



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

**COMPANY PETITION NO. (IB)-219/(ND)/2024**

**IN THE MATTER OF CP(IB)-219/(ND)/2024**  
**(Under Section 7 of IBC, 2016)**

**SREI Equipment Finance Limited**

'Vishwakarma', 86C, Topsia Road,  
Kolkata- 700046,  
West Bengal

**... Applicant/  
Financial Creditor**

**Versus**

**Victor Buildwel Private Limited**

Dwarka, Sector- 13, Opp. Metro Station,  
Near Radisson Blu Hotel, N.S.I.T. Dwarka,  
South West Delhi, New Delhi- 110078

**... Respondent/  
Corporate Debtor**

**Order Delivered on: 07.04.2025**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**  
**MS. REENA SINHA PURI, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Anirban Bhattacharya, Adv. Ashok Kumar Shukla, Adv. Rajeev Chowdhary, Adv. Priyanka Bhatt

**For the Respondent** : Adv. Abhishek Anand, Adv. Sugandh, Adv. Akshara

**PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER(J)**

**ORDER**

Stating succinctly, the captioned company petition could be preferred 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 by SREI Equipment Finance Limited (hereinafter, referred to as the “**Financial Creditor/ Applicant**”) with prayer to initiate the corporate insolvency resolution process qua Victor Buildwel Private Limited (hereinafter, referred to as the “**Corporate Debtor/ Respondent**”).

2. The brief facts as stated in the captioned petition reads thus: -

- i. The Respondent/ CD due to its financial needs for land development sought credit facility from the Applicant/ FC and the following facilities were extended by FC to CD from time to time: -

Contract No.	Date of Sanction	Financed Amount
82430	22.03.2015	Rs.60,00,00,000/-
172197	25.09.2018	Rs.5,00,00,000/-
173655	06.12.2018	Rs.9,00,00,000/-

The above credit facilities were secured through exclusive mortgage of a lease hold land bearing plot no. 78 & 79 at Pocket Extension -1, Sector- Ecotech I, I.T. Park, Village Dadha, Tehsil Sadar, Greater Noida, Uttar Pradesh.

- ii. The aforementioned credit facilities were eventually restructured and resultantly, a term loan facility of Rs. 91,00,00,000/- was sanctioned by the Applicant/ FC under the Loan Agreement Number 187721 dated 01.07.2020. Under Article 3.1 of said agreement, the loan facility was secured through exclusive charge on the mortgaged property mentioned above. The loan facility was additionally secured through pledging of 100% fully paid-up equity shares of the CD.
- iii. The Respondent/ CD by way of an undertaking dated 10.09.2020 had undertaken for perfection of security in favor of the Applicant/ FC. The relevant excerpt of the undertaking reads thus: -



- a. *The Company shall obtain permission to mortgage from Greater Noida Industrial Development Authority ("GNIDA") for creation of mortgage and charge by way of extension in favour of SREI within 90 days and/or at the earliest and submit the same to SREI.*
  - b. *The Company shall get the rent dues of GNIDA cleared till date and submit the copy of rent receipts to SREI accordingly.*
  - c. *The Company shall not create any type of further mortgage and/or charge and not even any second and/or subservient Charge and/or encumbrance in any manner on any of its said immovable property in favour of any person/banks/Fis whatsoever or howsoever, strictly without prior written approval of SREI;*
  - d. *The Company shall execute a Power of Attorney in favour of SREI and in the event of any default on the part of the Company to repay, SREI shall be entitled to sell the said immovable Property without any further consent of the Company and SREI will adjust the sale proceeds as repayment of dues of the Borrower;*
- iv. As per the aforesaid undertaking, the Respondent/ CD had also agreed that any breach or default of any of the provisions of the undertaking shall constitute an event of default under the loan facility and Applicant/ FC shall be entitled to initiate proceedings in accordance with law. Relevant excerpt of the undertaking reads thus: -

*“any breach and/or default in complying with all or any of the force undertaking shall constitute an event of default under the facility agreement and SREI shall be entitled to file in a suit and/or to take criminal action upon us and/or sell the said immovable property in accordance with the law.”*



