IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH -I

C.P. (IB)/680/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

ICICI Bank Limited

ICICI Bank Tower, Near Chakli Circle,

Old Padra Road, Vadodra Gujarat

390007

…Financial Creditor

V/s

Monopoly Innovations Limited

[CIN No. U15132MH2014PLC253906]

42-45 Emerald Industrial Estate

Dheku, Taluka Khalapur, Raigarh,

Raigad, Maharashtra, India, 410203

...Corporate Debtor

Pronounced: 20.11.2026

CORAM:

HON'BLE SHRI SUSHIL MAHADEORAO KOCHEY, MEMBER (JUDICIAL)

HON'BLE SHRI PRABHAT KUMAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Chales De Souza a/w Adv. Ms. Aditi Biswas i/b Vidhii Partners.

For Respondent: Adv. Ms. Prashansa Agarwal a/w Adv. Mr. Nilesh N. Mule a/w Adv. Ms. Yutika Sankpal i/b Adv. Mr. Vivek V. Phadke

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P.(IB) No.680/MB/2025 (Application) was filed on 10.07.2025 by ICICI Bank Ltd, the Financial Creditor through Mr. Sampson Albert, authorised signatory of the Applicant vide Power of Attorney dated 03.11.2008 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Monopoly Innovations Limited, the Corporate Debtor, having CIN No. U15132MH2014PLC253906

1.2. As per Part IV of the Application, the amount claimed to be in default is Rs.2,98,07,583/- (Rupees Two Crore, Ninety-Eight Lakhs Seven Thousand Five Hundred Eighty-Three Only).

1.3. As per Part IV of the Application, the amended date of default in respect to Loan Account No. UPMUMOOO43478632, is 05.03.2023 and with respect to another Loan Account No. UPMUM00044487659, the date of

default is 05.03.2024, and the said amendment was allowed by this Tribunal vide order dated 17.11.2025.

1.4. 1.4. The Applicant has proposed the name of Mr. Rajendra Devidas Purnaik, an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P-02029/2020-2021/13149, to act as the Interim Resolution Professional (IRP) in case the Application is Admitted.

2. FACTS OF THE CASE

2.1. The Financial Creditor had sanctioned two credit facilities by way of a Working Capital Term Loan under the Emergency Credit Line Guarantee Scheme (ECLGS) vide sanction letters dated 27.03.2021 and 29.09.2021 for the loan amounts of Rupees 1.99 Crore (1st loan) and Rupees 99.80 Lakh (2nd loan), respectively.

2.2. As per the terms and conditions of both sanction letters, the loans were to be repaid over a four-year tenure, with a one-year moratorium on principal repayment and interest at 9.25% per annum from the date of disbursal. However, interest was also stipulated to be paid monthly during the moratorium period.

2.3. The repayment of principal under each facility was fixed on the basis of a one-year moratorium; accordingly, the repayment of 1st Loan was to commence from 05.05.2021 with a monthly instalment of Rs. 1,89,189/, however, the applicant creditor debited Rs. 1,53,396/- on account of interest till April, 2022 and thereafter an amount of Rs. 6,35,133 from November, 2022 towards EMI including principal towards its repayment. Further, the repayment of Rs. 99.8 Lakhs was to commence from

05.11.2021; accordingly, the applicant creditor debited Rs. 76,929/- on account of interest till October, 2023, and thereafter an amount of Rs. 3,18,524 from November, 2023 towards EMI, including principal, towards its repayment.

3. CONTENTIONS OF APPLICANT (FC)

3.1. It is stated that at the request of the Corporate Debtor, the Financial Creditor agreed to extend a Guaranteed Emergency Credit Line by way of a Working Capital Term Loan amounting to Rs.1.99 Crores to the Corporate Debtor vide its sanction letter dated 27.03.2021. The same was disbursed on 28.03.2021

3.2. Further the Corporate Debtor requested the Financial Creditor to grant a Guaranteed Emergency Credit Line by way of a Working Capital Term Loan worth Rs.99.8 Lakhs, which was sanctioned by the Financial Creditor vide its Sanction Letter dated 29.09.2021 and disbursed on 08.10.2021.

