

NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI
CP (IB) No.102/MB/2025

*[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:

IRABATI TIE-UP PRIVATE LIMITED

[CIN: U51109MH2007PTC422218]

Office No. 215, 2nd Floor

Disma Complex, KWC Steel Market

Kalamboli, Navi Mumbai – 400099

Maharashtra.

...Financial Creditor/Applicant

V/s

ARK INDUSTRIES PRIVATE LIMITED

[CIN: U27200MH2004PTC148690]

Unit/Office No. 205, 2nd Floor

Windfall Building, Andheri Kurla Road,

J.B. Nagar, Andheri (E)

Mumbai – 400002, Maharashtra.

...Corporate Debtor

Pronounced: 08.05.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Nishant Chottani i/b Adv. Deep Shah

Corporate Debtor: Adv. Vikram Choudary



ORDER

[PER: CORAM]

1. **BACKGROUND**

- 1.1 This is an Application bearing C.P. (IB) No.102/MB/2025 filed on 10.10.2024 by Irabati Tie-Up Private Limited, the Applicant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”) by Mr. Sunil Molawade, authorised signatory *vide* Board Resolution dated 12.08.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of ARK Industries Private Limited, the Corporate Debtor.
- 1.2 The Applicant is engaged in the business of trading of iron and steel products. The Corporate Debtor is also engaged in the business of iron and steel.
- 1.3 As per Part-IV of the Application the total amount claimed to be in default by the Corporate Debtor is Rs.1,09,20,000/- (One Crore Nine Lakh Twenty Thousand Rupees) including principal amount of Rs.1,04,00,000/- (One Crore Four Lakh Rupees) and interest amount at 12% p.a. of Rs.5,20,000/- (Five Lakh Twenty Thousand Rupees). The date of default is mentioned as 01.04.2024 when the Corporate Debtor first defaulted in making the payment of the very 1st instalment towards the loan amount. Due to the prolonged non-payment and disregard for legal obligations by the Corporate Debtor, the Applicant has filed the present



Application seeking initiation of CIRP in respect of the Corporate Debtor under Section 7 of the Code.

2. AVERMENTS OF THE APPLICANT

- 2.1 The Applicant is a company incorporated under the provisions of the Companies Act, 1956 having Authorized Capital Rs. 5,00,00,000/- and Paid up Capital Rs. 4,85,00,000/-.
- 2.2 The Corporate Debtor had approached the Applicant and represented that there was a liability to State Bank of India, which the Corporate Debtor had partially settled by paying an amount of Rs. 36,00,000/-. However, an amount of Rs. 1,04,00,000/- was still due and payable. Accordingly, the Corporate Debtor requested the Applicant to advance a 'Short Term Loan' of Rs. 1,04,00,000/-.
- 2.3 A Loan Agreement dated 30.01.2024 was executed between the Applicant and the Corporate Debtor, wherein it was clearly stated that an interest rate of 12% per annum would be applied, calculated from the date of disbursement of the loan until the loan is fully paid. The loan agreement specifically states that the tenure of the loan was six months, with repayment commencing after two months of its execution and disbursement of the sanctioned amount.
- 2.4 The repayment terms as per the loan agreement were as follows:
- i. 1st instalment on 01.04.2024 of Rs.26,00,000/-
 - ii. 2nd instalment on 01.05.2024 of Rs.26,00,000/-
 - iii. 3rd instalment on 01.06.2024 of Rs.26,00,000/-
 - iv. 4th instalment on 01.07.2024 of Rs.26,00,000/-
- 2.5 The Corporate Debtor delayed the payment of the 1st instalment and eventually paid only an amount of Rs. 85,000/- towards the interest on the loan. The



Applicant addressed a letter dated 03.04.2024 to the Corporate Debtor, requesting payment of the pending amount. However, the Corporate Debtor orally requested the Applicant for more time since it was facing financial difficulties.

