



C.P. (IB) No.272/KB/2025

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-II
KOLKATA

C.P. (IB) No.272/KB/2025
Date of Order:30.09.2026

In the Matter of:

YES BANK LIMITED,

A Public Company incorporated under
the Companies Act,1956 and Banking
Company within the meaning of Section 5(C)
of the Banking Regulation Act, 1949,
having its Head Office:

Yes Bank House, Prabhat Nagar,

Off Western Express Highway,

Santacruz East, Mumbai - 400 005

and its Northern Regional Corporate Office:

Plot No. C, Max towers, Ground Floor,

4th, 5th, 14th (A)Floor, 001A/1,

Sector 16B, Noida, Uttar Pradesh - 201 301

and also at Dalhousie Kolkata Branch,

56A, Hemanta Basu Sarani,

Stephen House, Kolkata - 700 001.

APPLICANT/FINANCIAL CREDITOR

Versus

M/s. Ideal Aurum Nirman LLP

A Limited Liability Partnership,

Registered under the Limited

Liability Partnership Act, 2008,

And having its registered Office at:



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50, Jawaharlal Nehru Road,
11th Floor, Kolkata-700071

CORPORATE DEBTOR

With

I.A No.441/KB/2026

M/s. Ideal Aurum Nirman LLP

Vs.

Yes Bank

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

Present:

Mr. Ratnanko Banerji, Ld. Sr. Advocate For Financial Creditor
Mr. Siddhartha Chatterjee, Ld. Advocate
Mr. Prasun Ghosh, Ld. Advocate

Mr. Ishaan Saha, Ld. Advocate For Corporate Debtor
Ms. Sweta Mohanty, Ld. Advocate
Mr. Kanishk Kumar, Ld. Advocate



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ORDER

Labh Singh Member(Judicial)

1. The applicant, Yes Bank Limited has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “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, M/s. Ideal Aurum Nirman LLP
2. It is appropriate to mention that the applicant Bank, is a public Company incorporated under the Companies Act, 1956 and Banking Company within the meaning of Section 5(C) of the Banking Regulation Act, 1949, having its Registered Office at Yes Bank House, Prabhat Nagar, Off Western Express Highway, Santacruz East, Mumbai - 400 055. Northern Regional Corporate Office: Plot No. C, Max towers, Ground Floor, 4th, 5th, 14th (A) Floor, 001A/1, Sector 16B, Noida, Uttar Pradesh- 201 301.
3. Mr. Ankit Tulshan, Executive Vice President, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under

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the IBC Code. A copy of the Power of Attorney dated 01.12.2023 has been placed on record as Annexure-A.

4. The Respondent Company, M/s. Ideal Aurum Nirman LLP hereinafter to be referred as “Corporate Debtor”) against whom initiation of CIRP process has been prayed for, was incorporated on 06.05.2016 having its registered office situated at Jawaharlal Nehru Road, Kolkata. Since the registered office of the Corporate Debtor is situated at Kolkata; and hence, this Adjudicating Authority, 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 Corporate Debtor under sub-section (1) of Section 60 of the IBC Code.
5. Briefly stated the applicant’s case is that the Corporate Debtor has been a constituent of the Financial Creditor and the relationship of Banker and constituent had been maintained; and as a result thereof, the Corporate Debtor approached the Financial Creditor for availing loan facilities. One Srawan Kumar Himatsingka and Nakul Himatsingka were the livewire of the Corporate Debtor and other group of companies and had themselves represented the Corporate Debtor and other group of companies with the Financial Creditor. They had executed various documents to avail loan facilities.



