



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY PETITION NO. (IB)-36(ND)/2024

(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:

YES BANK

...Applicant/Financial Creditor

Versus

M/s KKSPUN INDIA LIMITED

...Respondent/ Corporate Debtor

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 11.07.2025

PRESENT:

For the Applicant : Mr. Raghav Kakkar, Adv.

**For the Respondent : Mr. Kartik Malhotra,
Ms. Shreya Mansi, Advs**

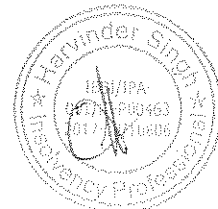




ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present Company Application is filed by Yes Bank ('Applicant') through its Senior Vice President /Authorised Representative Mr. Ekansh Kumar under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with the following prayer with a prayer to trigger Corporate Insolvency Resolution Process in respect of Respondent Company M/S. KKSPUN INDIA LIMITED ('Corporate Debtor') for default in repayment of financial debt of Rs.60,94,00,000/- (Rupees Sixty Crores and Ninty Four Lakhs Only).
2. The Applicant, Yes Bank is a body corporate constituted under the Companies Act, 1956, and a Banking Company within the meaning of Section 5(c) of the Banking Regulation Act, 1949, being a Scheduled Commercial Bank.
3. The Corporate Debtor i.e., M/S. KKSPUN INDIA LIMITED having CIN: U29199DL2006PLC144590 is incorporated on 09.01.2006 under the provisions of the Companies Act, 1956 having its registered office situated at DSIIDC SHED NO. 103, SCHEME - I OKHLA INDUSTRIAL AREA, PHASE-II, NEW DELHI - 110 020. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for



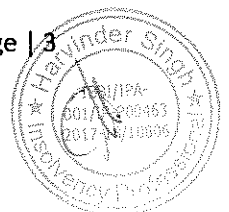


initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

A. The Applicant submits that the Corporate Debtor had approached the Financial Creditor for the sanction of credit facilities comprising a Cash Credit (CC) Facility of ₹2,00,00,000/- (Rupees Two Crore only) and a Bank Guarantee (BG) Facility of ₹27,00,00,000/- (Rupees Twenty-Seven Crore only), pursuant to Facility Letter bearing reference No. YBL/DEL/FL/0652/2016-2017 dated 30.08.2016, as subsequently modified by Addendum Facility Letter No. YBL/DEL/FL/0731/2016-17 dated 14.09.2016, both of which were duly accepted by the Corporate Debtor.

B. The Applicant submitted that the YBL Credit Facility formed part of a broader consortium lending arrangement. The financial assistance was extended under the said consortium. The Applicant submitted that the following facility and security documents were duly executed by the Corporate Debtor and the respective obligors pursuant to the Facility Letter bearing reference No. YBL/DEL/FL/0652/2016-2017 dated 30.08.2016, as

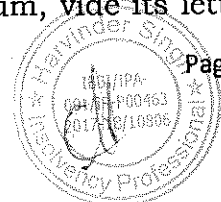




subsequently amended by Facility Letter No.
YBL/DEL/FL/0731/2016-17 dated 14.09.2016:

- i. Working Capital Consortium Agreement dated 17.11.2016 Joint Deed of Hypothecation dated 17.11.2016 in favour of the Financial Creditor.
- ii. Inter Se Agreement Between Consortium Lenders dated 17.11.2016
- iii. Common Document of Pledge of Shares dated 17.11.2016
- iv. Deed of Guarantee of guarantors dated 17.11.2016 of Mr. Kavish Gupta & Himanshu Gupta
- v. Equitable Mortgage on industrial properties at:
 - a. Plot No. SPL4, RIICO Industrial Area, Burhi Bawal - Dharuhera Road, Burera, Rajasthan;
 - b. Plot No. U133 (New Plot No. 2672, Sector A), forming part of Khasra No. 61/4, Greenfields, Sarai Khwaja, Faridabad, Haryana;
 - c. Plot No. SPL3, RIICO Industrial Area, Tapukara, Bhiwadi, District Alwar, Rajasthan;
 - d. Industrial Shed No. 103, DSIDC Scheme I, Okhla Industrial Area, Phase II, New Delhi;
 - e. Industrial Land and Building forming part of Khewat Khata No. 48/51, Khasra No. 37, Killa No. 7/2/2 situated at Village Mauza, Sector 15A, Faridabad, Haryana;
 - f. Flat No. 310, 3rd Floor, Block Amethyst I, Sunshine City, Alwar, Rajasthan.

C. The Applicant submitted that that State Bank of India,
acting as the Lead Bank of the consortium, vide its letter

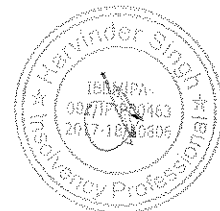




dated 10.03.2017, confirmed that a pledge over 36,12,264 equity shares, constituting 30% of the shareholding of the Corporate Debtor, has been duly created by the pledgors in favour of the consortium lenders, including the Financial Creditor, as security for the consortium credit facilities extended to the Corporate Debtor.