3.3. The Corporate Debtor defaulted on making repayments and thereafter, the Financial Creditor recalled the overdue amounts from the Corporate Debtor vide Loan Recall Notices dated 29.08.2023 and 04.12.2023

3.4. It is stated that Statements of Accounts of the Corporate Debtor for the financial years from 2021 to 2025 reflect the fact that the Corporate Debtor was indebted to the Financial Creditor.

3.5. Further, vide Additional Affidavit dated 03.09.2025, the Applicant has placed on record the loan agreement with respect to the amount claimed,

Banker's Book Evidence Act certificates and copies of NeSL Record of Default in Form C.

3.6. The Applicant has also placed on record the NeSL Form D with respect to both the financial facilities, which reveals the status of Authentication as AUTHENTICATED".

4. REPLY BY CORPORATE DEBTOR

4.1. It is stated that the Petitioner has annexed documents pertaining to loan accounts that have already been fully paid off (specifically, loan account numbers ending in **8632** and **7659**), whereas the current claims for outstanding amounts do not pertain to these accounts. Furthermore, there is material misrepresentation in the CIBIL report, as the Petitioner has failed to disclose or provide the CIBIL records corresponding to the aforementioned loan accounts which are allegedly in default.

4.2. It is stated that an unexplained difference exists between the amounts claimed by the Petitioner in the **foreclosure letter dated 30.04.2025** and the figures reflected on the **NeSL portal**. Additionally, significant discrepancies exist between the Statement of Accounts (SOA) provided by the Applicant and the figures recorded in the NeSL portal, thereby establishing fraud and misrepresentation on the part of the Petitioner.

4.3. The Petitioner has stated conflicting dates of default across various legal proceedings. In the Original Application (OA) filed before the Ld. DRT, the date of default was stated as **30.08.2023**. Conversely, in the current application, the Petitioner alleges the date of default to be **05.03.2023**

for the loan account ending in **8632** and **05.03.2024** for the loan account ending in **7659**.

4.4. It is further stated that the Emergency Credit Line Guarantee Scheme (GECL) loans carry a 100% guarantee by the Government of India, and no legal proceedings or claims could be initiated without the prior permission or authentication of the Government of India. The Petitioner manufactured an artificial dispute regarding the moratorium period, which was originally granted for 12 months and subsequently extended by another 12 months pursuant to restructuring guidelines.

4.5. By prematurely declaring the account as an NPA and coercing the Respondent into paying full EMIs by the 19th month, the Petitioner triggered the initial dispute, compelling the Respondent to file **S.C. Suit No. 996 of 2023** before the Hon'ble City Civil Court at Mumbai seeking interim restraint and consequential reliefs. This dispute remains actively *sub judice*; yet, the Petitioner has intentionally and deliberately suppressed the existence of this pre-existing litigation dating back to 2023 while instituting the present Company Petition.

4.6. Given that the GECL facility is 100% guaranteed by the Government of India, the Petitioner has failed to disclose the mandatory steps taken for loan recovery through the competent departments under the ECGLS scheme. Under the terms of the GECL scheme, the Government of India was liable to disburse 75% of the outstanding amount to the creditor immediately upon application, with the remaining 25% settled upon final closure of claims between the creditor and the government.

Consequently, if the guarantee is duly invoked, no liability remains payable by the Respondent under such GECL loan.

4.7. Pursuant to Reserve Bank of India (RBI) guidelines and governmental norms, creditors are strictly restrained from classifying loan accounts as NPAs without seeking prior approval from the Government of India. The Petitioner has failed to produce any sanction letter or communication demonstrating that the Government of India permitted the classification of the Respondent's loan accounts as NPAs, thereby committing a violation of both RBI and governmental norms.