- v. As per Article 5.3.2 of the loan agreement, the Respondent/ CD was obligated to perfect the security over the mortgaged property no later than 45 days from the initial disbursement of loan. Since the CD failed to obtain permission from Greater Noida Industrial Development Authority (hereinafter, referred to as “**GNIDA**”), and also failed to clear rent dues of GNIDA, in violation of the aforementioned undertaking, an event of default occurred in terms of the loan agreement.
  - vi. Consequently, on 30.08.2023, a notice of default was served upon the Respondent/ CD giving it 7 days’ time to create/ perfect the security as per the terms of the agreement in favor of the Applicant/ FC. It was further mentioned in the notice that failure to take such action would result in recalling of the entire loan.
  - vii. As the Respondent/ CD failed to take steps in accordance with the aforementioned notice, a Loan Recall Notice dated 21.11.2023 was served upon the CD, demanding payment of the entire dues of Rs. 140,23,76,356/- within 7 days.
  - viii. The CD failed to pay the aforesaid amount as per the loan recall notice and thus, committed a default as defined under Section 3(12) of IBC, 2016 and hence, the present application has been preferred under Section 7 of the Code for initiating CIRP qua the CD.
- 3.** On behalf of the Respondent/ Corporate Debtor, the following submissions could be put forth: -



- i. The application preferred by the FC is not maintainable as Section 11(ba) of the Code bars a Corporate Debtor in respect of whom a resolution plan has been approved in the preceding 12 months from filing an application to initiate CIRP. The FC was undergoing CIRP and in terms of order dated 11.08.2023 passed in CP(IB) No. 294-295 of 2021, the resolution plan submitted by one National Asset Reconstruction Company Limited was approved by the Kolkata Bench of this Tribunal.
- ii. The Applicant/ FC has failed to comply with the requirements stipulated under Regulation 20(1A) of Information Utility Regulations, 2017, which reads thus: -

***“20. Acceptance and receipt of information.***

*[...]*

*(1A) Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation.”*

Thus, the application is liable to be dismissed at the threshold.

- iii. The Respondent/ CD is facing irreversible and irreparable injury due to unlawful actions being taken by GNIDA. For creation of security in favor of the Applicant/ FC with respect to the mortgaged property, the Respondent made various representation to GNIDA, however, it received multiple show-cause notices and demand notices from GNIDA citing financial obligations, including premium amounts and



lease rents. These demands were made even though the possession of the land was not given to the Respondent/ CD.

- iv. Aggrieved by the demands raised by GNIDA *vide* Demand Notice dated 21.07.2020, the Respondent/ CD filed two writ petitions i.e. WP No. 16111 of 2020 and WP No. 16120 of 2020 before the Hon'ble Allahabad High Court, challenging the demands made by GNIDA. The Hon'ble High Court in terms of interim order dated 18.11.2020 directed GNIDA not to take any coercive steps against the CD.
- v. While the aforesaid writ petitions were pending, GNIDA in terms of order dated 15.06.2023 cancelled the allotment of the subject property without any prior notice or opportunity of hearing. Consequently, the CD filed an application before the Hon'ble Allahabad High Court, which is *sub-judice*.
- vi. During the pendency of the aforesaid litigation, the Applicant/ FC issued a notice of default dated 30.08.2023 on grounds of failure to create/ perfect security of the mortgaged property in favor of the FC as per the term stipulated in loan agreement dated 01.07.2020. Subsequently, a demand notice dated 21.11.2023 recalling the entire loan amount.
- vii. The aforementioned notice sent by Applicant/ FC was premature as the loan was scheduled for repayment only in December 2023 i.e. 42 months after the initial disbursement.



- viii. A One Time Settlement (OTS) was also proposed on 10.04.2024 by the Respondent/ CD, however, the same was never responded by the Applicant/ FC.
- ix. The alleged default was not due to the unwillingness on the part of the CD to repay the loan amount but due to the issue of creation/ perfection of security with GNIDA, which in turn is subject to pending litigation before the Hon'ble Allahabad High Court.
- x. The present application has been filed by the Applicant/ FC to arm twist the CD and use the present proceeding as debt recovery proceedings, which is not the intent and object of the IBC, 2016.