D. It is submitted by the Applicant that, at the request of the Corporate Debtor, the Financial Creditor renewed and enhanced the existing YBL Credit Facility, wherein the Bank Guarantee Facility was increased from ₹27,00,00,000/- (Rupees Twenty-Seven Crore) to ₹40,00,00,000/- (Rupees Forty Crore), and the Letter of Credit Facility was enhanced from ₹5,00,00,000/- (Rupees Five Crore) to ₹10,00,00,000/- (Rupees Ten Crore). In addition, a new Bid Bond Guarantee Facility amounting to ₹20,00,00,000/- (Rupees Twenty Crore) was also sanctioned in favour of the Corporate Debtor (hereinafter referred to as the "YBL Revised Facility"). It is further submitted that all securities earlier created by the Corporate Debtor and the guarantors were to stand extended and continue to secure the YBL Revised Facility granted by the Financial Creditor.

E. It is submitted that certain commercial terms under Facility Letter No. YBL/DEL/FL/0290/2017-2018 dated 25.05.2017 were modified by the Applicant Bank through

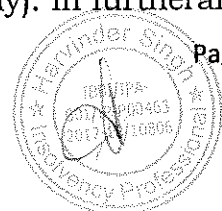




its Addendum Facility Letter No. YBL/DEL/FL/0294/2017-2018 dated 26.05.2017, which was duly accepted by the Corporate Debtor. Furthermore, for the purpose of securing the consortium credit facilities, including the YBL Revised Facility, the State Bank of India, acting as the Lead Bank of the consortium, duly recorded Memoranda of Entry dated 25.08.2017 in respect of the following immovable properties,

- i. Industrial shed No 103, DSIDC Scheme I, Okhla Industrial Area, Phase II, New Delhi
- ii. Plot No SPL4, RIICO Industrial Area, BurhiBawal-Dharuhera Rd, Burera, Rajasthan.
- iii. Plot No SPL3, RIICO Industrial Area, Tapukara, Bhiwadi, Dist. Alwar, Rajasthan; and
- iv. Plot No U 133 (New Plot No 2672, Sector A) forming part of Khasra No 61/4, Greenfields Sarai Khwaja, Faridabad, Haryana
- v. Flat No 310, Bhiwadi, 3rd floor, Block Amethyst I, Sunshine City, Alwar, Rajasthan.

F. It is submitted that the Financial Creditor further renewed the YBL Revised Facility at the request of the Corporate Debtor and the obligors vide Facility Letter bearing reference no. YBL/DEL/FL/0482/2018-2019 dated 27.06.2018, subject to an overall limit not exceeding Rs. 60,00,00,000/- (Rupees Sixty Crores only). In furtherance





of the same, the Corporate Debtor and the Guarantors executed a Letter of Continuity dated 26.08.2020 in relation to the revised working capital limits aggregating to Rs. 531 Crores.

G. As part of the consortium lending arrangement, it renewed and modified the YBL Revised Facilities in favour of the Corporate Debtor through Facility Letter bearing reference no. YBL/DEL/FL/0740/2020-21 dated 28.10.2020 ("YBL Revised Facilities 2"). It is further submitted that the securities earlier created by the Corporate Debtor and the guarantors were agreed to be extended and continued as security for the YBL Revised Facilities 2. In addition, certain additional securities were also provided pursuant to the said Facility Letter dated 28.10.2020 to secure the consortium finance, including the YBL Revised Facilities 2. The requisite facility and security documents were duly executed by the Corporate Debtor and the obligors in accordance with the terms of the aforementioned Facility Letter.

H. The Corporate Debtor subsequently sought a Guaranteed Emergency Credit Line (GECL) facility, which was sanctioned as a Working Capital Term Loan (WCTL) of ₹0.94 Crores vide sanction letter bearing reference no. YBL/DEL/FL/1096/2020-21 dated 02.01.2021 ("GECL Facility"). The Corporate Debtor and guarantors duly





executed the requisite facility and security documents in accordance with the said Facility Letter. Furthermore, certain commercial terms of Facility Letters YBL/DEL/FL/0740/2020-21 dated 28.10.2020 and YBL/DEL/FL/1096/2020-21 dated 02.01.2021 were amended through an addendum to both facility letters.

- I. State Bank of India issued a corrigendum dated 22.03.2021 to the Memoranda of Entry earlier recorded on 14.10.2020 and 23.10.2020 by the Corporate Debtor and Mr. Himanshu Gupta, to rectify and clarify the description of mortgaged properties pertaining to the Corporate Debtor and its guarantors. In furtherance of creating security for the facilities availed, Mr. Himanshu Gupta executed a fresh Memorandum of Entry dated 22.03.2021, signifying the intention to create a mortgage over immovable properties by depositing the title deeds with the Security Trustee acting on behalf of the Financial Creditor and other Consortium Members. Additionally, the Corporate Debtor executed a Deed of Hypothecation dated 03.08.2021. Accordingly, the Financial Creditor issued Facility Letter bearing reference no. YBL/DEL/FL/1043/2020-2021 dated 15.12.2021 for renewal of the availability period under the GECL Facility. Pursuant thereto, the Corporate Debtor and the obligors executed the requisite facility and





security documents in favour of the Financial Creditor in relation to the GECL Facility under the said Facility Letter.

