



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IN**  
**(IB)-701/ND/2024**

**IN THE MATTER OF:**

**Canara Bank**

(Through its Authorised Representative)

Having registered office at :

112, J.C. Road, Bangalore-560002

**Having one of its Branch amongst others at:**

**Asset Recovery Management Branch-1**

Arya Samaj Road,

Karol Bagh, New Delhi-110005

**... Applicant/Financial Creditor**

**VERSUS**

**M/s SS Realtech Pvt. Ltd.**

Through its Managing Director

Having registered office at :

592 A, Bijwasan, South West Delhi,

New Delhi - 110061

**... Respondent/Corporate Debtor**

**Section: 7 of the IBC, 2016**

**Order Delivered on: 29.04.2025**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**MS. REENA SINHA PURI, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Anju Jain, Adv. Hitesh Sachar, Adv. Anjali Singhvi



**For the Respondent** : Adv. Sumesh Dhawan, Adv. Kanav Dev Sharma  
Adv. Vatsala Kak, Adv. Sagar Thakkar

## **ORDER**

### **PER: MS. REENA SINHA PURI, MEMBER (T)**

This Application has been filed by Canara Bank (hereinafter referred to as the Financial Creditor or **FC/Petitioner**) against M/s S S Realtech Pvt. Ltd. (hereinafter referred to as the Corporate Debtor or **CD/Respondent**), seeking initiation of CIRP<sup>1</sup> under section 7 of IBC<sup>2</sup>. The Petitioner claims that the Respondent has committed a default in the repayment of financial debt amounting to Rs. 29,90,08,503.10, along with interest at the contractual rate per annum, compounded monthly, and an additional 2% overdue penal interest until realization<sup>3</sup>.

### **Application**

**2.** It is submitted that, the Petitioner sanctioned a Term Loan of Rs 18.51 crores to the Respondent on 09.07.2014. The loan was duly secured by a hypothecation agreement and the creation of an equitable mortgage over the immovable property<sup>4</sup> of the CD situated at village Bhensia, Rampur road, Moradabad, Uttar Pradesh. A charge was also created over the machineries, equipment, fixtures and other assets acquired or to be acquired by the CD. Security documents were executed by the CD in favour of the FC on

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<sup>1</sup> Corporate Resolution Insolvency Process

<sup>2</sup> Insolvency and Bankruptcy Code, 2016

<sup>3</sup> Copy of statement of accounts of the CD maintained by FC at Page 331-334 of the Application

<sup>4</sup> Immovable property bearing Khata no. 346, Khasra no. 221, 225-228 and Khata no. 345, Khasra no. 222, 225, 227, 235, having total area of 14485 sq m in village Bhensia, Rampur road, Moradabad, UP



12.07.2014. Additionally, the FC obtained personal guarantees from the directors of the CD, namely Sh Vinod Kumar Sharma, Sh Sanjeev Kumar Sharma and Ms Anjali Bhardwaj.

**3.** The loan was availed by the CD for the purpose of constructing a 4-star budget hotel in Moradabad, Uttar Pradesh<sup>5</sup>. However, the CD defaulted in the repayment of equated monthly instalments and failed to regularize the loan account despite repeated request from the FC. Consequently, the account of the CD was classified as a Non-Performing Asset (NPA) wef 29.09.2015.

**4.** No repayment was made by the CD or the personal guarantors in response to the notice issued by the FC under the SARFAESI<sup>6</sup> Act on 01.02.2016. Thereafter, on 30.04.2016, the FC issued a notice under section 13(4) of SARFAESI Act seeking possession of the mortgaged property. Subsequently, on 09.05.2016, the FC filed an application before the Debts Recovery Tribunal (DRT), Delhi, for recovery of the debt from the CD and the personal guarantors. Despite these measures, the CD failed to discharge its outstanding liabilities, leading to the filing of the present Application on 24.09.2024.

**5.** The acknowledgement of debt by the CD is evident from its financial statements<sup>7</sup> for the years ending 31.03.2015 till 31.03.2023 and also the various OTS proposals<sup>8</sup> dated 27.07.2016, 03.08.2016, 22.03.2017,

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<sup>5</sup> Suryansh Golf Link, Main Moradabad- Rampur National Highway no. 24, Moradabad, UP

<sup>6</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

<sup>7</sup> Page 256-330 of the Application

<sup>8</sup> One Time Settlement proposals dated 27.07.2016, 03.08.2016, 22.03.2017, 24.02.2023, 21.02.2024 at Pages 336-356



24.02.2023, 21.02.2024 as well as the withdrawal letter<sup>9</sup> of 06.12.2018. The debt is authenticated in the Record of Default with the Information Utility<sup>10</sup> also. The index of charges with the MCA<sup>11</sup> also evidences the charge created in favour of the Applicant against the loan amount of Rs 18.51 crores.

