



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 303/KB/2024

***An Application under Section 7 of the Insolvency and Bankruptcy
Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy
(Application to the Adjudicating Authority) Rules, 2016.***

IN THE MATTER OF:

Apheleia Power Projects Limited

... Financial Creditor/ Applicant.

Versus

M/S Shithala Dealers Limited

... Corporate Debtor/ Respondent.

.

Date of Pronouncement: 24.06.2025.

Coram:

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
CMDE . SIDDHARTH MISHRA, MEMBER (TECHNICAL)**

Appearance:

For the Financial Creditor

Mr. Srijan Mehrotra, Adv.

For the Corporate Debtor

Mr. Sumit Shukla, Adv.

ORDER

PER Bidisha Banerjee, Member (Judicial):

- 1.** The Court congregated through hybrid mode.
- 2.** Heard the Learned Counsels for both the parties.

3. *Factual matrix:*

The instant company petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the Insolvency

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and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by **“Apheleia Power Projects Limited”**, hereinafter referred to as **“Financial Creditor”/ “Applicant”** against **“M/S Shithala Dealers Limited”**, hereinafter referred to as **“Corporate Debtor”/ “Respondent”** seeking direction to initiate Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor due to a default in repayment of a financial debt amounting to Rs.8,98,00,000/- as on 26.06.2024, comprising principal of Rs.4,40,00,000/- and interest of Rs.4,68,00,000/- calculated at 15% per annum, after a partial payment of Rs.10,00,000/-.

4. Submissions of the Ld. Counsel for the Applicant:

4.1 The Financial Creditor disbursed ₹4.60 crore to the Corporate Debtor between Dec 2018 and Mar 2019, under a Lender-Borrower Agreement dated 05.12.2018, with repayment (at 15% p.a. interest) due by 12.05.2024. The Corporate Debtor defaulted, making only a partial payment of ₹10 lakh on 25.06.2024. The default is supported by:

- a.** Ledger accounts (Annexure E),
- b.** NeSL Certificate (Annexure N),
- c.** Debtor's email dated 25.06.2024 admitting debt and seeking a 30-day extension (Annexure G),
- d.** Debt admission in Paragraph 7 of the Debtor's reply.

4.2 The transaction qualifies as a "financial debt" under Section 5(8) of the Code, involving a disbursement against the time value of money, and the Financial Creditor is a "financial creditor" under Section 5(7) of the Code.

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4.3 It is claimed that the Corporate Debtor, in its email dated 25.06.2024 (Annexure G), admitted liability of ₹9.08 crore and made a partial payment of ₹10 lakh, leaving ₹8.98 crore unpaid. Despite reminder notices (Annexures G, H) and a 15-day extension granted until 15.07.2024, the debtor failed to repay. This amounts to a default under Section 3(12) of the IBC. The debt is also admitted in Paragraph 7 of the Corporate Debtor's reply.

5. Per contra, submission advanced by the Learned Counsel appearing on behalf of the Respondent:

5.1 It is submitted that the deponent, a director of the Respondent Company, is duly authorized by a Board resolution (Annexure-1) to represent the company in this matter and possesses full knowledge of the case, making them competent to submit this Affidavit.

5.2 It is claimed that any references to "Corporate Debtor" and "Financial Creditor" are made solely for convenience and do not constitute any admission of liability as claimed by the petitioner. The facts of the case have been presented in an unjustified manner.

5.3 It is further submitted that unless otherwise reflected in the record, the respondent vehemently denies each and every averment made by the financial creditor in the present application and the deponent states that any non-traversal shall be treated as a denial unless specifically admitted by the respondent.

6. We have heard the submissions made by both parties and perused the documents on record.

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7. Analysis and Findings

- 7.1** It is evident that there is demand notice dated 21.06.2024, annexure G at page 39-43 of the petition detailing the loan amount, the term interest, and additional charges, in case of any default on part of the corporate debtor.
- 7.2** It is evident from the Lender Borrower Agreement at Page 33 of the petition, that the loan facility was sanctioned for a period of sixty-two months commencing from the date of last disbursement. As per the agreed terms, the principal amount along with accrued interest was to be repaid by the Corporate Debtor to the Financial Creditor after the expiry of the sixty-two month . The interest on the loan was to be calculated at the rate of 15% per annum for the period of sixty months or till the payment is made of the loan amount.
- 7.3** The Corporate debtor has not denied its failure to repay the debt. Hence “default” is admitted.
- 7.4** We find no support to the argument made by Ld. Counsel for the Corporate Debtor that the Financial Creditor has given extension for repayment of loan.
- 7.5** Once the “debt’ and “default” is admitted or established the petition must be admitted.
- 7.6** We are fortified by the views of Hon’ble Apex Court to define “Financial Debt” and to initiate Corporate Insolvency Resolution process which is as under:
(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:
“any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and

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that the disbursal must be against consideration for time value of money.”

(Emphasis added)

(b) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)
that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...’

(Emphasis added)

(d) Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...’

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

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“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

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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 added)

8. Further, the date of default is 12.05.2024 whereas this application has been filed on 28.08.2024 which is well within the period of limitation, and therefore, we admit the Corporate Debtor into CIRP.
9. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 303/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by **Apheleia Power Projects Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Shithala Dealers Limited (Corporate Debtor)**.
- ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

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iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;*
- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*
- c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **“Mr. Avneesh Srivastava”**, Address: Srivastava Avneesh & Co, 2/7 Floor, 14/123A, Gopala Chambers, Parade, Kanpur, Kanpur Nagar, Uttar Pradesh, 208001 , Registration no. IBBI/IPA-001/IP-P01845/2019-2020/12869, Email is caavneesh11@gmail.com , as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter D at pages 36-38 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Avneesh Srivastava”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Avneesh Srivastava”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

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- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.

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- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the

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progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

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

10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

11. Post the Company Petition on **23/07/2025** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

The Order signed on this, the 24th day of June 2025.

V. Tiwari (LRA)