





**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**C.P. (IB)/826/MB/2025**

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**THE BANK OF MAHARASTRA LIMITED**

[PAN:AACCB0774B]

Stressed Asset Management Branch,

Janmangal , 4<sup>th</sup> Floor , 45/47,

Mumbai Samachar Marg, Fort,

Mumbai

**...Financial Creditor**

V/s

**OMEGA PREMISES PRIVATE LIMITED**

[CIN No.: U70103PN1995PTC084912]

929, F.C.Road , Mantri House, 2<sup>nd</sup> Floor,

Pune, Maharashtra

**...Corporate Debtor**

**Pronounced: 12.03.2026**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

For Applicant: Adv.Mr. Subir Kumar a/w Adv. Mr. Vaishnavi Pawar, a/w Adv. Ms. Ashita

Aggarwal i/b SDS Advocates

For Respondent: Adv. Mr.Amir Arsiwala i/b Adv. Pranav Shah

**ORDER**

**[PER: CORAM]**

**1. BACKGROUND**

- 1.1. This C.P. (IB) No.826/MB/2025 (Application) was filed on 11.08.2025 by The Bank Of Maharashtra Limited, the Financial Creditor (Financial Creditor), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Omega Premises Private Limited, the Corporate Debtor (Corporate Debtor) having CIN No.: U70103PN1995PTC084912
- 1.2. This Application has been affirmed by one Mr Deepak Kumar , authorised signatory of the Applicant through Authorization Letter dated 21.08.2024
- 1.3. As per Part IV of the Application, the default as claimed by the Applicant is Rs 45,41,08,451.8/- (Rupees Forty-Five Crore Forty-One Lakh Eight Thousand Four Hundred Fifty-One and Eight Paise Only ).
- 1.4. The date of default as mentioned in part IV is **24.06.2015 (updated pursuant to order dated 19.08.2025 through Additional Affidavit dated 09.09.2025)**
- 1.5. The Applicant has proposed Mr. Prashant Jain , having Registration No. IBBI/IPA-001/IPP01368/2018-2019/12131, to act as the Interim Resolution Professional (IRP).

**2. CONTENTIONS OF APPLICANT**



- 2.1. The Financial Creditor states that Respondent is a Corporate Guarantor to Principal Borrower M/s Brainer Impex Limited(formerly known as Brainer Financial Technologies Limited).
- 2.2. The Financial Creditor vide sanction letter dated 04.08.2011 extended fund-based credit facilities i.e. a cash credit facility amounting to Rs.9.75 Crore to the Principle Borrower. The copy of the sanction letter is attached to the petition as **Annexure F-1**.
- 2.3. The Principal Borrower agreed to all the terms of the sanction letter vide its letter dated 25.10.2011 and thereby the said financial facilities were secured by the personal guarantee issued by 5 individuals namely Mr. Malay Biswas, Mr. Pankaj Yadav, Mr. Shashank Gokhle , Mr. Surinder Sharma & Mr. Sanjay Tamhane and a Corporate Guarantee was issued by the Respondent/Corporate Debtor. The Typed copy of letter dated 25.10.2011 and deed of Guarantee is provided as **Annexure F-2 & F-3**.
- 2.4. The Respondent/Corporate Debtor also mortgaged the immovable property situated at Office No. 6, 6th Floor, Mantri Sterling, Model Colony, Shivajinagar, Pune.
- 2.5. The account of Principal Borrower was declared as NPA on 28.02.2015. Accordingly, a demand notice under section 13(2) of the SARFAESI act 2002 was issued on 17.04.2015 to both the Principal Borrower and the Corporate Debtor, demanding repayment of the then outstanding amount of Rs 10.67 Crore. The copy of demand notice is attached to the petition as **Annexure G-1** .
- 2.6. The Financial Creditor states that the Principal Borrower was admitted into CIRP by the Hon'ble NCLT, Mumbai Bench, by Order dated



24.06.2019 in Company Petition No. 4134 of 2018 filed by the Cosmos Co-operative Bank Limited. Upon failure of resolution, liquidation was ordered on 23.09.2021. The claim of the Financial Creditor to the extent of Rs. 25.56 Crores was fully admitted in the liquidation process. However, despite the liquidation, no effective recovery has been realized. The copy of Admission order and liquidation order is attached as **Annexure H1 & H2** to the petition.

- 2.7. The Financial Creditor had also proceeded under the SARFAESI Act and Corporate Debtor filed Securitization Application No. 82 of 2017 before the Ld. Debt Recovery Tribunal (DRT), Pune, in which Order dated 31.05.2017 was passed in favour of the Financial Creditor.
- 2.8. The Financial Creditor states that the date of default is 28.02.2015 however the application is well within limitation as the debt has been acknowledged by the Borrowers and guarantors on multiple occasions through One Time Settlement (hereinafter referred as "OTS") proposals, the latest being on 18.03.2024, thereby extending the limitation period by another three years under Section 18 of the Limitation Act, 1963. The copy of OTS proposal is provided as **Annexure F-12 & F-13** of the petition.
- 2.9. The Financial Creditor further states that an application under Section 95 was filed against personal guarantors namely Mr. Pankaj Yadav and Mr. Shashank Gokhale , which are admitted vide order dated 23.01.2024 and 05.04.2024 respectively by the Ld. NCLT Mumbai Bench. The copy of order is attached to the petition as **Annexure – J1**.



2.10. The Applicant submits that the date of default is 28.02.2015 as mentioned in the NeSL report which is provided as **Annexure – I** in the present Application.

2.11. As on 14.07.2025 the total dues are 45,41,08,451.80 which remain unpaid till date. The details provided are reproduced here under.

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Outstanding amount of cash credit facility	Rs. 9,18,37,495/-
2.	Interest and Penal Interest @13.90% till 31.07.2024	Rs. 31,18,25,159/-
3.	Penal Interest	Rs. 5,04,45,797.79/-
	<b>Total Debt</b>	<b>Rs. 45,41,08,451.8/-</b>

2.12. The Financial Creditor submits that as per section 128 of the Indian contract act 1872 the liability of the Corporate Debtor is always co-extensive with the debt of Principal Borrower and therefore the acknowledgement of debt by various OTS proposals are also deemed acknowledgement by the Corporate Debtor herein of the liability as corporate guarantor on behalf of the Principal Borrower.

