



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

Item No. P1.

C.P. (IB)/411(MB)2025

CORAM:

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

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

ORDER SHEET OF HEARING (HYBRID) DATED **11.07.2025**

NAME OF THE PARTIES: **K Sera Sera Box Office Private Limited**

**Vs**

**Shree Mahaganga Sugar Mills 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. Detailed order is being uploaded on the NCLT portal today.

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

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

**C.P. (IB)/411/MB/2025**

*[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]*

**K SERA SERA BOX OFFICE PRIVATE LIMITED**

[CIN No.: U93000MH2009PTC193284]

Unit No. 101A and 102, Morya Landmark - II,  
Opp. Infinity Mall, New Link Road,  
Andheri (West), Mumbai – 400053.

**...Financial Creditor**

V/s

**SHREE MAHAGANGA SUGAR MILLS LIMITED**

[CIN No.: U32109MH1991PLC063227]

Room No. 18, Vitha Wadi, Sawant Chawl,  
Azad Nagar, Near Tep. Dargh,  
Andheri (West), Mumbai – 400058.

**...Corporate Debtor**

**Pronounced: 11.07.2025**

**CORAM:**

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

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

**Appearances: Hybrid**

For Applicant: Adv. Mr. Sarang Pathak

For Respondent: Adv. Ms. Seema Ruia, Mr. Abhishek Rana



## ORDER

***[PER: CORAM]***

### **1. BACKGROUND**

1.1 This C.P. (IB) No.411/MB/2025 (Application) was filed on 12.02.2025 by K Sera Sera Box Office Private Limited, the Financial Creditor (FC) having CIN No.: U93000MH2009PTC193284 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shree Mahaganga Sugar Mills Limited, the Corporate Debtor (CD) having CIN No.: U32109MH1991PLC063227.

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs.1,61,35,928.77/- (One Crore Sixty One Lakh Thirty Five Thousand Nine Hundred Twenty Eight Rupees and Seventy Seven Paise) as on 05.11.2024, which includes principal amount of Rs.1,09,00,000/- and interest amounting to Rs.52,35,928.77/-. The date of default mentioned is 22.10.2024.

1.3 The Applicant has proposed one Ms. Bharati Manoj Daga, having Registration No. as IBBI/IPA-001/IP-P01963/2020-21/13070, to act as the Interim Resolution Professional (IRP).

### **2. CONTENTIONS OF APPLICANT (FC)**

2.1 A Tripartite Loan Agreement dated 09.10.2020 was entered into between the Applicant (lender) and one SPJ Exports (borrower) and the CD



(guarantor) for a sum of Rs.1,09,00,000/-, where it was mentioned that the payment, repayment or reimbursement, as the case may be, of the Guaranteed Obligations shall be secured, inter alia, by an unconditional and irrevocable guarantee of the Guarantor. The total sum of Rs.1,09,00,000/- was disbursed as under:

09.10.2020	Rs.50,00,000/-
29.10.2020	Rs.50,00,000/-
23.03.2021	Rs.1,00,000/-
24.03.2021	Rs.50,000/-
08.06.2021	Rs.5,00,000/-
13.07.2021	Rs.2,50,000/-

2.2 As per the repayment schedule, the repayment was to be made by the CD after 36 months w.e.f. 09.10.2023, but the CD couldn't repay and hence failed to adhere to the mutually agreed repayment schedule.

2.3 The Loan Agreement's Clause 13 (c) states that the non-adherence to the Repayment Schedule shall result in the occurrence of an Event of Default.

2.4 The Applicant issued a Request letter dated 20.10.2023 for Repayment of Loan to the Borrower. However, the borrower *vide* its letter dated 26.10.2023 informed the Applicant that the Borrower is "*not in position to repay loan amount*" due to some financial challenges.

2.5 Accordingly, the Applicant issued a Notice of Occurrence of Event of Default dated 31.10.2023 to the CD invoking its guarantee and calling upon it to make the repayment of the outstanding loan amount of Rs.1,09,00,000/- plus 12% interest till the date of repayment.



