

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**C.P. (IB) No. 165/KB/2022
Along with
I.A. (I.B.C) 1930/KB/2023**

*An Application 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:

State Bank of India

.....Financial Creditor/Petitioner

-Versus-

Shree Padmawati Metaliks Private Limited [CIN: U27106WB2003PTC096505]

.....Corporate Debtor/ Respondent

Date of Hearing: 08.07.2024

Date of Pronouncement: 23.09.2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically)

For the Financial Creditor : Mr. Santosh Kr. Ray, Adv.
Ms. R. Sanyal, Adv.
Ms. Zeba Khan, Adv.
Ms. Muskan Saha, Adv.

*For the Applicant in
I.A(IBC) 1930/KB/2023* : Mr. Arnab Saha, Adv.
Mr. Abhimanyu Banerjee, Adv.

Mr. Anirban Basak, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened through a hybrid mode.
2. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **State Bank of India (SBI)** hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Shree Padmawati Metaliks Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 02.07.2003. The authorized share-capital of the company ₹8,00,00,000/- and the paid-up share capital of the company is ₹7,14,00,000/-.
4. The total amount claimed to be in default by the Financial Creditor, is Rs. 58,67,64,732.64/- and the amount claimed to be outstanding as on 31.03.2022 is Rs. 163,92,65,626.03. The date of default mentioned in the petition is 31.08.2013. the date of the classification of the Corporate Debtor’s account as Non Performing Assets (NPA) is 28.11.2013.

Submissions behalf of the Financial Creditor in the petition:

5. State Bank of India (SBI), during the period between 20014 and 2012 had sanctioned various credit facilities to the Corporate Debtor herein vide various sanction letters annexure to the petition. The details of the credit facilities are given hereinafter:

<i>Date</i>	<i>Sanctioned Amount</i>
29.01.2004	5.85 Crore ¹
06.09.2005	18.30 Crore ²
03.01.2007	18.30 Crore ³

¹Annexure D

²Annexure E

01.09.2008	41.99 Crore ⁴
19.07.2010	35.37 Crore ⁵
23.12.2011	54.40 Crore ⁶
20.11.2012	66.30 Crore ⁷
Total	

6. During this period, the Corporate Debtor, *vide* memorandum of deposit of title deed⁸ dated 26.12.2011, deposited various title deeds with the Financial Creditor with the intent to create an equitable mortgage on the said immoveable properties.
7. Subsequently, *vide* letter⁹ dated 17.09.2014, the Financial Creditor informed the Corporate Debtor regarding the irregularity in its loan account and requested the Corporate Debtor to deposit the overdue account to make the account regular.
8. However due to continued failure on part of the Corporate Debtor in regularising the said loan account by depositing the overdue amounts, the loan account of the Corporate Debtor was classified as Non- Performing Asset (NPA) on 28.11.2013 as per prudential norms of RBI guidelines.
9. As such, the Financial Creditor issued a notice¹⁰ dated 13.12.2014 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002), thereby demanding a sum of Rs. 68,15,83,873.33 calculated upto 30.11.2014 and further interest charged at the agreed rate from 01.11.2014 till the date of realisation.
10. Since the Corporate Debtor failed and neglected to repay the aforesaid outstanding dues in full or in part, the Financial Creditor filed an Original Application(O.A.) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act,

³Annexure G

⁴Annexure H

⁵Annexure I

⁶Annexure J

⁷Annexure K

⁸Annexure "J-5"

⁹Annexure L

¹⁰Annexure M

1993, before the Learned Debts Recovery Tribunal-I, Kolkata on 16.12.2014, for the recovery of the outstanding dues for a sum of Rs.68,15,83,873.33 with further interest and costs and expenses from the Corporate Debtor.

