

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) No.52/ALD/2023**

*(An application filed 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:**

**Punjab National Bank.  
(Through Authorized Officer)**

**Head Office At:**

Plot No. 4, Sector -10, Dwaraka,  
New Delhi, 110075

**Circle Sastra At:**

Circle Office, Basant Bihar Colony,  
Bairaj Road, Bijnore- 246701

**Branch Office At:**

Chowk Bazar, Najibabad, District- Bijnore  
Uttar Pradesh- 246732

**.....Financial Creditor**

**Versus**

**M/s Shree Badri Kedar Paper Pvt Ltd.**

A Company Private Limited Incorporated with  
CIN-U27109UR1985PTC007453

**Registered Office:**

5 K.M, Najibabad Nagina Road  
Vill- Sikandrapur Basi Najibabad  
District – Bijnor, PIN – 246763

**..... Corporate Debtor**

**Order Pronounced on: 16.04.2025**

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***Coram:***

Sh. Praveen Gupta : Member (Judicial)  
Sh. Ashish Verma : Member (Technical)

***Appearances:***

Sh. Nishi Chaudhary with : *For the Financial Creditor*  
Sh. Yashartha Gupta, Adv.  
Sh. Vedant Agarwal, Adv. : *For the Corporate Debtor*

**ORDER**

1. This Application has been filed on 22.06.2023 by the Punjab National Bank as the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “IBC”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Shree Badri Kedar Papers Private Limited (hereinafter referred as “Respondent/Corporate Debtor) in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 41,94,62,418.23/- (as on 31.05.2023) in default, declaring date of default being 31.12.2021.
2. It is stated in Part-IV of the Application that the Corporate Debtor availed various credit facilities, namely term loan, cash credit, which

was subsequently enhanced over time, and Inland Letter of Credit/Foreign Letter of credit (ILC/FLC). The details of the sanctioned facilities are as follows:

<u>Facility</u>	<u>Limit (In Crores)</u>	<u>Date of Sanction</u>
Cash Credit	Rs. 2.50	23.02.2006
ILC/FLC	Rs. 3.00	29.12.2016
Cash Credit	Rs. 4.00	27.09.2008
Cash Credit	Rs. 5.25	17.11.2009
Cash Credit	Rs. 7.00	26.11.2010
Cash Credit	Rs. 7.50	09.03.2013
Cash Credit	Rs. 8.00	28.03.2014
Cash Credit (Renew)	Rs. 8.00	26.11.2014
Cash Credit	Rs. 11.00	28.10.2015
Cash Credit	Rs. 13.00	29.12.2016
Term Loan	Rs. 6.50	27.02.2017
Cash Credit	Rs. 15.00	03.02.2018

3. In order to secure the aforementioned loan facilities, the Applicant executed various security documents with the Corporate Debtor and further filed charges/modification of charges with the ROC. The Applicant obtained the Certificate of registration of charge dated 19.02.2018.
4. Further, the Corporate Debtor, through a letter dated 27.02.2020, requested the Applicant to allow interchangeability for both fund and non-fund based limits and subsequent transfer of Rs. 2.92 crores in cash credit facility. Consequently, the Applicant sanctioned the request through a sanction letter dated 29.02.2020, resulting in enhancement

of cash credit facility from Rs. 15 crores as sanctioned in the year 2018 to Rs. 17.92 crores.

5. The Applicant submits that they sanctioned the facilities based on the requirements of the Corporate Debtor; however, the Corporate Debtor failed to comply with the terms and conditions of the agreements. Despite repeated requests to regularize their accounts and adhere to banking norms, the Corporate Debtor did not maintain financial discipline and was classified as an NPA on 31.03.2021. In view of the continuing defaults, the Applicant issued multiple recall letters demanding payment of the outstanding amount.
6. The Directors of the Corporate Debtor executed various agreements of Guarantee dated 20.03.2006, 17.11.2008, 21.11.2009, 29.11.2010, 19.03.2012, 13.03.2013, 31.03.2014, 04.12.2014, 31.10.2015, 30.12.2016, 29.03.2017 and 19.02.2018, wherein they agreed that their guarantee shall be of a continuing nature and their liability shall be co-extensive with the liability of the Corporate Debtor.
7. Pursuant to the guarantee agreement executed, the Applicant submits that they have through a recall letter dated 10.03.2022 have also called upon the guarantors of the Corporate Debtor namely- Mr. Arvind Kumar Agarwal, Mr. Ashok Kumar Agarwal, Mr. Avdesh Kumar

Aggarwal, Mr. Sumit Kumar Agarwal, Mr. Dinesh Kumar Goel, Ms. Achala Agarwal and Ms. Uma Agarwal, to pay the outstanding amount along with further interest thereon.