2.6 The CD, through its Reply dated 10.11.2023, admitted to repay back the loan amount and further requested to restructure the repayment schedule with an extension of 6 months for repaying the loan amount, considering its financial hardships. Despite the Applicant's acceptance of CD's request for extension of 6 months to repay the loan *vide* letter dated 16.11.2023, the CD failed to clear the dues till 10.05.2024 and yet again requested a final and ultimate extension of 1 month *vide* its reply dated 21.05.2024 to the Applicant's 16.05.2024 letter calling the CD to repay the debt. The Applicant *vide* letter dated 23.05.2024 agreed to the said request and granted the 1-month extension.

2.7 Upon failure to repay the amount by the final extension date, the Applicant issued its Final Notice of Occurrence of Event of Default dated 24.06.2024, requesting the CD to repay the amount of Rs.1,09,00,000/- plus 12% interest within a period of 7 days from the date of receipt of the said Notice. The CD failed to reply to the same and also failed to make payment towards the said loan amount.

2.8 Clause 14 (a) under the heading 'Consequences of an Event of Default' in the Loan Agreement says the following:

*"The entire Loan Amount along with Interest for the entire period shall immediately become due and payable, and the Lender shall have the right to recall the entire loan together with interest for the entire period. the overdue interest arising on account of default and other Charges; All charges are payable by the Borrower and/or the Guarantor together with applicable taxes"*



The Applicant, therefore, issued a Demand Notice dated 15.10.2024 to the CD recalling the entire loan amount together with interest, overdue interest and other charges and called upon the CD to make the entire payment within a period of 7 days. The said Notice was sent to the CD through RPAD on 16.10.2024 and the same was 'Delivered' on 22.10.2024.

2.9 The CD replied to the Demand Notice *vide* letter dated 04.12.2024 stating that it is undergoing financial hardships and requested for further extension of 1 year for repayment of the loan amount.

2.10 At the hearing held on 11.04.2025 before this Bench, the Ld. Counsel for the Applicant undertook to modify the default date in the Application and accordingly, the Applicant modified the date of default as 22.10.2024 in the Form-I as the final Demand Notice was issued on 15.10.2024 by the Applicant calling upon the CD to clear the outstanding within 7 days, i.e., within 22.10.2024.

2.11 The Applicant, *vide* an Additional Affidavit dated 29.05.2024, affirmed by one Mr. Dharamveer Singh Magan Singh Shekhawat, who is stated to be the Director of the Applicant, brought on record the Record of Default under Form D as generated by NESL, which states that the status of default of the debt is 'Deemed to be authenticated'.

2.12 The Applicant has attached the following documents along with the Application and Additional Affidavit:

- a) Copy of the master data of the Applicant and the CD.
- b) Copy of the Authority Letter dated 25.10.2024 appointing Mr. Dharamveer Singh Magan Singh Shekhawat as the authorized signatory of the Applicant.



- c) Copy of Loan Agreement along with Deed of Guarantee dated 09.10.2020.
- d) Copy of Bank Statement of account of the FC for the period 09.10.2020 to 13.07.2021 evidencing disbursement of loan to principal Borrowers.
- e) Copy of Ledger Account of Borrower.
- f) Copy of the record of default registered with NESL.
- g) Copy of Notice of Occurrence of Event of Default dated 31.10.2023 on behalf of the Applicant.
- h) Copy of the CD's Reply dated 10.11.2023 to Repayment request letter.
- i) Copy of Reply dated. 16.11.2023 by the Applicant to the Letter of the CD dated 10.11.2023.
- j) Copy of 2nd Request letter for repayment of loan dated 16.05.2024 on behalf of the Applicant.
- k) Copy of the CD's Reply dated 21.05.2024 to 2nd Repayment request letter.
- l) Copy of Reply dated 23.05.2024 by the Applicant to the Letter of the CD dated 21.05.2024.
- m) Copy of Final Notice of Occurrence of Event of Default dated 24.06.2024 on behalf of the Applicant.
- n) Copy of Demand Notice dated 15.10.2024 issued by the Advocate of the Applicant to the CD along with postal Receipt and Tracking Report.
- o) Copy of the CD's Reply dated 04.12.2024 to the Applicant's letter dated 15.10.2024.
- p) Copy of the statement of the calculation of the total outstanding as on 05.11.2024.