4.8. The Respondent is a registered MSME entity under the MSMED Act, making all statutory protections thereunder fully applicable to the present matter. Under the provisions of the MSMED Act, a creditor is *suo motu* obligated to grant a fair opportunity for restructuring and rehabilitation to save an MSME enterprise from sliding into NPA status. Although the Respondent addressed multiple emails urging the Petitioner to consider restructuring options in light of the MSMED framework, the Petitioner arbitrarily denied any opportunity for rehabilitation before declaring the accounts as NPAs.

4.9. The Respondent vide Additional Affidavit dated 20.06.2026 has placed on record NeSL form D in respect of both the accounts which reveals the status of authentication as “DISPUTED”

5. REJOINDER

5.1. The Petitioner states that the Applicant has annexed relevant Application Forms, Sanction Letters, Disbursement Memos, and Statements of Accounts that clearly highlight the sanctioned amounts, rates of interest, defaults in repayment, and outstanding balances, along with certificates under the Bankers' Books Evidence Act certifying the Statements of Accounts for the loan accounts in default.

5.2. The Petitioner further states that no amounts have been claimed with respect to loan account numbers ending in **8019** and **7820** in the present Company Petition; consequently, the status of these accounts is entirely irrelevant to the present proceedings.

5.3. It is clarified that the foreclosure letter was issued prior to the submission of Form C, and because interest continued to accrue on the unpaid principal amount, a natural variance exists in the stated amounts.

5.4. It is stated that in Original Application No. 563 of 2024, filed on April 4, 2024, before the Debts Recovery Tribunal-II at Mumbai, the accounts were classified as Non-Performing Assets (NPAs) on June 3, 2023—exactly 90 days past due from the date of default for Loan Account No. UPMUM00043478632. This classification strictly complies with the Reserve Bank of India's Master Circular on Prudential Norms on Income Recognition, Asset Classification, and Provisioning pertaining to Advances, which is binding on all banking companies under Sections 2 and 35A of the Banking Regulation Act, 1949.

5.5. It is stated that the Respondent duly acknowledged and accepted the terms of the Sanction Letters dated March 25, 2021, and September 29,

2021, which explicitly define an event of default and outline its consequences. These documents were signed and agreed upon by the Corporate Debtor, thereby authorizing the Financial Creditor to exercise any lawful powers, rights, or remedies, including the institution of the present Company Petition.

5.6. It is stated that both the Sanction Letters and the ECGLS 2.0 Framework—under which the loan accounts were restructured—expressly clarify that the 12-month moratorium applied solely to the principal amount. Furthermore, the civil suit referenced by the Respondent does not impact the debt owed to the Financial Creditor, as no effective orders have been passed in that suit restraining the Financial Creditor from pursuing its lawful remedies.

5.7. In accordance with the terms of the execution documents, primarily the Sanction Letters dated March 27, 2021, and September 29, 2021, which outline the events of default and their legal consequences, the Financial Creditor is fully entitled to demand the claimed amounts and maintain the present Company Petition, all of which terms were duly acknowledged and accepted by the Respondent.

5.8. The Supreme Court of India, in ***Pro Knits v. Board of Directors, Canara Bank***, elaborated on the procedure and guidelines for restructuring advances granted to MSME companies, referencing the Central Government's Notification issued under Section 9 of the MSMED Act. Under this framework, a micro, small, or medium enterprise may voluntarily initiate restructuring proceedings if it apprehends business

failure or an inability to pay debts, provided its accumulated losses do not equal half or more of its net worth, and such an application must be verified by an authorized person’s affidavit. The Respondent failed to submit any such application supported by an affidavit. As the Supreme Court categorically held that it is incumbent upon MSMEs to be vigilant, follow the prescribed framework, and bring their eligibility to the bank's notice through authenticated and verifiable documents, the Respondent's accounts were not restructured due to its own failure to follow the statutory process.

6. SUR-REJOINDER

6.1. The Respondent states that the petitioner has filed OA 563 of 2024 before Ld. DRT Mumbai. Further the Applicant has also filed proceedings under the SARFAESI Act by clubbing GECL Loans and personal loans of the Respondent. Hence the Applicant is involved in Forum Shopping.