8. The Applicant, in compliance with the guidelines/directives of the RBI, submits that no interest accrued was debited /charged in the sanctioned credit working facilities of the Corporate Debtor from the date of its classification as NPA. However, the same was recorded separately in the memoranda register, and the Applicant Bank is entitled to claim/receive the said interest as due in the accounts from the Corporate Debtor till the repayment of the dues. Thus, the total recoverable amount as on 31.05.2023 stands as Rs. 41,94,62,418.23/.
9. Thereafter, the Applicant filed an original application no. 207/2022 before the Hon'ble Debt Recovery Tribunal (DRT), Dehradun, under section 19 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993, on 24.03.2022, which is still pending for further adjudication.
10. Aggrieved by the continuing default and after taking into account the directions issued by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 03 of 2020, the Applicant filed the present application.

## **REPLY ON BEHALF OF THE CORPORATE DEBTOR**

11. In response to the aforesaid application, the Corporate Debtor has filed a reply vide diary no. 2694 dated 09.10.2023, wherein the default amount as mentioned in Part-IV of the Application is vehemently disputed by the Corporate Debtor. The Corporate Debtor availed various financial facilities since 2006, which were periodically renewed vide sanction letters dated 09.03.2013, 26.11.2014, 27.02.2017, and 03.02.2018.
12. Thereafter, due to COVID-19, the Corporate Debtor's business came to a standstill, prompting the Respondent to apply under the Guaranteed Emergency Credit Line (GECL) scheme announced by the Union of India for MSME borrowers. However, the benefit of the scheme was not extended to the Respondent; instead, its loan accounts were restructured vide letter dated 08.01.2021.
13. The Corporate Debtor submits that in response to the Applicant's letter dated 27.01.2021 seeking compliance with the sanction terms dated 08.01.2021, it informed that Rs. 63 lakhs had already been deposited. Nevertheless, the Applicant again raised the same demand through its letter dated 18.02.2021. In response, the Directors of the Corporate Debtor, vide letter dated 30.03.2021, requested the Applicant Bank to continue the current account for 3 months.

14. The Corporate Debtor asserts that its directors, through multiple communications, including a letter dated 13.04.2021 and subsequent letters on 01.06.2021, 11.06.2021, 18.06.2021, and 29.06.2021, reiterated compliance with the restructuring terms and sought time for pending obligations due to the second wave of COVID-19.
15. Despite this, the Applicant, through email dated 29.04.2021 and letters dated 20.05.2021, 27.05.2021, 14.09.2021, and 27.09.2021, alleged non-compliance but also confirmed that the restructuring remained valid until 30.09.2021. Hence, the Corporate Debtor contends that classification of the account as NPA on 31.03.2021 is untenable, and the Applicant's shifting stand on the date of default renders the claim disputed.
16. The Corporate Debtor further submits that the Applicant in its notice dated 20.02.2023 under Section 13(2) of the SARFAESI Act, declared the account as NPA with effect from 31.03.2021. However, the Corporate Debtor contends that this classification is erroneous as the restructuring dated 08.01.2021 was acknowledged by the Applicant to remain valid till 30.09.2021. Moreover, as per RBI guidelines, a restructured account cannot be classified as NPA for at least three

months post-restructuring; hence, the declaration of NPA on 31.03.2021 is contrary to both contractual terms and regulatory norms.

17. The Corporate Debtor contends that the Applicant Bank has taken inconsistent positions regarding the date of NPA. While a text message dated 29.04.2022 from the Applicant Bank indicated the NPA date as 29.09.2020, the subsequent notice issued under Section 13(2) on 20.02.2023 mentioned 31.03.2021 as the NPA date. These contradictory statements raise serious doubts about the credibility and validity of the proceedings initiated by the Applicant Bank.
18. It is further contended by the Corporate Debtor that the Applicant has charged excessive interest in violation of RBI norms. This interest calculation has already been challenged by the Corporate Debtor before the Hon'ble DRT in SA No. 111/2022 and OA No. 207/2022, which are currently pending adjudication. Additionally, contrary to RBI guidelines requiring reversal of interest in a separate account after NPA classification, the Applicant continued to debit interest into the same account, further reflecting procedural lapses and casting doubt on the accuracy of the Applicant's claims.
19. The Corporate Debtor asserts that the Applicant Bank wrongfully and illegally initiated the initial SARFAESI proceedings with mala fide