J. The Applicant submitted that after availing the Revised Facilities 2 and GECL Facility (collectively referred to as the "Final Credit Facilities" or "Facilities") to their maximum sanctioned limits, the Corporate Debtor failed to maintain the requisite financial discipline. The Corporate Debtor neither submitted periodic stock statements and statements of sundry debtors nor routed its sale and purchase transactions through the designated account maintained with the appropriate consortium member bank, in contravention of the Reserve Bank of India's Circular titled "*Opening of Current Account by Banks – Need for Discipline*". Further, the Corporate Debtor failed to furnish regular financial data and cash flow statements and did not maintain adequate balances in its accounts on the respective due dates to meet the contingent liabilities arising under the Final Credit Facilities. Despite repeated demands and reminders issued by the Financial Creditor, the Corporate Debtor failed to discharge its outstanding liabilities, thereby committing a continuing default under the terms of the sanctioned Facilities.

K. It is submitted that the loan account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) by the Financial Creditor with effect from 05.08.2022, in



accordance with the applicable directives and guidelines issued by the Reserve Bank of India. Thereafter, on 07.03.2023, the Financial Creditor issued a Loan Recall Notice ("LRN") to the Corporate Debtor under the Final Credit Facilities, comprising the Cash Credit Facility, Bank Guarantee (BG) Facility, and GECL Facility. Through the said notice, the Corporate Debtor was called upon to:

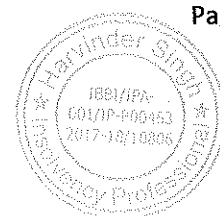
- (i) furnish 100% cash margin amounting to ₹21.85 Crores towards securing the outstanding liability under uninvoked BGs; and
- (ii) repay the entire outstanding amount of ₹32.13 Crores under the Cash Credit Facility, invoked BG (converted into a term loan), and GECL Facility, as on 01.03.2023, together with accrued interest, compound interest, liquidated damages, and other applicable charges, within seven (7) days from the date of receipt of the notice.

L. Upon the failure of the Corporate Debtor to repay the outstanding dues under the Final Credit Facilities within the period stipulated in the Loan Recall Notice dated 07.03.2023, the Financial Creditor, on 19.04.2023, issued a notice to the Guarantors invoking the guarantees and calling upon them to pay the entire outstanding amount under the Cash Credit Facility, invoked Bank Guarantees (converted into a term loan), and GECL Facility,



aggregating to ₹32.13 Crores as on 01.03.2023, along with accrued interest, compound interest, liquidated damages, and other applicable charges, within seven (7) days from the date of the notice. The Corporate Debtor failed to respond to the said notice. In view of the continued default and non-payment, the Financial Creditor filed Original Application No. 571/2023 before the Hon'ble Debts Recovery Tribunal-I, Delhi, against the Corporate Debtor and its obligors (Guarantors/Mortgagors), seeking issuance of a recovery certificate for (i) ₹31,59,60,986.97 (Rupees Thirty-One Crores Fifty-Nine Lakhs Sixty Thousand Nine Hundred Eighty-Six and Ninety-Seven Paise only), being the outstanding in Loan Account No. 002081300000411 (Cash Credit/Invoked BGs) as on 01.06.2023, along with pendente lite and future interest at the contractual rate of 18% per annum with monthly rests; and (ii) ₹97,68,547.04 (Rupees Ninety-Seven Lakhs Sixty-Eight Thousand Five Hundred Forty-Seven and Four Paise only), being the outstanding in Loan Account No. 003BM08211240001 (GECL Facility) as on 01.06.2023, along with pendente lite and future interest at the contractual rate of 9.25% per annum with monthly rests.

M. The Applicant submitted that the Financial Creditor, in the ordinary course of its business and in accordance with applicable banking practices, maintains books of account which

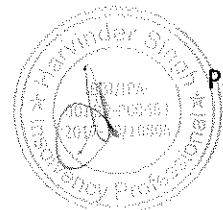




clearly reflect an outstanding amount of ₹31,59,60,986.97 (Rupees Thirty-One Crores Fifty-Nine Lakhs Sixty Thousand Nine Hundred Eighty-Six and Ninety-Seven Paise only) as on 01.06.2023 in Loan Account No. 002081300000411, pertaining to the Cash Credit Limit, together with pendente lite and future interest at the contractual rate of 18% per annum, compounded monthly. It is further submitted that an amount of ₹97,68,547.04 (Rupees Ninety-Seven Lakhs Sixty-Eight Thousand Five Hundred Forty-Seven and Four Paise only) remains outstanding as on 01.06.2023 in Loan Account No. 003BM08211240001, pertaining to the GECL Facility, along with pendente lite and future interest at the contractual rate of 9.25% per annum, compounded monthly.

5. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

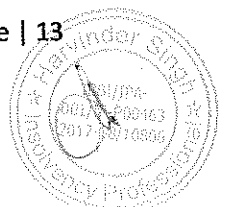
- A. That the present Application is a clear abuse of process, filed to invoke the jurisdiction of this Hon'ble Adjudicating Authority as an alternative forum for recovery, despite the Financial Creditor having already instituted O.A. No. 571/2023 before the Hon'ble DRT, New Delhi. The Application is liable to be dismissed for want of bona fides, as the Financial Creditor has not approached this Hon'ble Tribunal with clean hands and has suppressed material facts.





B. That it is engaged in the manufacturing of precast concrete products and provides supplies to major EPC players, including Larsen & Toubro (L&T). It is further involved in Engineering, Designing, Manufacturing, and Construction (EDMC) activities and is currently executing and bidding for several large-scale sewerage and wastewater management projects across India. The Corporate Debtor is registered as a Micro, Small and Medium Enterprise (MSME) under the laws of India and operates as a going concern, with over 235 individuals directly dependent on it for livelihood. The Corporate Debtor is facing only a temporary liquidity crunch and cannot be characterised as insolvent. It has substantial receivables, including pending arbitration claims amounting to approximately ₹960 Crores against various government entities and holds arbitral awards worth ₹15 Crores (approx.), with interest at 18% p.a. Accordingly, the Corporate Debtor possesses realizable assets far exceeding its total liabilities.

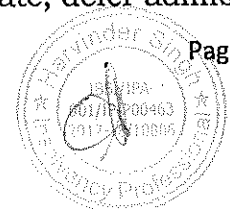
C. That it has a consistent track record of settling its dues and has resolved claims of several creditors. A Section 9 Application (IB-880/ND/2022) filed by M/s. Bamrah Pipes was settled and withdrawn. Similarly, the Corporate Debtor has entered into a settlement with M/s. RR Industrial Corporation India Pvt. Ltd., in relation to IB/568/ND/2023, and is duly honouring the settlement





terms. Additionally, the Corporate Debtor has principally settled the claim of Siemens Financial Services Pvt. Ltd. in IB/179/ND/2023, which is at the final stage of withdrawal. These instances clearly demonstrate the Corporate Debtor's commitment to resolving outstanding liabilities and maintaining financial discipline.

- D. That, being primarily an EPC and contracting company, it has limited tangible assets. Its principal assets comprise ongoing work orders, skilled manpower, and technical expertise. Given the nature of its business, delays in payment realization are common due to contractual disputes and pending finalization of rates for additional work. This business model aligns with standard industry practice. The current management is best placed to navigate these challenges.
- E. That Corporate Debtor is experiencing a temporary liquidity crunch due to delays in realizing receivables. However, it is confident of liquidating its arbitration claims and awards in due course, enabling repayment to creditors. A change in management would not expedite this process. The present case is squarely covered by the Hon'ble Supreme Court's decision in Vidarbha Industries Power Ltd., which affirms that the Adjudicating Authority has discretion under Section 7(5)(a) of the IBC to consider the Corporate Debtor's objections on merit and, where appropriate, defer admission

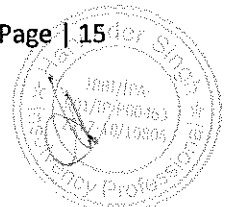




of the Application, unless compelling reasons exist to proceed otherwise.

F. That Corporate Debtor is actively executing existing projects and securing new work orders. Its account with HDFC Bank, a consortium lender, remains regular, with project payments routed through it. In the consortium meeting dated 01.03.2023, attended by the Financial Creditor, it was agreed that 5% of retained earnings would be shared among consortium members. The Corporate Debtor has been regularly depositing the Financial Creditor's 5% share into its cash credit account as per this arrangement.

G. That the Corporate Debtor, operating across various regions in India, was poised for significant growth in view of government initiatives to improve sewerage and water systems. With exclusive access to advanced Trenchless Pipe Rehabilitation (TPR) technology, the Corporate Debtor anticipated securing substantial orders from municipal corporations nationwide. Pursuant to the Corporate Debtor's request dated 09.11.2020, the Consortium Lenders, including the Financial Creditor, sanctioned an enhancement of working capital limits from ₹550 Crores to ₹700 Crores vide sanction letter dated 28.12.2020. However, the enhanced amount of ₹150 Crores was not disbursed by the Consortium, including the Financial





Creditor. This non-disbursement adversely impacted the Corporate Debtor's ability to secure projects worth approximately ₹2,000 Crores (with an estimated profit margin of ₹300 Crores), and further led to losses of around ₹50 Crores on existing projects due to reduced operational capacity. As a result of the Financial Creditor's failure to disburse the sanctioned enhanced limits, the Corporate Debtor suffered losses of approximately ₹350 Crores, which it is entitled to recover.

