



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

Company Petition No. C.P. (IB)/278(KB)2022

*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:**

**HI-TECH DESIGNS PVT LTD**, a Company under provisions of Companies Act, 2013, bearing CIN: U95000WB1996PTC080111, having its registered address at Ground Floor, Apsara Apartments, 67, Park Street, Kolkata, West Bengal – 700016

**... Financial Creditor No. 1/ Petitioner No. 1**

**And**

**S. K. FINSERVE PRIVATE LIMITED**, a Company under provisions of Companies Act, 2013, bearing CIN: U51909WB1995PTC074464, having its registered address at 67, Park Street, Apsara Apartments, Ground Floor, Kolkata, West Bengal – 700016

**... Financial Creditor No. 2/ Petitioner No. 2**

**Verses**

**SRI SAI CAR SALES PRIVATE LIMITED**, a Company under provisions of the Companies Act, 2013, bearing CIN: U34103WB2008PTC126978, having its registered address at Room No-4, Flat No-L/62/0506 Building No- L (62-63) Phase-4, Spriha Block, Sukhobrishti, Phase-2A, N. Town, Kolkata, West Bengal 700135

**... Corporate Debtor/ Respondent**

**And**

**IN THE MATTER OF:**

1. **Hi-Tech Designs Pvt Ltd**

2. **S. K. Finserve Private Limited**

**... Petitioners**

**Verses**

1. **Sri Sai Car Sales Private Limited**

**... Respondent**

**Date of Hearing: May 11, 2023**

**Date of Pronouncement of the Order: July 12, 2023**



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

Company Petition No. C.P. (IB)/278(KB)2022

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)**

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

**For Petitioners/ Financial Creditors:**

1. **Mr. Sankarsan Sarkar, Ld. Adv.**
2. **Mr. Tanmoy Sett, Ld. Adv.**
3. **Mr. Durgesh Kr. Jha, Ld. PCS**

**ORDER**

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

1. This Court is congregated through hybrid mode.
2. This instant petition is filed under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **I&B Code, 2016**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 jointly, by **Hi-Tech Designs Pvt Ltd**, being the **Financial Creditor No. 1** (hereinafter referred as "**Petitioner No. 1**") and **S. K. Finserve Private Limited**, being the **Financial Creditor No. 2** (hereinafter referred as "**Petitioner No. 2**") against **Sri Sai Car Sales Private Limited**, being the **Corporate Debtor** (hereinafter referred as "**Respondent**"), whereby, the Financial Creditors seek to initiate an insolvency resolution process against the Corporate Debtor. The combined balance in respect of the amount owed to the **Financial Creditor No. 1** is Rs. **87,17,049/-** along with the amount owed to the **Financial Creditor No. 2** is **73,15,327/-** makes the **Total Debt** of the Corporate Debtor towards the Financial Creditors combined to Rs. **1,60,32,376/-** together with the interest.
3. It is claimed that the Corporate Debtor is a Private Limited Company incorporated on June 30, 2008, having Authorized Share Capital of Rs. 4,44,00,000/- (Rupees Four Crore Forty-Four Lakh only) and having Paid-up



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

Company Petition No. C.P. (IB)/278(KB)2022

Capital of Rs. 4,35,78,000/- (Rupees Four Crore Thirty-Five Lakh Seventy-Eight Thousand only).

**4. Particulars of the Financial Debt:**

<b>TOTAL AMOUNT OF DEBT (DEFAULTED) GRANTED</b>	<b>1. Rs. 1,00,00,000/-</b> (Rupees One Crore Only) being interest at the rate of <b>16%</b> per annum with <b>2% Penal Interest</b> in case of delay in payment of interest or in repayment of the principal outstanding, as per the “Loan Agreement” dated February 24, 2021 (interest rate claimed as 18% in the Petition) disbursed by <b>HI-TECH DESIGNS PVT LTD</b> on February 25, 2021.
	<b>2. Rs. 60,00,000/-</b> (Rupees Sixty Lakh Only) being interest at the rate of <b>18.5%</b> per annum with <b>4%</b> penal interest applicable on the entire outstanding principal amount in case of default in repayment of any of the principal instalment, as per the “Loan Agreement” dated April 27, 2021 (interest rate wrongly claimed as 21% in the Petition) disbursed by <b>S. K. FINSERVE PRIVATE LIMITED</b> on April 27, 2021 and April 28, 2021.
<b>TOTAL AMOUNT CLAIMED TO BE IN DEFAULT</b>	<b>Rs. 1,60,32,376/- (Rupees One Crore Sixty Lakh Thirty-Two Thousand Three Hundred Seventy-Six Only)</b> in which Rs. 1,42,39,737/- on amount of Principal and a sum of Rs. 17,92,639/- on account of agreed interest, calculated from <b>September 01, 2021 to August 31, 2022.</b>
<b>DATE OF DEFAULT</b>	<b>April 30, 2021</b>



