



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

Company Petition C.P. (I.B.) No. 72/KB of 2021

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

**IN THE MATTER OF:**

**TIKMANI STEEL TRADING COMPANY**, a Partnership Firm under the provisions of the Indian Partnership Act of 1932, with its registered office at Sagar Estate, Room No. 17, 2<sup>nd</sup> Floor, 2 N.C. Dutta Sarani, Kolkata – 700001, West Bengal.

... **Petitioner/ Financial Creditor**

**Verses**

**RUKMANI ISPAT PRIVATE LIMITED**, bearing Corporate Identification Number (CIN): U27100WB2008PTC125434, having its registered address is 20, Maharshi Devendra Road, 3rd Floor, Kolkata – 700007, West Bengal.

... **Respondent/ Corporate Debtor**

**Date of Hearing: June 13, 2023**

**Date of Pronouncing the Order: September 19, 2023**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)**

**Ld. Counsels on Record Appeared Physically/ through Video Conferencing:**

**For Petitioner/ Financial Creditor:**

1. Mr. Sharukh Raja, Adv.
2. Mr. S. Mohta, Adv.

**For Respondent/ Corporate Debtor:**

1. Mr. Sailesh Mishra, Adv.

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**ORDER**

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

1. This Court is congregated through hybrid mode.
2. This instant Company Petition is filed under **Section 7** of the Insolvency and Bankruptcy Code of 2016 (for brevity “**I&B Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules of 2016 (for brevity “**the Rule**”) by **TIKMANI STEEL TRADING COMPANY**, being the “**Financial Creditor**” (hereinafter referred as “**Petitioner**”) against **RUKMANI ISPAT PRIVATE LIMITED**, being the “**Corporate Debtor**” (hereinafter referred as “**Respondent**”) whereby, the Financial Creditor seeks a direction passed by this Bench to initiate a Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor.
3. It is claimed in the Petition that the Corporate Debtor is a Private Limited Company, bearing CIN: U27100WB2008PTC125434, incorporated on May 06, 2008, having its Authorized Share Capital of Rs. 60,00,000/- (Rupees Sixty Lakh Only) and its Paid-up Share Capital of Rs. 31,25,000/- (Rupees Thirty-One Lakh Twenty-Five Thousand Only)
4. **Particulars of the Financial Debt as claimed:**  
It is claimed that the **amount in default** as on February 22, 2021, by the Corporate Debtor is an amount of **Rs. 1,49,62,819.67/-** (Rupees One Crore Forty-Nine Lakh Sixty-Two Thousand Eight Hundred Nineteen and Sixty-Seven Paise Only) together with interest applicable at the rate of 18% per annum up to February 19, 2021. The **Date of Default** has been claimed as **February 15, 2019**, which has been taken as seven days from the last date of payment.
5. **The Petitioner has relied on the following documents:**
  - a) The Demand Notice on July 08, 2020, to the Corporate Debtor through email, is annexed and marked as **Exhibit “F”**.

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- b) Reminder dated August 24, 2020, to the Corporate Debtor regarding the outstanding dues, is annexed and marked as **Exhibit “G”**.
- c) The Detail of the computation of the amount in default and the days of default, is annexed and marked as **Exhibit “H”**.
- d) A Copy of the Bank Account Statement for the period of October 11, 2018, to December 09, 2020, is annexed and marked as **Exhibit “I”**.

**6. Petitioner’s Contention:**

- 6.1.** The Ld. Counsel for the Financial Creditor would contend that the Financial Creditor had sanctioned and disbursed an amount of **Rs. 98,00,000/-** (Rupees Ninety-Eight Lakh Only) upon the Corporate Debtor on **December 07, 2017**, after a conversation over the telephone between the Petitioner and Respondent regarding the availing working facilities of the Corporate Debtor and due to long-standing business relationship between them, the Petitioner adjusted an amount of **Rs. 92,118/-** (Rupees Ninety-Two Thousand One Hundred Eighty-Eight Only) from the sanctioned amount to the Respondent, on the same day i.e., **December 07, 2019**, on account of some previous dues owed to the Corporate Debtor from the Financial Creditor, and accordingly, the principal of the credit facility was availed as an amount of **Rs. 97,07,812/-** (Rupees Ninety-Seven Lakh Seven Thousand Eight Hundred and Twelve Only).
- 6.2.** The Ld. Counsel for the Petitioner further would contend that the Respondent did not make any repayment towards the credit facility granted by the Petitioner except the repayment of an amount of **Rs. 2,50,000/-** (Rupees Two Lakh Fifty Thousand Only) on February 08, 2019. After the said repayment, the principal amount of such credit facility granted to the Corporate Debtor had become an amount of **Rs. 94,57,812/-** (Rupees Ninety-Four Lakh Fifty-Seven Thousand Eight Hundred and Twelve Only).

