



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

C.P.(IB)-881(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

Phoenix ARC Private Limited

...Financial Creditor/Petitioner

Versus

**KLТ Automotive and Tublar Products
Limited**

...Corporate Debtor/Respondent

Order pronounced on: 26.09.2024

Coram:

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

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditor: Adv. Rohit Gupta a/w Adv. Manswi Agarwal

For the Corporate Debtor: Adv. Rohan Agarwal a/w Adv. Shrushti Relekar

Per: Ms. Lakshmi Gurung, Member (Judicial)



1. The Present Company Petition (IB)-881(MB)/2023 has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC/Code”) by Phoenix ARC Private Limited, (“Financial Creditor/Petitioner”) for initiating Corporate Insolvency Resolution Process (“CIRP”) against KLT Automotive and Tabular Products Limited (“Corporate Debtor/ Respondent”) for default in repayment of Rs. 9,68,20,63,285/- (*Rupees Nine Hundred Sixty-Eight Crores Twenty Lakhs Sixty-Three Thousand Two Hundred Eighty-Five only*).

Brief Facts:

2. Debt assigned by Bank of India to Phoenix Trust FY 19 - 11.
 - A. Fund Based Facility
 - i. Cash Credit Facility last renewed under the Sanction Letter dated 24.08.2012 for Rs. 52,00,00,000
 - ii. Suppliers Bill Discounting Facility by Star Channel Finance under Sanction Letter dated 24.08.2012 for Rs. 29,00,00,000
 - B. Non-fund Based Facility
 - i. Letter of Credit (Inland/Foreign) under Sanction Letter dated 24.08.2012 for Rs. 37,00,00,000
 - ii. Bank Guarantee (Inland) under Sanction Letter dated 24.08.2012 for Rs. 8,00,00,000
- 3.1 The account of the Corporate Debtor in respect of the above credit facilities was declared a Non-Performing Asset with effect from 31.03.2015.
- 3.2 The debt owned by the Corporate Debtor to Bank of India was assigned to the Petitioner vide a Tripartite Assignment Agreement dated 24.01.2019. Being a signatory to the Agreement the Corporate Debtor acknowledged and



admitted the outstanding dues herein known as BOI Assigned Dues of Rs.192,00,10,203.85/- along with interest, penal interest and other charges.

- 3.3 Subsequently, the Corporate Debtor entered into settlement terms with the Petitioner to restructure and settle the BOI Assigned Dues recorded in a Letter of Acceptance **(LoA)** dated 15.02.2019 hereinafter referred to as LoA. Under clause 3(d) of the LoA, the Corporate Debtor acknowledged liability of Rs. 192,00,10,203.85/- as on 23.01.2019.
- 3.4 Under Para 4 of the LoA, the Corporate Debtor was to pay an amount of Rs.66,49,00,000 along with further interest @18% p.a. compounded monthly from 24.01.2019 towards the settlement of the assigned dues.
- 3.5 The LoA included that in the event of any default in payment of the BoI Settlement Amount, all benefits, concessions and waivers granted under this LoA, would be withdrawn and the Corporate Debtor would be liable to pay the entire BoI Assigned Dues along with further interest, charges, costs, expenses and penal interest.
- 3.6 The Corporate Debtor failed to comply with repayment of the BoI Settlement Amount. The Petitioner sent a notice revoking all benefits, concessions and waivers under the LoA dated 15.02.2019. Thereafter the Petitioner recalled the financial facilities vide Recall Letter dated 15.09.2020, and called upon the Corporate Debtor to pay the BOI Assigned Dues with further interest, charges, costs, expenses and penal interest adding up to Rs. 248,20,92,637 as on 31.08.2020 with interest thereon @15.45% p.a. and penal interest @2% p.a. from 01.09.2020 until repayment.