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

Company Petition No. C.P. (IB)/278(KB)2022

- 5. The Financial Creditors have relied on the following documents in support of their claims, such as:**
- i. Annexures “A-2” and “A-4”:** Board Resolutions of both the Financial Creditors.
  - ii. Annexure “A-11”:** Copy of the Statement of Accounts of both the Financial Creditors.
  - iii. Annexure “A-15”:** Copy of the **Loan Agreement** dated February 24, 2021 between the Financial Creditor No. 1 and Corporate Debtor.
  - iv. Annexure “A-27”:** Copy of **Loan Agreement** dated April 27, 2021 entered by and between the Financial Creditor No. 2 and the said Union Motors.
  - v. Annexure “A-28”:** Copy of the **Deed of Guarantee** entered by and between the Financial Creditor No. 2 and the said Union Motors.
  - vi. Annexure “A-33”:** Copies of the **Demand Notices** dated 10/01/2022, 01/02/2022, 13/05/2022 and 22/07/2022 issued by the Financial Creditor No. 1 to Corporate Debtor.
  - vii. Annexure “A-34”:** Copies of the said **Demand Notices** dated 13/05/2022 and 01/08/2022 issued by the Financial Creditor No. 2 to the Corporate Debtor.
- 6. In a nutshell, the Submissions made by the Ld. Counsel for Petitioners would be thus:**
- 6.1.** Both the Financial Creditors have made separate transactions to provide financial accommodation and/or loan to the Corporate Debtor. Both Petitioners are NBFCs registered under Section 45-IA of the RBI Act, 1934.
  - 6.2. Transaction made between the “Hi-tech Designs Pvt Ltd” (Financial Creditor No. 1) and “Sri Sai Car Sales Private Limited” (Corporate Debtor), as follows: -**



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

Company Petition No. C.P. (IB)/278(KB)2022

- 6.2.1.** The Corporate Debtor, through its Director of the Company, by letter dated February 23, 2021, requested the Financial Creditor No. 1 to grant a loan for an amount of **Rs. One Crore** for a period of 125 days for the purpose of their working capital requirements. (**Annexure “A-13” at Page 72 of the Petition**). The Financial Creditor No. 1 sanctioned and approved the same by its letter dated February 24, 2021, with stipulating the terms and conditions for such an approved loan (**Annexure “A-14” at Page 73 of the Petition**).
- 6.2.2.** It is contended that, in terms of the said loan agreement of **Rs. One Crore**, carrying interest at a rate of **16% P.A. with an additional 2% P.A. in case of delay in payment of interest or delay in repayment of the principal outstanding**, dated February 24, 2021 (**Annexed at Page 76-81 being Annexure “A-15”**) between the Financial Creditor No. 1 and Corporate Debtor, the Board of Corporate Debtor has approved the said loan from the Financial Creditor No. 1 throughs board resolution dated February 24, 2021 (**Annexed at Page 92 being Annexure “A-19”**).
- 6.2.3.** Further, the Ld. Counsel for the Financial Creditor would contend that the Corporate Debtor had also executed a Deed of Guarantee dated February 24, 2021 (**Annexed at Page 82-89 being Annexure “A-16”**) in favour of the Financial Creditor No. 1, for the said amount of **Rs. One Crore** and also given a Demand Promissory Notes dated February 24, 2021 (**Annexed at Page 90 being Annexure “A-17”**) to the Financial Creditor No. 1 amounting to said Rs. One Crore.
- 6.2.4.** Ld. Counsel for the Financial Creditors further contends that a letter of continuity dated February 24, 2021 (**Annexed at page 91 being Annexure “A-18”**) was also executed by the Corporate Debtor, in favour of the Petitioner No. 1 recording that the intention of the Corporate Debtor of providing security including the demand



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

Company Petition No. C.P. (IB)/278(KB)2022

promissory note, which shall be continuing at all times, for the due repayment of the said facility (loan) obtained by the Corporate Debtor and for payable to the Financial Creditor No. 1.

