



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

Company Petition (IB) No. 57 (KB) of 2023

*A Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**IN THE MATTER OF:**  
**CANARA BANK**

**... Financial Creditor/ Petitioner.**

*Versus*

**P.R. COMMERCE PRIVATE LIMITED**

**... Corporate Debtor/ Respondent.**

**Date of Pronouncement: November 27<sup>th</sup> Nov, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**  
**SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)**

**Appearances (via video conferencing/physically)**

**For Petitioner:**

Mr. Sujash Ghosh., Adv.  
Mr. Sankari Roy., Adv.  
Ms. Sayori Mukhopadhyay., Adv.

**For Respondent:**

Mr. Arik Banerjee, Adv.  
Mr. Shaynak Ghosh, Adv.  
Mr. Rajib Mullick, Adv.

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. The Court congregated through hybrid mode.
2. Heard the Learned Counsels for both the parties.
3. The Financial Creditor, **Canara Bank**, hereinafter referred to as "Petitioner" as FC by way of this company petition filed under

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Section 7 of the Insolvency and Bankruptcy Code, for brevity "I&B Code" has sought to initiate Corporate Insolvency Resolution Process, in short, "CIR Process" in respect of the Corporate Debtor, **M/s P.R. Commerce Private Limited**, hereinafter referred to as "Respondent" as CD.

4. The Petitioner (FC) claims the CD is in default of making payment of a sum of Rs. 14,01,65,382/- as 31.01.2023, and the date of default is as 25.03.2022, which is upon expiration of the 10<sup>th</sup> day for making payment by the corporate debtor and the corporate guarantor as per demand notice dated 15.03.2022 issued by the financial creditor.

**5. Submissions of the Ld. Counsel for the Applicant**

- 5.1 The Learned Counsel appearing on behalf of the Petitioner Canara Bank would submit that the corporate debtor herein is a corporate guarantor of **Rajgaria Timber Private Limited (Principal Borrower)** who had availed credit facilities from the Petitioner Bank and the corporate debtor unconditionally guaranteed the repayment of all the amounts advanced and all the liabilities arising out of the credit facilities extended to the Borrower.
- 5.2 It is contended that the current application is submitted by Mr. M. Gandhi, the authorized representative of the Financial Creditor, who is familiar with the details of the case based on the records kept by the Financial Creditor.

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- 5.3** It is further submitted that the corporate guarantor had for the principal borrower, **Rajgaria Timber Private Limited**, is liable for an amount of Rs. 140,165,382.76 as of 31.01.23, along with future interest, in accordance with section 128 of the Contract Act, 1872, under which they are jointly and equally responsible.
- 5.4** It is contended that in June 2016, the principal borrower, Rajgaria Timber Private Limited, through its Director, Mr. Sri Pawn Kumar Rajgaria, requested an overdraft, cash credit, term loan, and bank guarantee facilities under a consortium arrangement. The company's directors assured the Financial Creditor of their business potential and stability. Based on this representation, the Financial Creditor, along with the State Bank of India and Bank of Baroda, approved the requested facilities. The parties then entered into agreement, with the company, board resolutions were passed and guarantee agreements were executed ensuring repayment of all credit facilities.
- 5.5** It is further submitted that the principal borrower breached the agreements by failing to meet its obligations, including operating accounts as agreed, resulting in unpaid dues which amounts to a lack of intent to honor the contractual commitments. Under Section 128 of the Indian Contract Act, 1872, the guarantor's liability was equal to that of the principal borrower. Due to the borrower's default, the guarantor's status changed to that of a debtor or corporate debtor.
- 5.6** It is contended that the corporate debtor had signed a guaranteed agreement with the Financial Creditor and other

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banks on 09.09.2016, followed by additional agreements the latest being on 09.04.2019. Clauses 2 and 17 of the agreement required payment on demand if the borrower defaulted. Additionally, clause 17 of the Section 7 application stated that the guarantor waived their rights under Sections 133, 134, 135, and 139 of the Indian Contract Act.

**5.7** It is submitted that the Financial Creditor issued a letter to the corporate debtor, as guarantor for the principal borrower, demanding repayment of Rs. 12,71,44,455.59 within fifteen days, warning that failure to do so would result in an application to the NCLT. In response, on 25.03.2022, the corporate debtor and its guarantors claimed the demand was irrational and immoral, requesting the bank to withdraw the notice within seven days.

**5.8** It is submitted that the that none of the claims are barred by the law of limitation. The cause of action began on 27.02.2020 when the account was declared NPA and continues with the issuance of demand notices. The cause of action remains valid until the corporate debtor repays the outstanding debt to the Financial Creditor.

***6. Per Contra the Corporate Debtor would allege as under:***

**6.1** The Learned Counsel for the respondent would submit that the financial creditor was required to demand the payment of defaulted amount from the corporate debtor as per clause 2 of the guaranteed deed (pages 135-136). However, the financial creditor failed to fulfill this obligation, thereby absolving the corporate

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debtor from any responsibility to repay the alleged defaulted debts of the original borrower, Rajgaria Timber Private Limited.

