



NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.301
TP 200 of 2019 [CP(IB) 548 of 2018]

Order under Section 7 IBC

IN THE MATTER OF:

Bank of India

.....Applicant

V/s

MP Agro BRK Energy Foods Pvt Ltd

.....Respondent

Order delivered on 02/05/2025

Coram:

Shammi Khan, Hon'ble Member(J)

Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Tomar

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH, AT INDORE**

**TP(IB)/200/MP/2019
Old CP (IB) 548 of 2018**

(An application 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 **MP Agro BRK Energy Foods Private Limited**

Bank of India

UG 2,3,4 Om Gurudev Complex
Scheme No. 540,
Opp. Rajshri Appollo Hospital,
Vijay Nagar, Indore
Madhya Pradesh - 452010

...Applicant/Financial Creditor

VERSUS

MP Agro BRK Energy Foods Private Limited

CIN: U15410MP2007PLC019486
Plot No. 71(B&C)
Industrial Area No. 1,
A.B. Road, Dewas,
Madhya Pradesh – 455001.

...Respondent/Corporate Debtor

Order pronounced on 02.05.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)



A P P E A R A N C E

For the Applicant/FC : Ms. Darshana Baghel, Advocate

For the Respondent/CD : Mr. Sanyat Lodha, Advocate

O R D E R

(Per: BENCH)

1. This is an application filed on 22.10.2018 by **Bank of India** (hereinafter referred to as “the Applicant/ Financial Creditor”) against **MP Agro BRK Energy Foods Private Limited** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs. 11,57,89,697/- [Principal 10,43,09,697 + Interest Rs. 1,14,80,000]**.
2. The application is affirmed by Mr. Sridhar Seshadri, Authorized officer of the Financial Creditor, who is authorized under Authority letter marked as Annexure-B.



3. Perusal of of Part-I of the Form-1 indicates that the Applicant/Financial Creditor is a Bank. The registered office of the Financial Creditor is situated at UG 2,3,4 Om Gurudev Complex, Scheme No. 540, Opp. Rajshri Appollo Hospital, Vijay Nagar, Indore, Madhya Pradesh - 452010.
4. Perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is MP Agro BRK Energy Foods Private Limited (CIN: U15410MP2007PLC019486). The date of incorporation is 26.04.2007. The registered office of the Respondent/Corporate Debtor is situated at Plot No. 71(B&C), Industrial Area No. 1, A.B. Road, Dewas, Madhya Pradesh - 455001.
5. Perusal of Part-III of the Form-1 reveals that the Applicant/Financial Creditor initially nominated the name of Ms. Teena Sarawat Pandey, having Registration No. IBBI/IPA-001/IP-P00652/2017-18/11126 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). Later, vide order dated 24.03.2023, the proposed IRP was replaced through I.A. 89(MP)/2023 with **Ms. Chaya Gupta** due to the original IRP's conflict of interest, having Registration No.



IBBI/IPA-002/IP-N00984/2020-2021/13133. (Email: guptachayacs@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). She has filed her written communication annexed with the Petition as Form-2 as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Her AFA is valid up to 30.06.2025 as per data available on the official website of the IBBI ibbi.gov.in.

- 6.** She has filed her written communication annexed with the Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- 7.** Perusal of Part-IV of the Form-1 reveals that the Applicant/Financial Creditor has granted various credit facilities and the total amount in default is claimed to be Rs. 11,57,89,697/- including interest. The date of default is mentioned as 30.09.2017.
- 8.** It is stated that the copy of notice dated 06.11.2017 under Section 13(2) of the SARFAESI Act and possession notice dated



17.09.2018 for existence of the financial debt, the amount and date of default and the same is annexed as **Annexure-I**.

9. The application filed under Section 7 of the IBC, 2016 was admitted by this Adjudicating Authority vide order dated 05.03.2020 for initiation of CIRP against the Corporate Debtor. The said order was challenged by the Corporate Debtor by filing an appeal before the Hon'ble NCLAT. Following which vide order dated 14.11.2022, the Hon'ble NCLAT remanded the matter back to the NCLT to consider the objections as raised by the Corporate Debtor with regard to 'classification of credit facility as NPA'. The relevant part of the order dated 14.11.2022 of Hon'ble NCLAT is reproduced here as under:-

(2) Shorn of unnecessary details, the Respondent No. 1 ('Financial Creditor') filed the Application in Form-1 of the Code on 22.10.2018 and mentioned in Part IV of the Application that the default had occurred on 30.09.2017 when the account of Respondent No. 2 ('CD') was declared as an NPA. Counsel for the Appellant has submitted that the Appellant is a MSME. Before the Application under Section 7 could have been filed, the Reserve Bank of India ('RBI') issued a circular to all the Banks NBFCs which are regulated by the RBI that it has been decided that the exposure of Banks/NBFCs classified as Micro



Small Medium Enterprise under the Micro Small Medium Enterprise Development ('MSME Act, 2006'), shall continue to be classified as a standard Asset in the books of the Banks and NBFC subject to certain conditions in which one of the conditions was that the account of the Borrower was standard as on 31.08.2017 and that the aggregate exposure including Non Fund Based facilities of the Banks and NBFC to the Borrowers does not exceed 250 Million as on 31.08.2018. According to the Appellant, the Borrower's account was standard on 31.08.2017 as it was declared NPA on 30.09.2017 and that the Borrowing was only to the extent of Rs.11Cr./- approximately which is far less than the threshold of 250 Million as on 31.08.2018.

(3) It is further submitted that the account of the Appellant was made operational and a certificate was issued by Respondent No. 1 on 17.04.2018 which read as hereunder:

"This is to certify that M/s. MP AGRO BRK Energy Foods bearing A/c No. 890130110000135 is operational and banking with our branch.

The account can transact, receive or withdraw maximum INR of Rs.99999999999999.99 on a single transaction as per RBI guidelines and adhering to KYC norms through clearing/transfer/RTGS/NEFT.

This certificate is issued on a special request."