2.13. In these circumstances, and considering the overwhelming evidence of debt, security, and default, the Financial Creditor is constrained to initiate the present proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 to commence CIRP against the Corporate Debtor.



2.14. The Applicant has attached the following documents along with the Application and / or along with the Additional Affidavit.

- a. Copy of master data of the Corporate Debtor
- b. Copy of Written consent dated 21.08.2024
- c. Copy of Authorization for Assignment Letter of IRP
- d. A copy of the Tabular Chart showing the Total Amount of Debt along with the Principal Dues, Interest and Penal Interest.
- e. A copy of the Statement of Account along with the balance sheet of Principal Borrower & Corporate Debtor.
- f. A copy of the Interest Calculation Sheet.
- g. A copy of the Entries in a Bankers Book along with the Certificate u/s 2 (a) (b) and (c) in accordance with the Bankers Books Evidence Act, 1891 dated 14.07.2025
- h. Copy of Certificate issued by the Financial Creditor certifying the date of NPA of the Corporate Debtor dated. 03.09.2024.
- i. Copy Sanction Letter dated 04.08.2011
- j. A typed copy of the letter 25.10.2011 thereby accepting to adhere to the terms and conditions of the Sanction letter dated. 04.08.2011.
- k. A typed copy of the Deeds of Guarantees executed by the Personal Guarantor & Corporate Guarantor respectively dated 25.10.2011.
- l. A copy of the Demand Promissory Note dated 25.10.2011 executed by the Borrower in favour of the Financial Creditor.
- m. A typed copy of Composite Deed of Hypothecation for all Facilities dated. 25.10.2011 executed by the Borrower in favor of the Financial Creditor
- n. A copy of the Balance and Security Confirmation Letter dated. 10.10.2014 executed by the Guarantors



- o. A copy of the Balance and Security Confirmation Letter dated. 10.10.2014 executed by the Guarantor to the Financial Creditor.
- p. A copy of the One Time Settlement offer dated. 23.09.2016 from Brainer Impex Limited to the Financial Creditor
- q. A copy of the One Time Settlement offer dated. 26.02.2024 from Omega Premises Private Limited to the Financial Creditor. ( a/w typed copy of sale notice)
- r. A copy of the One Time Settlement offer dated 07.03.2024 from Brainer Impex Limited to the Financial Creditor
- s. A copy of the One Time Statement Offer dated 18.03.2024.
- t. A copy of the email communication dated. 18.04.2024 .
- u. A copy of letters dated. 01.08.2016, 30.07.2015, 19.08.2015, 15.01.2019, 29.01.2016, 28.06.2016 sent by the borrower Brainer Impex Limited to the Financial Creditor disputing the status of willful defaulter and offering One Time Settlement.
- v. A copy of the Demand Notice issued u/s 13(2) of the SARF AESI Act, 2002 dated. 17.04.2015 to all Corporate Debtor and its guarantors.
- w. A copy of the Judgment passed by Ld. DRT Pune on 31.05.2017 in SA 82 of 2017
- x. A copy of the Order dated. 24.06.2019 by the Ld NCLT, Mumbai Bench passed in C.P. 4134 of 2018
- y. A copy of the Order dated. 23.09.2021 by the Hon'ble NCLT, Mumbai Bench passed in M.A. No. 642 of 2020 in C.P. 4134 of 2018
- z. A copy of the Claims admitted by the Ld. Liquidator in C.P. 4134 I 2018 as extracted from the IBBI Website



- aa. A copy of the record of Default/ Debt/ Authentication as submitted to and held by National E-governance Services Limited i.e. NeSL dated 20.03 .2025
- bb. A copy of the Demand Notice dated. 27.06.2022 to Mr. Shashank Gokhale (Guarantor) from the Financial Creditor.
- cc. A copy of the Order dated. 23.01.2023 passed by the Ld. NCLT, Mumbai Bench passed in C.P. (IB) 58/(MB)/2023
- dd. A copy of the Order dated. 05.04.2024 passed by the Ld. NCLT, Mumbai Bench passed in C.P. (IB) 59/(MB)/2023 respectively.
- ee. Balance Sheet and Independent auditor report for FY 2016-2017
- ff. Balance Sheet and Independent auditor report for FY 2019-2020
- gg. Balance Sheet and Independent auditor report for FY 2021-2022
- hh. One Time Settlement letter dated 26.02.2024.
- ii. One Time Settlement letter dated 07.03.2024.

**3. ADDITIONAL AFFIDAVIT FILED BY THE APPLICANT**

- 3.1. Additional Affidavit dated 09.09.2025 was filed by the Applicant through Mr. Dipak Kumar who is stated to be an authorized signatory of the Applicant.
- 3.2. This Tribunal , vide order dated 19.08.2025, granted an opportunity to the Applicant to file an Additional Affidavit for explaining the limitation and amending form 1 in regard to the date of default.
- 3.3. The Applicant vide Additional Affidavit states that the Guarantee dated 25.10.2011 given by the Corporate Debtor was invoked on 17.04.2015.