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- 5.1 The Corporate Debtor, in consonance with Limited Liability Partnership Agreement dated May 09, 2016 and Supplemental LLP Agreement dated December 10, 2018, approached the Financial Creditor with a request to avail facilities for which a Board Resolution dated 31.08.2018 was passed by the Corporate Debtor. The Financial Creditor, after considering the request made by the Corporate Debtor and scrutinising the relevant documents submitted, issued a facility letter dated 31.08.2018 bearing no. YBL/DEL/FL/0912/2018-19 and inter alia sanctioned term loan facilities of Rs. 120,00,00,000/-, overdraft facility of Rs. 15,00,00,000/-, Financial/Performance Bank Guarantee for an amount of Rs. 10,00,00,000/-, Term Loan-2 of Rs. 100,00,00,000/-(along with sublimit of FCNR Loan of Rs. 100,00,00,000/-), Treasury Limit of Rs. 20,00,00,000/-(with overall capping of Rs. 120,00,00,000/- excluding treasury limit).
- 5.2 It is further submitted that the overdraft facility of Rs. 15,00,00,000/-, Term Loan-2 of Rs. 100,00,00,000/-(along with sublimit of FCNR Loan of Rs. 100,00,00,000/-), and Treasury Limit of Rs. 20,00,00,000/- were not availed by the Corporate Debtor and accordingly, cancelled by the Financial Creditor.
- 5.3 The Corporate Debtor, in consideration of availing the credit facilities , executed Master Facility Agreement dated



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10.09.2018, Loan Agreement dated 10.09.2018. The Corporate Debtor also agreed to provide various securities and guarantees and executed various loan/banking documents for the purpose of such credit facilities granted.

5.4 The Financial Creditor, vide Facility Letters bearing No. YBL/DEL/FL/2210/2018-19, and letter bearing YBL/DEL/FL/2212/2018-19 both March 28, 2019 for charging of processing fee and reduction in pricing respectively. The Financial Creditor also issued another Facility Letter No. YBL/DEL/FL/0180/2018-19 dated May 06, 2019 for incorporating an additional purpose.

5.5 The Financial Creditor, Upon request of the Corporate Debtor, vide Facility Letter No. YBL/DEL/FL/1051/2020-21 dated December 24, 2020, granted Working Capital Term Lona facility of Rs. 10,41,00,000/- which was lateron reduced to Rs. 10,00,00,000/- vide letter dated 01.04.2022.

5.6 The Corporate Debtor, in view of prevailing Covid 19 situation, had availed of the moratorium benefits in terms of RBI Circulars and expressed its inability to make payment of the accrued interest obligation on due date. Therefore, on the basis of the request made by the Corporate Debtor, the Financial Creditor agreed to provide facilities in the nature of funded interest Term loan which would comprise the accrued interest obligation of the Corporate Debtor as on



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September 02, 2020. The Corporate Debtor, in pursuance thereof, executed two separate agreements dated 20.01.2021. The additional facilities sanctioned to group companies of the Corporate Debtor were extended by way of execution of Supplemental Mortgage Deeds dated 18.08.2021.

- 5.7 The Corporate Debtor, in order to avail the said facility, executed loan agreement dated March 02, 2021. The Corporate debtor, in order to secure the aforesaid facilities, extended the mortgage created on Ideal Royale, ideal Grand, Ideal Exotica, Ideal Unique and Ideal Aurum by executing supplemental mortgage deeds dated August 18, 2021 which were lateron rectified vide rectification deed dated 17.05.2022.
- 5.8 During the month of January 2022, the equitable mortgage was also created by various mortgagors as detailed in part IV para no. (1)(XV), (XVI), and (XVII) of the present Company Petition for the properties situated at Mouza Reckjoani, J L No. 13, PS Rajarhat, Golpura Municipality, 24 Parganas. The applicant, in order to prove the same, has relied. Upon Memorandum of Equitable Mortgage and Declaration both dated 28.02.2022 Annexure-“CC”, Memorandum of Equitable Mortgage and Declaration both dated 28.02.2022 Annexure-“DD”, and Memorandum of Equitable Mortgage and Declaration both dated 28.02.2022 Annexure-“EE”. The various mortgagors also created hypothecation on their respective share of

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consideration from sale of units in Mouza Hanspukuria, J L No. 20, District South 24 Pragnas situated and lying at Premises No. 94, Diamond Harbour Road, Post Office Thakupukur, Kolkata, Ward No. 144 and Borough No. XVI, Kolkata Municipal Corporation as described in Annexure-K, Schedule A Part B for which Deed of Hypothecation with Power of Attorney is Annexure-“FF”.

5.9 The Corporate Debtor failed to operate the said accounts in terms of the loan agreements. The Corporate Debtor defaulted in repayment of principal and interest thereon. Consequently, the account became irregular and classified as Non-Performing Asset on 31.08.2023. The Corporate Debtor, despite repeated request and reminders, failed to repay the outstanding dues in the said accounts as per term and condition of the loan agreements and accordingly, the Financial Creditor issued loan recall notice dated 05.12.2023. The total outstanding dues payable by the Corporate Debtor as on 15.08.2025 is Rs. 757,157,210.58 including accrued interest thereon.

