

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT III**

**C.P.(IB)-732 (MB)/C-III/2022**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

**Omkara Assets Reconstruction  
Company Limited**

Having Branch Office at:

C/515, Kanakia Zillion, Junction of LBS Road and CST Road, BKC Annexe, Near Equinox, Kurla (W), Mumbai 400070.

**....Financial Creditor/Petitioner**

Vs

**Autocreate Wheels Private Limited**

Having Registered Office at:

B/301, Amaltas CHS Ltd, Juhu Versova Link Road, Andheri West, Mumbai 400058.

**.... Corporate Debtor/Respondent**

**Order Pronounced on: 16.07.2024**

CORAM:

***Ms. Lakshmi Gurung, Member (Judicial)***

***Sh. Charanjeet Singh Gulati (Technical)***

**APPEARANCES:**

For the Financial Creditor: Adv. Aayush Kothari, Adv. Shreyansh Desai, Adv. Charles Desouza, Adv. Nikhil Rajani, Adv. Apoorva Kulkarni, i/b M/s. V. Deshpande & Co.

For the Corporate Debtor: Adv. Ashish Pyasi, Adv. Sunil Kadam, Adv. Hemant Naik

**PER: SH. LAKSHMI GURUNG, MEMBER (JUDICIAL)**

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1. The Present Company Petition (IB) 732 (MB)/2022 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Omkara Assets Reconstruction Company Limited (“**Financial Creditor/Petitioner**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against M/s. Autocreate Wheels Private Limited (“**Corporate Debtor/Respondent**”) for a default amount of **Rs.23,07,60,303/-** (Rupees Twenty Three Crores Seven Lakhs Sixty Thousand Three Hundred and Three Only).

**Brief Facts:**

2. The Petitioner herein is the Assignee of loan accounts of the Corporate Debtor while the original lender to Corporate Debtor is State Bank of India (**SBI**). SBI had sanctioned financial facilities for Rs. 15,00,00,000/- (Rupees Fifteen Crore) to the Corporate Debtor. The Agreement of Loan cum Hypothecation executed on 28.10.2011 for Rs. 15.00 crores duly signed by the corporate debtor and the guarantors is annexed to the petition.

3. According to the petitioner, the said financial facilities were later enhanced vide letter dated 23.10.2013 as follows:

<b>Nature of Facilities</b>	<b>Facility Limits (In crores)</b>
<b>A) Fund based Limits</b>	
E-DFS (enhanced from Rs.1100 Lakhs to Rs.1650.00 Lakhs)	16.50
Term Loan	3.25
Total of Fund Based Limits	19.75
<b>B)Non-Fund Based Limits</b>	_____
LC/BG	_____
Total Non-Fund Based Limits	_____
<b>Total Limits</b>	<b>19.75</b>

4. The financial facilities were further modified in the year 2013 and 2014. As per the last sanction letter 09.12.2014, the said facilities were reduced as follows:

<b>Sr. No</b>	<b>Nature of Facilities</b>	<b>Existing (Rs. In Crores)</b>	<b>New (Rs. In Crores)</b>	<b>Changed</b>
	Fund based limits	16.50	12.00	-4.50
a.	E-DFS	(7.00)	(2.50)	-(4.50)
b.	DCC within E-DFS	(3.22)	(3.22)	_____
c.	Dropline overdraft (O/s) within E-DFS	1.83	1.83	_____
	<b>Total FBWC</b>	<b>16.50</b>	<b>12.00</b>	<b>-4.50</b>
	Term Loan present O/s)			
	<b>Total FB (a)</b>	<b>18.33</b>	<b>13.83</b>	<b>-4.50</b>
	<b>Total indebtness</b>	<b>18.33</b>	<b>13.83</b>	<b>-4.50</b>
	<b>Total Exposure</b>	<b>18.33</b>	<b>13.83</b>	<b>-4.50</b>

Thus, the limits were reduced to Rs. 18.33 crores and then to Rs. 13.83 crores approx.

