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

CP (IB) 1807/MB/C-I/2018

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Bank of Baroda,
The Permanent account number of the Bank is AAACB1534F
Baroda House, Mandvi, Baroda – 390006, Gujarat and acting through its ARM Branch, having its office at Meher Chambers, Ground floor, SB Marg, Opposite to Petrol Pump, Mumbai - 400001.

… Financial Creditor /Petitioner

Versus

Topworth Urja & Metals Limited
[CIN: U27109MH1993PLC074950]
308, 3rd Floor Ceejay House, Dr. A. B. Road, Worli, Mumbai 400018

… Corporate Debtor /Respondent

Order Delivered on: 12.08.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor	:	Mr. Anush Mathkar, Counsel.
For the Corporate Debtor	:	Ms. Krishna Kumar, Counsel.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This is a Company Petition filed under section 7 ("**the Petition"**) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Bank of Baroda** ("the Financial Creditor"), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **Topworth Urja & Metals Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a Public company limited by shares and incorporated on 05.11.1993 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 308, 3rd Floor Ceejay House, Dr. A. B. Road, Worli Mumbai 400018 MH. Therefore, this Bench has jurisdiction to deal with this petition.

3. The application is filed claiming a total default of Rs.218,14,20,222.95 (Rupees Two hundred and Eighteen crore Fourteen lakhs Twenty Thousand Two hundred and Twenty-Two and paise Ninety-Five only) and date of default stated to be 30.04.2018. This Application is filed by Mr. Vinod Kumar Porwal, Chief Manager, of the Financial Creditor duly authorized to file this application vide letter dated 15.11.2017.

4. Part IV of the Section 7 Application shows that the Applicant has filed the Section 7 Application basis following dates of default:

Facility	**Amount in default in Rs.**	**Date of defaults**
Term Loan 1	37,63,33,783.45	30.01.2016
Funded Interest	4,90,16,105.07	30.09.2015
Term Loan II	50,34,10,876.82	30.01.2016
Funded Interest	6,66,52,574.70	30.11.2015
Cash Credit	60,13,43,090.66	29.10.2015
Letter of Credit	58,46,63,792.25	23.09.2015
Total	**218,14,20,222.95**	

Submissions made by Financial Creditor:

Debt and Default:

5. Bank of Baroda ("Applicant") states that it had granted certain term loan and working capital facilities to Topworth Urja & Metals Limited ("Corporate Debtor") from time to time which were restructured on the terms and conditions set out under the Sanction Letter dated March 27, 2015 (*Exhibit – 7, Vol-II, pages 243 to 260 of the Application)* and Master Restructuring Agreement dated March 30, 2015 ("**MRA**") *(Exhibit-7, Vol-II, pages 261 to 342 of the Application).* The detailed terms and conditions of enhanced working capital credit facilities are captured in the First Supplemental Working Capital Consortium Agreement dated May 14, 2015 (**"Supplemental WC Agreement")** *(Exhibit-7, Vol-II, pages 343 to 365 of the Application).* Under the MRA and the Supplemental WC Agreement, the Applicant's exposure to the Corporate Debtor is as follows (set out in Schedule III of the MRA pages 323 to 324 of the Application) and the Second Schedule of the Supplemental WC Agreement (page 355 of the Application):

   (i) "Term Loan I" or "RTL I" — Rs.29.20 crore;

   (ii) "Term Loan II" or "RTL II" — Rs.39.06 crore;

   (iii) "Funded Interest Term Loan I" or "FITL I" — Rs.6.42 crore

   (iv) "Funded Interest Term Loan II" or "FITL II" — Rs.8.59 crore

(v) Enhanced working capital facilities aggregating to Rs.100.31 crores

("**Working Capital Facility**") which comprises:

(a) Cash Credit — Rs.40.23 crores;

(b) Bank Guarantee — Rs.5 Crores; and

(c) Letter of Credit — Rs.55.08 crores

The Term Loan Facilities and the Working Capital Facility aforementioned shall be collectively referred to as "**Facilities**".