- 3.4. The said invocation Notice under Section 13(2) of the SARFAESI Act 2002 was sent to the Corporate Debtor on 24.04.2015 giving 60 days time to clear the outstanding. Hence the date of default with relation to the Corporate Debtor is 24.06.2015. The amended Form -1 is provided as **Annexure - A** to the Additional Affidavit with new date of default i.e 24.06.2015
- 3.5. Further the Financial Creditor has provided audited financial balance sheets of the Corporate Debtor for the financial year 2016-17,2019-20 and 2021-22 wherein the Financial Creditor states that the Corporate Debtor has acknowledged the Financial Debt. The same is attached as Annexure - in the Additional Affidavit.
- 3.6. The Financial Creditor submits that after the date of default the sequence of events followed which shows the petition is well within limitation.
- a. The Corporate Debtor renewed its guarantee dated 25.10.2011 on 10.10.2014
  - b. The Principal Borrower namely Brainer Impex Ltd had given One Time Settlement offer on 23.09.2016
  - c. The Corporate Debtor filed a Securitization Application i.e SA 82 of 2017 in DRT Pune which was disposed of on 31.05.2017
  - d. The audited financial balance sheets of the Corporate Debtor for the financial year 2016-17,2019-20 and 2021-22 duly reflect the loan granted by the applicant as liability. These entries have been made in the balance sheet and are corroborated by respective independent auditors.
  - e. The same are signed and adopted by the Board of Directors of the Corporate Debtor which constitutes a valid and binding



acknowledgement of the debt under the law. The copy of the Balance Sheets and Independent Auditors Report are attached as **Annexure – B** to the Additional Affidavit.

3.7. Thereafter, a One Time Settlement letter (hereinafter referred as "OTS") was given by the Corporate Debtor on 26.02.2024 and by Principal Borrower namely Brainer Impex Ltd. on 07.03.2024. The copy of the OTS letter is attached as **Annexure – C1 and C2**.

#### 4. **REPLY**

- 4.1. The Affidavit in reply was filed on 13.11.2025 by one Ashok B Agarwal, who is the Director and Authorised Representative of the Corporate Debtor vide Board Resolution Dated 25.10.2025
- 4.2. The Corporate Debtor contends that the Petition is Time Barred. There was no continuing cause of action and therefore the Financial Creditor cannot change date of default as per its own convenience.
- 4.3. Even otherwise, the Petition as well as the Additional Affidavit filed by the Financial Creditor fail to establish that the purported debt is within limitation.
- 4.4. Section 7 was filed against Brainer Impex in the year 2018. Pursuant to such application, the Principal Borrower was admitted into CIRP on 24.06.2019. The Principal Borrower was thereafter admitted into liquidation on 23.09.2021. Thus, there is no reason as to how the party explains the delay from the period of 2018 till 2025 to initiate the present proceedings.



- 4.5. Hence the petitioner cannot be permitted an infinite timeline to file the proceedings. The same is clearly beyond the period of 3 years provided under S. 7 of the Code.
- 4.6. The Corporate Debtor has relied on the Judgement in the matter of **Ramdas Dutta v. IDBI Bank Ltd., reported at 2023 SCC OnLine NCLAT 1306**, wherein Hon'ble NCLAT was of the view that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Hence NPA date cannot be taken as date of default for the purpose of limitation.
- 4.7. The Corporate Debtor further argues that the petition is not maintainable as there is no disbursement of debt.
- 4.8. There is no admission of liability or default by Respondent herein. The alleged invocation of guarantee and default is not substantiated by any concrete proof of due invocation, crystallized liability, or failure to perform by the guarantor. Therefore, in the absence of specific invocation of the Guarantee Deed, the Financial Creditor cannot proceed on the basis of the same.
- 4.9. The Corporate Debtor submits that the Personal Guarantor of the Principal Borrower had sent a letter Dated 07.03.2024, to the Petitioner herein offering One Time Settlement. However, the Petitioner did not pay any heed to the OTS offer made by the Principal Borrower.
- 4.10. Thus, the Petitioner herein ought to have filed its claim before the liquidator of the Principal Borrower.



- 4.11. Further the Corporate Debtor states that in terms of the Certificate dated 15.10.2011, annexed with the present petition, it is amplified that the Principal Borrower has only taken credit facility to the tune of Rs. 6,00,00,000/-. However, the Petitioner is claiming a sum of Rs. 45,41,08,451.8/-, by virtue of the present petition. Thus, the amount claimed in the present petition is contrary to the amount for which the Principal Borrower had availed the credit facility.
- 4.12. The Corporate Debtor further submits that a mortgagee cannot be deemed as a guarantor. The Corporate Debtor claims that he is a mere mortgager and not a guarantor
- 4.13. That by virtue of hypothecation deed dated 25.10.2011, the Principal Borrower along with the Respondent herein allowed the Petitioner to have a charge on the assets of the Principle Borrower as well as the Respondent. Thus, the Respondent is a mortgagee as it has mortgaged its assets and did not give any guarantee per se.
- 4.14. The Corporate Debtor argues that in any case, the Resolution passed by the Corporate Guarantor specifically authorized the person to enter into an arrangement to the extent of Rs.6,00,00,000/- and not more. The Bank officials had taken signatures of the Authorized Signatory on Blank Papers. It appears that the officers of the Financial Creditor have later inserted the draft; the amounts are mentioned by way of hand in the standard draft. The Mortgage Deed executed contrary to the said resolution is void ab initio and is non est in the eyes of law.

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- 4.15. The Corporate Debtor contends that the petitioner has taken the signatures of the respondent on blank pages without its consent as the same is evident from the documents annexed with the present petition.
- 4.16. It is stated that the Corporate Guarantee dated 25.10.2011, cannot be invoked as the Respondent herein did not receive any demand notice, which is a prerequisite in terms of Clause 17 of the Corporate Guarantee dated 25.10.2011.
- 4.17. Further the Corporate Debtor states that the Board Resolution annexed to the Petition at Page Nos. 71 to 74 categorically states that a Corporate Guarantee is extended in respect of the Credit Facility of Rs. 600 Lakhs (Rs. 6 Crores) only. Therefore, the entire action of the Financial Creditor in proceeding to prepare documents to make the Corporate Debtor liable for more than the said amount i.e. Rs. 600 Lakhs (Rs. 6 Crores) is fraudulent and cannot be a basis for proceedings under the Insolvency and Bankruptcy Code, 2016.
- 4.18. The Corporate Debtor has relied on the following judgements-;
- i. Tech Sharp Engineers (P) Ltd. v. Sanghvi Movers Ltd., reported at (2023) 2 SCC 531
  - ii. Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., reported at (2020) 15 SCC 1
  - iii. Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International (P) Ltd., reported at (2021) 7 SCC 352
  - iv. Kesoram Industries Limited V. Pratim Bayal, reported at 2024 SCC OnLine NCLAT 41



v. Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and Ors., reported at (2020) 8 SCC 401

