

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/483/2020**

*(filed 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)*

*In the matter of M/s. Consolidated Construction Consortium Ltd.*

**State Bank of India**

Stressed Assets Management Branch  
"Red Cross Buildings"  
No.32, 2<sup>nd</sup> Floor, Red Cross Road,  
Egmore,  
Chennai – 600 008  
Represented by its Authorized Officer  
Mr. M. K. Kannan

*... Financial Creditor*

-Vs-

**M/s. Consolidated Construction Consortium Limited**

CIN: L45201TN1997PLC038610

Reg. Off:-

8/33, Padmavathiyar Road,  
Jeypore Colony,  
Gopalapuram,  
Chennai – 600 086

*...Corporate Debtor*

*Order Pronounced on 20<sup>th</sup> April 2021*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : B. Dhanaraj, Advocate*

*For Corporate Debtor : Karthikei Balan, Advocate*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. Under Adjudication is IBA/483/2020 that has been filed  
by **State Bank of India** (hereinafter referred to as '**Financial**

**Creditor'**) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Consolidated Construction Consortium Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is body Corporate constituted under the State Bank of India Act, 1955 and the Registered office as per the Application is stated to be at Corporate Centre at Madame Cama Road, Nariman Point, Mumbai – 400 021.

3. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number L45201TN1997PLC038610 incorporated on 11.07.1997 and registered office of the Corporate Debtor as per the Application is stated to be at #8/33, Padmavathiyar Road, Jeypore Colony, Gopalapuram, Chennai – 600 086. As per Part III of the application, the Financial Creditor has proposed the

name of one Mr. Krishnasamy Vasudevan, Registration Number: IBBI/IPA-001/IP-P00155/2017-18/10324 as the Interim Resolution Professional

4. Part IV of the application signifies the amount of debt to the tune of ₹675,57,51,695.39/- (Rupees Six Hundred and Seventy Five Crores Fifty Seven Lakhs Fifty One Thousand Six Hundred and Ninety Five and Paise Thirty Nine Only) and the date of default is mentioned as 31.12.2017. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- i. Letter of loan sanction dated 01.10.2003 issued by the creditor to the corporate debtor subject to compliance of terms and conditions including furnishing of primary and collateral security duly accepted on behalf of the borrower corporate debtor and guarantors.
- ii. Agreement of loan for overall limit dated 10.10.2003 executed by Corporate Debtor.
- iii. Letter of sanction / renewal of various credit facilities dated 19.02.2004, 13.06.2004, 16.12.2004, 17.08.2005, 05.09.2006, 07.02.2008, 28.05.2009, 15.10.2010, 03.12.2010, 02.04.2011, 14.12.2011, 23.11.2012, 22.05.2013, 15.05.2014, 26.06.2015, 01.09.2015, 25.01.2016, 13.01.2017.
- iv. Letter of Sanction / Renewal of Credit Facilities dated 03.05.2017 for an amount of INR 848 Cr. under RBI Scheme of Sustainable Structuring of

Stressed Assets and Renewal of Credit Facilities duly accepted and endorsed by authorised signatory of the Corporate Debtor / Borrower and the Guarantors.

- v. Master Restructuring Agreement (MRA) dated 09.05.2017 executed between the Lenders (State Bank of India, Bank of Baroda, ICICI Bank limited, IDBI Bank Limited and Tata Capital Financial Services Limited) and Corporate Debtor.
- vi. Lenders Agent Agreement dated 09.05.2017 executed between the Lenders (State Bank of India, Bank of Baroda, ICICI Bank limited, IDBI Bank limited and Tata Capital Financial Services Limited) and the Corporate Debtor and the Financial Creditor State Bank of India for appointment of SBI as the agent to represent the Lenders.
- vii. Letters of undertaking given by the Borrower or Corporate Debtor as well as the Promoters or Guarantors both dated 09.05.2017 and addressed to the lenders, in terms of MRA.
- viii. Security Trustee Agreement dated 22.05.2017 executed between the Consortium of Lenders, Lender's Agent, Corporate Debtor and IDBI Trusteeship Services Limited as Security Trustee in terms of MRA.
- ix. Deed of Hypothecation executed on 22.05.2017 by the Corporate Debtor in favour of IDBI Trusteeship Services Limited (Security Trustee) in pursuance of the MRA terms for creation of securities in respect of each financial facility availed.
- x. Deed of Personal Guarantee executed on 22.05.2017 by the Directors of the Corporate Debtor in favour of IDBI Trusteeship Services Limited (Security Trustee) as per MRA terms.

