



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 319/ND/2024**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

BANK OF INDIA

Head Office at: Star House, Plot No. C-5,
G-Block, Bandra-Kurla Complex,
Bandra (E), Mumbai 400051.

Branch Office at: New Delhi Asset Recovery Branch,
Star House, 3rd Floor, H-2,
Cannaught Circus, New Delhi-110001

...Applicant/Financial Creditor

Versus

M/S PASHUPATI DAIRIES PRIVATE LIMITED

F-82, 1st Floor, Shivaji Place, Rajouri Garden,
West Delhi, New Delhi, 110027

...Respondent/Corporate Debtor

Order Delivered on: 19.05.2025

CORAM:

**JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant: Mr. Karan Gandhi, Mr. Sikhar Tiwari,
Ms. Vidhika Kapoor, Advs.

For the Respondent: Ms. Varsha Banerjee, Adv.



ORDER

This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **Bank of India** through its Authorized Representative, Mr. Manoj Kumar Gupta (hereinafter referred to as ‘Financial Creditor’), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Pashupati Dairies Private Limited (“Corporate Debtor”).

2. The Corporate Debtor was incorporated on 30.12.2003, having CIN: U15204DL2003PTC273781 under the Companies Act, 1956. Its registered office is at F-82, 1st Floor, Shivaji Place, Rajouri Garden, West Delhi, New Delhi, India, 110027. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present application was filed on 08.06.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 4,72,08,30,812.03/- (Rupees Four Hundred and Seventy-Two Crores Eight Lacs Thirty Thousand Eight Hundred and Twelve and Three Paise) as on 31.05.2024. The alleged date of default is stated as 20.02.2019. The Financial Creditor has also filed the NeSL certificate along with the present application which reflects that the Principal Borrower has defaulted in the payment of Rs. 1,90,37,24,748.52/- owed to the Financial Creditor in respect of which the Corporate Debtor herein has also stood as a guarantor. Further, the status of the authentication of default is stated as ‘Authenticated’ by the Principal Borrower.
4. In the present case, the Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Kwaliti Limited, and the instant case has been filed against the Corporate Guarantor for standing as guarantor in respect of the loan facilities availed by the Principal Borrower. A petition bearing C.P. (IB) 1440/(ND)/2018 was filed by M/s K.K.R. India Financial Services Pvt. Ltd. against M/s Kwaliti Limited (the Principal Borrower) for initiation of CIRP and vide order dated 11.12.2018 the Adjudicating Authority had initiated CIRP against the Principal Borrower i.e. M/s



Kwality Limited. Currently, liquidation proceedings are in progress in respect of the Principal Borrower.

Submissions of the Financial Creditor: -

5. The details of transactions leading to the filing of this petition as averred by the Financial Creditor are as follows:
 - a) The Corporate Debtor herein is a Corporate Guarantor to the facilities availed by Kwality Limited, the Principal Borrower from the Applicant bank.
 - b) On 21.07.2010, the Bank of India sanctioned working capital limit fund based to the extent of Rs. 75,00,00,000/- to M/s Kwality Limited ("Principal Borrower"). The Principal Borrower and the Bank of India Consortium entered into Working Capital Consortium Agreement dated 30.03.2011 for extending working capital limits amounting to Rs. 390 Crore, in respect of which, the Principal Borrower executed Joint Deed of Hypothecation, etc. to secure the loan so granted.
 - c) The credit facilities granted to the Principal Borrower were enhanced time to time and additionally, the Working Capital limits were sanctioned and enhanced from time to time. On 25.07.2014, the Bank of India Consortium was reconstituted and credit facilities granted to the Principal Borrower were enhanced to Rs. 1126.43 Crore.
 - d) Principal Borrower and Pashupati Dairies Private Limited i.e. Corporate Debtor herein executed deed of guarantee dated 25.07.2014 in favour of the Bank of India Consortium to secure the credit facilities extended to the Principal Borrower to the extent of INR 1125 Crores. The Corporate Debtor further secured BOI Consortium by way of Equitable Mortgages consisting of piece and parcel of land located in villages of Haridwar, Uttarakhand.
 - e) As the Principal Borrower failed to repay the loan amount to the Applicant, the Principal Borrower's account was classified as NPA on 31.08.2018.
 - f) The Applicant issued Section 13(2) SARFAESI Act, 2002 dated 18.10.2018 to the Principal Borrower and simultaneously issued notice dated 20.02.2019 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor calling upon them to discharge their liability in full to the Bank, thereby, invoking the Corporate Guarantee by way of the aforesaid notice dated 20.02.2019.



