IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA

I.A. (IB) No. 1920/KB/2023
and
CP (IB) No. 127/KB/2023

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Oarsman Credit Private Limited
[CIN: U51900WB1994PTC066907]

...Financial Creditor

Versus

Ideal Real Estates Private Limited
[CIN: U70101WB1988PTC045347]

...Corporate Debtor

I.A. (IB) No. 1920/KB/2023

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

Ideal Real Estates Private Limited
[CIN: U70101WB1988PTC045347]

... Applicant

Versus

Oarsman Credit Private Limited
[CIN: U51900WB1994PTC066907]

... Respondent

Order pronounced on: 05.04.2024

Coram:

Shri Rohit Kapoor	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

Appearances (through hybrid mode):

For the Financial Creditor	:	1. Mr. Ratnanko Banerji, Senior Advocate 2. Mr. Reetibroto Mitra, Advocate 3. Ms. Urmila Chakrabortym Advocate 4. Mr. Aditya Kanodia, Advocate 5. Ms. Suparna Sardar, Advocate
For the Corporate Debtor	:	1. Mr. Joy Saha, Senior Advocate 2. Mr. Shaunak Mitra, Advocate 3. Mr. Dripto Majumdar, Advocate 4. Mr. Saubhik Chowdhury, Advocate

COMMON ORDER

Per Coram

1. This Court convened through hybrid mode.

2. The Company Petition and I.A are being dealt in a common order as both are interconnected.

Preamble

3. The Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ***("Code")*** by Oarsman Credit Private Limited, represented by Mr. Kamala Shankar Singh, authorized through a Board Resolution dated 26 May 2023[1] seeking to initiate Corporate Insolvency Resolution Process ***("CIRP")*** against Ideal Real Estates Private Limited ***("Corporate Debtor").***

4. I.A. (IB) No. 1920/KB/2023 has been filed by Ideal Real Estates Private Limited against Oarsman Credit Private Limited praying for the following reliefs:

[1] Page 36 of the C.P.

a. *Stay of all further proceedings in C.P. No. 127/KB/2023*

b. *C.P. No. 127/KB/ of 2023 being dismissed was permanently stayed.*

c. *Ad-interim order in terms of prayers above.*

d. *Such further and/or other order or orders be passed, direction or directions be given as to which the Learned tribunal may deem fit and proper.*

5. The Corporate Debtor was incorporated on 07 October 1988, having CIN: U70101WB1988PTC045347. It's registered office is 50 J L Nehru Road, Kolkata- 700071. Therefore, this Bench has jurisdiction to deal with this petition.

C.P. (IB) No. 127/KB/2023

6. The present petition was filed on 13 June 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.7,38,31,923.80/- (Rupees Seven Crore Thirty-Eight Lakh Thirty-One Thousand Nine Hundred Twenty-Three and Eighty Paise) as on 01 June 023. The date of default has been mentioned as 21 September 2022.

Submission of learned Senior Counsel appearing for the Financial Creditor

7. The learned Senior Counsel submitted the Financial Creditor is a NBFC and an amount of Rs.5,00,00,000/- (Rupees Five Crore only) together with interest at 17% p.a. which was revised to 18% p.a. and later to 20%, was disbursed to the Corporate Debtor from 04 May 2013 to 20 May 2013 for a period of 120 days which was extended from time to time. An amount of Rs.1,00,00,000/- was returned to the Financial Creditor.
8. Mr. Banerji submitted that the Financial Creditor along with two other Financial Creditors *viz.* Socrato Capital Private Limited and Aris Capital Private Limited filed a petitioner under section 7 of the Code which was

registered as C.P. (IB) No. 1621/KB/2018, the parties arrived at a settlement and in view of the settlement agreement dated 21 November 2020 and thereby filed I.A. (IB) No. 1499/KB/2020 for withdrawal of the Company Petition which was allowed on 22 January 2021.

