

C.P. (IB) No.292/KB/2024

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-II
KOLKATA

C.P. (IB) No.292/KB/2024

Date of Hearing: 10/01/2025

Date of Order:13/01/2026

In the Matter of:

HDFC Bank Limited
Department For Special Operations
Jardine House, Ist Floor, 4, Clive Row,
Kolkata - 700001,
West Bengal

APPLICANT/FINANCIAL CREDITOR

Versus

K.B. Sponge Iron Limited
6-Lyons Range 4th Floor, Unit no-2,
Kolkata - 700001,
West Bengal

CORPORATE DEBTOR

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha Kantilal Shah Hon'ble Member(Technical)

Present:

For the Financial Creditor: Mr.Shaunak Mitra,Adv.
Ms.Tannya Baranwal,Adv.
Ms.Vansika Khaitan,Adv.

For the Corporate Debtor: Ms.Urmila Chaktraborty,Adv.
Ms.Manisha Das,Adv.
Mr.Sayantan Bose,Adv.

ORDER

Labh Singh, Member(Judicial)

1. The HDFC Bank, being the Financial Creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as “the IBC Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) with a prayer to trigger Corporate Insolvency Resolution Process(for short “CIRP”) in respect of respondent Company K.B. Sponge Iron Limited (hereinafter to be referred to as “the corporate debtor”).
2. It is appropriate to mention that the applicant HDFC Bank Limited, is a Banking Company incorporated on 30.08.1994, having its Registered Office at House Senapati Bapat Marg. Lower Parel W. Mumbai - 400013 Maharashtra and one of its Branch Office at Department for Special Operations Jardine House, 1st Floor, 4, Clive Row, Kolkata - 700001, West Bengal
 - 2.1. Mr. Debojit Mukharjee, Senior Manager, Department For Special Operations Jardine House, Ist Floor, 4, Clive Row, Kolkata - 700001, West Bengal duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of

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the Resolution/Authorisation dated 22.11.2023 has been placed on record.

2.2. The Respondent Company, K.B. Sponge Iron Limited, against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 04.04.2002 having its registered office situated at 6-Lyons Range 4th Floor, Unit no-2, Kolkata-700001, West Bengal, India. Since the registered office of the respondent corporate debtor is situated at Kolkata, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

2.3. Briefly stated the case of the applicant is that Applicant/Financial Creditor had been approached by the Corporate Debtor being K.B. Sponge Iron Limited represented by its director for availing credit facilities. That pursuant to the said request, in December 2021, the applicant Bank vide the Sanction Letter bearing No. 86027035 dated 11.01.2022, sanctioned various credit facilities amounting to Rs 16,31,84,572.00 (Rupees Sixteen Crore Thirty One Lakh Eighty Four Thousand Five Hundred Seventy Two only) to the Corporate Debtor.

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- 2.4. That on 15.01.2022, the Corporate Debtor represented by its directors executed various loan and security documents including Term Loan Agreement, Facility Cum Hypothecation Agreement and Master Facility Agreement in favour of the Applicant/Financial Creditor. Additionally, an Agreement of Hypothecation of Stock and Book Debts was executed by the Corporate Debtor.
- 2.5. In consideration of the financial facilities availed by the Corporate Debtor, Ramesh Kumar Kejriwal, Aditya Kejriwal, Vishal Kejriwal, Anita Kejriwal and Sumitra Devi Kejriwal (hereinafter referred to as "Personal Guarantors") vide their Guarantee Agreement dated 15.01.2024 had stood as Personal Guarantors guaranteeing due repayment of the financial facilities availed by the Corporate Debtor.
- 2.6. The Supplemental Agreement dated 30.03.2022 was executed between Corporate Debtor and the Applicant bank for enhancement of the overall sanctioned facility limit of Rs 1510 lakhs. The Debt owed by the Corporate Debtor to the Applicant Bank became due and payable on November, 2023. The Corporate Debtor defaulted in the payment of the debt on 04.02.2024. Accordingly a Demand Notice was issued by A.K. Singh & Associates on behalf of the Applicant Bank on 09.04.2024 to the Corporate Debtor and the Personal Guarantors demanding the repayment of the default amount of

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Rs 16,15,00,226.29 (Rupees Sixteen Crore Fifteen Lakh Two Hundred Twenty Six and Twenty Nine Paise Only) due and payable as on 01.02.2024 and invoking the personal guarantee. That a Notice under Section 13(12) was issued by the Applicant Bank to the Corporate Debtor and the Personal Guarantors on 23.04.2024. On 07.05.2024, the Applicant Bank issued a notice for initiation of insolvency proceedings owing to non-payment of the debt to the Corporate Debtor and the Personal Guarantors.

