

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP (IBC)/33/KOB/2024

(Under Section 7 of IBC, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Kerala State Industrial Development Corporation Limited Vs Accurarch Acrylics Private Limited

MEMO OF PARTIES:

Kerala State Industrial Development Corporation Limited

TC 11/266, Keston Road, Kowdiar,
Trivandrum, Kerala 695003. India
CIN: U45309KL1961SGC001937

...Petitioner/Financial Creditor

-Vs-

Accurarch Acrylics Private Limited

Door No.5, Building No.638, Ward No.3,

Plot No.32, KINFRA Small Industries Park,
Nalukettu Road, KINFRA Park PO,
Koratty_680309, Thrissur District. Kerala
India

CIN: U25209KL2009PTC024180

...Respondent/Corporate Debtor

Order delivered on: 09.04.2025



Coram:

Smt. Madhu Sinha

Hon'ble Member (Technical)

Shri. Vinay Goel

Hon'ble Member (Judicial)

Appearances:

For the Petitioner: Mr. Akhil Suresh, Adv.

ORDER

Per Coram

1. The present petition is filed by Kerala State Industrial Development Corporation Limited on 24.06.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz. M/s Accurarch Acrylics Private Limited.
2. The total amount claimed to be in default as per Part-IV of the petition is Rs.10,06,29,063/- (Rupees Ten Crore Six Lakhs Twenty-Nine Thousand Sixty-Three only) as on 31.05.2024.
3. The Corporate Debtor was incorporated on 18.05.2009, having CIN: U25209KL2009PTC024180, under the Companies Act, 1956. The registered address of the Corporate Debtor is at Door No.5, Building No. 633, Ward No.3, Plot No. 32, KINFRA Small Industries Park, Nalukettu Road, KINFRA Park P.O, Koratty-680309, Thrissur District,



Kerala, India. Therefore, this Bench has jurisdiction to deal with this application.

4. By virtue of the order of this court on 16.07.2024, that on 26.07.2024, the Registry issued notice to the Corporate Debtor, returnable by 08.08.2024 and the notice was returned with the endorsement "Addressee left". The Applicant issued a notice to the Corporate Debtor by post on 17.07.2024 and 20.08.2024, but the notice was returned with the endorsement "Addressee left". Thereafter by virtue of the order of this Tribunal dated 08.08.2024, the Financial Creditor issued paper publication on 29.08.2024. The Financial Creditor filed their Affidavit of Service on 02.09.2024.
5. Despite giving many opportunities to the Corporate Debtor to appear, none appeared on behalf of the Corporate Debtor in any of the hearings and the Corporate Debtor was set ex-parte on 23.09.2024. Thereafter on 19.11.2024, the director of the company appeared in person and sought time for filing an application to set aside the ex-parte order but thereafter none appeared on behalf of the Corporate Debtor. Thus, it can be said that the Respondents are not interested in pursuing this matter. The ex-parte proceedings remained as such against the Respondent.
6. **Facts of the Case and Submissions made by Ld. Counsel for the Applicant**

I. The Financial Creditor is a systematically important non -deposit taking Non- Banking Financial Company (NBFC-ND-SI) with the primary objective to promote, facilitate, and finance micro, medium and small-scale industries and catalyze the development



of physical and social infrastructure required for industrial growth in the State of Kerala,

- II. It is stated that the Corporate Debtor through its promoter, director and shareholder director and shareholder, Shri. Bhaskaran Padmanabhan (Holding DIN-02596369) and late Shri. Prasannan Sukumaran (holding DIN: 02587680) approached the Petitioner/Financial Creditor for availing a Term Loan of Rs. 290 lakhs (Two Crore Ninety Lakhs only) towards part financing the project cost for setting up Acrylic Products Manufacturing Unit at KINFRA Small Industries Park, Koratty, Thrissur District.
- III. The Petitioner/Financial Creditor stated that at its 277th Board Meeting held on 10.12.2011 a Term Loan of Rs.290 lakhs (Rupees Two Crore Ninety Lakhs Only) was sanctioned to the Corporate Debtor, subject to the specific terms and conditions stipulated in its Sanction Letter dated 21.01.2012 & Loan Agreement dated 14.06.2012.
- IV. The Corporate Debtor agreed to repay the loan in 24 equal quarterly installments after moratorium of 12 months from the date of commercial production or 24 months from the date of first disbursement, whichever is earlier.
- V. The Financial creditor stated that the date of NPA is 28.09.2014. Thereafter a payment was made by the Corporate Debtor on 28.04.2017 and it was the last payment made towards the loan.
- VI. It is further stated that, the Corporate Debtor has acknowledged the liability in its Financial Statements and in Notes to Accounts prepared pursuant to Section 129 of Companies Act, 2013 for the