5.10 It is further submitted that the said Srawan Kumar Himatsingka died on 02.11.2023 leaving behind his legal heirs Ekta Sodhani, Nakul Himatsingka and Kanak Himatsingka. The said legal heirs are bound to discharge legal obligation of late Sh. Srawan Kumar Himatsingka.



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5.11 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 Bijay Murmuria, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP/P00007/2016-17/10026 C/O Sumedha Managment Solution Pvt Ltd, 6A, Geetanjali Apartment, B B Middleton Street, Kolkata with email ID: bijay_murmuria@sumedhamanagement.com. Mr. Bijay Murmuria 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 the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Bijay Murmuria 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.

5.12 The applicant, in order to prove its case, has relied upon Power of Attorney dated 01.12.2023 Annexure-A, certificate of incorporation and Master Data of Corporate Debtor Annexure-‘B’, Balance Sheet for the Financial Year 2021-22



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Annexure-‘C’, Certification of Registration Form B
 Annexure-‘D’, LLP Agreement dated 09.05.2016 Annexure ‘E’,
 Supplemental LLP Agreement dated 10.12.2018 Annexure ‘F’,
 Facility Letter dated 31.08.2018 Annexure ‘G’, Facility
 Letter dated 13.07.2020 Annexure ‘H’, Master Facility
 Agreement dated 10.09.2018 Annexure ‘I’, Loan Agreement
 dated 10.09.2018 Annexure ‘J’, Schedule of Charged and
 Mortgaged Properties Annexure ‘K’, Mortgage Deed dated
 23.02.2019 Annexure ‘L’, Mortgage Deed dated 04.12.2018
 Annexure ‘M’, Mortgage Deed dated 14.12.2018 Annexure ‘N’,
 Mortgage Deed dated 10.06.2019 Annexure ‘O’, Mortgage Deed
 for Developer’s share dated 10.05.2019 Annexure ‘P’, Deed of
 Hypothecation dated 05.02.2019 Annexure ‘Q’, Deed of
 Personal Guarantee dated 10.09.2018 Annexure ‘R’, Corporate
 Guarantee Deed Dated 10.09.2018 Annexure ‘S’, Cheques
 alongwith Declaration Annexure ‘T’, Facility Letter dated
 28.03.2019, 06.05.2019, 28.03.2019 and 06.05.2019 Annexure
 ‘U’, Facility Letter dated 24.12.2020 Annexure ‘V’, Facility
 Letter dated 01.04.2022 Annexure ‘W’, Letter of Arrangement
 dated 20.01.2021 Annexure ‘X’, Facility Letter dated
 22.01.2021 Annexure ‘Y’, Loan Agreement dated 02.03.2021
 Annexure ‘Z’, Facility Letter dated 30.03.2023 Annexure
 ‘AA’, Supplemental Mortgage Deed and Deeds of Rectification
 Annexure ‘BB’, Directors Declaration and Memorandum of Entry



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both dated 28.01.2022 Annexure 'CC', Directors Declaration and Memorandum of Entry both dated 28.01.2022 Annexure 'DD', Directors Declaration and Memorandum of Entry both dated 28.01.2022 Annexure 'EE', Directors Declaration and Memorandum of Entry both dated 28.01.2022 Annexure 'FF', Statement of Accounts Annexure 'GG', Settlement Agreement dated 13.12.2024 Annexure 'HH', Email Communication dated 15.03.2025, and Letters dated 18.03.2025 and 21.03.2025 Annexure 'II', Loan Recall Notice dated 05.12.2023 Annexure 'JJ', Certificates of Registration of Charge 'KK', and CRILC Report Annexure 'MM'.

5.13 The applicant has also placed on record a copy of record of default Annexure-'LL' 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 default has been authenticated as per Form 'D' placed on record.

5.14 Therefore, as per part IV of the application, it is claimed that as on 15.08.2025 a sum of Rs. 757,157,210.58/- is due and payable by the respondent company. The applicant has prayed for allowing the present application and admitting the Corporate Debtor in the CIRP process.