## 5. REJOINER

- 5.1. The Rejoinder is filed by one Mr. Dipak Kumar stated to be authorised officer of the Applicant.
- 5.2. The Financial Creditor submits that the petition is well within the limitation. Although the NPA date is 28.02.2015, there exist numerous acknowledgements of debt by both the Principal Borrower and the Corporate Debtor, each of which validly extends the limitation period under Section 18 of the Limitation Act, 1963.
- 5.3. The Financial Creditor states that there was a corporate guarantee renewal on 10.10.2014 . Thereafter an OTS proposal was given by the Principal Borrower on 23.09.2016. Thereafter an SA was filed by the Corporate Debtor in 2017 in DRT Pune which was dismissed. Further the audited financial statements for FY 2016-17,2019-20,2021-22 Shows the Financial Creditor loan as liability.
- 5.4. The Financial Creditor has relied on the judgement of Asset Reconstruction Co. v. Bishal Jaiswal (2021) 6 SCC 366, wherein Hon'ble Supreme Court held that entries in duly adopted balance sheets amount to acknowledgment and extend limitation for IBC proceedings
- 5.5. Similarly, in Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330, the Hon'ble Supreme Court affirm that written acknowledgments including



balance sheet entries revive limitation and render the petition maintainable

- 5.6. Further the Financial Creditor states that vide OTS proposal dated 26.02.2024 and 07.03.2024 the respondent acknowledged the liability.
- 5.7. Further it is stated that the Financial Creditor Vide Email Dated 18.04.2024 conveyed the Corporate Debtor that the proposed settlement is commercially unacceptable and inadequate.
- 5.8. The Financial Creditor states that it is after the directions issued by this Hon'ble Tribunal vide order dated 19.08.2025 in the captioned petition, that the Petitioners were directed to amend the date of default in Part IV of the Company Petition and to place on record an Additional Affidavit clarifying the computation of limitation.
- 5.9. The Financial Creditors states that the modifications made are in compliance with the aforesaid order and are intended to bring greater clarity and accuracy to the pleadings without altering the nature, cause of action, or substantive grounds of the Petition.
- 5.10. The Financial Creditor has placed reliance on Dena Bank (Now Bank Of Baroda) V/s C. Shivakumar Reddy And Anr. (2021) 10 SCC 330 wherein the , the Hon'ble Supreme Court observed that it is imperative that provisions of the Code and Rules and Regulations framed thereunder be construed liberally, in a purposive manner to further the objects of enactment of the statute, and not be given a narrow, pedantic interpretation, which defeats its purposes. On reading the provisions of Section 7(2) to (5) read with the 2016 Adjudicating Authority Rules, the Hon'ble Supreme Court reached a conclusion that there is no bar to the



filing of documents at any time until a final order either admitting or dismissing the application has been passed.

5.11. The Financial Creditor submits that documents placed on record, clearly and unequivocally establishes that the Financial Creditor sanctioned a Cash Credit Facility of Rs. 9.75 Crores vide sanction letter dated 04.08.2011. This sanction was not merely a formal approval but was accompanied by a complete set of loan documents, duly executed and forming the contractual foundation of the parties' relationship. The sanction letter, along with the attendant security documents, underscores the fact that the credit facility was a structured, legally enforceable financial arrangement entered into after due diligence and compliance with the governing regulations. Therefore, the plea of "no disbursement" is not only misleading but also contrary to the record and deserves to be rejected outright.

5.12. It is stated that the liability of a guarantor is co-extensive with that of the Borrower unless otherwise expressly contracted. In the present case, the Corporate Debtor executed a Corporate Guarantee and furnished a registered mortgage over its immovable property to secure the due repayment of the same loan. This unequivocally establishes the Corporate Debtor's role as guarantor and its full exposure to the liability arising from the default committed by the Principal Borrower.

5.13. The fact that the Corporate Debtor also created a mortgage does not negate its independent and primary obligation as a guarantor. The mortgage is merely an additional layer of security and does not dilute, restrict, or alter the co-extensive nature of the guarantee.



- 5.14. The Financial Creditor has placed reliance on BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. and Anr. 2025 1 Supreme Court Cases 456 wherein the Hon'ble Supreme Court emphasized that a guarantor's obligation to repay the loan to the creditor is separate and distinct from the Borrower's obligation. Further, it also held that the IBC allows for simultaneous proceedings against both the Principal debtor and the guarantor.
- 5.15. The Financial Creditor states that Guarantee was validly Invoked and the liability is Crystallised. Section 13(2) of SARFAESI Act, Demand Notice dated 17.04.2015 was issued to both the Principal Borrower and the Corporate Debtor. The notice clearly demanded repayment of outstanding dues, which constitutes valid invocation of guarantee.
- 5.16. Further it is stated that The law does not prescribe any rigid or technical format for the invocation of a guarantee; any communication that clearly demands payment is sufficient to trigger the guarantor's liability. Thus, in the present case, the guarantee stands validly invoked and the Corporate Debtor's liability has indisputably crystallized.
- 5.17. The Financial Creditor submits that The guarantor's liability survives CIRP/liquidation of the Borrower , Proceedings against, the guarantor are independent. & Discharge of Borrower by operation of law does not discharge guarantor.
- 5.18. The Financial Creditor has placed reliance on Laxmi Pat Surana v. Union Bank of India (2021) 8 Supreme Court Cases 481, wherein the Hon'ble Supreme Court reaffirmed that a Section 7 Petition under IBC, is fully maintainable against a corporate guarantor irrespective of the Borrower's

CIRP or liquidation status, and that the guarantor's liability arises immediately upon the Borrower's default.

5.19. Thus, the objection raised by the Corporate Debtor is untenable and contrary to settled law and the Corporate Debtor remains fully liable.

5.20. It is stated that the quantum of Rs 45.41 Crores is Fully Justified as Principal + Interest + Penal Interest + all amounts due under the loan agreement.