4. In response to the aforementioned reply, the Applicant filed a rejoinder espousing thus: -

- i. The Respondent/ CD has categorically admitted the execution of the loan agreement, disbursement of loan amount of Rs. 91 crores as well as default in material terms of the agreement.
- ii. There is no bar under Section 11 of the Code on the Applicant/ FC to file an application under Section 7 of the Code. As per the clarification provided under Explanation II to Section 11(ibid), nothing in said Section prevents a Corporate Debtor referred to in clauses (a) to (d) from initiating CIRP qua another Corporate Debtor. The said provision reads thus: -

***“11. Persons not entitled to make application.— The following persons shall not be entitled to make an***



*application to initiate corporate insolvency resolution process under this Chapter, namely:—*

- (a) a corporate debtor undergoing a corporate insolvency resolution process or a pre-packaged insolvency resolution process; or*
- (aa) a financial creditor or an operational creditor of a corporate debtor undergoing a prepackaged insolvency resolution process; or*
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or*
- (ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or*
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or*
- (d) a corporate debtor in respect of whom a liquidation order has been made.*

*Explanation I.— For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.*

*Explanation II.— For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”*

*(Emphasis Supplied)*

The aforesaid provision r/w the explanation thereunder has been explained in detail by the Hon’ble Supreme Court in the matter of





***Manish Kumar vs. Union of India & Anr.*** [(2021) 5 SCC 1] wherein it was held that it would not have been the intent of the legislature to create an obstacle in the path of a CD, in any of the circumstances contained in Section 11 of the Code, from maximizing its assets by trying to recover liabilities due from others. In fact, the provision debar the Corporate Debtor from initiating proceedings to resolve its own insolvency and does not apply to the application filed by the company referred to in Section 11 of IBC, initiating CIRP qua other companies.

- iii. With respect to the contention that the present application is liable to be dismissed on grounds of non-compliance of Regulation 20(1A) (ibid), it is stated that the Hon'ble NCLAT in ***Vijay Kumar Singhania vs. Bank of Baroda*** [2023 SCC Online NCLAT 2320] held that an application filed under Section 7 cannot be rejected on grounds that it is not supported by information of default from an IU, if the FC has filed other evidences of default.
- iv. The pending litigation between the Respondent/ CD and GNIDA is on the issue of pending dues w.r.t premium amount and lease rent, and does not concern the Applicant. The Respondent/ CD had entered into the loan agreement with a clear understanding that any breach or default in complying with the terms of the agreement would constitute an event of default, which in turn would give the Applicant/ FC the liberty to pursue legal remedies against the Respondent/ CD.



- v. Admittedly, the CD has failed to perfect the security and now, cannot do so since the allotment of subject land has been cancelled by GNIDA in terms of order dated 15.06.2023.
- vi. The CD has admittedly failed to obtain permission to mortgage from GNIDA and has also failed to clear rent dues of GNIDA in violation of the undertaking given, amounting to an event of default as defined under the Loan Agreement dated 01.07.2020.

**ANALYSIS & FINDINGS: -**

**5.** We have perused the contentions made on behalf of both the parties. As can be seen from Section 7(1) of the Code r/w the explanation provided thereunder, a Financial Creditor may file an application for initiating CIRP against a Corporate Debtor when a default occurs in respect of a financial debt. The provision reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor. —***

*(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

*Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”*

**6.** The definition of ‘financial debt’, as provided under Section 5(8) of the Code, means disbursal of any debt against the consideration for the time value



of money and includes money borrowed against the payment of interest. The Section 5(8) of the Code reads thus: -

**“5. Definitions.** – *In this part, unless the context otherwise requires, -*

*[...]*

*(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*



*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”*

**7. In *Pioneer Urban Land & Infrastructure Ltd. vs. Union of India***

[(2019) 8 SCC 416], the Hon’ble Supreme Court held that for the purposes of Section 5(8) of the Code, the disbursal must be against consideration for “time value of money” from the lender to the borrower who then utilizes the money.

