



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1.

C.P. (IB)/98(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **28.04.2025**

NAME OF THE PARTIES : **Small Industries Development**
Bank Of India
Vs
Dr. Smiths Biotech Private Limited

Under Section 7 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court *vide* separate order. In the result, the above **C.P. (IB)/98(MB)2025** is admitted. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SKS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH – VI, MUMBAI**

CP(IB)/98/MB/2025

(An Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

*In the matter of **M/s. Dr. Smiths Biotech Private Limited***

**M/s. Small Industries Development
Bank Of India (SIDBI),**

Having its Registered Office
AT SIDBI Tower, 15 Ashok Marg,
Lucknow, 226001, Uttar Pradesh

And Having Branch Office

At Swavalamban Bhavan,
Plot No. C-11, G Block
Bandra Kurla Complex, Bandra (East)
Mumbai 400051, Maharashtra
EMAIL: sarb_mumbai@sidbi.in.

... Applicant/Financial Creditor

VERSUS

**M/s. DR. SMITHS BIOTECH PRIVATE
LIMITED,**

Having Its Registered
At Office No. 508-511, Sacred World,
5th Floor, Above Macdonald, Vitthal Rao
Shivarkar Road, W, Anowrie, Pune,
Pune, Maharashtra, India, 411040
And Having Office At SN-593,
Opp. Malabar Hill, Sindh Hind Society, Lulla
Nagar, Pune 411048.

...Respondent/Corporate Debtor

Order pronounced on 28.04.2025



CORAM:

SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE (IN V-C MODE):

For Financial Creditor : Adv. Mr. Darshit Dave.

For Corporate Debtor : Adv. Mr. Somesh Chhangani

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

1. This is an Application filed by the M/s. Small Industries Development Bank of India (hereinafter referred to as "**Financial Creditor**") against *Smiths Biotech Pvt. Ltd.* (hereinafter referred to as "**Corporate Debtor**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking to initiate the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor, to appoint IRP and to initiate moratorium.
2. From Part I of the Form No. 1 of the Application it is seen that the Applicant was incorporated on 02.04.1990 and is having PAN No. AABCS3480N. The registered office of the Applicant is situated at SIDBI Tower, 15, Ashok Marg, Lucknow- 226001 Uttar Pradesh **Branch office:** Swavalamban Bhavan, SARB,



2nd Floor, C-11, G Block BKC, Bandra East, Mumbai, Maharashtra 400051.

3. The Application is affirmed by one Mr. Sunil Jadiya, acting as Dy. Legal Advisor cum General Counsel who is Authorized by letter dated 12.11.2024, which is annexed at Exhibit-A. The Application was affirmed on 02.12.2024.
4. From Part II of the Application, it is seen that the Corporate Debtor is one M/s. Dr. Smiths Biotech Private Limited having CIN No. U24246PN2015PTC154818. The Corporate Debtor was incorporated on 24.04.2015 and the Registered office address is at Office No. 508-511, Sacred World, 5th Floor, above Macdonald, Vitthal Rao Shivarkar Road, W, Anowrie, Pune, Pune, Maharashtra, India, 411040 and having Office at SN-593, Opp. Malabar Hill, Sindh Hind Society, Lulla Nagar, Pune 411048 Email: cs@cian.co. The Applicant is attached the MCA Master data of the Corporate Debtor as Exhibit-C.
5. The perusal of Part III of the Application reveals that the Applicant has named Ms. Megha Agrawal, as IRP. The IRP's Registration number is IBBI/IPA-001/IP-P-01456/2018-2019/12272. The consent of the IRP is attached at Exhibit-D and AFA is valid till 31.12.2025.
6. Part IV of the Application reveals that sometime in January 2017, the Corporate Debtor approached the Applicant/Financial



Creditor for availing a credit facility for setting up of a green field unit at Roorkee for manufacturing pharmaceutical products mainly gel based capsules including capsule, softgel etc. The Credit facility will involve acquisition of land and building, modification of existing building and acquisition of equipment's.

7. The Applicant sanctioned and disbursed a term loan amounting to Rs. 14.60 crores and a Soft Loan of Rs. 20 lakhs under the Make in India Soft Loan Fund for Micro, Small and Medium Enterprises by a Letter of Intent/sanction Letter dated 17.01.2017, which is attached as Exhibit-E and E-1 respectively. The formal Loan Agreement between the parties was executed on 31.01.2017 which is attached at Exhibit-F.
8. On 02.05.2019, a modification was made to the original Letter of Intent/Sanction Letter with respect to the Interest Clause governing the sanctioned credit facilities. A copy of the letter dated 02.05.2019 modifying the Sanction Letter duly accepted by the Corporate Debtor is attached at Exhibit-H.
9. The Corporate Debtor *vide* letter dated 02.11.2019 requested the Applicant to restructure the existing credit facilities, which was accepted by the Applicant through issue of a letter dated 26.12.2019. Through this letter, the Applicant approved the funded interest to the extent of Rs. 1.38 Crores and also



provided certain reliefs and concessions beside extending the repayment period.

10. The Loan account of the Corporate Debtor was classified as NPA on 08.11.2023. Certain fixed deposits lying as pledged with the Applicants were appropriated prior to account being classified as NPA. Pursuant to the payment received through encashing the FDRs, the Corporate Debtor made certain payment to the Applicant herein. However, the Corporate Debtor failed to maintain the financial discipline and once again the account of the Corporate Debtor was classified as NPA on 08.06.2024.
11. The Applicant thereafter by a letter dated 05.08.2024 recalled the entire Credit Facilities extended to the Corporate Debtor calling upon the Corporate Debtor to pay a sum of Rs. 8,00,66,981.02 within 15 days. A copy of the recall notice is attached at Exhibit-L.
12. It is stated that the Corporate Debtor has acknowledged its liability towards the outstanding dues owed to the Applicant in its Audited Balance Sheets for the financial year ending March, 2020 to March, 2023.
13. The Applicant has filed an additional affidavit dated 11.03.2025 and has filed clear copy of the Audited Balance Sheets for the year ended 31.03.2023.