11. Thereafter, due to failure on part of the Corporate Debtor in clearing its outstanding dues in accordance with the aforesaid notice dated 13.12.2014 under section 13(2) of the SARFAESI Act, 2002 , the Financial Creditor issued a possession notice¹¹ dated 19.01.2016 for taking symbolic possession of the secured assets.
12. The Corporate Debtor herein admitted and acknowledged its debts and liability to the Financial Creditor by giving proposals for one-time settlement of their dues vide letters¹² dated 19.10.2016 and 12.10.2020.
13. The Financial Creditor have also declared the Corporate Debtor and its Guarantors as wilful defaulters and registered the status with the Credit Information Bureau of India Limited¹³ (CIBIL).

Submissions behalf of the Corporate Debtor in Reply- Affidavit:

14. The defence taken by the Corporate Debtor is summarised hereinafter:
 - 14.1 The petition being C.P.(IB) No. 165/KB/2022 has been affirmed by on Mr. H.K. Prince Karimi , however he does not hold valid authorisation from the Financial Creditor for the same.
 - 14.2 The instant petition is barred by laws of limitation. The alleged date of default, if any, of the loan account has been pleaded by the Petitioner to be 31.08.2013, after 90 days of the same, the account of the Corporate debtor was classified as NPA on 28.11.2013. The alleged OTS proposal was sent by the Corporate Debtor on 19.10.2016 *i.e* beyond three years from the alleged date of default and therefore cannot be considered as acknowledgement for the purpose of section 18 of the Limitation Act, 1963. As such, the petition filed on 16.04.2022 is barred by limitation.

¹¹Annexure P

¹²Annexure Q 5 and Q6 respectively

¹³Annexure S

- 14.3 Further, the second OTS proposal relied upon by the Petitioner dated 12.10.2020 was issued by one Gopal Kumar Agarwal and not the Corporate Debtor. As such, the same cannot be considered as an acknowledgement of debt or default on part of the Corporate Debtor.
- 14.4 The letters relied upon by the Petitioner *i.e* letters dated 16.02.2018, 20.03.2018, 07.04.2018, 02.05.2018 and 16.11.2019 which were issued by the Corporate Debtor do not contain any admission of the alleged debt or alleged default.
- 14.5 The Corporate Debtor instituted a civil suit being C.S. No. 77 of 2014 for declaration against the purported assessment of outstanding amount as stated in the notice issued under section 13(2) of SARFAESI Act, 2002. The statements and contents made in the plaint filed by the Corporate Debtor in the civil suit being C.S. No. 77 of 2014 are all true and correct.
- 14.6 Since the properties of the Corporate Debtor are already under the custody of the petitioner bank under SARFAESI Act and there is no other property left for the resolution of the Corporate Debtor, no purpose will be served in admitting the instant petition.
- 14.7 Due to negligent delay of the Petitioner bank in disposing the secured properties of the Corporate Debtor in accordance with law despite having possession of the same since November 2018 and March 2019, the said properties have been made to render into scrap thereby seriously depreciating the value of the said assets.
- 14.8 Despite the order passed by Hon'ble High Court at Calcutta on 07.08.2018, the Petitioner has failed to take steps for the culmination of the proceedings under the SARFAESI Act when the Corporate Debtor is willing to cooperate in all manners possible.
- 14.9 The Petitioner bank has sought to initiate CIRP of the Corporate Debtor with malicious intent and is liable to be rejected with cost under section 65 of the Code.

Rejoinder Filed on behalf of the Financial Creditor:

15. After receipt of the aforesaid Reply- Affidavit, the Financial Creditor filed I.A. 1427/KB/2022 whereby the Financial Creditor sought to file its rejoinder affidavit. This Adjudicating authority, vide order dated 18.01.2024 allowed the said rejoinder affidavit to be taken on record subject to payment of Rs. 10,000/- as cost to be paid by the Applicant in I.A.(IBC) 1427/KB/2022 to the non-applicant therein.
16. The Corporate Debtor, being the Respondent in I.A.(IBC) 1427/KB/2022, filed an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT) against the aforesaid order dated 18.01.2024. The Appellate Authority, vide order dated 15.03.2024 dismissed the said appeal.
17. The aforesaid rejoinder affidavit has been duly and the following submissions have been made therein:

17.1 The petition filed under section 7 of the Code is within limitation period. The Civil Suit being C.S. No. 77 of 2014 was affirmed by the Corporate Debtor on 26.02.2014 wherein the Corporate Debtor has categorically stated¹⁴ to have issued a letter dated 02.11.2013 thereby informing the Financial Creditor that its net dues in cash credit account was to the tune of Rs. 15.40 Crore. Since the statement made by the Corporate Debtor was on affidavit within three years from the date of default, the same are undeniably acknowledgments within the meaning of section 18 of Limitation Act, 1963.

17.2 The Corporate Debtor has affirmed the writ petition *i.e* W.P. 7104 (W) of 2018 on 05.05.2018 wherein the Corporate Debtor has admitted to have voluntarily delivered possession of the asset mortgaged/charged in favour of the Financial Creditor. Therein the Corporate Debtor has prayed for an order to be passed directing the bank to take actual physical possession of the assets voluntarily handed over by the Corporate Debtor. This, therefore evinces the acknowledgment on part of the Corporate Debtor that the credit facilities were secured by immovable property and due to failure to repay the loan amount,

¹⁴Page 33 of the Reply Affidavit

the Corporate Debtor voluntarily handed over possession to the bank to sell such property. The statements made in W.P. 7104 (W) of 2018 therefore are acknowledgments within the meaning of section 18 of Limitation Act, 1963.

17.3 Lastly, in light of the order dated 10.01.2022 passed by the Hon'ble Supreme Court in *suo motu* Writ Petition (Civil) No. 3 of 2020, the limitation periods which would have expired between 15.03.2020 till 28.02.2022 would be extended. Account for the said extension along with the aforesaid acknowledgments made by the Corporate Debtor on different occasions, the instant petition is well within limitation.

I.A. 1930/KB/2023 filed on behalf of the Corporate Debtor:

18. The Corporate Debtor herein has filed the application being I.A. 1930/KB/2023 inter alia seeking the following reliefs:

- a. an order allowing the present application thereby directing an inquiry be made following the provision of Section 340 of the Code of Criminal Procedure, 1973 read with Section 424 of The Companies Act, 2013;*
- b. an inquiry may be conducted in respect of the under Section 195 of the Code of Criminal Procedure, 1973 and upon conclusion thereof record a finding to this effect and make a complaint in writing to the jurisdictional Judicial Magistrate in terms of Section 340 Criminal Procedure Code, 1973 to take cognizance of the alleged offence and to proceed with the said complaint in accordance with law; and*
- c. pass any other order or orders as it deems fit and proper for securing the ends of justice.*

19. The submissions of the Corporate Debtor in the instant application are summarised hereinafter:

19.1 The Corporate Debtor vide the instant application has alleged that offence of perjury has been committed by the Financial Creditors on the face of the record

and sought immediate cognizance and consequent legal action in respect of the same.

- 19.2 The referred alleged petition was duly signed by the said Assistant General Manager/Authorized Officer/Service Officer on each page using a seal, describing his official capacity and designation inscribing as "For State Bank of India". Further the authorization letter bearing no stamp and full name of the authorizing authority make it as good as without any authorization letter.
- 19.3 Furthermore, the instant petition of the Financial Creditor bank being CP (IB)165 (KB) of 2022 is inter alia replete with spree of fabricating false evidences, false statement made in declaration by law receivable as 'Evidence'; dishonest, fraudulent making of false claim in Court, which he knows to be false and untrue; intentional adducing false evidence at every stage of the judicial proceeding, or fabricating false evidence for the purpose of being used in any stage of a judicial proceeding and so on.
- 19.4 Each and every act of culpable suppression of material facts, distortion of matters of record, deliberate misleading and false statement made on oath, inter alia with a view to fabricate false evidence, intentional adducing false evidence ipso facto constitute spree of offences including offence against Public Justice envisaged under Chapter XI of the Penal Code, 1860 on the face of the record in effect, which warrants to take cognizance thereof forthwith to take necessary and consequent legal action under law simply to keep the stream of public justice free from adulteration, contamination and corruption of fraud, misrepresentation and related acts.
- 19.5 By such spree of acts committed therein the Financial Creditor herein has committed offences inter alia punishable under Sections 191, 192, 193, 199, 200, 205, 209, 210, 211 of the Indian Penal Code, 1860.