3.7 The total outstanding amount to be repaid as on **15.05.2023** was **Rs. 361,15,49,033.39.**

4 Debts assigned by KKR to Phoenix Trust FY 19 - 13

4.1 KKR India Financial Services Limited advanced a Term Loan under the Facility Agreement dated 28.09.2015 for the total amount of Rs. 195,00,00,000 which was disbursed in two portions viz. Rs. 51,50,00,000 on 30.09.2015 and Rs.143,50,00,000 on 06.05.2016. The Term Loan was to be repaid in 9 bi-annual installments commencing from 30.09.2016 to 30.09.2020.

4.2 The Corporate Debtor defaulted on the payment of loan and was declared as a Non-Performing Asset with effect from 29.06.2018.

4.3 The debt owed by the Corporate Debtor to KKR was thereafter assigned in favor of the Phoenix Trust FY 19 - 13 vide a Tripartite Assignment Agreement dated 24.01.2019. During such assignment the Corporate Debtor owed a total amount of Rs. 192,23,89,326 known as KKR Assigned Dues which was a sum of the Principal Amount (Rs. 142,87,69,019), Interest due (Rs.48,52,89,265) and Penal Interest (Rs. 83,31,022). Being a signatory to the Assignment Agreement, the Corporate Debtor acknowledged and admitted the said outstanding dues in Schedule I, clause A of the Agreement.

4.4 The Petitioner and the Corporate Debtor decided to settle by restructuring the debt in terms of a Letter of Acceptance dated 15.02.2019, herein after referred to as **LoA**. Under the LoA the dues were to be settled for an amount of



125,00,00,000 with interest @18% p.a. at monthly rests from 24.01.2019.

4.5 As the Corporate Debtor failed to comply with repayment of the dues, the Petitioner withdrew all benefits, concessions and waivers which were granted to the Corporate Debtor vide Revocation Letter dated 20.03.2020. Thereafter, the Petitioner recalled the financial facilities vide Recall Notice dated 15.09.2020.

4.6 Total outstanding dues under KKR Term Loan as on 15.05.2023 was **Rs. 403,76,57,426.82.**

5 Restructuring Support Financing (RSF) Facility:

5.1 The Petitioner sanctioned and advanced RSF Facility of Rs. 20,00,00,000. with interest @18% p.a. under the RSF Agreement dated 15.02.2019. This Facility was advanced on 18.02.2019 to restructure the debts assigned by KKR India Financial Services Limited. The interest on RSF Facility was payable on monthly basis from 31.03.2019 onwards, the principal amount was to be repaid in one bullet payment on 31.08.2019.

5.2 The Corporate Debtor failed to comply with the repayment of interest on 31.03.2019 and the payment of principal on 31.08.2019. The Petitioner recalled the Facility vide a notice dated 15.09.2020 to pay the outstanding dues amounting to Rs. 31,80,25,435. as on 31.08.2020 with interest @18% p.a. and penal interest @2% from 01.09.2020 until payment.

5.3 Total outstanding dues under RSF Facility as on **15.05.2023** was **Rs. 69,59,23,977.**



6 Debts assigned by Corporation Bank to Phoenix Trust FY 19 - 20

- i. Fund Based Limit of Rs. 26,00,00,000 (Rupees Twenty-Six Crores only) last renewed under the Sanction letter dated 18.09.2014.
- ii. Non-Fund Based Limit of Rs. 35,00,00,000 (Rupees Thirty-Five Crores only) last renewed under the Sanction Letter dated 18.09.2014.

6.1 The account of the Corporate Debtor in respect of the above credit facilities was declared as NPA with effect from 21.12.2017.

6.2 The debt owed by the Corporate Debtor to the Corporation Bank was assigned to the Petitioner vide a Tripartite Assignment Agreement dated 13.03.2019. The outstanding dues of Rs.67,28,70,597 which was a sum of Principle amount due as on 28.02.2019 (Rs. 53,91,87,907 (after adjusting 10% OTS amount in the month of September 2018) and Interest due as on 28.02.2019 (Rs. 13,36,82,690) were acknowledged by the corporate debtor.