5. The various other documents annexed to the petition include following:
  - i) Guarantee Agreement dated 28.10.2011.
  - ii) Supplemental Agreement of Loan-cum Hypothecation executed on 28.03.2013.
  - iii) Mortgage by Deposit of title deeds dated 24.03.2013.
  - iv) Guarantee Agreement dated 19.03.2014 issued by Autocrete India Private Limited.
  - v) Statement of account for facilities disbursed.
  
6. Due to failure to service the loan facility as per the loan agreement, on 07.07.2015, SBI declared the account of the Corporate Debtor as a Non-Performing Asset (**NPA**). Thereafter, SBI issued a notice dated 13.07.2015 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**), calling upon the Corporate Debtor to repay the outstanding amount of **Rs. 14,08,52,158** (Rupees Fourteen Crores Eight Lakhs Fifty-Two Thousand One Hundred and Fifty-Eight) as on 13.07.2015, within sixty days from receipt of the said notice. Despite receipt of the aforesaid notice dated 13.07.2015 under Section 13 (2) of the SARFAESI Act, the Corporate Debtor failed to repay the outstanding amount to the State Bank of India.
  
7. However, the Corporate Debtor, on 08.09.2016 addressed a letter to SBI proposing a One-Time Settlement (**OTS**) of **Rs.8,50,00,000** (Rupees Eight Crores Fifty Lakhs Only). In response, SBI advised the Corporate Debtor to improve its offer therefore the Corporate Debtor addressed another OTS letter dated 16.03.2017, proposing to make payment of an amount of Rs. **9,30,00,000** (Rupees Nine Crores Thirty Lakhs).

8. Thereafter, SBI assigned the above debt to ASREC (India) Limited (hereafter referred to as **ASREC**) vide a Deed of Assignment dated 28.11.2019. Therefore, the Corporate Debtor addressed several OTS letters to ASREC offering payment of the OTS amounts, which are as follows:
  - i. Vide letter dated 02.12.2019, the Corporate Debtor offered to make payment of an amount of Rs. 4,10,00,000/.
  - ii. Further vide letter dated 07.01.2020 the Corporate Debtor offered to make payment of an amount of Rs. 4,20,00,000 (Rupees Four Crores Twenty Lakhs Only).
9. Further, between 31.12.2019 and 01.01.2020, the Corporate Debtor made payment of Rs. 3,00,00,000 (Rupees Three Crores) to ASREC towards the outstanding dues.
10. ASREC, on 27.01.2020, approved the OTS proposal submitted by the Corporate Debtor on the terms and conditions specified therein. However, no payments were further made towards the OTS by the Corporate Debtor therefore the OTS was revoked by a letter dated 18.11.2020.
11. Thereafter, ASREC assigned the loan accounts of the Corporate Debtor to Omkara Asset Reconstruction Company Limited/ the Petitioner, vide Assignment Agreement dated 10.03.2021.
12. The Corporate Debtor addressed a letter dated 20.08.2021 to the Petitioner stating that the corporate debtor is working towards closing of the entire liability. The CD further submitted the cheque of Rs.30,00,000 (Thirty Lakhs Only) dated 18.08.2021 to be adjusted against the principal outstanding amount and also as a token to express their bona fide intention of clearing the dues as soon as possible. Accordingly, the petitioner accepted the cheque and which was credited to their account on 25.08.2021.

13. The Corporate Debtor addressed yet another letter dated 17.09.2021 to the Petitioner enclosing therewith a cheque drawn in favour of petitioner for Rs.2,00,000 (Two lakhs Only). The corporate debtor further expressed its intent to settle the accounts with the petitioner.
14. Another letter dated 21.09.2021 was sent by the corporate debtor to the petitioner stating *"We once again reaffirm our intent to completely settle our accounts with you"*.
15. Certificate of Registration dated 05.07.2021 for modification of charge issued by the Registrar of Companies, Mumbai in favour of the Petitioner is annexed to the petition.
16. Under this background, the Petitioner filed the instant petition on 21.02.2022 for default amount of **Rs. 23,07,60,303 (Rupees Twenty-Three Crores Seven Lakhs Sixty Thousand Three Hundred and Three)** outstanding as on 16.02.2022.