6. Under the Facilities, the Applicant disbursed the following amounts to the Corporate Debtor (*Exhibit-3. Vol-1, pages 17 to of the Application):*

(i) "Term Loan I" or "RTL I" - Rs.54,99,99,999.88;

(ii) "Term Loan II"or "RTL II" - Rs.46,23,43,686.31;

(iii) "Funded Interest Term Loan I" or "FITL I" – Rs.3,83,30,479;

(iv) "Funded Interest Term Loan II" or "FITL II" – Rs.7,01,26,016; and

(v) Working Capital Facility:

(a) Cash Credit – Rs.40,23,00,000;

(b) Letter of Credit – Rs.4,99,98,876;

(c) No Bank guarantee facility was open or outstanding on April 30, 2018.

7. The Applicant submits that the Corporate Debtor committed default in its repayment obligations under the said Facilities. The initial date of default is 30th September 2015. The amount of default in relation to the Facilities is as under (*Exhibit -4, Vol. I, page 20 of the Application):*

Facility	**Loan numbers and drawdown numbers**	**Amount in default in Rs.**
Term Loan I	06960600000893	37,63,33,783.45
Funded Interest Term Loan I	06960600001281	4,90,16,105.07
Term Loan II	06960600001006	50,34,10,876.82
Funded Interest Term Loan II	06960600001282	6,66,52,574.70
Cash Credit	06960500000075	60,13,43,090.66
Letter of Credit	06960900000060	58,46,63,792.25
The total amount in default as on April 30, 2018		**218,14,20,222.95**

8. The factum of default on the part of Corporate Debtor in repayment of the Facilities is evident from the following documents annexed to the Application:

   (a) Record of default under the report of the Central Repository of Information on Large Credits dated 1st September 2017. (*Exhibit-8, Vol-II, pages 366 to 368 [relevant serial No.19 on page 367 and serial no.8 on page 368] of the Application)*

   (b) Record of default under the report of the CIBIL dated 1st August 2017 (*Exhibit-8, Vol-II, pages 369 to 503 of the Application):*

(i) Term Loan I (06960600000893) – Credit Facility 106 (*Exhibit-8, page 440 of the Application);*

(ii) Funded Interest Term Loan I (06960600001282) – Credit Facility 108 (*Exhibit-8, page 442 of the Application);*

(iii) Term Loan II (06960600001006) -Credit Facility 107 (*Exhibit-8, page 441 of the Application);*

(iv) Funded Interest Term Loan II (06960600001282) - Credit Facility 109 (*Exhibit-8, page 443 of the Application);*

(v) Cash Credit (06960500000075) – Credit Facility 10 – (*Exhibit-8, page 385 of the Application).*

(c) Copies of entries in the bankers' book maintained by State Bank of India in accordance with Bankers' Book Evidence Act, 1891 (*Exhibit -9, Vol-III, pages 504 to 1003 of the Application):*

(i) Term Loan I (06960600000893) – entry of 30th January 2016 (*Exhibit-9, page 520 of the Application);*

(ii) Funded Interest Ter Loan I (06960600001281) – entry of 30th September, 2015 *(Exhibit-9, page 557 of the Application);*

(iii) Term Loan II (06960600001006) – entry of 30th January 2016 *(Exhibit-9, page 520 of the Application);*

(iv) Funded Interest Term Loan II *(*06960600001282) – entry of 30th November 2015 *(Exhibit-9, page 562 of the Application);*

(v) Cash Credit (06960500000075) – entry of 20th October, 2015 *(Exhibit-9, page 985 of the Application); and*

(vi) Letter of Credit (06960900000060) – entry of 23rd September 2015 *(Exhibit-9, page 999 of the Application).*

(d) Recall notice dated 01.02.2016 issued by the Applicant to the Corporate Debtor demanding payment of Rs.174.61 Crores (*Exhibit-10, pages 1004 to 1005 of the Application)*

