**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH, COURT-II**

**CP (IB) 331/MB/C-II/2020**

Under section 7 of the Insolvency and Bankruptcy Code, 2016

*In the matter of*

**Bank of India**
**[PAN: AAACB0472C]**
**[TAN: MUMB16546F]**
Branch Office at Mumbai Large Corporate Branch, Bank of India Building, 4th Floor, 70-80, M G Road, Fort, Mumbai - 400001.

…Financial Creditor/Petitioner

Versus

**VVF (India) Limited (demerged entity of VVF Limited)**
**[CIN: U24296MH2010PLC210239]**
109, Opp. Sion Fort Garden, Sion (East), Mumbai – 400022.

…Corporate Debtor/Respondent

**Order Delivered on 23.09.2021**

***Coram:***

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances (through video conferencing):***

For the Financial Creditor : Mr. Nausher Kohli, Advocate i/b DSK Legal.

For the Corporate Debtor : Mr. Mustsafa Doctor, Counsel i/b M/S Dhruve Liladhar & Co.

## ORDER

***Per: Shyam Babu Gautam, Member (Technical)***

1. This is a Company Petition filed under section 7 ("**the Petition"**) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Bank of India** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **VVF (India) Limited** ("the Corporate Debtor").
2. The Corporate Debtor is a Public company limited by shares and incorporated on 22.11.2010 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Company Identity Number (CIN) is **U24296MH2010PLC210239**. Its registered office is at 109, Opp. Sion Fort Garden, Sion (East), Mumbai – 400022. Therefore, this Bench has jurisdiction to deal with this petition.

**Submissions made by Financial Creditor by way of Application/Petition:**

3. The Applicant / Financial Creditor has filed the captioned petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for initiating corporate insolvency resolution process against the Corporate Debtor ("**Petition**"). The captioned petition was filed on January 17, 2020.
4. The Applicant had sanctioned / revised / reviewed / continued various fund based and non-fund based working capital facilities to VVF (India) Limited ("**VVF India/Corporate Debtor**") for a total sum of INR 283.65 Crore ("**Loan Amount**"). The said Loan Amount was disbursed to the Corporate Debtor in accordance with the terms and conditions set out in the various sanction letters. As mentioned in the Petition, the amount in default along with the interest is INR 293,42,50,526.79/-

("**Financial Debt**"), which is due and payable by the Corporate Debtor in favour of the Applicant.

**Particulars of Total Amount of Debt granted**:

| S. No. | Particulars | Existing (Rs. In crores) |
|---|---|---|
| 1. | WCTL | 19.98 |
| 2. | Long Term Working Capital Loan | 71.98 |
| **Total Term Loans** | | **91.96** |
| 1. | WCFBL<br>CC/ WCDL/ FCL/ EPC/ PCFC/ FBP/ FBD/ FCBD DP/DA- 180 days | 26.00 |
| **Total/ Max WCFB** | | **117.96** |
| 1. | LC (I/F) (DP/DA 180 days) ## | 84.07 |
| 2. | BG | 30.00 |
| 3. | EPBG | 45.05 |
| 4. | Credit exposure` | 6.57 |
| **Total NFB** | | **165.69** |
| CCPS | | -- |
| **Total Aggregate/ Max** | | **283.65** |

Date of Disbursement: From March 19, 2013 to October 26, 2016.

Banker's Book Annexed as **Exhibit "B"** in the petition contains the date of disbursement.

Amount claimed as on January 14, 2020 including the Interest Calculated till January 14, 2020 is INR 2,93,42,50,526.79 (Indian Rupees Two Hundred and Ninety-Three Crore Forty-Two Lakhs Fifty Thousand Five Hundred and Twenty-Six point Seven Nine Only)

Date of Default: December 31, 2017 (Date on which account was declared as an NPA). Details Pertaining to Default amount and the interest are Annexed as **Exhibit "C"** in the petition.

