

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

CP (IB) No. 345/KB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

AMENDED ORDER

This amended order is being issued to rectify certain inadvertent typographical errors as brought out by the learned Counsel appearing on behalf of the Financial Creditors and as mentioned in the daily order dated 5th April 2024.

This order supersedes the earlier order dated 3rd April 2024.

In the matter of:

Canara Bank (formerly known as Syndicate Bank)
[CIN: U67190KA1906PLC001069]

...Financial Creditor

Versus

Riverbank Developers Private Limited
[CIN: U70101WB2007PTC120037]

...Corporate Debtor

Date of pronouncement: 03.04.2024

Date of Amended Order: 05.04.2024

Coram:

Rohit Kapoor : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Ms. Urmila Chakraborty, Advocate
Ms. Sanjana Nandi, Advocate

For the Corporate Debtor : Mr. Aritra Deb, Advocate
Ms. Akshita Bohra, Advocate

AMENDED ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by Canara Bank (formerly known as Syndicate Bank), represented by **Mr. M. Gandhi**, the Assistant General Manager of the Financial Creditor authorized *vide* a Power of Attorney¹ dated 06.05.1999 seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Riverbank Developers Private Limited (“Corporate Debtor”).
3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part–IV of the Petition contains details of the Financial debt for an amount of **INR 175,89,47,673.52** (Rupees One Hundred Seventy Five Crores Eighty Nine Lakhs Forty Seven Thousand Six Hundred Seventy Three & Paise Fifty Two only) as on 30.11.2022.
5. The Corporate Debtor was incorporated on 25 October 2007, having CIN: U70101WB2007PTC120037, under the Companies Act, 1956. Its registered office is at 1, New Bata Road P.O - Batanagar, P.S- Maheshtala, South 24 Parganas, Kolkata, West Bengal, India, 700140. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 20th December 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in making a payment towards a sum of **Rs 175,89,47,673.52** (Rupees One Hundred Seventy-Five Crores Eighty-Nine Lakhs Forty-Seven Thousand Six Hundred Seventy-Three & Paise Fifty-

¹ Annexure A of the Petition

Two only) as on 30.11.2022. The date of default is stated to be 15.12.2022 when the Corporate Debtor failed to pay instalments and interest.

Brief facts of the case:

7. The Financial Creditor was formerly known as Syndicate Bank prior to its amalgamation with Canara Bank. The Corporate Debtor had entered into a Concession agreement dated 28.05.2014² with the Kolkata Metropolitan Development Authority (for brevity, "KMDA") in connection with the development, design, financing, procurement, engineering, construction, operation and maintenance of the elevated road between Jinzira Bazaar and Batanagar of the project highway on Budge Budge Trunk Road, Kolkata on DBFOT basis.
8. The BBT Elevated Road Private Limited (hereinafter referred to as "**BBT Elevated**") is a company registered under Companies Act, 1956 and is a subsidiary of the Corporate Debtor herein. **BBT Elevated** had approached the Financial Creditor for a loan of Rs.135 crore for business purpose. Subsequently, the Financial Creditor granted a loan facility of Rs.135 crore vide a sanction letter dated 17.01.2015.³ The said loan facility was granted to part finance the infrastructure project of the Corporate Debtor i.e., building and operating elevated toll road project at Budge Budge Trunk Road in Kolkata on Design, Build, Finance, Operate and Transfer ["DBFOT"] basis repayable with interest at the rate of 12.50% per annum on the agreed terms and conditions. A Facility Agreement⁴ was also executed on 19.02.2015 in connection with the said loan amount. The Corporate Debtor accepted the sanction to BBT Elevated and also agreed to execute to Counter Guarantee Agreement through its authorized signatory for Rs. 135 Crore in consideration of Term Loan and Bank Guarantee facility to BBT Elevated.
9. The Corporate Debtor had entered into a Concession agreement dated 28.05.2014 with the Kolkata Metropolitan Development Authority (for brevity, "KMDA") in

² Annexure A4 of the Petition

³ Annexure A3 of the Petition

⁴ Annexure A5 of the Petition

connection with the development, design, financing, procurement, engineering, construction, operation and maintenance of the elevated road between Jinzira Bazaar and Batanagar of the project highway on Budge Budge Trunk Road, Kolkata on DBFOT basis.

10. Under the said Concession Agreement the Corporate Debtor was to establish an escrow account and as the agreement dated 19.02.2015⁵ was entered into between the Financial Creditor, BBT Elevated and KMDA and the Financial Creditor was appointed as the Trustee for KMDA. The said sanction letter was modified and the loan amount was reduced and the commercial operation date was changed subsequently.
11. The scheduled CoD was changed during the currency of the work but this change in the Commercial Operation date did not lead to any deferment in the repayment schedule. The Financial Creditor had on several occasions requested the Corporate Debtor to repay the dues but no payment was made and accordingly the loan account of the Corporate Debtor was classified as a Non-Performing Asset on 30.03.2021. The Financial Creditor recalled the said loan vide a letter dated 03.04.2021.
12. The said loan was again recalled vide a Demand Notice by the Advocate of the Financial Creditor on 20.04.2021⁶. The Corporate Debtor replied to the said notice vide a letter dated 10.09.2021⁷ and referred to Money Suit No. 8 of 2020 filed by BBT at Alipore Commercial Court against KMDA to recover termination payments per their Agreement. KMDA acknowledged in the proceeding that out of the agreed Rs. 248 crores, only Rs. 86.8 crores were paid through government grants. Thus, a pending amount of Rs. 161.2 crores remain to be realized by BBT from KMDA.
13. The Financial Creditor was compelled to issue a notice dated 03.09.2021 regarding initiation of proceedings under the Insolvency and Bankruptcy Code, 2016. One Mr. Sumit Kumar Dabriwala, the promoter/director of the Corporate Debtor had visited the

⁵ Annexure A6 of the Petition

⁶ Annexure A13 of the Petition

⁷ Annexure A14 of the Petition

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

Canara Bank (formerly known as Syndicate Bank) v. Riverbank Developers Pvt. Ltd.