- xi. Deed of Corporate Guarantee dated 22.05.2017 executed by CCCL Infrastructure Limited in favour of IDBI Trusteeship Services Limited (Security Trustee) as per MRA terms.
- xii. Deed of Corporate Guarantee dated 22.05.2017 executed by CCCL Pearl City Food Port SEZ Limited in favour of IDBI Trusteeship Services Limited (Security Trustee) as per MRA terms.
- xiii. Trustee agreement executed between the Corporate Debtor and IDBI Trusteeship Services Limited appointing IDBI Trusteeship Services Limited as Debenture Trustee in terms of Section 71 of Companies Act, 2013.
- xiv. Trust and Retention Account Agreement dated 28.07.2017 executed between the Lenders (State Bank of India, Bank of Baroda, ICICI Bank limited, IDBI Bank limited and Tata Capital Financial Services Limited) and the Corporate Debtor and the Financial Creditor State Bank of India for appointment of SBI as the account bank for all Corporate Debtor transactions.
- xv. Amended & Restated Inter-Creditor Agreement dated 28.07.2017 executed between the Consortium of Lenders, Lenders' Agent, Security Trustee and the Corporate Debtor for the purpose of convenience and benefit for all Lenders.
- xvi. Debenture Trust Deed dated 28.07.2017 executed between the Corporate Debtor and IDBI Trusteeship Services Ltd. enumerating terms for issuance of Debentures.
- xvii. Deed of Hypothecation executed on 28.07.2017 by Corporate Debtor in favour of IDBI Trusteeship Services Ltd. (Debenture Trustee).

- xviii. Deed of Hypothecation executed on 28.07.2017 by M/s CCCL Infrastructure Limited in favour of IDBI Trusteeship Services Ltd. (Security Trustee), as per MRA terms.
- xix. Deed of Hypothecation executed on 28.07.2017 by M/s CCCL Infrastructure Limited to and in favour of IDBI Trusteeship Services Ltd. (Security Trustee), as per MRA terms.
- xx. Amended and restated agreement for pledge of shares dated 17.08.2017 executed between the promoters and security trustee towards pledge of 4,71,13,476 shares held by Promoters in the Share Capital of the Corporate Debtor.
- xxi. Irrevocable Power of Attorney executed by the promoters in favour of Security Trustee dated 17.08.2017 to accomplish the purpose of the pledge.
- xxii. Memorandum of Deposit of Title Deeds dated 17.10.2017 executed by the Corporate Debtor to and in favour of the Security Trustee and registered as Doc. No. 1065 of 2018 with the Sub-Registrar of Guduvanchery.
- xxiii. Memorandum of Entry dated 15.11.2017 executed by the Managing Director of Corporate Debtor to and in favour of the Security Trustee to hold and retain title deeds as and by way of mortgage by deposit of title deeds.
- xxiv. Letter dated 28.06.2018 submitted by the Corporate Debtor to the Financial Creditor proposing and one time settlement for INR 328 Cr.
- xxv. Memorandum of deposit of title deeds executed by the authorised signatory of the Corporate Debtor and to Corporate Guarantors to and in favour of the security trustee and registered as Document

Number 1165 of 2018 with the Sub-Registrar of Murapanadu.