6.2. The Petitioner is not entitled to relief in the Company Petition because the matter is already sub-judice in Suit No. 996 of 2023 before the Bombay City & Civil Court, where the NCGTC has filed an affidavit supporting the Respondent's stance.

6.3. It is stated that the core dispute centres on the fact that the sanction letter's shorter moratorium (limiting it to 18 months or demanding EMIs earlier) directly contradicts the GECL/ECLGS scheme guidelines—which mandate a 24-month moratorium. Consequently, the Petitioner's

premature demand for full EMIs (inclusive of principal and interest) and threats of declaring the account an NPA are illegal and disputed.

6.4. It is further stated that GECL facility is 100% guaranteed by the Government of India and in case of default by the Respondent, the petitioner should have filed a case or appropriate representation before the appropriate authority being NCGTC and could have recovered the entire alleged outstanding. By not making the Government of India as a necessary party or by not filing any petition/representation against the Government of India, there is mis-joinder of necessary party. Further the Petitioner has not disclosed as to whether the petitioner has approached any other-authority to recover the amount of alleged default from the Government of India under GECL scheme and/or recovered the alleged outstanding.

7. ANALYSIS AND FINDING

7.1. We have heard the learned counsel for both parties and perused the records, pleadings, and documents placed before us.

7.2. 7.2. The Financial Creditor sanctioned two Working Capital Term Loans under the Emergency Credit Line Guarantee Scheme (ECLGS), vide sanction letters dated 27.03.2021 and 29.09.2021, for Rs 1.99 crore (1st loan) and Rs 99.80 lakh (2nd loan), respectively. The 1st loan was disbursed on 29.03.2021, and the 2nd on 08.10.2021.

7.3. As per the sanction letters for both loan accounts, each loan was repayable over four years, with interest at 9.25% per annum and a one-

year moratorium on principal repayment from the date of disbursal. Interest was to be serviced monthly.

7.4. In respect of the 1st loan, payment of Interest was to commence from 05.05.2021, with a monthly instalment of Rs. 1,89,189. The Financial Creditor debited Rs. 1,53,396 towards interest until April 2022, and thereafter Rs. 6,35,133 per month from November 2022 towards EMI, including principal.

7.5. In respect of the 2nd loan, payment of interest was to commence from 05.11.2021. The Financial Creditor debited Rs. 76,929 towards interest until October 2023, and thereafter Rs. 3,18,524 per month from November 2023 towards EMI, including principal.

7.6. Subsequently, the ECLGS scheme was revised so as to provide for a total loan tenure of 5 years with two years being a moratorium on payment of principal, and interest to be serviced monthly during the moratorium period also; however, the Applicant Creditor, instead of deferring demand of principal amount for period of two years in case of 1st loan in accordance with revised terms of ECLGS Scheme, debited monthly EMI, including principal, from November, 2022 instead of May, 2023, though the demand of monthly EMI, including principal, in relation to 2nd loan was started after two years as envisaged in the revised ECLGS Scheme.

7.7. The Corporate Debtor's main objection arises from the demand of principal repayment in respect of the 1st Loan from November, 2022 instead of May, 2023. Accordingly, the Corporate Debtor paid about 4