- 6.2** It is submitted that Clause 2 of the Deed of Guarantee requires a specific demand from the bank for the guarantor's payment obligation to arise. Without such demand, there is no debt or default by the corporate debtor, making the Section 7 application premature and not maintainable". Reliance to that effect has been placed on ***J.C. Flowers Asset Reconstruction Private Limited vs. Deserve Exim Private Limited*** reported in (2023) SCC Online NCLAT 1817 (Para 12), ***Pooja Ramesh Singh vs. State Bank of India and Anr.*** in Company Appeal (AT) (Ins.) 329 of 2023 (Para 24) and ***Syndicate Bank vs. Channaveerappa Beleri & Ors*** reported in (2006) 11 SCC 506.
- 6.3** It is contended that the alleged demand notice dated 15th March 2022 was neither issued nor received. Despite several hearings, the financial creditor failed to provide any proof of dispatch or delivery of the notice. Even after the matter was adjourned to 5th September 2024, no evidence was produced to confirm that the notice was served.
- 6.4** It is further submitted that the corporate debtor has however filed its reply to the affidavit without delay or adjournment to the Section 7 petition which is non-maintainable due to non-invocation of the guarantee clause.
- 6.5** The Hon'ble NCLAT, in the cited judgment, held that if the guarantee clause is not invoked, there is no debt or default by the

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corporate guarantor, as their liability depends on the invocation of the guarantee.

- 6.6** Reliance has been placed on **Ambica Quarry Works & Anr. State of Gujarat and Ors.** reported in (1987) 1 SCC 213 (para 18 and 20) that the doctrine of non-traverse does not apply to the facts and circumstances of this present case.
- 6.7** It is averred that the corporate debtor cannot be held liable for the debts of the original borrower as the claim is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016. It is submitted that the loan facility was last renewed on 17th July 2019 for one year, with any default occurring by 16th July 2020. Since this date falls within the period covered by Section 10A, no proceedings can be initiated under Section 7 of the Code for this default.
- 6.8** The respondent would further assert that the application states the default as on 25th March 2022, following the demand notice on 15th March 2022. but a mere demand for an alleged default does not create a fresh cause of action. The date of default must be calculated from the date when the debt became due, which was 17th July 2020 for the original borrower. Additionally, the financial creditor classified the loan as a Non-Performing Asset (NPA) on 27th February 2020, as noted in the application and the SARFAESI notice. Therefore, the date of default should be considered as 27th February 2020.

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**7. Analysis and Findings**

- 7.1** We have noted that the principal borrower, Rajgaria Timber Pvt. Ltd stands admitted into Corporate Insolvency Resolution Process in Company Petition (IB) No. 313/KB/2022 vide order passed by this Tribunal dated 30.04.2024.
- 7.2** Its settled law that the Corporate Guarantor's Liability, to repay the debt is coextensive with the principal borrower and the right to proceed against the principal borrower as well as guarantor is in equal measure, in case the, principal borrower commits default in repayment of the amount of debt ,as laid down by the **Hon'ble Supreme Court of India** in the case of **Laxmi Pat Surana vs. Union of India** reported in Civil Appeal No. 2734 of 2020.
- 7.3** In other words, the obligation of the guarantor is coextensive and coterminous with the principal borrower to default the debt as predicated under Section 128 of the Contract Act.
- 7.4** The **Hon'ble Supreme Court** in the case of **Syndicate Bank Vs Channaverrappa Beleri - 2006 (11) SCC 506**, has held that "*where the guarantee is payable on demand, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand*".

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- 7.5** The **Hon'ble NCLAT** in the case of **Archana Deepak vs Indian Bank** (2023 SCC online NCLAT 192) has held “ that *it is clear that although the Guarantor immediately become liable on any default committed by the Principal Borrower but for initiating any action against the Guarantor, demand is to be made. Without there being any demand, it cannot be accepted that period of limitation against the guarantor shall commence*”.
- 7.6** In the case in hand, in terms of Clause 2 of the deed of Guarantee executed, the guarantors are liable to pay the amount defaulted by the principal borrower, on **demand** and demand was made on 15.03.2022 and the instant petition has been filed on 17.02.2023 which is within the 3 years from the date of default .Since receipt of the demand notice dated 15.03.2022 is not denied by the corporate debtor in its reply affidavit doctrine of non-traverse will apply.
- 7.7** The demand being made on 15.03.22 the filling of the petition on 17.02.23 is well within the prescribed period of limitation i.e. three years and hence, its not time barred.
- 7.8** It is evident that the date of classification of the account of the Corporate Debtor as **NPA** is on **February 27, 2020** which can be regarded as the date of default. In this context, we would rely upon the decision rendered by the Hon'ble Apex Court in **Laxmi Pat Surana v. Union Bank of India** reported in **(2021) 8 SCC 481: MANU/SC/0221/2021** that

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“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code...”