(e) Copy of the annual report of the Corporate Debtor for the financial year ending 31.03.2016 proving existence of financial debt and default (*Exhibit-10, pages 1006 to 1038 (relevant pages 1018-1019 of the Application).*

9. As stated above, the Principal amounts that are claimed to be in default in the Company Petition are clearly reflected in the Statement of Accounts for the said Facilities annexed to the Company Petition at *Exhibit 19 at page 504* onwards. Copies of entries in the bankers' book maintained by the Applicant in accordance with Bankers' Book Evidence Act, 1891 *(Exhibit-9, Vol.III page 504 to the Company Petition).*

10. The Petitioner placed reliance on **Swiss Ribbons Private Limited v. Union of India 2019 4 SCC 17** (para 55) and states that it is a settled position that entries in the Bankers Book as per the Banks Book Evidence Act 1891 are an evidence of debt. The Hon'ble Supreme Court held that:

"*55. Apart from the record maintained by such utility, From I appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt:*

(a) *Particulars of security held, if any, the date of its creation, its estimated value as per the creditor;*

(b) *Certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company);*

(c) *Order of a court, tribunal or arbitral panel adjudicating on the default;*

(d) *Record of default with information utility;*

(e) *Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925;*

(f) *The latest and complete copy of the financial contract reflecting all amendments and waivers to date;*

(g) *A record if default as available with any credit information company;*

(h) *Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891.* "

11. It is further submitted that the Principal Outstanding amounts in default provided in the Statement of Accounts are also

acknowledged by the Corporate Debtor in its Annual Report for the Financial Year 2015-16.

12. Further, the Corporate Debtor has acknowledged a debt of Rs.1,51,96,40,085/- as an **"Amount Outstanding as on 31.03.2018"** towards the Applicant in its Standalone Financial Statements for the period of 01.04.2017 to 31.03.2018 as available on the MCA website @ page 47 of the Standalone Financial Statements). Copy of the said Financial Statements for 01.04.2017 to 31.03.2018 is annexed hereto as **Annexure – 3.**

13. In view of the defaults committed by the Corporate Debtor, the Applicants vide its recall notice dated 01.02.2016 called upon the Corporate Debtor to pay Rs.174.61 crores being the amount due and payable as on 31.12.2015 (*Recall Notice is annexed at page 1004 of the CP).* It is noted that financial statements and annual report of the Corporate Debtor acknowledged the default in repayment by the Corporate Debtor.

14. The Applicant had filed the present Company Petition in view of the defaults sated hereinabove on 17.05.2018 for defaults as on 30.04.2018. The total outstanding in relation to the Facilities granted by the Applicant as on 30.04.2018 was Rs.218,14,20,222.95 (Rupees Two-hundred-Eighteen Crores Fourteen Lakh Twenty Thousand Two Hundred Twenty-Two and Ninety Five Paise Only). The default amounts in relation to the Facilities are provided at *Exhibit-4, Vol-1 Page 20 to the CP).*

15. Petition clearly evidences default above the threshold amount under IBC. It is submitted that the ascertainment of the quantum

of debt and default will have to be reconciled by the Resolution Professional once the claims are filed by the creditors with the Resolution Professional and the same need not be ascertained at the time of admission of Section 7 of the Code. It is further respectfully submitted that this Bench should satisfy itself as to the threshold of minimum of outstanding debt as required under the provisions of the Code.

16. In support of submission of ascertainment of the quantum of debt and default reliance is placed on ***Gouri Prasad Goenka v. Punjab National Bank & Anr. Company Appeal (AT) (Insolvency)*** **No.28 of 2019 (Para 11) and the Hon'ble Principal Bench of this Hon'ble Tribunal in IFCI Ltd. v. Era Housing and Developers India Ltd. IB-489(PB/2017)** (Para 17). It is a settled position as held by the Hon'ble National Company Law Appellate Tribunal in and that as an Adjudicating Authority it has not been entrusted with any function to determine the amount of default. Once the default has occurred and one of the requirements of Section 4 of the Code has been satisfied, any objection with regard to the amount would be maintainable before the Committee of Creditors.

