

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 93/7/JPR/2024

(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)

MEMO OF PARTIES

OMKARA ASSETS RECONSTRUCTION PVT. LTD.

R/o: No. 9, M. P. Nagar, First Street,
Kongu Nagar Extension, Tirpur, Tamil
Nadu- 641607

Also At:

Corporate Office at Kohinoor Square, 47th
Floor, N.C. Kelkar Marg, R.G. Gadkari
chowk, Dadar (West), Mumbai- 400028

...Financial Creditor/ Petitioner

VERSUS

SHRINATHJI BUSINESS VENTURE PVT. LTD.

171, Officer Campus Extn., Sirsi
Road, Jaipur- 302012 (Rajasthan)

...Corporate Debtor/ Respondent

For Financial Creditor : Ayush J Rajani, Adv.

Mitali Bhatt, Adv.

For Corporate Debtor : Prakul Khurana, Adv.

Gaurav Asati, Adv.

Nilimesh Sen, Adv.

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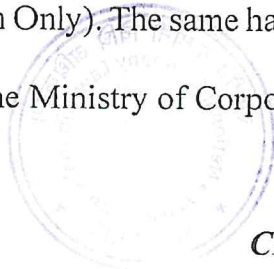
(Signature)
Assistant Registrar
National Company Law Tribunal
Jaipur

Order Pronounced On: 22.01.2025

ORDER

Per: Shri Deep Chand Joshi, Judicial Member

1. The Company Petition bearing *CP No. (IB)- 93/7/JPR/2024* has been filed by *Omkara Assets Reconstruction Private Limited* ('Financial Creditor'/ 'Petitioner') against the Corporate Debtor, namely, *M/s Shrinathji Business Ventures Private Limited* ('Corporate Debtor') under section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor on account of default in repayment of the outstanding loan amount.
2. The Corporate Debtor is a Private Limited Company incorporated on 03.12.2011 and duly registered with the Registrar of Companies, Jaipur, having Identification No. *U45201RJ2011PTC037227*. The registered office of the Corporate Debtor is situated at 171, Officer Campus Extn., Sirsi Road, Jaipur- 302012 (Rajasthan). The authorized share capital of the Corporate Debtor is Rs. 3,01,00,000/- (Rupees Three Crore One Lakh Only) and the paid-up share capital is Rs. 2,71,00,000/- (Rupees Two Crore Seventy- One Lakh Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.



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3. The details of the transactions leading to the filing of the Company Petition bearing *CP No. (IB)- 93/7/JPR/2024* as averred by the Financial Creditor are as follows:

3.1. The Corporate Debtor had obtained a loan of Rs. 11,00,00,000/- (Rs. Eleven Crores Only) from *Dewan Housing Finance Corporation Limited* ('DHFL') vide Sanction letter No. *DHFL/2014-15/PF/SN/VI/914* dated 25.09.2014. As per the sanction letter, the Corporate Debtor was required to pay the said loan in 36 equated monthly instalments commencing after 24 months from the date of disbursement and the interest was payable on the 1st day of every month. DHFL had disbursed the Loan amount of Rs. 9,50,00,000/- (Rs. Nine Crore Fifty Lakhs Only) in various tranches as requested by the Corporate Debtor.

3.2. The Corporate Debtor defaulted in repayment of the said loan as per the repayment schedule mentioned in the sanction letter. Consequently, the loan account of the Corporate Debtor was classified as NPA by DHFL on 06.12.2016.

3.3. On 15.11.2016, DHFL issued a recall notice to the Corporate Debtor seeking repayment of the outstanding amount together with accrued interests, costs, applicable charges, incidental expenses and other non-compliance charges within 7 days of receipt of notice. Further, DHFL

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issued a notice dated 08.12.2016 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor to repay the debts within 60 days of receipt of the said notice. DHFL has also published a demand notice under Section 13(2) of the SARFAESI Act, 2002 in newspaper on 20.12.2016.

3.4. In the meantime, the CIRP was initiated against DHFL *vide* Order dated 03.12.2019 in the matter of *Reserve Bank of India vs. DHFL CP No. 4258/MB/C-II/2019*. Subsequently, *vide* Order dated 07.06.2021, the Resolution Plan submitted by the Successful Resolution Applicant ('SRA') i.e., *Piramal Capital & Housing Finance Limited* was allowed and the SRA took over the entire management of DHFL.