9. The Corporate Debor failed to make payment in terms of the settlement agreement hence, the Financial Creditor along with the other two creditors filed an application for restoration which was numbered as Rest. A (IB) No. 08/KB/2021 seeking restoration of C.P. (IB) No. 1621/KB/2018 which was restored by an order dated 09 September 2021.
10. Subsequently, the Corporate Debtor once again entered into a settlement agreement dated 21 January 2022[2], with the Financial Creditor for a sum of Rs.5,67,50,000/- on the account of principle amount along with interest accrued calculated from 01 October 2021.
11. In terms of the settlement, C.P. (IB) No. 1621/KB/2018 was withdrawn on 28 February 2022[3].
12. The Corporate Debtor made payment of Rs.25,00,000/- on 22 December 2022 and Rs.10,00,000/- on 17 April 2023, thereafter, the Corporate Debtor failed to make any payments.
13. Ld. Sr. Counsel Mr. Banerji submitted that the Deed of Settlement records that in the event of default in making payment of any instalment the Financial Creditor will be entitled to initiate legal proceedings including approaching the Adjudicating authority under the Code.
14. The Financial Creditor sent a reminder letter on 09 February 2-23 for repayment of the debt amount. Thereafter, a recall notice was issued on 03 April 2023 demanding a total sum of Rs.7,26,51,045.93, no reply was received from the Corporate Debtor.
15. Mr. Banerji submitted that after the present Company Petition was filed, the Corporate Debtor made a payment Rs.10,00,000/- (Rupees ten Lakh only) was made .

[2] Annexure K of the CP
[3] Annexure L of the CP

16. Mr. Banerji submitted that during the course of arguments, the Corporate Debtor has taken four points, which are as follows:
    a. Whether the claim of Financial Creditor is a financial debt?
    b. Whether the Company Petition is maintainable for breach of any settlement terms?
    c. No liberty was granted by the Adjudicating Authority for filing a fresh petition.
    d. CIRP cannot be initiated against the Corporate Debtor as it is a solvent real estate company.
17. In order to counter the arguments placed by the Corporate Debtor, the learned Senior Counsel led us through Part – IV of the Company Petition, and submitted that it is evident that the petition has been filed claiming the original financial debt, which was extended by the Financial Creditor to the Corporate Debtor.
18. Mr. Banerji referred to Clauses 2 and 3 of the Restructuring Agreement[4] which are set out hereunder:

> *"2. The Borrower acknowledges that after settlement of all accounts and taking into consideration the past defaults, a sum of Rs. 5,67,50,000/- (Rupees Five Crore Sixty Seven Lakhs Fifty Thousand) only is due and payable on account of Principal with interest as on 1st October 2021 which the Borrower acknowledges to be a Financial Debt within the meaning of the Code.*
>
> *3. The Borrower undertakes that the Financial Debt together with interest thereon @ 1.25% p.m. with monthly rests, shall be paid by the Borrower as per schedule attached herewith marked as Annexure A."*

19. The Financial Creditor is referred to as the Lender and the Corporate Debtor as the Borrower in the Restructuring Agreement. The sum covered by the restructuring agreement has been acknowledged and deemed to be a financial

[4] Pp. 63-64 of the C.P.

debt as defined by the Code. Additionally, there is a monthly interest component with a rest period of one month at a rate of 1.25%. Therefore, Financial Creditor's claim is a financial debt.

20. The Deed of Settlement dated 21 January 2022 is a Restructuring Agreement and nothing more. Such a Restructuring Agreement is a common practice between the lenders and borrowers. The nomenclature of a document cannot alter and/or define the document. The agreement between the parties has to be understood from the contents of the document and not its nomenclature, it was held in the matter of ***Achintya Kumar Saha v. Nanee Printers and Others***[5]***, Sasan Power Limited v. North American Coal Corporation (India) Private Limited***[6]**.**

21. Mr. Banerji placed emphasis that by such restructuring, neither the original loan has been wiped off nor the liability to repay the same has been wiped off. The learned Senior Counsel referred to the document and stated that the document would show that the parties only had reconciled and recorded the amount due and had agreed to a fresh repayment schedule. The restructuring did not destroy or alter the nature of debt.