5.21. It is stated that the allegation of The Corporate Debtor that its signatures were taken on blank papers deserves to be rejected outright because the guarantee and mortgage documents are properly stamped, witnessed, and registered. The Corporate Debtor has not produced any complaint, correspondence or FIR alleging coercion or blank signatures. This allegation was never raised during SARFAESI proceedings or before the DRT. Therefore, it is clearly an afterthought and has no evidentiary value.

## **6. WRITTEN SUBMISSIONS OF APPLICANT**

6.1. The applicant has placed reliance on the following judgements;-

- a. Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330
- b. Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr.2022 SCC OnLine NCLAT 4237
- c. BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.2025 1 Supreme Court Cases 456
- d. Laxmi Pat Surana v. Union Bank of India(2021) 8 SCC 481
- e. Asha Basantilal Surana v. State Bank of India & Ors (2025) 262 Comp Cas 350 : 2025 SCC OnLine NCLAT 920



**7. WRITTEN SUBMISSIONS OF CORPORATE DEBTOR**

- 7.1. The Corporate Debtor submits that the Board Resolution dated 15.10.2011 only authorised for entering into arrangement up to the extent of Rs 6 Crore. However, in the present petition the petitioner has claimed exorbitant sum of Rs 45,42,08,451.80/-
- 7.2. It is stated that there was no disbursement of debt to the Respondent. The essential ingredient to prove a financial debt i.e disbursement against time value of money is missing
- 7.3. Further the Respondent submits that a balance sheet alone does not prove a financial debt if there is no syncing with the claim or proof of loan.
- 7.4. The Corporate Debtor further claims that he is merely a Mortgagee and not a guarantor per se hence the Corporate Debtor does not owe them the Financial Debt.
- 7.5. The Corporate Debtor states that admission in the balance sheet can not be used to extend the limitation. Once the Principal Borrower is proceeded against under section 7 , the limitation for the guarantor ought not to extend beyond 3 years from the date of admission, however in the present case it is being initiated beyond 3 years from the date of liquidation.
- 7.6. The case laws relied upon by the petitioner are:-
- I. Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., reported at (2020) 15 SCC 1



- II. Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International (P) Ltd., reported at (2021) 7 SCC 352
- III. Kesoram Industries Limited V. Pratim Bayal, reported at 2024 SCC OnLine NCLAT 41
- IV. Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and Ors., reported at (2020) 8 SCC 401

## **8. ANALYSIS AND FINDINGS**

- 8.1. We have perused the documents as placed before us and heard the Ld. Counsels for the Applicant and the Corporate Debtor. Our findings in the matter are as under :
- 8.2. On perusal of the documents we observe that Financial Creditor sanctioned the Principal Borrower a fund-based credit facility of Rs. 9.75 Crore for its business requirement.
- 8.3. The loan agreement was executed on 25.10.2011. In pursuance of the loan Agreement, loan was further secured by various documents including a guarantee agreement was executed by the Corporate Debtor.
- 8.4. The account of Principal Borrower was classified as NPA on 28.02.2015 and as a result the Financial Creditor issued a demand notice dated 17.04.2015 under section 13(2) of SARFAESI Act to both the Principal Borrower and the Corporate Debtor demanding repayment of the then outstanding amount of Rs. 10.67 Crore, thus invoking the Guarantee of the Corporate Debtor.



- 8.5. The Principal Borrower approached the Financial Creditor for a one-time settlement offer dated 23.09.2016.
- 8.6. The Principal Borrower was admitted into CIRP vide order dated 24.06.2019 and thereafter liquidation was ordered vide order dated 23.09.2021. The liquidator had admitted a claim of Rs 25,56,98,284.50 Crore of the Applicant.
- 8.7. The Principal Borrower along with the Corporate Debtor again approached the Financial Creditor for a one-time settlement offer vide letter dated 26.02.2024, 07.03.2024 and 18.03.2024. The latest proposal was rejected by the Financial Creditor vide mail dated 18.04.2024.
- 8.8. The evidentiary record placed before us includes the NeSL report in Form D in respect of the Principal Borrower, loan agreements dated 02.01.2018, Guarantee deed dated 27.02.2017 and other documents.
- 8.9. It is pertinent to note that as per the Guarantee Deed dated 25.10.2011, which was further confirmed vide balance and security confirmation letter dated 10.10.2014, the amount guaranteed shall be due and payable by the guarantors two days after demand. The clause 2 of the terms and condition of the guarantee deed states that



The Guarantors agree that the amount guaranteed shall be due and payable by the Guarantors jointly and severally to the Bank, two days after demand and without demur merely upon the Bank sending to the Guarantors a demand notice requiring payment of the amount. Any such demand made by the Bank on the Guarantors shall be conclusive as regards the amount claimed therein having become due and payable by the Borrowers to the Bank in respect of the credit facilities mentioned therein and also conclusive as regards the default having been committed by the Borrowers in repayment of the said amount to the Bank. The Guarantors agree that they will not require any further proof of these facts from the Bank and will pay the amount demanded forthwith on receipt of the demand notice. Any such demand notice sent by the Bank by hand delivery or by post to the Guarantors at their address mentioned above such address as may be known to the Bank shall be deemed to duly served on Guarantors at the time when the notice would in the ordinary course of post be delivered at such address, notwithstanding that the notice may not in fact have been received by the Guarantors or that the address to which it is despatched may have ceased to be the Guarantor's address. It is agreed that the Bank may in its sole discretion invoke this Guarantee as regards the amounts due from the Borrowers under some of the credit facilities without prejudice to its right to invoke this Guarantee thereafter in respect of the other credit facilities.

