

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.201
CP(IB)/246(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

Priti Bhupesh Shah
V/s
Lyka Labs Limited

.....Applicant

.....Respondent

Order delivered on: 16/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I
AHMEDABAD**

CP (IB) No.246/AHM/2022

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016]

*In the matter of **M/s. Lyka Labs Limited***

Mrs. Priti Bhupesh Shah

[Since deceased, through her Legal Heirs/representatives]

1. Mr. Bhupesh Sevantilal Shah (Husband);
2. Mr. Vinay Bhupesh Shah (Son); and
3. Mrs. Khushbu Shalin Shah (Daughter)

Having address for correspondence at:
Office No.410, Anand Building, 4th Floor,
82/84 Kazi Sayed Street, Above the
Shamrao Vithal Co-op Bank, Masjid (W),
Mumbai, Maharashtra – 400 003, India.

**...Applicant
(Financial Creditor)**

Versus

M/s. Lyka Labs Limited

[CIN: L24230GJ1976PLC008738]

Having its Registered Office at:
4801/B & 4802/A, G.I.D.C.
Industrial Estate, Ankleshwar,
Gujarat – 393 002, India.

And having its another office at:
Spencer Building, Ground Floor,
30 Forjett Street, Tardeo, Grand
Road (West), Mumbai – 400 036,
Maharashtra, India.

**...Respondent
(Corporate Debtor)**

Order Pronounced on 16.05.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant :Mr. Jaimin Dave, Advocate a. w. Ms. Hirva Dave, Advocate
For the Respondent :Mr. Saurabh Soparkar, Senior Advocate a. w. Ms. Dharmishta Raval, Advocate

O R D E R
[Per: Bench]

1. This is an application filed by the Applicant seeking initiation of Corporate Insolvency Resolution Process upon the Respondent i.e. M/s. Lyka Labs Limited, for appointment of IRP and declaration of moratorium. This petition was filed on 30.08.2022 and was in consideration before the Court-II of NCLT, Ahmedabad and was transferred to Court-I.

2. The Original Applicant is one Mrs. Priti Bhupesh Shah in her individual capacity who is residing at: Block No. 4, Jitendra Building, 578/A, Jam E Jamshed Road, Matunga, Mumbai, Maharashtra – 400 019, India.

3. The Applicant, Mrs. Priti Bhupesh Shah expired and I.A. No. 351 of 2023 was filed by the legal heirs which was allowed vide order dated 29.08.2023, as such the legal heirs of the deceased were substituted, namely, Mr. Bhupesh Sevantilal Shah, Mr. Vinay Bhupesh Shah and Mrs. Khushbu Shalin Shah.
4. A perusal of the Part-II reveals that the Corporate Debtor is one M/s. Lyka Labs Limited having CIN No. L24230GJ1976PLC008738 which was incorporated on 29.12.1976 having registered office address at: 4801/B & 4802/A, G.I.D.C. Industrial Estate, Ankleshwar, Gujarat – 393 002, India.
5. A perusal of the Part-III indicates that the applicant has nominated Mr. Amrish Navinchandra Gandhi, Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N00670/2018-19/12036.
6. A perusal of the Part-IV indicates that the applicant is claiming an amount of Rs.1,15,16,721/- as on 15.08.2022 which comprises of principal amount of Rs. 81,15,000/- and an interest amount of Rs.34,01,721/-.
7. The applicant has stated that there are several dates of default the first date of default is 01.09.2019 and the last date of default is 27.12.2019.
8. It is stated that the applicant herein has advanced a sum of Rs.81,15,000/- on different dates through eight

(8) tranches to the Corporate Debtor. The first such disbursement was made on 14.05.2018 and the last date of disbursement is 15.12.2018.

9. It is stated that the above amounts were advanced at an agreed interest payable quarterly at the rate of 15% per annum and was for a period of 175 days from the date of disbursement.
10. It is stated that the Corporate Debtor through a broker, had approached the Financial Creditor and requested to invest/deposit monies by ways of Short-Term Deposit(s).
11. It is stated that during the period May, 2018 to December, 2018 there were several E-mails and letters exchanged between the parties wherein, it was made clear by the Financial Creditor that she was making the deposits in the category of an "Individual". The said E-mails and letters are attached at Annexure-D.
12. It is stated that at the time of accepting the aforementioned short term deposit(s), along with a covering letter, the Corporate Debtor had handed over post dated cheques towards payment of quarterly interest as well as repayment of the short term deposit(s) in favour of the Financial Creditor and also the money receipt(s) acknowledging and admitting the amounts received from the Financial Creditor which are annexed at Annexure-E.