intent to harass the Respondent. Furthermore, the Bank has provided inconsistent and exaggerated figures regarding the Respondent's liability. Initially, an outstanding amount of Rs. 33.49 crores was claimed in O.A. No. 207/2022, which was subsequently amended to Rs. 35.69 crores, and later increased to Rs. 40.71 crores in the notice dated 20.02.2023. Thus, reflecting the Applicant Bank's mala fide intent, as evidenced by its varying claims of outstanding dues at different stages of proceedings before the Hon'ble DRT, Dehradun.

20. The Corporate Debtor submits that it has fully complied with the terms of the loan restructuring as per the sanction letter dated 08.01.2021, and therefore, the Applicant's allegations of non-compliance are unfounded. Moreover, the actual date of NPA classification remains unclear due to inconsistencies in the records of the Applicant, rendering the notices issued under Section 13(2) of the SARFAESI Act void ab initio. Further, the claimed extension of restructuring compliance until 30.09.2021 was never mutually agreed upon between the parties.
21. Lastly, it is submitted by the Corporate Debtor that the Applicant Bank has acknowledged the restructuring sanction letter dated 08.01.2021 in the proceedings before the Hon'ble DRT, Dehradun, stating that the

restructuring was valid till 30.09.2021. Therefore, the claim that the Respondent's account turned NPA on 31.03.2021 is erroneous, and no debt was due or payable to the Applicant Bank on that date. Furthermore, the Bank has initiated multiple proceedings in different forums and jurisdictions, such as O.A. No. 207/2022 before the DRT, Dehradun, for the recovery of the same alleged debt, thereby constituting "forum shopping," which is legally untenable.

### **REJOINDER FILED BY THE APPLICANT**

22. The Applicant filed its rejoinder, recorded under diary no. 2905 dated 09.11.2023, denying and countering all the contentions raised by the Corporate Debtor, on the following grounds:

- a. The Applicant, with respect to the contention of declaration of the Corporate Debtor's account NPA arbitrarily as the restructuring was valid till 30.09.2021, submitted that the Corporate Debtor failed to fulfil its obligation concerning the terms and conditions of the restructuring plan. The terms and conditions not abided by the Corporate Debtor are reproduced verbatim as follows:

“

- *Party has to bring Rs.0.95 Crore as part contribution which includes overdue amount of Rs.0.39 Crore as on 30.11.2020 and any other dues till the implementation of restructuring from his own sources upfront before implementation.*

- *Borrower to bring Rs.1.50 Crore as per TEV addendum dated: 20.11.2020 for CAPEX requirement for completion of turbine work of Rs. 1.50 Crore.*
- *LIE certificate that factory is in running conditions and required maintenance has been completed before implementation of restructuring except turbine project.*
- *Some adverse features are reported in CIR report of borrower and guarantor. Hence, NOC/No Overdue letter from respective banks to be obtained.*
- *Borrower to obtain electricity connection within 15 days of restructuring.*
- *Before implementation of restructuring, statutory dues will be cleared and No dues certificate from respective department to be obtained along with CA certificate.*
- *NOC/Clearance for service tax/GST be obtained and held on record before implementation of restructuring package.*
- *All payment of electricity dues amounting Rs.4.83 Crore approx. to be made, no dues from electricity department to be obtained.*
- *Company to ensure that income tax return, GST return upto latest date of company, borrower and guarantor to be filed up to date. GST return is obtained before implementation of the restructuring package.*
- *Before implementation of restructuring, borrower to obtain all necessary statutory approvals (including Fire certificate, Approval of bore well, Consent to establish, NOC from pollution control board for water and air pollution and factory license) has been obtained by the party and held on record.*