22. It is submitted that the Corporate Debtor has relied the judgments of the Hon'ble NCLAT in ***Amrit Kumar Agrawal vs Tempo Appliances Pvt Ltd.***[7] and ***Trafigura India Private Limited vs TDT Copper Limited***[8] in support of the proposition that default under the Settlement Agreement would not trigger the CIRP against Corporate Debtor. The learned Senior Counsel submitted that both these judgments were duly considered and distinguished in in the matter of ***Ahluwalla Contracts (India) Limited v M/s. Jasmine Buildmart Pvt. Ltd.***[9], passed on 01 September 2023 by the Hon'ble NCLAT, wherein, it was held at para 15 as follows:

"15. We have already noticed the nature of operational debt claimed in Section 9 Application, which arose out of construction contract granted

[5] (2004) 12 SCC 368, @ paragraph 7
[6] (2016) 10 SCC 813, @ paragraph 8
[7] 2020 SCC Online NCLAT 1202
[8] 2022 SCC Online NCLAT 3885
[9] C.A. (AT) (Ins.) No. 345 of 2023 & I.A. No.1164 of 2023

to the Operational Creditor by the Corporate Debtor. Settlement during earlier Section 9 proceeding was only mode of payment to the operational debt. The facts of the present case are clearly distinguishable. The judgment of this Tribunal in ***"Trafigura India Private Limited vs. TDT Copper Ltd."*** *does not come to any aid to the Appellant."*

23. Mr. Banerji submitted that the judgment of ***Amrit Kumar Agrawal*** *(supra)* is not applicable as the settlement was entered into between the Financial Creditor and the Corporate Guarantor therein and there was no disbursement against the consideration. Hence, such breach was not a financial debt. The judgment of ***Ahluwalla Contracts*** *(supra)* ***Amrit Kumar Agrawal*** *(supra)* was distinguished by the Hon'ble NCLAT, Principal Bench in the judgment dated 01 February 2023 in the matter of ***Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd. & Anr.***[10], wherein, at paragraphs 12 and 13 it was held:

"*The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms. Permitting such interpretation shall be giving premium to the corporate debtor who breach the consent terms*."

24. It is further submitted that the Corporate Debtor argued that the first petition was withdrawn with liberty to revive the petition in case of default. However, instead of reviving the old petition, the Financial Creditor has filed a new petition, for which, no liberty was granted. As such, the petition is not maintainable. In reply to such contention, Mr. Banerji led us through Clause 8 of the Restructuring Agreement which reads as under:

"8. On these representations, warranties, undertakings and assurances by the Borrower, the Lender has agreed to consent to withdrawal of the IBC Proceedings. <u>However, withdrawal thereof shall not be defence to any fresh proceedings being initiated by the Lender</u>

[10] C.A. (AT) (Ins.) No. 1423 of 2022 & I.A. No. 4457 of 2022

against the Borrower in case of default, nor bar the Lender from taking legal recourse, including approaching the Adjudicating Authority under the Code."

[emphasis supplied]

25. As per Clause 8, the Financial Creditor had the liberty to file fresh proceeding. One of the reasons for filing the present proceeding instead of reviving the previous one was because the previous petition was filed by three Financial Creditors jointly, who have separately entered into three separate Restructuring Agreement with the Corporate Debtor. The other two Creditors have received their dues in full, whereas the Financial Creditor has not received full payment under the Restructuring Deed. Hence, the Financial Creditor has filed a fresh Company Petition.
26. Mr. Banerji submitted that this issue was also considered and decided in ***Priyal Kantilal*** (supra) at paragraph 13 which is set out hereunder:

> *"13. It is relevant to notice that in clause 9 of the consent terms there was clear stipulation that financial creditor shall be entitled to revive the company petition, the mere fact that instead of reviving company petition, a fresh company petition has been filed under section 7 shall not be reason to reject the company petition and not to entertain the said company petition."*

27. The learned Senior Counsel submitted that the Code is a complete Code in itself. No provision is embodied in the Code which prevents filing of a fresh petition and there is no bar in entertaining such a fresh petition. The question of liberty to file a fresh petition being barred does not arise. The order permitting withdrawal of the first petition on the basis of a restructuring agreement was an additional liberty. Such liberty cannot constitute a bar upon the Financial Creditor to maintain a fresh petition.
28. The Corporate Debtor having agreed to and consequently a right having been vested in the Financial Creditor to initiate a fresh petition for CIRP, cannot now turn around and contend contrary thereto.