**(Emphasis Added)**

**7.9** Thus, we find no error committed by the applicant in claiming the date of classification of the Corporate Debtor as NPA as the Date of Default.

**7.10** We would discern that to admit an application under Section 7 of the I&B Code filed by the Financial Creditor triggering the insolvency proceedings in respect of the Corporate Debtor, the Adjudicating Authority is required to check certain criteria as laid down in law which are as under:

- (i)** Whether there is any “debt” that is disbursed against the consideration for the time value of money. **[Section 5(8) of the I&B Code]**
- (ii)** Whether there is any “default” on the part of the Corporate Debtor in repayment of the amount of debt that has become “due and payable”. **[Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017]**
- (iii)** Whether the Application filed by the Financial Creditor is complete with admissible evidence to substantiate the “debt” and the “default” on the part of the Corporate Debtor. **[Innoventive (Supra)]**

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- (iv) Whether the amount of default in the Application crosses the threshold financial limit of Rs. One Crore. **[Section 4 of the I&B Code]**
- (v) Whether the application is maintainable and not barred by limitation as prescribed under Section 238A of the I&B Code read with Article 137 of the Limitation Act, 1963. **[B.K. Educational Services Private Limited v. Parag Gupta and Associates, Civil Appeal No. 23988 of 2017 reported in MANU/SC/1160/2018]**

8. It is evident that date of default is on 27.02.2020 and the applicant has filed this application on 17.02.2023. Thus, the application is well-within the limitation period as prescribed under Section 238A of the I&B Code.

**9. Judicial Precedents which we would rely upon:**

9.1 We are fortified in our view by the judgment of the Hon'ble Apex Court is the case of **Anuj Jain v. Axis Bank Limited** reported in **(2020) 8 SCC 401: MANU/SC/0228/2020** that:

**“The essentials for financial debt and financial creditor”**

**“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursement against the consideration for time value of money. .... In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the**



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*consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. ..."*

(Emphasis Added)

9.2 Further, we would rely upon the decision passed by this Tribunal in the matter of ***Kesoram Industries Ltd. v. Pratim Bayal, RP of Birla Tyres Ltd.*** [I.A. (I.B.C) No. 957/KB/2023 In C.P. (IB) No. 250/KB/2021] reported in (2023) **ibclaw.in 734 NCLT** that:

*"6.8. Thus, from the statutory provisions and decisions supra, it is clear that to bring any existence of debt within the ambit of the definition of "Financial Debt", disbursement of money is sine qua non ..."*

(Emphasis Added)

9.3 We are further supported by the judgment passed by the Hon'ble Apex Court in ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund*** reported in (2021) **6 SCC 436: MANU/SC/0231/2021 (para 14)** that:

*"14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor..."*

(Emphasis Added)

9.4 The Hon'ble Apex Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank*** reported in (2018) **1 SCC 407: MANU/SC/1063/2017** has laid down that:

*"27. The scheme of the Code is to ensure that when a default takes place, in the sense that*



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**a debt becomes due and is not paid, the insolvency resolution process begins. ...'**

**"28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ..."**

XXX XXX XXX XXX

**"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."**

**(Emphasis added)**

10. It is evidently clear that this Adjudicating Authority is not required to go into the causes of default, or deliberate upon the differing perceptions of the usance period as once the default is established, the application has to be admitted.
11. Thus, in terms of the foregoing discussion elaborated above, we are of the view that this instant application under Section 7 of the I&B Code is squarely maintainable and therefore, we **ALLOW** the application bearing **Company Petition (IB) No. 57/KB/2023** filed under **Section 7 of the I&B Code**, and

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accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Canara Bank (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. P.R.COMMERCE PRIVATE LIMITED (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
  - a)** *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;*
  - b)** *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*
  - c)** *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
  - d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

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

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Sri Anil Agarwal”**, AAA Insolvency Professionals LLP, Address: Mousami Apartment, 158, Ballygunge Circular Road, Gr. Floor, Kolkata – 700027, Phone: 011 4666 4600, Mobile: +91 9830090905, Email ID: [anilagarwal@aaainsolvency.com](mailto:anilagarwal@aaainsolvency.com) / [anil@dvaonline.in](mailto:anil@dvaonline.in), Registration No. IBBI/IPA/-001/IP-POO270/2017-18/10514, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure “D” at Page 59-59B, to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating

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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 **“Sri Anil Agarwal”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Sri Anil Agarwal”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to

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Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Adjudicating Authority hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

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- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 12.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.



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- 13.** Post the Company Petition /      /2024 for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Sd/-

**Balraj Joshi  
Member (Technical)**

Sd/-

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 27<sup>th</sup> Day of November, 2024.**

Tiwari, V. [LRA]