### 3. CONTENTIONS OF CD

3.1 Reply was filed by the CD through an Affidavit dated 05.05.2025, affirmed by one Mr. Hiramani Babulal Sharma, who is stated to be a Director and Authorised Signatory of the CD.

3.2 In its Reply, the CD admits that:

- a) The Tripartite Agreement along with Deed of Guarantee was executed on 09.10.2020 between the Applicant, Principal Borrower and the CD.
- b) Loan of Rs.1,09,000/- was disbursed by the Applicant to the Principal Borrower.
- c) The CD issued a guarantee to the Applicant through a Deed of Guarantee dated 09.10.2020

3.3 The CD further admits that correspondence was made between the Applicant and the CD *vide* letters dated 31.10.2023, 10.11.2023, 16.11.2023, 16.05.2024, 21.05.2024, 23.05.2024, 24.06.2024, 15.10.2024, and 04.12.2024 wherein the Applicant had invoked the guarantee dated 09.10.2020 and demanded the repayment of the loan amount from the CD.

3.4 It is stated in the Reply by the CD that the application is not maintainable *qua* the CD and merits dismissal on the ground of maintainability itself. It is settled law that if there is an existence of an Arbitration Agreement between the parties, then the dispute has to be resolved between the parties through the Arbitration process prescribed under the Arbitration and Conciliation Act, 1996. The present Application filed by the Applicant is untenable within the



provisions of the IBC, as the parties have agreed to refer the matter to an Arbitrator in Clause 20 of the Tripartite Loan Agreement dated 09.10.2020.

3.5 The CD argues that the contents of the Final Notice of Occurrence of Event of Default dated 24.06.2024 are false, as there was no event of default at the CD's end, as it had only asked for extension of time for repayment of the loan and never denied to clear the dues. Therefore, there is no question of the imposition of consequences of an event of default.

3.6 The Demand Notice dated 15.10.2024 stated that to recover the loan amount, the Applicant would file an Application under the IBC, which is in complete breach of Clause 20 of the Tripartite Loan Agreement, wherein the parties have agreed to refer the matter to an Arbitrator. Therefore, the sole intention of the Applicant behind filing the present Application is to harass the CD and misuse the process for making undue and unlawful gains.

3.7 The CD states that it is ready to make repayment of the dues in installments over 3 years, and a schedule in this regard can be mutually agreed upon between the Applicant and the CD.

#### **4. REJOINDER**

4.1 The Applicant was provided an opportunity to file its rejoinder to the CD's Reply, but on 10.06.2025, the Applicant refused to file the same and hence, its right to file a rejoinder was closed.



**5. ANALYSIS AND FINDINGS**

5.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the Applicant and the CD.

5.2 It is observed that the CD has executed a Corporate Guarantee under a Tripartite Loan Agreement dated 09.10.2020, entered into *inter se* amongst the Applicant (FC), SPJ Exports (Principal Borrower), and the CD. Pursuant to the said agreement, a principal sum aggregating to Rs.1,09,00,000/- was disbursed, which the CD has unequivocally acknowledged through various correspondence with the Applicant and also in its Affidavit-in-Reply. As per Clause 13(c) of the Tripartite Agreement, a failure to adhere to the prescribed repayment schedule constitutes an “Event of Default.” The admitted default by the principal borrower has consequently triggered the obligations of the CD as a guarantor under the said Agreement. The Applicant invoked the guarantee of the CD vide its Notice dated 31.10.2023. Notably, the CD was afforded multiple opportunities to cure the default — initially for 6 months and thereafter an additional month — culminating in a final demand dated 15.10.2024. Despite the indulgences granted, the CD failed to effect repayment even after the final extension.

5.3 It is trite law that a corporate guarantor who undertakes to discharge the liability of the borrower assumes liability under the IBC upon the occurrence of a default by the principal borrower. The Hon’ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India & Anr.*, (2021) 8 SCC 481, has authoritatively held that proceedings under Section 7 of the IBC are maintainable against a Corporate Guarantor independently of any proceeding against the principal borrower.