### **Counter**

**6.** The CD in its reply of 20.02.2025, has questioned the maintainability of the Application contending that it is barred by limitation. Placing reliance on the order of Hon'ble NCLAT in *Milind Kashiram Jadhav*<sup>12</sup>, it is submitted that the Application filed by the FC is barred by limitation, since the alleged default occurred on 29.09.2015, the date on which the account of the respondent was declared as NPA. It is also claimed that considering the OTS proposal of 22.03.2017, the limitation of three years lapsed on 21.03.2020, but considering the exclusion of the limitation period from 15.03.2020 till 28.02.2022, by the Hon'ble Supreme Court in WP No. 3 of 2020 on account of Covid-19 pandemic, the Application could have been filed between 01.03.2022 and 29.05.2022. It was claimed that the OTS offers of 24.02.2023 and 21.02.2024 could not be considered as these were outside the original period of limitation of three years starting from 22.03.2017.

**7.** The CD has alleged that the FC is involved in 'forum shopping' as it has invoked the jurisdiction under SARFAESI Act and also filed application before

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<sup>9</sup> Pages 357-358 of the Application

<sup>10</sup> Pages 361-369 of the Application

<sup>11</sup> Page 359 of the Application

<sup>12</sup> *Milind Kashiram Jadhav vs State Bank of India & Anr in Company Appeal (AT) (INS) 1589 of 2023*



DRT. It is also claimed that since annexure number has not been mentioned, the affidavit filed along with the Application is defective.

**8.** Further, it is stated that in pursuance of the OTS sanction letter dated 24.12.2024 for Rs 30.25 crores, which was to be fully paid by 23.03.2025 by the CD, its group companies and guarantors, a sum of Rs 3.78 crores had been already paid to the account of the FC. The Application of the FC is sought to be kept in abeyance till 24.03.2025 by referring to the order of NCLAT dated 27.01.2025 in case of Anjali Bhardwaj, Suspended Director of M/s S V Buildcon Pvt Ltd v Canara Bank & Anr<sup>13</sup>, where taking note of the OTS and the assurance of the appellant to pay the entire amount by 23.03.2025, the matter had been adjourned to 24.03.2025.

### **Decision**

**9.** The submissions of the parties were heard and records carefully perused. On the matter of OTS, it is undisputed that the proposal of 24.12.2024 was withdrawn by the FC on 30.01.2025 as the CD failed to make the repayment as per the sanctioned terms. Though the CD continued to insist before the Authority and also before the Hon'ble NCLAT, that it would make the repayment as per the OTS proposal, FC has reiterated its stand by e-mail of 21.03.2025 and 24.03.2025 that the OTS of 24.12.2024 had stood withdrawn on 30.01.2025 itself.

**10.** The case of the CD that the Application is barred by limitation has no merit. Under IBC, the default in payment of a debt triggers the right to initiate

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<sup>13</sup> Company Appeal (AT) (Insolvency) No. 1999 of 2024



CIRP, and the application under section 7 of the IBC is required to be filed within three years from the date of default by virtue of section 238A of the IBC read with Article 137 of the Schedule to the Limitation Act. At this stage, it will be apt to refer to the judgment of the Hon'ble Supreme Court in the case of *Dena Bank (now Bank of Baroda) vs C Shivkumar Reddy and Anr*<sup>14</sup>, where it was noted:

*100. There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority (NCLT). An application for which no period of limitation is provided anywhere else in the Schedule to the Limitation Act, is governed by Article 137 of the Schedule to the said Act. Under Article 137 of the Schedule to the Limitation Act, the period of limitation prescribed for such an application is three years from the date of accrual of the right to apply.*

**11.** Furthermore, in the case at hand, the acknowledgement of debt by the CD is evident from its financial statements<sup>15</sup> for the years ending 31.03.2015 till 31.03.2023 and also the various OTS proposals<sup>16</sup> dated 27.07.2016, 03.08.2016, 22.03.2017, 24.02.2023, 21.02.2024 as well as the withdrawal letter<sup>17</sup> of 06.12.2018. Reference is again made to the judgment of the Hon'ble Supreme Court in *Dena Bank (supra)*, where it was held:

*113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom*

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<sup>14</sup> Civil Appeal No. 1650 of 2020 dated 04.08.2021

<sup>15</sup> Page 256-330 of the Application

<sup>16</sup> One Time Settlement proposals dated 27.07.2016, 03.08.2016, 22.03.2017, 24.02.2023, 21.02.2024 at Pages 336-356

<sup>17</sup> Pages 357-358 of the Application



*the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.*

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*118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In *Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr.* (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, [“Bengal Silk Mills”] and in *Re Pandem Tea Co. Ltd.*, the judgment of the Delhi High Court in *South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana* and the judgment of Karnataka High Court in *Hegde Golay Ltd. v. State Bank of India* and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.*

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*141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. ...*

*142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case*



*the period of limitation would get extended by a further period of three years.*

**12.** In support of its stand, the FC has relied on several other judgments also – *Asset Reconstruction Company (India) Ltd vs Tulip Star Hotels Ltd and Ors*<sup>18</sup>; *Vidyasagar Prasad vs UCO Bank & Anr*<sup>19</sup>; *Laxmi Pat Surana vs Union Bank of India & Ors*<sup>20</sup>; *Archana Deepak Wani vs Indian Bank*<sup>21</sup>; and *Deepak Kumar vs Phoenix ARC Pvt Ltd*<sup>22</sup>.

**13.** On the issue of alleged ‘forum shopping’ made by the CD – action taken under SARFAESI Act and application before DRT - the FC has relied on *Indian Bank v Infinitas Energy Solutions Pvt Ltd*<sup>23</sup> and *Paras Builders and Promoters v ASREC India Ltd & Ors*<sup>24</sup>.

**14.** In view of the above, there is no doubt in our minds that the Application by the FC is not hit by limitation contemplated in the Limitation Act, as contended by the CD. As indicated in Part-IV of Form-I, the debt of Rs 18.51 crores is undisputed as is the default, which occurred starting from 29.09.2015 and continued to subsist by way of acknowledgements in the form of financial statements and OTS proposals discussed in the preceding paras. Therefore, we have no reservations in accepting this Application under Section 7 of the IBC.

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<sup>18</sup> Civil Appeal No. 84-85 of 2020

<sup>19</sup> Civil Appeal No. 1031 of 2022

<sup>20</sup> Manu/SC/0279/2021

<sup>21</sup> Company Appeal (AT) (Insolvency) No. 301 of 2023

<sup>22</sup> Company Appeal (AT) Insolvency No. 848 of 2019

<sup>23</sup> CP/558(IB)/CB/2017

<sup>24</sup> CA(AT)(INS) No. 1016 of 2024



**15.** Hence, in view of the admitted debt and default, the application is allowed with the following directions:

**ORDER**

**16.** The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

**17.** The Applicant has proposed the name of Ms. Anju Agarwal as the Interim Resolution Professional (hereinafter referred to as the 'IRP'). The declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by way of Form 2 indicates that no disciplinary proceedings are pending against her and she is eligible to be appointed as IRP qua the CD<sup>25</sup>. Accordingly, this Adjudicating Authority appoints Ms Anju Agarwal, Registration Number: IBBI/IPA-001/IP-P-00106/2017-2018/10213, whose Authorization for Assignment is valid up to 31.12.2025 as per the IBBI IPs Registered List on the website. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

**18.** The IRP is directed to take charge of the management of the Corporate Debtor, immediately. She is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the

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<sup>25</sup> Page 35-36 of the Application



date of receipt of this order, and call for submissions of claims in the manner as prescribed.

**19.** Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the IBC.

**20.** It is hereby ordered that all of the following are prohibited:

- 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 or 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 rights 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 (54 of 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.

**21.** Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated



on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

**22.** The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period.

**23.** Furthermore, the provisions of Sub-section (1) of Section 14 of the IBC shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and to a surety in a contract of guarantee to a corporate debtor.

**24.** The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the IBC. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 of the IBC for discharging her functions under Section 20 of the IBC.



**25.** The Corporate Debtor as well as the Registry is directed to send the copy of this Order to the IRP, to enable her to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the IBC.

**26.** The Registry is directed to communicate this Order to the Corporate Applicant.

**27.** The Registry shall also communicate this Order to the Registrar of Companies, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

**Accordingly, this Company Petition is allowed.**

**Sd/-  
(REENA SINHA PURI)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**