6. Respondent appeared in pursuance of notice issued by this Tribunal and despite availing sufficient opportunities, failed to file reply affidavit. Consequently, this

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Adjudicating Authority closed the stage for filing reply affidavit vide the order dated 09.06.2026.

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7. Though the Corporate Debtor has not filed a reply affidavit; however, the Corporate Debtor filed the present application has been filed by the Corporate Debtor for dismissal of the present Company Petition No. 272/KB/2024.

7.1 It has been submitted that although credit facilities aggregating to substantial amounts were sanctioned by the petitioner Yes Bank Limited in terms of Facility Letter dated 31.08.2018; however, the Financial Creditor failed to disburse the sanctioned amount in full and disbursed only Rs. 71.55 crores out of the sanctioned limit of Rs. 100 crores. The said failure materially affected repayment of existing liabilities, compelled settlement of claims by transfer of flats to creditors, disrupted project execution and contributed to the financial distress of the Corporate Debtor.

7.2 It is further submitted that the Financial Creditor classified the account as a non performing asset and initiated SARFAESI proceedings by issuing notice under Section 13(2) and 13(4) of the SARFAESI Act 2002. The Financial Creditor also instituted O.A No. 02/2024 before Learned Debt Recovery Tribunal-1 Kolkata for recovery of



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alleged dues. During pendency of such recovery proceedings, the Financial Creditor filed the present Company Petition under Section 7 of the Code on 27.11.2025 for initiation of CIRP Process against the Corporate Debtor.

7.3 It is further submitted that despite procedural difficulties resulting in closure of its right to file reply affidavit vide order dated 09th June 2026 which remains pending adjudication.

7.4 It is further submitted that after filing of Section 7 petition, the Financial Creditor continued to actively pursue recovery before DRT-1 Kolkata and even filed I.A No. 176/KBN/2026 seeking judgment upon admission in OA No. 02/KB/2024. This conduct of the Financial Creditor demonstrates that the objective of the Financial Creditor is recovery of money and not bonafide insolvency resolution. The simultaneous pursuing remedy under the DRT and CIRP is mutually destructive and reflects abuse of insolvency process attracting Section 65 of the Code.

7.5 Therefore, the Company Petition deserves to be dismissed with cost.

7.6 The Financial Creditor opposed the present application and prayed for dismissal of the present IA and allow the present Company Petition.



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8. Based on pleading of the present Company Petition and objection raised by the Corporate Debtor in application filed under Section 65 of the Code for dismissal of the present company petition on the averment made therein and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:
- i. Whether pendency of application under Section 19 of the RDDBFI Act 1993 before DRT and initiation of SARFESI proceedings by the applicant affects hearing of the present company petition?
 - ii. Whether there is debt and default to trigger the CIRP process against the Corporate Debtor?
 - iii. Whether present Company Petition requires to be admitted for initiation of CIRP process of the Corporate Debtor?
 - iv. Relief, to which the applicant is entitled?
9. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing Mr. Ratnkar Banerjee Learned Senior Counsel appearing for the Financial Creditor and Mr. Jishnu Saha Learned Senior Counsel appearing for the Corporate Debtor, we shall now proceed to



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consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No. (i)

10. **Mr. Abhijit Saha Learned** Counsel argued that the Financial Creditor has filed IA No. 176 of 2026 for judgment on admission before Ld. DRT in OA NO. 02 OF 2024 filed under Section 19 of the RDDBFI Act 1993. The Financial Creditor has also taken action under the provision of SARFAESI Act 2002. The Corporate Debtor has challenged the action taken under the provision of SARFAESI Act 2002 before Ld. Debt Recovery Tribunal by filing Securitisation Application No.115 of 2024 under Section 17 of the SARFAESI Act 2002. Thus, the Financial Creditor is seeking to use the IBC Code as a recovery mechanism and not as a resolution process.
11. He further argued that once an order of admission is passed and moratorium under Section 14 of the IBC Code, 2016 comes into operation, the Financial Creditor would be precluded from continuing proceedings before the Learned Debt Recovery Tribunal and under the provision of SARFAESI Act, 2002. The Financial Creditor has elected to pursue remedies under the RDDBFI Act, 1993 and is consequently estopped from prosecuting the present Company Petition under Section 7 of the IBC Code, 2016.