**6.2.5.Ld.** Counsel for the Financial Creditors further to contend that by a Letter dated **February 25, 2021 (Annexed at page 93 being Annexure “A-20”)**, the Financial Creditor No. 1 recorded that the said loan amount of **Rs. One Crore** had been disbursed and was transferred to the bank (ICICI Bank, Mango Branch, Jamshedpur) of Corporate Debtor through RTGS (**Bank Statement, dated February 25, 2021, is annexed at Page 62-63 being Annexure “A-8”**). The disbursement of the said loan amount is tabulated as: -

<b>SN</b>	<b>Amount Disbursed</b>	<b>Date of Disbursement</b>
<b>1.</b>	<b>1,00,00,000/-</b>	<b>25/02/2021</b>

**6.2.6.** It is further contended that in terms of security to the aforesaid loan amount, the Corporate Debtor had furnished the road-worthiness certificates, being Form No. 22 for 8 vehicles, purchased by the Corporate Debtor from Hyundai Motor India Private Limited, which was the stock in trade for which the Corporate Debtor took said loan of Rs. One Crore (**Annexed at Page 94-101 being Annexure “A-21”**). The Corporate Debtor had also created charge of its book debts, stock in trade and unpledged equity in favour of the Financial Creditor No. 1 with the ROC, Kolkata (**Annexed at Page 102-109 being Annexure “A-22”**). The Corporate Debtor had also issued money receipt in favour of the Financial Creditor No. 1 (**Annexed at Page 110 being Annexure “A-A-23”**).

**6.2.7.Ld.** Counsel for the Petitioners would further contend that the corporate debtor had made part re-payment of loan along with interest of Rs. 36,33,267/-. Bank Statement of the Financial Creditor,



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

Company Petition No. C.P. (IB)/278(KB)2022

evinced such facts is **annexed at Page 111-124 being Annexure “A-24”**. The Statement of Accounts, prepared by the Financial Creditor is also **annexed at Page 68-69 being Annexure “A-11”**. The ledger account statement of the Corporate Debtor maintained by the Financial Creditor is **annexed at Page 125-129 being Annexure “A-25”**.

**6.2.8.** Further, it is submitted that Corporate Debtor started defaulting in repayment on and from **April 01, 2022** and the Corporate Debtor failed and/or neglected to pay the said loan amount of **Rs. 87,17,049/-** along with interest.

**6.2.9.** The Financial Creditor No. 1 by its demand notices dated 10/01/2022, 01/02/2022, 13/05/2022 and 22/07/2022 recalled the entire said loan, issued by the Financial Creditor No. 1 to the Corporate Debtor, demanding the aggregated sum of **Rs. 87,17,049/-** together with interest thereon (**Demand Notices are annexed at Page 156-164, being Annexure “A-33”**).

**6.3. Transaction made between the “S. K. Finserve Private Limited” (Financial Creditor No. 2) and “Union Motors”, as follows: -**

**6.3.1.** “Union Motors” is a partnership firm, and “Sri Sai Cars Sales Private Limited”, the Corporate Debtor, had provided corporate guarantee in favour of the Financial Creditor No. 2, to secure the dues of Union Motors, and as Union Motors is a non-corporate entity, the Petition filed under Section 7 of I&B Code, 2016 by the Financial Creditor No. 2 is maintainable against the Corporate Debtor. In support, the Petitioner has referred the judgment in the case of **K. Paramasivam v. The Karur Vysya Bank Ltd. 2022 SCC Online SC 1163: MANU/SC/1108/2022**, that:



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

Company Petition No. C.P. (IB)/278(KB)2022

*“16. ... the liability of the guarantor is co-extensive with that of the Principal Borrower. The judgment in Laxmi Pat Surana (supra), rendered by a three-Judge Bench of this Court is binding on this Bench. It was open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower.”*

**6.3.2.** Union Motors, by its letter dated April 26, 2021, had requested the Financial Creditor No. 2 to grant a loan for an amount of Rs. 65 Lakh to Union Motors (**Annexed at Page 130 being Annexure “A-26”**). In terms thereof, a loan agreement dated April 27, 2021 (**Annexed at Page 131-135 being Annexure “A-27”**) was entered into by and between the **“S. K. Finserve Private Limited” (Financial Creditor No. 2)** and **“Union Motors”**. The said loan amount was Rs. 60 Lakh for a period of 11 months, carrying interest at the rate of **18.5% P.A. with penal interest at the rate of 4% P.A.** applicable on the entire outstanding principal amount in case of default in repayment of any of the principal instalments.

**6.3.3.** It is further contended that Union Motors had also executed a **Deed of Guarantee** dated April 27, 2021 (**Annexed at Page 136-143 being Annexure “A-28”**) in favour of the Financial Creditor No. 2, wherein, the Corporate Debtor was one of the guarantors, where, the Corporate Debtor stood as a guarantor for Union Motors in the loan transaction with Financial Creditor No. 2.

**6.3.4.** The Ld. Counsel for the Petitioners would further contend that Union Motors had issued a **Demand Promissory Note**, dated April 27, 2021 (**Annexed at Page 144 being Annexure “A-29”**) to the Financial Creditor No. 2 amounting to Rs. 60 Lakh and also executed a Letter of Continuity dated April 27, 2021 (**Annexed at Page 145 being Annexure “A-30”**) in favour of the Financial Creditor No. 2 ensuring that the intention of Union Motors of catering to the security



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

Company Petition No. C.P. (IB)/278(KB)2022

including the demand promissory note, which shall be continuing at all times, for the due payment of loan facility.

**6.3.5.** Further to contend that the Union Motors availed of the said loan in two separate disbursements by the Financial Creditors No. 2 in terms of the said loan agreement, tabulated as: -

<b>SN</b>	<b>Amount Disbursed through cheque</b>	<b>Date of Disbursement</b>
<b>1.</b>	34,20,171/-	27/04/2021
<b>2.</b>	24,42,979/-	28/04/2021
<b>3.</b>	1,36,850/- (Interest deducted from disbursement)	
<b>Total = 60,00,000/-</b>		

The said loan amount of **Rs. 60,00,000/-** was disbursed through the Cheque. Bank statements of the Financial Creditor No. 2 evincing such facts is **annexed at page 66-67 being Annexure “A-10”**.

**6.3.6.** It is further stated that the Corporate Debtor made a re-payment of the said loan along with interest of Rs. 36,33,267/-. Bank Statements of the Financial Creditor, evincing the facts is **annexed at Page 111-124 being Annexure “A-24”**. The Statement of Accounts, prepared by the Financial Creditor is also **annexed at Page 68-69, being Annexure “A-11”**. The ledger account statement of the Corporate Debtor maintained by the Financial Creditor is **annexed at Page 146-148, being Annexure “A-31”**. Corporate Debtor paid the interest in respect of the said loans for which the Corporate Debtor deducted TDS, **annexed at Page 149-155 being Annexure “A-32”**.

**6.3.7.** Further, the Ld. Counsel for the Financial Creditor No. 2 has alleged that the Corporate Debtor started defaulting on and from April 1<sup>st</sup>,



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

Company Petition No. C.P. (IB)/278(KB)2022

2022 and the Corporate Debtor failed and/or neglected to pay the said loan amount of **Rs. 73,15,327/-** along with interest thereon.

**6.3.8.** The Ld. Counsel for the Financial Creditor would contend that by the Demand notice dated May 13, 2022, and August 01, 2022, the Financial Creditor No. 2 recalled the entire loan catered to by the Financial Creditor No. 2 to the Union Motors, wherein the Corporate Debtor stood as guarantor, thereby demanding the aggregated sum of Rs. 73,15,327/- together with the interest thereon, **annexed at Page 165-166, being Annexure “A-34”**.