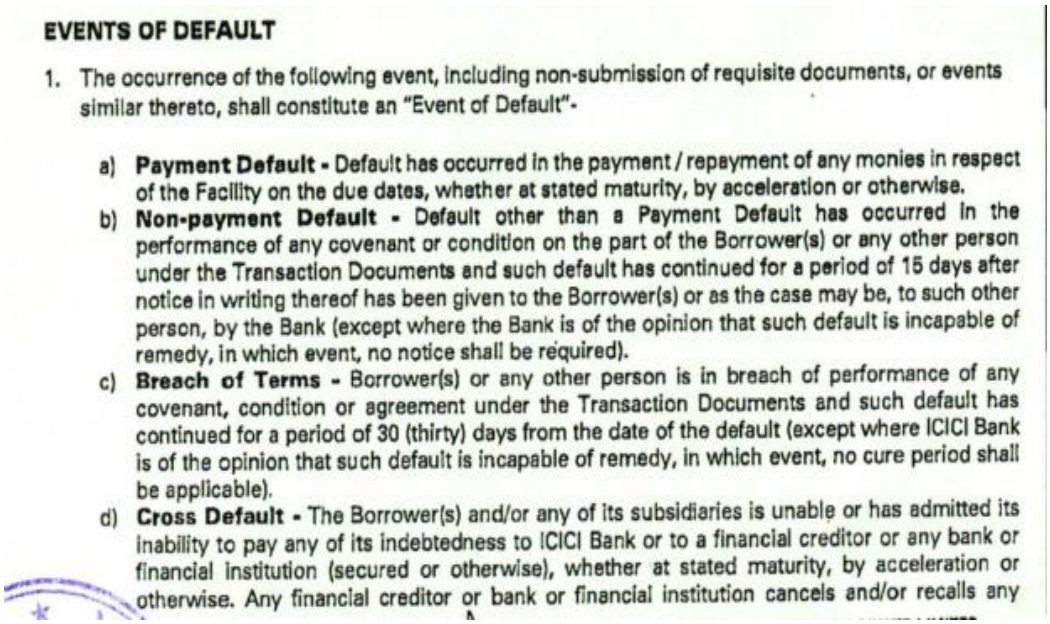
monthly EMIs, including Principal, till May, 2023, and stopped payment thereof from May, 2023. Consequently, the Applicant Creditor recalled the 1st loan on 29.08.2023 i.e. after expiry of 24 months from the sanction date. Further, the 2nd loan was also recalled vide said letter dated 29.08.2023, which was prior to expiry of 24 months from the sanction date. It contends that the Applicant demanded the entire loan amount after only about 18 months, and that the demand is therefore illegal.

7.8. It is not in dispute that, under the government's ECLGS framework, the moratorium on principal repayment was revised to two years, with principal to be repaid over the following three years. However, it is pertinent to note that the 1st loan was recalled after about 28 months, whereas the 2nd loan was recalled before the expiry of 24 months.

7.9. The Applicant Creditor has stated the amount in default as Rs. 38,10,797/- and Rs. 3,07,338 in the recall notice dated 28.08.2023. This default amount is determined based on a one-year moratorium for the 1st loan. On perusal of the records, it is noted that, in respect of the 1st and 2nd loans, the Corporate Debtor paid an aggregate sum of Rs. 58,19,191/- and Rs. 14,50,336/-, respectively, prior to the date of recall of the loans. Based on a two-year moratorium, the total amount required to be paid towards interest and principal till date of recall on 28.8.2023 comes to Rs. 62,57,829/- and Rs 16,07,816/- in respect of 1st and 2nd loan respectively, thereby demonstrating the default in payment of amounts due under both loan accounts prior to date of recall even on the

basis of revised moratorium of two years. Accordingly, the Corporate Debtor was in default in respect of both loan facilities prior to issuance of recall notice on 29.08.2023.

7.10. The terms of the sanction letter explicitly stipulate that the occurrence of any default in the payment or repayment of any monies under the financial facility shall constitute an "Event of Default." The relevant extract of the sanction letter is reproduced hereinbelow:



EVENTS OF DEFAULT

1. The occurrence of the following event, including non-submission of requisite documents, or events similar thereto, shall constitute an "Event of Default"-

a) **Payment Default -** Default has occurred in the payment / repayment of any monies in respect of the Facility on the due dates, whether at stated maturity, by acceleration or otherwise.

b) **Non-payment Default -** Default other than a Payment Default has occurred in the performance of any covenant or condition on the part of the Borrower(s) or any other person under the Transaction Documents and such default has continued for a period of 15 days after notice in writing thereof has been given to the Borrower(s) or as the case may be, to such other person, by the Bank (except where the Bank is of the opinion that such default is incapable of remedy, in which event, no notice shall be required).