The relevant excerpt of the judgment reads thus: -

*“61. The definition of “financial debt” in Section 5(8) then goes on to state that a “debt” must be “disbursed” against the consideration for time value of money. “Disbursement” is defined in Black’s Law Dictionary (10th ed.) to mean:*

*“1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.”*

*In the present context, it is clear that the expression “disburse” would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression “disbursed” refers to money which has been paid against consideration for the “time value of money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money [...].”*

**8.** In the facts of the present case, the Respondent/ Corporate Debtor has not disputed the existence of the loan agreement dated 01.07.2020 under which it was provided with the financial facility for a sum of Rs. 91,00,00,000/-. Therefore, this Tribunal is of the view that the financial



facility extended by the Financial Creditor to the Corporate Debtor, in terms of the aforesaid agreement dated 01.07.2020, was in the nature of a 'financial debt' for the purposes of the Code.

9. Further, the Applicant has stated that the default occurred when the Respondent/ CD failed to create/ perfect the security interest over the mortgaged property as per the undertaking given by it. The undertaking for perfection of security is enclosed as Annexure- I to the application, wherein it is clearly stated that in view of the loan agreement dated 01.07.2020, the Respondent/ CD is under an obligation to create first and exclusive charge over the mortgaged property in favor of the Applicant/ FC and the CD undertakes that it shall obtain permission from GNIDA to this effect within 90 days, in addition to clearing any dues of GNIDA. Further, as per clause 8 of the undertaking, the CD further declared that any default/ omission to comply with the undertakings given by it would constitute an "event of default" under the loan agreement. Relevant excerpt of the undertaking reads thus: -

3. I say that the said immovable property, both present and future, benefits accruing thereon is now proposed to be mortgaged and charged to secure the due repayment and discharge by the Company (by way of extension) of its Loan of Rs.91,00,00,000/- (Rupees Ninety One Crores Only) under the the Loan Agreement No./ Contract No. \_\_\_\_\_ dated 1/07/2020 (hereinafter referred to as "Facility Agreement") together with interest, additional interest, compound interest, liquidated damages, premia on prepayment, costs, charges, expenses and other monies payable under the Facility Agreement etc as amended from time to time ("Secured Obligations").



I further state on behalf of the Company that the said immovable property has already been mortgaged and charged with SREI by mortgage by deposit of documents of title on to secure the due repayment and discharge by the Company in respect of the following loans (which have all since been repaid)



availed by the Company from SREI:

Contract No	Date	Financed Amount
173655	6 <sup>th</sup> December, 2018	Rs.9,00,00,000/-
172197	15 <sup>th</sup> September, 2018	Rs.5,00,00,000 /-
82430	22 <sup>nd</sup> March,2015	Rs.60,00,00,000/-

5. I state on behalf of the Company that the Company is aware that it has to comply with the various formalities in view of the creation of the first and exclusive charge and mortgage (by way of extension) as aforesaid in favour of SREI. The Company, hereby confirm that it have already initiated requisite action and taken steps in this behalf.
6. In consideration of the above premises, the Company hereby agrees and undertakes that –
- The Company shall obtain permission to mortgage from Greater Noida Industrial Development Authority (“GNIDA”) for creation of mortgage and charge by way of extension in favour of SREI within 90 days and/or at the earliest and submit the same to SREI.
  - The Company shall get the rent dues of GNIDA cleared till date and submit the copy of rent receipts to SREI accordingly.
  - the Company shall not create any type of further mortgage and/or charge and not even any second and/or subservient Charge and/or encumbrance in any manner on any of its said immovable property in favour of any person/banks/FIs whatsoever or howsoever, strictly without prior written approval of SREI;
  - The Company shall execute a Power of Attorney in favour of SREI and in the event of any default on the part of the Company to repay, SREI shall be entitled to sell the said immovable Property without any further consent of the Company and SREI will adjust the sale proceeds as repayment of dues of the Borrower;

 ARV

[...]



8. The Company agrees that any breach and/or default in complying with all or any of the aforesaid undertaking(s) shall constitute an Event of Default under the Facility Agreement and SREI shall be entitled to file any Suit and/or take Criminal action upon us and/or sell the said immovable property in accordance with law.
9. Any breach, default and/or omission by us of any of the terms and conditions, covenants representations, promise and stipulations contained in this Undertaking shall automatically and ipso facto be deemed to be a breach, default omission and will entitle SREI to exercise all your rights and remedies available in accordance with law including penal action against the Company.
10. The Company further agree and confirm that the above undertaking is unconditional, irrevocable and shall continue to be in full force and in effect till such time the entire facility together with all interest and other monies are repaid to SREI, to the satisfaction of SREI. The Company is aware that based on trust and goodwill and on the strength of this Undertaking SREI has agreed to enter into the Facility Agreement and other Agreements.