29. It is further submitted that a bar to sue cannot be impliedly imposed. It being settled law now that the Code is a complete code in itself and provisions akin to Order XXIII of the Civil Procedure Code being absent in the Code.
30. It is further submitted that in any event, revival of the old petition of entertaining the present petition would not change either the nature of debt or the fact of their being a default qualifying into admission under section 7 of the Code.
31. The learned Senior Counsel submitted that the Corporate Debtor has relied on its balance sheets and a chart of profit/loss[11] made by Corporate Debtor between 2015 and 2022. For the assessment year 2022-23, Corporate Debtor contended that its loss was Rs.6,83,500.38/- whereas, it will be evident from the balance sheet and profit & loss of Corporate Debtor for the financial year ending 31 March 2022 that loss suffered by Corporate Debtor during that period is a whopping sum of Rs.68,35,30,000/-. As such, Corporate Debtor is a loss-making company.
32. The reserve and surplus of Corporate Debtor for the financial year ending 31 March 2021 was approximately Rs.103Crore which has drastically gone down to only Rs.34.55Crore in the financial year 2021-2022 though there is not much difference in the quantum of long-term lenders. This shows that the creditors' interest is not at all protected, rather there has been gross defalcation and misappropriation of funds by Corporate Debtor.
33. There are many insolvency proceedings which are also pending against Corporate Debtor. As such, Corporate Debtor should be immediately put into CIRP, otherwise, there will be further depletion of its assets, properties and funds. The Code does not bar commencement of CIRP against a real estate company.
34. Mr. Banerji submitted that in the Restructuring Agreement, the Corporate Debtor has admitted that the money paid to the Corporate Debtor was a loan and as on 01 October, 2021, a sum of Rs. 5,67,50,000/- was due and payable on account of such loan. It is further admitted by the Corporate Debtor that an

[11] At page 5, paragraph (xiii) of I.A

interest @ 1.25% per month on the principal sum of Rs. 4Crore (after payment of Rs.1Crore) would be payable by the Corporate Debtor. In case of default Financial Creditor could initiate a fresh petition for commencement of CIRP.

35. The learned Counsel submitted that it is a settled law now that, a party cannot be allowed resile from its admission. The creditors of Corporate Debtor are required to be protected. Corporate Debtor, despite giving an undertaking to this Adjudicating Authority, has defaulted in honoring the restructuring which form part of the record and order of this Adjudicating Authority. As such, dismissal of the petition on such frivolous and technical ground as raised by the Corporate Debtor will tantamount to giving premium to the Corporate Debtor who breached the terms and has so far avoided CIRP and thus continued to threatened the creditor at large as to their rights. As such, the contention of the Corporate Debtor is completely frivolous and misconceived and the present petition should be admitted.

36. The Financial Creditor has placed the following documents on record:

    a. Copy of Bank Statement annexed as Annexure H to the Company Petition;

    b. Copy of the Deed of Settlement dated 21 January 2022 annexed as Annexure K to the Company Petition;

37. The Financial Creditor has proposed the name of Mr. Mahesh Chand Gupta, registration number IBBI/IPA-001/IP-P01489/2018-2019/12304, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Senior Counsel appearing for the Corporate Debtor

38. The learned Senior Counsel submitted that the Deed of Settlement dated 21 January 2022 proposed that after settlement of all accounts a sum of

Rs.5,67,50,000/- was to be paid to the Financial Creditor with interest as on 01 October 2021 assessed at 1.25% per month with monthly rests. It was agreed that in case of ay default in payments of any instalment or deposit of TDS and continuation of such default for a period of 45 days, the entire amount remaining due and payable would become forthwith payable and the Corporate Debtor was to pay interest thereon at 1.5% per month with monthly rests until such entire amount was repaid.

39. It is further submitted that the parties agreed that in case of any default, the Financial Creditor would restore C.P. (IB) No. 1621/KB/2018 which was subsequently withdrawn *vide* order dated 28 February 2022.

40. It is further submitted that due to adverse market conditions and due to the fact that the erstwhile Chairman of the Corporate Debtor who was in charge of taking all the all decisions relating to the management and daily affairs of the Corporate Debtor was undergoing treatment and was not able to tend to his directorial and managerial duties, hence there were delays in adhering to the timelines of the Deed of Settlement.