c) **Breach of Terms -** Borrower(s) or any other person is in breach of performance of any covenant, condition or agreement under the Transaction Documents and such default has continued for a period of 30 (thirty) days from the date of the default (except where ICICI Bank is of the opinion that such default is incapable of remedy, in which event, no cure period shall be applicable).

d) **Cross Default -** The Borrower(s) and/or any of its subsidiaries is unable or has admitted its inability to pay any of its indebtedness to ICICI Bank or to a financial creditor or any bank or financial institution (secured or otherwise), whether at stated maturity, by acceleration or otherwise. Any financial creditor or bank or financial institution cancels and/or recalls any

7.11. Besides individual defaults in both facilities, it is relevant to note that clause D under Event of Default also enables the financial creditor to accelerate repayment, cancel the facility, or recall the indebtedness upon the occurrence of the Borrower's failure to service its other indebtedness due to the financial creditor. In view thereof, the recall of the entire principal amount by the Applicant Creditor, vide notice dated 29.08.2023, was in order.

7.12. It is also noted that the Corporate Debtor did not self-service the first loan after 03.05.2023, and it cannot escape its obligation to pay monthly

interest as well as EMI including principal after expiry of the revised moratorium of two years merely on the ground that the Applicant Creditor had started requiring the Corporate Debtor to pay EMI including principal prior to expiry of the revised moratorium of two years. Further, the filing of Suit No. 996 of 2023 on 24.03.2023 before Ld. City Civil Court, Mumbai, cannot exonerate the Corporate Debtor from its obligation to this extent. It is further evident from a careful examination of the statement of accounts that the Corporate Debtor has consistently failed to service interest and periodic principal repayments in respect of the first loan, and even the second loan was overdue by a sum of Rs.779720/- as on 24.11.2023, including monthly interest and EMI obligations. Having defaulted on its core financial obligations under the facility, the Corporate Debtor cannot now be permitted to shield itself from its legal liability to clear the outstanding dues on the ground of the Applicant Creditor not applying the revised moratorium of two years while demanding money under the first loan.

7.13. The aforesaid clearly demonstrate that, even after considering the revised moratorium of two years, a financial debt remains due and in default in respect of both the loans. In view of the recall of the principal amount consequent to such default, the outstanding amount exceeds the threshold limit stipulated under Section 4 of the Code as on the date of filing this Application.

7.14. Under the statutory scheme of the Insolvency and Bankruptcy Code, 2016 (the "Code") that this Adjudicating Authority, at the stage of

admission of a Section 7 application, is primarily required to ascertain whether a "financial debt" is due and payable, and whether a "default" has occurred. In our considered view, the Financial Creditor has placed on record cogent, sufficient evidence, including the sanction letters and Statement of Accounts backed by relevant certificates under the banker's book of evidence Act 1891, which shows that a financial debt is due and payable, and that the Corporate Debtor has committed a default in the repayment thereof.

7.15. Further, as the date of default is 05.03.2023 and 05.03.2024 and the Application is filed on 10.07.2025, the same is well within limitation.

7.16. The Corporate Debtor has raised certain other objections to the Application filed by the Applicant which are being dealt with in the following paragraphs.

7.17. It is submitted by the Corporate Debtor that the Record of Default with National E-Governance Services Limited (NeSL) reflects the said default as disputed, thereby casting doubt on the existence of the default. As noted above, there exists a default and a dispute before Ld. Civil Court for claiming revised moratorium cannot have a bearing on the existence of a default which otherwise exists even on the basis of revised moratorium of two years. Nonetheless, it is relevant to refer the decision in the matter of **Vijay Kumar Singhania v. Bank of Baroda and Anr. [(2023) ibclaw.in 787 NCLAT**], wherein the Hon'ble Appellate Tribunal has categorically held that the existence of a dispute concerning a financial debt does not preclude the Adjudicating Authority from

independently examining and determining the questions of debt and default.