financial year ended 31.03.2022 and Statutory Auditors also made comment in their Auditor's Report vide Clause 4 & 7 which was duly adopted by the shareholders of the Corporate Debtor in their Annual General Meeting dated 30.09.2022. The said debt was further acknowledged in e-Form AOC-4 filed with Registrar of Companies Ernakulam, pursuant to section 137 of the Companies Act 2013.

- VII. The Financial Creditor stated that the Corporate Debtor has also acknowledged the debt by the requisition letter dated 28.07.2020 and 01.12.2020, wherein the Corporate Debtor sought for the restructuring of the debt. Additionally, the debt was also acknowledged by the Corporate Debtor vide its email dated 23.06.2022 by requesting the Petitioner /Financial Creditor to provide the Loan Statement for the Financial Year 2021-2022 for Audit Purposes.
- VIII. The Financial Creditor stated that the Petitioner/Financial Creditor issued a Revenue Recovery Requisition in July 2016, against the company and the guarantors. Revenue authorities had attached plant & machinery of the Corporate Debtor on 25.07.2017 but failed to find prospective buyers in auctions as the reserve price was set at a higher end.
- IX. The Financial Creditor further stated that the Petitioner/Financial Creditor has requested the Revenue Recovery Department to attach the land and building of the Corporate Debtor and auction it along with plant and machinery. However, they have informed that, as the land was leasehold from KINFRA, Kerala Industrial



Infrastructure Development Corporation, a Kerala Government Company, for 86 years and 4 months commencing from 06.03.2013 and the Revenue Recovery Department informed the Petitioner /Financial Creditor that the said land and building cannot be attached and auction it.

X. National E-Governance Services Ltd. (NeSL), issued a Record of Default (RoD) to the Applicant whereby, it authenticated the 'default' filed by the Applicant with respect to debt owed against Corporate Debtor. The status of the Application is stated as 'Deemed to be Authenticated'.

7. The Financial Creditor has primarily relied upon the following documents:

- i. Sanction Letter dated 21.01.2012 as Annexure A2;
- ii. Loan Agreement dated 02.03.2012 as Annexure A2;
- iii. Record of Default as registered with the National E-Governance Services Ltd dated 25.06.2022 as Annexure A2;
- iv. Financial Statements of the Corporate Debtor as on 31.03.2022 as Annexure A3;
- v. Form AOC-4 prepared by the Corporate Debtor as Annexure A3;
- vi. Requisition letter dated 28.07.2020 and 01.12.2020 for restructuring debt as Annexure A4;
- vii. E-mail dated 23.06.2022 acknowledging the debt as Annexure A5.



8. Analysis and Findings

- i. We have heard the Ld. Counsel for the Petitioner and perused the documents submitted.
- ii. The issues which need to be determined are:
 1. Whether the Petition is barred by limitation or not.
 2. Whether the Petitioner has been able to prove the existence of "Financial Debt".
- iii. **Issue 1:** It was a case of a term loan and the loan was repayable in 24 equal quarterly installments after moratorium of 12 months from the date of commercial production or 24 months from the date of first disbursement, whichever is earlier. Part IV of the petition shows 28.09.2014 as the last NPA date, 28.04.2017 as the last payment date, and 30.09.2022 as the last acknowledgment date by the Financial Creditor. The case was also reported to the NeSL information utility and they have recorded the date of default as 11.04.2021.
- iv. It is settled law as decided by the Hon'ble NCLAT in its order in *Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd. (Company Appeal (AT) (Insolvency) No. 44 of 2017)* that, those provisions of the IBC cannot be shackled by the Limitation Act. It was observed that: "There is nothing on record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the appellant also failed to lay a hand on any of the provisions of I&B Code to suggest that the Law of Limitation Act, 1963 is applicable. The I&B Code, 2016 is not an Act for recovery of money claim, it relates to the initiation of the



Corporate Insolvency Resolution Process. If there is a debt which includes interest and there is default of debt and having a continuous cause of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.”