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12. Mr. Shah, Learned Counsel, relied upon the judgment pronounced by the Hon'ble Supreme Court in *Transcore us. Union of India & Anr. (2008) 1 SCC 125*, wherein Hon'ble Supreme Court held that the doctrine of election applies where two or more co-existent remedies are available to a litigant and such remedies are inconsistent with each other. It is pertinent to refer relevant observation of Hon'ble Supreme Court which is as follow:

"In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only when there are two or more



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co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application”.

13. Hon'ble Supreme Court in case of **Trascore (Supra)** laid down the proposition of law that the proceedings under the RDDBFI Act, 1993 and the SARFAESI Act, 2002 are not mutually exclusive and may proceed simultaneously. The same analogy applies in a case where the proceedings under Section 7 have been initiated by the Financial Creditor as recognised in judgments passed by the Hon'ble Supreme Court in **Kotak Mahindra Bank Ltd. vs. A . Balakrishnan, Tottempudi Salalith vs. State Bank of India and Elegna Cooperative Housing and Commercial Society Limited Us. Edelweiss Asset Reconstruction Company Limited & Anr.**, wherein it has been categorically held that pendency of recovery proceedings and/or enforcement proceedings does not create any bar to initiation of CIRP and that the doctrine of election cannot be invoked to prevent a Financial Creditor from approaching the Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016.



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14. Mr. Saha, Learned Counsel further placed reliance on the case of *Anita Jindal vs. Jindal Buildtech Pvt. Ltd. & Anr. 2022 SCC OnLine NCLAT 3748* wherein the debt itself was disputed and there were allegations of malicious initiation of CIRP process under Section 65 of the IBC Code. The facts of the present case are entirely different for the above cited case. In the present case, there exists no dispute with regard to debt and default as the Corporate Debtor have admitted the existence of debt and default in the reply affidavit and Settlement Agreement dated 13th December, 2024.
15. Mr. Saha Learned Counsel further placed reliance on the case of *Anjani Technoplast Limited vs. Shubh Gautam, reported in 2026 SCC OnLine 668* wherein core issue was whether insolvency proceedings could be resorted to as a substitute for execution of a Civil Court decree; however, no such issue is involved in the present case. The Financial Creditor is not having any such decree of Civil Court for which execution proceedings might have been instituted.
16. It is settled principle of law that in an application filed under Section 7 of IBC Code, if debt and default is established and there is no other impediment to admit the application, the initiation of CIRP process is but inevitable.



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17. On this aspect, Hon'ble Supreme Court in case of *Elegna Cooperative Housing and Commercial Society Limited Vs. Edelweiss Asset Reconstruction Company Limited & Anrs.* 2026 SCC OnLine SC 882 recognised the proposition of law laid down in case of *Innoventive Industries Limited Vs. ICCI Bank (2018) 1 SCC 407* and observed that:

12.3. *The legal position is now well settled. In Innoventive Industries, this Court held that once the Adjudicating Authority is satisfied that a financial debt exists and a default has occurred, it must admit the application unless it is incomplete. The inquiry under Section 7(5)(a) is confined strictly to the determination of debt and default, leaving no scope for equitable or discretionary considerations."*

18. Hon'ble Supreme Court while considering the issue of parallel proceedings and allegations of misuse of the Insolvency and Bankruptcy Code, 2016 as a recovery mechanism, in *Elegna Cooperative Housing and Commercial Society Limited* (supra) further observed in para no. 12.11 and 12.13 that:

"12.11. The contention that EARCL misused the Code as a recovery toll is equally untenable. The Code does not prohibit a financial creditor from



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invoking CIRP merely because recovery proceedings under the SARFAESI Act or before the DRT are pending or have been initiated. Section 238 accords overriding effect to the Code, and upon admission, the moratorium under Section 14 stays all such proceedings."

12.13. In Kotak Mahindra Bank Ltd. v. A. Balakrishnan and another, this Court held that the trigger point for CIRP is default, and that even a recovery certificate constitutes a fresh cause of action for initiation of insolvency proceedings. The mere pendency of parallel recovery proceedings does not establish mala fides unless abuse under Section 65 is demonstrated".