7.18. In light of the aforesaid legal position, this Tribunal is of the considered view that even if the status of the NeSL Record of Default is contested by the Corporate Debtor in a petition under Section 7 of the Code, this Adjudicating Authority is required to independently examine and ascertain the existence of debt and default. Furthermore, the Applicant has placed on record sufficient and cogent documents, including the Sanction Letter and the statement of accounts, which conclusively establish that the Corporate Debtor owes a "financial debt" and is in default.

7.19. As regards the objection of the Corporate Debtor of pursuing multiple remedies under the SARFAESI Act, RDB Act and that under IBC, it is relevant to refer the decision in ***Punjab National Bank vs. M/s. Vindhya Cereals Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 854 of 2019***, wherein it is held as under:

> *"8. This Tribunal in the case of Company Appeal (AT) (Ins) No. 323/2019 (Neeraj Jain Vs. Yes Bank Ltd. & Anr.) decided on 10.04.2019 held that Section 7 being an independent proceeding is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of App. (AT) (Ins) No. 1021/2019 (Karan Goeal Vs. M/s. Pashupati Jewellers & Ors.) decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending cannot be ground to reject the application under Section 7 of the I&B Code.*

9. In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force."

7.20. In view of the facts and circumstances of the present case and applying the dictum laid down by the Hon'ble NCLAT in Vindhya Cereals Pvt. Ltd. (supra), this Adjudicating Authority is of the considered view that Section 238 of the Code, containing an overriding non-obstante clause, shall prevail over other laws. Consequently, the pendency or initiation of multiple proceedings under the SARFAESI Act, 2002 or before the Cooperative Courts poses no bar to the maintainability of the present proceedings under the Code. The contention of the Corporate Debtor in this regard is therefore rejected.

7.21. The Contention that there is a discrepancy between the amount mentioned in the foreclosure letter and NeSL is not sustainable, as the amount in default exceeds the threshold of Rs. 1 crore stipulated under section 4 of the IBC Code.

7.22. The Corporate Debtor has raised a further objection that the Financial Creditor failed to comply with the RBI Prudential Norms, the MSME Revival and Rehabilitation Framework, and the RBI Directions before classifying its account as an NPA.

7.23. At the outset, the corporate debtor has failed to bring any document on record to demonstrate that it had approached the applicant with the necessary request, duly supported by the documents evidencing its eligibility, for seeking restructuring of its debt under the MSME framework and therefore, the plea of the corporate debtor in this regard is not tenable considering the judgments as cited above. Further, this Bench considered the effect of decision in the case of Pro Knits and later decision in relation to Notification dated 29.5.2015 issued by RBI in case of CP(IB) 322 of 2023 vide order dated 29.10.2024. The relevant part of the said order is reproduced hereunder:

> *9.The question before the Hon'ble Supreme Court was "Whether the Banks/ Non-Banking Financial Companies (NBFCs) are obliged to adopt the restructuring process as contemplated in the Notification dated 29th May, 2015 issued by the Ministry of Micro, Small and Medium Enterprises, on its own without there being any application by the Petitioners/ MSMEs." The Hon'ble Supreme Court held at Para 17 that*
>
> > *"17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or*

Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework"

10. The question before Hon'ble Supreme Court was not whether the provisions of MSME Act over-rides the provisions of IB Code, which is a later legislation. IB Code contains a non-obstante clause in terms of section 238 providing that "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith

contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

11. The Preamble of MSMED Act 2006 reads as "An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto".

12. The preamble of the Code reads as "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto".

13. The notification dated 29.5.2015 issued by the Central Government in exercise of powers conferred upon it u/s 9 of MSMED Act 2006 provides a Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprise. The provisions of IB Code have wider scope which provides for insolvency resolution of Corporate persons, which includes companies who are classified as MSME as well and provides for resolution of insolvency in comprehensive manner so that the MSME company is put back on its own feet. Section 240A of the