3.5. Further, an Assignment Agreement dated 10.01.2023 was executed between *Piramal Capital & Housing Finance Limited* and the Petitioner herein. As per the Assignment Agreement, the loans disbursed under the financing documents together with all the rights, title and interest in the Financing documents and any underlying security interests, pledges and/ or guarantees in respect of such loans were assigned in favour of the Financial Creditor including the loan granted by DHFL to the Corporate Debtor.

3.6. In the interregnum, the CIRP against the Corporate Debtor was initiated by this Adjudicating Authority *vide* Order dated 23.12.2021 under



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Section 7 of the Code in *CP No. 161/7/JPR/2020*. In the said CIRP, a claim of Rs. 29,59,67,506/- (Rs. Twenty- Nine Crores Fifty- Nine Lakhs Sixty- Seven Thousand Five Hundred and Six Only) qua the aforementioned debt was submitted before the Resolution Professional and the same was admitted by the Resolution Professional.

3.7. Thereafter, during the course of CIRP process of the Corporate Debtor, the locus of the homebuyers was challenged as they were fraudulently depicted as homebuyers while in fact, they were employees of the suspended management. Hence, on objections raised by the office of ED, this Adjudicating Authority *vide* Order dated 29.07.2024 quashed the CIRP Process and also issued notice under Section 65 of the Code against the Petitioners who portrayed themselves as home buyers.

3.8. The Corporate Debtor undisputedly committed defaults in repayment of the said loan facilities. The Corporate Debtor failed and neglected to pay the overdue amount. The total amount of debt due and payable by the Corporate Debtor as on 31.08.2024 is Rs. 44,63,37,321/- (Rs. Forty-Four Crores Sixty-Three Lakhs Thirty-Seven Thousand Three Hundred and Twenty-One only).

3.9. It was submitted that since prior CIRP against the Corporate Debtor commenced *vide* Order dated 23.12.2021, there was a moratorium in place and hence the entire period ought to be excluded. Further, it has

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been submitted that the period from 15.03.2020 till 28.02.2022 also needs to be excluded in view of COVID-19 pandemic and the Suo Moto Order dated 10.01.2022 passed by the Hon'ble Supreme Court of India. Since the Corporate Debtor defaulted in repayment of the said loan facilities, the present Application has been filed under Section 7 of the Code to initiate CIRP against the Corporate Debtor.

3.10 It was contended that as on date, the outstanding amount in default is Rs. 44,63,37,321/- (Rs. Forty- Four Crores Sixty- Three Lakhs Thirty- Seven Thousand Three Hundred and Twenty- One only). The relevant details as enumerated under Part IV of the instant Application are reproduced hereunder:

Part IV

PARTICULARS OF FINANCIAL DEBT

1.	<i>Total Amount of debt granted Date(s) of disbursement</i>	<u>Amount of Debt as on 31.08.2024:</u>	
		<i>Particular</i>	<i>Amount in INR</i>
		<i>Principal</i>	9,66,32,393
		<i>Interest @ 21% p.a. with monthly rests</i>	10,34,26,763
		<i>Penal Interest @ 30% p.a. payable in advance with monthly rests</i>	24,62,78,165

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		<p><i>in case of occurrence of Events of default</i></p> <table border="1"> <tr> <td>Total</td> <td>44,63,37,321</td> </tr> </table> <p><i>Details of disbursement are as under:</i></p> <table border="1"> <thead> <tr> <th><i>Date of disbursement</i></th> <th><i>Amount</i></th> </tr> </thead> <tbody> <tr> <td>30.09.2014</td> <td>7,50,00,000/-</td> </tr> <tr> <td>07.11.2014</td> <td>1,00,00,000/-</td> </tr> <tr> <td>10.12.2024</td> <td>1,00,00,000/-</td> </tr> <tr> <td>Total</td> <td>9,50,00,000</td> </tr> </tbody> </table>	Total	44,63,37,321	<i>Date of disbursement</i>	<i>Amount</i>	30.09.2014	7,50,00,000/-	07.11.2014	1,00,00,000/-	10.12.2024	1,00,00,000/-	Total	9,50,00,000
Total	44,63,37,321													
<i>Date of disbursement</i>	<i>Amount</i>													
30.09.2014	7,50,00,000/-													
07.11.2014	1,00,00,000/-													
10.12.2024	1,00,00,000/-													
Total	9,50,00,000													
2.	<p><i>Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and days of default in Tabular Form)</i></p>	<p><u>Amount of Debt as on 31.08.2024:</u></p> <table border="1"> <thead> <tr> <th><i>Particular</i></th> <th><i>Amount in INR</i></th> </tr> </thead> <tbody> <tr> <td><i>Principal</i></td> <td>9,66,32,393</td> </tr> <tr> <td><i>Interest @ 21% p.a. with monthly rests</i></td> <td>10,34,26,763</td> </tr> <tr> <td><i>Penal Interest @ 30% p.a. payable in advance with monthly rests in case of occurrence of Events of default</i></td> <td>24,62,78,165</td> </tr> <tr> <td>Total</td> <td>44,63,37,321</td> </tr> </tbody> </table> <p><u>Date on which Default occurred:</u> 29.07.2024</p>	<i>Particular</i>	<i>Amount in INR</i>	<i>Principal</i>	9,66,32,393	<i>Interest @ 21% p.a. with monthly rests</i>	10,34,26,763	<i>Penal Interest @ 30% p.a. payable in advance with monthly rests in case of occurrence of Events of default</i>	24,62,78,165	Total	44,63,37,321		
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4. The Corporate Debtor *vide* diary No. 87/2025 dated 08.01.2025 has filed Reply to the Petition filed by the Financial Creditor and contended the following:

4.1. It has been submitted that the instant Application is barred by limitation. It was contended that the cause of action i.e., right to sue arose on the date of default i.e. 06.12.2016, thus the limitation period of 3 years has expired on 05.12.2019. Hence, this Application is time barred and therefore the same is liable to be rejected.

4.2. It was contended that to mislead this Adjudicating Authority, the Petitioner under Part IV has mentioned two separate dates of default i.e., 06.12.2016 and 29.07.2024, which is otherwise not permissible within the scheme of IBC. It was submitted that 06.12.2016 is the actual date of default whereas 29.07.2024 is the date on which this Adjudicating Authority had dismissed the previously filed Section 7 Petition against the Corporate Debtor bearing *CP (IB) No. 161/JPR/2020*. As per Section 238A of the IBC, the period of limitation for filing a Section 7 Application starts from the date of default i.e., 06.12.2016, which came to an end on 05.12.2019. Therefore, the present Section 7 Application which has been filed by the Petitioner in September 2024 is sheerly barred by the law of limitation.

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- 4.3. It was submitted that in so far as the assignment of the loan to the Petitioner is concerned, the same was done on 10.01.2023 which was after the expiry of the 3-year limitation period, thus, the assignment of loan to the Petitioner would not give a fresh life to an already time barred debt. Similarly, the Petitioner cannot take recourse of Hon'ble Supreme Court's Suo Moto Order as the same pertains to the period between 15.03.2020 to 28.02.2022 while the limitation in the instant case had already expired on 05.12.2019.
- 4.4. The Respondent further contended that the initiation of CIRP against DHFL by Hon'ble NCLT Mumbai *vide* Order dated 03.12.2019 has no bearing upon the instant case. Hence, initiation of CIRP of DHFL is an independent and separate legal proceeding and therefore, it would not extend the period of limitation for the Petitioner to file present application.
- 4.5. The Petitioner further seeks exclusion of time from 23.12.2021 i.e., the date on which this Adjudicating Authority had previously initiated CIRP of the same corporate debtor in another *CP (IB) No. 161/JPR/2020* and the moratorium was implemented. It has been mentioned that CIRP of Corporate Debtor under *CP (IB) No. 161/JPR/2020* was initiated *vide* order dated 23.12.2021 and after lapse of three years the Petitioner on 23.02.2024 filed its claim before the

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Resolution Professional. Evidently, the said claim was filed after expiry of limitation and as such the said claim itself was liable to be rejected. Moreover, the Hon'ble NCLAT is seized of the matter in an appeal bearing *CA (AT) (Ins) No. 1785 of 2024* wherein a stay order dated 16.10.2024 has already been passed. Therefore, present application should not be admitted.

- 4.6. The Petitioner in present case has allegedly claimed an exorbitant amount as outstanding financial debt along with interest and penal interest @ 30%. It is evident that the Petitioner has filed the present application with ulterior motive to recover & recover money out of CIRP of the Corporate Debtor and thus exaggerated financial debt has been claimed. In this regard, it is submitted that the legislative intent behind implementation of IBC is to resolve state of insolvency of the Corporate Debtor and not to allow recovery proceedings. Further, the same is no longer res-integra.
5. The Petitioner has filed its Written Submissions wherein it is submitted that the default occurred on 06.12.2016. Further, a statutory notice under Section 13(2) of the SARFAESI was issued to the Corporate Debtor on 08.12.2016. In the meantime, on 03.12.2019, CIRP was initiated against DHFL and the Resolution Plan filed by *Piramal Capital & Housing Finance Limited* was approved *vide* Order dated 07.06.2021. Subsequently, the loan was assigned



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to *Omkara Assets Reconstruction Pvt. Ltd.* Further, in support of its arguments the Petitioner has placed reliance upon the judgment of the Hon'ble Apex Court in the case of *New Delhi Municipal Council vs. Minosha India Limited*.