**6.4.** The Ld. Counsel for the Financial Creditor during the argument has referred to the judgment held 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': On such application being filed with the compliance required Under Sub-section (1) to (3) of Section 7 of IB Code, a duty is cast on the Adjudicating Authority to ascertain the existence of a default if shown from the records or on the basis of other evidence furnished by the financial creditor, as contemplated Under Sub-section (4) to Section 7 of IB Code.”*

**6.5.** Further, the Ld. Counsel at the hearing would also refer to the judgment ***Innoventive Industries Ltd. v. ICICI Bank*** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017 (Para 27, 18, 29 and 30)**.

**6.6.** The Ld. Counsel for the Petitioners has contended that there exists debt due to the Financial Creditors, that a default had occurred wherein the debt is due by the Corporate Debtor to the Financial Creditor, and thus, two



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

Company Petition No. C.P. (IB)/278(KB)2022

Financial Creditors could jointly file an application under Section 7 of the I&B Code, 2016 against the same Corporate Debtor.

- 6.7.** The Ld. Counsel for the Petitioners accordingly prays that the instant petition under Section 7 of the I&B Code, 2016 be allowed by this Hon'ble Bench and the Corporate Debtor be admitted in Corporate Insolvency Resolution Process (CIRP) by appointing an Interim Resolution Professional and moratorium may be declared against the Corporate Debtor.
- 6.8.** The Ld. Counsel has further proposed the name of **Mr. Birendra Kumar Tripathi (Registration no.: IBBI/IPA-003/IPA-ICAI-N-00229/2019-2020/12679)**, Address: 60/2/1 Haripadda Dutta Lane, Golf View Apartment, Flat No. 7, 3<sup>rd</sup> Floor, Kolkata, West Bengal, Pin Code: 700033, Email ID: [bkt9000@gmail.com](mailto:bkt9000@gmail.com), for appointing as the **Interim Resolution Professional (IRP)**.
- 7.** It is evident that despite service of notice, the Corporate Debtor has failed to appear and accordingly, the Corporate Debtor is declared *ex-parte* for non-prosecution, by an **Order dated March 30, 2023** passed by this Bench.
- 8. Analysis and Findings:**
- 8.1.** We have heard the submission made by the Ld. Counsel appeared for the Financial Creditors (Petitioners) and perused the evidence placed.
- 8.2.** It is evident from the annexure appended to the pleadings that the instant Petition under Section 7 of the I&B Code, 2016 has been instituted solely on the basis of the distinct transactions made by the Financial Debtor for providing the financial accommodation and/or loan to the Corporate Debtor, whereby;
- 8.2.1.** A loan agreement was made and executed on February 24, 2021 between "**Hi-tech Designs Pvt Ltd**" (Financial Creditor No. 1) and "**Sri Sai Car Sales Private Limited**" (Corporate Debtor) of Rs.



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

Company Petition No. C.P. (IB)/278(KB)2022

**One Crore** for a period of 125 days carrying interest at rate **16% per annum** with additional **2%** as **penal interest** in case of delay in payment of interest or repayment of principal outstanding. Further, the Corporate Debtor No. 1 had executed the Deed of Guarantee and given a Demand Promissory Note along with a Letter of Continuity on February 24, 2021 for ensuring the repayment of the said loan with agreed interest rate. As the said agreement, by a Letter dated February 25, 2021 the Financial Creditor No. 1 had disbursed the said Loan amount of Rs. One Crore and transferred the same to the bank of Corporate Debtor No. 1 on February 25, 2021, and,

**8.2.2.** A loan agreement was made and executed on April 27, 2021 between the “**S. K. Finserve Private Limited**” (**Financial Creditor No. 2**) and “**Union Motors**”. The said loan amount was **Rs. Sixty Lakh** for a period of 11 months, carrying interest at rate of **18.5% P.A. with penal interest at rate 4% P.A.** applicable on the entire outstanding principal amount in case of default in repayment of any of the principal instalments. “**Sri Sai Cars Sales Private Limited**”, the Corporate Debtor, had provided **corporate guarantee** in favour of the Financial Creditor No. 2, to secure the dues of Union Motors. Union Motors had executed the Deed of Guarantee and also issued a Demand promissory Note on April 27, 2021 in favour of the Financial Creditor No. 2 ensuring that the intention of Union Motors of catering to the security including the demand promissory note, which shall be continuing at all times, for the due payment of loan facility. Accordingly, the Financial Creditor No. 2 disbursed the loan amount of Rs. 60 Lakh in two distinct disbursements to the Union Motors.