Submissions made by the Respondent:

17. The Respondent submits that the present application is liable to be dismissed on following grounds:

    I. the present Section 7 Application has been filed on the basis of an incorrect date of default;

II. the alleged amount claimed by the Applicant is not due and payable in fact and thereby the present application under section 7 of the Code is defective; and

III. the alleged amount is not due and payable in law, it being barred by limitation.

I. <u>The present Section 7 Application is defective as the same has been filed on the basis of an incorrect date of default.</u>

18. The Applicant had granted certain loans and working capital facilities to the Respondent from time to time which were restructured on the terms and conditions set out in the Master Restructuring Agreement, dated 30.03.2015 ("MRA") ***Exhibit7, Section 7 Application, pages 261 to 342).*** The Applicant has filed the present Section 7 Application on the basis of an alleged default committed under this MRA.

19. The Respondent submits that the date of default stated by the Applicant is incorrect as the same has been taken conveniently without any basis. In this regard the Applicant relies on the following documents placed before this Tribunal.

i) Notice dated 16.01.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 issued by the State Bank of India on behalf of the consortium members including the Applicant herein which categorically specifies that the date of default, being date of NPA in respect of the

Applicant is 01.12.2014 (see Annexure A2 of Additional Affidavit of Respondent dated 08.09.2020 & 6).

ii) Show-cause notice dated 03.11.2018, issued on behalf of the Applicant, *interalia* stated that the accounts of Respondent in the books of the Applicant have been demonstrated as NPA as on 01.12.2014 **(*See Annexure A3 of Additional Affidavit of Respondent dated 08.09.2020 @ 16).*** As a matter of fact, this notice was issued by the Applicant even after filing of the present application under Section 7 of the Code.

iii) Letter of the Applicant, dated 23.02.2016, by which the Applicant froze the account of the Applicant, categorically states that the account of the Applicant turned NPA on 27.03.2015 ***(See Annexure 2 of Additional Affidavit of Respondent dated 28.08.2020, @ 4).***

20. These documents show that the Applicant has stated contradictory date of NPAs in its own documents. However, presuming any of the two dates of NPA (01.12.2014 or 27.03.2015) to be correct, the default in the present case would be much prior to the date of default taken by the Applicant in Section 7 Application. Therefore, Section 7 Application is liable to be dismissed for the same being defective.

21. The Applicant also initiated a proceeding (OA 88 of 2016) against the Respondent before the Hon'ble DRT, Mumbai under section 19 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993. The Applicant in the OA filed in the said proceedings also has categorically admitted that the date on which the account

of the Applicant was declared as NPA was 27.03.2015 (**See Annexure 3 of Additional Affidavit of Respondent dated 28.08.2020, @ 43).** On this count also, the Section 7 application is liable to be dismissed.

22. In support of its argument, the Respondent relies upon the judgement of Hon'ble NCLAT in *State Bank of India v. Krishidhan Seeds Pvt. Ltd. CA(AT)(I) 972of 2020* wherein it has been held that there cannot be two dates of defaults in respect of the same debt, one for the purpose of proceedings filed before the DRT and other for the purpose of proceedings before this Tribunal.

See paragraph 4 of State Bank of India v. Krishidhan Seeds Pvt. Ltd. CA(AT) 972 of 2020 (Pages 165, 166 of Judgement Compilation)

II. The alleged amount claimed by the Applicant is not due and payable in fact

23. It is submitted that the present Section 7 application has been filed by the Applicant on the basis of the alleged default committed under the MRA. The MRA was entered into between the Applicant and the Respondent on 27.03.2015. Relevant causes of the MRA are as follows:

i) In terms of Clause 8.2 of the MRA, the Applicant had a right to revoke the MRA on account of failure by the Respondent to make payment of any amount due under the MRA (***Exhibit 7, Section 7 Application, pages @311).***

ii) Further, in terms of Clause 8.3 of the MRS depicting consequence of revocation of MRA, in case of any default

in the MRA and subsequent revocation of the MRA, the rights and remedies of the Applicant falls back to the original loan agreements/facility agreements ***(Exhibit 7, Section 7 Application, pages @ 312)***