**10.** The occurrence of the event of default in terms of the aforesaid undertaking has not been denied by the Respondent/ CD. Though the CD contended that the default on its part in complying with the terms of the loan agreement as well as the aforesaid undertaking was on account of ongoing issues with GNID regarding payment of certain dues and the same was sub-judice before the Hon'ble Allahabad High Court. However, pendency of any legal proceeding between the Corporate Debtor and a third party does not have any bearing on proceedings instituted by a financial creditor under Section 7 of the Code. This position was also stated by this Tribunal when the matter was listed on 13.11.2024. Relevant excerpt of the order dated 13.11.2024 reads thus: -

*“Mr. Abhishek Anand, Ld. Counsel for the Corporate Debtor submitted that the plot allotted to Corporate Debtor by land owner/agency could be cancelled and two writ petitions i.e. WPC No.- 16111/2020 and WPC No.- 16120/2020 questioning the cancellation of allotment could be transferred to Hon'ble*



*Allahabad High Court and the same is pending for consideration. In his submission if the writ petitions are allowed, the Corporate Debtor may be in a position to enter into settlement with the Financial Creditor. Nevertheless, he made it clear that the pendency of the petition has no bearing as the present proceedings and the captioned petition can be taken up on the next date of hearing for admission/order. As prayed by Mr. Abhishek Anand, Ld. Counsel for the Corporate Debtor hearing is deferred to 29.11.2024.”*

(Emphasis Supplied)

In the wake, the pendency of proceedings between the CD and GNIDA before the Hon’ble Allahabad High Court over payment of certain dues does not have bearing on the present proceedings.

**11.** In the wake, this Adjudicating Authority is satisfied that owing to the non- fulfilment of the conditions stipulated in the aforementioned undertaking, an event of default occurred following which the Applicant/ FC sent notice of default dated 30.08.2023 and finally, the notice of recalling of loan on 21.11.2023. Thus, there was a default in repayment of the defaulted debt.

**12.** As can be seen from the provisions of Section 7(3) of IBC, 2016, while considering admission of the application filed under Section 7, we need to satisfy ourselves regarding there being any evidence of default including IU record or entries in the Banker’s Book. The Section 7(3) reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor.—***

*[...]*





(3) *The financial creditor shall, along with the application furnish-*

*(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*

*(b) the name of the resolution professional proposed to act as an interim resolution professional;*

*(c) any other information as may be specified by the Board.”*

**13.** In the facts of the present case, the Applicant/ FC has enclosed the notice of default dated 30.08.2023 as Annexure- T to the application. The notice reads thus: -

Dear Sirs,

**Re:** Financial Assistance sanctioned to Victor Buildwel Private Limited by Srei Equipment Finance Limited (“SREI”) – Defaults committed in compliance of covenants of the loan agreement.

1. This has reference to the loan of Rs. 91,00,00,000/- (Rupees Ninety One Crore only) (“Loan”) extended to Victor Buildwel Private Limited ( “Company”), on the terms and conditions conditioned in loan agreements dated July 01, 2020 (“Loan Agreement”).
2. In terms of the said Loan Agreement, the Loan was to be secured by extension of exclusive charge and mortgage on the property admeasuring 40,480 Sq Mts located on plot no 78 & 79 pocket Extension-I at Sector Ecotech – I (I.T. Park) area situated at Greater Noida Industrial Development Area, District - Gautam Budh Nagar (“Security 1”) and also by way of an extension of pledge of 100% issued, subscribed and fully paid up voting equity share capital of the Company (“Security 2”).
3. In reference to the Security 1, the Company was required to obtain permission to mortgage from Greater Noida Industrial Development Authority (“GNIDA”) for perfection of mortgage and to clear the rent dues of GNIDA. However, the Company have failed and/or neglected to perfect the mortgage in favour of SREI and have committed defaults in performance of the terms and conditions and covenants of the Loan Agreement.
4. Further in reference to the Security 2, an extension of pledge of 100% issued, subscribed and fully paid up voting equity share capital of the Company was required to be created and/or perfected in favour of SREI to secure the due repayment of the Loan and other monies payable by the Company under the Loan Agreement. However, the Company have failed and/or neglected to create and/or perfect the pledge of shares of the Company in favour of SREI due to which the Company have committed defaults in performance of the terms and conditions and covenants of the Loan Agreement.
5. Since the Company have committed default in observance and performance of the terms and conditions contained in the aforesaid Loan Agreement, the Company is liable to pay penal interest as per the terms of the Loan Agreement. Srei reserves the right to charge penal interest from the date of such default.



