

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

C.P. (IB) No. 200/KB/2023

And

IVN.P. (IB) No. 20/KB/2024

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:
INDIAN BANK

... Financial Creditor/Applicant

-Versus-

M/S. BALLY EXPORTS LIMITED

... Corporate Debtor/Respondent

And

IVN.P. (IB) No. 20/KB/2024

An application under Section 60(5) of the I&B Code, read with Rule 11 of the NCLT Rules.

IN THE MATTER OF:

Shree Bankebehari Tie-up Private Limited

... Intervenor/ Applicant.

Versus

Indian Bank

... Respondent/ Financial Creditor.

Date of Pronouncement of the Order: 14.08.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances:

Mr. Shaunak Mitra, Adv.] For the Financial Creditor
Mr. Sidhartha Sharma, Adv.]
Mr. Rishav Dutt, Adv.]
Mr. Mohit Sharma, Adv.]
Mr. Aman Katauka, Adv.]

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Mr. Aritra Basu, Adv.] **For the Corporate Debtor**
Mr. Dipanjan Dey, Adv.]
Mr. Aniket Ojha, Adv.]

Ms. Swapna Choubey, Adv.] **For the Intervenor**
Mr. S. K. Kasera, Adv.]

ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through hybrid mode.
2. Learned Counsels appearing on behalf of the parties were heard *in extenso*.
3. This is a Company Petition being **C.P. (IB) No. 200/KB/2023** filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Indian Bank (hereinafter referred to as the “Financial Creditor/Applicant”) for initiating Corporate Insolvency Resolution Process (in short “CIRP”) against M/s. Bally Exports Private Limited (hereinafter referred to as the “Corporate Debtor/Respondent”).
4. **Factual matrix of the case is as under: -**

(a) The Corporate Debtor had approached Allahabad Bank (herein referred to as “Predecessor/Financial Creditor”) and credit facility was sanctioned by the said Bank on 14.05.2009 and the same was extended/reviewed from time to time and on 09.10.2013 a sanction letter was issued by enhancing the credit facility of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only).

(b) The said facility was also reviewed from time to time and acknowledged once again and enhanced to Rs. 10,70,00,000/-

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(Rupees Ten Crores Seventy Lakhs Only) on 29.12.2014 by way of a sanction letter issued by the Allahabad Bank.

- (c) Once again, the review of the account was made and the sanctioned limit of credit facilities was enhanced on 05.04.2017 by way of written document enhancing the credit limit to Rs. 12,53,00,000/- (Rupees Twelve Crores Fifty-Three Lakhs Only).
- (d) On 28.06.2021 restructuring and enhancing the sanction limit was sought by the Corporate Debtor from Allahabad Bank. An acknowledgment receipt was issued by the Corporate Debtor for sanction letter conveying sanction of credit limit to Rs. 11,61,00,000/- (Rupees Eleven Crores Sixty-One Lakhs Only).
- (e) The audited financial statement ending financial year on 31st March, 2020 acknowledged the debt due to the said Bank. Meanwhile, Allahabad Bank got merged with the Indian Bank and the Indian Bank became the Financial Creditor for the Corporate Debtor in the year 2020.
- (f) It is the submission in Part 4 of Form B filed by the Financial Creditor that the principal amount of Rs. 11,15,43,419/- (Rupees Eleven Crores Fifteen Lakhs Forty-Three Thousand Four Hundred Nineteen Only) is due and Rs. 3,47,81,013/- (Rupees Three Crores Forty-Seven Lakhs Eighty-One Thousand Thirteen Only) is due on account of accumulated interest and the default has been committed by the Corporate Debtor. Hence, the Financial Creditor in its petition seen to initiate CIRP of the Corporate Debtor.