H. That additionally, at the start of FY 2021, the Corporate Debtor incurred a setback of ₹30 Crores due to invocation of a Bank Guarantee in the absence of a stay order, owing to limited court functioning during the pandemic. Although a stay was later granted, the BG had already been encashed. The second wave of COVID-19 further disrupted operations, causing staff fatalities and delays in reinforcing manpower, which led to a delay of over 90 days in realizing receivables for Q4 of FY 2020. During this period, the Government provided limited relief to mid-scale companies, resulting in a severe yet temporary cash flow crisis. In response, certain banks, rather than extending support, withdrew sanctioned limits, further compounding the Corporate Debtor's financial distress.

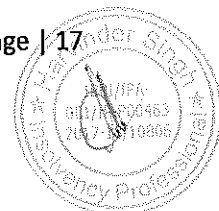
I. That the withdrawal of credit limits amounting to approximately ₹47 Crores by the Financial Creditor and



consortium banks had a severely adverse impact on the Corporate Debtor's financial capacity and operational performance. Despite requesting collective support from the consortium, including a specific request to SBI (lead bank) vide letter dated 10.06.2022 (Ref. No. KKSIL/SBI/2022-23/1006), no relief was extended.

J. That as per the RBI Circular dated 06.08.2020, only banks with 10% or more exposure to a borrower were permitted to debit the borrower's CC/OD account. In view of this, the Financial Creditor, having less than 10% exposure, ceased cooperation and withheld disbursement of sanctioned and RBI-mandated facilities, resulting in a loss of approximately ₹50 Crores to the Corporate Debtor, which it is entitled to recover. Additionally, in early FY 2020, the Corporate Debtor lost six months of operations due to the COVID-19 pandemic while continuing to bear fixed costs such as interest, salaries, and EMIs. It also undertook emergency restoration of excavated roads at project sites to facilitate essential services, incurring significant short-term expenses, with receivables pending from government authorities.

K. That IDFC First Bank, as part of the lending consortium, failed to disburse the ECLGS facility, causing the Corporate Debtor a loss of ₹10 Crores. Despite the promoters infusing ₹12.43 Crores as equity in August 2021 upon request in the Consortium Meeting dated 14.07.2021, Bank of Baroda





unilaterally adjusted the amount against its limits instead of returning it as recorded, disrupting operations and causing further losses of ₹20 Crores.

- L. That SBI initially issued LCs under sanction dated 28.12.2020 but later denied further LCs per sanction dated 18.02.2022, resulting in project terminations, non-receipt of funds, and eventual NPA classification. The sanctioned enhancement was never intended to support business revival, but rather obstructed it, causing operational failure and losses amounting to ₹100 Crores. Additionally, the Corporate Debtor substituted mortgaged property as per sanction conditions, repaying Hero Fincorp from revenues. However, non-disbursement of enhanced limits rendered the effort futile, causing a ₹5 Crore loss.
- M. That under ECLGS 2.0 Extension, only SBI and Axis Bank disbursed eligible funds, while others, including the Financial Creditor, did not. The refusal to release ₹90 Lakhs under this scheme caused an additional ₹5 Crore loss. Due to non-release of funds and limit reductions, the Corporate Debtor was unable to avail RBI's one-time restructuring scheme and, instead, repaid ₹80 Crores to the consortium, resulting in further financial strain. Accordingly, the Corporate Debtor is entitled to recover the total loss from the Financial Creditor.



N. That due to the aforesaid lapses on the part of the Financial Creditor, the Corporate Debtor has filed a Counter Claim dated 07.10.2023 in O.A. No. 571 of 2023, seeking a sum of ₹817 Crores, which is presently pending adjudication before the Hon'ble DRT-II, Delhi.

O. That the officials of the Financial Creditor are guilty of breach of trust and misrepresentation in relation to the sanction and conduct of credit facilities extended to the Corporate Debtor. It is submitted that due to the deliberate, arbitrary, and wrongful acts of the Financial Creditor, the Corporate Debtor has suffered substantial losses and damages, which far exceed the amount allegedly claimed in the present application and for which the Financial Creditor is liable to compensate.

P. That no material particulars have been provided regarding the circumstances of the alleged recall of credit facilities, nor any specific averments of default or breach by the Corporate Debtor to justify such recall. Further, the Financial Creditor has failed to lawfully communicate the declaration of the account as irregular, overdue, out of order, or NPA, as mandatorily required.