**8.3.** There is no denial of the fact as alleged by the Financial Creditor No. 1 that the Corporate Debtor started defaulting in re-payment on and from **April**



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

Company Petition No. C.P. (IB)/278(KB)2022

**01, 2022** and the Corporate Debtor has failed and/or neglected to pay against the loan amount of **Rs. 87,17,049/-** along with interest that is disbursed to the Corporate Debtor.

**8.4.** Further, there is no denial of the fact that the Corporate Debtor started defaulting on and from April 1<sup>st</sup>, 2022 and the Corporate Debtor failed and/or neglected to pay the said loan amount of **Rs. 73,15,327/-** disbursed by the Financial Creditor No. 2 to “Union Motors” (along with interest thereon).

**8.5.** The combined balance in respect of the amount owed to the **Financial Creditor No. 1** is Rs. **87,17,049/-** along with the amount owed to the **Financial Creditor No. 2** is **73,15,327/-** makes the **Total Debt** of the Corporate Debtor towards the Financial Creditors combined to Rs. **1,60,32,376/-** together with the interest, tabulated as: -

SN	DEBT (DEFAULTED) GRANTED	DEBT GIVEN BY	AMOUNT CLAIMED TO BE IN DEFAULT
1.	1,00,00,000/-	<b>“Hi-tech Designs Pvt Ltd” (Financial Creditor No. 1)</b>	87,17,049/-
2.	60,00,000/-	<b>“S. K. Finserve Private Limited” (Financial Creditor No. 2)</b>	73,15,327/-
<b>Total Amount Claimed to be in Default</b>			<b>1,60,32,376/-</b>

It is evident that the **individual** financial debts in default of the Corporate Debtor towards the respective Financial Creditors does not cross the threshold limit of Rs. One Crore (the minimum amount of default to initiate CIRP under I&B Code, 2016), as decided by the Central government vide Press Release dated March 24, 2020. However, the Total Debt amount claimed to be in default jointly reach the threshold financial limit of Rs. One Crore. We rely on the judgment laid down in the case of *Vishnu Oil*



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

Company Petition No. C.P. (IB)/278(KB)2022

*Mill Private Ltd. v. Union of India*, reported in **MANU/RH/1250/2022: 2022 (4) RLW 3184 (Raj.)**, that:

*“11. Having considered the entirety of the facts and circumstances as available on record and after appreciating the arguments advanced at bar, we are of the firm view that the statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated 05.06.2020, admits no other interpretation except that a group of financial creditors can converge and join hands to touch the financial limit of Rs. 1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC.”*

**(Emphasised Added)**

- 8.6.** It further appears that the demand notices dated 10/01/2022, 01/02/2022, 13/05/2022 and 22/07/2022 were issued by the Financial Creditor No. 1 to Corporate Debtor and the demand notices dated 13/05/2022 and 01/08/2022 were issued by the Financial Creditor No. 2 to the Corporate Debtor, for the repayment of the aforesaid loans.
- 8.7.** The Ld. Counsel for the Petitioners further argues that the Petition under Section 7 of the I&B Code, 2016 is filed within the period of limitation since date of default is **April 30, 2021**.
- 8.8. Judicial Precedents:**

**8.8.1.** In the case of *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': On such application being filed with the compliance required Under Sub-section (1) to (3) of Section 7 of IB Code, a duty is cast on the Adjudicating Authority to ascertain the existence of a default if shown*



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

Company Petition No. C.P. (IB)/278(KB)2022

*from the records or on the basis of other evidence furnished by the financial creditor, as contemplated Under Sub-section (4) to Section 7 of IB Code.”*

