



**NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH COURT VI**

Item No. P-2.

**C.P. (IB)/370(MB)2025**

CORAM

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING DATED **04.06.2025**

NAME OF THE PARTIES : **The Cosmos Co-operative Bank**

**Vs**

**M/s Cubatics Industries Private Limited**

**Under Section 7 of the IBC.**

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**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)/370(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)/ 370 /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. Cubatics Industries Private Limited***

**M/s. The Cosmos Co-operative Bank  
Ltd.**

"Cosmos Tower", Plot No. 6, ICS Colony,  
University Road, Ganeshkhind,  
Shivajinagar, Pune, Maharashtra,  
India - 411007.

***... Applicant/Financial Creditor***

VERSUS

**M/s. Cubatics Industries Private Limited,**

B/ 1006-1007, Express Zone, Western  
Express Highway Near Patel Uanika,  
Malad (East), Mumbai, Maharashtra,  
India, 400063.

***...Respondent/Corporate Debtor***

**Order pronounced on 04.06.2025**

**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. Bhupendra Dave  
i/b Naavic Legal LLP.



For Corporate Debtor : Adv. Mr. Somesh Chhangani  
i/b PCS Ms. Nishtha Khandelwal

## **ORDER**

**[Per: CORAM]**

1. This is an Application filed by the M/s. The Cosmos Co-operative Bank Ltd. (hereinafter referred to as "**Financial Creditor**") against *M/s Cubatics Industries 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 Application it is seen that the Financial Creditor is a company registered under the Companies Act, with CIN No. U99999MH1933PTC002029. The Registered office of the Financial Creditor is situated at "Cosmos Tower, Plot No. 6, ICS Colony, University Road, Ganeshkhind, Shivajinagar, Pune, Maharashtra, India - 411007".
3. From Part-II of the Application, it is seen that the Corporate Debtor is one M/s. Cubatics Industries Private Limited having CIN No. U17291MH2014PTC254110. The Corporate Debtor was incorporated on 11.03.2014 and its Registered office address is at B/1006-1007, Express Zone, Western Express Highway Near



Patel Uanika, Malad (East), Mumbai, Maharashtra, India, 400063. The Application was affirmed on 29.10.2024.

4. The perusal of Part III of the Application reveals that the Applicant has named Finvin Turnaround and Restructuring Private Limited, as IP. The IPE's Registration number is IBBI/IPE-0159/IPA-1/2024-25/50081. The consent of the IPE attached as Annexure-"11" of the Application. AFA is valid till 31.12.2025.
5. The perusal of Part IV of the Application reveals that the Applicant has claimed a sum of Rs. 20,55,59,549/- as on 31.03.2025 of which Rs. 19,00,00,000/- is the principal amount and the remaining amount is towards interests and other charges.
6. Upon an Application by the Corporate Debtor, the Applicant sanctioned a sum of Rs. 10 Crores as cash credit facilities *vide* letter dated 12.08.2015, in a multiple finance arrangement, for expanding the business of the CD. The said amount was disbursed on 04.04.2016. Further to this, enhancement of cash credit limit by Rs. 9 Crores was sanctioned *vide* letter dated 29.10.2021, which was disbursed on 02.11.2021.
7. It is stated by the Applicant that the Corporate Debtor could not maintain the financial discipline and the account of the Corporate Debtor was classified as NPA on 14.01.2024. *Vide*



notice dated 08.04.2024, the Applicant recalled the outstanding from the Corporate Debtor amounting to Rs.19,58,86,470.29 as on 31.03.2024..

8. It is stated in the Application that the notice under Section 13 (2) of the SARFAESI Act, 2002 was issued on 13.08.2024, whereby the Financial Creditor raised a demand of Rs. 19.96 Crores as of 31.07.2024.
9. In response to the said notice under SARFAESI Act, 2002, the Respondent has paid a sum of Rs. 1,33,67,576.00/- between the period from 01.08.2024 till 31.01.2025.
10. The perusal of the Part V of the Application reveals that the Applicant is holding the following securities:-

Sr. No.	<b>Collateral Securities</b>
A	<b>Pari Passu charge extended on following properties by way of joint deed of registered mortgage between Cosmos Bank/Applicant/Financial Creditor and HDFC Bank under Multiple Banking Arrangement.</b>
i.	Industrial Open Plots No 49 to 61 (Total 13 Plots), Shubhlaxmi Industrial Estate, Vibhag-3, Block no:32, Moje Atodara, Olpad Sayan Road, Tal & Dist: Olpad owned by Mr. Rakesh F. Sarwagi;
ii.	Factory Land & Building at S.No. 176, Block No: 219, Nr Sahiba, Moje: Jolva, Tal; Palsana, Dist: Surat owned by M/s Cubatics Industries Pvt. Ltd;



iii.	Residential Flat No. 801, 8 <sup>th</sup> Floor, Building No. E, "Nandini-III", R.S. No: 500, Revision S. No : 298, T.P.S. No. 7 (Vesu Magdalla), F.P.No. 45, Nr Samarth Enclave, VIP Road, Vesu, Surat owned by Mr. Rakesh Sarwagi;
iv.	Residential Flat No.802, 8 <sup>th</sup> Floor, Building No. E, "Nandini - III", R.S. No: 500, Revision S. No: 298, T.P.S. No 7 (Vesu Magdalla), F.P.No 45, Nr Samarth Enclave, VIP Road, Vesu, Surat owned by Mr. Rakesh Sarwagi;
v.	Open plots at R.S. No. 204/p, Pot No. 15/2/1, R.S. No. 205/2, R.S. No. 204/lp, Plot No. 15/1. R.S. No. 205/1/p & 205/3, Moje: Naroli, Union Territory of Dadra & Nagar Haaveli, Silvassa in the name of Cubatics Industries Pvt. Ltd.
vi.	Lien marked on FDR (A/C No. 110200107436) of original value of Rs. 8.49 Lakhs.
<b>B.</b>	<b>Second charge for ECLGS limit of Rs. 1350 lakhs with Axis Bank Ltd.</b>
Copy of index of Charges as per Ministry of Corporate Affairs is attached is "ANNEXURE 1" to the Application.	