Q. That this Adjudicating Authority may exercise its discretion under Section 7(5)(a) of the Code and keep the matter in abeyance, as the Corporate Debtor's Scheme under Sections 230-232 of the Companies Act, 2013 is currently



under consideration by the Consortium of Lenders, including the Petitioner Bank. It stated that the Corporate Debtor has sought responses from all the Consortium Members. Notably, the Petitioner Bank has expressed in-principle support for the Scheme, as recorded in the Minutes of the Lenders' Meeting dated 10.02.2025. Hence, till a final decision on the Scheme is taken, these proceedings may be deferred.

R. In support of its contention, the Corporate Debtor relies on the settled position of law that the Adjudicating Authority must exercise its discretion while adjudicating an application under Section 7 of the Code, as held by the Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited*, (2022) 8 SCC 352.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor.
7. The matter was first listed on 05.04.2024, when notice was issued to the Respondent. Vide order dated 19.04.2024, this Hon'ble Tribunal directed the Respondent to file its reply within one week. On 10.05.2024, the Respondent sought time citing delay in filing, and was directed to upload the reply on the DMS portal. On 13.11.2024, the Respondent again sought



adjournment due to counsel's engagement before the Hon'ble Delhi High Court. The Tribunal clearly observed that failure to submit reply and address arguments on the next date would result in closure of the Respondent's opportunity and the matter would proceed based on the documents available on record.

8. On 13.12.2024, this Hon'ble Tribunal noted that despite clear directions in the order dated 13.11.2024, the Respondent once again sought adjournment on the ground of having filed IA/5985/ND/2024 on 11.12.2024, listed on the same day. Considering that arguments on behalf of the Applicant were already heard on 14.10.2024 and the Respondent has repeatedly failed to argue the matter, the Tribunal declined further adjournment. Accordingly, the opportunity for reply and arguments on behalf of the Respondent stood closed. On 19.03.2025, this Hon'ble Tribunal, while noting that the Respondent's right to arguments had already been closed vide order dated 13.12.2024, granted an opportunity in light of the change in Bench composition. However, when called upon, the Respondent's counsel again expressed inability to argue. Accordingly, the Respondent's right to advance arguments was once again closed.
9. This Adjudicating Authority on 23.05.2025, issued a clarification directing both the parties to file a status report within 7 days, indicating the stage and any orders passed in OA No. 571/2023 and the Counter Claim and further since the AFA of the proposed



Resolution Professional expired on 10.05.2024, the RP is directed to file a valid AFA, a declaration regarding non-initiation of disciplinary proceedings, and details of assignments undertaken, by way of an affidavit within 7 days.

10. The Applicant in Part IV of the Application has mentioned that loan account of the Corporate Debtor was classified as Non-Performing Assets ('NPA') with effect from 05.08.2022.
11. In this backdrop, it is relevant to understand that the adjudicating authority under the present legislation has a very limited role to play while admitting or rejecting an application filed under section 7 of The Code. One of the important factor to be considered in an application under section 7 is the existence of debt and thereby non-payment of debt i.e. default (**Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1**). This is also evident from the bare language mentioned under Section 6 and 7 of The Code.
12. As it has been settled by the Hon'ble Supreme Court in catena of judgments that the Limitation Act, 1963 is applicable to the proceedings under the Code, 2016 (**B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633**). The basic idea behind the application of the Limitation Act, 1963 is not to give life to time barred debts (**Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1**). The mentioning of Date of Default in the Form-1 under Part IV is only for the purposes of reckoning of the Limitation Period within

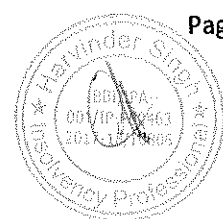


which a Financial Creditor has to exercise his rights, so that a financial creditor does not sleep over his right. Section 238 A of the Code provides for the provision of the Limitation Act, 1963 to apply to proceedings before the Adjudicating Authority. Accordingly, the time period for filing the application u/s 7 of the Code is governed by Article 137 of the Schedule to the Limitation Act, 1963 which provides for exercising the right within period of 3 years, from the date when the right to apply accrues. Hence, the Financial Creditor has to file the application within 3 years from the date when the right to apply accrue i.e. the date of default (**Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330**). Relevant paragraphs are extracted below:

"99. There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 IBC is three years from the date of accrual of the right to sue, that is, the date of default. In Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd. [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572 : (2020) 1 SCC (Civ) 1] authored by Nariman, J. this Court held : (SCC p. 574, para 6)

"6. ... The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137."

131. It is not in dispute that Respondent 2 is a corporate debtor and the appellant Bank, a financial creditor. The question is, whether the petition under Section 7 IBC has been instituted within 3 years from the date of default. "Default" is defined in Section 3(12) to mean "non-payment





of a debt which has become due and payable whether in whole or any part and is not paid by the corporate debtor”.

132. It is true that, when the petition under Section 7 IBC was filed, the date of default was mentioned as 30-9-2013 and 31-12-2013 was stated to be the date of declaration of the account of the corporate debtor as NPA. However, it is not correct to say that there was no averment in the petition of any acknowledgment of debt. Such averments were duly incorporated by way of amendment, and the adjudicating authority rightly looked into the amended pleadings.

