

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.305

RCP(IB)/8(AHM)2024(Old Case C.P.(IB)/307(AHM)2023 Restore on (27/11/2024)

Order under Section 7 IBC

IN THE MATTER OF:

R K Manufacturing Co.Limited
V/s
Devhari Exports (India) Limited

.....Applicant

.....Respondent

Order delivered on: 03/02/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

RCP (IB)/8(AHM)/2024

{Old CP (IB) No.307/AHM/2023}

(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. Devhari Exports (India) Limited.***

R K Manufacturing Company Limited,
215-A, Manek Center, P N Marg,
Jamnagar, Gujarat – 361008

...Applicant/ Financial Creditor

VERSUS

Devhari Exports (India) Limited,
9, Siddharth Shopping Center,
Opp. Jolly Bungalow,
Jamnagar, Gujarat – 361001

...Respondent/ Corporate Debtor

Order pronounced on 03.02.2025

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**



APPEARANCE

For the Applicant/FC : Mr. Dhiren Dave, Advocate
For the Respondent/CD : Mr. Love Modi, Advocate

ORDER

(Per: BENCH)

1. The present Petition was initially filed on 20.12.2023 vide diary No.E2231 by **R K Manufacturing Company Limited** (hereinafter referred to as “the Applicant/Financial Creditor”) against **Devhari Exports (India) Limited** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **1,30,22,928.26ps.** including interest.



- 2.** On perusal of Part-I of the Form-1 indicates that the Applicant/Financial Creditor is a Public Limited Company. The registered office of the Financial Creditor is situated at 215-A Manek Center, P N Marg, Jamnagar, Gujarat – 361008.
- 3.** The Petition is affirmed by Mr. Sandip Pandya, Manager and Authorized officer of the Financial Creditor, who is authorized vide Board resolution dated 01.07.2023 which annexed with the Petition.
- 4.** On perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is Devhari Exports (India) Limited (CIN: L51100GJ1994PLC023249). The date of incorporation is 11.10.1994. The registered office of the Respondent/Corporate Debtor is situated at 9, Siddharth Shopping Center, Opp. Jolly Bunglow, Jamnagar, Gujarat – 361001.
- 5.** On perusal of Part-III of the Form-1 reveals that the Applicant/Financial Creditor has nominated Mr. Nandish Sunilbhai Vin, having Registration No.



IBBI/IPA-001/IP-P-02117/2020-2021/13270 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He has filed his written communication annexed with the Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

6. On perusal of Part-IV of the Form-1 reveals that the Applicant/Financial Creditor has granted various inter corporate deposit to the Corporate Debtor from time to time and interest were also payable by the Corporate Debtor to the Applicant/Financial Creditor and the total amount in default is claimed to be Rs. 1,30,22,928.26/- including interest. The date of default is mentioned as variable events, the date of default is 31.03.2022 mentioned in the amended petition.
7. Total financial debt claimed as due and payable from Respondent/Corporate Debtor is **Rs.1,30,22,928.26ps.** including interest.



8. The Applicant/Financial Creditor has also filed Record of Default under Form-D issued by the NeSL stating the date of Default as 31.03.2023.
9. The Applicant/Financial Creditor has relied upon the following documents: -
- i. *Copy of ledger of Corporate Debtor in the books of Financial Creditors. (Annexure A).*
 - ii. *Copy of bank statement of the Applicant/Financial Creditor confirming the payment of loan to the corporate debtor (Annexure B).*
 - iii. *Copy of the Statutory Audit Report of the corporate debtor confirming the debt payable along with the interest (Annexure C).*
 - iv. *Copy of written communication in Form 2 (Annexure D).*
 - v. *Copy of Registration with NeSL (Annexure E).*
 - vi. *Copy of audited financial statement from 2018-19 to 2022-23 (Annexure C (Colly) to additional affidavit dated 09.01.2025).*
 - vii. *Copy of Board Resolution qua request for disbursement of the loan amount (Annexure D to additional affidavit dated 09.01.2025).*
 - viii. *Copy of ledger of Corporate Debtor in the books of Financial Creditors (Annexure E to additional affidavit dated 09.01.2025).*
 - ix. *Copy of Notice issued to Respondent/Corporate Debtor (Annexure A to affidavit dated 06.04.2024).*