- v. In the judgment of the Hon’ble Supreme Court in ***Dena Bank vs. C. Shivakumar Reddy and Ors. (Civil Appeal No. 1650 of 2020)***, the Hon’ble Supreme Court reiterated that Section 18 of the Limitation Act, 1963 is fully applicable to proceedings under ‘I&B Code’ and entries in books of accounts and/ or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. The Hon’ble Supreme Court in paragraph 118, held as under: -

“118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 18 [“Bengal Silk Mills”] and in Re Pandem Tea Co. 19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana 20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability



that is made in a balance sheet can amount to an acknowledgement of debt.”

- vi. It was a term loan repayable in 24 equal quarterly, the limitation would start from whenever each instalment became due. Further in this case the Respondent /Corporate Debtor made request for restructuring of their loan and also sent an e-mail dated 23.06.2022 acknowledging the debt benefiting the Petitioner/Financial Creditor on account of limitation and subsequently also acknowledged the debt and liability in the Annual General Meeting dated 30.09.2022 by approving Financial Statement having reference of acknowledgment of debt due. So Issue No.1 would be in favor of the Petitioner.
- vii. **Issue 2:** Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the Petitioner herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor.
- viii. It is relevant to note that the Hon'ble Supreme Court of India in the case of *Innoventive Industries Ltd. v. ICICI Bank, (2018) 1*



SCC 407, has laid down the guiding principles to admit or reject an application filed under Section 7 of the IBC.

In the above case, Hon'ble the Supreme Court has held that;

"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 subsection (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 CP (IB) 22/ KOB/ 2022 Page 8 of 15 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."

- ix. From a reading of the above order makes it clear that to admit the Petition filed under Section 7 of IBC, the Adjudicating Authority is to be satisfied that there was a debt and default has occurred. The Petitioner has annexed the NeSL certificate dated 25.06.2022 as Annexure A2. Upon the existence of the above debt and commission of default, in the proceedings initiated under section 7 of the Insolvency and Bankruptcy Code, 2016, this Tribunal has left with no other option but to admit the petition, as this petition is otherwise found to be in order and complete.
- x. So, in light of the facts of the case, circumstances, and legal situation, we believe that this application, as submitted by the Petitioner/Financial Creditor, must be admitted under Section 7(5) of the IBC, 2016.

ORDER

9. In light of the above facts and circumstances, it is, hereby ordered as follows: -

- i. The Petition bearing **CP(IBC)/33/KOB/2024** filed by Kerala State Industrial Development Corporation Limited, the Petitioner/Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against



Accurarch Acrylics Private Limited, the Respondent/Corporate Debtor, is hereby admitted.

- ii. There will be a moratorium under section 14 of the Code.
- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- v. The Financial Creditor has proposed the name of one **Mr. Rajmohan. R, IBBI Registration Number: IBBI/IPA-001/IP-P02331/2020-2021/13517**, as Interim Resolution Professional (IRP), and he had filed his written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (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 the Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Rajmohan. R 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. Rajmohan. R** as the IRP of the Respondent/Corporate Debtor.



- vi. The IRP shall carry out his functions as contemplated by sections 15 to 21 of the Code.
- vii. During the CIRP period the management of the affairs of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Petitioner/Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- x. In terms of section 7 (7) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance



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*In re Kerala State Industrial Development Corporation Limited Vs Accurarch Acrylics Private
Limited*

- report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this order.
- xii. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld.Counsel for information and for taking necessary steps.
11. Let the Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
12. File be consigned to records.

Sd/-

MADHU SINHA
(MEMBER TECHNICAL)

Sd/-

VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 9th day of April, 2025.

Athira.N.R/LRA

Certified to be True Copy-

Deputy Registrar
National Company Law Tribunal
Kochi Bench