19. Thus, even if a recovery certificate might have been issued by the Debt Recovery Tribunal in favour of the Financial Creditor, it would not disentitle the Financial Creditor from maintaining proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. Consequently, the initiation of SARFAESI proceeding under SARFAESI Act 2002 and challenge of the same before Ld. DRT under Section 17 of the SARFAESI Act 2002 and pendency of recovery proceedings filed under Section 19 of RDDBFI Act 1993 wherein



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application for admission on judgment has been filed cannot attract the doctrine of election or estoppel.

20. Hon'ble Supreme Court in case of *Tottempudi Salalith us. State Bank of India*, (2024) 1 SCC 24, which has been relied upon by the Hon'ble Supreme Court in case of *Elegna Cooperative Society Case(Supra)*, observed as follows:-

"20. On behalf of the appellant, submissions have been made that the banks having approached the DRT, were barred under the doctrine of election from approaching NCLT for recovery of same set of debts. This is a doctrine embodied in the law of evidence, which bars prosecution of the same right in two different fora based on the same cause of action. But so far as the present appeal is concerned, the recovery proceedings before the DRT had commenced in the year 2014. At that point of time, IBC had not come into existence. Moreover, it has been held by this Court in Kotak Mahindra-1 [Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186 : (2022) 4 SCC (Civ) 548] that the recovery certificate itself would give rise to a fresh cause of action entitling a financial creditor to initiate Corporate Insolvency Resolution Process (CIRP). By this judgment, the right of the



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financial creditor to invoke the mechanism under IBC after issue of recovery certificate stood acknowledged as a valid legal course. This Court, in that case also dealt with the question of instituting a CIRP on the strength of recovery certificate. Needless to add, such recovery certificate arose out of a proceeding from the DRT. The enforcement mechanism for a recovery certificate is an independent course, which a financial creditor may opt for realisation of its dues crystallised under the 1993 Act, instead of chasing the mechanism under the 1993 Act.

21. IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism. The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the



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SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued. In Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116], application of SARFAESI mechanism was held permissible even though the subject-proceeding was instituted under the 1993 Act.

22. Thus, the doctrine of election cannot be applied to prevent the financial creditors from approaching NCLT for initiation of CIRP.”

- 21.** Therefore, in view of our aforesaid observation and law applicable thereon, we are of the view that pendency of proceeding under the provision of RDDBFI Act 1993 and initiation of SARFAESI proceeding by the Financial Creditor does not affect the proceeding of the present company petition for initiation of CIRP process against the Corporate Debtor.

Issue No.(ii) & (iii)

- 22.** It is settled principle of law that an application filed under Section 7 of the Code is acceptable so long as the

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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/-. In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

23. In the facts of the present case, 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 sanctioned and disbursed loan an amount of more than rupees three hundred crores in favour of the Corporate Debtor.
24. Even otherwise, it is an admitted case of the Corporate Debtor in its application IA. No. 793/KB/2026 filed under Section 65 of the Code that the Financial Creditor, vide Facility letter dated 31.08.2018, had sanctioned loan facility of Rs. 120,00,00,000/-(Rupees One hundred Twenty Crores Only) in its favour; however, the Financial Creditor disbursed only an amount of Rs. 71.55 Crores.
25. Thus, it has been established from pleading and documentary evidence available on record that there is debt above the threshold limit as statutorily fixed by Section 4 of IBC 2016 and there is default in payment of debt on the part of the Corporate Debtor.

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26. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules proves 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.
27. We are satisfied that the present application is complete in all respect 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.
28. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.
29. Mr. Bijay Murmuria, having registration number IBBI/IPA-001/IP/P00007/2016-17/10026 C/O Sumedha Management Solution Pvt Ltd, 6A, Geetanjali Apartment, B B Middleton Street, Kolkata with email ID: bijay_murmuria@sumedhamanagement.com is appointed as an Interim Resolution Professional for the corporate debtor.
30. 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.



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31. We direct the applicant Financial Creditor to deposit a sum of Rupees three Lakhs with the Interim Resolution Professional namely Mr. Bijay Murmuria 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 be subject to adjustment towards Resolution Process cost as per applicable rules.
32. 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 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;

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(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.”

33. 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.

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

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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.

35. 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 Bengal the earliest possible but not later than three days from today.
36. Consequently, the present Company Petition(IB) No. 272/KB/2025 stands admitted as above.



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37. In view of admission of Company Petition in CIRP process, the I.A No.441/KB/2026 stands dismissed being devoid of merits.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)