- x. Copy of proof of dispatch and delivery (Annexure B(Colly) to affidavit dated 06.04.2024).*
- xi. Copy of proof of service through E-mail (Annexure C to affidavit dated 06.04.2024).*
- xii. Copy of bank statement of petitioner (Annexure A to the Affidavit dated 01.02.2024).*
- xiii. Copy of Audit Report of the Corporate Debtor specifically acknowledging the debt with interest (Annexure B to the Affidavit dated 01.02.2024).*

10. This Tribunal vide order dated 11.03.2024 issued notice to the Respondent/Corporate Debtor and the said notice was delivered by the Applicant/Financial Creditor and service report was filed by the Applicant/Financial Creditor before this Tribunal on 10.04.2024 vide diary no. D-3015.

11. The Respondent/Corporate Debtor appeared and filed its short reply before this Tribunal on 02.05.2024 vide diary No. D-3771 and against the said reply the Applicant/Financial Creditor has stated that they do not want to file any rejoinder to the said reply as a result of which the right to file rejoinder by the



Applicant/Financial Creditor was closed and the same was recorded in the order dated 15.05.2024.

12. The Reply filed by the Respondent/Corporate Debtor was affirmed by one Mr. Dipesh Pala in the capacity of Director of the Corporate Debtor. The relevant paragraphs of the Reply is hereby reproduced:-

- i. The Corporate Debtor would like to submit that we have not received any Demand Notice as required under the IBC. Several personal follow up and telephonic talks to initiate CIRP are not valid Demand Notice under the IBC. Hence this petition does not survive on that ground.
- ii. The Company would like to submit that though there is outstanding payable to the Applicant/Financial Creditor in the books of the Company under the head Loans. But there is no loan agreement between the Company and Applicant/Financial Creditor.
- iii. In absence of Loan Agreement, Applicant/Financial Creditor falls within the category of Financial Creditor or not as per IBC. That is the main legal issue to be decided by the adjudicating authority.



iv. If at all Hon'ble Bench feels that even without loan agreement Applicant/Financial Creditor falls within the definition of Financial Creditor, our humble submission is that, we have been informing the Applicant/Financial Creditor that we will make payment in installments and we have paid also during last couple of years slowly. Applicant/Financial Creditor is aware that due to business slowdown of the company post covid 19, it is difficult for the company to repay the entire amount in one go and would take up matter with the Applicant/Financial Creditor to give time for repayment of outstanding amount in suitable installments that may be mutually decided between us.

13. That in the midst of the proceeding convened on 02.08.2024 it was apprised to this court that some amicable settlement is likely to be entered between this parties and in respect of this statement this Tribunal dismissed the Petition and granted a liberty that the Applicant/Financial Creditor can revive the application, in case no settlement is reached thereafter, within 60 days from the date of this order. The relevant portion of the order dated 02.08.2024 is hereby reproduced:-



“Learned Counsel appearing for both the sides again submitted that the settlement is on and there are likely to be settlement between the parties.

Since both the learned counsels are repeatedly seeking time to arrive at amicable settlement. We are not inclined to keep this matter pending on the board. This application is dismissed with liberty to the applicant to revive this application, in case no settlement is reached thereafter, within 60 days from the date of this order.

Accordingly, C.P.(IB)307(AHM)2023 is hereby disposed of as dismissed.”

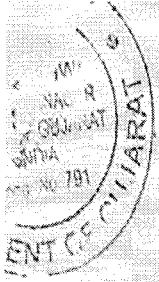
- 14.** Thereafter, Applicant/Financial Creditor filed Restoration Application being Rst. App/28(AHM)2024 in which on 09.10.2024 this Tribunal issued notice to the Respondent/Corporate Debtor, for the purpose of restoring the present petition on account of non-settlement between the parties.
- 15.** This Tribunal vide order dated 07.11.2024 restored the Petition which re-numbered as RCP (IB)/8(AHM)/2024. Thereafter, the Applicant/Financial Creditor filed additional documents by way of affidavit of compliance



on 16.01.2025 vide inward Diary No. D-223 which was taken on record vide order dated 17.01.2025.

