



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
SPECIAL BENCH**

CP (IB) No. 21/KB/2024

**A PETITION UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016.**

IN THE MATTER OF:

Small Industries Development Bank of India

...Financial Creditor/Applicant

Versus

As Infracon Private Limited

...Corporate Debtor/ Respondent

Coram

Smt. Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

Date of pronouncement: 30/10/2024

Appearances (through hybrid mode):

Mr. Sourodip Banerjee, Adv

] For Financial Creditor

Mr. Arnab Dutta, Adv

Ms. Prena choudhary, adv

ORDER

Per: D. Arvind, Member (Technical)

1. This Court convened through hybrid mode.
2. This is an Petition being CP (IB) No. 21/KB/2024 filed by Small Industries Development Bank of India, the Financial Creditor/Applicant,



on 12.05.2023 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) for Initiating Corporate Insolvency Resolution Process (CIRP) in the case of AS Infracon Private Limited (Corporate Debtor).

3. The Corporate Debtor was incorporated on 17 August 1998, having CIN: U51109WB1998PTC087733. It's registered office is 70, NALINI SETH ROAD, 3rd Floor, Kolkata- 700007. Therefore, this Bench has jurisdiction to deal with this petition.
4. The Financial Creditor has filed the captioned Company Petition against the Corporate Debtor pursuant to the Guarantee Agreement dated 26 February 2014 executed by the Corporate Debtor in favour of the Financial Creditor.
5. Pursuant to sanction letters issued by the Financial Creditor in favour of **Kosas Exports Limited** ("Principal Borrower"), the Financial Creditor had originally sanctioned an aggregate amount of Rs 7,00,00,000/- (Rs Seven Crores only) to the Principal borrower with interest at the rate of 12.75% p.a and penal interest of 2% p.a payable in 138 monthly instalment after moratorium of 6 (six) months from the date of disbursement of the loan as per the repayment schedule and the repayment of instalment was schedule to be due on 10th of each month.
6. The entire credit facilities advanced by the Financial Creditor to Principal Borrower were recalled vide the Recall Letter dated **08 March, 2016** addressed by the Financial Creditor to Principal Borrower.



7. On 27 July 2016, the Financial Creditor invoked the guarantee provided by the Corporate debtor and called upon the Corporate debtor to pay Rs **7,28,75,463** (Rs **Seven Crore twenty eight lakh seventy five thousand four hundred sixty three**) together with interest and all other charges and monies payable by the Principal borrower.
8. The Corporate Debtor did not appear before this Adjudicating Authority despite of service of Notice. The Adjudicating Authority vide order dated 21st August 2024 has warned the both the parties financial Creditor and Corporate Debtor that if none appear on behalf of the both the parties on the next date of hearing an appropriate order will be passed. However, the Corporate Debtor did not appear even after warning given by adjudicating authority on 18.09.2024.

Analysis and Finding

9. We have heard the learned counsel and perused the record. From the submission of learned counsel for the petitioner and materials on record following issues arise for consideration:

I. Whether the present application is barred by limitation?

10. We are sanguine that the criteria for examining the date of default for the purpose of limitation for the Corporate Debtor and Corporate guarantor are not the same. In the present case what need to be seen is that, when the debt became due and payable by the Corporate Guarantor. In this regard a reference can be made to the Guarantee Deed annexed at page **44-49**, of the Application. The relevant clauses of the Corporate Guarantee are incorporated herein:



“3. In the event of any default on the part of the borrower in payment/repayment of any of the moneys referred to above, or in the event of any default on the part of borrower to comply with or perform any of the terms, condition and covenant contained in the said agreement, the guarantor shall, upon demand forthwith pay to SIDBI, without demur, all the accounts payable by the borrower under the said agreement.

“22. A balance confirmation and/or acknowledgment of debt and security execute by the borrower shall be treated as balance confirmation and/or acknowledgment of debt or security of by the guarantor(s) for the purpose of this guarantee”

11. From a perusal of the Guarantee Deed, it can be inferred that the Debt against Corporate Guarantor became due and payable when the Creditor called upon the Guarantor to pay the amount. Hence, it won't be wrong to say that the period of limitation shall begin to run from the date when the Creditor had called upon the Corporate Guarantor to pay the amount. In other words the date when guarantee is invoked by the Creditor is the date of commencement of period of Limitation for filing Petition under Section 7 of IBC,2016. It is also agreed that any admission or acknowledgement in writing by the principal borrower to the subject matter of this guarantee, shall be binding on guarantor.



12. At this juncture, we may refer to the judgement passed by Hon'ble **.NCLAT in the case of Pooja Ramesh v. SBI** and as held by the **Hon'ble Supreme Court in the cases of Syndicate Bank v. Channaveerappa Beleri & Ors., and Margaret Lalita Samuel vs. Indo Commercial Bank Ltd.**, it is clear that the Date of Default will be the date on which the demand was made. In the instance case, the Corporate guarantee was invoked on **27.07.2016** and the applicant was to file the present Petition before three years i.e 26.07.2019. However, before the expiry of the limitation period the Principal borrower (Kosas Export Ltd) submitted OTS on 8th June 2019 and on 5th November 2020. Even after the acknowledgement of debt through the OTS by the principal borrower, the applicant was to file the present Petition before 4th November 2023. The applicant has been filed the present petition is 12 May 2023. We, therefore, have no hesitation to hold the present Petition is within limitation, considering the position that the principal borrower acknowledgement's deemed to be an acknowledgement by corporate guarantor in terms of clause 22 extracted from corporate guarantee agreement, which has been mentioned in para 10 of this order .Therefore, we admit the Corporate Debtor into CIRP.
13. In terms of the foregoing discussion, we **ALLOW** the petition bearing Company Petition (IB) No. **21/KB/2024** filed under 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 Petition filed by **Small Industries Development Bank of India** (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. **As Infracon Private Limited** (Corporate Debtor).
- II. As a consequence of this Petition 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;]

- 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. Ajit Gyanchand Jain**”, Registration no. IBBI/IPA-001/IP-P00368/2017-2018/10625, Email id. **ajit@vcanca.com**, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter C at pages 28-29 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 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. Ajit Gyanchand Jain”** 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. Ajit Gyanchand Jain”** 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.

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).
- 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.

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

14. 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.

15. Post the Company Petition on **06.12.2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 30/10/2024

NKS(LRA)