6. It was submitted by the learned counsel for the Petitioner that the Respondent had wrongly contended that the right to sue expired on 05.12.2019. In support of its arguments, the Petitioner placed reliance upon Section 60(6) of IBC. For ready reference Section 60(6) is reproduced hereunder:

“..60(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.”
...[emphasis supplied]

7. We have heard the learned counsels for the parties and have perused the Application, Reply, Written Submissions and the documents enclosed therewith. The moot question of law that arises in the instant application is whether the application has been filed within the prescribed limitation period or not.
8. In order to adjudicate upon the issue of limitation in background of the facts of the instant case it is pertinent to refer to the Judgment of the Hon'ble Supreme Court in the case of *New Delhi Municipal Council vs. Minosha India Limited* reported in [2022] 8 SCC 384 wherein it has been held that:

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"31. Under the IBC, by virtue of the order admitting the application, be it under Sections 7, 9 or 10, and imposing moratorium, proceedings as are contemplated in Section 14 would be tabooed. This undoubtedly does not include an application under Section 11(6) of the 1996 Act by the corporate debtor or for that matter, any other proceeding by the corporate debtor against another party. At least there is no express exclusion of the jurisdiction of the Court or authorities to entertain any such proceeding at the hands of the corporate debtor. However, we must not be oblivious to the other provisions as well. Under Section 17, the management of the affairs of the corporate debtor is taken over by the interim resolution professional. The powers of the Board of Directors or the partners of the corporate debtor shall stand suspended and it would be exercised by the interim resolution professional. When the authority changes hands from the interim resolution professional to the resolution professional, the previous management continues to be excluded. The Committee of Creditors comes into being. Under the supervision, "as it were", of the Committee of Creditors, all the matters are proceeded with. The resolution plans are received by the resolution professional and the resolution plan which is finally approved by the Committee of Creditors and still further at the hands of the adjudicating authority, would result in the curtains being wrung down on the moratorium under Section 31(3). During this entire period, what is noteworthy is that while in law and in form, the corporate debtor continues to exist and represented by the interim resolution professional to begin with and the resolution professional thereafter, the erstwhile management of the corporate debtor is displaced. When the resolution plan is approved, a new management takes over. All this is contemplated when the CIRP is successful. Undoubtedly, if it is unsuccessful, the corporate debtor slips into liquidation. Therefore, on the one hand, an application under Sections 7, 9 or 10, does bring in a period which is intended to bring a corporate debtor back to life if possible, "a period of calm", in the words of the respondent. But this is a period during which the management of the corporate debtor is displaced, ironically, a period of turbulent churning. While it may be true that proceedings by the corporate debtor through the resolution professional are contemplated, it is not impossible to contemplate that the resolution professional for whatever reason it may be, does not discharge his



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duties and conduct proceedings in all matters as he should. We are noting this as this can be the rationale for the law giver excluding the period of limitation in regard to suits or applications at the instance of the corporate debtor under Section 60(6).

32. As far as understanding the meaning of Section 60(6) is concerned, there cannot be a slightest doubt that the period of Moratorium is excluded even in the case of a suit or application brought by a corporate debtor viz. in regard to the period of the moratorium. It is true that on the one hand what is taboed in Section 14 when a Moratorium is put into place is inter alia the institution of suits or continuance of pending suits or proceedings against the corporate debtor including proceeding in execution of inter alia, the decree or order of an arbitration panel. So, also the provision prohibits 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. Still further, the recovery of any property by an owner or lessor in the occupation of the corporate debtor is forbidden. These provisions do not in any manner appear to stand in the way of the corporate debtor instituting or proceeding with a suit or a proceeding against others. Section 60(6) on the other hand excludes the period during which the Moratorium under Section 14 is in place in computing the period of limitation. An ambiguity is introduced, namely the need to exclude the period of limitation for a suit or an application, at the instance of the corporate debtor when a Moratorium ushered in by an order under Section 14 does not pose any bar against a suit or an application at the instance of the corporate debtor. The words for which an order of Moratorium has been made under this part is intended to be the point of reference or the premise for the exclusion of the time for the purpose of computing the period of limitation. Besides being the point of reference and being the sine qua non for applying Section 60(6), it also specifies the period of time which will be excluded in computing of the period of limitation. In other words, present an order of Moratorium under Section 14, the entire period of the Moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor."