(4) According the Appellant, the Respondent No. 1, even though, declared the account of the Appellant as NPA on 30.09.2017 but still it allowed the Appellant to transact,



receive and withdraw the maximum sum of Rs.9.99Cr./- in a single transaction in terms of the RBI guidelines from the said account which was made operational.

(5) It is further submitted that this aspect of the matter has been raised in the Reply to the Application filed under Section 7 and was noticed by the Tribunal in the Impugned Order in para 15 yet when the decision was ultimately taken, none of the objections or the submissions made in writing by the Appellant were taken into consideration as not a single word has been mentioned in the chapter of observations which is contained in paragraph 23 that the objections raised by the Appellant are either flimsy, frivolous or are not made out.

(6) It is thus submitted that the Impugned Order suffers from the vice of non-application mind and is not a speaking Order, therefore, the prayer made by the Appellant is that the present Appeal may be allowed, the Impugned Order be set aside and the matter may be remanded back to the Learned Tribunal for the purpose of taking a decision after taking into consideration the objections/contentions raised by the Appellant in their Reply.

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. .*

(10) We have heard Learned Counsel for the parties and peruse the record with their assistance.

(11) The facts are not much in dispute but the dispute in this case is as to whether the decision taken by the Tribunal in



admitting the Application filed under Section 7 by Respondent No. 1 without touching/discussing even an Iota of the objection raised by the Appellant in its decision, is a non-speaking Judgement and deserves to be set aside and remanded.

(12) The objections raised by the Appellant have been duly noticed by the Learned Tribunal in its Impugned Order and for the sake of convenience we may also reproduce the same:

“15.1. It is submitted that the petition preferred by the Petitioner under Section 7 of Insolvency and Bankruptcy code, 2016 unless anything expressly admitted herein below nothing shall be construed to be deemed as admission for want of traverse.

15.2. It is submitted that the present petition is required to be dismissed is as much as there is no ‘default’ as described Under Section 3(12) of the Code. It is submitted that as per dictum of law enunciated by the Hon’ble Supreme Court in the case of Innovative Industries Limited Vs. ICICI Bank and another, reported at 2008 (2) SCC 134, existence do ‘default, as per provisions of the Code is essential before petition under Section 7 of the Code can be admitted. The sole premise for instituting the present petition and considering default by the petitioner is on the premise that the Account of the corporate debtor is classified as NPA on 30.09.2017. The said classification is not only incorrect but also illegal and untenable on facts as well as in law, that is demonstrated hereinafter. In view of the fact that ‘default’ on the part of corporate debtor is not established within the meaning of



Section 3(12) of the Code, the present petition deserves to be dismissed.

15.3. It is submitted that the corporate debtor was established as proprietor ship concern in the year 1991. Thereafter, Corporate debtor was converted into a partnership Firm in the year 2006, incorporate as a Private Limited Company in the year 2007. In the year 2009, the Corporate Debtor was converted into a Public Limited Company.

15.4. It is further stated by the Respondent that the sole premise on which default is described in Form No. 1 is classification of credit facility of Respondent as non-performing asset (NPA). Refer Part IV (item 2) in Form 1. Reference be also made to Annexure E. The applicant has unequivocally stated that credit facility has become NPA on 30.09.2017. As demonstrated hereinafter classification of credit facility of Respondent is not in compliance of Circular issued by Reserve Bank of India dated 07.02.2018 and therefore classification of credit facility of Respondent as NPA is not only bad in law, but also terming “default” based on wrong classification is also incorrect. It is stated that except classification of Respondent’s credit facility as NPA, no other contention is pressed by the Petitioner to support the contention of “default” under the provisions of “the Code”.

15.5. It is further submitted that the perusal of Circular issued by RBI dated 07.02.2018 (produced at page - 517) clearly demonstrates that classification of credit facility of Respondent is erroneous. Condition No. II of the said circular reveals that if



non-fund based facilities of banks vis-à-vis borrower do not exceed 250 million rupees on 31.01.2018 and coupled with the fact that the borrower is a MSME unit with further condition that the account of borrower was “standard” as on 31.01.2017, the account cannot be classified as NPA based on 90 day and 120 day delinquency norms.”

(13) The observations made by the Learned Tribunal is contained in para 23 also deserves to be reproduced for a quick reference and is reproduced as hereunder:

“23. The Petitioner Bank has submitted the documents duly executed by the Corporate Debtor and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of its IB Petition for initiation of C.I.R.P.

23.1. The Cash Credit and Term Loan facilities were sanctioned by the Petitioner Bank and the same were availed by CD, M.P. Agro BRK Energy Foods Limited. The Charges have been filed by the CD with RoC and the Financial Creditor has filed valuation report and search report.

23.2. The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and the date of default is 30.09.2017. The Statement of accounts and the CIBIL Reports submitted by the applicant Bank confirm the debt is due and default has been committed by the Corporate Debtor.

23.3. The Petitioner Bank has filed the petition within the period of limitation, as the last credit has come to the account



on 31.08.2018 when this application has been filed on 22.10.2018 which is within 3 years of last payment.

23.4. The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under Section 7 of the I.B. Code annexing copies of loan documents confirming the existence of debt due and defaulted and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).”

(14) And the ultimate Order that has been passed by the Tribunal is also required to be reproduced which is as follows:

“24. Considering the material papers filed by the Petitioner Bank, arguments of the counsels of both parties and the facts mentioned in the Para No.23, 23.1, 23.2, 23.3 & 23.4 this Adjudicating Authority is satisfied that;.....”

(15) It is clear from the aforesaid facts and circumstances that the objections of the appellant were not taken into consideration while passing the impugned order. It is pertinent to mention that if Tribunal was not satisfied with the objections it could have at least say a word that the objections are flimsy or frivolous...

(16) Thus, in view of the aforesaid discussion, the present appeal is allowed. Impugned order is set aside and the matter is remanded back to the Tribunal to consider the objections raised by the appellant.....

10. Following the NCLAT Order, this Adjudicating Authority after taking into consideration all the issues, again admitted the



present application vide order dated 04.04.2024 for initiation of CIRP against the Corporate Debtor.