**(Emphasis added)**

**8.8.2.** Further, it is observed in the case of *Lepakshi Knowledge Hub Pvt. Ltd. v. Global Emerging Markets India Ltd.* reported in **MANU/NL/0505/2022** that:

*“48. To be noted, that with a view to fulfil the requirement of Section 5 (8) of the I & B Code, 2016, the financial transaction ought to be in the nature of 'Debt'. An existing obligation to pay a sum of money is the sine qua non of a 'Financial Debt'. A sum of money which is certainly and, in all eventualities, payable is a 'Debt' without regard to the fact whether it is payable now or at a future date.”*

**(Emphasis added)**

**8.8.3.** Moreover, 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** laid down that

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.’*

*“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, in which case it may give notice to the applicant to*



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

Company Petition No. C.P. (IB)/278(KB)2022

*rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”*

**(Emphasis added)**

**8.8.4.** Further it is evident that “**Union Motors**” is a partnership firm, and “**Sri Sai Cars Sales Private Limited**”, the Corporate Debtor, had provided corporate guarantee in favour of the Financial Creditor No. 2, to secure the dues of Union Motors, and as Union Motors is a non-corporate entity, the Petition filed under Section 7 of I&B Code, 2016 by the Financial Creditor No. 2 is maintainable against the Corporate Debtor. We rely upon the decision in the case of *K. Paramasivam v. The Karur Vysya Bank Ltd.* **2022 SCC Online SC 1163: MANU/SC/1108/2022**, that:

*“13. Under Section 7 of the IBC, CIRP can be initiated against a corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. **The guarantor is then, the Corporate Debtor.**”*

**(Emphasised Added)**

**8.9.** It is evident that despite intimations galore, the respondent has failed to make his/her appearance before this Bench on any single date. At this juncture, it would be appropriate to go through **Rule 110** of the **NCLT Rules, 2016**, which are reproduced in verbatim as below: -

*“110. Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition ex-parte and pass final order on merits:’*

*“Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.”*



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

Company Petition No. C.P. (IB)/278(KB)2022

Hence, the Corporate Debtor was set *ex-parte* and the hearing proceeded.

9. In the light of the facts stated in the petition and the evidence placed on record and the discussion hereinabove, we have no hesitation in admitting the petition.

Hence, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the corporate debtor by the following **Orders**:

- i. The Petition filed by the **HI-TECH DESIGNS PVT LTD**, Financial Creditor No. 1/ Petitioner No. 1) and **S. K. FINSERVE PRIVATE LIMITED**, (Financial Creditor No. 2/ Petitioner No. 2) under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **SRI SAI CAR SALES PRIVATE LIMITED** (Corporate Debtor).
- ii. Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- iii. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional (IRP) shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:
  - 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;



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

Company Petition No. C.P. (IB)/278(KB)2022

- 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.
- v. 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.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii. Provided that where at any time during the Corporate Insolvency Resolution Process period. if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an Order for Liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix. Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
- x. As per proposal given by the Financial Creditors, **Mr. Birendra Kumar Tripathi (Registration no.: IBBI/IPA-003/IPA-ICAI-N-00229/2019-2020/12679)**, Address: 60/2/1 Haripadda Dutta Lane, Golf View Apartment, Flat No. 7, 3<sup>rd</sup> Floor, Kolkata, West Bengal, Pin Code: 700033, Email ID: [bkt9000@gmail.com](mailto:bkt9000@gmail.com), for appointing as the IRP, is appointed as the **Interim Resolution Professional** for ascertaining the particulars of



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

Company Petition No. C.P. (IB)/278(KB)2022

Creditors and convening a Committee of Creditors for evolving a Resolution Plan.

- xi.** The Financial Creditors 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.
  - xii.** The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- 10.** The Registry is hereby directed to communicate the Order to the Corporate Debtor, and to the Interim Resolution Professional by Speed Post and also by e-mail.
  - 11.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
  - 12.** Post the matter on **16/08/2023** for Progress Report.

**Sd/-  
Balraj Joshi  
Member (Technical)**

**Sd/-  
Bidisha Banerjee  
Member (Judicial)**

**This Order Signed on the 12th Day of July, 2023**

Bose, R. K. [LRA]