6.3 Under the Letter of Acceptance dated 26.04.2019, both the parties entered into a settlement with the Petitioner to restructure and settle the CB Assigned Dues for an amount of Rs. 48,15,00,000 which was to be repaid in monthly installments commencing from 30.04.2019 with further interest @18% p.a.

6.4 The Corporate Debtor failed to comply with the repayment of the dues. By a notice dated 20.03.2020, the Petitioner revoked all benefits, concessions and waivers under the Letter of Acceptance, thereafter, recalling the financial facilities vide a recall notice dated 15.05.2020 to pay the CB



Assigned dues amounting to Rs. 86,44,32,202 on 31.08.2020 together with interest @14.30% p.a. and penal interest @2% p.a. from 01.09.2020 till payment. In respect of the Cash Credit Facility @15.25% p.a. and penal interest @2% p.a. from 01.09.2020 until payment.

6.5 Total outstanding amount under the CB Assigned Dues as on **15.05.2023** was **Rs. 133,69,32,847,13.**

7. The Petitioner filed Original Application no. 201 of 2021 before the Debts Recovery Tribunal-I, Mumbai on 10.02.2021 to recover the abovementioned dues. During the pendency of the said Application, the Corporate Debtor proposed an amicable settlement of the said dues, which was accepted by the Petitioner. Subsequently, the Petitioner and Corporate Debtor along with other defendants to the Original Application filed Consent Terms dated 29.08.2022 before the DRT hereinafter referred to as (DRT Consent Terms).
8. Under the consent terms, the Corporate Debtor admitted to the liability for an amount of **Rs. 664,72,53,586** as on 31.01.2021 together with further interest, penal interest and other charges from 01.02.2021.
9. The DRT issued Recovery Certificate No. 53 of 2022 dated 29.08.2022 for the recovery of the entire outstanding amount of **Rs. 664,72,53,586** in favor of the Petitioner. Therefore, the Decretal Amounts under the Recovery Certificate became due and payable by the Corporate Debtor on 01.11.2022.
10. The Petitioner also filed Company Petition No. 1207 of 2021 before this Tribunal under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of the CIRP against the Corporate Debtor. Both the parties settled the matter by filing consent terms dated 30.09.2022 before this Tribunal, hereinafter referred to as



Consent Terms. These terms were taken on record and Company Petition No. 1207 of 2021 was disposed off as withdrawn by an order dated 10.10.2022.

11. Clause 9 and 10 of the Consent Terms is reproduced as under: -

“9. In view of the above, the parties hereto agree that the present Company Petition be disposed of in accordance with the DRT Consent Terms and grant liberty to the Petitioner to file a fresh petition under section 7 of the Insolvency and Bankruptcy Code, 2016, in case the Corporate Debtor defaults in any of the obligations contained in the DRT Consent Terms.

10. The Corporate Debtor hereby agrees, confirms and declares that in case there is any default in fulfilling any of the obligations of the Corporate Debtor contained in the DRT Consent Terms and the Petitioner files a fresh petition under section 7 of the IBC shall be liable to be admitted by this Hon’ble Tribunal forthwith.”

12. The Petitioner addressed a letter dated 01.03.2023 detailing the terms of restructuring the debt owed by the Corporate Debtor. The Corporate Debtor accepted the terms of restructuring, signed and stamped the letter dated 01.03.2023.
13. However, the Corporate Debtor once again defaulted in complying with its obligations under the restructuring which was agreed under the letter dated 01.03.2023. Notably, under the said restructuring, the Corporate Debtor paid only an amount of Rs. 22,25,00,000 (Rupees Twenty-Two crores and Twenty-Five Lakhs only) to the Petitioner and failed to comply with any other obligation thereunder. Thus, the Petitioner addressed a letter dated 04.04.2023 stating that an event of default had occurred, and the said restructuring was cancelled.



14. In view of the above facts, the Petitioner filed this Petition before this Tribunal under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate CIRP against the Corporate Debtor.