11. The order dated 04.04.2024 was again challenged by the corporate debtor before Hon'ble NCLAT, wherein the Hon'ble NCLAT vide order dated 26.04.2024 remanded the matter to the Adjudicating Authority, thereby setting aside the order dated 04.04.2024. The relevant part of the order dated 26.04.2024 of Hon'ble NCLAT is reproduced here as under:-

“9. We have heard Counsel for the parties and after perusal of the record, are of the considered opinion that, once the Adjudicating Authority has taken into consideration the pleadings and evidence and the contentions raised by both the parties recording the finding only that it has looked into the documents, therefore, it has come to the conclusion that the default has been committed is not sufficient.

10. Consequently, we are of the considered opinion that this case requires a relook by the Adjudicating Authority on the evidence which has been brought on record to judge about two basic issues i.e. debt and default having been committed by the Appellant for the purpose of attracting Section 7 of the Code.

11. As a result thereof, the appeal succeeds and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority to redecide the issue after taking into consideration the contentions of both the parties by recording



categoric finding on the issue which has been raised so that it may facilitate a judicial review by the Appellate Tribunal if any.”

12. This Adjudicating Authority has re-examined the evidence and contentions, as directed by the Hon’ble NCLAT vide orders dated 14.11.2022 and 26.04.2024, focusing on the existence of debt and default. The Financial Creditor, vide its additional affidavit filed on 22.10.2024, submitted responses to the objections raised by the Corporate Debtor. The relevant part thereof is reproduced here as under: -

a. That the main objection raised by the Corporate Debtor with regard to “classification of credit facility of Respondent being not in compliance of circular issued by Reserve Bank of India dated 07.02.2018 (Annexure R/3 Page 517) and therefore classification of credit facility of Corporate Debtor as NPA is not only bad in law, but also terming default based on wrong classification is also incorrect” is baseless and deserves to be rejected. It is pertinent to mention here that, the account of Corporate Debtor was declared NPA (on 30/09/2017) i.e. prior to issuance of RBI Circular and the account of Corporate Debtor was not eligible for



restructuring and not viable technically and not proper, therefore the Financial Creditor rejected the restructuring, and the Corporate Debtor had duly defaulted, in fact and in law, at the time of institution of application before Hon'ble NCLT.

- b. It would be amply clear from the statement of account of the Term Loan Account No. 881070210000008 that the aforesaid overdue amount and payments from the borrower due between September 1, 2017 and January 31, 2018 were not paid by the Corporate Debtor within 180 days from their respective original due dates as required by the RBI circular. That the last repayment in the said account was of Rs. 1000/- on 03.11.2017. Therefore, it is most humbly submitted that there is an existence of default in the sense that the debt is due. Default has been defined under Section 3 (12) in very wide terms as meaning non-payment of even part thereof or an instalment amount, as the debt is a liability and obligation on the part of Corporate Debtor towards Financial Creditor. The Code gets triggered the moment default is of Rs. One Crore or more. A copy of



statement of Term Loan Account No. 881070210000008 is filed and marked as Annexure A/3.

- c. That with regard to the non-disclosure of the subsequent re-classification of the account of CD as “Operational Account”, it is submitted that the Financial Creditor never re-classified the account as “Standard” from “NPA” after classifying it NPA on 30.09.2017.
- d. In view of the default by the Corporate Debtor, its account was classified as a Non-Performing Asset on 30.09.2017 by the Applicant Financial Creditor, as per the applicable RBI guidelines owing to persistent financial/non-financial irregularities in relation to repayment of the credit facilities, as per the terms of the various credit agreements/documents executed by the Corporate Debtor. The Applicant Bank issued Notice dated 06.11.2017 under Section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor demanding to discharge its full liabilities to the tune of Rs. 1066.21 Lakhs, as on the date of notice, along with further interest at the contractual rate on aforesaid amount together with incidental expenses, cost charges, etc. within stipulated time under Section 13 (2) of the SARFAESI Act,



2002. The said notice is produced at Annexure I along with the Application (page 478).

- e. The Corporate Debtor had on several occasions, during the pendency of this petition, offered various Settlement Proposal and the Applicant Financial Creditor has always showed its support to that effect. However, the last OTS proposal also failed on account of non-compliance of the terms and conditions of the Settlement Scheme. The Letter of rejection addressed by the Applicant dated 07.10.2019, is produced at Annexure R-16, page 544, by the respondent Corporate Debtor.
- f. The total outstanding amount due and payable by the Corporate Debtor is to the tune of Rs. 11,57,89,697/- as on the date of filing the Application under Section 7 of IBC 2016 plus further interest. That the outstanding debts have not been repaid till date and the same are due and payable.
- g. The Applicant Bank has submitted copy of the following documents in supports of their claim.
- Loan Sanction Documents from 2014 to 2017
(Annexure D)
 - Acknowledgment of debt (Annexure D)



- List of Properties mortgaged (Annexure F)
- Certification of Registration of Mortgage (Annexure F)
- Search Reports (Annexure F)
- CIBIL Report of Corporate Debtor (Annexure G)
- Bank Statement as per Bankers Book Evident Act, 2002 (Annexure H)
- Notices under Section 13(2) of the SARFAESI Act, 2002 (Annexure I)
- Notices under Section 13(4) of the SARFAESI Act, 2002 (Possession Notice) (Annexure I)

13. The Corporate Debtor has also filed its reply on 23.10.2024 and 18.02.2025 on the additional affidavit of the applicant. The main grievance of the Corporate Debtor onto this Adjudicating Authority's earlier orders were that while deciding the application the Adjudicating Authority had not considered its objection that the account of Corporate Debtor could not have been declared as NPA and as such the Corporate Debtor could not have been considered as having defaulted in payment of its account.