### **Reply by the Corporate Debtor**

17. The Corporate Debtor filed reply taking various defense which can be summarized as below: -

#### **I. Petition is barred by limitation**

The Original lender i.e. State Bank of India has classified the account of the Corporate Debtor NPA on 7.07.2015 and issued demand notice dated 13.07.2015. Thereafter, the State Bank of India issued possession notice on 05.10.2015. There has not been any acknowledgement of debt within the relevant period of limitation hence the present petition is barred by limitation.

#### **II. Pending litigation before DRT**

SBI has filed O.A. No.490 of 2016 on 05.05.2016 which is pending

before DRT. The Corporate Debtor filed S.A. No. 356 of 2015 before the DRT which is still pending. Another O.A. No. 319 of 2017 is also pending before DRT.

**III. Invalid Assignment Deed**

The alleged assignments in favour of the Financial Creditor are not valid documents as they are inadequately stamped and the alleged assignment deed cannot be taken as evidence.

**IV. No willful Default by CD but default is attributed to SBI**

The Corporate Debtor was carrying on the business of Automobiles and was an authorized dealer for Maruti Suzuki Cars in Andheri. The Corporate Debtor was constituents of the SBI for the last several years and was enjoying various credit facilities. SBI abruptly reduced the Cash credit limits and also put onerous condition upon the Corporate Debtor to infuse capital of Rs.3 Crores within time stipulated therein. The Corporate Debtor never accepted such onerous condition and the purported renewal sanction was imposed upon the Corporate Debtor. It is further submitted that at the time of the alleged NPA, the Corporate Debtor was having about 150 bookings for the delivery of cars. However, the SBI abruptly froze the account and therefore the Corporate Debtor could not even complete deliveries in hand.

**V. Default amount is incorrect**

It is claimed by the Corporate Debtor that an amount of Rs.1.50 Crores deposited with the Financial Creditor has not been accounted. Further during the pendency of Securitization Application, the Corporate Debtor paid aggregate of Rs.3.85 Crores for consideration of various OTS proposals the same has not been accounted by the Corporate Debtor. Therefore, the amount of claim mentioned in the Application is incorrect and application is liable to be rejected.

**Rejoinder by the Financial Creditor:**

18. In response to the Reply of the Corporate Debtor, the Petitioner has filed rejoinder stating that the Corporate Debtor has not denied the followings:
- a. availing of credit facilities;
  - b. committing default in repayment of the said credit facilities;
  - c. making part payments and getting the some of the secured assets released against such part payment.
19. Under the terms of Letter of Arrangement dated 23.03.2013 recording terms of Sanction of credit facilities the Corporate Debtor was required to repay Working Capital Term Loan of Rs. 19.75 Crores in 60 EMI of Rs. 9,88,734/- each commencing after one month from the disbursement i.e. on or before 22.03.2018. Thus, the Financial Creditor is entitled to file the present proceedings within three years thereafter i.e. on or before 21.03.2021. Considering the exclusion period granted by Hon'ble Supreme Court the petition is well within limitation.
20. The Corporate Debtor in its reply-in-affidavit has itself admitted of giving various One Time Settlement Proposals including one to the Petitioner.

**Analysis & Findings**

21. Heard the Ld. counsel for the parties and perused the records.
22. It is noted that the Corporate debtor has not denied the factum of availing credit limits from SBI which facilities were modified from time to time. The corporate debtor has also not denied various letters sent to SBI and its successor, ASREC for settlement proposals. The corporate debtor has further not denied the letters dated 20.08.2021, 17.09.2021 and 21.09.2021 sent by it to the Petitioner acknowledging the debt and



also expressing its intent to settle the loan account. Therefore, the existence of the “debt and default” is not denied by the corporate debtor.

23. The objections/defence raised by the corporate debtor are mentioned in para 18 above as follows: -

- I. **Petition is barred by limitation**
- II. **Pending litigation before DRT**
- III. **Invalid Assignment Deed**
- IV. **No willful Default by CD but default is attributed to SBI**
- V. **Default amount is incorrect**

24. As far as the first three objections are raised, they are legal in nature and go to the root of the matter and therefore will be dealt with in detail.

