed at “Exhibit No. “C3” of the Company Petition
3. Pursuant to the sanction of the abovementioned term loans, the Financial Creditor and Corporate Debtor executed two documents in the year 2014 i.e., Term Loan Agreement dated 08.05.2014 (Annexed at “Exhibit No. “D-1” of the Company Petition) and Indenture of Mortgage Deed 08.05.2014 (Annexed at “Exhibit No. “D-1” of the Company Petition). These terms and conditions were accepted by the Corporate Debtor on 08.05.2014. Mr. Damji R. Shah Director was authorized to



sign and execute the necessary documents on behalf of the company. The statements showing disbursement of loan and the statement of accounts have been annexed as Exhibit “G-1 Colly” and “G-2 Colly” to the Company Petition.

4. Due to the default in payment of principal and interest amount, the Corporate Debtor’s account was declared as a Non Performing Asset on 07.05.2017 in the books of Syndicate Bank and on 02.03.2018 in the books of Canara Bank. The Applicant issued a Demand Notice under Section 13(2) of the SARFAESI Act on 04.02.2019, demanding Rs. 19,08,47,603.81/- which was to be paid within 60 days from the date of Demand Notice. Annexed at “Exhibit No. “E” of the Company Petition.
5. The Corporate Debtor sent the 1<sup>st</sup> Revival Letter on 17.03.2017 and 2<sup>nd</sup> Revival Letter on 17.07.2019 (Annexed at “Exhibit No. “F-1” and “F-2” of the Company Petition) to the Financial Creditor acknowledging the debt and execution of loan and security documents. Thereafter, as per letter dated 06.08.2019, the Corporate Debtor requested some time for repayment of dues. Further, on 20.01.2020, the Corporate Debtor stated that they had identified interested parties who could extend financial support for the projects and pay the dues of the lenders and that the dues shall be paid by March 2020.
6. The Financial Creditor filed a Recovery Application before the DRT Mumbai on 15.01.2021 which is pending against the Corporate Debtor.
7. The Financial Creditor also annexed the “NPA Certificate” in the books of Canara Bank dated 26.12.2022, as per section 2(8) of Banker’s Books Evidence Act, 1891 as Exhibit “J-1” to “J-3”.
8. Due to the default in repayment of above mentioned dues, the Financial Creditor filed the present application on 31.01.2023 under Section 7 of



the Code, seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

9. After the Present Petition was filed before the Tribunal on 31.01.2023, the Corporate Debtor approached for the repayment of loan through a letter dated 18.05.2023 proposing to pay an amount of Rs. 21.50 Crores towards One Time Settlement (**"OTS"**) of entire outstanding amount.
10. On due consideration, the Financial Creditor sanctioned the One Time Settlement (**"OTS"**) vide letter dated 08.08.2023 imposing certain terms and conditions which were to be complied by the Corporate Debtor. These terms and conditions were accepted and acknowledged by the Corporate Debtor.
11. The Financial Creditor addressed multiple letters on 14.09.2023, 21.09.2023, 27.09.2023 and 11.10.2023 reminding the Corporate Debtor to comply with the OTS Sanction letter dated 08.08.2023. The Financial Creditor revoked and withdrew the OTS Sanction vide letter dated 04.12.2023 due to the non-compliance of OTS Sanction terms.
12. The Financial Creditor identified the account of Corporate Debtor as a **"Wilful Defaulter"** vide letter dated 12.02.2024.

**Submissions by the Financial Creditor**

13. The Financial Creditor relied on **Edelweiss Asset Reconstruction Company Ltd. Vs Perfect Engine Components Pvt. Ltd. (CA No, 840 of 2021)** where the Hon'ble NCLAT considered Dena Bank Vs C. Sivakumar Reddy & Anr. (2021) 10 SCC 330 & Laxmi Pat Surana Vs Union Bank of India (2021) 8 SCC 481 and stated, since the date of default does not mean a strict interpretation of the 'date of NPA', the date of latest restructuring letter will amount to a fresh acknowledgement of



debt under Section 18 & 19 of the Limitation Act, 1963 and therefore, there is no question of attracting any issue of limitation in the facts of the present case as the latest restructuring letter issued by the Corporate Debtor is of 18.05.2023.

14. It was further submitted that, the Financial Creditor received part-payment after restructuring, therefore, as per Sections 19 and 20 of the Limitation Act, 1963, a fresh period of limitation commenced with every part-payment made after the Restructuring Letter dated 18.05.2023.
15. The Corporate Debtor deposited Rs. 1 Crore towards the loan account on 21.02.2024. The Financial Creditor addressed a letter dated 22.02.2024 to the Corporate Debtor clarifying that the amount deposited in loan account was not part and parcel of the OTS Sanction because it already stood withdrawn as per letter dated 04.12.2024.
16. The Corporate Debtor acknowledged the debts and defaults by depositing random amount on random events in the loan Account No. TXCOSLB192560174 AND 1903773000161.