- a. The applicant has failed to produce or placed any document/evidence on record which goes to show that the respondent's account was declared NPA on 30.09.2017.
- b. Entire case setup by the Financial Creditor in the application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is that of default having occurred on 30.09.2017 basis the declaration of the Term Loan Account of the Corporate Debtor as NPA with the consequent NPA declaration of the two Cash Credit Accounts without producing any document on record to show that the account was declared as NPA on the said date. It is settled law that the date of default or the nature of default cannot be altered or pleaded beyond what is stated in the Section 7 Application. In the pleadings and at the time of oral submissions before this Hon'ble Tribunal, the only case set up by the Applicant Bank is that of NPA declaration as the basis of claiming default. As such, it is humbly submitted that any other subsequent pleadings, affidavits or submissions *qua* any other purported default, being unsupported by pleadings, are wholly untenable and not liable to be considered by this Hon'ble Tribunal.



[Innoventive Industries Ltd. vs. ICICI Bank & Anr. (2018) 1 SCC 407 Para 28; Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (2020) 5 SCC 1 Para 24.1, 34, 35; Next Education India Pvt. Ltd. vs. K2 Techno Services Private Limited (2021) SCC Online NCLAT 105 Para 23]

- c. As regards the alleged NPA declaration, it is a matter of fact that the said three accounts were in operation, banking and standard pre- as well as post- 30.09.2017 and both credit and debit entries were continuously permitted from the same. Memorandum dated 05.08.2017 prepared for sanction/approval of ZLCC with respect to Respondent's account clearly shows that the account was standard, operational and banking, and not NPA, in the month of August, 2017.
- d. Minutes of the ZLCC meeting dated 13.09.2017 (Pg. 30-33 of Section 7 Application) as communicated vide letter dated 16.10.2017 (Annexure D Pg. 29 of Section 7 Application), after considering memorandum dated 05.08.2017 clearly point towards the account being standard, and not NPA, and being eligible for the loan and cash credit facilities.



- e. As per the ZLCC Meeting minutes, account was standard and was contemporaneously recommended for extension of credit to the tune of Rs. 966.68 lacs (subsequently revised to Rs. 955.42 lacs). Thus, the Bank cannot now submit to the contrary to claim that the account was contemporaneously also declared NPA as on 30.09.2017.
- f. Notably, under the same ZLCC meeting minutes, the Bank has artificially sought to reduce the credit limits of the Corporate Debtor's account and such unilateral actions on the part of the Bank cannot form the basis of default on the part of the Corporate Debtor for the purposes of the IBC.
- g. The following aspects/admissions on the part of the Bank are clearly made out from the aforementioned communication dated 16.10.2017, ZLCC recommendation dated 13.09.2017 and the memorandum dated 05.08.2017:
- (i) The Respondent had duly paid all the previous three term loans.
 - (ii) Conduct of the Respondent's account is satisfactory.



(iii) There are no contingent liabilities in the last financial year as per the audited report as on 31.03.2017 and further, there are no adverse audit remarks in the last audited report as on 31.03.2017

(iv) The Respondent is enjoying FBWC CC limit of Rs. 800 lacs from the bank to meet its working capital requirement based on estimated sales of Rs. 6283.24 lacs for the F.Y. 2017-18 and projected sales of Rs. 6652.85 Lacs for F.Y. 2018-19 and we recommend for continuation of the same.

(v) There are favourable factors for the business of the Respondent to grow and several mitigatory factors such as good location, vast domestic market, easy availability of the raw material, the Malwa Crown brand of the Respondent company being a well-known brand, company's concentration in bulk market, sales in states such as Maharashtra and Gujarat, good marketing team etc., in case the situation demands.



(vi) The Respondent has complied with all the last sanctioned terms, all the security documents are valid, the exposure is within Bank's prudential norms/RBI guidelines, there is no deviation from usual norms and there is no persistent irregularity in account.

(vii) After going through the memorandum, the ZLCC had approved the recommendation for extension of credit to tune of Rs. 966.68 Lakhs, which was subsequently revised to Rs. 955.42 Lakhs. The communication of the said approval on 16.10.2017 signifies that the account of the Respondent was worth extending the credit facility to the extent of Rs. 955.42 Lakhs as on 16.10.2017.

(viii) The Respondent was a profit making company with projected revenue and profit growth

(ix) The Respondent's account were fit for extending the loan facilities as late as September and October 2017.



(x) No contemporaneous mention of the account being NPA in any manner in the aforementioned contemporaneous detailed record of the Bank/Applicant.

(k) No indication, contrary to what was sought to be orally argued without basis in documents, that the account was under default.

- h. The entire stand of the Applicant Bank on the issue of NPA clearly appears to be a *mala fide* stand unsupported by the contemporaneous material on record. The said aspect is further evident from the factual events that transpired post the said date of 30.09.2017, as described hereunder.
- i. Notably, no notice was issued to the Corporate Debtor prior to, at the time of or post the purported NPA declaration on 30.09.2017. Further, no demand of overdue was raised by the Applicant before 30.09.2017. Demand Notice dated 06.11.2017 u/S. 13(2) of SARFAESI subsequently withdrawn by communication dated 06.04.2022.
- j. It is a matter of record as submitted during the course of the hearing that as a matter of practice and banking



instructions, the Term Loan Account was all throughout serviced by way of payments being made from the Cash Credit Accounts and the responsibility and power of taking the money from the cash credit account for servicing the term loan account was that of the Financial Creditor / Applicant Bank itself.

- k. Specifically, an amount of Rs. 33,72,643.04/- was credited in Cash Credit Account No. 881030110000033 and Rs. 3,33,18,262.12/- in Cash Credit Account No. 890130110000135 between 01.09.2017 to 30.11.2018. As such, while there were sufficient credit entries and deposits into the Cash Credit Accounts, the Applicant Bank of its own volition chose not to debit the said accounts for servicing of the Term Loan facility. The said deposits were more than sufficient to service any pending instalments that may have been due at any point in time.
1. Applicant Bank had complete knowledge that the accounts of Respondent are operational as Respondent itself had *vide* letter dated 21.03.2018 informed the Applicant about the credit and debit of Rs. 1,50,53,273.50/- and Rs. 1,49,53,232.72/- respectively till 21.03.2018.