C.P.(I.B.) No. 345/KB/2022

office of the Financial Creditor on 10.09.2021 and promised to pay overdue instalment amount (excluding interest) till March, 2022 amounting to Rs.6.48 crore and also to pay at least Rs.1 crore every month starting from September, 2021. The same was confirmed by the Corporate Debtor by its letter dated September 10, 2021⁸. However, despite such commitment, the Corporate Debtor again failed to honour the same.

14. The Financial Creditor, on 8th December 2022⁹, issued a Notice invoking the Guarantee of the Corporate Debtor, necessitating the payment of outstanding dues attributable to the default of BBT Elevated Road Pvt. Ltd.

15. The Financial Creditor has placed the following documents on record which includes:

Annexure	Dates	Copies	Page Numbers
A3	January 17, 2015	Sanction letter	52-57
A4	May 28, 2014	Concession Agreement	58-167
A5	February 19, 2015	Facility Agreement	168-188
A6 (Colly)	February 19, 2015	Letter with documents	189-227
A7	October 16, 2015	Counter Guarantee Agreement	228-233
A8	June 15, 2016	Letter	234-235
A9	January 15, 2018	Letter	236-237
A10	January 15, 2018	Amended Facility Agreement	238-244
A11	February 27, 2019	Amended Facility Agreement	245-251

⁸ Annexure A16 of the Petition

⁹ Annexure A17 of the Petition

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

Canara Bank (formerly known as Syndicate Bank) v. Riverbank Developers Pvt. Ltd.

C.P.(I.B.) No. 345/KB/2022

A12	April 3, 2021	Loan recall notice with Postal Receipt	252-254
A13	April 20, 2021	Demand Notice with Postal Receipt	255-266
A14	September 10, 2021	Reply on behalf of the Corporate Debtor	267-269
A15	September 13, 2021	Reply on behalf of the Financial Creditor	270
A16	November 6, 2021	Demand Notice with Postal Receipt	271-272
A17	December 8, 2022	Invocation of Guarantee and Demand Notice with Postal Receipts and Track Reports	273-277
A18	-	Working computation of amount and date of default	278

16. The Financial Creditor has proposed the name of **Mr. Sachin Gopal Jathar**, registration number IBBI/IPA-002/IP-N00640/2018-2019/11968, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Reply Affidavit filed by the Corporate Debtor

17. The Corporate Debtor, who is the Corporate Guarantor, has stated that upon successful submission of bid by a consortium formed by the erstwhile Riverbank Holdings Private Limited and Larsen & Toubro Limited a special purpose vehicle named BBT Elevated as their special purpose vehicle (for brevity “SPV”) was formed and was incorporated on Feb 19, 2014 for the sole purpose of execution of the abovementioned project.

18. The essential term of the original request for proposal was that the successful bidder was entitled to charge/levy predetermined “user fees”/toll charges from the users of the

proposed elevated road as a part of the said project pursuant to which the Corporate Debtor entered into a Concession Agreement with the KMDA.

19. It is stated by the Corporate Debtor that after completing the said project, a completion certificate¹⁰ was issued by the KMDA. Under clause 4.1(j) of the Concession Agreement, KMDA was obligated to issue a toll notification that would enable the Corporate Debtor to collect toll fees from vehicles using the elevated road for a period of time as set out in the agreement. It was mentioned in clause 6.1 of the said agreement that toll fee to be collected by BBT would be deposited in the Escrow account. However after completion of the said project and its inauguration, it was announced that for the time being there shall be no toll fee for cars, jeeps, vans and taxis and the toll notification would be issued in consonance with what is recorded and agreed in the agreement save and except toll for cars, jeeps, vans and taxis whereas the said category of vehicles constitute the bulk of toll collection and a result, the Corporate Debtor was prevented from recovering the money which it had spent towards the construction of the said project.
20. It is stated that as BBT Elevated was formed with the sole purpose of completion of the project, it did not indulge in any other commercial activity other than the ones mentioned in the agreement nor does it have any other source of income other than the one as mutually agreed in the Concession agreement.
21. Pursuant to the assurance given by the KMDA that it would compensate the Corporate Debtor for the losses in toll revenue, the Corporate Debtor raised several bills along with supporting counter receipts of tolls and video footage claiming compensation¹¹ in view of non-levy of toll but the KMDA failed to make any payment to the Corporate Debtor.
22. It is stated that the Corporate Debtor incurred a massive expenditure towards the construction of such project in the anticipation that once it is completed, the toll collected would enable the Corporate Debtor to pay its liabilities. However, it was

¹⁰ Annexure H of the Reply Affidavit

¹¹ Annexure K(colly) of the Reply Affidavit

constrained to terminate the Concession Agreement by a letter dated 13.06.2019¹² as in terms of clause 32.4.2 of the said agreement, the SPV of Corporate Debtor i.e. BBT Elevated would be entitled to a termination payment for an amount of Rs.313,44,00,000/- (Rupees Three Hundred Thirteen Crore and Forty Four Lakh Only). It also filed a Money Suit being Money Suit No. 8 of 2020¹³ before the Alipore Commercial Court seeking relief for the same and the Financial Creditor has also filed an intervention application to the said suit.

23. It is stated that as per clause 10.1.1 of the Escrow Agreement, the parties were to opt for conciliation as the first step of dispute resolution but the Financial Creditor by pursuing remedies before the Debt Recovery Tribunal-I, Kolkata has acted in total disregard of the said clause being well aware of the sufferings of the Corporate Debtor.
24. The Corporate Debtor asserts its cognizance of the mentioned monetary lawsuit, highlighting the Financial Creditor's submission of an intervention application¹⁴ to the Alipore Commercial Court for inclusion as a party.
25. The Corporate Debtor contends that, due to the alleged malafide conduct of KMDA and BBT, it has encountered a transient liquidity shortfall. It asserts that such short-term financial constraints are customary in infrastructure development firms and do not imply the company's operational non-viability or lack of sustainability. The Corporate Debtor further asserts its continuous efforts in pursuing various debt restructuring initiatives over the past year.
26. It is pertinent to highlight that, throughout the relevant periods, the Financial Creditor possessed knowledge of the Agreement, the Escrow Agreement, and their respective clauses. The Financial Creditor is also well-informed about the transactions involving deposits and withdrawals from the escrow account established pursuant to the Escrow Agreement. These records serve as evidence that BBT has been unable to generate revenue from the Project due to the alleged mala fide actions of KMDA.