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- 6.3.** It is further stated that after a plethora of reminders over the telephone, the Corporate Debtor had failed to clear off the entire dues and after that, the Financial Creditor was compelled to issue a **Demand Notice in Form 3** dated June 17, 2020, at the registered address of the Respondent taken from the MCA web portal, but the same was returned with the remark as “addressee moved”. The Copy of the envelope evidencing such postage and subsequent return is annexed and marked as **Exhibit “E”** on Pages 28-29 of the Petition. Then, the Financial Creditor issued the Demand Notice through Email also taken from the MCA web portal to the Corporate Debtor dated July 08, 2020. The Copy of the Email attaching the Demand Notice is annexed and marked as **Exhibit “F”** on Pages 30-36 of the Petition. Further, as on July 2020, the Respondent had failed to repay the amount in default aggregating to **Rs. 94,57,812/-** along with the interest incurred thereon at the rate of 18% per annum, the Petitioner had issued a Reminder Notice dated August 24, 2020, to the Respondent against such outstanding dues upon the address catered to in the Master date of the Respondent from the MCA web portal. The Copy of the Reminder is annexed and marked as **Exhibit “G”** on Pages 37-41 of the Petition.
- 6.4.** The Ld. Counsel for the Petitioner appends the Computation of Default Amount in Tabular form in **Exhibit “H”** on Page 42 of the Petition, from the date of 12-07-2017 to 19-02-2021. In that said Tabulation Chart, the **amount in default** has been calculated as **Rs. 1,49,62,819.67/-** (Rupees One Crore Forty-Nine Lak Sixty-Two Thousand Eight Hundred Nineteen and Sixty-Seven Paise Only) wherein the amount of **Rs. 94,57,812/-** is the principal amount and **Rs. 55,05,007.67/-** is the interest amount (at the rate of 18% per annum).
- 6.5.** The Ld. Counsel for the Petitioner also submits the Bank Account Statement of the Financial Creditor for the period of October 11, 2018, to

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December 09, 2020, annexed and marked as **Exhibit “I”** on Pages 43-113 of the Petition substantiates his claim.

7. The Ld. Counsel for the Financial Creditor has further proposed the name of **Shri. Mahesh Chand Gupta**; bearing Registration no.: **IBBI/IPA-001/IP-P-01489/2018-2019/12304**, address: FE-202, Salt Lake City, Sector-III, 1<sup>st</sup> Floor, Kolkata – 700106, Email ID: [mcgupta90@gmail.com](mailto:mcgupta90@gmail.com), for appointing as the **Interim Resolution Professional** (for brevity “**IRP**”).

**8. Respondent’s Contention, per contra:**

- 8.1.** Ld. Counsel for the Respondent would allege that the instant Petition is maintainable neither on facts nor in law. The Petition is not in proper form and lacks various statutory requirements and evidence to substantiate the claim raised in the Petition.
- 8.2.** Ld. Counsel for the Respondent would contend that the Respondent Company is a trader of steel and the Petitioner is one of the customers of the Respondent and used to purchase steel products from the Respondent. The Petitioner also used to sell their goods to multifarious purchasers in which the Respondent plays the role of broker in those transactions. Further, the Petitioner is a distributor of Tata Steel Ltd., enjoying various financial loans from various financial institutions.
- 8.3.** It is alleged that the Petitioner for purchasing certain materials from the Respondent, issued a cheque for an amount of Rs. 98 Lakh on December 07, 2017.
- 8.4.** It is further alleged that immediately after the encashment of the said cheque issued by the Petitioner, the Petitioner made a request to the Respondent not to send the materials as the Petitioner had already purchased the material from one “Ezone Strips Pvt. Ltd.” and “Ajay Tube Industries Pvt. Ltd.”, and thus, the Petitioner did not require the same.