- m. As such, it was up to the Bank to appropriate the same towards pending loan instalments and interest if any and no default can be said to have occurred on the part of the Corporate Debtor for the failure of the Bank in this regard.
- n. Further, Corporate Debtor was permitted to withdraw money from the cash credit accounts all the way up to November, 2018 which could not have been the case had the accounts actually been declared NPA on 30.09.2017 as per the case sought to be projected by the Bank in the Section 7 Application.
- o. To this effect, the Bank had itself also given a certificate dated 17.04.2018 bearing no. VIJ/ADV/2018- 19/1 clearly stating the *factum* of continuing banking operations in the account maintained by the Corporate Debtor with the Bank. By way of the certificate dated 17.04.2018 the Bank had certified that Account No.890130110000135 in the name of the M/s MP Agro BRK Energy Foods Limited is *operational and banking with our branch*. The certificate further states that *“the account can transact (receive and withdraw) maximum INR of Rs.99999999999999.99 on a single transaction as per RBI guidelines and adhering to*



KYC norms through clearing/transfer/RTGS/NEFT.”

Therefore, it is clear from the said certificate the account of the Respondent was standard and operational as on 17.04.2018 and no default had arisen in fact or in law.

- p. It is a matter of record as aforementioned that the accounts of the Respondent were permitted to credit and debit entries all throughout, till as late as November, 2018 and as such, the question of the account being NPA does not arise, in view of the contemporaneous documents, stand and conduct of the Bank itself.
- q. The Corporate Debtor is admittedly an MSME engaged in manufacture of essential commodities and has remained a going concern with ongoing business all throughout the period since the original order admitting the Corporate Debtor to insolvency to this date.
- r. There was no default in fact or in law and the alleged classification of the Corporate Debtor's account was contrary to the circulars issued by the Reserve Bank of India. Among the various circulars and guidelines issued from time to time on classification of MSME accounts the RBI circular dated 07.02.2018 directed schedule banks and



NBFCs to provide relief for MSME borrowers registered under the GST. As per the said circular the account of the registered MSMEs were to continue to be classified as a standard asset and were not to be classified as an NPA on the basis of a 90 and 120 days' delinquency period and the respondent herein was covered by the same. Thus alleged classification of respondents account as NPA on 30.09.2017 was contrary to the circular of RBI and, therefore, it is correct to say that the respondent was not in default as on 30.09.2017.

- s. RBI's circular being beneficial in nature inasmuch as it prevents the accounts of the MSMEs from becoming stressed/non-performing assets, has to be given retrospective effect.
- t. Without prejudice, it is for the first time that the Applicant Bank is seeking to purportedly rely upon the Circular to state that the classification of the Respondent's account is in compliance with condition (iv) of the circular. In view of the limited remand order by the NCLAT as quoted above, it is not open to the Bank to factually argue and plead afresh at this stage that one of the conditions was not met under



the said circular, when the same was not the case of the Applicant Bank in the first round before the Hon'ble NCLT or in the Appeal before the Hon'ble NCLAT.

- u. The Applicant herein has neither previously claimed before this Hon'ble Tribunal or the Hon'ble NCLAT nor informed the Respondent that the account of the Respondent is not standard as on 31.08.2017 and the account of the Respondent was overdue as on 01.09.2017. This is the first time that the Applicant Bank has pleaded the same and therefore, the same ought to not to be allowed to be relied upon placed on record. As a matter of fact, the Applicant herein had never claimed or raised any demand on the Respondent with respect to overdue amount prior to the alleged classification of Respondent's account as NPA, which itself militates against the aforesaid submission on the part of the Applicant Bank qua non-compliance with condition (iv). Even otherwise, any default in terms of condition (iv) could only be after the 6-month window envisaged therein and not a prior, as pleaded in the present Section 7 Application i.e. from 30.09.2017.



- v. Without prejudice to the aforesaid, it is submitted as per RBI's Master Circular on NPA dated 01.04.2023 clear guidelines have been provided with regard to procedure to be followed for recognizing any default as defined in IBC. As per the said circular, it is the duty of the bank to recognise incipient stress in loan account on default and classify the same as Special Mention Accounts ("SMA"). Further as per circular dated 11.09.2013, it is obligatory upon the banks to report credit information including classification of account as SMA to Central Repository of Information on large Credit (CRILC). However, in the present case no such reporting had been done by the bank hence the contention of bank that the account was having overdue on 01.09.2017 is false and is an afterthought. It is further submitted that once a borrower is reported to be in default, the banks are required to undertake a prima facie review of the borrower's account within 30 days from such default ('Review Period') and the same has not been undertaken by the Applicant in the present case.
- w. Without prejudice to the above, even otherwise, the amounts as alleged were not "overdue". Further, without



prejudice, the Corporate Debtor fulfilled all the conditions under the said circular including condition (iv) of the said circular which provides for a 6-month window to make payments. As aforementioned, sufficient credit entries came into the cash credit account during 01.09.2017 up to 31.03.2018 for servicing any amounts due as instalments under the term loan account.

- x. As such, but for the failure of the Bank itself, there was no amount due or in default in terms of the RBI Circular and the Corporate Debtor was fully entitled to the benefit of the circular.
- y. The document placed on record by applicant itself shows that the account of the respondent was operational and payments in an out of the account were made before and after 30.09.2017 and the account of the respondent were also not frozen after alleged declaration of respondents account as NPA.
- z. Record clearly shows that the Bank also withdrew its notices and proceedings under SARFAESI as many as 4 times. Further proceedings sought to be re-initiated by the



Bank under SARFAESI have been stayed by the High Court.

- aa. Without prejudice, the amounts due under the loan and cash credit facilities cannot be said to be overdue and in default for the purposes of IBC as the term loan account was to be serviced only in terms of the instalments due from time to time and entries towards the same were to be taken by the Bank from the cash credit account, without any intervention from the Corporate Debtor.
- bb. Without prejudice, even otherwise, the entire term loan account and cash credit account does not become due in case of a minor amount remaining due under the said accounts.
- cc. Furthermore, it has been placed on record that the Bank had in the past as well charged exorbitant/excessive interest and thereafter reverted entries to the credit of the account towards such interest to the amount of Rs. 5,16,372.78/- on 05.05.2015 [@ Page 441/Application] and Rs. 8,67,936/- on 30.03.2016 [@ Page 455/Application] totalling Rs. 13,84,308.78/-. Bank Statements from Chartered Accountants clearly reflect an overcharging of



interest to the tune of Rs. 51,97,373/- which further needs to be adjusted and cannot be claimed to have been due as on 30.09.2017.