¹² Annexure L of the Reply Affidavit

¹³ Annexure M of the Reply Affidavit

¹⁴ Annexure N of the Reply Affidavit

27. The Corporate Debtor submits that it acknowledges clauses 6.1 and 6.4 of the aforementioned Agreement, which pertain to the method and procedure for the inflow of funds into the escrow account managed by the Financial Creditor. Clause 6.4 of said Agreement explicitly mandates that revenue generated from toll collection must be directed to an escrow account, in this instance, the one overseen by the Financial Creditor. Therefore, in instances where toll collection is prohibited, the matter of depositing said toll into the escrow account shall not be deemed applicable. Clause 6.1 of the Agreement identifies toll collection as the primary revenue stream for BBT, stipulating that the resulting proceeds are to be directed into the escrow account of BBT, managed by the Financial Creditor.
28. The Corporate Debtor asserts that on April 3, 2021, the Financial Creditor dispatched a communication to BBT, notifying BBT for the initial instance of its classification as a 'Non-Performing Asset'. Additionally, the Financial Creditor demanded the repayment of Rs. 148,13,66,687.84/- (Rupees one hundred and forty-eight crore thirteen lakh sixty-six thousand six hundred and eighty-seven eighty-four paise only) from BBT¹⁵. Following this, on April 8, 2021, BBT dispatched a letter¹⁶ to the Financial Creditor, underscoring the profound financial distress precipitated by the unilateral and malicious actions of KMDA.
29. The Corporate Debtor herein responded to the financial creditor's letter dated April 3, 2021, through a communication dated April 9, 2021¹⁷. The Corporate Debtor conveyed the dire circumstances it was confronted with, attributable to various factors entirely beyond its control, to the financial creditor. Subsequently, on November 10, 2021, RDPL, acting as a corporate guarantor to the loan extended by the financial creditor to BBT pursuant to the sanction letter dated January 17, 2015, issued a further communication to the financial creditor. In this correspondence, RDPL elucidated the comprehensive series of events that resulted in RDPL facing a disadvantageous position concerning the repayment of the loan amount.

¹⁵ Annexure O of the Reply Affidavit

¹⁶ Annexure P of the Reply Affidavit

¹⁷ Annexure Q of the Reply Affidavit

30. The Corporate Debtor submits that as of June 13, 2019 (the date of termination of the aforementioned Agreement), BBT has encountered a cumulative financial liability amounting to Rs 379,65,00,000/- (Rupees three hundred and seventy-nine crore and sixty-five lakhs only), as confirmed by the certificate issued by the independent statutory auditors of BBT¹⁸.
31. The Corporate Debtor, being the majority shareholder of BBT, has been unable to recuperate any sum from the aforementioned Project due to the failure of KMDA to fulfil its obligations as stipulated in the terms of the Agreement. Additionally, it is pertinent to note that as of the present date, BBT has not received any restitution for the toll fees relinquished during the months of February, March, and April of 2019, nor has it been disbursed the termination payment to which it is entitled under the terms of the Agreement.
32. It is stated that despite its financial constraints, the Corporate Debtor by a letter dated 12.09.2022 offered to enter into a one-time settlement with the Financial Creditor and after rounds of negotiation, the Financial Creditor has accepted the final offer dated 15.03.2023 which is being actively considered by the Financial Creditor. The Corporate Debtor had also issued a cheque¹⁹ of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) as upfront payment.
33. The Corporate Debtor contends that the financial creditor's claim against BBT, as well as against the Corporate Debtor, emanates from the same term loan and transaction as delineated previously. Consequently, in the event of a successful settlement between the financial creditor and BBT, the financial creditor's claim against the Corporate Debtor would also be nullified. It is pertinent to note that the Corporate Debtor acted solely as a corporate guarantor to the term loan extended to BBT by the financial creditor, pursuant to the sanction letter²⁰ dated January 17, 2015.

¹⁸ Annexure R of the Reply Affidavit

¹⁹ Annexure S(colly) of the Reply Affidavit

²⁰ Annexure F of the Reply Affidavit

34. The Corporate Debtor further submits that the Financial Creditor is concurrently pursuing remedies before the Hon'ble Debt Recovery Tribunal - I, Kolkata, through an original application numbered O.A. 137 of 2021²¹. It is evident that the remedies sought by the Financial Creditor primarily pertain to debt recovery mechanisms. It is well-established that this Tribunal is not a forum for debt recovery proceedings. In light of the aforementioned submissions, the Corporate Debtor respectfully requests this Tribunal to acknowledge the same and grant an extension of ten weeks to conclude the settlement process.

Rejoinder Affidavit filed by the Financial Creditor

35. In its rejoinder affidavit, the Financial Creditor asserts that the Corporate Debtor has acknowledged both the existence of the debt and default in its reply affidavit. Furthermore, the Financial Creditor contends that any dispute between the Corporate Debtor and KMDA cannot serve as a defense in the present proceedings. Paragraph 10 of the Rejoinder Affidavit emphasizes that the Financial Creditor's role as a trustee for KMDA and the repayment schedule outlined in the Facility Agreement are distinct from the provisions of the Escrow Agreement. The Escrow Agreement exclusively pertains to the projects and the deposits to be made by both the BBT Elevated and KMDA, with no correlation to the terms of the Facility Agreement.

36. The Financial Creditor asserts that to date, the Corporate Debtor has not made any upfront payment following the letter dated 15.03.2023 issued by the Corporate Debtor. Consequently, there is neither an ongoing settlement process between the Financial Creditor and the Corporate Debtor nor any proposal for settlement currently under active consideration by the stakeholders of the Financial Creditor.