13. It is stated that the first renewal was done by the Corporate Debtor of all the Eight (8) deposits between the period 05.11.2018 to 08.06.2019 aggregating to Rs.81,15,000/-. The Corporate Debtor has also handed over post dated cheques towards principal and interest payment and also fresh money receipts were issued.

14. It is stated that the first of the renewed deposit was due for repayment on 29.04.2019 and the applicant has written an E-mail on 25.04.2019 reminding the payment due on 29.04.2019. The said E-mail is annexed at Annexure-G. However, upon insistence and the request of the Corporate Debtor all the Eight (8) deposits were renewed for varied period as detailed below:-

SECOND RENEWEL:-

Sr. No.	Date of Renewal	Amount (in Rupees)	Agreed Date of Repayment
1.	30.04.2019	2,00,000/-	18.06.2019 (after 50 days)
		2,00,000/-	13.07.2019 (after 75 days)
		2,00,000/-	07.08.2019 (after 100 days)
		2,00,000/-	01.09.2019 (after 125 days)
		2,00,000/-	26.09.2019 (after 150 days)
2.	03.05.2019	15,00,000/-	24.10.2019 (after 175 days)
3.	14.05.2019	17,25,000/-	04.11.2019 (after 175 days)
4.	28.05.2019	16,00,000/-	18.11.2019 (after 175 days)
5.	22.06.2019	5,90,000/-	13.12.2019 (after 175 days)
6.	02.07.2019	9,00,000/-	23.12.2019 (after 175 days)
7.	06.07.2019	6,00,000/-	27.12.2019 (after 175 days)

15. It is stated that at the time of accepting the aforementioned short term deposit(s), along with a covering letter, the Corporate Debtor had handed over post dated cheques towards payment of quarterly interest as well as repayment of the short term deposit(s) in favour of the Financial Creditor and also the money receipt(s) acknowledging and admitting the amounts received from the Financial Creditor which are annexed at Annexure-H.
16. Out of the second renewal the deposits of Rs.6,00,000/- were again renewed by the Corporate Debtor for a period of 90 days as per the table below:-

THIRD RENEWAL:

Sr. No.	Date of Renewal	Amount (in Rupees)	Agreed Date of Repayment
1.	19.06.2019	2,00,000/-	16.09.2019 (after 90 days)
2.	14.07.2019	2,00,000/-	11.10.2019 (after 90 days)
3.	08.08.2019	2,00,000/-	05.11.2019 (after 90 days)

17. It is stated that at the time of accepting the aforementioned short term deposit(s), along with a covering letter, the Corporate Debtor had handed over post dated cheques towards payment of quarterly interest as well as repayment of the short term deposit(s) in favour of the Financial Creditor and also the money receipt(s) acknowledging and admitting the amounts received from the Financial Creditor which are annexed at Annexure-I.

18. It is stated that at the time of the afore-stated third renewal the Corporate Debtor had assured the Financial Creditor that renewal of the remaining deposits will be made and on such assurances of the Corporate Debtor, the Applicant has not deposited post-dated cheques in her banks.
19. It is stated that a balance confirmation letter dated 02.05.2019 for the year ended 31.03.2019 was issued by the Corporate Debtor acknowledging the outstanding principal amount of Rs.81,15,000/- as on 31.03.2019. A copy of such letter is attached at Annexure-K.
20. It is stated that the balance deposits were not renewed and the Applicant herein has deposited Eight (8) cheques issued by the Corporate Debtor towards the repayment of the principal amount with its Bank which were returned with the comment funds insufficient, the details of such cheques are provided in the table below:-