25. As far as the fourth objection is concerned, it is not an objection in true sense, because there is admission by the corporate debtor that default has occurred but alleged that the default has occurred due to the fact that SBI abruptly reduced the limits availed by the Corporate Debtor and had put a condition to infuse capital, which prejudiced the Corporate Debtor as the corporate debtor could not make deliveries of the orders in hand. Firstly, infusion of capital by the Corporate Debtor was one of the conditions for the renewal of credit facilities and the same was agreed upon by the Corporate Debtor. Secondly, for adjudication of a section 7 petition, the cause of the default is irrelevant as Adjudicating Authority is not a court of equity. The Adjudicating Authority has to merely determine whether there is “debt” and “default”, which is not denied by the corporate debtor in the present case. Hence this objection is untenable and is hereby rejected.

26. As far as the fifth objection is concerned, the default amount mentioned in the petition is incorrect, sufficient to say that as long as the default amount exceeds the threshold limit of Rs. 1.00 crore, the petition cannot be dismissed merely on the ground that the amount mentioned in the

petition is incorrect. The default amount claimed under Part IV of the petition is Rs.23,07,60,303. Even at the best case of the corporate debtor, after deducting the amounts deposited by the corporate debtor with various OTS proposals, the default amount is still above the threshold limit under section 4 of IBC. Hence this objection is also rejected for consideration of the present petition for admission.

27. Having considered the first three objections of the corporate debtor, the issues to be decided by the Adjudicating Authority are as follows:
- I. Whether the company petition is bared by limitation?
  - II. Whether the section 7 petition has to await the outcome of the pending litigation before the DRT?
  - III. Whether in the absence of adequately stamped assignment agreement, the financial creditor is not entitled to file section 7 petition?
28. The Corporate debtor has contended that the Original lender i.e. State Bank of India has classified the account of the Corporate Debtor NPA on 07.07.2015. Thereafter, there is no acknowledgment of debt by the corporate debtor within three years. Hence the petition is barred by limitation.
29. Per contra, the Financial Creditor has submitted that the term loan of Rs. 19.75 crores sanctioned while letter of arrangement dated 23.03.2013 was to be repaid in 60 EMIs of Rs. 9,88,734/- commencing after one month i.e. 22.03.2018 and the last instalment falling due on 21.03.2021. Therefore, the limitation period ends on 21.03.2021. However, due to exclusion period granted by Hon'ble Supreme Court in Sue Motu Writ Petition No.03/2020, the period from 15.03.2020 to 28.02.2022 has to be excluded for calculating the limitation period.
30. The Financial Creditor has further pointed out various letters sent by the corporate debtor for OTS and expressing its intent to make

settlement. We find force in the submission of the petitioner. The Corporate Debtor was declared as NPA on 07.07.2015 which means default occurred 90 days prior to 07.07.2015 i.e. on 08.04.2015. In other words, date of default is 08.04.2015. Therefore, the limitation period starts from 08.04.2015. If there is no fresh acknowledgement of debt, the limitation period would ordinarily expire on 07.04.2018. However, the petitioner has placed on record numerous letters sent by corporate debtor to SBI/ASREC/the Petitioner proposing for One Time Settlement (OTS) of the loan accounts availed from the State Bank of India which are summarised below:

<b>Date</b>	<b>Particulars</b>
08.09.2016	The Corporate Debtor proposed for one-time settlement of the amount.
16.03.2017	Corporate Debtor addressed a letter to the State Bank of India acknowledging its debt and proposed to make payment for the same, in following terms: <i>“We offer a OTS of Rs.9.30 crores as full and final settlement of our dues. The payment of this amount will be partly done by sale of property with your permission and partly availing financial help from relatives and friends”</i>
02.12.2019	Corporate debtor sent a letter to ASREC (India) Limited proposing to make a settlement of Rs.4,10,00,000/-.
07.01.2020	Corporate debtor sent letter to ASREC (India) Limited proposing to make a settlement of Rs.4,20,00,000/-, in following terms: <i>“The prime focus of the company still remains the same which is settle its pending dues with its financial creditors, thus in view thereof we hereby make an OTS proposal of Rs.4,20,00,000 (Rupees Four Crores Twenty Lacs Only) along with interest @24% p.a quarterly compounded from December 01, 2019 till the final payment of the settlement</i>