20. **Analysis and Findings:**

- 20.1 Heard the Ld. Counsel on behalf of the parties and perused the records.

20.2 The primary contention of the Corporate Debtor is that the instant petition is barred by limitation and that the documents relied upon by the Petitioner do not constitute valid acknowledgments within the meaning of section 18 of the Limitation Act, 1963.

20.3 In response to the same, the Financial Creditor has attempted to explain the extension of the limitation period as envisaged under section 18 of the Limitation Act by referring to the following documents:

- i) The acknowledgement made by the Corporate Debtor in the affidavit filed by the Corporate Debtor being C.S. No. 77 of 2014. The relevant part of the same is reproduced hereinafter:

“The Petitioner by a letter dated 2nd November 2013, a copy whereof is annexed hereto and marked with letter “R”, informed the respondent that its net dues in cash credit account is only Rs. 15.40 crores against the sanctioned drawing power of Rs. 45 crores”

- ii) OTS proposal issued by the Corporate Debtor on 19.10.2016;
- iii) The paragraphs 5 to 8 of the Writ Petition being W.P.7104 (W) of 2018¹⁵ which was affirmed by the Corporate Debtor on 05.05.2018. The relevant portion of the said writ petition are extracted hereinafter:

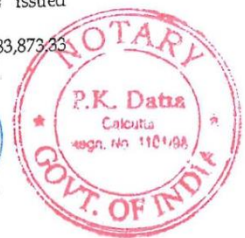
¹⁵Annexure A1 to rejoinder

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4. Your Petitioners state that the Respondent No.1 to 6 are the 'State' within the import of Article 12 of the Constitution of India, therefore their actions are subject to the judicial review under the writ jurisdiction under Article 226 of the Constitution of India. The Petitioner's grievances are mainly against the impugned actions of the Respondent No. 4 and Respondent No. 5, 6 but since the ancillary actions of the rest of the State Respondents are going to affect the Petitioners, the State Respondents have therefore, been made necessary party to this petition for the ends of justice.

5. Your Petitioners state that the Petitioner no.1 had availed financial assistance over the times from the Respondent Bank by way of loan against various assets creating security in favour of the Respondent Bank for the purpose of its said business after executing several agreements/documents. The borrower and the guarantors have created mortgage by way of deposit of original Title Deeds creating security interest in favour of the Respondent Bank and charges in respect of the said securities have already been registered with Registrar of Company, West Bengal.

6. Your Petitioner states that the Petitioner no.1 was reimbursing the loan, the Respondent Bank has abruptly purportedly classified the loan account of Petitioner as Non-Performing Asset on 28.11.2013. Subsequently the entire loan facilities was recalled and demand notice dated 11.12.2014 was issued demanding for repayment of the entire outstanding of Rs. 68,15,83,873.33