Cheque No.	Date	Amount (in Rupees)	Reason for dishonor
102205	24.10.2019	15,00,000/-	Funds Insufficient
635611	04.11.2019	17,25,000/-	Funds Insufficient
110704	05.11.2019	2,00,000/-	Account Blocked
635688	18.11.2019	16,00,000/-	Funds Insufficient
397541	29.11.2019	2,00,000/-	Funds Insufficient
397544	13.12.2019	5,90,000/-	Funds Insufficient
397547	23.12.2019	9,00,000/-	Funds Insufficient
397550	27.12.2019	6,00,000/-	Funds Insufficient

21. For the returned cheques notice under Section 138 was

issued and complaint was filed before the Additional Metropolitan Magistrate, Mazgaon, Mumbai under Section 138 of the Negotiable Instruments Act, 1881. Subsequent to the filing of the said criminal complaint the Corporate Debtor and its Directors had filed a Criminal Writ Petition Bearing No. 1432 of 2021 before the Hon'ble High Court of Bombay which was later on withdrawn by the Corporate Debtor vide order dated 22.01.2021.

22. An application under Section 143A of the Negotiable Instruments Act, 1881, seeking interim compensation, was allowed vide order dated 01.01.2022 by the Ld. Additional Metropolitan Magistrate, Mazgaon, Mumbai and Corporate Debtor was directed to pay 20% of the amount of the dishonored cheques.
23. It is stated that a Criminal Writ Petition was filed by the Corporate Debtor before the Hon'ble High Court of Bombay alleging that a sum of Rs. 75,25,000/- was immediately repaid/transferred to a proprietary firm, namely, M/s. Khushbu Impex which is controlled and managed by the husband of the Financial Creditor.
24. It is stated by the Applicant herein that Mrs. Priti Bhupesh Shah, the Applicant is a separate legal entity from M/s. Khushbu Impex, a proprietary firm of the husband and the payments made by the Corporate Debtor to M/s. Khushbu Impex were towards a

different set of commercial/business transactions and as the two entities are different Corporate Debtor and cannot adjust any amount due to the Applicant.

25. It is stated that the husband of the Financial Creditor has preferred an Insolvency Application against the Corporate Debtor being C.P. (IB) No. 56 of 2021 before this Adjudicating Authority and immediately, thereafter, on 02.04.2021 the Corporate Debtor has filed a Commercial Suit being 7160 of 2021 before the Hon'ble High Court of Bombay against the Financial Creditor and her relatives which is being contested by the Applicant herein.
26. It is the contention of the Applicant that the Corporate Debtor herein has issued a money receipts, which were renewed from time to time, has paid interest at agreed dates for considerable time, has deducted and deposited TDS on the interest which is reflected through Form No. 26AS issued by the Income Tax Department.
27. In spite of several reminders the Corporate Debtor has failed to repay deposits and, hence, the present application.
28. Affidavit in reply was filed by the Corporate Debtor under Inward Diary No.6352 dated 09.12.2022 which affirmed by one Mr. Yogesh B. Shah, Authorized Signatory of the Corporate Debtor being Executive Director and CFO, duly authorized vide Board

Resolution dated 11.02.2021. In reply the Corporate Debtor states that nothing is due and payable to the Financial Creditor herein. The salient points as per the reply of the Corporate Debtor are captured below:-

- i) At the instance of the husband of the petitioner i.e. Mr. Bhupesh Shah certain financial arrangements were entered into between the husband of the petitioner and the corporate debtor. The corporate debtor was using the LC facility of one M/s. Khushbu Impex (proprietary concern of husband of the petitioner). Till 2018 financial relationship continued without any delay or default.
- ii) Certain agreements were entered into with Mr. Bhupesh Shah and the corporate debtor in the year, 2018 whereby, Shri. Bhupesh Shah, his wife and daughter-in-law would advance money in the personal capacity and the corporate debtor would repay the said amount in the accounts of M/s. Khushbu Impex. In terms of the same agreement, the corporate debtor received the funds from the petitioner.
- iii) The corporate debtor is listed entity on the Bombay Stock Exchange and National Stock Exchange and having a turnover of Rs. 164 Crores for the year ended 31.03.2022. The corporate debtor has attached the balance sheet for the said period and states that it is a going

concern and is making profit.