	<i>amount”</i>
20.08.2021	The Corporate Debtor addressed a letter to the Petitioner admitting its liability and its intent to settle the outstanding amount.
17.09.2021	The Corporate Debtor sent another letter to the Petitioner acknowledging its liability and its intent to settle the account.
21.09.2021	The Corporate Debtor sent yet another letter to the Petitioner acknowledging its liability and reaffirming its intent to settle the account in following terms:  <i>“We once again reaffirm our intent to completely settle our account with you”</i>

31. It is settled law that a proposal to make settlement amounts to acknowledgement of debt. Reliance is placed on the judgment of ***Tejas Khandar vs Bank of Baroda Company Appeal (AT) (Insolvency) No. 371 of 2020*** wherein it was held that:

*“Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.”*

*“To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were*

*an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.”*

*“It is seen from the record that the date of default has been mentioned as 13.09.2013, which stood revived with the OTS proposal dated 01.08.2016 filed vide I.A. 1155/2016 before the DRT Pune, well within the three-year period. Subsequently, another settlement proposal dated 07.03.2018 was accepted by the Bank on 27.03.2018, wherein a timeline was provided for the payment of the balance amount. We are of the considered view that the OTS proposal dated 01.08.2016 filed vide I.A. 1155/2016 falls within the ambit of ‘acknowledgement of debt’ as defined under Section 18 of the Limitation Act, 1963, which is further fructified by the admitted OTS dated 27.03.2018 again within three years of the previous proposal where the ‘debt’ is acknowledged to be ‘due and payable’. Therefore, we are of the view that the ratio of the Hon’ble Supreme Court in ‘Dena Bank (now Bank of Baroda)’ Vs. ‘C. Shivkumar Reddy and Anr.’, (2021) 10 SCC 330, is squarely applicable to the facts of this case as there is a jural relationship between the ‘Corporate Debtor’ and the Respondent Bank and there is an ‘acknowledgement of debt’ vide the OTS dated 27.03.2018, which falls within the ambit of Section 18 of the Limitation Act, 1963.”*

32. From the table given in Para 30, it can be seen that an OTS proposal was made by the corporate debtor on 16.03.2017 thereby giving a fresh limitation period of further three years from 16.03.2017. Similarly,

another letter dated 07.01.2020 was addressed by the corporate debtor to the assignee of SBI i.e. ASREC proposing to make settlement. Thus, a fresh limitation period starts from 07.01.2020 and ends on 06.01.2023. The Petition was filed on 21.02.2022 which is within the limitation. From whichever point we look at, we have no hesitation in holding that the petition is well within the limitation in view of the letters offering OTS proposals from time to time. Therefore, the first question is answered in negative.

33. The second defense raised by the corporate debtor is relating to the pending litigation before DRT. The issue whether petition under section 7 of IBC can be filed during the pendency of recovery proceedings by the Financial Creditor before the DRT is no more *res-integra*. The settled position is that the recovery proceeding before DRT and proceedings before IBC operate in different fields with different objectives. Further, section 238 of IBC gives overriding effect to the proceedings under section 7 of IBC.
34. Reliance is placed on very recent judgement of the Hon'ble NCLAT titled as ***State Bank of India Vs. Abhijeet Ferrotech Ltd. in Company Appeal (AT) (Insolvency) No. 690 of 2023 decided on 02.07.2024.*** Referring to the judgment of Hon'ble Supreme Court in ***A. Navinchandra Steels Pvt. Ltd. Vs. Srei Equipment Finance Ltd 2020 SCC Online SC 1141*** the Hon'ble NCLAT has held as follows: -

*“23. The above judgment of the Hon'ble Supreme Court clearly lays down that proceedings under Section 7 can neither be held to be barred by any order passed by DRT under 1993 Act, nor pendency of proceedings at DRT (which is now pending at the stage of Calcutta High Court) shall preclude decision on Section 7 Application on merits.*

*32. We, thus, are of the considered opinion that order of DRT dated 27.06.2022 and the proceedings under section 19, which*