6. You are hereby requested to immediately create and/or perfect the Security 1 and Security 2 in favour of SREI, within a period of 7 (Seven) days from the date hereof. In case the Company fails to create and/or perfect the Security 1 and Security 2 in favour of SREI and rectify the defaults within a period of 7 (Seven) days from the date hereof, SREI shall be constrained to take such steps including without prejudice exercising its rights under the Loan Agreement and the other financing documents/security documents and/or under applicable law, including recall of Loan and enforcing the securities securing the Loan.
7. Please note that this notice is being issued without prejudice to the rights and remedies of SREI.
8. Please also note that the defaults committed by the Company as mentioned in this notice are not exhaustive in nature as there may be other defaults committed by the Company and SREI reserves its rights to issue separate notices to the Company and take such actions including without prejudice exercising its rights under the Loan Agreement and the other financing documents/security documents and/or under applicable law regarding such other defaults as and when required by SREI in its sole discretion from time to time.

(Capitalised terms not defined hereunder shall have the same meaning as ascribed to them under the Loan Agreement).

14. Further, the Applicant has also enclosed the loan recall notice dated 21.11.2023 issued to the CD as Annexure- U to the application. The notice reads thus: -

5. SREI had vide letter dated August 30, 2023 had called upon the Company to create and/or perfect the Security 1 and Security 2 in favour of SREI, within a period of 7 (Seven) days. However, the Company committed defaults in performance of the terms and conditions and covenants of the said Loan Agreement and has failed and neglected to create and/or perfect the Security 1 and Security 2 in terms of the said Loan Agreement.

6. Since the Company has committed defaults observance and performance of the terms and conditions contained in the aforesaid Loan Agreement and other documents, SREI has become entitled to recall the entire principal amount of the Loan, together with interest and all other amounts due in respect thereof. The particulars of all the outstanding amounts due to SREI in respect of the Loan are mentioned in Annexure. All reliefs and concessions, if any, provided in relation to the Loan are hereby revoked.

Accordingly, SREI hereby declares in writing as follows:

That the outstanding principal amount of the said Loan of SREI has become due and payable by the Company immediately, and accordingly, the outstanding principal amount together with interest, liquidated damages and other moneys payable thereon aggregating to Rs.140,23,76,356/- (Rupees One Hundred Forty Crore Twenty Three Lacs Seventy Six Thousand Three Hundred and Fifty Six only) calculated on due date basis up to November 20, 2023, the particulars of which are given in Annexure, hereto, to be immediately due and payable to SREI.

7. In the premises, we hereby call upon the Company to pay to SREI within a period of 7 (Seven) days from the date hereof, the aforesaid sum Rs.140,23,76,356/- (Rupees One Hundred Forty Crore Twenty Three Lacs Seventy Six Thousand Three Hundred and Fifty Six only) in respect of the said Loan as per Annexure, together with further interest thereon with effect from November 21, 2023 at the contractual rates upon the footing of compound interest together with costs, charges, expenses and other monies till payment or realization.
8. In case the Company fails to make payment of the aforesaid amounts and comply with the requirements, SREI shall be constrained to take such steps including without prejudice exercising its rights under the Loan Agreement and the other financing documents/security documents and/or under applicable law as may be advised for enforcing the securities and realizing its dues at the Company's own risk as to the costs and consequences.
9. Please note that the above notice is issued without prejudice to the rights and remedies to SREI available against the guarantors of the Loan.