- dd. Similarly, the amounts paid by third parties/corporate debtors during the process of restructuring of the accounts during the contemporaneous period from November, 2017 to March, 2018 to the tune of Rs. 42 lakhs approx., which has not been returned by the Bank, and has been appropriated as such, also needs to be adjusted against the claimed dues by the Bank.
- ee. Seen thus, there was even otherwise no default on the part of the Corporate Debtor of the amounts due as on 30.09.2017 and any amounts/instalments alleged to be due (Rs. 13,20,491/- as claimed by the Applicant Bank in its subsequent Affidavits before this Hon'ble Tribunal along with the amount due under the ad-hoc facility) could have been easily satisfied with the aforementioned credit amounts, reversal of interest entries, third party payments retained by the Bank etc. all of which were obligations of the Applicant Bank without anything further being required to be done by the Respondent. It is settled law that "due" is



not equivalent to “default” under the IBC. As such, there was no default on the part of the Respondent such as would require the invocation of the provisions of the IBC for declaration of the Respondent as insolvent.

- ff. The “entire loan and cash credit facility” as on 30.09.2017 could not have been said to be overdue or under default as what is due under the said facilities is merely the installments as clearly reflected from the ZLCC meetings minutes. The same is also the admitted position of the Bank and no submissions to the contrary were made during the course of hearing before the Hon’ble Tribunal. In fact, no response to the contrary was so much as offered on behalf of the Bank to a specific query to this effect by the Hon’ble Tribunal. As such, even otherwise, the amount in “default” as claimed in Form 1 of the Section 7 Application is wholly without basis in pleadings, fact or law. As such, the present Section 7 Application is liable to be rejected on that ground as well.
- gg. In the context the learned counsel had also drawn our attention to the two cash Credit Accounts (A/c Nos. 881030110000033 and 890130110000135) and the Term



Loan Account No. (881070210000008) and submitted that the various receivables of the respondent company was being deposited/credited into those Cash Credit accounts and the instalment due as regards term loans were being paid of through transfer/withdrawal entries from those Cash Credit accounts. In the context he stated that as per the normal practice the bank officials on their own would give effect to such transfer/withdrawal entries from Cash Credit accounts to the term loan account and that the same was being done but then in the year of 2017 at some point of time they had not transferred/withdrawal the amount from Cash Credit to the term loan account and created an artificial situation of default in respect of its term loan accounts. On this the learned counsel for the applicant/Financial Creditor submitted that the due instalments in respect of term loan was recovered through the Cash Credit accounts till the closing negative balance (overdraft amount) was within the limits granted against those cash credit accounts. Both the learned counsels had referred to the relevant entries in all these accounts.



14. We have heard the counsels from both sides and have perused the records. On basis of the Pleadings and submissions of both sides, the issues for determination are as under: -

- (A).** Whether there exists a “financial debt” under **Section 5(8)** of the IBC owed by the Corporate Debtor to the Financial Creditor?
- (B).** Whether the Corporate Debtor has committed a “default” under **Section 3(12)** of the IBC, 2016, with respect to the financial debt in the Term Loan and Cash Credit Accounts as on the NPA date (30.09.2017), accepted as the date of default?
- (C).** Whether there was a default on the date of classification of the Corporate Debtor’s account as an NPA on 30.09.2017.
- (D).** Whether the application under Section 7 is maintainable, given that disputes about the NPA classification are immaterial?
- (E).** Whether the application under Section 7 of the IBC, 2016, is maintainable and within the period of limitation?

15. Issue No.(A): Existence of Financial Debt:

15.1. Under Section 5(8) of the IBC, 2016, a financial debt is defined as a debt along with interest, if any, disbursed against the consideration for the time value of money. The Applicant has provided loan sanction documents (Annexure D), acknowledgement of debt, and a statement



of accounts certified under the Bankers' Books Evidence Act, 1891, establishing that term loans and cash credit facilities were disbursed to the Corporate Debtor. The mortgages created as security are evidenced by Annexure F.

15.2. The Corporate Debtor does not dispute availing the credit facilities or executing the loan agreements. The CIBIL report (Annexure G) and bank statements (Annexure H) further corroborate the existence of a financial debt. The total amount claimed, Rs.11,57,89,697/-, includes principal and interest, satisfying the definition of financial debt under the IBC, 2016.

15.3. The Corporate Debtor's contention that overcharged interest (Rs.51,97,373/-) and unadjusted third-party payments (Rs.42.00 lakhs) reduce the debt is unsupported by conclusive evidence. The alleged overcharged interest of Rs. 51,97,373/-, supported by bank statements from 2015 and 2016 (Annexure H, Pages 441, 455), pertains to reversed entries and does not affect the default as on 30.09.2017. The Corporate Debtor has not provided



evidence of ongoing overcharging post-2016. Further, the third-party payments lack documentation to prove their applicability to the debt. Thus, the existence of a financial debt is established. Further, even if there is a substance in the claim of the Corporate Debtor, it might only affect the quantum of debt, but it will not make any difference because the amount of debt in any case is not less than Rs 1,00,00,000, the threshold required under section 4 of the IBC, 2016.

16. Issue No.(B) & (C): Existence of Default on the date of NPA:

16.1. Section 3(12) of the IBC, 2016 defines default as the non-payment of a debt, in whole or part, when due and payable. The Applicant's case is based on defaults in the Term Loan Account (No.881070210000008) due to non-deposit of Instalments and Cash Credit Accounts (Nos.881030110000033 and 890130110000135) due to overdraft beyond sanctioned limits and irregular repayments, which led to NPAs on 30.09.2017. The Corporate Debtor challenges the NPA classification and



denies a default, citing operational accounts and the Applicant's failure to appropriate funds.