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9. Thus, it transpires that by virtue of Section 60(6) for computing limitation for any suit or application by or against the Corporate Debtor the period during which the company was placed under moratorium shall be excluded.
10. In the instant case, it is clear that the default was committed by the Corporate Debtor on 06.12.2016. Subsequently, DHFL went under CIRP on 03.12.2019. Hence by virtue of Section 60(6) of IBC, DHFL was unable to file any suit or proceeding against the third person. Thereafter, *vide* Order dated 07.06.2021, the Resolution Plan was approved by Hon'ble NCLT Mumbai Bench in which *Piramal Capital & Housing Finance Limited* emerged as the Successful Resolution Applicant. Thus, the aforementioned period till which DHFL was under CIRP i.e., 03.12.2019-07.06.2021 has to be excluded while computing the limitation by virtue of Section 60(6) in the instant case.
11. Thus, if the limitation period of three years is to be calculated from the date of default i.e., 06.12.2016, the same would have expired on 05.12.2019. However, in the instant case, as recorded above, the time period ranging between 03.12.2019-07.06.2021 has been excluded by virtue of Section 60(6) of the Act. At this juncture, it is imperative to take note of the Judgment of the Hon'ble Apex Court in the case of *Re: Cognizance for extension of Limitation [Suo Moto Writ Petition (C) No. 3 of 2020, Order dated 10th January, 2022]* wherein the Hon'ble Court has directed that the time period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of



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limitation. Moreover, in the said Judgment it was further directed that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

12. Thus, it transpires that even if the limitation period resumed after the approval of the Resolution Plan of the DHFL i.e., on 07.06.2021, the Applicant herein would have a limitation period of 90 days from 01.03.2022 as per the directions of the Hon'ble Supreme Court.
13. Further, in the meantime, the present Respondent/ Corporate Debtor i.e. *M/s Shrinathji Business Ventures Pvt. Ltd.* underwent CIRP on 23.12.2021 in a separate petition bearing No. 161/7/JPR/2020. In the meantime, a deed of assignment was entered between *Piramal Capital and Housing Finance Limited* ('Assignor') and *Omkara ARC* ('Assignee/ present financial creditor/ petitioner'). However, on 29.07.2024 the CIRP proceedings against *Shrinathji Business Ventures Pvt. Ltd.* were quashed by this Adjudicating Authority. Thus, during the pendency of the aforementioned Petition, the Petitioner herein could not have filed another CIRP application against the same Corporate Debtor. Further, we cannot lose sight of the fact that the claim filed by the Petitioner was admitted against the Corporate Debtor in the aforementioned proceedings. Moreover, in light of Section 60(6) the

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aforementioned period during which the Corporate Debtor was under CIRP while computing the limitation period.

14. Thus, the period of earlier CIRP of the Corporate Debtor i.e., from 23.12.2021-29.07.2024, has to be excluded. Therefore, the Applicant's limitation period of 90 days by virtue of Sua Moto's Order which would have started on 01.03.2022 will become available to the Applicant from 29.07.2024.
15. The instant Petition has been filed on 23.09.2024 which is within 90 days of 29.07.2024. Therefore, we are of the opinion that in background of the facts of the instant case, the present Petition has been filed within the prescribed period of limitation. A brief summary of list of dates evincing that the instant Application has been filed within limitation is provided hereunder: -

Date	Events
06.12.2016	The Loan A/c of the Corporate Debtor was declared as an NPA by DHFL. Thus, technically the period of limitation would have expired on 06.12.2019 in ordinary circumstances. However, in the instant case, the CIRP of the DHFL was initiated in the meantime and the said period is excluded from the computation of limitation period as per Section 60(6).
03.12.2019- 07.06.2021	The CIRP of DHFL was initiated by Hon'ble NCLT Mumbai Bench vide its Order dated 03.12.2019. Resolution Plan submitted by M/s Piramal Capital and Housing Finance Ltd was approved in the CIRP of DHFL by Hon'ble NCLT Mumbai Bench.