5. The Financial Creditor has placed on record the particulars of Financial Debt documents, Records and Evidence of Default

| **Sr. No.** | **Particulars** |
|---|---|
| i. | Deed of guarantee dated October 21, 2016 |
| ii. | Share Pledge Agreement dated October 21, 2016 |
| iii. | Promoters undertaking dated October 21, 2016 |
| iv. | General counter guarantee and indemnity covering several guarantees dated April 17, 2015. |
| v. | Counter indemnity for guarantee limit dated April 17, 2015 |
| vi. | Personal guarantee dated April 17, 2015 |
| vii. | Promoters Undertaking dated April 17, 2015 |
| viii. | Supplemental Deed of Hypothecation dated July 02, 2013 |
| ix. | General counter guarantee and indemnity covering several guarantees dated June 02, 2014 |
| x. | General counter guarantee and indemnity by surety dated June 02, 2014 |
| xi. | First Supplement Share Pledge Agreement dated August 11, 2016 |
| xii. | Deed of guarantee dated January 05, 2017 |
| xiii. | Deed of Personal Guarantee dated January 22, 2013 |
| xiv. | Deed of Personal Guarantee dated October 21, 2016 |
| xv. | Indenture of Mortgage dated June 01, 2017 |

| | |
|---|---|
| xvi. | Indenture of Mortgage dated July 31, 2014 |
| xvii. | Memorandum of entry dated November 29, 2016 |
| xviii. | Indenture of Mortgage dated March 09, 2013 |
| xix. | Deed of Guarantee dated July 02, 2013 |

6. The Financial Creditor has also placed on record estimated value of security and collateral against the total debt which is as below;

**Estimated Value of Security**

Primary:

Margin money for bank guarantee and Letter of credit in form of Term Deposit of INR 5,66,85,024.75 (which will be set off at time of claim)

**Collateral:**

Details of properties charged to Bank of India under Consortium

| S. No. | Particulars |
|---|---|
| 1. | Kutch Unit – 1<br><br>Address: Survey No. 65 & Survey No. 95/A & 95/B,<br>Village Meghpar, Borichi, Taluka Anjar,<br>Dist, Kutch-I, Gujrat<br><br>Valuation by Kakode Associates Consulting Private Limited dated July 17, 2017;<br><br>Market Value: INR 25.43 crores<br>Realisable Value: INR 20.36 crores<br>Distress Value: INR 15.27 crores |
| 2. | VVF Limited Sion Plant |

| | |
|---|---|
| | Address: Plot No. 109 & 109 B, Opposite Sion Fort Garden, Sion East, Mumbai 400022<br><br>Valuation by Kakode Associates Consulting Private Limited dated September 21, 2018<br>Market Value: INR 26,686.96 Lakhs<br>Realisable Value: INR 22,683.92 Lakhs<br>Distress Value: INR 20,0152.22 Lakhs |
| 3. | Taloja Property<br>Address: Plot No. V-39 & V-40 in Taloja Industrial Area, ] within the village limits of Chal, Taluka and registration sub-district Pavel, District Raigad<br>Valuation by Kakode Associates Consulting Private Limited dated July 17, 2017<br>Market Value: INR 869.42 crores<br>Realisable Value: INR 739.01 crores<br>Distress Value: INR 608.59 crores |
| **Details of property held exclusively by Bank of India** | |
| 1. | Dadar Property<br>Address: Flat No. 502, B-Wing, situated at Dadar Parsee Colony, Dadar East, Mumbai 400014<br>Valuation by Dadbhawala Architects, Engineers & valuers Ltd- INR 3,65,40,000/-<br>Copy of ROC Search Report is Annexed as **Exhibit "D"** in the petition. |

7. The following is a brief chronology of events, in relation to the pending Financial Debt of the Corporate Debtor:

   i. The Corporate Debtor has availed of various fund based and non-fund based working capital facilities from the Financial Creditor from time to time;

ii. The Corporate Debtor and its Promoters executed inter alia the following Securities in favour of the Applicant, for securing the disbursement of the Loan Amount:

(a) Indenture of Mortgage
(b) Memorandum of Entry
(c) Deed of Hypothecation
(d) Share Pledge Agreement
(e) Deed of Guarantee
(f) Personal Guarantee
(g) Promoters Undertaking
(h) General Counter Guarantee and Indemnity;
(i) Counter Indemnity

iii. Due to various defaults committed by the Corporate Debtor, the account of the Corporate Debtor was classified as a Non-performing Asset by the Applicant on December 31, 2017 but with effect from October 24, 2016 ("NPA"). As per RBI guidelines (Income Recognition and Asset Classification Master Circular dated 15.07.2015), if a company fails to repay the loan liability sanctioned to the borrower under corrective action plan, then the asset classification of the borrower will be considered from the cut-off date considered for the implementation of the corrective action plan ("CAP"). In this account, under CAP, long term working capital loan was sanctioned in 2016 and due to payment default the Statutory Central Auditors of the Applicant classified the Corporate Debtor as an NPA on December 31, 2017 with effect from October 24, 2016 i.e. from the implementation date of the CAP.

