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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1

CP (IB) No.422/7/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 24.01.2020

Name of the Company: Bank of Baroda
V/s
Fairdeal Marwar Garages Pvt Ltd

Section: Section 7 of the Insolvency & Bankruptcy Code
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

The present matter is kept for pronouncement of order today.

Hence, the present IB Petition. *i.e., CP(IB) No. 422 of 2018*, filed under Section 7 of the Insolvency & Bankruptcy Code, is admitted.

Detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated 24th day of January, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH AT AHMEDABAD**

C.P. (I.B.) No. 422/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

In the matter of:

BANK OF BARODA (Erstwhile Dena Bank)

Incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act V of 1970)

Having Registered Office at:

Dena Corporate Centre, C-10, "G" Block, Bandra Kurla Complex, Bandra(E), Mumbai – 400 051

.....Petitioner

Versus

FAIRDEAL MARWAR GARAGES
PRIVATE LIMITED.

Having its Registered Office at:

2 - A.B. Road, Indore,
Madhya Pradesh-452 001.

.....Respondent

Appearance:

Advocate, Shri Subham Sharma and Gaurav Maharshi for the Applicant/Financial Creditor

Advocate, Shri Akshat Agrawal for the Respondent/Corporate Debtor

Order Pronounced and delivered on **24.01.2020**

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[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor **Bank of Baroda (erstwhile Dena Bank)** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, Fairdeal Marwar Garages Private Limited for the default committed by the Corporate Debtor in making repayment of the Cash Credit/LC/LG facilities availed from the Bank. The Applicant (FC), Bank of Baroda (erstwhile Dena Bank) is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Hemant Rampurkar, Chief Manager, Dena Bank, Palasia, Indore, Madhya Pradesh.
2. The Respondent Corporate Debtor (CD) Company, namely Fairdeal Marwar Garages Private Limited was incorporated as a private limited company in the year 1974. In the year 1996, under Section 43A (1A) of the Companies Act, 1956, the word private was deleted. In the year 2002, under Section 43A (2A) of the Companies Act, 1956, the word private was inserted again was incorporated on 15/07/1974 with CIN: U11102MP1974PTC001283.

3. The nominal share capital of the Respondent (CD) Company is Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) and the paid up capital of the company is Rs.1,25,00,000.00 (Rupees One Crore Twenty Five Lakhs Only). The Registered Office of the Corporate Debtor Company is situated at: 2 – A.B. Road, Indore, Madhya Pradesh-452 001.

4. The Respondent (CD) Company had the dealership of Maruti cars and sold cars since 1994.

5. The company was promoted by Rajendra Kumar Tekriwal and Smt. Meera Tekriwal and availed Cash Credit/LC/LG facilities from the Applicant. The facilities were sanctioned against the movable properties, immovable properties and guarantees were also furnished.

6. It is submitted that the Financial Creditor renewed the sanctioned facilities on 15/07/2002, Cash Credit Hypothecation – Stocks aggregating to Rs.2,65,00,000.00 (Rupees Two Crores Sixty Five Lakhs Only), Letter of credit (Inland) – DP – Revolving Aggregating to Rs.3,65,00,000.00 (Rupees Three Crores Sixty Five Lakhs Only) and Bank Guarantee of Rs.15,00,000.00 (Rupees Fifteen Lakhs Only).

Thus, total aggregate limit of **Rs.6,45,00,000.00** was sanctioned by the Applicant Bank with certain terms and conditions including hypothecation of plant and

machineries and mortgage of immovable properties including guarantees which was duly accepted/acknowledged by the Corporate Debtor and Mortgagor/Guarantors. Mortgage of the property has been created on **07/07/1998** (Page no. 87 to 116 of the paper book).

7. The Corporate Debtor has defaulted payment and the **date of default is 01/07/2003** as stated by the Petitioner Bank (page no. 30-37F of paper book).