### **Findings and Observations**

17. We have heard the Ld. Counsels for parties and carefully perused the records.
18. As per Para IV of Form I, the Principal Outstanding Amount is of **Rs.18,03,24,600.87** together with Interest and Penal Interest is in default as on 30.09.2022 for Term Loan of Rs.100 Crore and an amount of **Rs.15,47,25,719.43** together with Interest and Penal Interest is in default as on 30.09.2022 for Term Loan of Rs.85 Crore. Therefore, the total outstanding amount as of 30.09.2022 is **Rs.33,50,50,320.30**.
19. The Corporate Debtor has not filed any reply to the petition. In this respect it is important to take note of following daily orders of this Tribunal in respect of this case: -



- (i) As per Tribunal's Daily Order dated 22.03.2024: -  
*"...In the meantime, Ld. Counsel for CD seeks time to file reply. Let the same be done within two weeks after serving advance copy to the other side, failing which the CD's right to reply shall stand forfeited. List on **26.04.2024.**"*
- (ii) Subsequently, as per Tribunal's Daily Order dated 26.04.2024: -  
*"Vide order dated 22.03.2024 two weeks' time was granted to the Corporate Debtor to file reply. Despite direction, the Corporate Debtor has not filed reply. Hence, Respondent's right to file reply stands forfeited. List on **06.06.2024.**"*
- (iii) As per Tribunal's Daily Order dated 06.06.2024: -  
*"...Ld. Counsel for Petitioner seeks adjournment due to non-availability of the arguing counsel. At his request, matter is adjourned to **26.07.2024.**"*
- (iv) As per Tribunal's Daily Order dated 26.07.2024: -  
*"Heard Ld. Counsel for the parties. List on **02.09.2024** for written submissions."*
- (v) As per Tribunal's Daily Order dated 02.09.2024: -  
*"Learned Counsel for the Respondent submits that he does not have any instructions to file written submissions, while petitioner has already submitted his written submissions.  
This matter is **Reserved for Order.**"*

20. Therefore, it can be seen that, even after multiple opportunities granted by this Tribunal, the Corporate Debtor **did not file** any Reply. Therefore, as on 26.04.2024, the Corporate Debtor's right to file reply was forfeited.



Further, on 02.09.2024 whereas the Petitioner submitted their Written Submissions, the Respondent did not file any Written Submission because he did not have any instructions to do so. Accordingly, this Petition is being decided based on material available on record.

21. The Financial Creditor and Corporate Debtor executed two documents in the year 2014 regarding sanction of the term loan. The statements showing disbursement of loan and the statement of accounts have been annexed as Exhibit “G-1 Colly” and “G-2 Colly” to the Petition. The Corporate Debtor agreed to the terms and conditions for repayment of loan as per the significant clauses of the following documents: -

- a. Clause 2.4 of Term Loan Agreement dated 08.05.2014: -

*“2.4.1 The Term of the Loan shall be for a period of 5 years from the date of disbursement with a 3 year moratorium and construction period and 2 years repayment period commencing after expiry of moratorium.*

*2.4.2 It has been agreed between the Parties that repayment of the said Loan shall take place within a period of 2 years (8 equal quarterly instalments) from the date of disbursement with a moratorium and construction period of 3 years as more particularly set out in Schedule II herein.”*

- b. Clause 2 of Indenture of Mortgage Deed dated 08.05.2014:

*“2. COVENANT TO REPAY PRINCIPAL AND INTEREST*

*2.1 In pursuance of the Loan Agreement and in consideration of the Lenders having lent and advanced and/or agreed to lend and advance the loan to the Mortgagor for the purposes and on the terms and subject to conditions set out in the Loan Agreement, the Mortgagor doth hereby covenant with the Lender that it shall duly and punctually repay the principal amount of the Loan, and pay all interest, premium on prepayment, reimbursement of all*



*costs, charges and expenses and other monies payable by the Mortgagor under the Loan Agreement, in the manner set out therein and shall duly observe and perform all the terms and conditions of the Loan Agreement.”*

22. As per the abovementioned clauses, the Corporate Debtor was supposed to pay the Principal and Interest amount within 5 years from the date of disbursement with a 3 years’ moratorium and construction period commencing after expiry of moratorium, but failed to do so.
23. The Corporate Debtor through the ‘REVIVAL LETTER FOR THE PURPOSE OF LIMITATION’ dated 17.03.2017 acknowledged that: -