iv. The Financial Creditor had addressed a demand notice to the Corporate Debtor dated November 11, 2019 for demanding the repayment of the Loan Amount, along with interest thereto. The

Corporate Debtor had replied to the demand notice on November 18, 2019, however, the reply did not contain any averments denying that the debt is not due and payable by the Corporate Debtor to the Applicant.

v. On March 11, 2019, the Corporate Debtor issued a Revival Letter addressed to the Applicant inter alia confirming and admitting the existence of the various facilities and security documents availed by and executed by the Corporate Debtor and its Promoters. Further, in the Revival Letter dated July 24, 2020, executed by the Corporate Debtor and its Promoters, it has expressly admitted its liability to the Financial Creditor. By virtue of issuing Revival Letters dated March 11, 2019 and July 24, 2020, the period of limitation stood extended in accordance with Section 18 of the Limitation Act, 1963.

8. The Financial Creditor and the Corporate Debtor has Executed 14 agreements/contracts reflecting all amendments and waivers, which is forming part of the Financial Creditor's pleadings

**List of Contract Reflecting All Amendments and Waivers as on the Date**

| S. No. | Particulars |
|---|---|
| 1. | Common loan Agreement dates October 21, 2016. |
| 2. | Master Joint Lenders Forum Agreement dated December 30, 2015. |
| 3. | Lenders Agent Agreement dated October 21, 2016. |
| 4. | Inter-Creditor Agreement dated October 21, 2016. |
| 5. | Deed of Accession (Common Loan Agreement) dated January 05, 2017. |
| 6. | Deed of Accession (Lenders Agent Agreement) dated January 05, 2017. |

| | |
|---|---|
| 7. | Deed of Accession (Inter Creditor Agreement) dated January 05, 2017 |
| 8. | Working Capital Consortium Agreement dated March 09, 2009 |
| 9. | First Supplemental Working Capital Consortium Agreement dated June 24, 2011 |
| 10. | Second Supplemental Working Capital Consortium Agreement dated August 30, 2011 |
| 11. | Third Supplemental Working Capital Consortium Agreement dated February 07, 2013 |
| 12. | Facility Agreement dated April 17, 2015 |
| 13. | Facility Agreement dated July 02, 2013 for granting term loans |
| 14. | L 440- instalment letter dated July 02, 2013 |

9. The reliance has been placed on additional documents to prove the existence of the financial debt, the amount and date of default;

**List of Other Documents Attached to this Application**

| **Sr. No.** | **Particulars** |
|---|---|
| 1. | Sanction letter dated January 19, 2013 from BOI to VVF transferring the limits in the name of VVF post demerger of core business of VVF, copy of which is Annexed as **Exhibit "E"** in the petition. |
| 2. | Sanction Letter dated April 16, 2013 from BOI to VVF review of credit facilities, copy of which is Annexed as **Exhibit "F"** in the petition. |
| 3. | Sanction Letter dated May 20, 2014 from BOI to VVF for review of credit facilities, copy of which is Annexed as **Exhibit "G"** in the petition. |
| 4. | Sanction Letter dated April 13, 2015 from BOI to VVF for review of credit facilities, copy of which is Annexed as **Exhibit "H"** in the petition. |

| | |
|---|---|
| 5. | Sanction Letter dated June 29, 2016 from BOI to VVF sanction of long-term working capital loan, copy of which is Annexed as **Exhibit "I"** in the petition. |
| 6. | Letter dated March 11, 2019 from VVF to BOI regarding documents executed by VVF for the purpose of S. 18 of the Indian Limitation Act, 1963, copy of which is Annexed as **Exhibit "J"** in the petition. |
| 7. | Board Resolution of VVF dated August 11, 2016 regarding availing of credit facilities by way of consortium finance in terms of long-term working capital working capital loans under corrective action plan, copy of which is Annexed as **Exhibit "K"** in the petition. |
| 8. | Legal/Demand Notice dated November 11, 2019 addressed by the A.H. Dhunna, Advocate for BOI to VVF calling upon them top repay the amount loaned to them by BOI, copy of which is Annexed as **Exhibit "L"** in the petition. |
| 9. | Balance sheet of VVF for the Financial year 2019 and 2018 reflecting the debt in the books of VVF, copy of which is Annexed as **Exhibit "M"** in the petition. |