2.7. That as on date, an amount of Rs. 14,78,17,496.02/- (Rupees Fourteen Crore Seventy Eight Lakh Seventeen Thousand Four Hundred Ninety Six and Two Paise Only) is due and payable towards the principal outstanding amount and an amount of Rs. 1,39,23,205.70/- (Rupees One Crore Thirty Nine Lakh Twenty Three Thousand Two Hundred Five and Seventy Paise Only) is due and payable towards the interest. The Corporate Debtor is liable for an amount of Rs. 16,17,40,701.72/- (Rupees Sixteen Crore Seventeen Lakh Forty Thousand Seven Hundred one and Seventy Two Paise Only) as on 05.06.2024.

2.8. Therefore, as per part IV of the application, it is claimed that as on 05.06.2024, a sum of Rs. 16,17,40,701.72/- (Rupees Sixteen Crore Seventeen Lakh Forty Thousand Seven Hundred One and paisa Seventy one Only) is due and payable

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by the respondent company and the date of default is 04.02.2024.

2.9. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof, the applicant has proposed the name of Sushanta Kumar Choudhury, for appointment as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N00292/2020-2021/13238 resident of 64, Hem Chandra Naskar Road, Belegkata, Kolkata with email id: sk.choudhury123@gmail.com. Mr. Sushanta Kumar Choudhury has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sushanta Kumar Choudhury as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the IBC Code has been satisfied.

2.10. The applicant has placed following documents on record to prove its claim:

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- i. Copy of Master Data of Corporate Debtor Exh-N;
- ii. Copy of Working of Computation of the amount Exh-D;
- iii. Copies of Memorandum of Deposit of Title Deeds for creation of mortgage in order to secure Term Loan and Working Capital Credit Facilities Exh. E
- iv. Copies of Registration of Charge with ROC- Exh. F;
- v. Copy of Sanction Letter dated 11.01.2022 Exh.-G;
- vi. Copy of Hypothecation Agreement dated 15.01.2022 Exh.-H;
- vii. Copy of Board Resolution of CD dated 13.01.2022 Exh.-I;
- viii. Copy of Deed of Continuing Guarantee Dated 15.01.2022 Exh.-J;
- ix. Copy of Supplemental Agreement dated 30.03.2022 Exh.-K;
- x. Copy of Memorandum of Entry dated 30.03.2022 Exh.-L;
- xi. Copy of Term Loan Agreement dated 15.01.2022 Exh.-M;
- xii. Copy of Facility cum Hypothecation Agreement dated 15.01.2022 Exh.-N;
- xiii. Statement of account as on 05.06.2024 Exh.-P
- xiv. Copy of Demand Notice dated 09.04.2024 Exh.-Q
- xv. Copy of Demand Notice dated 09.04.2024 issued under Section 13(2) of the SARFAESI Act 2002 Exh.-R; and
- xvi. Copy of Notice dated 07.05.2024 Exh.-S.

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- 2.11. The applicant has also placed on record a copy of record of default Exh.-‘O’ filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that the claim of applicant is authenticated as no objection has been recorded by corporate debtor.
- 2.12. The respondent corporate debtor has filed its reply raising preliminary objection that the present application is wholly misconceived and has been filed for extorting the money. The present application is based on wild and baseless facts.
- 2.13. The present application is also founded on an inflated and fictitious claim, to which the financial creditor is not entitled to either in law or on the facts of the present case. The alleged financial creditor has not approached this Tribunal with clean hands. The present application suffers from deliberate and intentional distortion and concoction of material facts.
- 2.14. The present petition has been filed without any authority. In the absence of authorization, no petition could have been filed by the petitioner. The petition is defective and that such defects are fatal in nature which strikes at the very maintainability of the petition. The instant petition is incomplete and hence, is liable to be dismissed in limine.

