



IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II KOLKATA

**(BEFORE LABH SINGH, MEMBER (JUDICIAL) AND REKHA K SHAH,
MEMBER (TECHNICAL))**

**C.P. (IB) No.78/KB/2023
Date of Hearing: 18.6.2025
Date of Order:04.7.2025**

In the Matter of:

**Indian Bank,
SAM Large Branch,
1st Floor. 14 India Exchange Place,
Kolkata-700001**

APPLICANT/FINANCIAL CREDITOR

Versus

**M/s P.C Dey & Son Distribution Private Limited
Deshbandhu Park, Bata Show Room,
Jessore Road,
Habra West Bengal-743263
,**

CORPORATE DEBTOR

**Coram: Labh Singh Hon'ble Member(Judicial)
Rekha Kantilal Shah Hon'ble Member(Technical)**

Present:

**For the applicant(s): Mr. Santosh Kumar Ray Ld. Advocate
Ms. Zeba Khan Ld. Advocate
Ms. Muskan Saha Ld. Advocate**

For the respondent.: Ex-parte



O R D E R

Labh Singh Member(Judicial)

1. The Indian Bank has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as “the IBC Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) through Mr. Ajit Kumar Jha its Chief Manager with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s P.C Dey & Son Distribution Private Limited (hereinafter to be referred to as “the corporate debtor”).
2. Briefly stated the facts of the applicant case is that the applicant Indian Bank, is a body corporate constituted under the Banking Companies(Acquisition and Transfer of Undertaking, having its Corporate Office at Indian Bank Building, PB No. 254-260, Avvai Shanmugam Salai, Royapettah, Chennai-600014 and carrying its banking business from one of its Branch office at SAM Large Branch, 1st Floor, 14 India Exchange place Kolkata.
3. The Respondent Company M/s P.C Dey & Son Distributor Pvt Ltd against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 17.01.2011 having its registered office situated at Deshbandhu Park Bata Show Room Jessore Road, Habra, West Bengal-743263.



Since the registered office of the respondent corporate debtor is situated at Habra, West Bengal, this Tribunal having territorial jurisdiction over the West Bengal is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. It has been averred that on 30.01.2027, the Financial Creditor has sanctioned certain credit facilities aggregating to Rs. 21,00,00,000/- (Rupees Twenty One Crore Only) to the Corporate Debtor which were later on reviewed and enhanced to an aggregate limit of Rs. 21,85,24,000/- (Rs. Twenty One Crore Eighty Five Lakh Twenty Four Thousands Only) from time to time. The Financial Creditor, based on an application made by the Corporate Debtor also sanctioned a car loan of Rs. 23,30,000/- on 07.08.2017. The Financial Creditor issued sanction letter dated 31.01.2017 for Rs. 21 crores Annexure-C and the terms and condition of sanction letter were duly accepted by the Corporate Debtor.
5. There was irregularity in repayment of the loan facilities and accordingly, on 27.11.2019, the Financial Creditor issued notice Annexure-C/8 to Corporate Debtor to review the credit facilities. On 07.12.2019, the Financial Creditor issued another notice Annexure C-09 and C-10 to the Corporate Debtor to regularize the credit facilities which



were overdue for the month of October, 2019 and November, 2019. The Financial Creditor restructured the credit facilities on 18.01.2020 vide restructuring sanction letter Annexure D and D-1 issued on 28.01.2020.

6. The Corporate Debtor failed to repay the loan amount as per terms and condition of sanction letters and accordingly, the Financial Creditor issued demand notice dated 13.9.2022 under Section 13(2) of SARFAESI Act, 2002. The Financial Creditor also initiated recovery proceedings by way of an application under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 which is pending before Debts Recovery Tribunal-1 Kolkata.
7. The present application has been filed claiming defaulted amount of Rs. 30,43,11,409/ which includes accrued interest up to 31.01.2023. The initial date of default of the loan account was on 01.10.2019 and the loan account was classified as NPA with effect from 28.01.2020 as per the RBI guidelines. Thus, the defaulted amount claimed is Rs. 30,43,11,409/- as on 28.01.2020 which is the date of declaring the account as NPA and the date of default.
8. Therefore, as per part IV of the application, it is claimed that as on 28.01.2020 a sum of Rs. 30,43,11,409/- (Rupees Thirty Crores Forty Three Lakh Eleven Thousands Four Hundred Nine Only) is due and payable by the respondent company.



9. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sriram Mittal, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-02276/2021-2022/13677 resident of Mercantile Building Block B, Room No. 89, Lalbazar Street, Kolkata having his office at Srira Mittal & Company Room No. 611, 6th Floor, P-41, Princep Street Kolkata-700072 with email id srirammittal.ey@gmail.com. Mr. Sriram Mittal has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sriram Mittal as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

10. The applicant has placed following documents on record to prove its claim:

(i) The copy of Master Data and Index of Charges maintained with MCA Annexure-B, Particulars of Charges filed with ROC



Annexure B-1, the copy of Sanction letter dated 30.1.2017
Annexure C-2, DP Delivery Letter dated 31.01.2017 for an
amount of Rs. 21 Crores Annexure C-3, Letter of
Hypothecation General Letter of Hypothecation dated
31.01.2017 Annexure C-4, Letter of Irrevocable Authority
dated 31.01.2017 Annexure C-5, Letter of Undertaking for
credit facilities dated 31.01.2017 Annexure C-6, Affidavit
of Declaration dated 31.01.2017 Annexure C-7, notice to the
Corporate debtor dated 27.11.2019 to review the credit
facilities for irregularities in the account Annexure C-8,
notice to the its debtor dated 07.12.2019 and Corporate
debtor dated 18.12.2019 to regularize the credit facilities
Annexure C-9 & C10, notice to the Corporate debtor dt.
07.01.2020 to regularize the credit facilities Annexure
C-11, the Corporate debtor's reply to the Financial
Creditor's letter dated 21.01.2020 assuring to pay the
overdue amount by 25.01.2020 Annexure C-12.

- (ii) The Financial Creditor restructuring the credit facilities
on 18.01.2020 in favour of the Corporate debtor Annexure D,
sanction letter dated 28.01.2020 alongwith acknowledgement
Annexure D-1, Board Resolution dated 28.01.2020 Annexure
D-2, Demand Promissory Note of Rs.12.00 crores dated
28.01.2020 Annexure D-3, Demand Promissory Note of Rs.9.00
crores dated 28.01.2020 in favour of the Financial Creditor
Annexure D-4, Demand Promissory Note of Rs.85.24 crores



dated 28.01.2020 Annexure D-5, Demand Promissory Note of Rs.21,85,24,000/- dated 28.01.2020 Annexure D-6, Form No.ADV-32- General Letter of Hypothecation limit of Rs.21,85,24,000.00 dated 28.01.2020 Annexure D-7, Form No.SD- 4-Term Loan Agreement for Hypothecation of Movables/Plant and Machineries limit of Rs.9,85,24,000.00 dated 28.01.2020 Annexure D-8, SD-39- Undertaking to maintain current account with Indian Bank (E-Allahabad Bank) dated 28.01.2020 Annexure D-9, Form No.ADV-24 Undertaking from the borrower to maintain stipulated marking dated 28.01.2020 Annexure D-10, Form No.SD- 40 Letter of Continuity dated 28.01.2020 Annexure D-11, Letter of Undertaking dated 28.01.2020 Annexure D-12.

(iii) letter of request to the Financial Creditor general information for sanction the car loan of Rs.23.30 lacs dated 02.08.2017 Annexure E, sanction car loan of Rs.23,30,000/- dated 07.08.2017 Annexure E-1, Board resolution dated 08.08.2017 in favour of the Financial Creditor Annexure E-2, Demand Promissory Note of Rs.2,30,000/- dated 08.08.2017 Annexure E-3, Form No.SM- Hypothecation Agreement dated 08.08.2017 Annexure E-4, Letter of Irrevocable Authority dated 08.08.2017 Annexure E-5, Letter of Standing Instructions for Deduction of EMI's in respect of Car Loan dated 08.08.2017 Annexure E-6, Copy of the Certificate of Registration in respect of Vehicle in question dated



08.08.2017 Annexure E-7, notice under Section 13(2) of the SARFAESI Act, 2002 dated 13.09.2022 Annexure F, Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 filed before the Ld. DRT-1, Kolkata (without annexures) dated 18.11.2022 Annexure G, Statement of Cash Credit Account "H" No.5037400207 of the Corporate Debtor including Certificate under the Banker's Books Evidence Act, 1891 Annexure H, Statement of WCTL Account No.50511871363 of the Corporate Debtor including Certificate under the Banker's Books Evidence Act, 1891 Annexure H-1, Statement of FITL Account No. No.50511846789 of the Corporate Debtor including Certificate under the Banker's Books Evidence Act, 1891 Annexure H-2, Statement of FITL, Account No. 50401242160 of the Corporate Debtor including Certificate under the Banker's Books Evidence Act, 1891 H-3, Annual Audited Statement of Accounts and Balance Sheet of Corporate Debtor as 31.03.2018 Annexure-I.

11. The applicant has also placed on record a copy of record of default filed with NeSL (information utility) Annexure-J in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that the claim of the applicant is deemed authenticated as no objection has been recorded by the corporate debtor.



12. The respondent corporate debtor appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present application is barred by law of limitation as date of default was mentioned as 01.10.2019 and date of declaration of the account of Corporate Debtor as NPA as 28/01/2020. The debt has become time barred after 30th September 2022, whereas application has been preferred in the month of March 2023.
13. It has further been replied that Mr. Ajit Kumar Jha does not have authorisation to sign or affirm the application. The power of attorney dated 31.01.2014 was issued by Allahabad Bank whereas after the merger of Allahabad Bank with Indian Bank, the former has lost its juristic status and hence, such POA has no legal sanctity to file the present application.
14. It is further averred that by reason of delay on the part of the applicant bank in disbursement of credit facilities and to sanction only part amount which is less than the capital need of the respondent, the Corporate Debtor had to suffer business loss, hardship in carrying as its business.