10. Since the Financial Debt Amount remain unpaid, the Applicant filed the captioned petition before this Tribunal.

**SUBMISSIONS MADE BY THE CORPORATE DEBTOR BY WAY OF AFFIDAVIT IN REPLY:**

11. The Corporate Debtor submits that a consortium of nine banks had advanced certain facilities to the Corporate Debtor. The Financial Creditor is a part of this consortium of banks. No other bank has initiated proceedings under the IBC. A Joint Lenders Forum ("**JLF**") was formed

comprising the consortium of nine banks. Various attempts were made to restructure debt of the Corporate Debtor. However, for some reason or the other, the proposed restructuring of the Corporate Debtor did not fructify. Presently discussion are going on with an asset restructuring company and some banks have assigned the Corporate Debtor's account to an asset reconstruction company. The remaining banks continue to be in talks with the said asset reconstruction company for taking over the account of the Corporate Debtor.

12. The basis of the present Petition is 14 agreements/contracts executed between the parties as is apparent from read with Clauses 5 and 8 at pages 9 and 10 of the Petition respectively.

13. The Corporate Debtor states that vide 17th August 2020, reply to the petition inter alia setting out is preliminary objection to the maintainability of the Petition on the ground that the Petition is incomplete as it does not enclose the financial contracts/agreements executed between the parties that are mandatorily required to be filed along with the Petition as per the provisions of the IBC and the Rules framed thereunder. Thereafter, on 11th March 2020, that is much after the present Petition was filed, the financial Creditor filed a record of the Corporate Debtor's alleged default with the Information Utility, which was disclosed by the Financial Creditor only in its Affidavit in Rejoinder dated 21st August 2020. The basis on which the Petition was filed remains unaltered.

14. The present Petition is filed on the basis of 14 agreements/contracts between the parties as stated above. This is evident from Clauses 5 and 8 at pages 9 and 10 of the Petition respectively. The Financial Creditor has failed to annex any of the said 14 agreements/ contracts to the present Petition. It is to be noted under Clause 3 (page 9 of the Petition),

which reads *"RECORD OF DEFAULT WITH INFORMAATION UTILITY, IF ANY"* The remark is "N.A.".

15. Under Section 7(3)(a) of the IBC, the Financial Creditor is required to furnish, along with the application,
    (a) record of default recorded with the information utility or such other record or evidence of default as may be specified
    (b) name, of the IRP and
    (c) other information as may be specified by the Board.
16. Under Section 7(5)(a) of the IBC, the adjudicating Authority may admit the application only if it is satisfied that it is complete. The present Petition is *ex-facie* incomplete and not in compliance with the provisions of the IBC and rules referred to blow.
17. As per 4 of the Insolvency and Bankruptcy (Applications to Adjudicating Authority) Rules, 2016 ("**Rule**"), an application under Section 7 is required to be filed in Form-1. This application must be accompanied by documents and records as specified. Item 4 of Part V (sr. 5 and 8) of Form-1 of the Rule mandatorily requires a Financial Creditor to attach copies of the latest and complete copy of the financial contracts reflecting all amendments and waivers.
18. Further the Corporate Debtor states that though referred to in its Form 1, the Financial Creditor has failed to annex any of the 14 financial contracts/documents/agreements between the parties. Apart from some correspondence and certain other letters, the financial Creditor has failed to place on record any loan/ financial documents and /or contracts executed between the parties.
19. The Corporate Debtor submitted that the Petition filed is *ex-facie* incomplete. Therefore, vide Reply dated 17th August 2020 inter alia objected to the maintainability of the Petition on the ground that the Petition is incomplete as it does not enclose the financial contracts/

agreements executed between the parties that the mandatorily required to be filed along with the Petition as per the provisions of the IBC and the Rule framed thereunder.

**SUBMMISSIONS MADE BY FC BY WAY OF REJOINDER:**

20. In its Reply, the Corporate Debtor has alleged that the application filed by the Financial Creditor is incomplete as it fails to annex the copies of the financial contract which have been entered between the parties. Further, the Corporate Debtor has alleged that the application does not bring on record any loan / financial documents and/or contracts executed between the parties. To support the said allegation, the Corporate Debtor has relied upon Rule 4 read with Form – 1 of the Insolvency and Bankruptcy (Applications to Adjudicating Authority) Rules, 2016 ("**Rules**").