16. We have heard the counsels from both sides and have perused the records. The observations of the Tribunal are follow as under:-

- i. That in Part IV of the Form-1, it is provided that the Applicant/Financial Creditor has granted to the Respondent/Corporate Debtor from time to time inter corporate loan along with the interest which is amounting to Rs. 1,30,22,928.26ps. to the Respondent/Corporate Debtor in line of the Board Resolution dated 02.02.2018, passed by the Board of Directors of the Applicant/Financial Creditor.
- ii. That for proving the disbursement so made by the Applicant/ Financial Creditor to the Respondent/ Corporate Debtor, the Applicant/Financial Creditor has placed on record the Ledger Account of “Devhari Exports (India) Limited” which is maintained in the books of the Financial Creditor. The copy of the Ledger Account is hereby Reproduced: -



R.K. Manufacturing Co. Ltd1
215, Manek Centre
P.N. Marg
Jamnagar
CIN: L27209WB1984PLC037758

Devhari Exports India Ltd
Ledger Account

					Page 1	
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
3-10-2018	Cr Idbi Bank Jamnagar	Payment	33	6,79,00,000.00		
	Cr Idbi Bank Jamnagar	Payment	34	3,76,36,295.00		
17-10-2018	Dr Idbi Bank Jamnagar	Receipt	38		1,00,00,000.00	
18-2-2019	Dr Idbi Bank Jamnagar	Receipt	71		82,00,000.00	
				9,55,36,295.00	1,82,00,000.00	
	Dr Closing Balance				7,73,36,295.00	
				9,55,36,295.00	9,55,36,295.00	
1-4-2019	Cr Opening Balance			7,73,36,295.00		
22-3-2019	Cr Idbi Bank Jamnagar	Payment	14	12,000.00		
14-6-2019	Dr Idbi Bank Jamnagar	Receipt	13		83,500.00	
25-8-2019	Dr Idbi Bank Jamnagar	Receipt	17		71,000.00	
1-10-2019	Dr NITIRAJ SHARES	Journal	8		94,99,882.00	
	Dr SIDDHARTH EDUCATION	Journal	9		22,27,501.00	
23-10-2019	Dr Idbi Bank Jamnagar	Receipt	44		14,500.00	
24-12-2019	Dr Idbi Bank Jamnagar	Receipt	54		75,000.00	
10-2-2020	Dr Idbi Bank Jamnagar	Receipt	80		50,00,000.00	
12-2-2020	Dr Idbi Bank Jamnagar	Receipt	81		50,00,000.00	
14-2-2020	Dr Idbi Bank Jamnagar	Receipt	83		50,00,000.00	
17-2-2020	Dr Idbi Bank Jamnagar	Receipt	84		50,00,000.00	
19-2-2020	Dr Idbi Bank Jamnagar	Receipt	85		50,00,000.00	
25-2-2020	Dr Idbi Bank Jamnagar	Receipt	86		50,00,000.00	
2-3-2020	Dr Idbi Bank Jamnagar	Receipt	88		50,00,000.00	
6-3-2020	Dr Idbi Bank Jamnagar	Receipt	89		25,00,000.00	
7-3-2020	Dr Idbi Bank Jamnagar	Receipt	70		25,00,000.00	
18-3-2020	Dr Idbi Bank Jamnagar	Receipt	71		25,00,000.00	
19-3-2020	Dr Idbi Bank Jamnagar	Receipt	72		25,00,000.00	
31-3-2020	Dr Idbi Bank Jamnagar	Receipt	73		41,90,000.00	
				7,73,48,295.00	6,11,81,183.00	
	Dr Closing Balance				1,81,87,112.00	
				7,73,48,295.00	7,73,48,295.00	
1-4-2020	Cr Opening Balance			1,61,87,112.00		
6-4-2020	Dr Idbi Bank Jamnagar	Receipt	1		25,00,000.00	
	Dr Idbi Bank Jamnagar	Receipt	2		16,90,000.00	
13-7-2020	Dr Idbi Bank Jamnagar	Receipt	6		40,00,000.00	
	Cr Idbi Bank Jamnagar	Payment	10	50,000.00		
1-9-2020	Cr Sources & Soluation	Journal	2	40,00,000.00		
				2,02,37,112.00	81,90,000.00	
	Dr Closing Balance				1,20,47,112.00	
				2,02,37,112.00	2,02,37,112.00	