Reply of the Corporate Debtor:

The Corporate Debtor raised the following contentions in its Reply on Affidavit

15. Date of Recovery Certificate cannot be date of default.
- a. The Corporate Debtor submits that as per Part IV of Form 1 the entire claim of the Petitioner is based on Recovery Certificate dated 29.08.2022. The Corporate Debtor further stated that the Financial Creditor's case rests on the issuance of Recovery Certificate constituting a fresh cause of action for the purpose of the present petition. It being a settled law that a recovery certificate cannot by any stretch of imagination be construed as the date of default. The date of default shall always remain the date on which the actual default occurred, which in the present case is 15.09.2020, when the Recall Notice was issued by the Financial Creditor. The Corporate Debtor relied on the matter of **Laxmi Pat Surana v. Union Bank of India [(2021) 8 SCC 481]**.
- b. The Corporate Debtor relied on the case of **Digamber Bhondwe Vs. JM Financial Asset Reconstruction Company Limited**, where the NCLAT was of the view that a decree-holder does not fall under the definition of a financial creditor and even if there exists a consent decree the limitation period is counted from the date of the default and not from that of the settlement agreement.
16. Present company petition is based on Recovery Certificate



- a. The Corporate Debtor contends that in para (iii) of the consent terms dated August 29, 2022 filed in DRT-I (Mumbai) it is stated that;

“(iii) The Applicant shall be entitled to proceed with the execution of the Recovery Certificate issued by the Hon’ble Tribunal for the recovery of the decretal amount, less any amount paid after date and for enforcement of the Secured Assets and the Defendant Nos.1, 2(i) to (iii), 3 to 5 agree and undertake before this Hon’ble Tribunal that they shall not protest in any manner for the said execution of the recovery Certificate;”

Therefore, it was submitted that, the Company Petition was based on the Recovery Certificate dated 29.08.2022 which was not with an intention to revive the company in a timely and efficient manner but a mere tactic adopted by the Petitioner to recover its dues.

- b. The Corporate Debtor also relied upon the judgment passed by the Hon’ble Supreme Court of India in **S.S. Engineering Vs. Hindustan Petroleum Corporation [Civil Appeal 4583 of 2022] dated 15.07.2022**, it was held that: -

“The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.”

- c. The Corporate Debtor further relied on **Subhankar Bhowmik Vs. Union of India**, in the High Court of Tripura, where it was submitted that the claims filed by a decree-holder cannot be



treated and/or considered as financial debt. Once a decree is passed, the decree-holder must approach the concerned court for execution of the decree under the Code of Civil Procedure, 1908 ("CPC"). A decree-holder is not directly entitled to the decretal amount until the full and final satisfaction of the said decree and therefore, there is no question of proceedings under Section 7 of the Code being admitted at the behest of the decree holder.

17. With reference to the debt assigned by KKR Phoenix Trust FY19 - 13, the Corporate Debtor stated that, the said loan amount was lying in escrow account and because BOI was not giving NOC, the Corporate Debtor was unable to access the account. The Corporate debtor further stated that the Petitioner is claiming interest on the escrow account to which the Petitioner is not entitled to claim.

18. The present petition is barred by limitation

a. The Corporate Debtor submitted that the proceedings have been filed beyond the period of limitation. It was further submitted that the date of default must be the date on which the default occurred most prior in point of time. Assuming that a default occurred, the same would have ordinarily been 90 days prior to the date of declaration of as a Non-Performing Asset which would be 31.03.2015, when BoI declared the respondent a Non-Performing Asset, 29.06.2018 when KKR declared the respondent a Non-Performing Asset and around 2015 when CB declared the respondent a Non-Performing Asset. The present petition had been filed on 03.01.2023 which is after a long span from the alleged date of default which is between the year 2016-2019. The Corporate Debtor relied on the Hon'ble Supreme Court judgment in **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank**



Limited & Anr [(2021) 7 SCC 313] where it was held that the Limitation Act would apply to proceedings of the Insolvency and Bankruptcy Code before the NCLT and NCLAT.