41. The learned Senior Counsel submitted that the present Company Petition was filed alleging the breach of the Deed of Settlement despite being well aware that no right to file a fresh petition was conferred on the Financial Creditor.

42. It is further submitted that the Company Petition is not maintainable in law since breach of the Deed of Settlement whereunder payment due does not come under the ambit of section 5(8) of the Code and hence does not constitute financial debt.

43. The alleged date of default is 21 September 2022 is based solely on the breach of the Deed of Settlement and not on the basis of claim originating from the default occurring in repayment of sums loaned by the Financial Creditor to the Corporate Debtor. The nature and character of the financial debt has changed due to the Deed of Settlement and the Financial Creditor is seeking to recover the dues from the Deed of Settlement.

44. The learned Senior Counsel placed reliance on judgments of the Hon'ble NCLAT in ***Amrit Kumar Agrawal vs Tempo Appliances Pvt Ltd.***[12] and ***Trafigura India Private Limited vs TDT Copper Limited***[13] in support of the proposition that default under the Deed of Settlement would not trigger the CIRP against Corporate Debtor.
45. The Corporate Debtor has filed I.A. (IB) No. 1920/KB/2023 seeking dismissal of the Company Petition. The Learned Senior Counsel submitted that the Corporate Debtor has is engaged in the business of real estate development and promotions and has approximately 160 workers and employees.
46. It is submitted that the Corporate Debtor has been making profits even during Covid-19. The learned Senior Counsel submitted that the provisions of the Code cannot be used as a debt recovery mechanism and also submitted that real estate companies engaged in housing projects must be treated differently from other companies. In support of the above contention, the learned Senior Counsel placed reliance on several judgment passed by the Hon'ble Supreme Court viz. ***Jaypee Kensington Boulevard Apartments Welfare Association and Others v NBCC (India) Limited and Others***[14]***, Axis Bank v. Vidarbha Industries Power Limited***[15]***, Bhupinder Singh v. Unitech Limited***[16]***.***

Analysis and Findings

47. Heard the learned Senior Counsel appearing for the Financial Creditor and the learned Senior Counsel appearing for the Corporate Debtor and perused the record.

48. It has been argued by Learned Senior Counsel appearing for Corporate Debtor that the Financial Creditor has no right to file fresh section 7 petition in terms of Deed of Settlement. It is also contended by Learned Senior Counsel for the Corporate Debtor in para 'xii' of reply affidavit, no liberty was granted vide

[12] 2020 SCC Online NCLAT 1202
[13] 2022 SCC Online NCLAT 3885
[14] 2022 1 SCC 401
[15] 2023 7 SCC 321
[16] 2022 8 SCC 749

order dated 28 February 2022 passed by this Adjudicating Authority to file fresh application in the event of default by the Corporate Debtor.

49. The Corporate Debtor has filed an IA seeking dismissal of Company Petition on the ground that Corporate Debtor is a Real Estate company and it falls within the exceptions. It needs to be mentioned earlier, C.P. (IB) No. 1621/KB/2018 was dismissed as withdrawn vide order dated 22 of January, 2021. Liberty was granted to the Financial Creditor to seek revival of Company Petition at the stage it is left out in case of any default. Financial Creditor stated that despite deed of settlements mentioned in this petition, the Corporate Debtor has defaulted in the payment of debt on 03 April 2023

50. Before proceeding further, we need to record one order dated 28th of February, 2022 extracted hereinbelow;-

"ORDER

1. Learned counsel on both sides present.

2. Three settlement agreements all dated 21.01.2022 have been entered into with the three financial creditor who are petitioners in the present petition.

3. The corporate debtor has agreed to settle the outstanding between them in terms of the settlement agreements in which future payments are also envisaged the settlement agreements are taken on record and shall form a part of this order.

4. The undertakings given shall be treated as undertakings given to the court. CP No. 1621/2018 shall stand dismissed as withdrawn in accordance with the three settlement agreements.

5. Liberty is granted to the financial creditor to file appropriate applications for revival of the company petition at stage at which it was left of in case there is default."