11. The Applicant relies upon the following documents in its Application to prove the existence of debt:-

- i. Copy of the Sanction Letter dated 12 August 2015 is attached as "ANNEXURE-2" to the Application.
- ii. Copy of the Sanction Letter dated 29 October 2021 is attached as "ANNEXURE-3" to the Application.



- iii. Copy of the Deed of Mortgage executed in correspondence with Sanction Letter dated 23 December 2022 is attached as "ANNEXURE-4" to the Application.
- iv. Copy of the Sanction Letter dated 23 December 2022 is attached as "ANNEXURE-5" to the Application.
12. The Applicant has attached the Certificate issued under Bankers Book Evidence Act as Annexure "9" to the Application. The Applicant has also attached the Record of Defaults with Information Utility at Page No. 239 of the Application.
13. The perusal of the Record of Default with Information Utility reveals that the date of default is mentioned at 14.01.2024 and that the authentication status is "Authenticated".
14. From the Record of Default it is seen that the date of authentication is 04.02.2025 at 00:06:51 hours.
15. This matter was first heard on 25.03.2025, when certain directions were given to the Applicant. On 25.03.2025, Ld Counsel Ms. Nishtha Khandelwal represented the Respondent and 2 days' time was given to the Respondent to file Vakalatnama in the matter.
16. Order dated 03.04.2025 records that an additional time of 14 days was granted to the Applicant to file additional affidavit along with fresh Form "1" to address the deficiencies pursuant to directions issued on 25.03.2025 and the matter was fixed for



hearing on 29.04.2025. The deficiencies pertained to filing of Bankers Book Evidence Act Certificate and also the debt on which outstanding amount was claimed in the Application by the Applicant.

17. The additional affidavit dated 28.04.2025 along with fresh Form "1" was filed on 29.04.2025. The same was taken on record.

18. Order dated 29.04.2025 records as under:

1. *Ld. Counsel Mr. Bhupendra Dave for the Applicant is present through VC, PCS Ms. Nishtha Khandelwal for the Respondent is also present through VC.*
2. *In compliance of the order dated 03.04.2025, Applicant has filed additional affidavit, which is dated 28.04.2025, along with its annexures, which is taken on record.*
3. *Ld. Counsel appearing on behalf of the Respondent states that they have received the copy of Application along with the additional affidavit. The additional affidavit was received yesterday i.e. on 28.04.2025.*
4. *Ld. Counsel for the Respondents admits that there is a default of the debt exceeding Rs. 1 crore and he does not denies disbursement.*



5. Applicant has attached the record of default with Information Utility which is at page No. 239 of the Application and which is under "authenticated" status.

6. Heard the Counsels. Reserved for orders.

### **ANALYSIS AND FINDINGS**

19. It is the case of the Applicant that the total amount of Rs.20,55,59,549/- is outstanding as on 31.03.2025. The Principal amount was disbursed on 04.04.2016 and 02.11.2021.
20. The Respondent could not maintain financial discipline and defaulted pursuant to which the account was classified as NPA on 14.01.2024 and thereafter a SARFAESI notice dated 13.08.2024 was issued by the Applicant, which is appended at Page No. 217 to Page No. 224 of the revised Application. The said notice was delivered upon the respondent through Dasti mode. The Applicant has attached the Record of Default with Information Utility (NeSL) from which it is apparent that the Respondent has defaulted for a sum of over Rs. 1 crore. The said Record of Default shows an "authenticated" status and the respondent has authenticated the same on 04.02.2025 at 00:06:51 hours.
21. Ld. Counsel appearing on behalf of the Respondent at the hearing held on 29.04.2025 has admitted that the Respondent



has obtained disbursement and that the account of the Corporate Debtor is in default with the Financial Creditor herein for a sum exceeding Rs. 1 crore. The Respondent has not filed any reply to the Application.

22. 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.

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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 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."

23. 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 to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.



24. From the Application it is seen that the Applicant has disbursed financial debt to the Respondent of an amount aggregating to Rs. 19 crores on different dates. The Applicant has thereafter issued the recall notice of the loan on 08.04.2024 (acknowledged by the Corporate Debtor by Dasti mode) upon default and for which SARFAESI notice dated 13.08.2024 was issued. The said notice was delivered to the Corporate Debtor through Dasti mode, which is acknowledged by the Corporate Debtor on 13.08.2024.
25. The Applicant has proved that there exists a debt which is in default, the said default is for more than Rs. One crore, the Applicant has furnished the Record of Default recorded with the information utility (NeSL) and the name of the Insolvency Professional to be appointed as Interim Resolution Professional has been given in the Application, against whom no disciplinary proceedings are pending, and that the Application filed is complete, we are forced to initiate Corporate Insolvency Resolution Process against the Respondent herein.
26. As a consequence of the above discussion, the present Application being CP 370/2025 is hereby 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. **Cubatics Industries Private Limited**, 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 IPE, we hereby appoint **Finvin Turnaround and Restructuring Private Limited** having registration no. **IBBI/IPE-0159/IPA-1/2024-25/50081 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 a 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 initial 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.



27. **Accordingly, CP (IB)/370/(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)