(Capitalised terms not defined hereunder shall have the same meaning as ascribed to them under the Loan Agreements).



[...]

**Total Outstanding details as on November 20, 2023**

No.	Particulars	Amount (Rs.)
1	Principal Outstanding	91,00,00,000
2	Interest Accrued till August 30, 2023	41,94,72,812
3	Penal Charges for non-payment of Dues till November 20, 2023	7,29,03,544
<b>Total</b>		<b>140,23,76,356</b>

**15.** In addition to the above notices, the Applicant/ FC has also enclosed a copy of CIBIL Report dated 29.11.2023 to provide a record of default.

**16.** It is pertinent to mention that on behalf of the Respondent/ CD, it was contended that since the record of default has not been filed with the Information Utility as per Regulation 20(1A) (ibid), the application is liable to be dismissed. This plea was opposed by the Applicant/ FC by placing reliance on the judgment dated 13.12.2023 passed by Hon'ble NCLAT in **Vijay Kumar Singhania vs. Bank of Baroda** [2023 SCC Online NCLAT 2320] wherein it was held that an application filed under Section 7 cannot be rejected on grounds that it is not supported by information of default from an IU, if the FC has filed other evidences of default. Relevant excerpt of the judgment reads thus: -

*"29. From the above examination of statutory scheme, the Rules and Regulations, it is clear that regulation 20(1A) cannot be read to mean that after the said amendment brought in the regulation with effect from June 14, 2022 an application filed under section 7 which is not supported by information of default from an information utility is to be rejected and if the financial creditor has filed other evidence to prove default which is contemplated by the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said application has not to be considered.*



*We, thus, are of the considered view that even after amendment of regulation 20 by insertion of regulation 20(1A) with effect from June 14, 2022, the financial creditor is entitled to file evidence of record of default as contemplated by regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We, thus, do not find any substance in the submission of the appellant that since financial creditor has not filed the record of default from an information utility, section 7 deserves to be rejected.”*

**17.** It is also relevant to refer to the judgment dated 14.08.2024 passed by the Hon’ble Supreme Court in Civil Appeal No. 9299/2024 whereby the aforesaid judgment of Hon’ble NCLAT was upheld. Relevant excerpt of the judgment reads thus: -

*“2. We find no reason to interfere with the order of the National Company Law Appellate Tribunal dated 13 December 2023 in Company Appeal (AT) (Insolvency) No 1058 of 2023.*

*3. The appeal is accordingly dismissed.”*

**18.** Thus, the aforesaid judgment of the Hon’ble NCLAT and the Hon’ble Supreme Court has settled the legal position that an application filed under Section 7 and 9 of the Code cannot be dismissed on the ground of non-compliance of Regulation 20(1A)(ibid) when the Applicant/ FC has filed other evidences of default.

**19.** In the facts of the present case, it is clear that there was a financial debt owed by the Corporate Debtor to the Financial Creditor, the debt had become due and there was default in repayment of defaulted amount.





**20.** In ***Innoventive Industries Limited vs ICICI Bank Ltd*** [(2018) 1 SCC 407], the Hon'ble Supreme Court had analysed the scope and extent of the powers conferred with the Adjudicating Authority under Section 7 of the Code and held that in case of a Corporate Debtor who commits default, the Adjudicating Authority merely has to see from the records or evidence produced by the FC to satisfy itself that a default has occurred. Relevant excerpt of the judgment reads thus: -

*"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

(Emphasis Supplied)



**21.** Furthermore, the Hon'ble Supreme Court in the matter of **M. Suresh Kumar Reddy V. Canara Bank**, [(2023) 8 SCC 387] held that once the Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with it to refuse the admission of the application under Section 7 of the Code. The relevant extract of the aforesaid judgement reads thus: -

*"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."*

**22.** The aforesaid judicial precedents of the Hon'ble Supreme Court thus indicate that this Tribunal, at the time of considering the admission of an application under Section 7 of the Code, is to see whether there is a debt and a default in repayment of the debt by the Corporate Debtor.