- xxvi. Loan Recall Notice issued on behalf of the Financial Creditor of the Corporate Debtor, Corporate Guarantors and Personal Guarantors.
- xxvii. Reply to the Loan Recall Notice dated 20.11.2018 from the Corporate Debtor admitting measures for settlement.
- xxviii. Letter of Sanction given by the Financial Creditor for the OTS amount of INR 180.65 Cr. dated 04.06.2019.
- xxix. Letter dated 29.11.2019 submitted by the Corporate Debtor relating to a Compromise Proposal to the Financial Creditor.
- xxx. Notices dated 05.12.2019 & 06.12.2019 issued under SARFAESI Act, 2002 by the Financial Creditor to the Corporate Debtor and Guarantors (Personal & Corporate).
- xxxi. Revival letter dated 18.03.2020 acknowledging debt to the tune of INR 1189.94 Cr. in respect of Working Capital Lenders along with Board Resolution of the Corporate Debtor dated 06.02.2020 resolving to affix common seal in Revival Letters of Debt / Balance Confirmation Letters favouring SBI.
- xxxii. Statement of Accounts of the Financial Creditor in 8 Loan Accounts – Cash Credit, Corporate Loan, Construction Equipment Loan, Working Capital Term Loan I, Working Capital Term Loan II, Funded Interest Term Loan I, Funded Interest Term Loan II, Additional Term Loan.
- xxxiii. Summary of the Principal Outstanding, Applicable Interest, Debt converted into OCDs & Equity, Bank

Guarantees and Bank Charges of the Corporate Debtor as on 30.06.2020.

xxxiv. Records of Default dated 16.06.2020 with the Information Utility in 8 Loan Accounts – Cash Credit, Corporate Loan, Construction Equipment Loan, Working Capital Term Loan I, Working Capital Term Loan II, Funded Interest Term Loan I, Funded Interest Term Loan II, Additional Term Loan.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is engaged in the business of Industrial, Commercial and Infrastructural Construction throughout India and in the year 2003, the Corporate Debtor opened a Current Account with the Financial Creditor and availed a Bank Guarantee Facility from the Financial Creditor and thereafter, on the basis of the Corporate Debtor's request since September 2003, the Financial Creditor sanctioned various Credit Facilities / Enhanced Facilities / Additional Facilities by issuing Sanction Letters on various dates and released the Facilities to the Corporate Debtor upon confirmation of the due compliance of the term / conditions stipulated in the Sanction Letters including execution of necessary Loan Documents.

6. The Summary of the various Sanction Letter, Date of Release of Facilities to the Corporate Debtor and the



documents executed by the Corporate Debtor in favour of the Financial Creditor is extracted hereunder;

S. No.	DATE OF SANCTION LETTER & AMOUNT	PARTICULARS OF DOCUMENTS EXECUTED
1.	Sanction Letter dated 01.10.2003 for INR 15 Cr.	<ul style="list-style-type: none"> <li data-bbox="927 443 1407 689">i. Board Resolution dated 09.10.2003 in favour of obtaining the advance of INR 15 Cr. by way of various credit facilities with necessary securities.</li> <li data-bbox="927 689 1407 831">ii. Agreement of loan for overall limit of 15,00,00,000 dated 10.10.2003</li> <li data-bbox="927 831 1407 972">iii. Letter regarding grant of individual limits within the overall limit dated 10.10.2003.</li> <li data-bbox="927 972 1407 1113">iv. Agreement of hypothecation of goods and assets dated 10.10.2003.</li> <li data-bbox="927 1113 1407 1254">v. Deed of personal guarantee for overall limit by the promoters dated 10.10.2003</li> </ul>
2.	Sanction Letter dated 19.02.2004 for INR 24.50 Cr.	<ul style="list-style-type: none"> <li data-bbox="927 1294 1407 1547">i. Board Resolution dated 28.02.2004 in favour of availing enhanced limits for INR 24.50 Cr. by way of various credit facilities with necessary securities.</li> <li data-bbox="927 1547 1407 1727">ii. Letter dated 22.03.2004 issued on behalf of the Corporate Debtor accepting the sanction of enhanced facilities.</li> <li data-bbox="927 1727 1407 1868">iii. Supplemental agreement of loan for increase in the overall limit dated 22.03.2004.</li> <li data-bbox="927 1868 1407 1968">iv. Letter regarding grant of Individual Limits within the Overall Limit dated</li> </ul>