15. It is submitted that the Corporate Debtor had also requested the applicant to permit it to sell properties and to adjust the sale proceeds towards repayment of the alleged debt of the applicant bank. However, the applicant turned down the request to initiate these proceedings which is against guidelines of RBI. As per RBI guidelines, it was obliged to seek reduction of such respondents by restructuring the account in IBC.
16. It has further been averred that the Respondent is a going concern & running well. The application is merely a recovery proceeding and not for resolution of the Corporate Debtor. Hence, the present application deserves to be dismissed.
17. Thus, the main objection raised by the respondent is that neither any default has occurred nor the respondent corporate debtor is bankrupt or in position of not being able to pay off its debts.
18. The applicant Company filed its rejoinder denying the averment made in the reply and reiterating the facts as pleaded in the present petition which are not reproduced here for sake of brevity.
19. This matter was earlier heard by the then Bench and dismissed vide order dated 12.01.2024. The Financial Creditor, being aggrieved from the order dated 12.01.2024,



preferred an appeal before Hon'ble National Company Law Appellate Tribunal. Hon'ble NCLAT, vide order dated 26.11.2024, set aside the order dated 12.01.2024, and remanded the matter back for deciding afresh with observation that:

“Thus, we exclude the said period there was a balance period for filing the Application and the Adjudicating Authority committed error in rejecting the application as barred by Law of Limitation”.

20. Thus, in view of the observation of the Hon'ble NCLAT, the issue of limitation does not survive and the present application has been filed within period of limitation. Based on pleading of the parties and after hearing Learned Counsel for the applicant/Financial Creditor, the following points remains for determination:

- (i) Whether Mr. Ajit Kumar Jha does not have authorisation to file and maintain the present application?
- (ii) Whether there is default as defined in Section 3(12) of the IBC Code 2016 to trigger the CIRP Process?
- (iii) Relief, to which the applicant is entitled?

21. None has appeared in the present matter despite opportunity granted by the Tribunal and hence, the matter was proceeded ex-parte vide order dated 18.3.2025.



22. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsel for the Financial Creditor; and after going through pleadings of the parties, documentary evidence and hearing the learned counsel for the Financial Creditor, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Point No. (i)

23. It has been contended by the Corporate Debtor in its reply that Mr. Ajit Kumar Jha does not have authorisation to sign or affirm the application as the power of attorney dated 31.01.2014 was issued by Allahabad Bank whereas after merger of Allahabad Bank with Indian Bank, the Allahabad Bank has lost its juristic status to file the present application. This is an application filed by the Indian Bank and after merger of the Allahabad Bank with the Indian Bank, every act and deed done prior to merger does not get extinguished.

24. Section 85 of Indian Evidence Act 1872 as it was the then applicable on date of execution of power of Attorney dated



31.01.2014 and on 02nd May 2023 when this application was filed provides as under:

"85. Presumption as to powers of attorney. The court shall presume that every document purporting to be a power of attorney and to have been executed before, and authenticated by a notary public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul or representative of the Central Government was so executed and authenticated."

25. A power of attorney granted by a Bank before a merger does not automatically become invalid or extinguished after a Bank merges with another Nationalized Bank in pursuance of notification issued by the Government of India. The successor Bank can generally utilize the Power of Attorney to initiate or pursue recovery suits related to the merged Bank's assets or debts. Mr. Ajit Kumar Jha was having a legal and valid power of attorney dated 31.1.2014 to file and maintain the present application. Therefore, this plea of the Corporate Debtor is not tenable at law.

Point No. (ii) & (iii)

26. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. one Crore. In view of the Section 4 of the Code, the moment



default is of Rupees one crores or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

27. In the facts, it is seen that the applicant clearly comes within the definition of Financial Creditor which is not disputed by the Corporate Debtor. The material placed on record further confirms that the applicant financial creditor had advanced the loan amount which is not disputed by the Corporate Debtor. It has been established on file from documentary evidence that as on 28.01.2020 a sum of Rs. 30,43,11,409/- (Rupees Thirty Crores Forty Three Lakh Eleven Thousands Four Hundred Nine Only) is due and payable by the respondent company. The default has been established on the case file and it is recorded with NeSL to which no objection has been authenticated. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
28. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the



corporate debtor and that there has been default in payment of the financial debt.

29. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.
30. Mr. Sriram Mittal, having registration number IBBI/IPA-001/IP-P-02276/2021-2022/13677 resident of Mercantile Building Block B, Room No. 89, Lalbazar Street, Kolkata having his office at Srira Mittal & Company Room No. 611, 6th Floor, P-41, Princep Street Kolkata-700072 with email id srirammittal.ey@gmail.com. is appointed as an Interim Resolution Professional for the corporate debtor.
31. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
32. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Sriram Mittal to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial



Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

33. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

34. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services



to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

35. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall



be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

36. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of West Bengal at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

Signed on this, 24th day of June, 2025