8.10. Further, the due to the event of default by the Principal Borrower and the account being classified as NPA, the Financial Creditor issued a demand notice dated 17.04.2015 under section 13(2) to the Corporate Debtor as well as the Principal Borrower. However, the Corporate Debtor failed to repay the amount within stipulated time. The relevant extract of the notice is provided hereunder;-

*8.Omega Premises Pvt Ltd.  
929, FC Road, Pune-411005  
Through Directors  
Mr Ashok Bankatial Agarwal  
Flat No.18, Megha Terrace  
Survey No. 164-165,Aundh,Near Wireless  
Brahmani Chowk Pune*

*You No.2, No.3, No.4, No.5 ,No.6, No.7 and No.8 stood as guarantors/mortgagor for repayment of the dues under or in respect of the credit facility granted to You no.1.*

*You have still not repaid the dues of the Bank and hence in exercise of the powers conferred on the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(SARFAESI) and without prejudice to the rights of the Bank and to the pending proceedings mentioned above, the Bank hereby calls upon you to repay in full the amount of (1)LB Rs.92792967/- + unapplied interest Rs.13880978/-@14.75% p.a. Total Dues plus future interest thereon as applicable w.e.f.17/04/2015 within 60 days from the date of receipt of this notice, failing which in*



*addition to and without prejudice to the other rights available to the bank , the bank shall be entitled to exercise any/or all of the powers under Sub-Sec(4) of Sec 13 of the aforesaid act in respect of these properties/securities enforceable under the Act.*

8.11. Based on an examination of the above terms of the Guarantee Deed as well as the demand Notice we find that the Financial Creditor has invoked the Guarantee of the Corporate Debtor in terms of the stipulations in the deed of guarantee.

8.12. The Corporate Debtor was obliged to pay the outstanding amount however having failed to do so, an event of default has occurred. Further, from the Statement of Accounts submitted before this Tribunal, it is evident that the last interest payment was remitted on 13.07.2016 . Since that date, no further payments toward the Principal or interest have been paid by the Corporate Debtor. Consequently, the Applicant has successfully demonstrated a persistent breach of the repayment schedule. In view of the aforementioned contractual provisions and the evidentiary record, we find that a default has occurred.

8.13. One of the contentions of the Corporate Debtor is qua limitation. In this Respect it is seen that acknowledgement was made multiple times by the Corporate Debtor through various OTS proposals.

8.14. Further the Applicant has provided balance sheets of the Corporate Debtor for FY 2016-17, 2019-20, 2021-2022 wherein the acknowledgement of the guarantee as a liability can be proved. The same is provided as hereunder;-

For FY 2016-17.

Where there is a possible obligation of which outflow of resources is remote, disclosure as specified in Accounting Standard 29 "Provisions, Contingent Liabilities and Contingent Assets", is made as follows.

Particulars	Bank Name	Loan Amount(Limit)	Party
Unit no 601 in Mantri Sterling mortgaged by Omega Premises	Bank of Maharashtra	9.75Crores	Bralner Implex Ltd

**AUDITORS REMUNERATION**

Statutory Audit Fees for year ended 31<sup>st</sup> March 2017: Rs. 85,000/- (excluding Service tax)

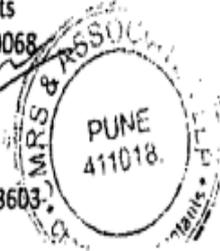
Audit fees for the current year as follow

Particulars	Amount
Statutory Audit Fees	50000
Tax Audit Fees	30000
Vat Audit Fees	15000
Returns Fees	8000

As per our report attached.

For CMRS & Associates LLP  
Chartered Accountants  
FRN: 101678W/W100068

M. A. Vkas Ahirave  
Membership No. : 148603  
Date: 5th Sept, 2017  
Place: Pimpri, Pune



For and on behalf of BOD

Mr. Ashok Agarwal

Director

0000932942

Mr. Sunil Patil

Director

0003614451

For FY 2019-2020.



**AS 29 Provisions, Contingent Liabilities and Contingent Assets**

The company recognises a provision when there is a present obligation as a result of past event that probably requires a cash flow of resources and a reliable estimate can be made of the obligation. A disclosure for a contingent liability is made when there is possible obligation or a present obligation that may, but probably will not require an outflow of resources.

Where there is a possible obligation of which outflow of resources is remote, disclosure as specified in AS 29 "Provisions, Contingent Liabilities and Contingent Assets," is made as follows

Particulars	Bank Name	Loan Amount	Party
Unit No 601 in Mantri Sterling mortgaged by Omega Premises	Bank of Maharashtra	9.75 crores	Brainer Impex Ltd

For FY 2021-2022.

b. Given Guarantee as follows:

**A) In case of Omega Premises Pvt Ltd (Holding Company)**

Particulars	Bank Name	Guarantee Amount	Party
Guarantee of Unit No. 661 in Mantri Sterling mortgaged by Omega Premises Pvt Ltd	Bank of Maharashtra	6.00 crores	Brainer Impex Ltd

8.15. The date of default as mentioned in Form 1 part IV is 24.06.2015 as the guarantee was invoked via demand letter dated 17.04.2015 and a 60 days period was provided for repayment, however the Respondent failed to clear the dues.

8.16. Thereafter acknowledgement of debt can be proved based on OTS Proposal Letter dated 23.09.2016 by the Principal Borrower, which was within the limitation from the date of default. Further vide balance sheet of Corporate Debtor for FY 2016-17, 2019-20 & 2021-22 the acknowledgement of the liability as a guarantee existed and hence acknowledgement of debt can be proved thereof which was all well within



limitation. Further again on 24.02.2024 & 07.03.2024 an OTS letter was issued by the Corporate Debtor which again revived the limitation.

The table herein shows how the limitation gets extended.

Event	Date
Invocation of Guarantee by 13(2) SARFAESI Act Demand Notice.	17.04.2015
Date of Default	24.06.2015
1 <sup>st</sup> OTS letter	23.09.2016
Balance Sheet and Independent Auditor Report	30.03.2017
Admission of CIRP of Principal Borrower.	24.06.2019
Balance Sheet and Independent Auditor Report	30.03.2020
Liquidation order of Principal Borrower	23.09.2021
Balance Sheet and Independent Auditor Report	31.03.2022
OTS letter of acceptance by Corporate Debtor	26.02.2024
OTS letter by co-guarantors for releasing of the personal and corporate guarantor with respect to the loans to the Principal Borrower.	07.03.2024
Petition filed on	11.08.2025

8.17. As seen above, the guarantee is invoked vide a demand notice under section 13(2) of the SARFAESI Act 2002 dated 17.04.2015. However, the corporate debtor failed to pay the outstanding amount within a period of 60 days, hence the date of default as mentioned in Part IV of the application is 24.06.2015 and thus the limitation starts from the date of default being the end of period of payment as specified in notice under section 13(2) of SARFAESI Act.