		<p>22.03.2004.</p> <p>v. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 22.03.2004.</p> <p>vi. Supplemental Deed of Personal Guarantee for increase in the overall limit by the promoters dated 22.03.2004.</p>
3.	Sanction Letter dated 23.06.2004 for INR 34.50 Cr.	<p>i. Board Resolution dated 23.06.2004 in favour of availing enhanced / additional limits for INR 34.50 crores by way of various credit facilities with necessary securities.</p> <p>ii. Letter dated 23.06.2004 issued on behalf of the corporate debtor accepting the sanction of enhanced facilities.</p> <p>iii. Supplemental agreement of loan for increase in the overall limit dated 23.06.2004.</p> <p>iv. Letter regarding grant of Individual Limits within the Overall Limit dated 23.06.2004.</p> <p>v. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 23.06.2004.</p> <p>vi. Supplemental Deed of Personal Guarantee for increase in the overall limit by the promoters dated 22.03.2004.</p> <p>vii. Agreement of pledge of goods and assets dated 23.06.2004.</p> <p>viii. 3 Agreements to Mortgage dated 23.06.2004.</p> <p>ix. 2 Letters of Undertaking dated 23.06.2004 by the</p>

		<p>guarantors.</p> <p>x. NOC dated 16.08.2004 issued by Bank of Baroda in favour of Corporate Debtor.</p> <p>xi. Letter dated 16.09.2004 issued by the Corporate Debtor enclosing forms 17 &amp; 13, all dated 10.09.2004, issued by the Registrar of Companies w.r.t. satisfaction of Charges of Bank of Baroda.</p>
4.	Sanction Letter dated 16.12.2004 for INR 50 Cr.	<p>i. Board Resolution dated 29.12.2004 in favour of availing enhanced / additional limits for INR 50 Crores by way of various credit facilities with necessary securities.</p> <p>ii. Supplemental Agreement of Loan for increase in the Overall Limited dated 31.12.2004.</p> <p>iii. Letter regarding grant of Individual Limits within the Overall Limit dated 31.12.2004.</p> <p>iv. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 31.12.2004.</p> <p>v. Supplemental Deed of Personal Guarantee for increase in the overall limit by the promoters dated 31.12.2004.</p> <p>vi. Supplemental Agreement of pledge of goods and assets for increase in the overall limit dated 31.12.2004.</p> <p>vii. Form 8 dated 20.01.2005 and Forms 13 dated 28.01.2005 issued by the Registrar</p>

		of Companies w.r.t. registration of modification of charges in favour of the Financial Creditor.
5.	Sanction Letter dated 17.08.2005 for INR 89.51 Cr.	<ul style="list-style-type: none"> <li>i. Board Resolution dated 28.07.2005 and 20.08.2005 in favour of availing enhanced / additional limits for INR 89.51 Crores by way of various credit facilities with necessary securities.</li> <li>ii. Supplemental Agreement of Loan for increase in the Overall Limited dated 23.08.2005.</li> <li>iii. Letter regarding grant of Individual Limits within the Overall Limit dated 23.08.2005.</li> <li>iv. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 23.08.2005.</li> <li>v. Supplemental Deed of Personal Guarantee for increase in the overall limit by the promoters dated 23.08.2005.</li> <li>vi. Forms 17 &amp; 13 dated 28.01.2005, issued by the Registrar of Companies w.r.t. satisfaction of charges of Union Bank of India.</li> </ul>
6.	Sanction Letter dated 05.09.2006 for INR 204.24 Cr.	<ul style="list-style-type: none"> <li>i. Board Resolution dated 28.09.2006 in favour of availing enhanced / additional limits for INR 204.24 Crores by way of various credit facilities with necessary securities.</li> <li>ii. Supplemental Agreement of Loan for</li> </ul>