133. As observed above, the appellant Bank filed the petition under Section 7 IBC on 12-10-2018. Within three months, the appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decreed dated 27-3-2017 in OA No. 16 of 2015 and the recovery certificate dated 25-5-2017, enabling the appellant Bank to recover Rs 52 crores odd. The judgment and order/decreed of the DRT and the recovery certificate gave a fresh cause of action to the appellant Bank to initiate a petition under Section 7 IBC.

134. On or about 5-3-2019, the appellant Bank filed another application for permission to place on record additional documents including inter alia financial statements, annual report, etc. of the period from 1-4-2016 to 31-3-2017, and again, from 1-4-2017 to 31-3-2018 and a letter dated 3-3-2017 proposing a one-time settlement. This application was also allowed on 6-3-2021. The adjudicating authority, took into consideration the new documents and admitted the petition under Section 7 IBC. 135. Even assuming that documents were brought on record at a later stage, as argued by Mr. Shivshankar, the adjudicating authority was not precluded from considering the same. The documents were brought on record before any final decision was taken



in the petition under Section 7 IBC. 136. A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate.

137. The appellant Bank was thus entitled to initiate proceedings under Section 7 IBC within three years from the date of issuance of the recovery certificate. The petition of the appellant Bank, would not be barred by limitation at least till 24-5-2020.

138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

13. Further the dictum laid down in **Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330** has also been followed by Hon'ble National Company Law Appellate Tribunal in **Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622**. The relevant paragraphs are extracted below:





"4. The brief point, which falls for consideration in this Appeal is whether the Adjudicating Authority was justified in dismissing the Application filed under Section 7 of the Code as 'barred by Limitation' and also holding that there was no 'default'.

5. We are of the considered view that the issue of Limitation is to be tested on the touchstone of the ratio of the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy' wherein the Hon'ble Apex Court has clearly laid down that Judgment/decree for money or Certificate of Recovery or Arbitral Award in favour of the 'Financial Creditor', constitutes an 'acknowledgement of debt' and gives rise to a fresh cause of action, provided it is within three years of the default:

The Hon'ble Apex Court in 'Laxmi Pat Surana v. Union Bank of India' has observed as follows:

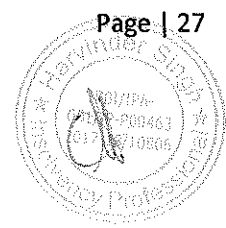
"43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean 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. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to nonpayment of debt. Thus, when the



principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the Financial creditor can initiate action under Section 7 IBC."

7. In the aforementioned Judgment, the Hon'ble Apex Court has clearly laid down the principle that the 'date of default' does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of default' defined under Section 3(12) of the Code is to mean 'non-payment of a debt which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'.

8. It is also seen from the Balance Sheets that there has been an 'acknowledgement of liability' upto the years 2018-2019. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is 'barred by





Limitation' is untenable as at the cost of repetition we hold that as per the ratio of the Hon'ble Apex Court in 'Laxmi Pat Surana' (Supra) the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/Financial Creditor for Restructuring, apart from the liability being shown in the Balance Sheets."

14. Taking note of the decision in **Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622**, we are of the view, that ordinarily the Date of NPA can be considered as Date of Default but the right to apply under the Code accrues once there is a default (which is three months prior to Date of NPA). Hence, in the present case, even if we consider the Date of Default to be three months prior to the Date of NPA i.e. 05.08.2022, the right to file the application was to be exercised within 3 years. The present Application under Section 7 of the Code has been filed by the Financial Creditor on 21.12.2023.
15. Thus, the stand taken by the Corporate Debtor, that the applicant has not mentioned the Date of Default, is wholly misconceived as the Adjudicating authority is hardly left with any discretion to refuse the admission of the application under Section 7 once it is satisfied that the default has occurred We are inclined to refer to the Judgement passed by Hon'ble Supreme





Court in **M. Suresh Kumar Reddy v. Canara Bank, (2023) 8**

SCC 387 which is as follows:

"11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.

"Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

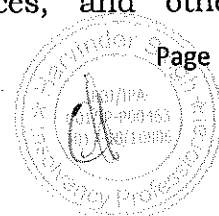
(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;" Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

- 16.** In order to admit an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), the Hon'ble Adjudicating Authority must be satisfied that the statutory requirements for initiating the Corporate Insolvency Resolution Process (CIRP) are duly met. The first and foremost requirement is the existence of a financial debt as defined under Section 5(8) of the IBC. A financial debt refers to a debt that is disbursed against the consideration for the time value of money, which includes loans,



bonds, debentures, or any other financial instruments specified under the provision. The applicant must establish that the Corporate Debtor had availed such financial debt and that the liability to repay the same has arisen. Then, there must be a "default" in repayment of the said financial debt, as defined under Section 3(12) of the IBC, which refers to non-payment of the whole or any part of the debt when it has become due and payable. Further, the application must be filed by a Financial Creditor in the prescribed form and manner, duly accompanied by requisite documents and affidavits under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