*are still inconclusive, cannot be as ground to hold Section 7 Application as barred. The Adjudicating Authority committed error in holding Section 7 Application as barred in view of the order dated 17.06.2022 passed by DRT.”*

35. Therefore, in our considered view there is no bar to entertain and adjudicate Section 7 petition even during the pendency of recovery proceedings before the DRT. Accordingly, the second question is answered in negative.
36. Coming to the next issue in hand raised by the corporate debtor is relating to Assignment Agreement. It is submitted by the corporate debtor that the Assignment Deed dated 28.11.2019 between SBI and ASREC is bad and illegal for the simple reason that it is having multiple loan accounts of the various other borrowers and a common assignment deed has been prepared and executed with the sole purpose of avoiding payment of the requisite stamp duty, which is liable to be paid by the financial institution as per the provisions of the Maharashtra Stamp Act, 1958. It is contended that if the title of the person is defective then he cannot pass on a better title than what he has. Hence the petition deserved to be dismissed on this ground.
37. We have considered the submission of the corporate debtor. At this juncture, we would like to refer to the Judgement of the **Hon'ble Supreme Court in N. N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. [Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020]** wherein it is observed as follows:

*“Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be admitted in evidence...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be “admissible in*

*evidence.” **The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid.** The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterized as accruable defect. The Stamp Act itself provides for how the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured”.*

**(Emphasis Provided)**

38. The above judgment of Hon’ble Supreme Court is direct answer to the objection raised by the corporate debtor. Inadequate stamping of the Assignment Deed does not render it to be bad or illegal or void but merely not admissible in evidence.
39. Further, the Petitioner has annexed the Certificate of Registration for Modification of Charge wherein it is stated as follows:

*“Assignment Agreement dated March 10, 2021 executed between ASREC (India) Limited (also acting in its capacity as Trustee of the ASREC PS 02/2019-2020 Trust) as Assignor in favour of Omkara Assets Reconstruction Private Limited (also acting in its capacity as Trustee of the Omkara PS 18/2020-2021 Trust) as Assignee whereby the assignor, has inter-alia, assigned all rights, title and interest in the Loans detailed in the Schedules to the Assignee. Sun Resources India Private Limited and Auto Creates (India) Private Limited are the Corporate Guarantors of the Company and the above modification has been registered and assigned a Charge Identification Number as mentioned above in the Register of*



*Charges, in accordance with the provisions contained in that behalf in Chapter VI of the said Act.”*

40. The above Certificate of Registration of Charge in favour of the Petitioner was issued by the Registrar of Companies, Mumbai on 05.07.2021 held by the Petitioner under the Companies Act, 2013, which is subsisting and not denied by the corporate debtor. The above Certificate clearly acknowledges the charge created in favour of the Petitioner on account of the assignment agreement dated 10.03.2021 executed by ASREC in favour of the Petitioner. The issue of the Certificate issued by ROC, Mumbai, a public authority is admissible evidence which cannot be questioned. Hence the third question is also answered in negative rejecting the objection of the corporate debtor.
41. Further It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]*** wherein it was held as follows:

*28. ... 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' receipt of a notice from the adjudicating authority.*

*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.”*

42. In view of the discussions above, this Tribunal is of considered view that debt and default have been established by the Financial Creditor and the petition is filed within the limitation period and the default amount is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Accordingly, we are satisfied that the present Petition is maintainable.
43. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no.732 of 2022 is **admitted** and ordered as follows:

**ORDER**

- i. The above Company Petition No. (IB) 732(MB)/2022 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Autocreate Wheels Private Limited.
- ii. The Petitioner has proposed the name of **Mr. Kamal Rajkumar Sharma** Registration No. IBBI/IPA-001/IP-P01850/2019-2020/12870, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 15.02.2022 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA which is valid upto 30 June 2025. Accordingly, we appoint **Mr.**

**Kamal Rajkumar Sharma**, kamal.sharma@ajallp.in **as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

- iii. The Financial Creditor shall deposit an amount of Rs. 6 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order.
- iv. There shall be a moratorium under section 14 of the Code prohibiting the following:
  - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

- vi. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

xiv. Accordingly, this Petition is **Admitted.**

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**

Apurva, LRA