		<p>increase in the Overall Limited dated 29.09.2006.</p> <p>iii. Letter regarding grant of Individual Limits within the Overall Limit dated 29.09.2006.</p> <p>iv. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 29.09.2006.</p> <p>v. Letter giving consent for disclosure of information and undertaking dated 29.09.2006.</p> <p>vi. Revival letter dated 29.09.2006 issued in favour of the Financial Creditor, acknowledging liability and reviving all loan documents, guarantees, supplemental documents, supplemental guarantees and letters executed by the Corporate Debtor and its promoters from 10.10.2003.</p> <p>vii. Letter dated 21.09.2007 issued by Bank of Baroda ceding <i>pari passu</i> charges over the Securities created in its favour by the Corporate Debtor.</p>
7.	Sanction Letter dated 07.02.2008 for INR 404 Cr.	<p>i. Board Resolution dated 29.01.2008 in favour of availing enhanced / additional limits for INR 404 Crores by way of various credit facilities with necessary securities.</p> <p>ii. Supplemental Agreement of Loan for increase in the Overall Limited dated</p>

		<ul style="list-style-type: none"> <li>iii. 03.03.2008. Letter regarding grant of Individual Limits within the Overall Limit dated 03.03.2008.</li> <li>iv. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 03.03.2008.</li> <li>v. Letter giving consent for disclosure of information and undertaking dated NIL.</li> </ul>
8.	Sanction Letter dated 28.05.2009 for INR 540 Cr.	<ul style="list-style-type: none"> <li>i. Board Resolution dated 25.06.2009 in favour of availing enhanced / additional limits for INR 540 Crores by way of various credit facilities with necessary securities.</li> <li>ii. Supplemental Agreement of Loan for increase in the Overall Limited dated 17.07.2009.</li> <li>iii. Letter regarding grant of Individual Limits within the Overall Limit dated 17.07.2009.</li> <li>iv. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 17.07.2009.</li> <li>v. Revival Letter dated 17.07.2009 issued in favour of the Financial Creditor, acknowledging liability and reviving all Loan Documents etc. executed by the Corporate Debtor and its Promoters from 10.10.2003.</li> </ul>
9.	Sanction Letter dated 15.10.2010 for INR 690.50 Cr.	<ul style="list-style-type: none"> <li>i. Board Resolution dated 28.10.2010 in favour of availing enhanced /</li> </ul>

		additional limits for INR 690.50 Crores by way of various credit facilities with necessary securities.
10	Sanction Letter dated 03.12.2010 for INR 50 Cr.	<ul style="list-style-type: none"> <li>i. Board Resolution dated 10.01.2011 in favour of availing enhanced / additional limits for INR 50 Crores by way of various credit facilities with necessary securities.</li> <li>ii. Letter dated 03.01.2011 issued on behalf of the corporate debtor accepting the sanction of enhanced facilities.</li> <li>iii. Supplemental agreement of loan for increase in the overall limit up to INR 740.50 Cr. dated 01.02.2011.</li> <li>iv. Letter regarding grant of Individual Limits within the Overall Limit dated 01.02.2011.</li> <li>v. Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 01.02.2011.</li> <li>vi. Letter regarding consent for disclosure of information and undertaking dated Nil</li> <li>vii. Revival letter dated 01.02.2011 issued in favour of the Financial Creditor, acknowledging liability and reviving all loan documents, guarantees, supplemental documents, supplemental guarantees and letters executed by the Corporate Debtor and its promoters from 10.10.2003.</li> </ul>