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15.03.2020-28.02.2022	<p>Period discounted by Hon'ble Apex Court in the case of Suo Moto (Supra) for the purposes of limitation. Further, in cases where limitation was ending in the said period, the Hon'ble Court granted an extension of limitation by 90 days from 01.03.2022.</p> <p>Thus, the Applicant would have 90 days for filing an application from 01.03.2022. However, the CIRP of the Corporate Debtor was initiated on 23.12.2021, thus, the said period deserves to be excluded from computation of limitation. Further, the period of 90 days shall be available to the Applicant from 29.07.2024 i.e., the date of quashing of the CIRP of the Corporate Debtor.</p>
23.12.2021-29.07.2024	<p>The CIRP of the Corporate Debtor was initiated by this Adjudicating Authority vide its Order dated 23.12.2021 in CP(IB) No. 161/7/JPR/2020. This Adjudicating Authority vide its Order quashed the CIRP of the Corporate Debtor in CP(IB) No. 161/7/JPR/2020.</p>
23.09.2024	<p>Date of filing of the instant Application by the Applicant. Since, the Application has been filed within 90 days of the CIRP quashing date i.e., 29.07.2024, the same is within limitation.</p>

16. Before proceeding further, it is incumbent to refer to Section 7 of the Code which clarifies that the Adjudicating Authority upon being satisfied that the default of financial debt has occurred, may order for initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section 7 of the Code are: (i) there has to be a financial debt and; (ii) there must be a default in repayment of the financial debt. Hence, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with

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an application under section 7, the Adjudicating Authority is not required to consider the question of the dispute between the parties as long as the 'debt' and 'default' is proved.

17. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in *M/s Innoventive Industries Ltd. vs. ICICI Bank*, C.A. Nos. 8337-8338 of 2017, wherein it was held that upon being satisfied that a debt is due and default has occurred, the Adjudicating Authority is bound to commit the Corporate Debtor into CIRP. The relevant excerpts from the judgment are as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that 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. 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 rectify the defect within 7 days of receipt of a notice from the adjudicating authority."

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."



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(emphasis added)

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18. Further, the Apex Court in the case of *E S Krishnamurthy & Ors. vs. M/s Bharath Hi Tech Builders Pvt. Ltd.*, Civil Appeal No. 3325 of 2020, dated 14.12.2021, relied upon the judgment of *Innoventive (supra)* and had held as below:

“25. In Innoventive Industries (supra), a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held that the Adjudicating Authority only has to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through

27. The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.”

(emphasis added)

19. Thus, upon conclusion of the fact that the debt has become due and default has been committed in payment of the same to the Creditor, the Adjudicating Authority has no discretion to refuse the admission of the Application for CIRP of the Corporate Debtor. Similarly, when it is found that the debt has not become due and payable, the Application under Section 7 of the Code can be rejected.

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20. The registered office of the Corporate Debtor is located in the State of Rajasthan and therefore the same falls within the jurisdiction of this Adjudicating Authority. In the instant case, there is no dispute that the Corporate Debtor has availed various loan facilities from the Financial Creditor and has defaulted in making the repayment. Further, as adjudicated above the instant Petition has been filed within prescribed period of limitation.
21. In view of the discussion on the proposition of law entailed in the preceding paragraphs and considering the circumstances of the case; we find that the Petition filed under Section 7 of the Code ought to be accepted. In our considered view, the debt and default were adequately demonstrated by the Applicant in the instant case and the same is supported by the records. Further, the default is above the threshold limit of Rs. 1 crore. This is a case where all the pre-requisites for filing a Section 7 stood fulfilled thus the Adjudicating Authority is inclined to admit the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold limit.
22. Under such circumstances, The Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Thus, this Application stands admitted and the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby ordered to be initiated. Since



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the Applicant has proposed the name of the IRP, therefore, we appoint *Mr. Vikas Gopichand Khiyani* having Registration Number IBBI/IPA/-001/IP-P-02738/2022-2023/14194, duly registered with ICAI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

- i) The Resolution Professional proposed by the Applicant is *Mr. Vikas Gopichand Khiyani*, who is an IP registered with ICAI Insolvency Professional Agency having Registration No. *IBBI/IPA/-001/IP-P-02738/2022-2023/14194*. He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.
- ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly

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as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

- iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) as the fees in the account of IRP within three working days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

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23. A Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

24. In the circumstances, *CP No. (IB)- 93/7/JPR/2024* stands admitted.

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DEEP CHANDRA JOSHI
JUDICIAL MEMBER

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VELAMUR G. VENKATA CHALAPATHY,
TECHNICAL MEMBER



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M. Adhvech
Assistant Registrar

National Company Law Tribunal
Jaipur

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