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- 8.5.** It is further alleged that it is requested by the Petitioner to the Respondent to pay the said amount of Rs. 98 Lakh to the said companies being Rs. 72,59,755/- to the said “Ezone Strips Pvt. Ltd.” and Rs. 23,40,245/- to the said “Ajay Tube Industries Pvt. Ltd.”, through Real Time Gross Settlement (RTGS).
- 8.6.** It is claimed that the Respondent accordingly accepts the request made by the Petitioner and immediately transferred the said amount to both the Companies from which the Petitioner purchased the said materials. The Copy of the Bank Statement of the Respondent as a testimony of such transaction is annexed and marked as **Annexure “A”** of the Reply Affidavit on Pages 5-7.
- 8.7.** It is further alleged that the Petitioner is working on financial assistance taken from various other financial institutions and the Petitioner is not in a position to give loan to any other entity as it is neither having any money lending license nor registered with the RBI as NBFC, and the Petitioner has never provided any financial assistantship and/or loan to the Respondent.
- 8.8.** The Ld. Counsel for the Respondent further denies that there was not any telephonic conversation between the Petitioner and Respondent regarding the sanctioned amount as claimed in default in the Petition. Further, it is denied that any amount is due or is required to adjust against any alleged financial assistantship provided previously by the Petitioner, as falsely alleged in the Petition. It is further denied that any alleged principal amount of Rs. 94,57,812/- was due and required to be paid by the Respondent to the Petitioner, as falsely claimed in the Petition.
- 8.9.** The Ld. Counsel further denies the computation of the amount in default annexed as **Exhibit “H”** on Page 42 of the Petition as it lacks veracity and genuineness. It is also denied that a sum of **Rs. 1,49,62,819.67/-** was due or payable, as it has been falsely alleged in the Petition. Further, it is also

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denied that there was any contractual obligation to pay any interest or there was any amount due as claimed in the Petition.

**8.10.** Further, it is denied that the alleged claim made by the Petitioner is within the pecuniary jurisdiction of this Tribunal.

**8.11.** The Ld. Counsel for the Respondent prays for dismissal of the instant Petition with exemplary costs.

**9. Analysis and Findings:**

**9.1.** We have heard the submission made by the Ld. Counsels appeared for the Financial Creditors (Petitioners) and Corporate Debtor (Respondent) and perused the evidence placed by them.

**9.2.** It is evident that *vide* an Order dated **September 26, 2022**, this instant Company Petition, being **C.P. (IB)/72/KB/2021** was dismissed for non-prosecution by the Financial Creditor. Further, an application filed *vide* No. **RST.A(IBC)/53/KB/2022** praying for the Restoration of this Company Petition. Ld. Counsel for the Financial Creditor submitted that due to certain technical glitches in the virtual appearance on the last occasion, could not be heard and it was construed that he was not present. In view of the above, *vide* an Order dated **December 13, 2022**, the Application, being **RST.A(IBC)/53/KB/2022** was accordingly allowed and the Company Petition, being **C.P. (IB)/72/KB/2021** is restored with cost.

**9.3.** It is claimed by the Ld. Counsel for the Petitioner that the Financial Creditor had sanctioned and disbursed an amount of **Rs. 98,00,000/- (Rupees Ninety Lakh Only)** upon the Corporate Debtor on **December 07, 2017**, after a conversation over the telephone between the Petitioner and Respondent regarding the availing working facilities of the Corporate Debtor. It is evident from the Bank Statement annexed at **Page 35** of the Petition that on **December 07, 2017**, through RTGS *vide* No.