5.4 The primary objection raised by the CD pertains to the arbitration clause (Clause 20) contained in the Tripartite Agreement and the assertion that the same ousts the jurisdiction of this Tribunal. Such a contention is legally unsustainable. The IBC, being a special legislation, incorporates a non-obstante clause under Section 238, which unequivocally overrides any inconsistent contractual mechanisms, including arbitration clauses. The Hon'ble Supreme Court in *Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*, [Civil Appeal No 3045 of 2020] has categorically held:

*“21. .... In terms of Section 238 and the law laid down by this Court, the existence of a clause for referring the dispute between parties to arbitration does not oust the jurisdiction of the NCLT to exercise its residuary powers under Section 60(5)(c) to adjudicate disputes relating to the insolvency of the Corporate Debtor.”*

Accordingly, it is now well settled that the jurisdiction of the Adjudicating Authority under the IBC is not excluded merely by reason of an arbitration clause. Proceedings under Section 7 are summary in nature, and are limited to determining the existence of a financial debt and default thereunder. Such statutory proceedings cannot be supplanted by private dispute resolution mechanisms. Contractual dispute resolution clauses do not defeat statutory remedies enshrined under the IBC.

5.5 The contention advanced by the CD that there has been no “Event of Default” is devoid of merit. The documentary record demonstrates that the CD has admitted to the liability and has, on more than one occasion — through its letters dated 10.11.2023 and 21.05.2024 — sought extensions



for repayment, which were duly granted. Despite such accommodation, the CD failed to discharge its obligation, thereby constituting a clear “Event of Default” under Clause 13(c) of the Loan Agreement and within the meaning of Section 3(12) of the IBC. The plea that the CD never expressly refused repayment is of no consequence, as default stands established once the due date for repayment lapses and no payment is made despite multiple opportunities.

5.6 The CD’s proposal to liquidate the outstanding dues in instalments over a period of 3 years is treated as an admission of liability and cannot constitute a valid ground to deny admission of the present Application. The IBC, 2016 is not intended to serve as a forum for debt recovery or post-default negotiations. It is a time-bound mechanism for insolvency resolution, and the Adjudicating Authority cannot permit deviation from this framework merely on the basis of unsubstantiated assurances which have repeatedly gone unfulfilled.

5.7 At this juncture, reference may be made to the landmark judgment of the Hon’ble Supreme Court in *Innoventive Industries Limited v. ICICI Bank Limited*, [(Civil Appeal Nos. 8337-8338 of 2017), (2017) 8 SCR 33], which comprehensively delineates the scope of powers exercisable by 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 extract 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.”*



- 5.8 The Record of Default submitted by the FC from the Information Utility (NESL), evidencing the default and bearing the status “deemed to be authenticated,” further fortifies the claim of the FC. In accordance with Section 7(5) of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, such a record constitutes valid and sufficient proof of default.
- 5.9 The allegation that the present Application has been initiated with *mala fide* intent is baseless and unsubstantiated. The invocation of statutory rights under the IBC, once the threshold requirements under Section 7 stand satisfied, cannot be characterised as an abuse of the process of law.
- 5.10 In view of the foregoing facts and legal position, and in light of the established existence of a ‘financial debt’, admitted ‘default’ on the part of the CD, the Application filed by the Applicant contains the information/documents required and is thus complete and that there is no disciplinary proceeding ready against the proposed insolvency resolution professional, this Tribunal is legally obligated to admit the present Application and initiate CIRP against the CD. We are, therefore, of the considered opinion that the present Application filed by the Applicant is maintainable and complete in terms of Section 7 of the IBC and merits **admission.**

## **ORDER**

In view of the aforesaid findings, this Application bearing C.P. (IB) 411/MB/2025 filed under Section 7 of IBC, 2016 by K Sera Sera Box Office



Private Limited, the Applicant (FC) for initiating CIRP in respect of Shree Mahaganga Sugar Mills Limited, the CD, is **admitted**.

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
  - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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, and;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.



- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Ms. Bharati Manoj Daga, a registered Insolvency Professional** having **Registration No. as IBBI/IPA-001/IP-P-01963/2020-2021/13070** and **e-mail address [Bharateedaga1008@gmail.com](mailto:Bharateedaga1008@gmail.com)**, having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Required steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.



- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

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