The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a **Certificate to this effect under Banker's Book of Evidence** Act, 1891. (Page no. 153 of paper book). The Petitioner Bank has claimed their total dues of **Rs.43,61,80,732.00 (Rupees: Forty Three Crores Sixty One Lakhs Eighty Thousand Seven Hundred Thirty Two Only)** as on **31/05/2018 i.e. Principal Rs.3,41,69,238.00 and undebited interest of Rs.40,20,00,494.00**

The Petitioner Bank, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all the sanction letters, the workings showing the amount claimed to be in default and its calculation in tabular form as on **31/05/2018.**

8. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to **initiate the Corporate Insolvency Resolution Process.**

9. The Financial Creditor, to substantiate its claim, has enclosed following documents: -

- i. Copy of letter dated 12.12.2002, letter of Acknowledgement of debt by the borrower. (Page no.38 to 41 of paper book)
- ii. Copy of letters dated 29.09.1999, Letter of Credit Inland, by conversion of overdraft limit, up to Rs.1,80,00,000.00 (Page no.42 to 46 of paper book)
- iii. Copy of letter dated 07.06.1999, Letter of Credit Inland, by enhancing the Cash Credit Limit, up to Rs.2,25,00,000.00 (Page no.47 to 51 of paper book)
- iv. Copy of letter dated 24.12.1998, letter of credit, up to Rs.1,00,00,000.00 (Page no.52-53 of paper book)
- v. Copy of letter dated 29.06.1998, Cash Credit Hypothecation, up to Rs.3,50,00,000.00 (Page no.54-55 of paper book)
- vi. Copy of letter dated 29.06.1998, letter of credit, up to Rs.1,90,00,000.00 (Page no.56-57 of paper book)

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- vii. Copy of letter dated 29.06.1998, Overdraft against advance payment to suppliers, up to Rs.2,25,00,000.00 (Page no.58-59 of paper book)
- viii. Copy of letter dated 29.06.1998, Bank Guarantee (Performance/Financial), up to Rs.15,00,000.00 (Page no.60-62 of paper book)
- ix. Copy of Hypothecation Agreement of all movables plant and machinery. (Page no.63-71 of paper book)
- x. Copy of Hypothecation Agreement of all goods like stocks in trade. (Page no.72-86 of paper book)
- xi. Copy of Memorandum of Entry for extension of Existing Mortgage dated 07.07.1998 by **Smt. Meera Tekriwal, Guarantor to Fairdeal Marwar Garages Private Limited.** (Page no.87-116 of paper book)
- xii. Copy of Counter Guarantees in favour of the bank on behalf of the corporate debtor for sum of Rs.15,00,000.00 (Fifteen Lakhs only) undertaken by Shri. Rajendra Kumar Tekriwal and Smt. Meera Tekriwal. (Page no.117-124 of paper book)
- xiii. Copy of letter of Guarantee dated 29.06.1998 for the amount of Rs.7,80,00,000.00 (Seven Crores Eighty Lakhs) undertaken by Shri. Rajendra Kumar Tekriwal and Smt. Meera Tekriwal, on

- behalf of Fairdeal Marwar Garages Private Limited.
(Page no.125-131 of paper book)
- xiv. Copy of letter of confirmation of Guarantee dated 29.06.1998 for Rs.7,80,00,000.00 (Seven Crores Eighty Lakhs) undertaken by Shri. Rajendra Kumar Tekriwal and Smt. Meera Tekriwal, on behalf of Fairdeal Marwar Garages Private Limited.
(Page no.132 of paper book)
- xv. **Copy of Chief Metropolitan Magistrate, Esplanade, Mumbai-order dated 23.09.2014, case no. 284/SA/2013 for taking possession of secured assets. (Page no.133-137 of paper book)**
- xvi. Copy of the sanction letter dated 17.07.2002, by Dena Bank, Head Office, Mumbai whereby the facilities were Reviewed and Renewed. (Page no. 138-152 of paper book)
- xvii. Copy of Banker's books of evidence certificate.
(Page no. 153 of paper book)
- xviii. Copy of statements of accounts from books of the banker in respect of loans and other facilities. (Page no.187-330 of paper book)
- xix. **Copy of MCA Data. (Page no. 330A of paper book)**

10. In the present matter, this Tribunal, vide its order dated **11/09/2018** had directed the Petitioner Bank **to serve**

the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 29/10/2018 and sought time to file objections within two weeks.