*“We do hereby confirm that all the Financing Documents and Security Documents executed by us in favour of the Lenders under the said consortium in respect of such Term Loan Facilities are subsisting, valid continuing, binding, effective and are fully enforceable against us.*

*We do hereby acknowledge for the purposes of Section 18 of the Indian Limitation Act 1963 and in order to preclude any question being raised on limitation regarding our liability to the lenders for the payment of the outstanding amounts in respect of the present as well as the future indebtedness and liabilities under the said Financing Documents together with interest, compound interest, additional interest, liquidated damages, cost charges, expenses and other charges payable in terms of the said Financing Documents and confirm that our liability shall remain in full force with all relative securities, arrangement and obligations as mentioned therein.”*

24. Due to default in repayment of the Principal and Interest amount, the Corporate Debtor’s account was declared as a Non-Performing Asset **(“NPA”) on 07.05.2017** in the books of Syndicate Bank.





25. Subsequently, the Corporate Debtor's account was classified as a Non-Performing Asset in the books of Canara Bank as **("NPA") on 02.03.2018.**
26. The Financial Creditor issued a Demand Notice to the Corporate Debtor under Section 13(2) of the SARFAESI Act vide Letter Ref No. SPCBMF/ADV/SG/CR-PSK/1668/2018-19 dated 04.02.2019. As per SCHEDULE – C [Details of liability as on date] of the Demand Notice, the repayment amount of Rs. 19,08,47,603.81 is reproduced below: -

No.	Loan No.	Nature of loan/limit	Liability as on 31.01.2019	Rate of Interest
1	190377300 0161 of Canara Bank	Term Loan	10,47,02,644.91	1-year MCLR i.e. 8.70+7.00+2.00(penal)=17.70% p.a.
2	Q24OSLB14 1770001 of Syndicate Bank	Term Loan	8,61,44,958.90	Same as above
<b>Total</b>			<b>19,08,47,603.81</b>	

27. The Corporate Debtor in their 'REVIVAL LETTER FOR THE PURPOSE OF LIMITATION' dated 17.07.2019 reiterated the contents of Revival Letter dated 17.03.2017 which have been mentioned above in para 30 of this order.
28. The Corporate Debtor requested for the extension of time for clearing the bank dues vide their letter dated 06.08.2019 stating their priority to clear the bank dues at the shortest possible time but not later than the end of March 2020 in the following manner:-

“- First payment of Rs. 5 Crores by 30<sup>th</sup> September 2019.

- Balance dues with up-to-date interest by December 2019  
or at the most by March 2020.”



29. The Corporate Debtor vide their letter dated 20.01.2020 informed the Financial Creditor about identifying interested parties who could extend financial support for the projects and that they shall pay the dues by March 2020. Relevant extract from the said letter is reproduced below: -

*“As informed earlier, we have been on the lookout of interested parties for extending financial support (either as Joint Developer or as Investor) for settling the banks’ dues and completion of the Project. We were, in fact, able to identify 4 interested parties with whom negotiations were going on.*

*We have now been able to arrive at a consensus with one of them who has agreed to take up the project acting as Development Manager-cum-investor with full responsibility to settle the dues to the Consortium, fund the project, and complete the implementation. Detailed Term Sheet is being drafted and the same will be finalized shortly. We shall share the same on finalization and keep the Consortium informed about the timelines.*

*We are hopeful that we will be able to settle the dues to the Consortium by March 2020 as assured earlier...”*

30. It can be clearly understood from this letter that; the Corporate Debtor was seeking more time for the repayment of dues with the help of other investors. Hence, the debt was acknowledged in this letter dated 20.01.2020.
31. After perusing the Term Loan Agreement, Indenture of Mortgage Deed and the abovementioned trail of communication between the Financial Creditor and Corporate Debtor it is clear that the loan amount of Rs. 185 Crore was disbursed on different dates into the loan account of Corporate Debtor holding Account No. TXCOSLB192560174 and that the Corporate Debtor failed to repay the outstanding loan amount.



32. The Financial Creditor reported the default to CRILIC. As per CRILC (Central Repository of Information on Large Credits) report dated 03.12.2022 annexed as Exhibit-H in the Petition by the Financial Creditor, the outstanding amount when the Borrower, PSK Developers Private Limited bearing PAN: AADCP4574E was classified as SMA-2 (when the Principal or Interest payment is overdue between 61-90 days) was Rs. 906.01 Lakhs. Asset Classification of the Borrower as per latest monthly CRILC Main Return as on 31.10.2022 was classified as Doubtful 3 (loans that have been classified as NPA for more than 12 months) under the heading Reporting Bank i.e., Canara Bank.
33. We also note that the Corporate Debtor stated vide their letter dated 18.05.2023 that they already paid an amount of Rs. 50,00,000/- on 14.03.2023. The Corporate Debtor further acknowledged the debt by proposing the following OTS Sanction terms and conditions:-