24. As a matter of fact, the MRA was revoked by the Applicant by its letter dated 01.02.2016 and the Applicant called upon the Respondent to pay an amount of ₹174.61 crores as on 31.12.2015 **(*Exhibit 10, Section 7 Application, pages @1004).***

25. The Applicant argues that in terms of Clause 8.3 of the MRA as shown herein above, the moment there is revocation of the MRA, the rights and liabilities of the parties falls back to the original facility agreements which were already declared NPA by the Applicant as has been demonstrated above. Since the Applicant has filed the present Section 7 Application on the basis of default committed under the MRA, the present application is liable to be dismissed as the amount claimed is not due and payable on fact. The same could only have been filed based on the date of declaration of account as NPA.

26. In this regard, the Respondent relies upon the judgement of Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407* wherein it has been held that a debt is not due if it is not payable in law or in fact.

See paragraph 28 of Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC

27. Further, in the present case, the Applicant has filed Section 7 Application based on the dates of default in the MRA. Respondent argues that the same could not have been done as any restructuring if failed/aborted, will not give the Applicant any fresh cause of action for the purpose of proceeding under the Code. In this regard, reliance is placed upon the judgement of Hon'ble NCLAT in *Stressed Asset Stabilization Fund v. Royal Brushes P. Ltd. CA(AT)(I) 949 of 2020*

    See paragraph 4, 5 of *Stressed Asset Stabilization Fund v. Royal Brushes P. Ltd. CA (AT) (I) 949 of 2020* **(Page 193 of Judgement Compilation).**

III. The alleged debt is not due as the same is not payable in law, it being barred by limitation.

28. Under Section 7(5) of the Code, Corporate Insolvency Resolution Process in respect of Corporate Debtor can only be initiated once the Tribunal is satisfied that a default has occurred.

29. Under Section 3(12) of the Code, default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be. Further, as has been stated above, a debt is not due if it is not payable in law or in fact.

30. The Respondent submits that in the present case, debt is not due as the same is not payable in law, it being barred by limitation.

31. The Respondent submits that Section 7 Application has been filed on the basis of incorrect date of default. The Section 7 Application could only have been filed on the basis of the date of NPA which in the present case is either 01.12.2014 or 27.03.2015. However, the present Application filed on 17.05.2018 which is 3 years after the date of declaration of account as NPA. Therefore, the present application is barred by limitation.

32. The Respondent submits that it is a settled law that date of declaration of the account as NPA is the starting date of counting a three (3) year period of limitation for the purpose of application under Section 7 of the Code. In support of the arguments, reliance is placed upon the following judgements:

    See paragraph 3, 6 of *Gaurav Hargovind Dave v. Asset Reconstruction Company India Ltd. and Anr. Civil Appeal No.4952 of 2019* ***(pages 56, 57, of Judgement Compilation).***

    See paragraph 3 of *Sri Kaustuv Ray v. State Bank of India & Anr. CA(AT)(I) No.804 of 202* **(Pages 227,228 of Judgement Compilation)**

    See paragraph 1 of *Invent Asset Securitization and Reconstruction Pvt. Ltd. Xylon Electrotechnic Private Limited, Civil Appeal No.3783 of 2020 (**Page 225 of Judgement Compilation)***

33. Further submits that in the present case, the Applicant has filed Section 7 Application based on the dates of default in the MRA. Respondent submits that the same could not have been done as any restructuring if failed/aborted, will not give the Applicant any fresh cause of action for the purpose of proceeding under the Code. In this regard, reliance is placed upon the judgement of Hon'ble

NCLAT in *Stressed Asset Stabilization Fund v. Royal Brushes P. Ltd. CA(AT)(I) 949 of 2020*