- g) The Adjudicating Authority vide its Order dated 11.12.2018 admitted the Section 7 petition bearing No. CP IB-1440/ND/2018 filed by the KKR India Financial Services Limited and initiated CIRP against the Principal Borrower i.e. M/s Kquality Limited.
- h) It is submitted that for the same loan, another Corporate Guarantor i.e. M/s JTPL Pvt. Ltd. also provided guarantee. On account of the Principal Borrower's failure to repay the loan amount, the Adjudicating Authority initiated CIRP against another Corporate Guarantor i.e. M/s JTPL Pvt. Ltd vide Order dated 15.04.2024.
- i) The Applicant has stated in its written submissions filed on 09.04.2025 that the Corporate Debtor herein has made acknowledgment of the aforesaid debt in its balance sheet for the Financial Year 2022-23 and 2023-24.
- j) The Applicant submits that the Corporate Debtor is continuing to be in default of the loan amount in terms of the Deed of Guarantee executed to secure the loan amount disbursed to the Principal Borrower. Hence, the instant application has been filed.

6. Submissions of the Corporate Debtor:

- a) That the present petition is not maintainable for being filed beyond the period of limitation. The Petitioner invoked the Guarantee Deed executed by the Respondent vide Notice dated 20.02.2019 under Section 13(2) of the SARFAESI Act, 2002. Consequently, the petitioner admits that the alleged date of default is 20.02.2019, however, the present petition was filed on 08.06.2024, therefore, the same is not filed within the limitation period of 3 years from the date of default.
- b) That the Record of Default in Form-D issued by the NeSL pertains to the Principal Borrower and not the Corporate Debtor herein.
- c) That in terms of clause (i) of the Inter Se Agreement dated 25.07.2014, it was provided that any action for enforcement of any security interest can only be taken by the lead bank in consultation with all other members of the consortium. However, in the instant case, the Petitioner, being the lead bank, has failed to



bring on record the evidence establishing the consultation between the members of the Consortium.

- d) That the CIRP against another Guarantor namely M/s JTPL Limited, for the same debt, has been initiated by the Co-ordinate Bench of this Adjudicating Authority, vide order dated 15.04.2024. Therefore, for the same debt and default, the Petitioner has already initiated proceedings against another Guarantor, and therefore, simultaneous proceedings against another Guarantor are not maintainable.

Analysis and Findings

We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submissions.

7. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
8. In the present case, the Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Kquality Limited. We note the submissions of the Financial Creditor that a petition was filed by KKR India Financial Services Limited for initiation of CIRP and vide order dated 11.12.2018, the Co-ordinate bench of this Adjudicating Authority had initiated CIRP against the Principal Borrower i.e. M/s Kquality Limited. Further, for the same loan, the Adjudicating Authority had initiated CIRP against the corporate guarantor M/s JTPL Pvt. Ltd. vide Order dated 15.04.2024.
9. In the present case, on the perusal of records, it emerges that the Principal Borrower (M/s Kquality Limited) took a loan for an amount of Rs. 75 Crores from Bank of India, the Applicant/Financial Creditor herein as on 21.07.2010. Subsequently, the Financial Creditor entered into several inter se agreements with the consortium of banks including Bank of India and the loan amount was finally enhanced to Rs. 1126.43 Crores. Further, vide Deed of Guarantee dated 25.07.2014, the Corporate



Debtor admittedly provided guarantee in favour of the Bank of India Consortium to secure the credit facilities extended to the Principal Borrower to the extent of Rs. 1125 Crores. Furthermore, the Corporate Debtor also secured the Bank of India Consortium by way of Equitable Mortgages consisting of piece and parcel of land located in villages of Haridwar, Uttarakhand. The aforesaid guarantee was invoked by the Applicant by virtue of Notice dated 20.02.2019 issued under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor. There is no dispute as to the existence of 'Financial Debt' and Guarantee given by the Corporate Debtor herein in respect of such debt.

10. It is noteworthy that the Corporate Debtor herein has not disputed the facts relating to guarantee deed, but has mainly taken a defense under the law of Limitation. This Adjudicating Authority vide its Order dated 10.03.2025 directed the Corporate Debtor to file the financial data as on 31.03.2022 and 31.03.2023. In compliance of the same, the Corporate Debtor has filed its reply dated 21.03.2025 for placing on record the Audited Financials of the Corporate Debtor for the Financial Year ending 31.03.2022 and 31.03.2023. The relevant extract from the Balance Sheet is reproduced hereunder as:

"The company had given corporate guarantee to the tune of Rs. 113,643.00 Lacs to BOI Consortium (Consisting of 10 Banks with Bank of India as Lead Bank) on behalf of Kwaliti Limited. (Previously group Company of Pashupati Dairies Pvt Ltd) Company has received various legal notices and/ or initiated. Legal proceedings for the receiving of outstanding dues (by invoking Corporate Guarantee) before the competent Authority by various banks of BOI Consortium."