17. Once the Adjudicating Authority is satisfied with the existence of a financial debt, the occurrence of default, and procedural compliance, it is bound to admit the petition. The Authority has limited discretion at this stage and cannot conduct a deeper enquiry into the merits or defences unless the application is incomplete or legally barred.
18. Applying the principles enunciated above to the facts of the present case, it is evident that all statutory requirements for admission under Section 7 of the Insolvency and Bankruptcy Code, 2016, stand fulfilled. The existence of a financial debt is clearly established through the facility letter, bank guarantees, Security Trustee Agreement, Working Capital Consortium Agreement, loan agreements, demand notices, and other





supporting documents filed by the Financial Creditor. These documents substantiate that a financial debt, as defined under Section 5(8) of the IBC, was duly disbursed to the Corporate Debtor.

19. On perusal of the documents, we find that the application, filed under Section 7 of the IBC by the Financial Creditor, is duly supported by all requisite documents. With no statutory bar to its admission, and in view of the undisputed financial debt, established default, and procedural compliance, the initiation of CIRP is warranted.
20. With regard to the existence of debt and default, on a perusal of Form - I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.
21. In the present case, we note that the loan account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) by the Financial Creditor on 05.08.2022. Subsequently, the Financial Creditor instituted O.A. No. 571 of 2023 before the Hon'ble DRT, Delhi on 29.08.2023, which is pending adjudication. The Corporate Debtor, in turn, filed a counter claim dated 13.10.2023 in the said proceedings, registered as TCC/2/2024, seeking reliefs amounting to ₹817 Crores. The present application under Section 7 of the Insolvency and Bankruptcy Code, 2016, being CP (IB)-36/ND/2024, was filed on



21.12.2023, subsequent to the filing of the said counter claim. It is incumbent upon the Financial Creditor to initiate proceedings under Section 7 of the Code promptly upon the occurrence and recording of default, without undue delay. Recourse to the mechanism under the Code ought not to be delayed until all other remedies are exhausted, as such delayed invocation undermines the very spirit and purpose of the insolvency framework and may amount to an abuse of the process.

- 22.** This Bench deems it necessary to reiterate, as it has time and again, that banks and financial institutions must not treat the Insolvency and Bankruptcy Code (IBC) as a remedy of last resort. On the contrary, prompt action under the Code should be initiated as soon as a default occurs. It is observed with concern that in numerous cases brought before us, banks have approached this Tribunal after an inordinate delay of 2 to 2.5 years from the date of default. While such applications may still fall within the period of limitation, the delay significantly undermines the value of the corporate debtor's assets. In several such matters, by the time the proceedings are triggered, substantial deterioration has already taken place, resulting in irretrievable loss of value. The primary objective of the IBC is value maximization, which is defeated when lenders adopt a delayed approach. This Bench emphasizes that banks must remain vigilant and act expeditiously in protecting and recovering dues, especially considering that these involve public funds



entrusted to them. Delay in initiating insolvency proceedings not only jeopardizes the interest of creditors but ultimately causes grave prejudice to the public interest at large.

23. We are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company application (C.P. No. (IB)-36/(ND)/2024) stands admitted and the CIRP is hereby initiated against **M/s. KKSPUN INDIA LIMITED**.
24. The Applicant, in Part-III of the application, has proposed the name of Mr. Harvinder Singh as the Interim Resolution Professional (IRP), bearing Registration No. IBBI/IPA-001/IPP00463/2017-2018/10806. Pursuant to the directions issued by this Adjudicating Authority vide order dated 23.05.2025, the proposed IRP has filed an affidavit dated 29.05.2025, placing on record a declaration confirming the validity of his Authorisation for Assignment (AFA), non-initiation of any disciplinary proceedings against him, and details of assignments undertaken, which is taken on record.
25. It is, however, observed that as per Annexure-2 of the said affidavit dated 29.05.2025, the AFA of the proposed IRP is valid only up to 30.06.2025. Notwithstanding the same, this



Adjudicating Authority appoints Mr. Harvinder Singh, having Registration No. IBBI/IPA-001/IPP00463/2017-2018/10806 and email address harvinder@akgandassociates.com, as the Interim Resolution Professional (IRP) for the Corporate Debtor, subject to the condition that he shall file a valid AFA along with an updated declaration confirming that no disciplinary proceedings are pending against him, within a period of three (03) days from the date of pronouncement of this order.

- 26.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

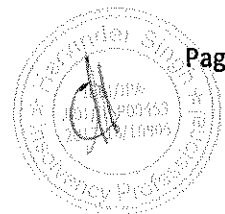


e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, 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."

- 27.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- 28.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.



- 29.** We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Harvinder Singh 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
- 30.** The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
- 31.** It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional





would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

32. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
33. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.
34. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./36/2024 stands admitted.**

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)



Harvinder Singh