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7. Your Petitioners further state that the Respondent Bank has issued a notice under section 13(2) of the Act, 2002 on 13.12.2014 to discharge the entire liability of Rs. 68,15,83,873.33 (Rupees Sixty Eight Cores fifteen lacs Eighty Three thousand eight hundred Seventy three and paise Thirty three only) to the bank Respondent within 60 days from the date of the said notice and also liable to pay further interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc. The copy of the notice dated 13.12.2014 is annexed hereto being marked as Annexure-"P-1".
8. Your Petitioners further state that since the Petitioners have failed to reimburse the said amount in time the Bank Respondent has been pleased to invoke the provision of section 13(4) of the Act, 2002 on 07.12.2015 by issuing notice under section 13(4) of the Act, 2002. The copy of the Notice dated 07.12.2015 is annexed hereto being marked as Annexure-"P-2".
9. Your Petitioners further state that amongst the series of securities inter alia one of the securities to enforce is a 35 years old flat of 722 sqft at the 4storied building in the land measuring about 1 cottah, 12 chittaks and 35 sqft situated at the premises no. 13/2A, Priya Nath Mallick Road, P.S: Bhowanipur Kolkata: 700026 within the ward no. 72, Borough-VIII of Kolkata Municipal Corporation which is owned by the other persons by virtue of a deed of sale being Deed No. 1-05170 dated 25.05.2010.



20.4 With respect to the statements made by the Corporate Debtor in paragraphs 5 to 8 of W.P.7104 (W) of 2018, it is clear that while the said writ petition was filed by the Corporate Debtor seeking direction upon the Financial Creditor herein to take actual possession of the scheduled properties which were handed over by the Corporate Debtor ‘voluntarily’, in doing so the Corporate Debtor has admitted that its account was declared as NPA and it had failed to reimburse the said amount to the Financial Creditor. It is to be noted that there is nothing on record to indicate that the amount has been subsequently repaid by the Corporate Debtor. As such, the Corporate Debtor has acknowledged its liability towards the Financial Creditor within the meaning of section 18 of the Limitation Act, 1963 and a fresh limitation period will therefore ensue from 05.05.2018 and culminate on 03.05.2021.

20.5 Lastly, the Financial Creditor has also relied upon the order dated 10.01.2022 passed by the Hon’ble Supreme Court in suo motu Writ Petition (Civil) No. 3 of 2020 the relevant part of which is reproduced hereinafter:

“ III In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

20.6 Since the limitation period would culminate on 03.05.2021 *i.e* during the period between 15.03.2020 till 28.02.2022, the balance limitation period of 301 days (from 03.05.2021 to 28.02.2022) would become available from 01.03.2022 in light of the aforesaid order dated 10.01.2022, the limitation period for filing the instant petition would end on 26.12.2022. As such the instant petition filed on 16.04.2022 is well within limitation.

On debt and default:

20.7 The Corporate Debtor has submitted that no purpose will be served in admitting the instant petition since the properties of the Corporate Debtor are already

under the custody of the petitioner bank under SARFAESI Act and there is no other property left for the resolution of the Corporate Debtor.

20.8 With regard to admissibility of applications under section 7 of the Code, it is well established that in order to adjudicate upon a petition filed under section 7 of the Code, the Adjudicating Authority needs to primarily ascertain that a ‘debt’ and ‘default’ exist.

20.9 In this regard, we would like to refer to the decision of the Hon’ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*¹⁶ wherein the Apex Court has held as follows:

“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

¹⁶2017 SCC SC 1025

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.”.

- 20.10 In the instant case, the Corporate Debtor has time and again acknowledged its liability towards the Financial Creditor. The fact that the Corporate Debtor issued the OTS proposal dated 19.10.2016 it itself makes it clear that a debt was due from the Corporate Debtor to the Financial Creditor and defaulted on the same. The CIBIL Report¹⁷ of the Corporate Debtor dated 24.02.2022 also establishes the overdue amounts of the Corporate Debtor. Lastly, the statements affirmed by the Corporate Debtor in C.S. No. 77 of 2014 and W.P.7104 (W) of 2018 also establish ‘debt’ and ‘default’ in the matter.

On validity of the letter of authorisation:

- 20.11 It is seen that the Letter of Authorisation¹⁸ issued by Financial Creditor is in the letter head of the Financial Creditor and signed by the Deputy General Manager as well as Mr. H.K. Prince Karimi *i.e* the person authorised thereby. While the

¹⁷Annexure S

¹⁸Annexure A

same does not contain the seal of the Financial Creditor, the document has been duly notarised and as such the same is a valid document and in order as per Section 7 as well as Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 .