iii. Upon perusal of the said Ledger Account, it is noticed that from the period of 03.10.2018 to 01.09.2020 following are the status of the Disbursals/Payments and Receipts to the Corporate Debtor. The said data is hereby mentioned: -

Disbursals to Corporate Debtor:

Sr. No.	Date	Disbursal
1.	03.10.2018	5,79,00,000.00
2.	03.10.2018	3,76,36,295.00
3.	22.05.2019	12,000.00
4.	13.07.2020	50,000.00
5.	01.09.2020	40,00,000.00
Total		9,95,98,295.00

Receipts from Corporate Debtor:

Sr. No	Date	Disbursal
1.	17.10.2018	1,00,00,000.00
2.	15.02.2019	82,00,000.00
3.	14.06.2019	83,500.00
4.	25.06.2019	71,000.00
5.	01.10.2019	94,99,682.00
6.	01.10.2019	22,27,501.00
7.	23.10.2019	14,500.00
8.	24.12.2019	75,000.00
9.	10.02.2020	50,00,000.00
10.	12.02.2020	50,00,000.00
11.	14.02.2020	50,00,000.00
12.	17.02.2020	50,00,000.00
13.	19.02.2020	50,00,000.00
14.	25.02.2020	50,00,000.00
15.	02.03.2020	50,00,000.00
16.	06.03.2020	25,00,000.00



17.	07.03.2020	25,00,000.00
18.	18.03.2020	25,00,000.00
19.	19.03.2020	25,00,000.00
20.	31.03.2020	41,90,000.00
21.	06.04.2020	25,00,000.00
22.	06.04.2020	16,90,000.00
23.	13.07.2020	40,00,000.00
Total		8,75,51,183

iv. That, upon perusal of the above-mentioned ledger account and data of the disbursement and receipts from the Corporate Debtor, we are of the opinion that the entry in the ledger account for an amount of Rs.40,00,000.00 dated 01.09.2020 which is in the form of Journal Entry is not supported by any document or any explanation for such an entry. The said journal entry as shown in Ledger account is reproduced hereunder: -

01.09.2020	Cr.	Sources & Soluation	Journal	2	40,00,000
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v. Since, transaction recorded in a **ledger account in the shape of journal entry without any proof of source or supporting document is not admissible under the law.** Therefore, if the Opening balance of for the year 2020-2021 is seen



it is recorded at Rs.1,61,87,112.00 and the total receipts in the said year is Rs.81,90,000.00 and disbursal of Rs.50,000.00. Hence, the outstanding amount from the Respondent/Corporate Debtor will be only Rs.80,47,112.00 which is below the threshold limit.

- vi. Further, various opportunities were granted by this Tribunal to the Applicant/Financial Creditor for amending the application as well as to the Respondent/Corporate Debtor and also for putting on record additional documents which include actual proof of disbursement of total loan amount. The said record of the liberties granted is hereby mentioned:

Sr. No.	Particulars	Date of the Order
1.	Applicant sought liberty to amend the application by filing additional documents (2 Additional Documents)	16.01.2024
2.	Applicant again sought time to liberty to amend application	09.02.2024
3.	The Applicant as well as Respondent were directed to file additional documents. i.e. to place on record their complete balance sheets/the financial statements since the disbursement of the loan amount till date duly audited,	11.06.2024



	, Board Resolutions qua request for disbursement of the loan amount of both sides, Proof of receipts thereon along with the computation chart be as well as proof of interest if agreed between the parties by way of additional affidavit	
4.	Applicant sought liberty to file additional documents	10.12.2024