16.2. The Applicant claims a default of Rs.11,57,89,697/- as on 30.09.2017, when the account was classified as an NPA. The statement of the Term Loan Account (No. 881070210000008) shows no significant repayments after Rs. 1,000/- on 03.09.2017, and overdue amounts from 01.09.2017 remained unpaid within 180 days, as required by RBI guidelines. CIBIL reports (Annexure G), confirming non-payment, further corroborate the default.

16.3. The Corporate Debtor's primary defence is that the NPA classification was invalid, negating the default. It relies on the RBI Circular dated 07.02.2018, which allowed MSME accounts to remain standard if the account was standard on 31.08.2017 and the exposure did not exceed Rs. 250 million on 31.01.2018. The Corporate Debtor claims its account was standard on 31.08.2017, supported by the ZLCC memorandum dated 05.08.2017 and minutes dated 13.09.2017. Deposits in Cash Credit Accounts (Rs. 33,72,643.04/- and Rs. 3,33,18,262.12/-) were sufficient



to service the Term Loan, and the Applicant's failure to debit these accounts created an artificial default.

16.4. However, the Applicant counters that the The NPA classification on 30.09.2017 predates the RBI Circular dated 07.02.2018, which is prospective in nature and does not apply to classifications made prior to its issuance, as no retrospective effect was mandated by the RBI, and the account was not eligible for restructuring due to technical non-viability and persistent irregularities. The statement of accounts shows overdue installments from 01.09.2017, and the Corporate Debtor failed to clear these within the 180-day window provided by the circular. The ZLCC minutes, while noting the account's satisfactory conduct, also reflect a reduction in credit limits, indicating financial stress.

16.5. The Corporate Debtor's reliance on the certificate dated 17.04.2018, stating the account was "operational," is misplaced. The Applicant clarifies that the certificate was issued at the Corporate Debtor's request and did not alter the NPA status. RBI guidelines permit limited transactions



in NPA accounts under specific conditions, and the certificate's reference to unlimited transactions appears to be a standard format rather than a reclassification of the account as standard.

16.6. The Corporate Debtor's argument that the Applicant failed to debit cash credit accounts to service the term loan is also untenable. While the practice of debiting cash credit accounts existed, the Applicant submits that such debits were limited to the sanctioned overdraft limits. The cash credit accounts' statements show credits but also reflect negative balances, indicating that the available funds were insufficient to service the term loan instalments without exceeding the limits. The Corporate Debtor's failure to ensure sufficient funds or instruct specific debits cannot shift the responsibility to the Applicant.

16.7. The Corporate Debtor's contention that the entire loan amount cannot be considered in default is incorrect. Under the loan agreements, a default in instalment payments accelerates the entire debt, as reflected in the SARFAESI notice dated 06.11.2017 demanding Rs.



10,66,21,000/-. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. vs. ICICI Bank & Anr. [(2018) 1 SCC 407, Para 28]*** held that a default, even in part, triggers Section 7 of the IBC, provided the debt exceeds Rs. 1 crore, as is the case here.

16.8. The Corporate Debtor's reliance on the RBI Master Circular on NPA dated 01.04.2023 is misplaced, as it is prospective and inapplicable to the NPA classification in 2017. Further, the Corporate Debtor has not provided evidence of non-compliance with CRILC reporting requirements as per the RBI Circular dated 11.09.2013, which was applicable at the time

16.9. The withdrawal of the SARFAESI notice on 06.04.2022 and the High Court's stay on subsequent proceedings do not negate the default, as they pertain to enforcement actions, not the existence of the debt or default. The Corporate Debtor's MSME status and on-going business operations are irrelevant to the determination of default under Section 7, which focuses solely on debt and default. The Adjudicating Authority has discretion to examine the



existence of a default, but disputes extraneous to non-payment (e.g., NPA classification) are immaterial if debt and default are established. (***Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. [(2022) 8 SCC 352]***).

16.10. The Corporate Debtor's reliance on Cash Credit deposits is misplaced. The primary obligation was to repay the Term Loan, and the Applicant's practice of debiting Cash Credit Accounts was contingent on available limits. The Corporate Debtor provides no evidence that the Cash Credit Accounts had unutilized limits sufficient to cover the Term Loan instalments.

16.11. The **Cash Credit Account statements** show that the Corporate Debtor exceeded sanctioned overdraft limits. Irregular repayments and overdraft beyond limits constitute a default under **Section 3(12)**, as the Corporate Debtor failed to maintain the account within agreed terms.

16.12. The certificate dated 17.04.2018 and operational status until November 2018 do not negate the default. Banking practice allows limited transactions in NPA accounts to



facilitate recovery or operations within restricted limits. The certificate is a procedural formality and does not reclassify the account as standard.

16.13. The deposits cited by the Corporate Debtor, while substantial, were insufficient to regularize the accounts, as the overdraft remained beyond sanctioned limits. The Applicant's evidence of irregular transactions and NPA classification is consistent with a default.

16.14. The Corporate Debtor's objections regarding the NPA classification (e.g., RBI Circular dated 07.02.2018, lack of CRILC reporting, ZLCC documents) are even otherwise immaterial, as the Adjudicating Authority's role under Section 7 is to verify debt and default, not the procedural validity of the NPA classification. The NPA date of 30.09.2017 is accepted as the date of default, supported by the Applicant's statement of accounts (Annexure H), which confirms non-payment of dues. The Corporate Debtor's claim that no evidence of NPA classification was provided is untenable, as the burden to disprove the



default lies with the Corporate Debtor, which it has failed to do.

16.15. The Corporate Debtor's obligation was to ensure repayment of the Term Loan and maintain Cash Credit Accounts within sanctioned limits. The Applicant's practice of debiting Cash Credit Accounts was not mandatory, and the Corporate Debtor provides no evidence of sufficient unutilized limits.

16.16. The deposits (Rs.33,72,643.04/- and Rs.3,33,18,262.12/-) were insufficient to regularize the Cash Credit Accounts or clear Term Loan dues, as evidenced by the Applicant's statements. The default persists regardless of the Applicant's appropriation decisions.