- *Branch to close the current account (A/c No. 0357002100293053) permitted for clearing statutory dues within 2 months from the date of restructuring but before release of enhanced facilities by way of fresh FBWC of Rs. 4.94 Crore.*
  - *Promoters must bring additional funds in all cases of restructuring. Additional funds brought by promoters should be a minimum of 20% of bank's sacrifice or 2% of the restructured debt whichever is higher. The promoter's contribution should be brought up front.”*
- b. The Applicant submits that the Directors of the Corporate Debtor, through letter dated 29.06.2021, acknowledged the expiry of the restructuring proposal on 07.07.2021 in view of the non-compliance of the said proposal and further requested 3 months to comply with the compliances as per the Restructuring plan.
- c. The Applicant asserts that the present matter is filed under section 7 of the Code wherein the Corporate Debtor is in default, whereas the Corporate Debtor is trying to dispute the quantum of the amount which is in default by referring to different amounts due at different points in time. However, the present application is filed under Section 7 of the Code, which is distinct from the SARFAESI Act and RDBFI Act.
- d. The applicant states that under no situation can the Corporate Debtor claim its account to be regular or satisfactorily maintained with the Financial Creditor. The account of the Corporate Debtor is under the category of NPA, which was declared on 31.03.2021 by the applicant Bank.

e. It is submitted by the applicant bank that as per Section 3 (12) of the Code, 2016, default means non-payment of debt when whole or any part or instalment of any debt has become due and payable and is not paid by the Corporate Debtor, as the case may be and on the other hand debt as per section 3(11) of the Code, 2016 means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and an operational debt. As per Section 5(8) of the Code “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money. Therefore, on conjoint reading of the above definitions of the Code, the Corporate Debtor is in default for its debt amounting to Rs. 41,94,62,418.23/- as on 31.05.2023.

23. The Corporate Debtor had also filed an affidavit recorded under Diary No. 1147 dated 03.06.2024, wherein the Corporate Debtor stated the deliberate misconduct on the part of the Applicant during the proceedings before the Hon’ble DRT, Dehradun. It is further contended by the Corporate Debtor that the Applicant has also failed to disclose the consideration of the OTS proposal before this Tribunal, despite the fact that the same has been acknowledged before the Hon’ble DRT.

24. In compliance with the order dated 03.07.2024, the applicant filed an affidavit recorded under diary No. 1816 dated 11.06.2024, wherein the Applicant submitted the following:

- a. On 04.03.2020, the Corporate Debtor in its cash credit account bearing No. 0357008700390176 exceeded its sanctioned limit of Rs. 17.92 crore. Thus, the actual date of default in the Cash Credit account of the Corporate Debtor was on 04.03.2020, and the default was continued till the date of NPA, i.e., 31.03.2021. Thus, the actual default by the Corporate Debtor has occurred much prior to the applicability of Section 10A of the Code.
- b. The Applicant submits that, irrespective of being in default on 04.03.2020 itself, the account of the Corporate Debtor was not marked Special Mention Account (SMA) due to the circular issued by the RBI on 27.03.2020. The said circular granted a moratorium period of 3 months on payments of all instalments falling due between 01.03.2020 till 31.05.2020. Further, the said timeline was extended by another 3 months from 01.06.2020 till 31.08.2020 vide RBI circular on 23.05.2020. The said circular also permitted the Financial Creditors to convert the interest of the extended period upto 31.08.2020 into a funded interest term loan.
- c. Thereafter, through an internal circular dated 25.06.2020, the RBI issued certain guidelines regarding the exposure limit for Cash Credit/Overdraft (CC/OD) accounts exceeding Rs. 50 lakhs. The Hon'ble Supreme Court vide its judgment in *WP (C) No. 476/2020* titled as "*Small Scale Industrial Manufactures*

*Association V. Union of India & Anr.* ” dated 23.03.2021, vacated earlier interim relief granted not to declare the accounts of respective borrowers as NPA. Consequently, the Applicant was categorised as NPA on 31.03.2021.

- d. The Applicant has also relied on the judgment passed by the Hon’ble NCLAT in the matter of “Milind Kashiram Jadhav v. State Bank of India and Anr.” [CA (AT)(INS) 1589 of 2023] wherein the Hon’ble NCLAT has observed as follows: -

*“74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.”*

**WRITTEN SUBMISSION FILED BY THE  
RESPONDENT/CORPORATE DEBTOR**

25. The Corporate Debtor, in compliance with the order dated 24.03.2025, has filed its written submission, recorded under Diary No. 543 dated 02.04.2025, wherein it is submitted that the date of default falls within

the period prescribed under Section 10A of the Code. The Corporate Debtor's account was declared NPA on 31.03.2021, indicating that the date of default occurred within three months prior to the said declaration. As such, the default date clearly falls within the suspension period under Section 10A of the Code, rendering the present application non-maintainable at the outset.