- b. The Corporate Debtor further submitted that the petition is barred by the law of limitation as the same is filed much beyond the statutory period of 3 years prescribed under Article 137 in Schedule I of the limitation Act, 1963.
19. The Corporate Debtor submitted that a document which is insufficiently stamped, cannot be brought into evidence for the purpose of laying a claim and recovering monies. Furthermore, the Corporate Debtor relied on the judgment passed by the Hon'ble Supreme Court of India in the matter of **N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Limited & Ors. [(2023) 7 SCC 1]**.
20. CIRP should not be initiated against solvent companies
- a. The Corporate Debtor submitted that they are engaged in the business of manufacturing of chassis for heavy and light commercial vehicles and predominantly supplies to Mahindra and Mahindra, Tata Motors, Daimler Trucks and that they have 7 manufacturing plants across India and employs about 1100 workers/employees including contract labor.
 - b. The corporate debtor submitted that they have utilized their own internal accruals and funds to manage their working capital requirements and payments to its lenders/creditors/statutory authorities. Despite declining sales, lack of working capital, economic downturn and factors disrupting the automotive industry, the Corporate Debtor continued to honor its payment obligations over the years. The Corporate Debtor carved leave to refer to and rely upon reports



signifying the way corporate debtor utilized its EBITDA. With the ever-growing demand for electric vehicles, Corporate Debtor further foresees a positive demand in the requirement for chassis and diverse business operations resulting in higher profitability.

- c. The Corporate Debtor further relied upon the judgment of the Hon'ble Supreme Court of India in **Vidarbha Industries Power Limited Vs. Axis Bank Limited [2022 SCC OnLine SC 841]**, where it was held and observed that it is not necessary for the Adjudicating Authority to admit a petition filed under the provisions of Section 7 of the Code even if it was found that there was existence of a debt and default in repayment of such debt. The Adjudicating Authority is empowered to exercise its discretion as provided in section 7(5)(a) of the Code if a Corporate Debtor opposes a Company Petition on its own merits. It is therefore pertinent to note that the viability and financial health of the Corporate Debtor are important factors to be considered before the initiation of CIRP.

Written Submissions of the Financial Creditor in brief

21. The Financial Creditor submitted that the issuance of Recovery Certificate amounts to a fresh cause of action to file the above petition under Section 7 of the IBC. Therefore, the Petition is liable to be allowed solely based on the Recovery Certificate issued by the DRT. The Petitioner relied upon the judgment of the Hon'ble Supreme Court in **Dena Bank Vs. C. Shivakumar Reddy and Ors. [(2021) 8 SCC 481]**.
22. The Petitioner submitted that the Corporate Debtor defaulted in repayment of the aforesaid financial facilities as early as 2015 and this fact was admitted by the Corporate Debtor in their Affidavit in Reply to the present petition. It is a settled law that if the default in



repayment occurred prior to the period specified in Section 10A of the IBC and such default only continues during the said specified period, the bar under Section 10A of the IBC would not apply.

23. The Petitioner relied upon the judgment of the NCLAT in **Narayan Mangal Vs. Vatsalya Builders & Developers Pvt. Ltd.** [Company Appeal (AT) (ins.) No. 249 of 2023 (para 11 and 12) and **Mukesh Goel Vs. Aldous Commodities Pvt. Ltd.** [Company Appeal (AT) (Ins.) No. 1235 of 2023 (para 19)].
24. Under Consent Terms filed before NCLT dated 30.09.2022, the Petitioner was entitled to file a fresh petition under Section 7 of the IBC, if the Corporate Debtor defaulted in complying with its obligations. The Consent Terms stated that the Corporate Debtor shall not raise any objection to the fresh Petition filed under Section 7 of the IBC.