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**ICICR52017120700726324/RUKMANI ISPAT PVT LTD** (Cheque/ Ref No. 1498) an amount of **Rs. 98,00,000/-** has been withdrawn by the Corporate Debtor. However, the Respondent denies the existence of any debt and default by stating that as per the request of the Petitioner, the Respondent had paid out the said amount of Rs. 98 Lakh, **as amount of Rs. 72,59,755/- to the Ezone Strips Pvt. Ltd. and Rs. 23,40,245/- to the Ajay Tube Industries Pvt. Ltd.**, through Real Time Gross Settlement (RTGS). The Copy of the Bank Statement of the Respondent that bears a purported testimony to such transaction, is annexed and marked as **Annexure “A”** of the Reply Affidavit on Pages 5-7. It is evident from Page No. 7 of the Bank Statement (**Annexure “A”**) that there are two transactions made by the Respondent on December 07, 2017, immediately after receiving an amount of Rs. 98 Lakh from the Petitioner to the “Ezone Strips Pvt. Ltd.” (*Vide* Cheque No. 222861) an amount of Rs. 72,59,755/- and to the “Ajay Tube Industries Pvt. Ltd.” An amount of Rs. 23,40,245/- (*Vide* Cheque No. 222862).

- 9.4.** Further, it is seen that the **Demand Notice dated 17.06.2020** was issued by the Financial Creditor to the Corporate Debtor envisaging the demanding payment is **an unpaid operation debt** which is due from the Tikmani Steel Trading Co. under the I&B Code, but the petition was filed under Section 7 of I&B Code. Thus, the Petition is not complete by its content and does not include proper particulars regarding the unpaid debt. The scanned copy of the demand notice is reproduced here as: -

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Form 3

See Clause (a) of sub rule (1) of rule (5)

FORM OF DEMAND NOTICE /INVOICE OF DEMANDING PAYMENT UNDER  
THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(Under rule 5 of the Insolvency and Bankruptcy (Application to adjudicating  
authorities) Rules,)

DATE: 17.06.2020

To,  
RUKMANI ISPAT PRIVATE LIMITED  
20, Maharshi Devendra Road, 3<sup>rd</sup> Floor  
Kolkata - 700007.

From,  
TIKMANI STEEL TRADING CO.  
Sagar Estate, 2nd Floor, Room No. 17  
2, N.C. Dutta Sarani,  
Kolkata - 700001

**Sub:-Demand notice/invoice demanding payment of  
unpaid operation debt due from Tikmani Steel  
Trading Co. Under the Code.**

Sir/Madam,

1. This is a Demand Notice/Invoice demanding payment of an unpaid operational debt due from Tikmani Steel Trading Co..
2. Please find the particulars of the unpaid operational debt:-

PARTICULARS OF THE OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH THE DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	Rs. 1,42,42,002.27/- (Rupees One Crore One Crore Forty Two Lacs Forty Two Thousand Two and Twenty Seven Paise)



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		Only) alongwith interest charged @ 18% till date.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED (ATTACH THE WORKINGS FOR COMPUTATION DEFAULT IN TABULAR FORM)	07.12.2017 Rs. Rs. 94,57,812/- (Rupees Ninety Four Lacs Fifty Seven Thousand Eight Hundred and Twelve Only) 08.02.2019 Computation of the workings of the default in tabular form is attached herewith as Annexure - "A"
3.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR, ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	N/A
4.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	N/A
5.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY (IF ANY)	N/A
6.	PROVISIONS OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH THE DEBT HAS BECOME DUE	
7.	LIST OF THE DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENSE OF OPERATIONAL DEBT AND THE AMOUNT OF DEFAULT	Invoices and ledger account statements attached herewith as Annexure - "B"

3. If you dispute the existence or amount of unpaid operational debt (in default), please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.



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4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:
  - a) An attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor or
  - b) An attested copy of any record that [name of the operational creditor] has received in payment
5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute in relation to the relevant operational debt has been filed by any person at any information utility (if applicable)
6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate corporate insolvency resolution process in respect of Tikmani Steel Trading Co.