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- 2.15. The present petition is filed as an arm twisting method with no intent of any resolution of the alleged corporate debtor. The present petition is filed with malicious intent for purpose other than for the resolution of insolvency. The said petition is liable to be dismissed with costs and penalty be imposed.
- 2.16. On merits, it has been replied that the respondent has been carrying on the business of iron and steel and has set up a manufacturing unit at Durgapur. The respondent had initially obtained financial assistance from Dena Bank for setting up such factory, which was fully repaid and/or liquidated in the year 2015. The respondent also availed financial assistance from Bandhan Bank and SIDBI Bank for expansion of its business. The respondent upon availing the aforesaid credit facilities had duly implemented the expansion plan of its existing unit and was fulfilling all its financial obligations towards the said Bandhan Bank and SIDBI.
- 2.17. However, there was an outbreak of COVID-19 Pandemic and as a result thereof the nation- wise lockdown was imposed by the Government of India which completely halted the manufacturing process of the respondent. The business of the respondent was profitable even during such challenging times. The respondent was regularly serving the interest and EMIs payable to the said Bandhan Bank and SIDBI.

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2.18. In the year 2022, the petitioner bank approached the respondent to take over its existing loan accounts maintained with Bandhan Bank. The respondent was in need of further financial assistance for meeting its working capital requirement and as such agreed to accept such proposal of the petitioner bank for taking over of its existing loan facilities from Bandhan Bank. Accordingly, the petitioner bank had issued a sanction letter dated 11.02.2022 incorporating the terms and conditions for taking over the existing loan facilities of the respondent from Bandhan Bank.

2.19. It is further replied that for running the aforesaid unit situated at Durgapur, the respondent was fully dependent on the power supply from Damodar Valley Corporation (DVC) and the average cost per unit was around Rs. 4.80/unit. In the year 2023, the Government of India announced a new policy that every power plant in India has to use 10% of imported coal of their total consumption. The effect of such policy was an immediate enhancement of the existing rate of the power supply by DVC.

2.20. On and from the month of June 2022 the rate per unit was increased to Rs. 6.70/Unit. The average electricity bill prior to such enhancement was around Rs.160 lakhs and from June 2022, such bill was enhanced to Rs. 220 lakhs. In view

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of such huge variation in the rate of the power supply, the cost of production of the respondent was enhanced to a great extent which was challenging to the viability of the said unit of the respondent.

2.21. The aforesaid circumstances and in view of exorbitant enhancement of the rate of electricity per unit, all the industries, which were dependent on the power supply from DVC were adversely affected. In view of this, the Association filed a case before the Learned Appellate Tribunal for Electricity ("APTEL") challenging such enhancement of rate by the DVC. However, no favourable order could be obtained from the said Tribunal and accordingly, the order of the Ld. Tribunal was challenged before the Hon'ble Supreme Court of India; and upon hearing the parties, the Hon'ble Supreme Court, vide its order dated 23.11.2022, directed the consumers to continue to pay the enhanced bill. However, such payment will be subject to outcome of the said case pending before the Ld. APTEL.

2.22. In view of the above order passed by the Hon'ble Supreme Court, the respondent was compelled to continue to make the payment of the enhanced bill raised by DVC, which adversely affected the viability of the unit of the respondent. The respondent continued to pay such enhanced electricity bill till September 2025. However, thereafter, the electricity

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connection of the respondent was disconnected by DVC in the month of November 2023.

2.23. Therefore, the entire activities of the respondent had completely closed but despite having no production and/ or generation of fund, the respondent had to continue to bear and pay the overhead expenses including the wages and salaries of the permanent employees and staff. The financial condition of the respondent was completely in distress and despite having no cash flow, the respondent had to continue to bear such expenses including the security expenses for protecting the properties. In the meantime, the term loan facility availed from SIDBI had been fully liquidated by sale of one vacant land which was the collateral security of SIDBI.

2.24. The bank guarantee facility sanctioned by the petitioner bank was utilized for the purpose of issuance of bank guarantee in favour of DVC. In the month of December 2023, the said DVC had wrongfully invoked all the bank guarantees totalling to Rs.5.60 crore, which was much more than the actual outstanding of DVC to the tune of Rs. 4.18 Cr. The respondent was compelled to file a case against DVC for recovery of such excess amount by invocation of bank guarantees before the Hon'ble High Court at Calcutta being

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WPA No. 11113 of 2024. The said case is still pending for adjudication.

2.25. It is submitted that in the month of January 2024, the respondent submitted a restructuring proposal vide letter dated 24.01.2024 to the Petitioner bank. The respondent proposed to obtain a fresh electricity connection from West Bengal State Electricity Distribution Company Limited and to restart the unit at Durgapur. The petitioner replied to such restructuring proposal by its letter dated 15.02.2024. In the said letter, the petitioner bank had refused to even process such request for restructuring of the respondent and the said action of the petitioner bank was without authority and arbitrary.