In view of the acknowledgement of guarantee by the Corporate Debtor in the Audited Financial Statements of the Corporate Debtor for the Financial Year ending 31.03.2022 and 31.03.2023, a fresh period of limitation commences from the date of acknowledgement. Accordingly, we are satisfied that the present petition has been duly filed within the period of limitation.

11. It is the case of the Corporate Debtor that the Record of Default in Form-D issued by the NeSL pertains to the Principal Borrower and not the Corporate Debtor herein. Further submitting that the CIRP against M/s JTPL Private Limited i.e., another

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Guarantor of the Principal Borrower has already been initiated by the Co-ordinate bench of this Adjudicating Authority vide Order dated 15.04.2024, therefore, no proceedings could be initiated against the Corporate Debtor herein in respect of the same debt. The Corporate Debtor places its reliance on the decision of the Hon'ble NCLAT in the matter of Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. [Company Appeal (AT) (INS) No. 346 of 2018] contending that once an application u/s 7 has been admitted against a Corporate Debtor, a second application in respect of same claim but another Corporate Debtor cannot be admitted. However, the controversy has been set at rest by the several precedents on the issue. The Hon'ble Supreme Court of India in **BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. (2025) 1 SCC 456** held as below:

"28. Hence, we summarize some of our conclusions as under:

a.

b.

c. The financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well;"

Therefore, in view of the aforesaid judicial decision, we are of the view that the fact of initiation of CIRP against the Principal Borrower and/or Corporate Guarantor does not bar initiation of CIRP against other Corporate Guarantors.

12. The Corporate Debtor contends that the Inter Se Agreement dated 25.07.2014, provides that any action for enforcement of any security interest can only be taken by the lead bank in consultation with all other members of the consortium. However, it is a settled law that once debt and default is established, the Financial Creditor can file an application for initiation of CIRP against the Corporate Debtor under Section 7 of the Code. Further, while adjudicating a Section 7 application, the Adjudicating Authority has merely to satisfy itself regarding the existence of 'Debt' and 'Default'. It is noted that on account of default in payment of dues, the account of the Principal Borrower was declared as NPA on 31.08.2018. The NeSL records reflect the existence of 'debt' and 'default' by the Principal Borrower and the same

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has also been authenticated. Further, the aforesaid NeSL certificate also shows that the Corporate Debtor herein stands as a guarantor in respect of the debt owed by the Principal Borrower. We also note that the Corporate Guarantee stood invoked by the Applicant on 20.02.2019. Therefore, in view of the observations made hereinbefore, we are satisfied that there is a default in the payment of the Financial Debt to which the Corporate Debtor herein stood as a Corporate Guarantor.

13. The Hon'ble Supreme Court in the judgement of "**Innoventive Industries Limited v. ICICI Bank and Another**" (2018) 1 SCC 407 has held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as:

*"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."*

14. Therefore, this Adjudicating Authority is satisfied that the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 08.06.2024, and at that time the debt owed to the Financial Creditor has been an amount of Rs. 4,72,08,30,812.03/- (Rupees Four Hundred and Seventy-Two Crores Eight Lacs Thirty Thousand Eight Hundred and Twelve and Three Paise), a fact that has not been disputed by the Corporate Debtor. Therefore, the present petition meets the threshold of Rs. One Crore as laid down under Section 4 of the Code.



In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/319 (ND) 2024** filed by Bank of India, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Pashupati Dairies Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Pashupati Dairies Private Limited is initiated.

16. That the petitioner in part-III of the petition has proposed the name of Mr. Sandeep Goel, as Interim Resolution Professional, having Registration Number IBBI/IPA-003/IP-N00073/2017-18/10583 and E-mail Id cmasandeepgoel@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.
17. We also declare moratorium 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 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.*
 - (e) The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.
19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 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 & Bankruptcy Code, 2016.
20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Sandeep Goel to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) 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, is subject to adjustment towards Resolution Process cost as per applicable rules.
21. The Interim Resolution Professional shall perform all his functions as 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.

22. 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 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 ex- management 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 Adjudicating Authority with a prayer for passing appropriate orders.
23. 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 his 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.
24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. I.B./319 (ND)/2024 stands admitted.**
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(JYOTSNA SHARMA)
MEMBER (JUDICIAL)