11. The matter was taken up and heard both sides by this Bench on 11.09.2018, 29.10.2018, 07.12.2018, 11.01.2019, 22.02.2019, 16.04.2019, 19.06.2019, 23.07.2019, 30.07.2019, 13.08.2019, 27.08.2019, 18.09.2019, 17.10.2019, and 07.11.2019. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Adjudicating Authority.
12. The Learned Lawyer of the Applicant Bank(FC) clarified their positions and put forth their arguments **relying on the documents submitted by them, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.** ROC report filed by them is referred to in **support of the charge created in their favour by the Corporate Debtor.**
13. On 21/02/2019 the Counsel of the **Corporate Debtor submitted application** to the Adjudicating Authority

containing 6 Pages for **taking on record of further developments/documents**. It is submitted as under:

13.1 The Corporate Debtor hereby submits that it has submitted a One Time Settlement proposal to the present financial Creditor vide its application dated 14/01/2019, regarding settlement of Account and finally arriving at Rs.125 Lakhs details are as under:

Towards Term Loans 1, 2 and 3	Rs.50,00,000.00
Towards Working Capital	Rs.75,00,000.00

	Rs.1,25,00,000.00

Mr. Pawan Singhania has already deposited Rs.50 Lakhs out of the above 125 Lakhs in "No Lien Account." It is submitted that on depositing of the above amount, Financial Creditor will issue the full and final NOC and release charge satisfaction letter to be filed with the Registrar of Companies. Accordingly, **the Financial Creditor will withdraw all cases filed by themselves in all Courts, Tribunal or any other legal proceedings initiated against them. Same way the Respondents will also withdraw all cases filed by themselves against Bank in all Courts, Tribunals or any other institutions.**

13.2 It is submitted that the said OTS proposal **is still pending** and is under consideration before the present financial Creditor, viz, Dena Bank. The negotiations between the parties are still going on and have to be given final shape by the banking authorities. A perusal of Correspondence

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between Corporate Debtor and the Financial Creditor would go to show that the **proposal is under consideration and is at last stage of completion.**

13.3 The Corporate Debtor Fairdeal Marwar Garages Limited in its OTS offer letter dated **14/02/2019 submits final non-negotiable offer of Rs.1.75 Crores** for One Time Settlement of the Loan Accounts with the conditions that:

- (a) All the charges of the bank in the ROC records over the assets of the company shall stand vacated and the mortgage documents including the original chain documents of the properties mortgaged with the bank for the said loan accounts shall be returned back to them.
- (b) The cases against the company and its promoters on various forums including the **petition filed under IBC with NCLT Bench, Ahmedabad, shall be withdrawn with immediate effect.**
- (c) The bank shall issue a '**No dues**' certificated on payment of the amount as above within 02 days of making the payments.
- (d) The bank shall release the primary as well as collateral security with immediate effect.
- (e) The bank shall release the personal guarantees of all the guarantors immediately after receipt of the amount as above.

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- (f) The bank shall not have any claim against the promoters, company, properties of the company or any other assets of the company after the payment of the amounts as above.
- (g) It is stated that they will withdraw all cases from all courts, tribunals or in any other legal platforms and similarly bank will also withdraw all cases from all courts, tribunals or in any other legal platforms.

It is stated that they have arranged funds from the investor who would not be **available after 25/02/2019**. Hence, they have requested the Financial Creditor to approve the OTS and oblige.