Written submissions by the Corporate Debtor in brief

25. The Corporate Debtor stated that the present petition is clearly aimed at recovery of monies and is therefore not maintainable under the said Code. As per Part IV of the Petition, the entire claim of the Financial Creditor was based on a Recovery Certificate No. 53 of 2022 dated 29.08.2022.
26. The Corporate Debtor submitted that date of default can only be the when the Recall Notice was issued i.e. on 15.09.2020 and not from the date when the Recovery Certificate was issued. The present petition falls under section 10A period as the date of default arises after failing to make payment in pursuance of Recall Notice dated 15.09.2020.

Observations & Findings

27. Heard Ld. Counsel for the parties and perused the record.



28. We note that following 4 (four) types of loans have been availed by the Corporate Debtor from the Petitioner: -

- A. **Bank of India** assigned the entire debt of Corporate Debtor outstanding as on 24.01.2019 was Rs.192,00,10,203.85 to Phoenix Trust - 11 vide Tripartite Agreement dated **24.01.2019** to which the Corporate Debtor was a party, had signed the assignment agreement and acknowledged the debt.
- B. **KKR India** assigned the entire debt of Corporate Debtor outstanding as on 24.01.2019 was Rs.192,23,89,326 to Phoenix Trust - 13 vide Tripartite Agreement dated **24.01.2019** to which the Corporate Debtor was a party, had signed the assignment agreement and acknowledged the debt.
- C. **Corporation Bank** assigned the entire debt of Corporate Debtor outstanding as on 13.03.2019 was Rs.67,28,70,597 to Phoenix Trust - 20 vide Tripartite Agreement dated **13.03.2019** to which the Corporate Debtor was a party and had signed the assignment agreement and acknowledged the debt.
- D. **RSF Facility** – The Petitioner had also given a loan of Rs.20,00,00,000 to Corporate Debtor vide Restructuring Support Finance Agreement dated **15.02.2019**. The outstanding debt as on 15.09.2020 was Rs.31,80,25,435.

29. It is submitted by the Petitioner that the Corporate Debtor defaulted in adhering to the terms and conditions of the above loan assignment/agreements and in repayment of the loan. The following documents have been annexed to the petition as evidence of debt and default: -

- A. **Bank of India**



- i. Tripartite Assignment Agreement dated **24.01.2019** between Bank of India, Phoenix Trust -11 and the Corporate Debtor. Copy of the assignment agreement has been annexed.
- ii. NeSL Certificate mentioning date of default as **29.10.2021**. NeSL Certificate has been annexed.

B. KKR India Assigned loan

- i. Tripartite Assignment Agreement dated **24.01.2019** between Bank of India, Phoenix Trust -11 and the Corporate Debtor.
- ii. NeSL Certificate mentioning date of default as **26.07.2021**. NeSL Certificate has been annexed.

C. Corporation Bank –

- i. Tripartite Assignment Agreement dated **13.03.2019** between Bank of India, Phoenix Trust - 20 and the Corporate Debtor. Copy of assignment agreement has been annexed.
- ii. NeSL Certificate mentioning date of default as **07.10. 2021**. NeSL Certificate has been annexed.

D. RSF Facility –

- i. The loan of Rs.20,00,00,000 was given to Corporate Debtor vide Restructuring Support Finance Agreement dated 15.02.2019.
RSF agreement has also been annexed.
- ii. Date of Default according to the NeSL is **23.09.2021**. NeSL Certificate has been annexed.

30. The Petitioner had annexed a copy of the order dated 29.08.2022 passed in O.A. No. 201 of 2021 by the Debts Recovery Tribunal – I, Mumbai and a copy of the Recovery Certificate dated 29.08.2022 passed by Debts Recovery Tribunal – I, Mumbai. Summary of Record of Default issued by the Information Utility has been given below in a tabular form: -



RECORD OF DEFAULT w.r.t. THE FOLLOWING DEBTS		
The Financial Institution	Date of default	Default Amount (Rs.)
Bank of India	29.10.2021	2,91,79,83,789/-
KKR Financial Services Limited	26.07.2021	3,04,01,50,649/-
RSF Facility by Phoenix Trust - 13	23.09.2021	43,70,29,984/-
Corporation Bank (now Union Bank of India)	07.10.2021	1,01,74,52,631/-
TOTAL		7,41,26,17,053/-