37. The Financial Creditor states that the Corporate Debtor has not disputed the loan facility availed by BBT Elevated and it has not made any allegations against the Financial Creditor, therefore it is necessary that present petition be admitted and Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

²¹ Annexure T of the Reply Affidavit

Analysis and Findings

38. Heard the Ld. Counsel appearing for both the parties and perused the records.
39. When the case was brought before this Tribunal on the 1st of September, 2023, the Learned Counsel representing the Corporate Debtor informed the Court of a One Time Settlement (OTS) proposal that had been submitted, asserting that payment pursuant to the aforementioned OTS would be forthcoming. Consequently, this matter was scheduled for a settlement update on the 26th of September, 2023. This Adjudicating Authority explicitly stated that in the absence of a settlement, the case would proceed to be adjudicated on its substantive merits. On the 26th of September, 2023, a final opportunity was extended to the Corporate Debtor to fulfil the settlement by the subsequent day. Nevertheless, as of this date, no settlement has been reached between the parties.
40. The corporate debtor in Para 14 of the Reply Affidavit states that it is posited as a corporate guarantor in relation to the term loan extended to BBT by the financial creditor. The financial creditor instituted the present proceedings against the corporate debtor, functioning as the corporate guarantor, with the intention of recouping the outstanding liabilities arising from the loan disbursed to BBT, which has purportedly run into financial distress due to violation of the agreement by KMDA. In this regard we rely on ***Laxmi Pat Surana v. Union Bank of India and Anr (2021) 8 SCC 481:***

“21. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt.”

“25. ...The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of the expression “corporate debtor” in Section 3(8) IBC.”

The Hon'ble Supreme Court put any ambiguity to rest by holding that that CIRP can be initiated against Corporate Guarantors.

41. In presenting their argument, the Learned Counsel for the Corporate Debtor placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Vidarbha Industries Power Ltd v. Axis Bank 2022 SCC Online SC 841***. Specifically, the counsel referred to paragraph 13 of the Reply Affidavit, which is reproduced as follows:

“13. The Corporate Debtor reiterates that in an effort to resolve the dispute with KMDA in a steadfast manner, the BBT instituted a commercial suit under the rigours of the Commercial Courts Act, 2015 for recovery of Rs. 313,44,00,000 /- (Rupees Three hundred and Thirteen Crore and Forty Four Lakhs only) along with other incidental costs suffered by the debtor owing to the lapses of KMDA in fulfilment of KMDA's obligations under the said concession agreement. Regrettably, despite initiating such action in 2020, the KMDA has been adopting every possible mean to purposefully delay the proceedings, despite BBT's bona fide”

42. Upon reviewing the submissions made by the Learned Counsel for the Corporate Debtor and after careful examination of the legal principles established by the Hon'ble Supreme Court, we find that although the term "example" was employed within the judgement, there necessitates a condition analogous to the issuance of an award or decree in favour of the Corporate Debtor, prior to the contemplation of suspending the admission of an application under Section 7 of the Insolvency and Bankruptcy Code (IBC) by the Adjudicating Authority. The mere filing or ongoing status of a civil suit, in our assessment, does not constitute a circumstance akin to or contemplated by paragraph 88 of the Supreme Court's judgement, as invoked by the Corporate Debtor.
43. While addressing the plea of the Corporate Debtor in para mm & nn of the Reply Affidavit that the Financial Creditor is also pursuing remedies before the Learned DRT at Kolkata, we refer to the judgment passed by the Hon'ble NCLAT, Chennai in ***Amar***

Vora v. City Union Bank Limited & Anr, Company Appeal (AT) (CH) (Ins) No. 130 of 2022, NCLAT Chennai Bench which is as follows:

“7. Now we take up point no.(i)

It is the case of the Appellant that the financial Creditor issued notice under Section 13(2) of the SARFAESI ACT, 2002 for a default of Rs. 14,14,61,066/- for almost 12 accounts and the financial Creditor has also filed an application bearing OA No. 497 of 2019 before the DRT Madurai against the Appellant/Corporate Debtor for recovery of debts Rs. 19,73,47,599/- and filing the application before the Adjudicating Authority for default in loan amount to the tune of Rs. 8,04,86,434/- with interest for the very same loan facility would amount to forum shopping and hence initiation of CIRP by the Adjudicating Authority cannot be maintained. Further, the Ld. Counsel submitted that an application being IA 844 of 2021 filed before the Adjudicating Authority praying the Authority to keep abeyance till the matter in reference no. R-1929 of 2020 before the prohibition of Benami Property Transaction Act, 1988 is decided.

8. The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon’ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.”

44. Having reviewed the pleadings and arguments presented by both parties, we ascertain that there existed a debt which the Corporate Debtor in its role as a Corporate Guarantor failed to repay upon being asked to do so by the financial creditor (**Letter Dated 08.12.2022 [REF. NO.501/BBT/ARM/2364/2022]**)²² leading to a default.
45. We also rely on the judgement of Hon’ble NCLAT in the matter of ***State Bank of India vs NS Engineering CA(AT)(Insolvency) 978, 1000 and 1039 of 2022*** which is:

*15. The Hon’ble Supreme Court has had occasion to examine the contours of Section 7 Application. The Hon’ble Supreme Court in *Innoventive Industries Limited vs. ICICI Bank and Anr.- (2018) 1 SCC 407* had noted the Scheme of Section 7 of the Code and also contrasted it with the Scheme under Section 8 and 9. Paragraphs 28 and 29 of the judgment of the Hon’ble Supreme Court is as follows:*

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an

²² Annexure A-17 of the Petition

application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. 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”.

Further in Para 16 of the same judgement, it has been inter-alia mentioned that:

16. The Hon’ble Supreme Court in the above case has observed that the moment Adjudicating Authority is satisfied that default has occurred, the Application must be admitted, unless it is incomplete.

Consequently, the fundamental criteria for an application under Section 7 of the Insolvency and Bankruptcy Code (IBC), namely the existence of a debt and a default, are duly met.

46. We find that the present petition made by the Financial Creditor which is complete in all respects, should be ***admitted***. It is hereby ordered as follows: -

- a. The application bearing ***CP (IB) No. 345/KB/2022*** filed by Canara Bank, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Riverbank Developers Private Limited**, the Corporate Debtor, is ***admitted***.
- b. There shall be a moratorium under Section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. **Mr. Sachin Gopal Jathar**, registration number IBBI/IPA-002/IP-N00640/2018-2019/11968, email: sgjathar.ip@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

47. **CP (IB) No. 345/KB/2022** to come up on **15-05-2024** for filing the periodical report.

48. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 5th day of April, 2024

A.J.S

DIVISION BENCH
COURT - I

M-1

(MENTIONING)

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/345(KB)2022

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 05TH APRIL 2024

IN THE MATTER OF	Canara Bank VS Riverbank Developers Private Limited
UNDER SECTION	IBC UNDER SEC 7

Appearances (via video conferencing/physically)

Ms.Urmila Chakraborty Adv. For Financial Creditor

C O R R I G E N D U M O R D E R

1. This matter was not on Board today and was taken upon mentioning by the Ld. Counsel for the Financial Creditor.
2. Certain typographical errors have been brought to our notice in the order dated 03/04/2024 through a mentioning memo.
3. We have perused the mentioning memo and it appears necessary to correct these inadvertent errors. An amended order incorporating the same shall be issued separately in due course

**Balraj Joshi
Member (Technical)**

**Rohit Kapoor
Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH , COURT-I
KOLKATA**

CP (IB) No. 345/KB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Canara Bank (formerly known as Syndicate Bank)
[CIN: U67190KA1906PLC001069]

...Financial Creditor

Versus

Riverbank Developers Private Limited
[CIN: U70101WB2007PTC120037]

...Corporate Debtor

Date of pronouncement: 03.04.2024

Coram:

Rohit Kapoor : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Ms. Urmila Chakraborty, Advocate
Ms. Sanjana Nandi, Advocate

For the Corporate Debtor : Mr. Aritra Deb, Advocate
Ms. Akshita Bohra, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by Canara Bank (formerly known as Syndicate Bank), represented by **Mr. M. Gandhi**, the Assistant General Manager of the Financial Creditor authorized *vide*

- a Power of Attorney¹ dated 06.05.1999 seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against BBT Elevated Road Private Limited (“Corporate Debtor”).
3. It is submitted that Part –I of this petitions contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
 4. Part–IV of the Petition contains details Financial debt for an amount of **INR 175,89,47,673.52** (Rupees One Hundred Seventy Five Crores Eighty Nine Lakhs Forty Seven Thousand Six Hundred Seventy Three & Paise Fifty Two only) as on 30.11.2022.
 5. The Corporate Debtor was incorporated on 25 October 2007, having CIN: U70101WB2007PTC120037, under the Companies Act, 1956. Its registered office is at 1 1, New Bata Road P.O - Batanagar, P.S- Maheshtala, South 24 Parganas, Kolkata, West Bengal, India, 700140. Therefore, this Bench has jurisdiction to deal with this petition.
 6. The present petition was filed on 17th December 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in making a payment towards a sum of **Rs 175,89,47,673.52** (Rupees One Hundred Seventy-Five Crores Eighty-Nine Lakhs Forty-Seven Thousand Six Hundred Seventy-Three & Paise Fifty-Two only) as on 30.11.2022. The date of default is stated to be 15.12.2022 when the Corporate Debtor failed to pay instalments and interest.

Brief facts of the case:

7. The Financial Creditor was formerly known as Syndicate Bank prior to its amalgamation with Canara Bank. The Corporate Debtor had entered into a Concession agreement dated 28.05.2014² with the Kolkata Metropolitan Development Authority (for brevity, "KMDA") in connection with the development, design, financing, procurement, engineering, construction, operation and maintenance of the elevated

¹ Annexure A of the Petition

² Annexure A4 of the Petition

road between Jinzira Bazaar and Batanagar of the project highway on Budge Budge Trunk Road, Kolkata on DBFOT basis.

8. The Corporate Debtor had approached the Financial Creditor for a loan of Rs.135 crore for business purpose. Subsequently, the Financial Creditor granted a loan facility of Rs.135 crore vide a sanction letter dated 17.01.2015.³ The said loan facility was granted to part finance the infrastructure project of the Corporate Debtor i.e., building and operating elevated toll road project at Budge Budge Trunk Road in Kolkata on Design, Build, Finance, Operate and Transfer ["DBFOT"] basis repayable with interest at the rate of 12.50% per annum on the agreed terms and conditions. A Facility Agreement⁴ was also executed on 19.02.2015 in connection with the said loan amount.
9. The Corporate Debtor had entered into a Concession agreement dated 28.05.2014 with the Kolkata Metropolitan Development Authority (for brevity, "KMDA") in connection with the development, design, financing, procurement, engineering, construction, operation and maintenance of the elevated road between Jinzira Bazaar and Batanagar of the project highway on Budge Budge Trunk Road, Kolkata on DBFOT basis.
10. The Corporate Debtor is a consortium of one Riverbank Holdings Private Limited and Larsen & Toubro Limited. Under the said Concession Agreement the Corporate Debtor was to establish an escrow account and as the agreement dated 19.02.2015⁵ was entered into between the Financial Creditor, Corporate Debtor and KMDA and the Financial Creditor was appointed as the Trustee for KMDA. The said sanction letter was modified and the loan amount was reduced and the commercial operation date was changed subsequently.
11. The scheduled CoD was changed during the currency of the work but this change in the Commercial Operation date did not lead to any deferment in the repayment schedule. The Financial Creditor had on several occasions requested the Corporate Debtor to repay the dues but no payment was made and accordingly the loan account

³ Annexure A3 of the Petition

⁴ Annexure A5 of the Petition

⁵ Annexure A6 of the Petition

of the Corporate Debtor was classified as a Non-Performing Asset on 30.03.2021. The Financial Creditor recalled the said loan vide a letter dated 03.04.2021.

