

C.P. (IB) No.128/KB/2025
IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-II

KOLKATA

C.P. (IB) No.128/KB/2025
Date of Order:22.6.2026

In the Matter of:

Alankar Commotrade Pvt Ltd.

A Company registered under the
Companies Act, 1956, having its

Registered Office at:

Hindustan Park, Ground Floor,

Kolkata-700029

Email: accounts@thehariram.com

APPLICANT/FINANCIAL CREDITOR

Versus

Swadeshi Merchants Pvt Ltd,

A Company registered under the
Companies Act, 1956, having its

Registered Office at:

31, Sir Hariram Goenka Street,

Kolkata-700007

Email: vikramkhaitan@yahoo.co.in

CORPORATE DEBTOR

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha K Shah Hon'ble Member(Technical)

Present:

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For the applicant(s): Mr. D. N Sharma Ld. Sr. Advocate
For the respondent.: Ex-parte vide order dated 28.11.2025

ORDER**Labh Singh Member(Judicial)**

1. The applicant, Alankar Commotrade Pvt. Ltd has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "the IBC Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process(for short "CIRP") in respect of respondent Company, Swadeshi Merchants Pvt Ltd.
2. Mr. Inder Kumar Daga Director, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of CIRP process against the respondent under the IBC Code. A copy of the Board Resolution dated 20.12.2024 has been annexed with the present application.
3. The Respondent Company, Swadeshi Merchants Private Limited (hereinafter to be referred as "Corporate Debtor") against whom initiation of CIRP process has been prayed for, was incorporated on 25.02.2009 having its registered office situated at 31, Sir Hariram Goenka Street Kolkata. Since the registered office of the respondent, Corporate Debtor is






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situated at Kolkata; and hence, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP process in respect of respondent, Corporate Debtor under sub-section (1) of Section 60 of the Code.


4. Briefly stated the applicant's case is that the Financial Creditor is engaged in business of development of real estate. During the year 2012, the Corporate Debtor approached the Financial Creditor and represented that it was lessee of an approximately 28 Cotthas of land along with dilapidated structures standing thereon situated at premises no. 1, Alipore Park Place, Kolkata-700027. It was further represented that the Corporate Debtor was the lessee of one Gokul Chand Tapuria HUF under a registered deed of Indenture of Lease dated 03.02.2012.
 - 4.1. The Corporate Debtor represented that it intend to enter into an agreement with the Financial Creditor whereby the Financial Creditor would develop the said property by constructing a new building which according to the Corporate Debtor was allowed under the original Indenture of Lease executed by the Tapuria HUF in favour of the Corporate Debtor.
 - 4.2. It has further been submitted that the Corporate Debtor has assured and promised to the Financial Creditor that it has

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unassailable right and interest in the subject property and there is no impediment in the development of the said property. During negotiation, it transpired that Mr. Arun Kumar Mundra, one of the Directors of the Corporate Debtor, was also brother in law of one Sudarshan Tapuria being one of the coparceners of the lessor. It was then found that the Members of Shyam Sunder Tapuria Family were in occupation of a portion of the subject property of the Corporate Debtor.


4.3. The Corporate Debtor had always assured the Financial Creditor that it would makeover vacant possession of the property for the purpose of development within three months from date of entering into development agreement with the Financial Creditor. It was also assured that No Objection Certificate had been obtained from the owners of the property to enter into a development agreement with the Financial Creditor. Accordingly, the Development Agreement dated 14.02.2012 was executed in respect of the property.

4.4. The Financial Creditor duly paid a sum of Rs. 3.50 crores on signing of the agreement as an interest free deposit and the same was recorded in clause 7(b) of the Development Agreement Annexure-B. The Corporate Debtor represented that the vacant possession of the entire property would be made over to the Developer and sought time to get possession of Tapuria vacant possession of the property. The Financial

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Creditor made payment of security deposit on signing of the Development Agreement.

- 4.5. It is further submitted that on 10.08.2013, the Financial Creditor received a letter from one Real Estate Surveyor and Consultant namely Mr. Narayan Chandra Das that the Corporate Debtor was seeking to deal with the subject property. The Financial Creditor immediately filed an application under Section 9 of the Arbitration and Conciliation Act 1996 for injunction restraining the Corporate Debtor dealing with the subject property. The order of status quo dated 09.09.2013 was passed on the said application. The representative of the Corporate Debtor assured the Financial Creditor that the Corporate Debtor would fulfil all its obligations of the agreement. It was appraised that Mr. Shashikant Tapura was in occupation of the entire building who was assured to vacate the building and hand over vacant possession of the building.
- 4.6. The Corporate Debtor filed its reply in proceedings filed under Arbitration and Conciliation Act 1996 alleging that the agreement has been frustrated and unenforceable against the Corporate Debtor. The Financial Creditor, from the content of reply affidavit, came to know that the Corporate Debtor is proceeding to avoid the development agreement.
- 4.7. Therefore, the Financial Creditor invoked arbitration clause of the agreement vide letter dated 04.07.2019 and sought for

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refund of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakh Only) paid to the Corporate Debtor together with interest. The Corporate Debtor has failed to perform its obligation to hand over vacant possession under the development agreement and as such, the matter was referred to Learned Arbitrator appointed by Hon'ble High Court of Calcutta vide order dated 12.12.2019. Learned Arbitrator passed an award dated 18.10.2023 and held that the Corporate Debtor is not entitled to retain the sum of Rs. 3.50 crore and is liable to refund the said amount to the Financial Creditor forthwith. Learned Arbitrator further held that the Financial Creditor is entitled to interest at the rate of 6% per annum on the entire awarded amount of Rs. 3.50 crore from 14.02.2012 till the date of award.