31. The Corporate Debtor's first contention is that the date of Recovery Certificate cannot be date of default.
32. Accordingly, we find that the petitioner has not only annexed the Record of Default issued by NeSL clearly showing the debt and default but has also annexed the order dated 29.08.2022 passed by DRT and Recovery Certificate dated 29.08.2022 as an evidence of debt and default.
33. The landmark judgment of the **Hon'ble Supreme Court** in **Dena Bank Vs. C. Shivakumar Reddy and Ors. (2021) 10 SCC 330** it was held that Section 7 of the Petition can be initiated on the basis of the Recovery Certificate obtained by the DRT. Relevant paragraphs of the judgment are produced: -

"130. We see no reason why the principles should not apply to an application under Section 7 of the IBC



which enables financial creditor to file an application initiating the Corporate Insolvency Resolution Process against the Corporate Debtor before the Adjudicating Authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC.”

“136. A final judgement and order/decreed is binding on the judgement debtor. Once a claim fructifies into a final judgement and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

137. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate.”

34. The relevant excerpt of the Recovery Certificate dated 29.08.2022 reads as follows: -

“In terms of final order dated 29th August, 2022 passed by this Tribunal in the above mentioned case, it is ordered that the Applicant Certificate Holder Bank is entitled to recover a sum of Rs.664,72,53,586.17/- together with further interest from 01.02.2021.



- a. At the rate of 15.45% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 265,66,94,089.18/- until payment and/or realization; and*
- b. At the rate of 17% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 269,94,12,458.51/- until payment and/or realization; and*
- c. At the rate of 18% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 36,53,33,398/- until payment and/or realization; and*
- d. At the rate of 14.30% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 27,92,24,323.08/- until payment and/or realization and at the rate of 15.25% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 64,65,89,317.40/- until payment and/or realization in full from the Certificate Debtor No. 1,2(i) to (iii), 3 to 5 hereinafter referred to as: -*

35. The Corporate debtor also contended that the present petition falls under Section 10A period as the date of default arises after failing to make payment in pursuance of Recall Notice dated 15.09.2020. In view of the order of DRT and the Recovery Certificate, we are of the considered view that default does not fall under section 10A period.
36. As per the restructuring which was agreed under the letter dated 01.03.2023, the Corporate Debtor repaid only Rs. 22,25,00,000/- and failed to repay the remaining dues or comply with any other obligation thereunder.
37. The Recovery Certificate, which is an order of Tribunal, is sufficient evidence to establish debt and default under Section 7(3) of the IBC.



Rule 2A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2020 is reproduced as under: -

*“2A. Record or evidence of default by financial creditor.
For the purposes of clause (a) of sub-section (3) of Section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: -
a) certified copy of entries in the relevant account in the bankers’ books as defined in clause (3) of Section 2 of the Bankers’ Books Evidence Act, 1891;
b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.”*

38. In view of the legal provisions of law and legal proposition laid down by the Hon’ble Supreme Court, all the objections raised by the Corporate Debtor are legally untenable and are hereby rejected.
39. 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)

40. We are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code.
41. Accordingly, this Company Petition bearing no. 881 of 2023 is **admitted** with the following directions:
- i. The above Company Petition (IB) 881(MB)/2023 is **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **KLT Automotive & Tubular Products Limited**.
 - ii. Having perused the written consent and AFA of the proposed Insolvency Professional, we hereby appoint **Mr. Ashutosh Agarwala** bearing Registration No: IBBI/IPA-001/IP-P01123/2018-19/11901, having valid Authorization for Assignment up to 03.01.2025, email: gantrip@gmail.com; Address: D-1005, Ashok Towers, Dr. S.S. Road, Parel, Mumbai, Maharashtra - 400012 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. 7 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.



42. The Company Petition **No. 881 of 2023** is accordingly **admitted**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Vaishnavi, LRA

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)