On perjury:

20.12 Coming to the I.A.(IBC) 1930/KB/2023, the Corporate Debtor has alleged that offence of perjury has been committed by the Financial Creditor . With respect to prosecution for perjury, we find it pertinent to refer to the decision of the Hon'ble Supreme Court in ***Chajoo Ram v. Radhey Shyam***¹⁹, wherein the Apex Court held as follows:

"7. *The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.*"

¹⁹MANU/SC/0082/1971 : (1971) 1 SCC 774: AIR 1971 SC 1367

20.13 Further, in *Seema Thakur vs. Union of India &Ors.*²⁰, Hon'ble Delhi High Court viewed that to impute criminality, an element of mens rea need to be present. The relevant excerpt of the judgment reads thus:-

"14. It is trite that to impute criminality, an element of mens rea has to be found. It is also well settled that it is sine qua non for initiation of criminal action by the court under Section 340 Cr.P.C. that satisfaction as to the expediency of such course is reached {Iqbal Singh Marwah vs. Meenakshi Marwah, MANU/SC/0197/2005 : (2005) 4 SCC 370}."

20.14 We also find it pertinent to refer to the decision of the Ld. National Company Law Tribunal (NCLT), Ahmedabad Bench in *Srei Infrastructure Finance Ltd. and Ors. vs. Arcelormittal India (P) Ltd. and Ors.*²¹ wherein the Adjudicating Authority, vide order dated 17.03.2023 has held as follows:

"....We hold that there is nothing wrong if the party to any proceedings who asserts certain facts and if said facts is not accepted by the Judicial Forum to be correct that does not mean that the parties asserting the facts commits perjury. If that logic is made applicable then every losing party in a judicial proceeding shall be held to have committed the offence of perjury. This cannot be the intention and interpretation of the law." (Para 9)

20.15 The Applicant has enumerated various instances which, as per the Applicant, which tantamount to the offence of perjury as envisaged under Chapter XI of the Indian Penal Code, 1860. However, the aforesaid instances prima facie do not appear to be 'deliberate' attempt at fabricating false evidence. The same appear to be nothing but bonafide statements which a man of ordinary prudence could have inferred in the given scenario. The element of *mens rea* cannot be

²⁰CrI. M.A. 19647/2012 decided on 16th February, 2017

²¹IA/283(AHM)2023 in IA 832 of 2022 in CP(IB) No. 40 of 2017

established from the submissions of the Applicant and as such, there is no case for perjury. The instant application is devoid of merit and liable to be rejected as such.

20.16 In light of the aforesaid facts, circumstances and case-laws cited above, we are satisfied that the Corporate Debtor has defaulted in payment of the debt due to the Financial Creditors and as such the instant petition needs to be admitted. It is, accordingly, hereby ordered as follows:-

- i. The application bearing **CP (IB) No. 165/KB/2022** filed by **State Bank of India** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Shree Padmawati Metaliks Private Limited** (CIN:U27106WB2003PTC096505), the Corporate Debtor, is **admitted**.
- ii. There shall be a moratorium under section 14 of the IBC.
- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. **Mr. Avishek Gupta**, having registration number IBBI/IPA-003/IP-N000135/2017-18/11499 , **email: avishek@optimusresolution.net**, as per the IBBI Panel S.no.13 for the WB region, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the 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.

- vi. 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 Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. 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.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Financial Creditor shall initially deposit a sum of ₹_3,00,000/- (Rupees Three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata 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.

20.17 **I.A. (IBC) 1930/KB/2023** shall stand rejected.

20.18 **CP (IB) No. 165/KB/2022** to come up on **22.11.2024** for filing the progress report.

20.19 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerje
Member (Judicial)

Signed on this, the 23rd day of September, 2024