		viii. Master Agreement dated 01.02.2011.
11	Sanction Letter dated 02.04.2011 for improvement in pricing of fund based working capital	i. Letter dated 20.04.2011 issued on behalf of the Corporate Debtor accepting the sanctioned limits
12	Sanction Letter dated 02.04.2011 for INR 740.50 Cr.	<p>i. Board Resolution dated 27.12.2011 in favour of availing enhanced / additional limits for INR 740.50Crores by way of various credit facilities with necessary securities.</p> <p>ii. Letter dated 27.12.2011 issued on behalf of the corporate debtor accepting the sanction of enhanced facilities.</p> <p>iii. Letter regarding grant of Individual Limits within the Overall Limit dated 30.12.2011.</p>
13	Sanction Letter dated 23.11.2012 for INR 724.92 Cr.	i. Board Resolution dated 12.02.2013 in favour of availing enhanced / additional limits for INR 724.92Crores by way of various credit facilities with necessary securities.
14	Sanction Letter dated 22.05.2013 for INR 82 Cr.	<p>i. Board Resolution dated 25.05.2013 in favour of availing enhanced / additional limits for INR 82Crores by way of various credit facilities with necessary securities.</p> <p>ii. Letter dated 05.07.2013 issued on behalf of the corporate debtor accepting the sanction of enhanced facilities.</p> <p>iii. Deed of personal guarantee for overall limit by the promoters</p>



		iv. dated 25.07.2013. Revival Letter dated 13.12.2013, acknowledging liability and reviving all loan documents executed w.e.f. 10.10.2003.
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7. The Learned Counsel for the Financial Creditor submitted that during the Financial Year 2013 – 2014, the Corporate Debtor faced a huge setback in its commercial operations throughout India, which resulted in the Loan Accounts being rendered irregular and the Corporate Debtor had made an application seeking for restructuring its payments / repayments under the Corporate Debt Restructuring (CDR) mechanism and in pursuance of the same, the Corporate Debt Restructuring Cell sanctioning the application of the Corporate Debtor and the debt was restructured under CDR mechanism during March 2014 with cut-off dated 01.10.2013. It was submitted that the CDR package was approved by the CDR Empowered Group by its Letter dated 28.03.2014 and the Corporate Debtor executed the Master Restructuring Agreement dated 29.03.2014 and the Trust and Retention Account Agreement dated 25.04.2014, to and in favour of all the then Lender Banks of the Corporate Debtor including the Financial Creditor, who is a Lead Bank. Subsequently, by a Letter of Sanction dated 15.05.2014, the Financial Creditor

renewed and sanctioned credit facilities aggregating to Rs.983.92 Crores to the Corporate Debtor.

8. The Learned Counsel for the Financial Creditor submitted that the IDBI Bank Limited exercised its Exit option in terms of the CDR package by a Deed of Accession dated 30.06.2014 executed between the Corporate Debtor and the Consortium of Lenders including the Financial Creditor and consequently the CR package was revised and M/s. Tata Capital Financial Services Limited was included as a Member in the Consortium of Lenders of the Corporate Debtor. It is pertinent to mention here that the said M/s. Tata Capital Financial Service Limited had also filed an Application under Section 7 of IBC, 2016 against the Corporate Debtor in IBA/228/2019.

9. The Learned Counsel for the Financial Creditor submitted that by its Sanction letter dated 26.06.2015, the Financial Creditor had sanctioned the continuation of the facilities granted earlier vide Letter of sanction dated 15.05.2014, aggregating to Rs.872.73 Crores and also for conversion of part of debt (WCTL I) into Equity Shares, on the terms and conditions stipulated therein. It was further submitted that during June 2015, the Consortium Members converted a portion of the debt of Rs.82.50 Crores into Equity by

Preferential Allotment of 21,37,33,963 Equity Shares, consequent on which the Financial Creditor's share was Rs.40.80 Crores for 10,57,06,828 shares.