5. Ld. Counsel for the Applicant: -

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- (a)** The Ld. Counsel appearing on behalf of the petitioner brought to attention the various sanction letters issued by the predecessor bank the Financial Creditor, namely, the Allahabad Bank from time to time and the acknowledgment of the Corporate Debtor acknowledging the sanction letter and the debt.
- (b)** He also brought our attention a certificate issued by information utility dated 31.03.2022.
- (c)** As per the said record of default issued by the information utility, the date of default of debt has been recorded as 31.03.2022.
- (d)** He also brought to our notice several such records of default which has been annexed as 'Annexure – 18' in his petition to demonstrate the amount in default and the date of default.

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Annexure- 'A+B'
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NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

FORM D
RECORD OF DEFAULT (RoD)

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s INDIAN BANK in respect of the default of debt as per details given below-

(a) Name of the Submitter: M/s INDIAN BANK
(b) Schedule-2 Bank (Y/N): Y
(c) Name of Corporate Debtor: M/s BALLY EXPORTS LIMITED
(d) Unique Debt Identifier Number: AAAC11607G_50492046951
(e) Registered Address: 61, Rajaji Salai, Chennai
(f) Total Outstanding Amount: 36278357.00
(g) Default Amount: 15371257.00
(h) Date of Default: 31-03-2022
(i) Status of Authentication of Default: AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(6)	31-03-2023 23:23:53	*AUTHENTICATED Colour Code :GREEN	21-04-2023 12:20:08

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

- (e) He brought to our attention the balance-sheet of the Corporate Debtor for the year 31st March, 2020 wherein the loan taken from Allahabad Bank has been recorded and acknowledged as debt.
- (f) He also relied on the financial statements for the year ended 31.03.2021 to demonstrate that the loan due to Allahabad Bank has been acknowledged.

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- (g) He specifically brought to our notice the Statutory Auditors' Report for the year 31.03.2022 wherein it has been clearly recorded that the company has defaulted in repayment of loans from financial institutions. The same is in page no. 321 of the petition.
- (h) Thus, the petition filed on 09th October, 2023 is well within the period of limitation, and consequently, the petition deserves admission and the Corporate Debtor be put in Corporate Insolvency Resolution Process (in short "CIRP") under Section 7 of IB Code, 2016, claims the Ld. Counsel for the petitioner.

6. Ld. Counsel for the Respondent: -

- (a) Ld. Counsel for the Respondent submitted that the Corporate Debtor and the predecessor Financial Creditor, namely, Allahabad Bank had a long history of business relationship, and that is why, the said Bank from time to time has enhanced the limits from mere Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) in 2009 to Rs. 12,53,00,000/- (Rupees Twelve Crores Fifty-Three Lakhs Only) in 2017.
- (b) He submits that the Corporate Debtor suffered losses on account of demonetisation, GST Implementation and COVID-19 pandemic. The Corporate Debtor always repaid the loan regularly in the past without any instance of default. It was only due to non-cooperation by the Financial Creditor who deprived the special COVID-19 Regulatory packages issued by

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the Reserve Bank of India, the Corporate Debtor faced financial instability.

- (c)** It is his submission that as per the RBI's prudential norms the loan amounts that have suffered from circumstances that were beyond the control of the borrowers should be provided adequate support and no step for classification of the loan account as NPA should be taken.
- (d)** He also submits that the Corporate Debtor during COVID-19 pandemic issued a letter dated April 15, 2020 requesting for a Moratorium and Guaranteed Emergency Credit Line (in short "GECL") loan as per the said guidelines issued by the Reserve Bank of India keeping COVID-19 pandemic in mind. He took us to the relevant letter dated April 2, 2020 in this regard.
- (e)** Even after that without responding to this letter of the Corporate Debtor dated 15th April, 2020 the Financial Creditor issued notice dated August 2, 2021 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") and the matter is pending before the Learned Debts Recovery Tribunal (in short "DRT") for adjudication.
- (f)** In 2023 the current Financial Creditor conducted auction of two immovable properties pledged with the Financial Creditor as security and completed the sale and recovered a sum of Rs. 6,21,00,000/-. This has to be adjusted against the outstanding principal amount to Rs. 11,15,43,419/- (Rupees Eleven Crores Fifteen Lakhs Forty-Three Thousand Four

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Hundred Nineteen Only) once admitted, the principal amount would become less than Rs. 4 Crores.