16.17. The Corporate Debtor's claims of overcharged interest (Rs. 51,97,373/-) and unadjusted payments (Rs. 42 lakhs) relate to the quantum of debt, which may be addressed during claim verification in the CIRP but do not disprove the existence of a default exceeding Rs. 1 crore. **(Swiss Ribbons Pvt. Ltd. vs. Union of India (2019) 4 SCC 17).**



16.18. The withdrawal of the SARFAESI Notice dated 06.11.2017 reflects settlement attempts, not an admission of no default. IBC proceedings are independent of SARFAESI actions. The Corporate Debtor's MSME status and ongoing business operations, while relevant for resolution planning under Section 29A of the IBC, are immaterial to the determination of default under Section 7, which focuses solely on debt and default. CIRP aims to preserve operations. Thus, the Corporate Debtor's objections regarding interest, SARFAESI withdrawals, and MSME status do not negate the defaults in the Term Loan and Cash Credit Accounts.

16.19. Thus, a default exists in the Term Loan Account as well as in the Cash Credit Accounts, as the Corporate Debtor failed to repay instalments in the Term Loan Account and exceeded sanctioned limits of the Cash Credit Accounts, and failed to regularize repayments as evidenced by the account statement. Further, there was a default on the date of NPA on 30.09.2017. We are of the view that the law requires the occurrence of a default, and the same is



established by the Applicant. The main defence of the Corporate Debtor questioning the NPA based on the RBI Circular or certificates issued does not support its case. It has not been proved that a default had not occurred.

16.21. Further, the Applicant has established a default exceeding Rs.1.00 Crore, satisfying the threshold under Section 7 of the IBC, 2016.

17. Issue No.(D) & (E) Maintainability and Limitation:

17.1. The application under Section 7 of the IBC, 2016, is filed in the prescribed Form-1, supported by requisite documents, including loan agreements, bank statements, and notices under the SARFAESI Act, 2002. The Applicant's authorized officer has affirmed the application, and the proposed IRP has provided written consent, complying with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Further, the Debt & Default is established and proven even on the given date of NPA as above.



17.2. The application is within the limitation period under Article 137 of the Limitation Act, 1963, which prescribes three years from the date of default. The default occurred on 30.09.2017, as evidenced by the NPA classification and non-payment of instalments (Annexure H). The application, filed on 22.10.2018, is within the three-year period under Article 137 of the Limitation Act, 1963. Additionally, the last credit entry on 31.08.2018 (Annexure H) acknowledges the debt, further extending the limitation period under Section 18 of the Limitation Act

17.3. The Corporate Debtor's contention that the Applicant's subsequent affidavits introduce new grounds for default is incorrect. The additional affidavit dated 22.10.2024 elaborates on the NPA classification and responds to the Corporate Debtor's objections, consistent with the original pleadings in Form-1. The Hon'ble NCLAT's remand order dated 26.04.2024 directed a re-examination of the debt and default, which the Applicant has addressed through existing and additional evidence.



17.4. Thus, the application is maintainable and within limitation.

- 18.** The Applicant has established the existence of a financial debt of Rs.11,57,89,697/- owed by the Corporate Debtor, supported by loan documents, bank statements, and a CIBIL report. The Corporate Debtor defaulted on its repayment obligations, as evidenced by the term loan account statement showing overdue instalments from 01.09.2017, leading to default on 30.09.2017.
- 19.** The Corporate Debtor's objections regarding the NPA classification period are untenable. The RBI Circular dated 07.02.2018 provides relief for MSME accounts, but disputes regarding its applicability are immaterial, as the focus is on debt and default. Further, the **RBI Circular dated 07.02.2018** does not apply retrospectively, and the Corporate Debtor failed to meet its conditions. **Master Circular on NPA dated 01.04.2023** and **Circular dated 11.09.2013** mandate NPA classification procedures, but procedural disputes are irrelevant if non-payment is established. **Section 7(5)** mandates admission if a default is established, the application is complete, and no disciplinary issues exist with the IRP. The



Applicant's conduct, including the certificate dated 17.04.2018 and limited account operations, does not negate the default status.

- 20.** The Corporate Debtor's claims of overcharged interest, unadjusted payments, and the Applicant's failure to debit cash credit accounts lack evidentiary support and do not disprove the default.
- 21.** The application is maintainable, filed within the limitation period, and complies with procedural requirements under the IBC, 2016.
- 22.** In view of the above findings, this Adjudicating Authority is satisfied that the Applicant has proved the existence of a financial debt and a default exceeding Rs. 1 crore, warranting the initiation of CIRP against the Corporate Debtor under Section 7 of the IBC, 2016.
- 23.** The objections raised by the Corporate Debtor are dismissed as being without merit, as they fail to disprove the debt or default.



24. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

25. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **MP Agro BRK Energy Foods Private Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the IBC, 2016.
- (ii) Consequently, an Interim Resolution Professional (IRP) is appointed, and a moratorium under Section 14 of the IBC, 2016, is declared, prohibiting all of the following as per Section 14(1) of the IBC, 2016: -
 - a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*



- c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing,



shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

- (v) As proposed by the Financial Creditor, we appoint **Ms. CHAYA GUPTA**, having Registration No.IBBI/IPA-002/IP-N00984/2020-2021/13133, having the address: I, Bima Nagar, 202, Almas Dreams Apartment, Near Anand Bazaw, Indore, Madhya Pradesh,452018 (**e-mail: guptachayacs@gmail.com**) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all its functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the



management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of the obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority a periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Financial Creditor to pay the IRP a sum of **Rs.3,00,000/- (Rupees Three Lakh Only)** in



advance within seven days from the date of this order, as per Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to meet the costs of CIRP, including public notice and claim invitations, until the Committee of Creditors decides on the IRP's fees/expenses.

- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal, specifically mentioning regarding admission of this Application, and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the



initiation of CIRP against the Corporate Debtor timely.

(xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

26. Accordingly, this Application **TP(IB)/200/2019** old **CP(IB)/548/MP/2018** is hereby admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)