13.4 The Corporate Debtor further submits another letter on 18/02/2019 about their **"One Time Settlement"** offer stating that this has reference to the OTS proposals submitted by the Fairdeal Marwar Garages Private Limited. They have requested the Financial Creditor to try and do the OTS so that the matter **can be closed once for all**.

13.5 It is further submitted by the Corporate Debtor on 21/02/2019 before this Adjudicating Authority that in view of above submission and pendency of OTS proposal before the Financial Creditor, the present matter listed on 22/02/2019 may **kindly be adjourned** to a later date.

14. Further the **Corporate Debtor has submitted its objections** on 14/11/2019 stating that the alleged claim

of the Financial Creditor is barred by limitation in view of the judgment of Hon'ble Supreme Court in case of B.K. Educational Services Private Limited vs. Parag Gupta and Associates 2018, Non-availability of existence of default for initiation of Corporate Insolvency Resolution Process in respect of Corporate Debtor. Applicant Financial Creditor is guilty of suppression, fraud and misrepresentation, Territorial Jurisdiction. Mr. Hemant Rampurkar, chief Manager, Dena Bank is not an authorised person to file the present application. The copy of the relevant account from the Bank is not as per the Banker's Books Evidence Act, 1891. The affidavit in support of the application not admissible for want of completeness and correctness. Certificate under Rule 9(2) from the proposed insolvency professional cannot be relied upon. The mandatory instructions under Form No.5 have been violated. In view of the submissions made hereinabove the application filed by the applicant under Section 7 of the IBC Code deserves to be and may kindly be dismissed.

15. The Applicant Bank **submitted their written submission on 13/11/2019**. It is stated that the Corporate Debtor **time and again** has offered One Time Settlement(OTS) Proposal for settling down the debt which clearly **shows the intent, acknowledgment and continuance of Debt by the Corporate Debtor**.

- 15.1 It is submitted that matter is also pending before the Debt Recovery Tribunal, Jabalpur having Original Application **No.147 of 2005** under Section 19 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993. The next date of hearing in that case is **21.11.2019**
- 15.2 It is stated that the Respondent had submitted **an OTS vide letters dated 05.01.2019, 14.01.2019, 11.02.2019 and 18.02.2019. These OTS offers were rejected by the Financial Creditor vide letter dated 20.02.2019.**
- 15.3 It is submitted that the similarly another OTS offer was made **on 17.06.2019** which was rejected vide letter dated 02.08.2019.
- 15.4 It is submitted that the offering of OTS to the Applicant by the Corporate Debtor clearly shows that the **debt has been acknowledged by the Corporate Debtor and there has been a continuous cause of action which gives rise to the claim** of debt of the Applicant against the Corporate Debtor.
- 15.5 It is submitted that moreover, there are proceedings pending in the DRT as well along with the interest accruing on the Respondent which only goes to **show that there is a continuous cause of action and that the application is not barred by limitation.**
- 15.6 It is submitted that it is imperative to note that there has been a continuous wrong on the part of the Respondent when they refused to pay the **admitted debt and instead**

kept on submitting OTS offers. This continuing wrong and continuous cause of action allow the **application to be not barred by limitation.**