- iv) The petitioner herself has never personally approached the corporate debtor for the purposes of alleged short term deposits.
- v) As per the understanding between Mr. Bhupesh Shah and the corporate debtor the entire amounts received from the petitioner were paid back to M/s. Khushbu Impex. The corporate debtor has annexed as Annexure-R-IV, the details regarding the amount received from the petitioner and the amount paid back to M/s. Khushbu Impex.
- vi) As a result of the repayment of the amount, no sum is due and payable by the corporate debtor to the petitioner. The corporate debtor, thereafter, has attached the copies of the bank statements.
- vii) In para 17 of the reply, the corporate debtor admits that post-dated cheques were issued in favour of the petitioner. However, it is stated that the said cheques would not be utilized till such time reconciliation of the accounts is carried out.
- viii) The corporate debtor, thereafter, has denied the cheques forming part of the application being signed by late Shri. N. I. Gandhi, Ex-Managing Director of corporate debtor.
- ix) In para 19 the corporate debtor denied to have renewed the term deposits on the ground that the corporate debtor was in need of funds.
- x) It is stated that Mr. N. I. Gandhi expired on 10.07.2019 and the new management started

scrutinizing the financial arrangement entered into between the corporate debtor and Mr. Bhupesh Shah and his family members. It was found that huge amount of money was paid by the corporate debtor to M/s. Khushbu Impex and that M/s. Khushbu Impex was yet to repay the excess amount paid to it. Thereafter, the corporate debtor addressed various e-mails for the purpose of reconciliation of the accounts detailed statement of the accounts of M/s. Khushbu Impex etc. The same are annexed as Annexure-R-VI.

- xi) Despite repeated communication the petitioner and Mr. Bhupesh Shah never cooperated due to which stop payment instructions for the cheques issued was made by the corporate debtor.
- xii) It is stated that TDS was deducted prior to reconciliation of accounts.
- xiii) It is stated that the corporate debtor has filed Criminal Application before the Hon'ble High Court of Mumbai against order of deposit of 20% of dishonored cheques wherein the Hon'ble High Court has been pleased to grant stay against the order of deposit and a charge-sheet has been filed for forgery of cheques and other offences in the State of Maharashtra. Such order is annexed as Annexure-R-VII.
- xiv) It is stated that no separate account of the petitioner or husband of petitioner was

maintained by the corporate debtor in its books of accounts.

- xv) It is stated that a Civil Suit has been filed for recovery before the Hon'ble High Court of Mumbai by the corporate debtor and that the amount involves therein is Rs.1,47,24,781/-.
- xvi) It is stated that the corporate debtor is commercially solvent.

29. Rejoinder was filed by the Applicant vide Inward Diary No. D 260 dated 23.01.2023 which is affirmed by the applicant. The salient points in the rejoinder are captured below:-

- I. The corporate debtor has accepted monies from the applicant in the form of short term deposits for which money receipts were received and interest payments were made between the duration of June, 2018 to December, 2019.
- II. Deposits were placed in applicant individual capacity.
- III. There was no understanding that the amount would be repatriated to M/s. Khushbu Impex.
- IV. Defense of the Respondent is completely bogus and lacks any documentary evidence.
- V. Thereafter, the applicant has more or less reiterated what was stated in the petition.
- VI. It is submitted that at certain instances the post-dated cheques issued towards payment of quarterly interests were dishonored and the

corporate debtor has made payments through NEFT for which the applicant has relied upon Page Nos. 343 to 345 of the application.

- VII. It is stated that the TDS statement i.e. Form No. 26AS perusal shows that TDS was deposited by the corporate debtor under Section 194A of the Income Tax Act, 1961 which pertains to interest other than “Interest on Securities” and Form No. 16A was received by the applicant from the Corporate Debtor for such TDS deduction.
- VIII. It is the case of the applicant that the TDS deduction and payment of interest was all done pending reconciliation of accounts with M/s. Khushbu Impex and such the corporate debtor has no case to club her account with the account of M/s. Khushbu Impex.
- IX. It is restated that has already issued a balance confirmation on 02.05.2019 and the same has not been denied by the Respondent.
- X. It shall not be open for the respondent/corporate debtor to arbitrarily adjust/settle a portion of payment, which is otherwise paid towards business/commercial transactions with the other account of the family being M/s. Khushbu Impex.
- XI. The applicant has, thereafter, raised issues on reconciliation of accounts but for the sake of brevity and since the matter is un-related, we are not going into the same.
- XII. The applicant has relied upon the decision of

Hon'ble Supreme Court, in the matter of ***Innoventive Industries Ltd. Vs. ICICI Bank Ltd.*** ***Reported in [2017] 140 CLA 39 (SC)*** and stated as under:-

"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 1, 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.