26. The Corporate Debtor further submits that the actual date of default, i.e., 04.03.2020, as mentioned by the Applicant in its affidavit dated 28.08.2024, is erroneous. A perusal of the cash credit account statement, annexed as Annexure 1 to the said affidavit, reveals that the default occurred only after 30.03.2020, when the Corporate Debtor exceeded the sanctioned limit for a continuous period of 30 days. Therefore, the date of default, if any, would be 31.03.2020 onwards, which squarely falls within the period prescribed under Section 10A of the Code. Accordingly, the present application is liable to be dismissed as non-maintainable.

### **FINDING AND ORDER**

27. We have heard the Ld. Counsel for the Applicant and perused the records, exhibits/annexures, and after considering arguments

advanced by respective Learned Advocates, the main issues which are before us to be decided in respect of the present Application u/s 7 are:

- i. Whether there is debt and default within the meaning of the I &B Code, 2016.
- ii. Whether the date of default as mentioned in the Section 7 application falls within the period specified under Section 10A of the Code.

**28.** With regard to the first issue, it is stated that the Corporate Debtor has availed the Financial Facilities in the following forms:

- i. Term loans of Rs. 6.50 crores, Rs. 2.50 crores, Rs. 4.50 crores and Rs. 6.50 crores vide sanction letter dated 23.02.2006, 09.03.2013, 26.11.2014 and 27.02.2017, respectively.
- ii. Cash credit facility of Rs. 2.50 crores vide sanction letter dated 23.02.2006, which was further renewed and enhanced till Rs. 15 crores vide sanction letter dated 27.09.2008, 17.11.2009, 26.11.2010, 09.03.2013, 28.03.2014, 26.11.2014, 28.10.2015, 29.12.2016 and 03.02.2018, respectively. Further, through a letter dated 29.02.2020 seeking the interchangeability of both non-fund based limits as well as fund-based limit, the cash credit facility was enhanced to Rs. 18 crores.
- iii. Inland Letter of Credit/Foreign Letter of Credit issued for Rs. 3 crores vide the sanction letter dated 29.12.2016.

**29.** In support of the above financial and credit facilities, several letters dated 22.03.2006, 19.11.2008, 30.11.2010, 20.03.2012, 14.03.2013,

02.04.2014, 14.12.2014, 15.12.2014, 31.10.2015, 30.12.2016, and 29.03.2017 were issued by the Corporate Debtor, wherein it acknowledged the sanctioned loan amounts and confirmed the deposit of the original title deeds of the properties offered as security.

30. As per Part-IV of the Application, the various financial and credit facilities have been in default since 31.03.2021, thus resulting in the total recoverable/default amount as on 31.05.2023, as follows: -

Total Cash Credit	Rs. 28,26,51,959.80
Total 1 <sup>st</sup> Term Loan	Rs. 78,29,862.75
Total 2 <sup>nd</sup> Term Loan	Rs. 1,97,28,229.46
Total 3 <sup>rd</sup> Term Loan	Rs. 10,92,52,366.22
<b>Total</b>	<b>Rs. 41,94,62,418.23/-</b>

31. It is also stated by the Applicant that the accounts of the Corporate Debtor failed to comply with financial discipline and first time defaulted on repayment on 04.03.2020 and as default continued, the loan account of the Corporate Debtor was accordingly classified as NPA on 31.03.2021. Subsequently, recall notices were issued to the Corporate Debtor demanding repayment of the outstanding dues. The Applicant also invoked the personal guarantees of the guarantor

associated with the Corporate Debtor through a letter dated 10.03.2022.

- 32.** As the default continued, the Applicant filed a recovery application before the Hon'ble DRT, Dehradun, which is currently pending adjudication. Thereafter, the Applicant filed an application under Section 7 of the Code before this Tribunal on 22.06.2023, which falls within the three-year limitation period from the date of default, i.e., 31.03.2021.
- 33.** The default on the part of the Corporate Debtor is evident from the NeSL records submitted by the Applicant as on 07.06.2023, showing that there is a default committed by the Corporate Debtor.
- 34.** As regards to no default on repayment of loan occurring on 31.03.2021 i.e., the date of NPA and debt having not become due for repayment in view of restructuring of loan of the Corporate Debtor remained valid till 30.09.2021, we find that no details could be produced by the Corporate Debtor to show that any repayment of outstanding loan could be started by it even after 30.09.2021. Therefore, an Original Application No. 207/2022 was filed by the Applicant Bank before the Hon'ble DRT, Dehradun under Section 19 of RDDBFI Act, 1993 on 24.03.2022, which is still pending for