- 2.6 Despite repeated demands from the Applicant, the Corporate Debtor has failed to make any instalment payments. Accordingly, the Applicant issued Letters dated 03.05.2024, 03.06.2024, and 03.07.2024 to the Corporate Debtor requesting payment of the overdue instalments along with the applicable interest. However, the Corporate Debtor has not only defaulted on these payments but has also failed to respond to the aforementioned letters.
- 2.7 As per terms and conditions of the said loan agreement, it was clearly mentioned that if the Corporate Debtor fails to pay any instalment, the Applicant will have right to recall the entire loan facility. The Applicant issued Loan Recall Notice on 15.07.2024 calling upon the Corporate Debtor to make the entire outstanding payment including the interest. Subsequent to the receipt of the Loan Recall Notice, the Corporate Debtor addressed a Letter dated 30.07.2024 acknowledging its liability and made a proposal of restructuring of the loan facility which was rejected by the Applicant.
- 2.8 The Corporate Debtor had also issued confirmation of accounts to the Applicant. The Corporate Debtor had admitted and acknowledged the financial debt *vide* various confirmation of accounts which bear the stamp and signature of the Corporate Debtor. The same manifests that the Corporate Debtor admits its liability to pay the financial debt.
- 2.9 The Applicant sent a final reminder to the Loan Recall Notice on 31.07.2024 to the Corporate Debtor calling upon to pay the entire outstanding amount within 7



days from receipt of the notice, however, the Corporate Debtor failed to pay the same. No payments were received towards principal or interest amount for the said loan facility even after providing 7 days to the Corporate Debtor and also failed to reply to the demand notice.

2.10 The non-payment of the outstanding dues by the Corporate Debtor has had a significant adverse impact on the Applicant. The Corporate Debtor's inability to settle the outstanding dues signifies a state of financial distress, making it liable for initiation of the CIRP.

2.11 The date of default is mentioned as 01.04.2024.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The Corporate Debtor *vide* its Affidavit-in-Reply dated 19.03.2025 the same is affirmed by Mr. Dhanesh Mehta – Director and authorized representative of the Corporate Debtor.

3.2 In reply, the Corporate Debtor has contested that the present Application is filed to simply harass the Corporate Debtor and to pressurize and coerce the Corporate Debtor to make the alleged payments to the Applicant.

3.3 The Application was driven by mala fide intentions to recover dues rather than to rehabilitate the Corporate Debtor as it is evidenced by the unreasonable and onerous conditions imposed by the Applicant such as the terms and conditions of the rate of interest that was imposed on the Corporate Debtor demonstrates clear malice and bad faith in their approach to recover the debt. The cumulative effect of such a high interest rate, along with the additional penalties, would create a financial burden that the Corporate Debtor cannot sustain, further pushing the company towards insolvency. The Applicant's ultimate goal appears



to be to initiate the CIRP process and force liquidation to seize the Corporate Debtor's assets. This approach not only disregards the true purpose of the CODE but also constitutes an abuse of the CIRP for personal financial gains, violating the principles of fairness and equity.

- 3.4 The Loan Agreement dated 30.01.2024 referred and relied upon by the Applicant in the Application is not a registered agreement and cannot be legally enforced. While Section 18 of the Registration Act provides an option for the registration of certain documents, the nature of the agreement in question suggests that they ought to have been registered to ensure their legal standing and admissibility. The failure to comply with this statutory requirement undermines the validity of the agreements and, consequently, the legal basis for the Applicant's claims. Hence, the present proceedings based on such documents cannot be proceeded further with and would be beyond the jurisdiction of this Hon'ble Tribunal.
- 3.5 The Applicant does not possess a valid money lending license as required under the provisions of the Maharashtra Money-Lending (Regulation) Act, 2014 or any other applicable state legislation, to engage in the business of lending money. The Corporate Debtor submits that a person or entity engaged in illegal money lending cannot seek to enforcement its rights under the provisions or the CODE, as the claim itself is rooted in an unlawful and unenforceable transaction.
- 3.6 The Corporate Debtor submits that the Hon'ble Tribunal has powers to refer the parties to an experienced mediator for the purpose of effective settlement and therefore, referring the matter to mediation with an experienced mediator is appropriate and would ensure an effective and expeditious resolution of disputes. Mediation, being a non-adversarial process, would allow the Applicant and the Corporate Debtor to collaboratively explore viable solutions, considering the



financial difficulties faced by the Corporate Debtor, as admitted in its communication dated 30.07.2024.