12. The said loan was again recalled vide a Demand Notice by the Advocate of the Financial Creditor on 20.04.2021⁶. The Corporate Debtor replied to the said notice vide a letter dated 10.09.2021⁷ and referred to Money Suit No. 8 of 2020 filed by BBT at Alipore Commercial Court against KMDA to recover termination payments per their Agreement. KMDA acknowledged in the proceeding that out of the agreed Rs. 248 crores, only Rs. 86.8 crores were paid through government grants. Thus, a pending amount of Rs. 161.2 crores remain to be realized by BBT from KMDA.
13. The Financial Creditor was compelled to issue a notice dated 03.09.2021 regarding initiation of proceedings under the Insolvency and Bankruptcy Code, 2016. One Mr. Sumit Kumar Dabriwala, the promoter/director of the Corporate Debtor had visited the office of the Financial Creditor on 10.09.2021 and promised to pay overdue instalment amount (excluding interest) till March, 2022 amounting to Rs.6.48 crore and also to pay at least Rs.1 crore every month starting from September, 2021. The same was confirmed by the Corporate Debtor by its letter dated September 10, 2021⁸. However, despite such commitment, the Corporate Debtor again failed to honour the same.
14. The Financial Creditor, on 8th December 2022⁹, issued a Notice invoking the Guarantee of the Corporate Debtor, necessitating the payment of outstanding dues attributable to the default of the Borrower viz BBT Elevated Road Pvt. Ltd.
15. The Financial Creditor has placed the following documents on record which includes:

Annexure	Dates	Copies	Page Numbers
A3	January 17, 2015	Sanction letter	52-57

⁶ Annexure A13 of the Petition

⁷ Annexure A14 of the Petition

⁸ Annexure A16 of the Petition

⁹ Annexure A17 of the Petition

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

Canara Bank (formerly known as Syndicate Bank) v. Riverbank Developers Pvt. Ltd.
C.P.(I.B.) No. 345/KB/2022

A4	May 28, 2014	Concession Agreement	58-167
A5	February 19, 2015	Facility Agreement	168-188
A6 (Colly)	February 19, 2015	Letter with documents	189-227
A7	October 16, 2015	Counter Guarantee Agreement	228-233
A8	June 15, 2016	Letter	234-235
A9	January 15, 2018	Letter	236-237
A10	January 15, 2018	Amended Facility Agreement	238-244
A11	February 27, 2019	Amended Facility Agreement	245-251
A12	April 3, 2021	Loan recall notice with Postal Receipt	252-254
A13	April 20, 2021	Demand Notice with Postal Receipt	255-266
A14	September 10, 2021	Reply on behalf of the Corporate Debtor	267-269
A15	September 13, 2021	Reply on behalf of the Financial Creditor	270
A16	November 6, 2021	Demand Notice with Postal Receipt	271-272
A17	December 8, 2022	Invocation of Guarantee and Demand Notice with Postal Receipts and Track Reports	273-277
A18	-	Working computation of amount and date of default	278

16. The Financial Creditor has proposed the name of **Mr. Sachin Gopal Jathar**, registration number IBBI/IPA-002/IP-N00640/2018-2019/11968, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1)

of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Reply Affidavit filed by the Corporate Debtor

17. The Corporate Debtor, who is the Corporate Guarantor, has stated that upon successful submission of bid by a consortium formed by the erstwhile Riverbank Holdings Private Limited and Larsen & Toubro Limited a special purpose vehicle named BBT Elevated as their special purpose vehicle (for brevity “SPV”) was formed and was incorporated on Feb 19, 2014 for the sole purpose of execution of the abovementioned project.
18. The essential term of the original request for proposal was that the successful bidder was entitled to charge/levy predetermined “user fees”/toll charges from the users of the proposed elevated road as a part of the said project pursuant to which the Corporate Debtor entered into a Concession Agreement with the KMDA.
19. It is stated by the Corporate Debtor that after completing the said project, a completion certificate¹⁰ was issued by the KMDA. Under clause 4.1(j) of the Concession Agreement, KMDA was obligated to issue a toll notification that would enable the Corporate Debtor to collect toll fees from vehicles using the elevated road for a period of time as set out in the agreement. It was mentioned in clause 6.1 of the said agreement that toll fee to be collected by BBT would be deposited in the Escrow account. However after completion of the said project and its inauguration, it was announced that for the time being there shall be no toll fee for cars, jeeps, vans and taxis and the toll notification would be issued in consonance with what is recorded and agreed in the agreement save and except toll for cars, jeeps, vans and taxis whereas the said category of vehicles constitute the bulk of toll collection and a result, the Corporate Debtor was prevented from recovering the money which it had spent towards the construction of the said project.
20. It is stated that as BBT Elevated was formed with the sole purpose of completion of the project, it did not indulge in any other commercial activity other than the ones

¹⁰ Annexure H of the Reply Affidavit

mentioned in the agreement nor does it have any other source of income other than the one as mutually agreed in the Concession agreement.

21. Pursuant to the assurance given by the KMDA that it would compensate the Corporate Debtor for the losses in toll revenue, the Corporate Debtor raised several bills along with supporting counter receipts of tolls and video footage claiming compensation¹¹ in view of non-levy of toll but the KMDA failed to make any payment to the Corporate Debtor.
22. It is stated that the Corporate Debtor incurred a massive expenditure towards the construction of such project in the anticipation that once it is completed, the toll collected would enable the Corporate Debtor to pay its liabilities. However, it was constrained to terminate the Concession Agreement by a letter dated 13.06.2019¹² as in terms of clause 32.4.2 of the said agreement, the SPV of Corporate Debtor i.e. BBT Elevated would be entitled to a termination payment for an amount of Rs.313,44,00,000/- (Rupees Three Hundred Thirteen Crore and Forty Four Lakh Only). It also filed a Money Suit being Money Suit No. 8 of 2020¹³ before the Alipore Commercial Court seeking relief for the same and the Financial Creditor has also filed an intervention application to the said suit.
23. It is stated that as per clause 10.1.1 of the Escrow Agreement, the parties were to opt for conciliation as the first step of dispute resolution but the Financial Creditor by pursuing remedies before the Debt Recovery Tribunal-I, Kolkata has acted in total disregard of the said clause being well aware of the sufferings of the Corporate Debtor.
24. The Corporate Debtor asserts its cognizance of the mentioned monetary lawsuit, highlighting the Financial Creditor's submission of an intervention application¹⁴ to the Alipore Commercial Court for inclusion as a party.
25. The Corporate Debtor contends that, due to the alleged malafide conduct of KMDA and BBT, it has encountered a transient liquidity shortfall. It asserts that such short-term

¹¹ Annexure K(colly) of the Reply Affidavit

¹² Annexure L of the Reply Affidavit

¹³ Annexure M of the Reply Affidavit

¹⁴ Annexure N of the Reply Affidavit

financial constraints are customary in infrastructure development firms and do not imply the company's operational non-viability or lack of sustainability. The Corporate Debtor further asserts its continuous efforts in pursuing various debt restructuring initiatives over the past year.