**23.** The particulars of debt and default have been mentioned in Part-IV of the captioned petition, which reads thus: -

**PART - IV  
PARTICULARS OF FINANCIAL DEBT**

1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Rs.1,40,23,76,356/- (Rupees One Hundred Forty Crore Twenty-Three Lakhs Seventy-Six Thousand Three Hundred Fifty-Six Only)										
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Total Claim Amount as on 20-11-2023:</p> <p>Rs.1,40,23,76,356/- (Rupees One Hundred Forty Crore Twenty-Three Lakhs Seventy-Six Thousand Three Hundred Fifty-Six Only).</p> <table><tr><th>PARTICULARS</th><th>AMOUNT (RS)</th></tr><tr><td>Principal</td><td>91,00,00,000</td></tr><tr><td>Interest Accrued</td><td>41,94,72,812</td></tr><tr><td>Overdue Charges</td><td>7,29,03,544</td></tr><tr><td>Total</td><td>1,40,23,76,356</td></tr></table> <p>AMOUNT CLAIMED TO BE IN DEFAULT AS ON 20<sup>th</sup> NOVEMBER, 2023:</p> <p>Rs.1,40,23,76,356/- (Rupees One Hundred Forty Crore Twenty-Three Lakhs Seventy-Six Thousand Three Hundred Fifty-Six Only)</p> <p>Date of Default- 28<sup>th</sup> NOVEMBER, 2023:</p> <p>True copy of Statement of Account of corporate debtor is attached as ANNEXURE-F.</p>	PARTICULARS	AMOUNT (RS)	Principal	91,00,00,000	Interest Accrued	41,94,72,812	Overdue Charges	7,29,03,544	Total	1,40,23,76,356
PARTICULARS	AMOUNT (RS)											
Principal	91,00,00,000											
Interest Accrued	41,94,72,812											
Overdue Charges	7,29,03,544											
Total	1,40,23,76,356											

**24.** In Part- III of the application, the Applicant/ FC has proposed the name of Sumedha Management Solutions Private Limited, IPE [Reg. No. IBBI/IPE-0020/IPA-1/2022-2023/50023] to act as the Interim Resolution Professional. Relevant excerpt of the same reads thus: -

**PART-III  
PARTICULARS OF THE PROPOSED INTERIM RESOLUTION  
PROFESSIONAL**

1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL	<p>Name of Interim Resolution Professional: <b>SUMEDHA MANAGEMENT SOLUTIONS PVT. LTD.</b></p> <p>True Copy of Written Consent by the proposed IRP, dated 05.02.2024 given by the Interim Resolution Professional is attached as <b>ANNEXURE-II.</b></p>
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**25.** It is also pertinent to mention that the aforementioned insolvency professional has submitted a declaration under Rule 9 of the I&B (Application to Adjudicating Authority) Rules, 2016 by way of Form 2 to indicate that no disciplinary proceedings are pending against him and he is eligible to be appointed as the RP qua the Corporate Debtor. The relevant excerpt of the same, enclosed at page 449 to the application, reads thus: -

*“(iv) certify that there are no disciplinary proceedings pending against us with the Board or Indian Institute of Insolvency Professionals of ICAI;*

*(v) affirm that we are eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;*

*(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.”*

**26.** As has been provided in sub-section (5) of Section 7 of IBC, 2016, where this Adjudicating Authority is satisfied that a default has occurred and the application filed under Section 7(2) is complete and there are no disciplinary proceedings pending against the proposed Resolution Professional, it may admit the application. Section 7(5) of the Code reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor.—***

*[...]*

*(5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary*





*proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”*

**27.** In the facts and circumstances of the case, as noted above we are left with no option but to admit the present application. Ordered accordingly.

**28. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

**29.** As proposed by the Applicant/ FC, Sumedha Management Solutions Private Limited, IPE [Reg. No. IBBI/IPE-0020/IPA-1/2022-2023/50023, is hereby appointed as IRP. It is further ordered that the IRP shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC, 2016 specifically under Section 15, 17, 18, 19(2), 20 and 21 of the Code read with extant provisions of CIRP Regulations, 2016. The IRP would also take steps as per Regulations 4A and 30 of IBBI (CIRP) Regulations, 2016.

**30.** The Applicant/ FC is directed to deposit Rs. 2,00,000/- with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

**31.** A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

**32.** In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

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

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