3.7 The right to file rejoinder was closed *vide* order dated 20.03.2025.

4. **ANALYSIS AND FINDINGS**

4.1 We have heard the respective Counsels and have perused the records as placed before us. Our findings in the matter are as under: -

4.2 We observe that at the request of the Corporate Debtor, the Applicant had advanced Short-Term Loan of Rs.1,04,00,000/- with respect to which, the parties had executed a Loan Agreement dated 30.01.2024.

4.3 Upon perusal of the statement of accounts of the Applicant for the period from 30.01.2024 to 12.02.2024, we observe that the loan amount of Rs.1,04,00,000/- was disbursed to the Corporate Debtor on 12.02.2024, 06.02.2024 and 31.01.2024. The Applicant has placed on record the proofs of disbursements of the Loan amount to the Corporate Debtor in the form of copy of its Bank account statement with PNB on Page Nos. 39 and 40 of the Application, which clearly show the disbursement of Rs.40 Lakhs on 31.01.2024, Rs.30 Lakhs on 06.02.2024, Rs.10 Lakhs on 06.02.2024 and Rs.24 Lakhs on 12.02.2024, all totalling to Rs.104 Lakhs.

4.4 The Loan Agreement has interest clause which is at 12% p.a. and repayment terms, which are as follows:

“Repayment: The Tenure will be for 6 months and repayment shall commence after 2 months in 4 instalments of Rs 26,00,000/- each in lieu of timely repayment of the Loan. The first instalment shall begin on 01.04.2024 and ending on 01.07.2024”



4.5 It is observed that as per the repayment terms the 1st instalment of the loan was due on 01.04.2024. Subsequently, the 2nd instalment fell due on 01.05.2024, 3rd instalment on 01.06.2024 and 4th instalment on 01.07.2024. The amount of Rs.26,00,000/- was fixed for each instalment. The Corporate Debtor failed to pay the 1st instalment on 01.04.2024 of Rs.26,00,000/- but eventually paid an amount of Rs.85,000/- towards the interest on the loan. The Applicant had sent letters dated 03.04.2024, 03.05.2024, 03.06.2024 and 03.07.2024 in regard to the instalments which the Corporate Debtor had to pay as per the dates mentioned above. But the Corporate Debtor failed to make any payments. Thereafter, the Applicant sent a Recall Notice dated 15.07.2024 to the Corporate Debtor recalling the whole amount of Rs.1,04,00,000/-. The Corporate Debtor responded to this notice *vide* letter dated 30.07.2024 acknowledging the debt amount and requesting the Applicant to restructure the loan amount which was due and payable by the Corporate Debtor. The Applicant sent a final reminder notice to the Recall Notice on 31.07.2024 to Corporate Debtor calling upon to release the entire outstanding amount within 7 days from the date of receipt of the notice. However, the Applicant failed to make payment of the recalled amount.

4.6 The NeSL Form D has also been attached in the Application showing the status as “Deemed to be Authenticated”.

4.7 The Corporate Debtor has raised objections as under:

- i. Intention of the Applicant is recovery
- ii. Loan Agreement is not registered
- iii. Applicant is not possessing any Money Lending License



- iv. To refer the matter to mediation

The said objections have been dealt with in the following paragraphs.

- 4.8 The Corporate Debtor alleged that the Loan Agreement is not registered as per Section 18 of the Registration Act, 1908 and the same is not legally enforceable. In this regard we are of the view that the said objection raised by the Corporate Debtor is not sustainable for the reason that in a Section 7 application, it is not necessary that the Loan Agreement, which has been attached by the Applicant along with the Application, is a registered document so long as the Applicant can, based on the documents attached with the application, establish that the debt exists and that a default exceeding the threshold amount as per Section 4 of the Code, has taken place. On perusal of the Loan Agreement along with other documents attached with the Application, we see that both the parties have signed on the Agreement and have acted upon the terms therein i.e. the Applicant has disbursed the amount, which has been received by the Corporate Debtor and the Corporate Debtor has failed to pay the due amount as per the terms of the Loan Agreement. The Applicant has placed on record the proofs of disbursements of the Loan to the Corporate Debtor in the form of copy of its Bank Account Statement with PNB on page nos. 39 and 40 of the Application, which clearly show the disbursement of Rs.40 lakhs on 31.01.2024, Rs.30 lakhs on 06.02.2024, Rs.10 lakhs on 06.02.2024 and Rs.24 lakhs on 12.02.2024, all totalling to Rs.104 lakhs. On page nos. 51-57, the Applicant has attached statements of accounts of the Corporate Debtor in its books for the period from 01.04.2023 till 31.07.2024, which has the confirmation made by the authorised signatory/director of the Corporate Debtor on it. The Applicant has even attached