IB Code makes certain concessions to MSME Corporate person and vests powers in Central Government u/s 240A(2) of the Code to direct in the public interest, by notification, that any of the provisions of this Code shall either not apply to micro, small and medium enterprises; or apply to micro, small and medium enterprises, with such modifications as may be specified in the notification. It is pertinent to note that the said Notification dated 29.5.2015 has not been notified later on in terms of Section 240A(2) of the Code by the Central Government. Accordingly, it can not be said that MSMED Act overrides the provisions of IB Code, unless said so expressly in terms of Section 240A(2). Undisputedly, the Notification dated 29.5.2015 issued under MSMED Act contemplates a framework for revival and rehabilitation of MSME, so does IB Code. The Notification dated 29.5.2015 is prior in time of introduction of IB Code and IB Code is a comprehensive code to deal with financial stress of Corporate Debtor. Had it been intent of Central Government to mandate recourse to Revival and Rehabilitation Framework first before availing alternative equally effective remedy available in the later legislation, the scope of which is much wider, the Central Government in terms of powers vested in Section 240A(2) could have said so. In other words, the lenders of a MSME enterprise are not precluded from taking alternative course of resolution of the stress of a MSME Corporate Debtor in case of a default. It can

also not be said that even if a lender fails to take recourse to Notification dated 29.5.2015, the existence of default vanishes and it is precluded from initiating Insolvency Resolution process in terms of provisions of IB Code.

14. The Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. and Anr. V. Union of India and Ors. (2019) ibclaw.in 03 SC held at Para 12 that "It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests". It further held at Para 24 that "A financial creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a "default" occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process

under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor".

15. The reliance on para 5(4) of the said Notification placed by the Counsel to contend that the recovery will follow (i) rectification, and (ii) Restructuring is misplaced in view of Hon'ble Supreme Court's decision in case of Swiss Ribbons (supra) that the Insolvency Resolution process is not a recovery process and is also not adversarial to the Corporate Debtor. In our considered view that the restructuring contemplated in para 5(4) of the notification is another mode for revival and rehabilitation of the MSME Corporate Persons in addition to IB Code and it cannot be argued that it is incumbent on the Banking companies to first exhaust the avenue of revival under the Notification before proceeding to file an application u/s 7 of IB Code for the resolution of financial defaults under the Code.

7.24. It is clear from the above discussion that, the limited jurisdiction of this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code is to ascertain whether a financial debt exists and whether a default, as defined under Section 3(12) of the Code, has occurred. In terms of Sections 7(3), 7(4) and 7(5), the existence of default is to be determined from the Information Utility records or other documentary evidence placed on record.

7.25. In view of the above, the Applicant has successfully demonstrated the existence of a financial debt, as the transaction involves money borrowed against the payment of interest under section 5(8)(a) of IBC 2016, the occurrence of default, which is way above the threshold as stipulated under Section 4 of the Code, and the continuing nature of such default supported by clear documentary evidence. Moreover, the issues and objections raised by the Respondent Corporate Debtor have been dealt with in the earlier paragraphs and have been found to be non-tenable.

7.26. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Mr. having Registration No. IBBI/IPA-001/IP-P01045/2017-2018/11718 and Authorization for Assignment (AFA) which is valid upto 31.12.2026 as per IBBI portal, as the proposed IRP and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against the said IP. Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

7.27. We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 680/MB/2025 filed under Section 7 of IBC, 2016, by ICICI Bank Limited, the Applicant (FC), for initiating CIRP in respect of Monopoly Innovations Limited, the Corporate Debtor, is **Admitted.**

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

I. We prohibit:

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

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

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

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints**,** Mr. Rajendra Devidas Purnaik , having Registration No. IBBI/IPA-001/IP-P-02029/2020-2021/13149 and **e-mail address** rdpuranik@gmail.com having valid Authorisation for Assignment up to 31.12.2026 (as per IBBI site) as the IRP to carry out the functions under the IBC.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

VIII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.**3,00,000**/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority

upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

IX. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the Corporate Debtor.

X. The IRP is directed to issue notice of Admission upon all the statutory authorities of Corporate Debtor without Fail

XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIII. **A compliance report of the order by the Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)