See paragraph 4, 5 of *Stressed Asset Stabilization Fund v. Royal Brushes P. Ltd. CA(AT)(I) 949 of 2020* ***(Page 193 of Judgement Compilation).***

34. To save Section 7 Application from being barred by law of limitation, the Applicant relies upon an alleged acknowledgement of debt of the Applicant in its annual report for the financial year 2015-16 *(Exhibit 10, Section 7 Application, page 1018)* to argue that the same will extend the period of limitation under Section 18 of the Limitation Act, 1963. In this regard, the Respondent submits that the alleged acknowledgement relied upon by the Applicant is nothing but an auditor's report which is not even signed by the Respondent or its directors. Hence, the same is not an acknowledgement of debt for the purpose of Section 18 of the Limitation Act, 1963. In this regard, reliance placed upon Explanation 2 of Section 18 of the Limitation Act reproduced herein below:

"18. Effect of acknowledgement in wring —

…….

Explanation — For the purposes of this section,

……

(b) the word "signed" means signed either ***personally*** *or by* ***an agent duly authorized in this behalf; and***

……."

35. We have heard the arguments of Financial Creditor and Corporate Debtor and perused the records.

36. The Corporate Debtor has contended the matter and opposed admission on three grounds. First being debt claimed under Section 7 Application is stated to be on the basis of incorrect date of default. While perusing the records, we have observed that the Financial Creditor granted various facilities to the Corporate Debtor and upon non-payment of those facilities, the Account of the Corporate Debtor became NPA. Thereafter, the Applicant and Respondent vide Agreement dated 30.03.2015 entered into MRA. Excerpts of Schedule of repayment agreed vide MRA is also annexed to the Petition under which repayment was to be made till 2024-25. Even after entering the MRA, the Corporate Debtor defaulted the repayment schedule of MRA.

37. Vide letter dated 01.02.2016, the Financial Creditor called upon the Corporate Debtor to pay a sum of Rs.174.61 crore being the amount due and payable as on 31.12.2015 within 7 (Seven) days from the date of receipt of recalled notice. Therefore, it can be construed as date of default were taken by the Applicant were correct. The Corporate Debtor failed to comply with the MRA.

38. Secondly, the Corporate Debtor contented that the amount claimed in the Application is not due and payable, the moment there is revocation of the MRA, the rights and liabilities of the parties falls back to the original facility agreements which were already declared NPA by the Applicant as has been demonstrated above upon the perusal of records. We have noticed that both the parties entered into MRA and there is no record of terminating MRA. Therefore, the Corporate Debtor's arguments are devoid of

merits that the amount claimed is not due and payable under MRA.

39. Also, the reliance placed by the Corporate Debtor on judgement of Innoventive Industries is misplaced, even if we consider the situation that MRA was revoked and rights and liabilities of parties falls back the original facilities Agreements vide which Respondent was declared NPA way back in this situation also there was default on part of the Respondent. Hence now Respondent cannot shy away from the fact that there is debt and default in repayment was committed by the Respondent. The MRA was to facilitate restructuring of the Corporate Debtor and not to defraud the Creditor. Therefore, this Bench is of the considered opinion that the Corporate Debtor owes money to the Financial Creditor.

40. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

41. The Financial Creditor has proposed the name of **Mr. Alok Kailash Saksena,** Registration No. IBBI/IPA-001/IP-P00056/2017-2018/10134, as the Interim Resolution Professional of the Corporate Debtor. He has filed 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 his Certificate of Registration.

42. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

43. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB) 1807/MB/C-I/2018** filed by **Bank of Baroda,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Topworth Urja & Metals Limited [CIN: U27109MH1993PLC074950],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

(i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) 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.

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

(f) **Mr. Alok Kailash Saksena,** Registration No. IBBI/IPA-001/IP-P00056/2017-2018/10134, having address at 104, Mysore Colony, Chembur, Mumbai – 400074, Email: aks@dsaca.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs 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).

(i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)

12.08.2022
SAM