the Reply dated 30.07.2024 of the Corporate Debtor (attached on page no. 50) to its Loan Recall Notice dated 15.07.2024 (attached on page No. 49), *vide* which the Corporate Debtor has acknowledged the debt payable to the Applicant. Moreover, the Applicant has placed on record the NeSL Form D, on page no. 60A of the Application, which has confirmed the status of authentication of default as “Deemed to be Authenticated”. As such, the Applicant has proved beyond doubt the existence of debt exceeding Rs.1 crore and default with respect to the same, and therefore, the said objection of the Corporate Debtor holds no merit.

4.9 The Corporate Debtor has also raised the objection that the intention of the Applicant is recovery and that the present Application is not maintainable on the ground that the NCLT is not a recovery forum. The said objection of the CD is not maintainable as the filing of the Application under Section 7 of CODE results in initiation of Insolvency Resolution Process, which is not a recovery process but a collective resolution process for maximisation of the value of the assets of the Corporate Debtor to benefit all its stakeholders.

4.10 The Corporate Debtor has raised further objection that the Applicant does not possess a valid money lending licence to engage in the business of the lending and therefore, it cannot enforce its rights under CODE in respect of its illegal money lending. There is nothing on record brought by the Corporate Debtor to demonstrate that the Applicant was a professional money lender engaged in the business of money lending for which a licence is required. What has come to our notice is the single transaction entered into by the Applicant with the Corporate Debtor, which is only a one-time loan/inter-corporate deposit, which does not constitute a systematic money lending business requiring a licence. The Corporate Debtor has miserably failed to discharge the onus in proving that the



Applicant is a money lender and has been engaged in the business of money lending. In any case, examining the said aspect does not fall within this Tribunal's jurisdiction if it is proved that the debt has been raised and default is made.

4.11 The contention of the Corporate Debtor to refer the matter to mediation is something, which is out of the jurisdiction of this Tribunal with respect to the CODE matter and therefore, the said contention is also not tenable. In any case, the promoters of the Corporate Debtor may also participate in the resolution process, if they are not ineligible under Section 29A of the Code, and may settle the dues of the Creditors of the Corporate Debtor including the dues payable to the Applicant, by filing a resolution plan.

4.12 In view of aforesaid discussions, it is clear that the Applicant has placed on record necessary evidences and materials to demonstrate the existence of the financial debt exceeding the minimum threshold of Rs.1 Crore prescribed under Section 4 of the Code, which is due and payable as well as the default in repayment thereof by the Corporate Debtor.

4.13 The Applicant has proposed the name of Interim Resolution Professional (IRP) in compliance with Section 7(3)(b) of the Code. It has proposed the name of Mr. Umesh Balaram Sonkar, a registered Insolvency Professional (IP) as the IRP to carry out the functions as mentioned under the Code and has provided his AFA in Form B valid till 30.06.2025 and has also given his declaration in Form AA, *inter alia*, stating that no disciplinary proceeding is pending against him. This consent Form AA is not as per the Code and hence, we do not deem fit to appoint the proposed IRP. The Adjudicating Authority will appoint an IRP from the panel of IPs.



4.14 We find that all pre-requisites of Section 7(5)(a) of the Code are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission under Section 7 of the Code.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.102/MB/2025 filed under Section 7 of the Code by Irabati Tie-Up Private Limited, the Applicant, for initiating CIRP in respect of ARK Industries Private Ltd, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below: -

I. We prohibit-

- 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 Securitisation 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 possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Vivek Satyaprakash Jalan**, a registered Insolvency Professional having Registration Number **IBBI/IPA-002/IP-N01295/2024-2025/14452** and e-mail address cavivekjalan81@gmail.com having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the Code.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.



- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Applicant on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.



- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Applicant, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Vani//

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)