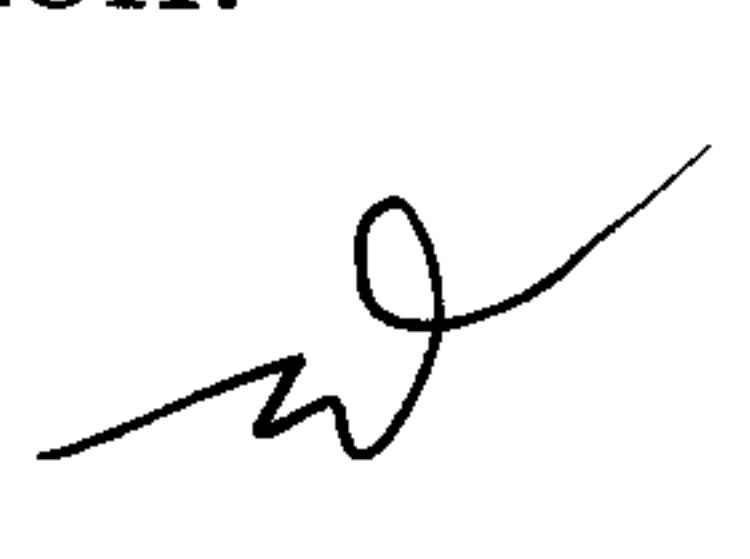
15.7 It is submitted that the application is within the period of limitation because the Corporate Debtor has itself acknowledged the current continuance of debt by submitting an OTS to settle the dues with the Applicant. If the Corporate Debtor was of the **opinion that the debt is time barred, it would not have submitted an OTS at all.**

15.8 It is submitted that therefore, it is imperative to believe that the **Application under Section 7 is maintainable and not barred by limitation** and it is humbly prayed that the said application be accepted and CIRP may be initiated against the Corporate Debtor.

16. It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the CD.

17. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

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Observations

18. Having heard the arguments from the counsels of both sides and documents available on record. It is observed, that the Petitioner Bank has submitted the documents **duly executed by the Corporate Debtor and guarantors** along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P.

18.1 The Term CC/LC/LG facilities were sanctioned and released by the Petitioner Bank and the same were availed by CD, Fairdeal Marwar Garages Private Limited. **The Charges have been** filed by the CD with the **ROC, Gwalior** in favour of the Petitioner which are **yet to be satisfied** as per company data available in MCA/ROC site Gwalior.

18.2 The Corporate Debtor has defaulted in making repayment of Cash Credit/Letter of Credit/Letter of Guarantee (Devolved) facilities to the Petitioner Bank and **the date of default is 01/07/2003**. The Statement of the accounts submitted by the applicant Bank **confirm that the debt is due and default** is committed by the Corporate Debtor.

18.3 The application filed by the **Financial Creditor in the Year 2005** (147 of 2005) with **DRT Jabalpur is still going on**. Next date of hearing was 21/11/2019.



18.4 The Corporate Debtor is going on negotiating with the Financial Creditor and offered OTS proposals on **05/01/2019, 14/01/2019, 14/02/2019 & 18/02/2019** after the application is filed under Section 7 by the Financial Creditor. The OTS offer was rejected by the Financial Creditor on **20/02/2019**.

18.5 Corporate Debtor **acknowledged the Debts by submitting the OTS to the Financial Creditor** on 14.02.2019 with a prayer that:

- i) The charges of the Bank in the ROC records over the assets of the company shall stand vacated;
- ii) The mortgage documents including the original chain documents of the properties mortgaged with the Bank for the said loan accounts shall be returned;
- iii) All the cases against the company and its promoters on various forums including the petition filed under **IBC with NCLT Bench, Ahmedabad, shall be withdrawn with immediate effect.**
- iv) Bank shall issue a 'No dues' certificate on payment of the amount within 02 days of making the payments by the Corporate Debtor.

18.6 The present I.B. Petition is filed by **the duly authorised** official of the Applicant Bank in a prescribed format under **Section 7** of the Insolvency and Bankruptcy Code, 2016 annexing copies of loan

documents **confirming the existence of debt due and defaulted.**

18.7 The Financial Creditor proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP) for initiation of CIRP.

ORDER

19. Considering the material papers filed by the Petitioner Bank, arguments advanced by the counsels of both sides and the facts mentioned in the **Para No.18, 18.1, 18.2, 18.3, 18.4, 18.5, 18.6 & 18.7**, this **Adjudicating Authority is satisfied that,**