Yours Sincerely

Signature of the person authorized on behalf of the operational creditor: *Abhishik Tikmani*  
 Name in block letters: **Abhishik Tikmani**  
 Position with or in relation to the operational creditor: **Partner**  
 Address of the person signing : **Sagar Estate, 2<sup>nd</sup> Floor, Room No. 17, 2, N. C. Dutta Sarani, Kolkata- 700001**

Encl: A/A



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9.5. Further, it is observed that no interest component was fixed and agreed upon during the disbursement of the money between the Financial Creditor and Corporate Debtor, and the amount sanctioned for financial assistance was not given for the time value of money and there is nothing on record to deduce the present of any explicit agreement between the parties. We are in view that there are two fundamental criteria need to be fulfilled for classifying a financial debt as per Section 5(8) of the I&B, Code, 2016 that:

- (i) *debt along with interest*, and
- (ii) *disbursed against the consideration for the time value of money*;

We here rely upon the very recent judgment passed by the Hon'ble NCLAT in *SAJ Housing Pvt. Ltd. v. Ms. Priyanka Chouhan Liquidator, Company Appeal (AT)(Insolvency) No. 1093 of 2022*, reported in (2023) *ibclaw.in 600 NCLAT* that:

*“34. This now brings us to the concern most justifiably raised by the Learned Senior Counsel for the Corporate Debtor while relying on the judgment of this Tribunal in **Nikhil Mehta (supra)** that the cardinal feature of time value of money is glaringly amiss in the present transaction. We entirely agree with the above legal proposition. We also like to add that it is settled law as laid down by the Hon'ble Apex Court in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416** that any debt to be treated as financial debt, there must happen disbursement of money and the disbursement must be against consideration for time value of money. In the matter of **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited & Ors. (2020) 8 SCC 401**, the Hon'ble Supreme Court has held that the essential condition*

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of financial debt is disbursement against the consideration for time value of money. Further in the most recent judgment of Hon'ble Supreme Court in **Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd. (2023) 3 SCC 753**, it has been clearly held that financial debt does not expressly exclude an interest free loan. It has also emphasized that financial debt includes any amount raised under any other transaction having the commercial effect of borrowing. It would be safe to infer from the above judgements that the concept of time value of money would also include a transaction which does not necessarily culminate into money being returned to the lender or interest being paid in respect of money that has been borrowed and can include anything which is equivalent to the money that has been loaned as long as commercial effect of borrowing or profit as the aim is discernible."

**(Emphasis Added)**

We further rely upon the judgment of the Hon'ble NCLAT in **Shivam Agriols Pvt. Ltd. v. Shree Krishna Vanaspati Industries Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 982 of 2022** reported in (2023) **ibclaw.in 332 NCLAT** that:

"29. We now proceed to examine whether in the present case, disbursement of money has taken place against the consideration for time value of money and whether commercial effect of borrowing is found to underpin the transaction. At the outset, we acknowledge that the concept of time value of money has not been expressly defined in the IBC. Undoubtedly, the most typical illustration of time value is in the form of interest on the principal amount that has been borrowed. However, it is now a well settled proposition of law that interest on loan is not the only binding criterion for determining time

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value of money. The Insolvency Law Report, 2018 has also held time value of money to mean compensation or the price paid for the length of time for which money has been disbursed. Thus, time value of money is not only a regular or timely return received for the duration for which the amount is disbursed as an amount in addition to the principal, but also covers any other form of benefit or value accruing to the creditor as a return for providing money for a long duration.”

(Emphasis Added)

Further we would rely upon the judgment of *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018)1SCC407: MANU/SC/1063/2017 where the Hon’ble Apex Court held that:

“27. .... The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined Under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt Under Section 5 (21) means a claim in respect of provision of goods or services.”

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“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

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*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. In the instant case, there is no agreement on the payment of Interest claimed by the Financial Creditor @18% and the same has been assumed predictably to cross the hurdle of the Threshold value.
11. It is however more plausible that there was no interest component agreed upon, even verbally, since the payment of Rs. 2,50,000/- admittedly made by the Corporate Debtor is adjusted against the Principal and not Interest. Thus, considering the fact that the disbursement was admittedly made by the Financial Creditor, the fact remains that the total amount of debt is short of the threshold value of Rs 1.0 Crore as per Section 4 of the Code. Hence this Petition is not maintainable.
12. In view of the above, we **reject** the prayer and accordingly **dismiss** this Company Petition.
13. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

**This Order is signed on the 19<sup>th</sup> Day of September, 2023**

Bose, R. K. [LRA]