- 8.18. Further an OTS letter dated 23.09.2016 was proposed by the principal borrower hence extending the limitation to further period of 3 years.
- 8.19. The Corporate Debtor's FY 2016-17 balance sheet further acknowledged the guarantee liability, extending limitation by another three years. The FY 2019-20 balance sheet and independent auditor's report reiterated this acknowledgement, triggering yet another three-year period extension.
- 8.20. Thereafter the principal borrower went into CIRP vide order dated 24.06.2019 and henceforth into liquidation vide order dated 23.09.2021. Further the financial creditor has submitted that the liquidator had admitted claims worth Rs. 25.56 Crore of the Applicant however there is no fruitful recovery till date. The same has not been disputed by the Corporate Debtor.
- 8.21. This Tribunal has placed reliance on the judgement of Hon'ble NCLAT in **Shankar Khandelwal Vs Omkara Asset Reconstruction Pvt Ltd. Company Appeal (AT)(Ins) No. 293 of 2025** wherein it was held that RP has the authority to make an acknowledgement on behalf of the Corporate debtor. Further another issue which was adjudicated by the Hon'ble NCLAT in the said case was that whether admission of a claim by the RP in an earlier CIRP proceeding against the CD would constitute an Acknowledgement of debt by a CD to save limitation for the Initiation of a fresh CIRP against that very CD. It was held that the entire management of the CD vest with the RP and in absence of the board of directors to perform any function in relation to the CD, the admission of claim by the RP shall amount to admission of liability of the CD. Further if the RP has admitted a claim , it constitutes an acknowledgement under



section 18 of the limitation act. The relevant extracts are reproduced hereas under-;

*12. The second question is considered first. When once a CIRP under Sec.7 IBC (also Sec.9 ) is admitted and the IRP is appointed, Sec.17(1) steps into declare that the Board of Directors of the CD will stand suspended and that the entire management of the CD will stand vested in the IRP and that even the officers of the CD would have to report to the IRP and the financial institutions are required to act on his instructions. Sec.17(2)(a) authorises an IRP to “act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any.” Sec.18 expands and also explains the scope of an IRP’s authority. Indeed, Sec.18(1)(b) authorises him to “receive and collate all the claims submitted by creditors to him...” Sec.20 of the IBC vests the IRP with the authority to make every endeavour to ensure that the CD is kept alive as a going concern. And, when an IRP is replaced by a RP post the constitution of the CoC, Sec.25 read with Sec.28 the IBC informs that RP would continue to discharge substantially the functions which the IRP has been hitherto performing, and more. In particular Sec.25(2)(e) mandates that a resolution professional “shall update the list of claims.” Thus, when the IRP at the initial stage of the CIRP proceeding and the RP at a later stage is required to perform the functions of the Board of Directors and also have been authorised to admit Claims from the creditors of the CD, to dispute the authority of the IRP or the RP to act for and on behalf of the CD would be fallacious.*

*17. Returning to the point of discussion, if the entire management of the CD is vested with the IRP or the RP, as the case may be, and if they were statutorily authorised to admit a claim, in the absence of the board of directors to perform any function in relation to the CD, admission of a Claim either by the IRP or the RP would amount to admission of a liability of the CD to repay the creditor, to emphasis, based on a pre-existing and enforceable right of payment. And, acknowledgement of a debt within the meaning of Sec. 18 of the Limitation Act in essence is but an admission of the liability to repay. A mere choice of expression such as ‘acknowledgement’ or ‘admission’ used in different statutory schemes cannot alter the fundamentals: existing of a liability, correlatable to a pre-existing and enforceable right to repayment. Therefore, where an IRP or a RP has admitted a claim, it does constitute an acknowledgement under Sec.18 of the Limitation Act. To state it differently, if the RP has the authority to admit a claim and if admission of a Claim also constitutes an acknowledgement of liability, it follows that the RP has the authority to acknowledge a liability on behalf of the CD.*

*19. There is therefore, little difficulty in holding that the date of admission of a Claim by the IRP grants a fresh date for commencement of limitation and when the Claims are subsequently updated it pushes the date of terminus a quo to that date.*

8.22. Drawing a parallel reasoning, this Tribunal is of the view that admission of claim by the liquidator would constitute an acknowledgement of debt



by the CD. Further in the instant case liquidator of the Principal Borrower had admitted claims worth Rs. 25.56 Crore of the Applicant, which constitutes an acknowledgement of debt by the principal borrower, which is in liquidation and hence shall also constitute the acknowledgement by the corporate debtor and other co guarantors.

8.23. Further it is seen in the balance sheet and independent auditor report for FY 2021-2022 that the corporate debtor has acknowledged the guarantee given by it which further extends the limitation by 3 years ending 31.03.2025. However, an OTS proposal dated 07.03.2024 was made again to the financial creditor by the co guarantors including the corporate debtor, however the same was rejected by the financial creditor thus the limitation again got extended for a fresh period of 3 years upto 06.03.2027

8.24. This Tribunal has also relied on the judgement of Hon'ble NCLAT in **Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr.** Wherein it has been held that OTS and financial account statements constitute valid acknowledgment of debt and extends limitation period. The relevant abstract of the judgement is produced below:-

*“26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this*



*matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4*

*27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-2015 and F.Y. 2015-2016 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also, in its letter dated 23.02.2017 submitted a proposal for one-time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.*

*28. Therefore, we hold that the petition filed by the Financial Creditor is within limitation*

8.25. This Tribunal has further relied on Hon'ble Supreme Court judgment of **Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330**, where it was held that

*“139 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....Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years.*

8.26. Considering the facts of this matter and applying the decision of the Hon'ble Supreme Court in Dena Bank(Supra) and Hon'ble NCLAT in

Dinesh G Jaiswal (Supra) and other citations , we are of the view that the present Application filed on 11.08.2025 is well within limitation period.