- (a) The Corporate Debtor **availed the CC/LC/LG facilities** from the Financial Creditor.
- (b) Existence of debt is above **Rs. One Lac;**
- (c) **Debt is due;**
- (d) Default has occurred **on 01/07/2003;**
- (e) Petition has been filed within the **limitation period as the entire matter was entangled in the Court cases from the date case filed before DRT, Jabalpur in 2005** which is still continuing. Moreover, offering **repeated OTS** of Rs.1.75 Crores **by the Corporate Debtor to the Financial Creditor on 05.01.2019, 14.01.2019, 14.02.2019 & 18.02.2019** for settling down the debt payable to Financial Creditor clearly established the **acknowledgement of debt due, debt defaulted, amount**

of acknowledgment of debt is more than Rs.1 Lakh as the offer amount is Rs.1.75 Crores against the claim amount of Rs.43.62 Crores and continuance of Debt by the Corporate Debtor extending the limitation another 3 years from 18.02.2019.

Detailed OTS offer letters from the Corporate Debtor already established that this offer of settlement of Rs.1.75 Crores is only for the Loans/Limit availed by the Corporate Debtor from the Financial Creditor executing the documents of hypothecation agreement, LC document, deposit of title deeds, guarantee documents for the limit of Rs.6.45 Crores on 29/06/1998. This OTS is for this credit only not for any other purpose or for any other loan. Hence this offer letter in writing covers the acknowledgment of the entire period from the date of loan till the date of the offer of OTS irrespective of the fact that whether the case filed before DRT/DRAT have been disposed or not.

Corporate Debtor is a company having separate legal entity with a perpetual succession and it can't escape its liability on the ground that SARFAESI/DRT/DRAT proceeding are going on, every three years from the availment of the loan, debt acknowledgment letter has not been submitted by the Directors/Authorised Officers although the charges have been filed with ROC by the Corporate Debtor itself are not yet satisfied and the

OTS offer letter **is being submitted with a prayer to the Financial Creditor to settle down** the debts with lower amount/with lower interest rate. Original documents were executed by the Corporate Debtor for the loans availed i.e. DPN, Hypothecation agreements, LC documents, Deposits of title deeds etc. The legal recourse available **at the time of default i.e. 01/07/2003** was **filing the case before DRT in time**, which has been done by the Financial Creditor in the year 2005 filing the case before the DRT Jabalpur within the limitation period.

In the meantime, IBC has come and the Financial Creditor has filed application under Section 7 of IBC for **initiation of CIRP**. The entire period from the **date of filing case before DRT in 2005** till the petition filed before this Adjudicating Authority **is excluded for the purpose of limitation**.

The Corporate Debtor has duly executed number of documents while availing the **loan and simultaneously** the Corporate Debtor **has registered the charges of that amount of Credit availed in favour of the Financial Creditor which is still not satisfied**. Had the company repaid the loan, obtained no due certificate (NOC) from the Financial Creditor and filed with the ROC for satisfaction of charges, **the charges would not have continued till date in ROC record**. Since the amount of loan has not been repaid, charge is still continuing in the record of ROC,

the Company cannot escape its liability, hence the limitation is available for Financial Creditor to file application.

Corporate Debtor is having its own legal existence and it has defaulted in repaying the loan. Default might have been on account of many reasons i.e. Mismanagement of the Affairs of Corporate Debtor, Diversion of fund, Policy change of the Government, Non-implementation of upgradation of the Machineries, Technology etc. **IBC has come into existence in 2016 and admission of the petition under Section 7 of IBC does not necessarily lead into liquidation** and on the other hand the company must not lose, during the process of CIRF, **the opportunity** of having a **new Expert Management, Fresh Investment, New Technology for its revival**. The Corporate Debtor which is under stress **may now have a chance to revive even with or without any haircut of its liability in the present Falling Interest Rate Regime, changes in Companies Act, competitive market etc.**

Hence, this petition **needs to be admitted** in the interest of the revival of the Corporate Debtor also which is independent of its present Management/Director/ Board.

Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to**

be complete for the purpose of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 24.01.2020**

20. This Adjudicating Authority hereby appoints, as proposed, **Mr. Jagdish Kumar, having Insolvency Professional AAA Insolvency Professionals LLP, Registration No. IBBI/IPA-001/IP-P00671/2017-18/11143, Email ID: jkparulkar@aaainsolvency.com, Address: E-10A, Kailash Colony, Greater Kailash-I, New Delhi-110048, India as an Interim Resolution Professional.** The Interim Resolution Professional is further **directed to make** public announcement of moratorium in respect of Corporate Debtor soon after the receipt of an authentic copy of this order and to act further as per the order/directions issued by this Adjudicating Authority. The IRP is also to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code 2016.

21. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with**



effect from today for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*
 - (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

22. The **IRP is hereby advised to adhere the timeline** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified **Under Section 17, 18, 20 and 21 of**

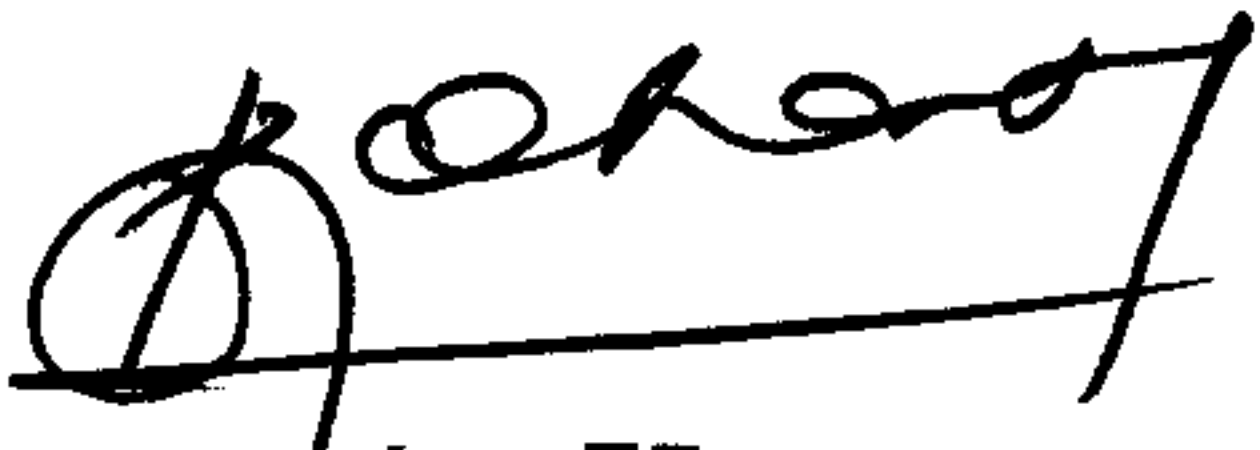
I.B Code. Further the **personnels of the Corporate Debtor** are advised to extend co-operation to **Interim Resolution Professional as required Under Section 19 of IB Code.**


23. It is observed that the Petitioner Bank has claimed **total dues of Rs.43,61,80,732/- (Rupees Forty Three Crores Sixty One Lakhs Eighty Thousand Seven Hundred Thirty Two Only) i.e. Principal of Rs.3,41,69,238.00 and undebited interest of Rs.40,20,00,494.00.** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find out a viable, feasible Insolvency Resolution Plan** for the **Corporate Debtor** and in order to have a Resolution Plan **Viable, feasible and implementation successful**, in the era of Minimum Cost of funds based Lending Rate ("MCLR" in short)/**Repo Linked Interest Rate/Falling Interest Rate Regime/** Competitive market condition, Committee Of Creditor(s) (COC) **may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan at the rate of Petitioner Bank's One Year

MCLR or One Year MCLR + 1% without any penal /overdue interest.

24. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gwalior, Madhya Pradesh immediately through speed post / registered post.

25. Thus the present I.B petition filed Under Section 7 of the **IBC stands admitted today with the above directions and observations.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)

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