10. The Learned Counsel for the Financial Creditor submitted that by a Notification dated 13.06.2016, the Reserve Bank of India introduced a Scheme for Sustainable Structuring of Stressed Assets (S4A) providing an option for deep financial restructuring involving write down of debts and enable accounts to become viable and based on the request of the Corporate Debtor and taking into consideration the deteriorating performance of the Corporate Debtor, even after the sanction of CDR mechanism, the Joint Lenders' Forum was held on 18.07.2016 to examine the feasibility of invocation of S4A in respect of the Corporate Debtor's Loan Accounts and the scheme was found viable and on 11.11.016, the Joint Lenders' Forum decided to invoke the Scheme in respect of the Corporate Debtor. Further, it was submitted that consequent to the invocation of the S4A Scheme, the Financial Creditor sanctioned restructuring facilities granted to the Corporate Debtor by its Letter of Sanction dated 03.05.2017, which was duly accepted by the Corporate Debtor and the Directors / Personal Guarantors. Accordingly, it was submitted that as per the sanction letter dated 03.05.2017 and the guideline of RBI

and SEBI relating to S4A Scheme, the loans and other facilities granted to the Corporate Debtor by the Lenders', existing as on 11.11.2016 were bifurcated into sustainable debt and unsustainable debt and the outstanding of the Corporate Debtor to the extent of Rs.579.55 Crores forming part of Unsustainable Debt was converted into "Optional Convertible Debentures" (OCD), out of which an amount to the tune of Rs.317.75 Crores formed part of the Financial Creditor's share. Further, it was submitted that in terms of the S4A Scheme, the Consortium Members retained M/s. IDBI Trusteeship Services Limited" as their Trustee and thus, the S4A scheme was duly implemented by the Lenders' on 09.05.2017, which implementation was duly accepted on behalf of the Corporate Debtor.

11. The Learned Counsel for the Financial Creditor submitted that despite the fact that the benefits of CDR and S4A scheme was extended to the Corporate Debtor by way of Restructuring of Facilities, the performance of the Corporate Debtor deteriorated and only a meagre sum was realized by the Lender's including the Financial Creditor through payments against Term Loan and Cash Credit facilities and by Redemption of some debentures and Sale of some shares. In view of the continued non - performance of the Corporate

Debtor and the commission of gross events of default as spelt out in the Master Restructuring Agreement dated 09.05.2017, the account of the Corporate Debtor was classified as Non – Performing Asset on 31.03.2018 and thereafter, the Loan Accounts of the Corporate Debtor got migrated on 29.05.2018 from the Financial Creditor’s Leather International Branch to the Stressed Assets Management Branch.

12. The Learned Counsel for the Financial Creditor further submitted that subsequent to the abolishment of S4A scheme under the RBI Circular dated 12.02.2018, the Financial Creditor by its Recall Notice dated 20.11.2018, recalled the Loans and facilities granted to the Corporate Debtor which aggregated to Rs.709,43,51,575.21 as on 17.11.2018, after giving credit to all the payments made by the Corporate Debtor and demanded payment of the aforesaid sum together with future interest and cost. In response to the said Recall Notice, it was submitted that the Corporate Debtor by its Letter dated 24.11.2018 had admitted its liability. It was also submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor by its letter dated 28.06.2018 proposed an One Time Settlement for Rs.328 Crores, and subsequently, the Financial Creditor sanctioned an OTS for Rs.180.65 Crores by its Letter of Sanction dated 04.06.2019

and 06.06.2019 and further the Corporate Debtor by its Letter dated 29.11.2019 shared the details of the Compromise proposal for Rs.180.45 Crores, however all the said proposals were not given due effect by the Corporate Debtor.