2.26. The respondent raised its objection against the decision of non-placing and/or forwarding the restructuring proposal to the competent Authority. The respondent appraised the petitioner that the respondent being a MSME unit was entitled for consideration of the restructuring proposal. The petitioner bank duly received the said reply of the respondent dated 05.03.2024 but failed and neglected to give any reply to such proposal. The petitioner bank issued a communication dated 07.03.2024 intimating the respondent the alleged outstanding in its loan accounts as well as the fact

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that penal interest @ 18% per annum was being charged on the overdue amount.

2.27. It is stated that the issuance of such letter clearly demonstrates that the petitioner bank instead of coming forward to extend its cooperation to the respondent, opted to take advantage of such adverse situation faced by the respondent by charging/debiting penal interest at such inflated and draconian rate and to get its claim enhanced artificially. These facts and circumstances are completely and grossly suppressed by the petitioner in the said petition. On this ground alone, the present petition is liable to be dismissed in limine with exemplary costs.

2.28. It is further replied that the petitioner bank issued a legal notice dated 09.04.2024 through its Advocate wherein false and frivolous allegations were made. It was informed for the first time that the petitioner bank had declared the loan accounts of the respondent as NPA on 04.02.2024. In all its previous correspondences, the petitioner has failed to disclose such purported fact of alleged classification of its account as an NPA.

2.29. The respondent by its letter dated 15.04.2024 replied to such legal notice challenging the classification of the loan account as NPA on 04.02.2024. The petition replied through its Advocate vide letter dated 26.04.2024 raising a

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vague, frivolous and unfounded contention. During the interregnum, the petitioner had issued a purported demand notice dated 23.04.2024 alleging that the loan facilities of the respondent were purportedly declared as NPA on 04.02.2024. The alleged demand notice issued by the petitioner was illegal and without jurisdiction.

- 2.30. The petitioner, by alleged demand notice, had demanded the outstanding in respect of five loan accounts including the invoked bank guarantee. The interest accrued in the cash credit account was served by the respondent till 31.10.2023 and as such 90 days interest was not accrued and/or remained unpaid in the said cash credit account as on 04.02.2024. The bank guarantee issued in favour of DVC was invoked on 01.12.2023 and as such the 90 days' time had not elapsed till 04.02 2024 i.e. the date of alleged classification of the loan accounts as NPA. In so far as the term loan account no. 452386041 is concerned, the EMIs were deposited till 07.10.2023 and the next EMI was due and payable only on 07.11.2023. In the event the default in payment of EMI in such term loan account is taken into consideration, the 90th day of such default could have been on 05.02.2024 and as such the said loan account could not be classified as NPA on 04.02.2024.

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- 2.31. It is further submitted that the GECL facility sanctioned by Bandhan Bank was taken over by the petitioner bank having account no. 86244475. In the said GECL account also, the date of payment of EMI was 7th day of every month and on 07.10.2023, the respondent had paid such EMI. The next EMI in such GECL account was falling due and payable on 07.11.2023 and as such, there was no 90 days default till 04.02.2024 in respect of such GECL account also.
- 2.32. It is further stated that the GECL loan facility was sanctioned as per the guidelines of the Reserve Bank of India and the outstanding in such loan facility was guaranteed by the National Credit Guarantee Corporation. The said loan facility was unsecured and not required to be secured by the personal guarantee or the further collateral security. It is further stated that in terms of the guidelines, such GECL facility cannot be classified as NPA without first notifying the said National Credit Guarantee Corporation and submitting the demand with them. In the instant case without observing such provision of the guidelines, the petitioner had wrongfully and illegally classified such loan account as NPA on 04.02.2024.
- 2.33. The petitioner demanded an inflated and exorbitant claim without even providing the rate of interest charged and/or debited in such loan accounts and more so no statement of

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the respective loan accounts was enclosed with the alleged demand notice. The failure to disclose such mandatory particulars and/or details of the purported claim had rendered the purported demand notice as illegal and infructuous.

2.34. It is further submitted that by issuance of the alleged demand notice dated 23.04.2024, the petitioner had wrongfully clubbed its alleged dues. The petitioner bank has taken actual physical possession of the registered office of the respondent situated at 6, Lyons Range, 4th Floor, Unit No. 2, Kolkata- 700 001.