14. It is stated that the date of NPA is 08.06.2024 and the date of default is 10.03.2024.

15. It is stated that the Applicant is holding the following securities:-

1. Equitable Mortgage (Non-Agricultural)

The Corporate Debtor created First Charge by way of Mortgage by Deposit of Title Deeds of Corporate Debtor of the Immovable property being All those piece and parcel of land admeasuring 2814 Sq. Meters bearing Plot No. B-5, part of Khasra No. 9 & 10, Dev Bhoomi Industrial Estate VII, Bantakhedi, Taluka, Roorkee, Haridwar, Uttarakhand together with all building and structures thereon and plant and machinery attached to earth or permanently fastened to anything attached to earth. The aforesaid was recorded by Declaration and Undertaking for creation of Mortgage dated 31st January 2017. A copy of the Declaration and Undertaking for creation of Mortgage dated 31st January 2017 is annexed as "Exhibit-N" to the Application.

2. Hypothecation:

First Charge by way of Hypothecation in favor of SIDBI of all movable properties of the Corporate Debtor as described in the Loan Agreement including but not limited to its Plant, Machinery, equipment, tools, spares, accessories and all



other assets acquired / to be acquired by the borrower under the project. A copy of the Hypothecation Agreement dated 31st January 2017 is annexed as "Exhibit-O" to the Application.

3. Pledge of Fixed Deposits:

Lien Marked Fixed Deposit of Rs. 100 lakhs in favor of the Petitioner.

4. Guarantees:

Irrevocable and unconditional Personal Guarantee of

a. Suraj Shriniwas Zanwar dated 31st January 2017 is annexed as "Exhibit-P" to the Application.

b. Kavita Suraj Zanwar dated 7th February 2017 is annexed as "Exhibit-Q" to the Application.

5. A copy of ROC-Charge Form-CHG-1 along with charge certificate is annexed as "Exhibit-R" to the Application.

16. The Applicant relies upon the following documents:-

1. A copy of the Statement of Accounts annexed as "Exhibit-U" to the Application.

2. Certificates under the Bankers Book Evidence Act, 1891 is annexed as "Exhibit-V" to the Application.



17. The Applicant has attached the record of default with Information Utility (NeSL) from page No. 283 to page No. 354. A perusal of the same reflects that the date of default is 08.06.2024 and the respective Form-Ds are under the status "deemed to be authenticated".
18. The Applicant has attached proof of service of this Application upon IBBI which is attached at page No. 403.
19. This matter was first heard on 28.01.2025, the court notice was issued. The Order dated 18.03.2025 records that registry notice could not be delivered and was returned unserved on 12.02.2025. The Substituted service was ordered *vide* order dated 18.03.2025.
20. In compliance of the order dated 18.03.2025, Ld. Counsel for the Applicant filed an affidavit of service. A perusal of affidavit of service reveals that paper publication was made in Indian Express in English and Loksatta in Marathi in Pune Edition on 22.03.2025. The affidavit of service is dated 04.04.2025.
21. In response to the notice, respondent has filed an affidavit in reply, which is dated 15.04.2025 affirmed by one Mr. Suraj Zanwar duly authorized by board resolution dated 14.04.2025.
22. Under para 4 of the above reply the respondent writes as under:

"It is further submitted that even though the Respondent acknowledges the existence of financial



obligations, due to current financial constraints and operational setbacks, the Respondent is not in a position to either immediately repay the claimed dues or provide a firm commitment regarding the timeline for clearance of the said outstanding amounts in the near future”.

23. The Applicant has chosen not to file any rejoinder to the reply.
24. We have heard the various Counsels for the parties as appearing before us and have perused the documents.
25. The Applicant has placed necessary documents such as the sanctioned letter duly accepted by the Corporate Debtor, Registration of Charge, Proof of disbursement, Certificate under Bankers Book Evidence Act, showing that the Corporate Debtor is in default, NeSL record of default and the recall notice etc.
26. The Respondent/Corporate Debtor in his reply has admitted the debt and has further stated that he is not in a position to either immediately repay the claimed dues or provide a firm commitment regarding the timeline for clearance of the said outstanding amounts in the near future.
27. In our considered view, the amount claimed in default is more than Rs. 1 crore and the said debt is within the limitation period as the date of default is 10.03.2025.



28. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, (Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33 has discussed extensively the scope of the powers of the Adjudicating Authority under section 7 of the IBC and has held that the same is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred. The relevant portion of the said Judgment is reproduced below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that 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, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

.....
.....

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."

29. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

30. As a consequence of the above discussion, the present Application being CP 98/2025 is being admitted in terms of Section 7 of the Code, moratorium as envisaged under



provisions of Section 14(1) and as extracted hereunder, shall follow in relation to the Corporate Debtor:-

- i. The Respondent/Corporate Debtor- M/s. **Smiths Biotech Pvt. Ltd**, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.
- ii. As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016:
 - 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 provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. Since the Applicant has named an IRP, we hereby appoint **Ms. Megha Agrawal** having registration no. **IBBI/IPA-001/IP-P-01456/2018-2019/12272 as the IRP** of the Corporate Debtor.
- vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016.



It is further made clear that all 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 IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
- viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- ix. 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 CIRP in respect of the Corporate Debtor.
- x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern,



to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.

- xi. **The Financial Creditor is directed to pay an advance of Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- xii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.



31. **Accordingly, CP (IB)/98/(MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//Sunil//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)