...

...

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.**

XIII. As regards pendency of the commercial suit before the Hon'ble High Court of Bombay, it is stated by the applicant that they are contesting the same.

XIV. The applicant has, thereafter, relied upon decision of ***Karan Goel Vs. Pashupati Jewellers reported in [2019] 156 SCL 653 (NCLAT)*** wherein it was held as under:-

"7. From the aforesaid finding of the Hon'ble Supreme Court, it is clear that once the Adjudicating Authority is satisfied on the basis of

records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application. The Respondent M/s Pashupati Jewellers having enclosed the copy of the 'Corporate Guarantee and Undertaking Agreement dated 7th April, 2017 instituted on e-Stamp, issued by Government of National Capital Territory of Delhi, it was not open to the Adjudicating Authority to deliberate on the issue whether e-Stamp is a forged document or not. **Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.**"

XV. And also a decision in the matter of **Monotrone Leasing Private Limited Vs. PM Cold Storage Private [Company Appeal (AT) (Insolvency) No. 99 of 2021**, wherein, it is held as under:-

"26. The Adjudicating Authority has also rejected the Application on the ground of pendency of Civil Suit between the parties. In this regard, the Adjudicating Authority has observed that:

"14. As against this. Corporate Debtor come out with clear defense that financial creditor owes nothing against them. They filed interpleader suit disclosing the nature of alleged transaction. We do not say that their contention in the suit may be correct but competent Civil Court having felt that there exists prima facie case in favour of the Corporate Debtor have issued and an interim prohibitory order against financial creditor and others stating they cannot recover the amount claimed herein."

It is observed by the Adjudicating Authority that the civil court has issued an interim prohibitory order against the Financial Creditor and others stating that they cannot recover the amount claimed herein. The Respondent has failed to file

*any such order of the civil court prohibiting realization of the said amount. However, **it is to be clarified that Section 238 of the IBC has an overriding effect over any other law that is inconsistent with the provisions of IBC. Therefore, the Civil Court was not competent to issue an injunction order for a case pending before this Tribunal under IBC. The Adjudicating Authority has erred in rejecting the application based on the pendency of civil suit between the parties.***"

30. The list of dates and events and written submissions have been filed and the same have been considered.

31. Affidavit was filed by the corporate debtor under Diary No. D 3530 dated 26.04.2024 affirmed by one Mr. Kunal Gandhi, stated to be Managing Director of the Corporate Debtor. The salient contents of the same are reproduced below:-

- i. It is stated that this affidavits is being without entering into the merits of the petition for the purpose of reiterating that the Respondent/Corporate Debtor is ready and willing to deposit the principle amount of Rs.81,15,000/- which is allegedly due and payable as per the Financial Creditor within a period of two weeks from the said offer being found acceptable.
- ii. It is stated that this Hon'ble Tribunal may be pleased to appoint any Chartered Accountant/Audit firm for the purpose of reconciling the accounts of the Corporate Debtor with that of the Financial Creditor along with the

family members and their proprietary firms of Mr. Bhupesh Shah & Bhupesh Shah HUF.

- iii. It is stated that that on the receipt of the report of the said Chartered Accountant/Audit Firm if the moneys are found due and payable by the Corporate Debtor than the said amount of Rs. 81,15,000/- deposited before this Hon'ble Tribunal may be appropriated by the Financial Creditor and if the moneys are not found due and payable the present petition may be dismissed and the moneys so deposited may be refunded to the Corporate Debtor within a period of two weeks.

32. We have heard the various counsels and have perused the documents which placed before us. Followings are the un-disputed facts:-

- I. The applicant has placed deposits in Eight (8) tranches within the period 14.05.2018 to 15.12.2018 with the corporate debtor at an agreed date of interest of 15%. The receipt of the same has never been denied by the corporate debtor.
- II. The corporate debtor has issued money receipt(s), post-dated cheques towards interest and principal via. up through forwarding letters of various dates in name of the applicant herein.
- III. All the Eight (8) deposits were renewed between the periods 05.11.2018 to 08.06.2019, the fact has not been denied by the corporate debtor.