2.35. The initiation of the proceeding under the IBC by the petitioner bank itself is ex-facie illegal and void, inasmuch as the loan accounts of the respondent could not be classified as NPA on 04.02.2024. It is further submitted that since the classification of NPA itself was illegal and de hors the RBI guidelines, the invocation of the provisions of the IBC was without jurisdiction.

2.36. The alleged computation sheet as annexed by the financial creditor is inconclusive. There is no detail provided of the payment received by the Financial Creditor from the alleged corporate debtor. The purported claim of the financial creditor is totally inflated. The alleged computation does not provide any date of default. The alleged computation

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sheet is wholly misconceived and false; and therefore, no reliance can be placed on the same. The financial creditor has randomly applied highly inflated rates of penal interest.

2.37. The respondent, being aggrieved by and dissatisfied with the coercive measures taken by the Petitioner bank, filed a SARFAESI Application being S.A. No. 301 of 2024 before the Ld. Debts Recovery Tribunal No. 1, Kolkata which was admitted by an order dated 26.11.2024. In view of the relevant provisions of the SARFAESI Act, 2002, the Ld. DRT 1, Kolkata is yet to adjudicate the legality and validity of the purported measures taken by the Petitioner bank and its officers in the said SARFAESI proceedings. Despite being fully aware of the pendency of the SARFAESI Application before the Ld. DRT 1, Kolkata, the petitioner bank has grossly suppressed such material facts before this Hon'ble Tribunal and filed the present proceeding under the IBC, 2016.

2.38. Moreover, the petitioner bank has also filed a purported application being Misc. Crl. Case No. 678 of 2024 under Section 14 of the SARFAESI Act, 2002 before the Ld. Chief Judicial Magistrate at Howrah to take physical possession of the security interests in respect of the same transaction. Thus, it is evident that the petitioner bank has approached

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this Tribunal with unclean hands by completely suppressing the fact of the pendency of the SARFAESI proceedings and that the petitioner bank is rampantly indulging in multiplicity of proceedings.

2.39. The petitioner bank has also instituted three separate applications under Section 95 of the IBC Code 2016 against Ramesh Kumar Kejriwal, Aditya Kejriwal and Vishal Kejriwal before this Tribunal being CP (IB) No. 294/KB of 2024; CP (IB) No. 296/KB of 2024 and CP (IB) No. 295/KB of 2024, respectively. The said applications are pending adjudication before this Tribunal.

2.40. While replying para wise, the respondent has denied and disputed each and every content of the present application which has not specifically been admitted herein. It has been denied and dispute that any sum or a sum of Rs. 14,78,17,496.02 is due or payable or outstanding, as alleged. The corporate debtor is running as a going concern and as such, it is in no need of any resolution whatsoever. The account of the principal borrower has been erroneously and illegally declared as NPA. It is denied and disputed that the alleged corporate debtor is in default or that it has committed any default, as alleged or at all.

2.41. It has been denied and disputed that there is any record of default with NeSL or any other information utility, as

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alleged. The CD has been disputing the alleged claim of the bank and the wrongful classification of accounts of the respondent as NPA.

2.42. Thus, the main objection raised by the respondent is that neither any default has been occurred nor the respondent corporate debtor is bankrupt or in position of not being able to pay off its debts.

3. The applicant Company filed its rejoinder denying the averment made in the reply and reiterating the facts as pleaded in the present petition which are not reproduced here for sake of brevity. The respondent also filed its sur-rejoinder to rejoinder filed by the petitioner and reiterated the facts pleaded in reply affidavit which also not reproduced here for sake of brevity.

4. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:

- (i) Whether the person who filed the present application has not authority to file and maintain the present application?
- (ii) Whether there is financial debt as defined in Section 5(8) of the IBC Code 2016?
- (iii) Whether there is default as defined in Section 3(12) of the IBC Code 2016?

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(iv) Relief, to which the petitioner is entitled?

5. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No.(i)

- 5.1. The respondent has taken a plea that the present petition has been filed without any authority and accordingly, in absence of authorization, no petition could have been filed by the petitioner.
6. Mr. Debojit Mukharjee, Senior Manager, Department For Special Operations Jardine House, Ist Floor, 4, Clive Row, Kolkata - 700001, West Bengal has been duly authorized on behalf of applicant to prefer the present application for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of the Resolution/Authorisation dated 22.11.2023 has been placed on record. The plea of the respondent that the present application has been filed by a person who is incompetent is not tenable at law. Therefore, this question is answered against the respondent.