adjudication. Therefore, it is very clear that the first default which occurred on 04.03.2020 and finally resulted into NPA on 31.03.2021 continued despite an attempt for restructuring of outstanding debt was made by the Corporate Debtor, which it states to have continued till 30.09.2021 but it also failed as conditions stipulated by the Bank could not be fulfilled. Thus, we find that clear default in repayment of outstanding debt which is more than the threshold of Rs. 1 crore, has occurred.

35. The debt and default further stand corroborated by a perusal of the statement of accounts of the Financial Creditor, which has been filed with the instant petition as Annexure A-40, as well as the affidavit dated 28.08.2024 as Annexure-1. Thus, the Corporate Debtor is admittedly in default on repayment of its huge amount of loan facilities towards the Financial Creditor, which has now become overdue.
36. After considering the entire facts of the case so far discussed and taking into account the decision of the Apex Court in the case of *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407* in which it has been already held that a petition under IBC be admitted if there is clear debt and default, we are of the considered opinion that in the present case, default on repayment of the debt has occurred and the

Section 7 Petition filed by the Financial Creditor is complete in all aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 and attaching all the necessary supporting documents including ROD from NeSL as required in Part V of the Application. Considering that all the above criteria are fulfilled as required under the I & B Code, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor.

37. With regard to the second issue i.e., the maintainability of the present application, the Corporate Debtor has taken the position that since the loan account was classified as NPA on 31.03.2021, the date of default must be considered as three months prior to such classification. On this basis, it is contended that the default falls within the prohibited period under Section 10A of the Code, and therefore, the application is not maintainable.
38. However, the Learned Counsel for the Applicant, by way of an affidavit dated 28.08.2024, has submitted that the actual date of default occurred on 04.03.2020, when the Corporate Debtor exceeded the sanctioned limit of ₹17.92 crores in its Cash Credit account. This default, as per the Applicant, is a significant financial default and

occurred well before the commencement of Section 10A, which was introduced with effect from 25.03.2020. The relevant excerpts of Section 10 A of the Code states as follows:

*“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”*

- 39.** Based on the submissions made by the Applicant, it is noted that the Applicant was unable to classify the account as Special Mention Account (SMA) on the said date due to restrictions imposed by the Reserve Bank of India’s circular dated 27.03.2020. This circular provided relief measures in the form of a moratorium on payment obligations, including those under Term Loans and Working Capital Facilities, covering the period from 01.03.2020 to 31.05.2020. Accordingly, the inability to tag the account as SMA at that time was

a result of regulatory compliance, not an absence of default. The cash credit account statement placed on record establishes that the default had, in fact, occurred on 04.03.2020, which is prior to the cut-off date prescribed under Section 10A of the Code.

40. It is further noted that the Reserve Bank of India, vide circular dated 23.05.2020, extended the moratorium granted under its earlier circular by an additional period of three months, thereby covering the period from 01.06.2020 to 31.08.2020. These regulatory relaxations were aimed at providing temporary relief to borrowers in view of the COVID-19 pandemic and its impact on economic activity. Subsequently, in the matter of Writ Petition (Civil) No. 476 of 2020, the Hon'ble Supreme Court of India, by its judgment dated 23.03.2021, vacated the stay that had earlier restrained lenders from classifying borrower accounts as NPAs during the intervening period. It is only upon such vacation of the stay and the lifting of regulatory constraints that the Applicant proceeded to classify the Corporate Debtor's account as NPA on 31.03.2021.
41. In view of the foregoing facts and circumstances, it is evident that the delay in classification of the account as NPA was not due to the absence of default, but rather due to compliance with regulatory

circulars issued by the RBI and directions of the Hon'ble Apex Court. Accordingly, the classification of the account as NPA on 31.03.2021 was a consequence of the lifting of legal and regulatory impediments, and does not alter the date of actual financial default, which has already been established as 31.03.2021 as per the cash credit account statement attached as Annexure 1 of the affidavit dated 28.08.2024. Nevertheless, the default which has occurred on 31<sup>st</sup> March, 2021 is an independent event as the CC limit exceeded on that date and that is not barred under section 10A of the Code.