26. It is pertinent to highlight that, throughout the relevant periods, the Financial Creditor possessed knowledge of the Agreement, the Escrow Agreement, and their respective clauses. The Financial Creditor is also well-informed about the transactions involving deposits and withdrawals from the escrow account established pursuant to the Escrow Agreement. These records serve as evidence that BBT has been unable to generate revenue from the Project due to the alleged mala fide actions of KMDA.
27. The Corporate Debtor submits that it acknowledges clauses 6.1 and 6.4 of the aforementioned Agreement, which pertain to the method and procedure for the inflow of funds into the escrow account managed by the Financial Creditor. Clause 6.4 of said Agreement explicitly mandates that revenue generated from toll collection must be directed to an escrow account, in this instance, the one overseen by the Financial Creditor. Therefore, in instances where toll collection is prohibited, the matter of depositing said toll into the escrow account shall not be deemed applicable. Clause 6.1 of the Agreement identifies toll collection as the primary revenue stream for BBT, stipulating that the resulting proceeds are to be directed into the escrow account of BBT, managed by the Financial Creditor.
28. The Corporate Debtor asserts that on April 3, 2021, the Financial Creditor dispatched a communication to BBT, notifying BBT for the initial instance of its classification as a 'Non-Performing Asset'. Additionally, the Financial Creditor demanded the repayment of Rs. 148,13,66,687.84/- (Rupees one hundred and forty-eight crore thirteen lakh sixty-six thousand six hundred and eighty-seven eighty-four paise only) from BBT¹⁵. Following this, on April 8, 2021, BBT dispatched a letter¹⁶ to the Financial Creditor,

¹⁵ Annexure O of the Reply Affidavit

¹⁶ Annexure P of the Reply Affidavit

underscoring the profound financial distress precipitated by the unilateral and malicious actions of KMDA.

29. The Corporate Debtor herein responded to the financial creditor's letter dated April 3, 2021, through a communication dated April 9, 2021¹⁷. The Corporate Debtor conveyed the dire circumstances it was confronted with, attributable to various factors entirely beyond its control, to the financial creditor. Subsequently, on November 10, 2021, RDPL, acting as a corporate guarantor to the loan extended by the financial creditor to BBT pursuant to the sanction letter dated January 17, 2015, issued a further communication to the financial creditor. In this correspondence, RDPL elucidated the comprehensive series of events that resulted in RDPL facing a disadvantageous position concerning the repayment of the loan amount.
30. The Corporate Debtor submits that as of June 13, 2019 (the date of termination of the aforementioned Agreement), BBT has encountered a cumulative financial liability amounting to Rs 379,65,00,000/- (Rupees three hundred and seventy-nine crore and sixty-five lakhs only), as confirmed by the certificate issued by the independent statutory auditors of BBT¹⁸.
31. The Corporate Debtor, being the majority shareholder of BBT, has been unable to recuperate any sum from the aforementioned Project due to the failure of KMDA to fulfil its obligations as stipulated in the terms of the Agreement. Additionally, it is pertinent to note that as of the present date, BBT has not received any restitution for the toll fees relinquished during the months of February, March, and April of 2019, nor has it been disbursed the termination payment to which it is entitled under the terms of the Agreement.
32. It is stated that despite its financial constraints, the Corporate Debtor by a letter dated 12.09.2022 offered to enter into a one-time settlement with the Financial Creditor and after rounds of negotiation, the Financial Creditor has accepted the final offer dated 15.03.2023 which is being actively considered by the Financial Creditor. The Corporate

¹⁷ Annexure Q of the Reply Affidavit

¹⁸ Annexure R of the Reply Affidavit

Debtor had also issued a cheque¹⁹ of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) as upfront payment.

33. The Corporate Debtor contends that the financial creditor's claim against BBT, as well as against the Corporate Debtor, emanates from the same term loan and transaction as delineated previously. Consequently, in the event of a successful settlement between the financial creditor and BBT, the financial creditor's claim against the Corporate Debtor would also be nullified. It is pertinent to note that the Corporate Debtor acted solely as a corporate guarantor to the term loan extended to BBT by the financial creditor, pursuant to the sanction letter²⁰ dated January 17, 2015.

34. The Corporate Debtor further submits that the Financial Creditor is concurrently pursuing remedies before the Hon'ble Debt Recovery Tribunal - I, Kolkata, through an original application numbered O.A. 137 of 2021²¹. It is evident that the remedies sought by the Financial Creditor primarily pertain to debt recovery mechanisms. It is well-established that this Tribunal is not a forum for debt recovery proceedings. In light of the aforementioned submissions, the Corporate Debtor respectfully requests this Tribunal to acknowledge the same and grant an extension of ten weeks to conclude the settlement process.

Rejoinder Affidavit filed by the Financial Creditor

35. In its rejoinder affidavit, the Financial Creditor asserts that the Corporate Debtor has acknowledged both the existence of the debt and default in its reply affidavit. Furthermore, the Financial Creditor contends that any dispute between the Corporate Debtor and KMDA cannot serve as a defense in the present proceedings. Paragraph 10 of the Rejoinder Affidavit emphasizes that the Financial Creditor's role as a trustee for KMDA and the repayment schedule outlined in the Facility Agreement are distinct from the provisions of the Escrow Agreement. The Escrow Agreement exclusively pertains

¹⁹ Annexure S(colly) of the Reply Affidavit

²⁰ Annexure F of the Reply Affidavit

²¹ Annexure T of the Reply Affidavit

to the projects and the deposits to be made by both the Corporate Debtor and KMDA, with no correlation to the terms of the Facility Agreement.