- IV. Second renewal was done by the corporate debtor of the entire deposits aggregating to Rs.81,15,000/- between the period of 30.04.2019 to 06.07.2019.
- V. Deposit worth Rs.6,00,000/- principal amounts was renewed for the third time by the corporate debtor between the period 19.06.2019 to 08.08.2019.
- VI. The corporate debtor has paid interest on the deposits, has deducted TDS which was duly deposited to the Income Tax Department and has issued Form No. 16A.
- VII. The applicant has attached Form No. 16A and Form No. 26AS. A perusal of which reflects that TDS was deposited under Section 194A being Interest other than "Interest of Securities."
- VIII. Admitted facts that the deposits have not been repaid.
33. The financial creditor on the one side stated that despite repeated request and reminder the respondent/corporate debtor has not paid the financial debt.
34. On the other hand the corporate debtor states that there is a dispute. The entire amount received by the corporate debtor was paid to M/s. Khushbu Impex (a proprietary firm of husband of the applicant) within a day or two from the date of receipt of the amounts of

deposits.

35. It is stated by the corporate debtor that for recovery of the amounts due from M/s. Khushbu Impex a Civil Suit is pending before the Hon'ble High Court of Bombay.
36. Having analyzed the entire pleadings and arguments, we are of the view that the applicant herein has proved beyond doubt that the amount advanced by the financial creditor to the corporate debtor was financial debt bearing interest at the rate of 15%.
37. The applicant has also proved beyond doubt that despite repeated demands the corporate debtor has failed to repay the amount.
38. The corporate debtor by placing reliance upon the Civil Suit and clubbing of the accounts has raised the defense that amounts were due and payable by M/s. Khushbu Impex to the corporate debtor.
39. In this respect, the applicant has placed the reliance upon the following judgments: ***Innoventive Industries Ltd. Vs. ICICI Bank Ltd. Reported in [2017] 140 CLA 39 (SC), Karan Goel Vs. Pashupati Jewellers reported in [2019] 156 SCL 653 (NCLAT) and Monotrone Leasing Private Limited Vs. PM Cold Storage Private [Company Appeal (AT) (Insolvency) No. 99 of 2021.***

40. Thus, in our view, the applicant has proved beyond doubt, that there is a debt which is in default and the aggregate debt is over Rs.1.00 Crore.
41. As such, we are forced to order for Corporate Insolvency Resolution Process against the Corporate Debtor.
42. As proposed by the Financial Creditor, we appoint **Mr. Amrish Navinchandra Gandhi**, having Registration No. IBBI/IPA-002/IP-N00670/2018-2019/12036 (Email: amrishgandhi72@gmail.com) (AFA valid till 06.12.2024) under Section 13 (1)(c) of the Code to act as Interim Resolution Professional (“**IRP**”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r. w. Regulations made thereunder.
43. The corporate debtor in order to prove the solvency has filed affidavit showing their willingness to deposit a sum of Rs.81,15,000/- Lakhs within a period of two weeks.
44. In view of the offer of the corporate debtor, we hereby defer the implementation of this order for a period of two weeks. Corporate debtor in meanwhile is directed to place the said amount of Rs.81,15,000/- with Bank of Baroda, Bhadra Branch, Ahmedabad in a fixed deposit. The said bank is directed to keep the fixed

deposit original receipt with itself and not to part with the amounts in the said fixed deposit till further orders from this Tribunal.

45. In case no fixed deposit is made for the stated amount of Rs.81,15,000/- by the respondent/corporate debtor, we direct the IRP to commence the CIRP without waiting for any further orders from this Tribunal.

46. In case the corporate debtor complies with the above directions, let the corporate debtor file an affidavit attaching there with the fixed deposit Xerox Receipt issued by the Bank of Baroda, Bhadra Branch for the amount of Rs.81,15,000/- for further orders in this regards. The matter may be listed for hearing on **24.06.2024.**

47. Accordingly, **CP (IB) 246 of 2022** is hereby ordered.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

SK