Issue No. (ii) & (iii)

7. It is an accepted proposition of law that an application under Section 7 of the IBC Code 2016 is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1,00,00,000/-. In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.
8. In the facts, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that initially in the month of December 2021, the applicant financial creditor vide Sanction Letter dated 11.01.2022, advanced various credit facilities amounting to Rs 16,31,84,572.00 (Rupees Sixteen Crore Thirty One Lakh Eighty Four Thousand Five Hundred Seventy Two only) to the Corporate Debtor. Thereafter, those financial assistance were renewed/reviewed from time to time.
9. It is also proved on record that as on date, an amount of Rs. 14,78,17,496.02/- (Rupees Fourteen Crore Seventy Eight

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Lakh Seventeen Thousand Four Hundred Ninety Six and Two Paise Only) is due and payable towards the principal outstanding amount and an amount of Rs. 1,39,23,205.70/- (Rupees One Crore Thirty Nine Lakh Twenty Three Thousand Two Hundred Five and Seventy Paise Only) is due and payable towards the interest. Thus, the Corporate Debtor is liable for an amount of Rs. 16,17,40,701.72/- (Rupees Sixteen Crore Seventeen Lakh Forty Thousand Seven Hundred one and Seventy Two Paise Only) as on 05.06.2024.

10. Therefore, as per part IV of the application, it is claimed that as on 05.06.2024, a sum of Rs. 16,17,40,701.72/- (Rupees Sixteen Crore Seventeen Lakh Forty Thousand Seven Hundred One and paisa Seventy one Only) is due and payable by the respondent company.
11. The respondent has taken a plea that the respondent, being aggrieved with the coercive measures taken by the Petitioner bank, filed a SARFAESI Application being S.A. No. 301 of 2024 before the Ld. Debts Recovery Tribunal and Ld. DRT 1, Kolkata has yet to adjudicate the legality and validity of the purported measures taken by the Petitioner bank and its officers in the said SARFAESI proceedings. It has been submitted by the respondent that the applicant bank has grossly suppressed this material facts before this Tribunal and filed the present proceeding under the IBC, 2016.

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12. Insofar as pendency of Securitisation Application before Debts Recover Tribunal is concerned, it has no impact on continuation of proceeding under IBC Code 2016. Hon'ble NCLAT in case of Punjab National Bank Versus Vindhya Cereals Pvt. Ltd 2020 SCC OnLine 957 held that:

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

13. Hon'ble NCLAT in another M/s Sundram BNP Paribas Home Finance Limited Versus M/s MPL 2 Wheelers Private Limited IBA/780/2019 vide order dated 13th November 2020 on the same proposition of law held that:

“Thus from the judgment cited above, it is now trite that pendency of actions under the SARFAESI Act by the Financial Creditor is not bar for filing an application under Section 7 of IBC, 2016, especially in view of Section 238 of IBC. Further the proceeding under IBC,

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2016 cannot be said to be a parallel proceeding since the application under Section 7 of IBC, 2016 is filed to bring about a resolution for the Corporate Debtor, on other hand the proceeding under the SARFAESI Act 2002 is for recovery of the amount which is due and payable to the Financial Creditor.”

14. Therefore, the pendency of Securitisation Application under the provision of SARFAESI Act 2002 before Debts Recover Tribunal has no impact on continuation of proceeding under Section 7 of IBC Code 2016
15. The date of default has been proved on record which is 04.02.2024 and the default has been authenticated in the record of Information Utility i.e NeSL which is Annexure-0 filed with the present application. There is no dispute raised with information utility about the default recorded therein.
16. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
17. There is no pre-existing dispute between the parties which might have impacted the proceeding before this Tribunal. The dispute with regard to classification of account as non

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performing asset is not an impediment to admit the corporate debtor in CIRP process when the default has been proved on record.

18. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

Issue No. (iv)

19. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.
20. Mr. Sushanta Kumar Choudhury, Resolution Professional having registration number IBBI/IPA-003/IP-N00292/2020-2021/13238 resident of 64, Hem Chandra Naskar Road, Belegghata, Kolkata having email id: sk.choudhury123@gmail.com is appointed as an Interim Resolution Professional for the corporate debtor.
21. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2,50,000/- with the Interim Resolution Professional

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namely Mr. Sushanta Kumar Choudhury to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

23. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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

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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.”

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

25. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are

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under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the exmanagement or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

26. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal, Kolkata at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)