36. The Financial Creditor asserts that to date, the Corporate Debtor has not made any upfront payment following the letter dated 15.03.2023 issued by the Corporate Debtor. Consequently, there is neither an ongoing settlement process between the Financial Creditor and the Corporate Debtor nor any proposal for settlement currently under active consideration by the stakeholders of the Financial Creditor.
37. The Financial Creditor states that the Corporate Debtor has not disputed the loan facility availed by it and it has not made any allegations against the Financial Creditor, therefore it is necessary that present petition be admitted and Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

Analysis and Findings

38. Heard the Ld. Counsel appearing for both the parties and perused the records.
39. When the case was brought before this Tribunal on the 1st of September, 2023, the Learned Counsel representing the Corporate Debtor informed the Court of a One Time Settlement (OTS) proposal that had been submitted, asserting that payment pursuant to the aforementioned OTS would be forthcoming. Consequently, this matter was scheduled for a settlement update on the 26th of September, 2023. This Adjudicating Authority explicitly stated that in the absence of a settlement, the case would proceed to be adjudicated on its substantive merits. On the 26th of September, 2023, a final opportunity was extended to the Corporate Debtor to fulfil the settlement by the subsequent day. Nevertheless, as of this date, no settlement has been reached between the parties.
40. The corporate debtor in Para 14 of the Reply Affidavit states that it is posited as a corporate guarantor in relation to the term loan extended to BBT by the financial creditor. The financial creditor instituted the present proceedings against the corporate debtor, functioning as the corporate guarantor, with the intention of recouping the outstanding liabilities arising from the loan disbursed to BBT, which has purportedly

run into financial distress due to violation of the agreement by KMDA. In this regard we rely on **Laxmi Pat Surana v. Union Bank of India and Anr (2021) 8 SCC 481:**

“21. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt.”

“25. ...The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of the expression “corporate debtor” in Section 3(8) IBC.”

The Hon’ble Supreme Court put any ambiguity to rest by holding that that CIRP can be initiated against Corporate Guarantors.

41. In presenting their argument, the Learned Counsel for the Corporate Debtor placed reliance on the judgment delivered by the Hon’ble Supreme Court in the case of **Vidarbha Industries Power Ltd v. Axis Bank 2022 SCC Online SC 841**. Specifically, the counsel referred to paragraph 13 of the Reply Affidavit, which is reproduced as follows:

“13. The Corporate Debtor reiterates that in an effort to resolve the dispute with KMDA in a steadfast manner, the BBT instituted a commercial suit under the rigours of the Commercial Courts Act, 2015 for recovery of Rs. 313,44,00,000 /- (Rupees Three hundred and Thirteen Crore and Forty Four Lakhs only) along with other incidental costs suffered by the debtor owing to the lapses of KMDA in fulfilment of KMDA's obligations under the said concession agreement. Regrettably, despite initiating such action in 2020, the KMDA has been adopting every possible mean to purposefully delay the proceedings, despite BBT's bona fide”

42. Upon reviewing the submissions made by the Learned Counsel for the Corporate Debtor and after careful examination of the legal principles established by the Hon’ble Supreme

Court, we find that although the term "example" was employed within the judgement, there necessitates a condition analogous to the issuance of an award or decree in favour of the Corporate Debtor, prior to the contemplation of suspending the admission of an application under Section 7 of the Insolvency and Bankruptcy Code (IBC) by the Adjudicating Authority. The mere filing or ongoing status of a civil suit, in our assessment, does not constitute a circumstance akin to or contemplated by paragraph 88 of the Supreme Court's judgement, as invoked by the Corporate Debtor.

43. While addressing the plea of the Corporate Debtor in para mm & nn of the Reply Affidavit that the Financial Creditor is also pursuing remedies before the Learned DRT at Kolkata, we refer to the judgment passed by the Hon'ble NCLAT, Chennai in ***Amar Vora v. City Union Bank Limited & Anr, Company Appeal (AT) (CH) (Ins) No. 130 of 2022, NCLAT Chennai Bench*** which is as follows:

"7. Now we take up point no.(i)

It is the case of the Appellant that the financial Creditor issued notice under Section 13(2) of the SARFAESI ACT, 2002 for a default of Rs. 14,14,61,066/- for almost 12 accounts and the financial Creditor has also filed an application bearing OA No. 497 of 2019 before the DRT Madurai against the Appellant/Corporate Debtor for recovery of debts Rs. 19,73,47,599/- and filing the application before the Adjudicating Authority for default in loan amount to the tune of Rs. 8,04,86,434/- with interest for the very same loan facility would amount to forum shopping and hence initiation of CIRP by the Adjudicating Authority cannot be maintained. Further, the Ld. Counsel submitted that an application being IA 844 of 2021 filed before the Adjudicating Authority praying the Authority to keep abeyance till the matter in reference no. R-1929 of 2020 before the prohibition of Benami Property Transaction Act, 1988 is decided.

8. The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner

for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.”

44. Having reviewed the pleadings and arguments presented by both parties, we ascertain that there existed a debt which the Corporate Debtor in its role as a Corporate Guarantor failed to repay upon being asked to do so by the financial creditor (**Letter Dated 08.12.2022 [REF. NO.501/BBT/ARM/2364/2022]**)²² leading to a default.

45. We also rely on the judgement of Hon'ble NCLAT in the matter of **State Bank of India vs NS Engineering CA(AT)(Insolvency) 978, 1000 and 1039 of 2022** which is:

²² Annexure A-17 of the Petition

15. *The Hon'ble Supreme Court has had occasion to examine the contours of Section 7 Application. The Hon'ble Supreme Court in Innoventive Industries Limited vs. ICICI Bank and Anr.- (2018) 1 SCC 407 had noted the Scheme of Section 7 of the Code and also contrasted it with the Scheme under Section 8 and 9. Paragraphs 28 and 29 of the judgment of the Hon'ble Supreme Court is as follows:*

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such

application, as the case may be. 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”.

Further in Para 16 of the same judgement, it has been inter-alia mentioned that:

16. The Hon’ble Supreme Court in the above case has observed that the moment Adjudicating Authority is satisfied that default has occurred, the Application must be admitted, unless it is incomplete.

Consequently, the fundamental criteria for an application under Section 7 of the Insolvency and Bankruptcy Code (IBC), namely the existence of a debt and a default, are duly met.

46. We find that the present petition made by the Financial Creditor which is complete in all respects, should be **admitted**. It is hereby ordered as follows: -

- a. The application bearing **CP (IB) No. 345/KB/2022** filed by Canara Bank, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against BBT Elevated Road Private Limited, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under Section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan

under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sachin Gopal Jathar**, registration number IBBI/IPA-002/IP-N00640/2018-2019/11968, **email: sgjathar.ip@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

47. **CP (IB) No. 345/KB/2022** to come up on **15-05-2024** for filing the periodical report.

48. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 3rd day of April, 2024

A.J.S