13. The Learned Counsel for the Financial Creditor submitted that they have filed OA No. 349/2019 before the Hon'ble Debtor Recovery Tribunal – II, Chennai against the Corporate Debtor under Section 19 of the Recovery of Debt and Bankruptcy Act, 1993 which is pending adjudication. Further, it was submitted that the Financial Creditor had also issued notice under Section 13(2) of the SARFAESI Act, 2002 dated 05.12.2019 and 06.12.2019 to the Corporate Debtor and the Guarantors and taking possession of the Secured Assets in relation to the same.

14. It is also seen that the Financial Creditor has filed their Information utility Report dated 16.06.2020 in relation to the Corporate Debtor at Page No. 1119 to 1205 of the typed set filed along with the Application and a perusal of the same shows the Status of Authentication as "Deemed to be Authenticated". Under the said circumstances, the Learned Counsel for the Financial Creditor submitted that the inability of the Corporate Debtor to service its dues on time establishes

the fact that the Corporate Debtor has become commercially insolvent rendering itself liable to be dealt with under the provisions of IBC, 2016 and hence sought for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

15. In relation to the Corporate Debtor, it may be noted from the record of proceedings that the matter first came up for hearing on 09.12.2020 and this Tribunal had directed that notice be sent to the registered office address of the Corporate Debtor as reflected in the Master Data maintained with MCA. Thereafter when the matter came up for hearing on 25.01.2021, the Corporate Debtor was represented by a Counsel and this Tribunal directed the Corporate Debtor to file its reply within a period of ten days. Subsequently, when the matter came up for hearing on 23.02.2021 and 11.03.2021, it is seen that the Corporate Debtor has not filed its counter and finally seven days time was granted to the Corporate Debtor to file its counter and finally when the matter came up for hearing on 31.03.2021, it is seen that the Corporate Debtor has not filed its counter and also no defence has been put forth by the Corporate Debtor in relation to the present case.

16. We have heard the submission made by the Learned Counsel for the parties and perused the records, including the documents placed on file. From the averments made in the Application it is seen that the Corporate Debtor has committed default in repayment of its dues which it had availed by the Financial Creditor by way of various credit facilities sanctioned and granted by it. The record from the Information Utility also posits the same fact as the same shows as "Deemed to be Authenticated". Further, it may be seen that the Financial Creditor has classified the accounts of the Corporate Debtor as NPA on 31.03.2018 and thus under the provisions of IBC, taking into consideration the decision of the Supreme Court in **Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr.** in *Civil Appeal No.4952 of 2019* and **B.K. Educational Services Private Limited –Vs- Parag Gupta and Associates;** (2018) SCC Online SC 1921, the right to sue accrues for the Financial Creditor to sue the Corporate Debtor on 31.03.2018, the date on which the account of the Corporate Debtor was declared as NPA and from the records it is evident that the Financial Creditor has filed the present petition on 24.07.2020 which is well within the 3 years period of limitation.



17. Further, we are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Consortium of Bankers and in the instant case to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. –Vs- ICICI Bank and another** (2018) 1 SCC 407 as well as **Mobilox Innovations Pvt. Ltd.. –Vs- Kirusa Software Pvt. Ltd.** (2018) 1 SCC 353 after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, (now increased to Rs.1 Crore on and from 24.03.2020) this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence or set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In any case in the present matter, no counter has been filed before this Tribunal, leave alone such defence being put up. Thus, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh.

18. Also the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016

19. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

20. The Financial Creditor has proposed the name of **Mr. Krishnasamy Vasudevan**, with Registration Number: *IBBI/IPA-001/IP-P00155/2017-18/10324* (email id:- *cavasu1967@gmail.com*) as the Interim Resolution Professional (IRP) who has also filed his written consent in Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 which is placed at page 1206 to 1208 of the typed set filed along with the Application. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the

Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

21. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

22. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate

Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

23. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under

Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

24. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned

-Sd-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-

**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*