42. It is important to reiterate that Section 7 of the Code is triggered upon the occurrence of a "default" as defined under Section 3(12), which refers to the non-payment of debt when due and payable. Therefore, the relevant consideration for maintainability is the date of default i.e., when the debt becomes due and payable, and not merely the date of NPA classification. In the present case, the dates on which the debt became due and payable namely, the initial date of default being 04.03.2020 and the final date of default being 31.03.2021, as specified in Part-IV of the application, fall beyond the protective period covered under the bar imposed by Section 10A of the Code. Accordingly, the defaults in question are not shielded by the temporary suspension of

insolvency proceedings provided under the said provision. Hence, the present application is maintainable as the default date does not fall within the period as prescribed under Section 10A of the Code.

43. Further, with respect to another contention raised by the Corporate Debtor that its account ought not to have been classified as NPA on 31.03.2021 owing to a restructuring proposal executed between the parties, we find that the restructuring proposal dated 08.01.2021 was never implemented, as the Corporate Debtor failed to fulfil the additional stipulations and conditions prescribed under the said proposal.
44. It is further observed that the mere existence of a restructuring proposal, without its implementation due to the Corporate Debtor's non-compliance with stipulated conditions, does not defer the occurrence of default or preclude NPA classification. The extension of timelines was conditional and intended to facilitate compliance, which, not having occurred, rendered the proposal inoperative. Therefore, the said contention of the Corporate Debtor does not affect the validity of the NPA classification or the maintainability of the present application.

45. Considering the above facts and circumstances, we have observed that credit facilities having a value of more than 1 crore have been sanctioned to the Corporate Debtor, which is defaulted by it on repayment due to its inability to pay the same within the agreed repayment schedule, thereby causing default. Further, on a perusal of the reply filed by the Corporate Debtor, it is evident that the Corporate Debtor has not denied the existence of debt or default but has merely raised a dispute regarding the quantum of debt. We reiterate that Section 7 of the Code requires the existence of a financial debt above the threshold limit and a default in repayment thereof; the dispute on its exact quantification is not a ground for rejecting the application, provided the minimum threshold of ₹1 crore is satisfied, which is clearly met in the present case.
46. Thus, the Applicant / Financial Creditor has proved that there is a ‘debt’ and ‘default’ on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is required to be admitted and Corporate Insolvency Resolution Process (CIRP) is required to be initiated against the Corporate Debtor, i.e., M/s Shree Badri Kedar Papers Private Limited.

47. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs. 1 crore applicable at present. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7 has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.
48. The Financial Creditor, in Part-III of the Application, has proposed the name of Ms. Rakesh Verma as Interim Resolution Professional. His Registration Number is IBBI/IPA-001/IP-P-01814/2019-2020/12794, R/o H. No. 1099, Vikas Kunj, Vikas Puri, West Delhi- 110018, Email: rverma@ravkassociates.com. She has duly given consent in Form No. 2 dated 21.03.2023 annexed as **Annexure A-41** with the Application. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Ms. Rakesh Verma, and found that presently no disciplinary proceeding is pending against the proposed IRP and also there is nothing adverse against her. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 30.06.2026. After considering these details, we appoint Ms. Rakesh

Verma having registration No. IBBI/IPA-001/IP-P-01814/2019-2020/12794, as Interim Resolution Professional (IRP).

49. Accordingly, this application is admitted u/s 7 of the Code, 2016 under the following terms and conditions.

- i. The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., **M/s Shree Badri Kedar Papers Private Limited** is hereby admitted.
- ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii. This Adjudicating Authority hereby appoints Ms. Rakesh Verma to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 53 above.
- iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
  - 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;
  - 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.
- vi.** Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor, as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii.** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- viii.** The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-

section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

- ix.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors ( hereinafter referred as “**COC**”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and

Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.

- xiii.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.
- xiv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”).
- xv.** The Financial Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.

- xvi.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.
- xvii.** The IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench/IBBI/MCA for this purpose.
- xviii.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.
- xix.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- xx.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxi.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.

- xxii.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxiii.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- xxiv.** We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
- 50.** A certified copy of the order shall be communicated to both the Applicant Financial Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Financial Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
- 51.** List the matter on 19.05.2025 for filing of the progress report/further proceeding.

**-Sd-**  
**(Ashish Verma)**  
**Member (Technical)**  
**Date: 16.04.2025**

**-Sd-**  
**(Praveen Gupta)**  
**Member (Judicial)**