- vii. Though, the Applicant/Financial Creditor has produced financial statements, Bank Statements, and statutory audit reports to confirm the existence of **inter-corporate deposits in order to** establish that the Applicant is a Financial Creditor and there is debt and default. However, the Applicant/Financial Creditor failed to prove the aforementioned transaction/disbursement of Rs.40,00,000.00 dated 01.09.2020 recorded in a ledger account in the shape of journal entry without any proof of source or supporting document.
- viii. Further, with respect to the journal entry dated 01.09.2020 amounting to Rs. 40,00,000/-, while the Financial Creditor has not provided explicit proof of its source, it is pertinent to note that the Respondent/Corporate Debtor has also not objected to this entry and has indirectly admitted its financial liability. However, in the absence of any supporting documentary evidence from the Financial Creditor, the




said amount cannot be considered as a proved debt under the IBC framework.

- ix. According to the Indian Accounting Standards (Ind AS), financial transactions must be supported by proper documentation such as agreements, invoices, or bank records to ensure authenticity and reliability. A mere journal entry without a verifiable source or corresponding supporting documentation cannot be considered as conclusive proof of a financial liability. In this case, the journal entry dated 01.09.2020 amounting to Rs.40,00,000/- lacks any supporting documentation, making it inadmissible under the accounting framework. Furthermore, as per Ind AS 1 (Presentation of Financial Statements) and Ind AS 37 (Provisions, Contingent Liabilities, and Contingent Assets), unsubstantiated entries cannot be classified as financial obligations.
- x. In the case of ***Dena Bank Vs. C. Shivakumar Reddy and Ors.***, the Hon'ble **Supreme Court** observed that mere entries in books of account or balance sheets without corresponding evidence of a financial transaction are insufficient to establish a financial debt under the IBC. The Court emphasized the necessity of substantive evidence to prove the existence of a debt and default.



- xi. Similarly, the National Company Law Appellate Tribunal (**NCLAT**) in ***Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Anr.*** held that while entries in balance sheets can amount to an acknowledgment of debt under Section 18 of the Limitation Act, such acknowledgment must be supported by underlying evidence of the debt. The absence of supporting documentation renders such entries insufficient to establish a claim.
- xii. These judgments underscore the principle that unsupported journal entries or balance sheet notations, without corroborative evidence, do not constitute adequate proof of a financial debt under the IBC framework
- xiii. Since, the Financial Creditor has failed to provide proof for a significant journal entry and the Corporate Debtor has not raised any objections, this Tribunal considers the possibility of collusion between the parties. As the Respondent/Corporate Debtor has not produced its complete balance sheets and financial statements, duly audited, from the time of disbursement of the loan amount till date. Additionally, the Board Resolutions for the request for disbursement of the loan amount from both parties, proof of receipts, computation charts, and proof of agreed interest payments (if any) have not been



submitted despite directions. The failure to furnish these crucial documents also casts serious doubt on the legitimacy of the financial transactions and strengthens the inference of possible collusion between the parties. Moreover, lack of contestation over such a large amount raises concerns regarding the authenticity of the claim, which must be evaluated cautiously to prevent misuse of the insolvency resolution process.

- xiv. Since, a transaction dated 01.09.2020 amounting to Rs.40,00,000.00 recorded in a ledger account in the shape of a journal entry without any proof of source or supporting document is not admissible under the law, it is necessary to reassess the outstanding liability. The opening balance for the year 2020-2021 is recorded as Rs. 1,61,87,112.00, with total receipts during the said year amounting to Rs. 81,90,000.00 and disbursal of Rs. 50,000.00. Hence, the actual outstanding amount from the Respondent/Corporate Debtor is Rs. 80,47,112.00, which is below the threshold limit of Rs. 1,00,00,000.00 prescribed under Section 4 of IBC, 2016.
- xv. In view of above observations, the outstanding financial debt is less than rupees one crore which does meets the threshold limit as per section 4 of the Code.



xvi. Consequently, the petition does not meet the criteria under Section 7 of IBC, 2016, and is liable to be dismissed.

17. Accordingly, **RCP (IB)/8(AHM)/2024 (Old Case No. CP (IB)/307 (AHM) 2023)** is dismissed being below threshold Limit. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)
RS

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)