- (g) The interest amount calculated by the Financial Creditor is arbitrary not agreed between the parties, and consequently, the same is disputed.
- (h) Relying on a supplementary affidavit filed by the Corporate Debtor, the respondent counsel submits that the Corporate Debtor will make the balance payment of Rs. 4 Crore approx. as soon as possible. He submits the Corporate Debtor will make a payment of Rs. 50 Lakhs on or before December, 2024 and if time is granted in all probabilities the said amount will be enhanced and necessary payment in this regard shall also be made.
- (i) And, therefore, he submits that this petition may be dismissed and opportunity may be given to Corporate Debtor to settle the matter with the Financial Creditor.

7. Analysis & Findings: -

- (a) We find that the principal amount due is Rs. Rs. 11,15,43,419/- (Rupees Eleven Crores Fifteen Lakhs Forty-Three Thousand Four Hundred Nineteen Only) and the interest amount claimed is Rs. 3,47,81,013/- (Rupees Three Crores Forty-Seven Lakhs Eighty-One Thousand Thirteen Only).
- (b) It is the claim of the respondent that the Financial has realized by selling two properties belonging to the Corporate Debtor a sum of Rs. 6,21,00,000/-. The claim of the Corporate Debtor

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has been rebutted with a bare denial without any specific response with details. In any case, this is a question of fact. If the Financial Creditor has indeed realized amounts by selling the properties of the Corporate Debtor the same will have to be adjusted against the principal amount owed by the Corporate Debtor to Financial Creditor.

(c) Even if the amount involved in sale of two properties of the Corporate Debtor is adjusted, the principal amount due by the Corporate Debtor to the Financial Creditor is in far in excess of the threshold limit specified in Section 4 of IBC. Further, interest amount to Rs. 3,47,81,013/- (Rupees Three Crores Forty-Seven Lakhs Eighty-One Thousand Thirteen Only) by the Corporate Debtor will add to the amount in default, though the quantum of interest is disputed.

(d) In this petition the date of default claimed as June 29, 2019. However, the information utility record of default states that the date of default is 31.03.2022. We have also noted that the balance-sheets of the Corporate Debtor as on 31.03.2022 including the Statutory Auditors' Report records the liability of the Corporate Debtor to the Financial Creditor, and therefore, we find that this petition has been filed on time. The debt is in excess of limit prescribed under Section 4 of IBC, 2016, and, consequently, applying the ratio of the **Hon'ble Supreme Court** judgment in the case of ***Innoventive Industries Ltd. v. ICICI Bank*** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017** has laid down that:

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“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... 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, ...”

XXX XXX XXX XXX

“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.”

(Emphasis added)

- (e) The defence taken by the Corporate Debtor that the Financial Creditor did not implement 6 months moratorium and not granted GECL loan in line with guidelines issued by RBI, on

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account of COVID-19 pandemic, cannot be adjudicated in this summary proceedings.

(f) As held by the **Hon'ble Supreme Court** judgment in the case of **Innoventive Industries Ltd. v. ICICI Bank** cited supra, as long as there is debt and default and the defaulted amount is in excess of threshold limit, this Adjudicating Authority has to admit the petition. The petition mentioned above criteria, if filed within the time limit prescribed under law of limitation, has to be admitted. Since, we find all the criteria mentioned above has been met in this case, **we admit the petition.**

(g) In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 200/KB/2023** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders:**

- i.** The Application filed by **Indian Bank (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Bally Exports Limited (Corporate Debtor).**
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code.

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However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 2002);*
- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

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[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- vi.** The Petition has proposed the name of **“Mr. Neeraj Kumar Sureka”**, Address: Central Plaza 6th Floor, Room No. – H, 41 B. B. Ganguly Street, Kolkata – 700 012, West Bengal, registration no. IBBI/IPA-001/IP-P-01539/2019-2020/12517, contact no.: 9831099551, Email ID: ipneerajsureka@gmail.com, as the “IRP”. We

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have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by **Mr. Neeraj Kumar Sureka** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **Mr. Neeraj Kumar Sureka** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B 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. 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 I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the

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Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard

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to the progress of the CIR Process in respect of the Corporate Debtor.

- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, 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.

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- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 8.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 9.** Post the Company Petition on **26/ 09/ 2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

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- 1.** Heard the Learned Counsel Ms. Swapna Choubey along with Mr. S K. Kasera, appearing on behalf of the Intervenor.
- 2.** The present application has been preferred by Shree Bankebehari Tie-up Private Limited (Applicant) against the Financial Creditor Indian Bank

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(Respondent) under Section 60(5) of the I&B Code, read with Rule 11 of the NCLT seeking the following reliefs as under:

- a)** *Leave be given to the applicant to intervene in the Company Petition being C.P. (IB) No. 200/KB/2023.*
- b)** *The applicant be added as a party respondent in the Company Petition filed by the Financial Creditor.*
- c)** *Stay of all further proceeding in the Company petition pending disposal of the present application.*
- d)** *Ad interim order in terms of prayers above.*
- e)** *Such further order/orders may be deemed fit and proper.*

3. The Applicant Shree Bankebehari have purchased the immovable property situated at P-26B, Kasba Industrial Estate, Phase-III, Tiljala, Kolkata 700107, from MSTC Ltd. on an auction conducted on 11.10.2023. The Applicant was the highest bidder in the auction for an amount of Rs. 2,31,76,300/- against which a sum of Rs. 20,70,000/- was paid as the earnest money deposit on 11.10.2023, as a successful bidder. The LoI was issued on 10.04.2024. The balance amount has also been paid on two occasions i.e., on 12.10.2023, and 29.12.2023.

4. The Applicant would submit that the said property is the lease hold property under WBSIDCL and requested to them for No Objection and/or give consent to mortgage in favour of the applicant.

5. The Applicant would further submit that the Corporate Debtor is a tenant in the aforesaid premises since 30.01.2023. As such the said immovable property was in mortgage in favour of the Financial Creditor by the Corporate Debtor by registered deed of conveyance in pleading as a Corporate Debtor as a necessary party.

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6. The Applicant would contend that the Company Petition has been preferred to perpetrate fraud on the Applicant Shree Bankebehari at the behest of the Financial Creditor and the Corporate Debtor, having intension to render the sale conducted to transfer of the leasehold rights in respect of the said premises in favour of the Applicant infructuous. In case the CIRP of the Corporate Debtor is admitted, the sale will remain incomplete, and the entire consideration remitted by the Applicant in favour of the Financial Creditor will be jeopardized and rendered infructuous.

7. We find no merit and/or any statutory provisions as well as any precedents to allow the present application. We have noted that the Sale Certificate has been issued on 30.12.2023, annexed at pages 25 to the application, by the Financial Creditor Indian Bank in favour of the Applicant Shree Bankebehari under provisions of the SARFAESI Act, 2002, pursuant to the premises in question secured in favour of the Financial Creditor Indian Bank by the Corporate Debtor M/s Bally Exports Limited (Mortgagor). Thus, the issue raised in this application is between the Applicant and Financial Creditor Indian Bank relating to the sale of immovable property arises under the provisions of the SARFAESI Act, 2002, not related to the debt due and default committed on part of the Corporate Debtor herein.

8. As we have already admitted the Company Petition and appointed IRP to conduct the CIRP of the Corporate Debtor, liberty is however granted to file the any claim of the Applicant including the completion of sale and/or the transfer of the leasehold rights in respect of the aforesaid premises in favour of the Applicant. The IRP shall entertain and deal with such claim of the Applicant in accordance with law. We find that the Applicant Bankebehari is a Successful Bidder and has paid the EMD to the auction conductor MSTC Limited and the balance amount to the Financial Creditor. Thus, we would

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infer that the IRP or RP shall be liable to dispose of the issue of the Applicant at earliest.

9. In terms of the view above, this Intervention Application is **dismissed**.

10. A certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 14th Day of August 2024.

Ar. [steno]/ Bose, R. K. [LRA]