- 4.8. The arbitral award has attained finality as it was not challenged by the Corporate Debtor and even the limitation period to challenge the award has already expired. Therefore, the arbitral award is binding on the Corporate Debtor. Since the arbitral award has not been satisfied, and hence, it is financial debt and there is default on the part of the Corporate Debtor.
- 4.9. The Corporate Debtor has committed default in payment of Rs. 6,90,47,265/- which includes interest calculated at the rate of 6% per annum from 14.02.2012 to 18.10.2023. Thus, the default has occurred on 19.10.2023.

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4.10. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Sudipta Ghosh, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00484/2017-18/10872 resident of 8, N N Mukharjhee 3rd Lane, Uttarpara, Hooghly-712258 with email-id: Sudipat-ghosh08@yahoo.com. Mr. Sudipta Ghosh has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sudipta Ghosh as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

4.11. The applicant has placed following documents on record to prove its claim:

- i. Board Resolution of Financial Creditor Annexure-‘A’;
- ii. Master Data of Corporate Debtor Annexure-‘A1’;
- iii. Copy of Form-2 of proposed RP Annexure-‘A2’;
- iv. Copy of Development Agreement dated 14.02.2012



Annexure 'B';

- v. Copy of order dated 12.12.2019 Annexure 'C';
- vi. Copy of Arbitral Award dated 18.10.2023 Annexure 'D';
- vii. Details of Computation of total amount due

Annexure-'E';

- viii. Bank Statement of Financial Creditor Annexure A-3.

4.12. The applicant has also placed on record a copy of record of default Form 'C' filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that there is a defaulted amount of Rs. 6,90,47,265/- and date of default is 19.10.2023.

4.13. Therefore, as per part IV of the application, it is claimed that as on 18.10.2023 a sum of Rs. Rs. 6,90,47,265/- is due and payable by the respondent company. Therefore, a prayer has been made to allow the present application and admit the Corporate Debtor in the CIRP process.

4.14. This Tribunal issued notice upon the Corporate Debtor; however, despite due service of notice through email, the Corporate Debtor opted not to appear in the present matter and hence, the present case proceeded ex-parte against the Corporate Debtor vide order dated 28.11.2025.

5. We have gone through the case file carefully and perused the pleadings of the present company petition and documents placed on record by the Financial Creditor and heard the

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arguments put forth by learned Sr. Counsel for the Financial Creditor; and after hearing the learned Sr. Counsel appearing for the Financial Creditor, we shall now proceed to consider the present petition on its merits.

6. It is a settled proposition of law that an application under Section 7 of the IBC Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1,00,00,000/- (Rupees One Crore Only). In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger CIRP Process under the IBC Code is maintainable. The corporate debtor has failed to appear in the matter and show that there is no debt or default in existence so as to avoid the provisions of the IBC Code.
7. In the facts, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that the applicant/ Financial Creditor had availed an amount of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakh Only) from the Financial Creditor. Upon referral of matter to Arbitrator appointed by Hon'ble High Court of Calcutta, Learned Arbitrator passed an award dated 18.10.2023 and held that the Corporate Debtor is not entitled to retain the sum of Rs. 3.50 crore and is liable to refund the said amount to





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the Financial Creditor forthwith. Learned Arbitrator further held that the Financial Creditor is entitled to interest at the rate of 6% per annum on the entire awarded amount of Rs. 3.50 crore from 14.02.2012 till the date of award. Thus, as on 18.10.2023 a sum of Rs. Rs. 6,90,47,265/- is due and payable by the respondent company. The date of default has been established from pleadings and documentary evidence filed with the present application as 19.10.2023.

8. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
9. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
10. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.
11. Mr. Sudipta Ghosh, having registration number IBBI/IPA-001/IP-P00484/2017-18/10872 resident of 8, N N Mukherjee 3rd Lane, Uttarpara, Hooghly-712258 with email-id: Sudipat-ghosh08@yahoo.com is appointed as an Interim Resolution Professional for the corporate debtor.

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12. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
13. We direct the applicant Financial Creditor to deposit a sum of Rs. Three (3) Lakhs with the Interim Resolution Professional namely Mr. Sudipta Ghosh to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
14. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including


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execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18,

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19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West

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Bengal at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