8.27. Further the Corporate Debtor contends that the petitioner no amount has been disbursed to him and as a result the applicant is not a financial creditor.

8.28. In this regard it is observed that the Principal Borrower availed a cash credit facility from the applicant. The same transaction constitutes a financial debt under section 5 (8)(a) of the Code. Further Section 5(8)(i) of the code states that any guarantee or indemnity for any item of the 5(8) (a to h) shall constitute a financial debt as well.

At this juncture it is pertinent to reproduce Section 5(8) of the code:-

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

*(a) money borrowed against the payment of interest;*

*(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*

*(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(e) receivables sold or discounted other than any receivables sold on non-recourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

<sup>2</sup>*[Explanation. -For the purposes of this sub-clause,-*

*(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*



*(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

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

8.29. Hence, we are of the view that there is no requirement of disbursement to the guarantor / indemnifier if he is a guarantor/ indemnifier to a financial debt as stipulated under Section 5(8) of the Code.

8.30. The corporate debtor contends that the resolution passed by the corporate debtor authorises the person to enter into an arrangement to the extent of Rs. 600 lakhs i.e. 6 crore only and not more than that.

8.31. In regard to the above, it is well settled that any dispute regarding the specific quantum of debt is immaterial during the stage of admission if the default crosses the threshold of Rs. 1 crore (as per Section 4 of the Insolvency and Bankruptcy Code) and then in such a situation an application under Section 7 is required to be admitted.

8.32. This Tribunal has also relied on the judgement in the matter of '**M/s. Innoventive Industries Ltd.' Vs. 'ICICI & Anr.'**, (2018) 1 SCC 407, wherein the Hon'ble Supreme Court observed the definition of 'Claim' and held that even if right of payment is disputed, the Code



gets triggered the moment, the default exceeds the threshold amount. At this juncture, it is relevant to reproduce paras 27, 28 & 30 of the Judgement in the matter of 'M/s. Innoventive Industries Ltd.' (Supra) wherein the Hon'ble Supreme Court has observed as follows:

*27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the Corporate Debtor itself or a Financial Creditor or operational creditor. A distinction is made by the Code between debts owed to Financial Creditors and operational creditors. A Financial Creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21)*



*means a claim in respect of provision of goods or services.*

28. *When it comes to a Financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any Financial Creditor of the Corporate Debtor – it need not be a debt owed to the Applicant Financial Creditor. Under Section 7(2), an Application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the Application is made by a Financial Creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the Applicant in Part I, particulars of the Corporate Debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V*

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

*(Emphasis Supplied)*

8.33. Another contention of the corporate debtor is that the petitioner has taken signature on blank paper. This Tribunal is of the opinion that the corporate debtor never disputed the same earlier. Further vide various OTS proposals and Balance sheet of the Corporate Debtor, it admitted that it has provided the Guarantee for the debt of the Principal Borrower.

8.34. The Corporate Debtor has relied upon the following judgments, which in our view do not help its case for the following reasons: -

- I. *The Judgment of Hon'ble Supreme Court in the matter of BABULAL Vardharji Gurjar v. Veer Aluminium Industries(P) 2020 15 SCC 1& does not apply to the facts of this case as the Applicant has been able to demonstrate with the help of the documents placed on record that multiple acknowledgements have been made, which extend the limitation period.*
- II. *The judgement of Hon'ble Supreme Court in the matter of Reliance Asset Reconstruction Co. Ltd vs Hotel Poonja International (P) Ltd. does not apply to the facts of the present case as in the present case the entry made in the balance sheet along with independent auditors report clearly shows the acknowledgement of liability by the Corporate Debtor*
- III. *The judgement of Hon'ble NCLAT in the matter of Ramdas Dutta vs IDFC Bank does not come to the rescue of the Corporate Debtor as in the present case the date of default of the corporate guarantor would be when the guarantor has failed to pay the guaranteed amount after invocation of the guarantee. Herein the guarantee was invoked on 17.04.2015 and as the guarantor failed to pay the amount within the stipulated time of 60 days the date of default is 24.06.2015. Hence the date of default would be different with that of the Principal Borrower.*
- IV. *Further the judgement of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and Ors., reported at (2020) 8 SCC 401 does not apply to facts of the present case as the principal borrower had availed a cash credit facility from the applicant. The same transaction constitutes a financial debt under section 5 (8)(a) of the Code. Further 5(8)(i) of the code states that*



*any guarantee or indemnity for any item of the Section 5(8) (a to h) shall constitute a financial debt as well.*

8.35. In view of the above discussion, the Applicant has successfully demonstrated the existence of a financial debt as the transaction involves amount raised pursuant to Guarantee Deed under section 5(8) of the IBC, the occurrence of default, and the continuing nature of such default and all supported by clear documentary evidence.

8.36. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Mr. Prashant Jain as the proposed IP having valid AFA upto 31.12.2026 as reflected on IBBI portal, and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against the said IP. Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

8.37. We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

### **ORDER**

In view of the aforesaid findings, this Application bearing C.P. (IB) 826/MB/2025 filed under Section 7 of IBC, 2016, by The Bank Of Maharashtra , the Applicant (Financial Creditor) for initiating CIRP in respect of **Omega Premises Private Limited** having CIN No. U70103PN1995PTC084912 the Corporate Debtor, is **Admitted**.

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

I. We prohibit:



- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the 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, and;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That 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.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Prashant Jain**, having Registration No. **IBBI/IPA-001/IPP01368/2018-2019/12131**, email id : [ipprashantjain@gmail.com](mailto:ipprashantjain@gmail.com), having valid Authorisation for



Assignment up to **30.12.2026** as the IRP to carry out the functions under the IBC.

- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal monthly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. The IRP is directed to issue notice of Admission upon all the statutory authorities of Corporate Debtor without Fail



- XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XIII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**

**SAMEER KAKAR  
MEMBER (TECHNICAL)**

//S.Jain //

**Sd/-**

**NILESH SHARMA  
MEMBER (JUDICIAL)**