51. Paragraph 5 of this order in express terms granted liberty to the Financial Creditor to file appropriate application for revival of Company Petition in case there is default. Thus, contention of Corporate Debtor is contrary to the record and is liable to be rejected. Further, as is evident from settlement deed at Clause-8[17] extracted hereinafter;-

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[17] Page 64 f the CP

"8. On these representations, warranties undertakings and assurances by the Borrower, the Lender has agreed to consent to withdrawal of the IBC Proceedings. However withdrawal thereof shall not be defence to any fresh proceedings being initiated by the Lender against the Borrower in case of default, nor bar the Lender from taking legal recourse, including approaching the Adjudicating Authority under the Code."

52. Even in terms of the Deed of Settlement, the Financial Creditor is within its right to have filed this petition. Therefore, plea of Corporate Debtor is again contrary to record and, therefore, the same is rejected.

53. Further, we seek to place reliance on paragraphs 12-13 of order dated 1st of February, 2023 passed by Hon'ble NCLAT in **Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd. & Anr**.[18] which is given hereunder:

> *"12. The judgement which has been relied by Learned Counsel for the Appellant "Amrit Kumar Agrawal" (supra) was a case where section 7 application was filed on the ground of default in payment of settlement agreement where the court held that default in payment of settlement agreement does not constitute a financial debt. The facts of the present case are clearly distinguishable. Present is not a case where Section 7 Application has been filed only on the ground of default in the settlement agreement rather section 7 application has been filed on the basis of original financial debt which was extended by the Financial Creditor to the Corporate Debtor. The mere fact that in earlier company petition, consent terms was arrived, which consent terms was breached by the corporate debtor, the financial debt which was claimed by the financial creditor would not be wiped out nor the nature and character of financial debt shall be changed on account of breach of the consent terms. Permitting such interpretation shall be giving premium to the corporate debtor who breach the consent terms. Another judgement which has been relied on by Learned Counsel for the Appellant is "Dr. Gopal Krishnan MS", (supra) which is also judgement relying on "Amrit Kumar Agrawal". The court in the facts of the said case came to the conclusion that debt is not a financial debt. The above judgement is also clearly distinguishable.*
>
> *13. It is relevant to notice that in clause 9 of the consent terms there was clear stipulation that financial creditor shall be entitled to revive the*

[18] C.A. (AT)(Ins.) No. 1423 of 2022

company petition, the mere fact that instead of reviving company petition, a fresh company petition has been filed under section 7 shall not be reason to reject the company petition and not to entertain the said company petition."

54. Therefore, we have no hesitation to hold that the Financial Creditor was well within its right to file the petition under section 7of the Code after the Corporate Debtor defaulted to pay its dues in terms of the settlement deed referred hereinabove. It is the stand taken on behalf of Corporate Debtor that section 7 is not a remedy since there is no disbursement of debt is legally untenable. The debt that has been has been claimed is on the amount that was disbursed as loan and not the amount in the Deed of Settlement, hence, the amount claimed falls under the definition of financial debt.
55. The Corporate Debtor in its own submissions has stated that due to the ill health of in Director, the Corporate Debtor has not adhered to the timelines of the Deed of Settlement, hence the Corporate Debtor has defaulted in payment.
56. In view of the above factual and legal position, it is clear that there is a debt and default.
57. With respect to the issue of limitation, it is seen that the Corporate Debtor has acknowledged the debt and as such the petition is within limitation period.

58. The Company Petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

59. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

    a. The application bearing ***CP (IB) No. 127/KB/2023*** filed Oarsman Credit Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against ***Ideal Real Estates Private Limited***, the Corporate Debtor, is ***admitted***.

b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. Mr. Mahesh Chand Gupta, registration number IBBI/IPA-001/IP-P01489/2018-2019/12304, email id: mcgupta90@gmail.com, phone no. 9831046652, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Financial Creditor shall deposit a sum of ***Rs 3,00,000/- (Rupees Three Lakh only)*** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

60. In view of the above observations, I.A. (IB) No. 1920/KB/2023 is hereby dismissed.

61. **CP (IB) No. 127/KB/2023** to come up on **02-05-2024 f**or filing the periodical report.

62. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi	**Rohit Kapoor**
Member (Technical)	**Member (Judicial)**

This order is pronounced on the 5th day of April, 2024.

GGRB_LRA/Zia_steno