*“1. Ch. No. 402973 dt. 31.05.2023 of Rs.  
1,00,00,000/-*

*2. Ch. No. 402974 dt. 15.06.2023 of Rs.  
1,00,00,000/-*

*3. Ch. No. 402975 dt. 30.06.2023 of Rs.  
1,00,00,000/-*

*Going forward the balance payment structure  
shall be as follows: -*

*July 2023 – September 2023 Rs. 9,00,00,000*

*October 2023 – December 2023 Rs.  
9,00,00,000*

*January 2024 – March 2024 Rs. The entire  
balance amount before March 2024”*

34. The Financial Creditor referred to the Corporate Debtor's letter dated 18.05.2023 and stated that the Appropriate Authority of the Bank permitted the Corporate Debtor's OTS (One Time Settlement) offer of payment of full contractual dues with interest applicable as per credit sanction terms in the account towards the full and final settlement of the



dues as under which was received by Mr. Damji R. Shah who was authorized to sign and execute the necessary documents on behalf of the Corporate Debtor on 08.08.2023.

35. Records of default issued by the Information Utility i.e., NeSL have also been placed on record, wherein the date of default is stated as **01.12.2017** and the amount of default is **17,25,68,856.83/-**. As already noted, the Corporate Debtor had from time to time acknowledged the debt. The last acknowledgement of debt by the Corporate Debtor was on **20.01.2020**. The Present Petition has been filed on 31.01.2023. Considering the facts of the case and also the exclusion granted by Hon'ble Supreme Court in **M.A. No. 21 of 2022 in Suo Moto W.P. (C) No. 3 of 2020**, we are satisfied that this petition has been filed well within limitation. With respect to the amount of default we rely upon Para IV of Form I, as also on the statement of accounts attached by the Petitioner where the Principal Outstanding Amount of Rs.18,03,24,600.87 together with Interest and Penal Interest is in default as on 30.09.2022 for Term Loan of Rs.100 Crore and an amount of Rs.15,47,25,719.43 together with Interest and Penal Interest is in default as on 30.09.2022 for Term Loan of Rs.85 Crore, the total outstanding amount as of **30.09.2022** is **Rs.33,50,50,320.30/-**
36. In their written submissions, the Financial Creditors relied on **Edelweiss Asset Reconstruction Company Ltd. Vs Perfect Engine Components Pvt. Ltd. (CA No, 840 of 2021)** where the Hon'ble NCLAT stated that the date of default does not mean a strict interpretation of the 'date of NPA', the date of latest restructuring letter shall amount to a fresh acknowledgment of debt under Section 18 and 19 of the Limitation Act, 1963. The Financial Creditor calculated the period of limitation from the last restructuring letter issued by the Corporate Debtor on 18.05.2023. With respect to our collective cognizance, the last letter where the Corporate Debtor acknowledged its debt was on 20.01.2020 before the present petition was filed on 31.01.2023. Therefore, the period of



limitation shall be calculated from 20.01.2020, and the Petition is found to have been filed within limitation as discussed at para 35 above.

37. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt, and if it is satisfied that a default has occurred and that the application is complete under all the mandatory aspects, then the application under Section 7 of the Code shall be admitted. We rely on the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was held that-

*“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.*

*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 Provided)**

38. In view of the facts of the case discussed herein above we are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is more than Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. It is also seen that the instant petition has been filed within limitation.



39. Accordingly, this Company Petition no. 772 of 2023 is **admitted** with the following directions:

**ORDER**

- i. The above Company Petition (IB) 772(MB)/2023 is **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **PSK Developers Private Limited**.
- ii. After perusing the written consent of the Insolvency Professional, we hereby appoint **Mrs. Megha Agrawal** bearing Registration No: IBBI/IPA-001/IP-P-P01456/2018-19/12272, having valid Authorization for Assignment up to 31.12.2025, email: *ip.meghaagrwal@gmail.com*; Address: 001, Shivranjani Apartments, In Circle of Congress Nagar Garden, Congress Nagar, Nagpur, Maharashtra - 440012 as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
- iii. The Financial Creditor shall deposit an amount of **Rs. 5 Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- iv. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
  - 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 assets or any legal right or beneficial interest therein;
- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- vi. That 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.
- vii. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33.
- viii. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.



- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
- xi. The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.
- xii. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the IRP.
- xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
40. The Company Petition **No. 772 of 2023** is accordingly **admitted**.

**Sd/-**

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

Vaishnavi, LRA

**Sd/-**

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**