21. Rule 4 of the Rules reads as under:

> *4. Application by financial creditor: — (1) A financial creditor, either by itself or jointly,shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1,* ***accompanied with*** *documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

22. In order to save the stamp duty that would have to be paid if these documents were executed in the state of Maharashtra, the Corporate Debtor requested that the loan and security documents be executed in Daman, Gujarat and Baddi, Himachal Pradesh. The Corporate Debtor has deliberately raised this technical argument knowing fully well that if the Applicant had attached the loan agreement and security documents to the captioned Application, the Corporate Debtor would have called

upon this Tribunal to impound the loan agreement and security documents as they would not have been stamped as per The Maharashtra Stamp Act, 1958. If these documents are brought into the State of Maharashtra, the same would be subject to significant stamp duty implication as per the Maharashtra Stamp Act. The Applicant has already suffered a huge financial burden on account of the failure of the Corporate Debtor in repaying the outstanding debt to the Applicant. Despite this, the Corporate Debtor is now relying on a technical argument and denying the Applicant its right to come before this Tribunal under Section 7 of the Code. Because these documents were executed outside the state of Maharashtra, they have been kept at the same place of its execution in order to avoid payment of stamp duty in the state of Maharashtra.

23. The Financial Creditor without prejudice to the aforesaid submitted that the argument of the Corporate Debtor is misconceived and de hors the provisions of law because the obligation of the Financial Debtor is to bring on record the Information Utility Report, which the Financial Creditor has done. Once the Information Utility Report is brought on record, it conclusively proves the fact that the Corporate Debtor has committed a default. The Financial Creditor is not required to bring any other document on record thereafter. Even on this count, the argument raised by the Corporate Debtor must fail.

24. In the matter of *Anchor Leasing Private Limited v. Euro Ceramics Limited (CP No. 66/IBC/NCLT/MB/MAH/2018)*, this Tribunal has held that the Code nowhere prescribes the compulsory existence of an express agreement to prove a loan and its disbursement and in case there are acknowledgements of such debt by the corporate debtor and/or statements of accounts produced on record which prove the disbursement of the loan amount, the same may adequately reveal the

existence of a creditor-debtor relationship between the applicant and the respondent and due satisfaction of the conditions with respect to existence of 'financial debt' as enumerated under Section 5(8) of the Code. Therefore, on a conjoint reading of the position of law as enumerated by various judgments passed by the Hon'ble Supreme Court of India and the National Company Law Tribunal, Mumbai Bench, it is ex facie clear that the initiation of corporate insolvency resolution process under Section 7 of the Code cannot be defeated on technical grounds (such as contract agreements not annexed to the petition) as long as the Application discloses existence of a financial debt and default thereof.

25. Therefore, the Financial Creditor submits that, in view of the aforesaid, the instant application is complete in all aspects and the allegations made by the Corporate Debtor are without any merits and are frivolous and have been made with a mala fide intent to mislead this Tribunal.

26. The Corporate Debtor has alleged that out of 9 (nine) banks forming part of a Consortium, the Applicant is the only bank which has initiated proceedings under the Code against the Corporate Debtor. The Corporate Debtor has further alleged that no bank is entitled to unilaterally pursue legal proceedings against the Corporate Debtor unilaterally. This allegation made by the Corporate Debtor not only erroneous but is also contrary and inconsistent with the provisions of the Code.

27. Section 7 of the Code read with Rule 4 of the Rules itself states that a financial creditor, may either by itself or jointly make an application for initiating the corporate insolvency resolution process against any corporate debtor. No consent is required from other members of the consortium to initiate legal steps against the Corporate Debtor or to approach this Tribunal to initiate corporate insolvency resolution

process against the Corporate Debtor, when the Corporate Debtor has admittedly failed to repay their dues to the Applicant.

28. Further no consent is required by the lender, from the other members of the consortium to initiate legal steps against the Corporate Debtor or to approach this Tribunal to initiate corporate insolvency resolution process against the Corporate Debtor, when the Corporate Debtor has admittedly failed to repay their dues to the Applicant. The argument of the Corporate Debtor may have had some semblance of weight if the members of the consortium had entered into an Inter Creditor Agreement. In any event, no Inter Creditor Agreement was ever executed between the lenders. The purported Inter Creditor Agreement brought on record by the Corporate Debtor is merely a draft and was never executed.

29. In its Reply that, the Corporate Debtor has alleged that there were payments which were made by the Corporate Debtor in favour of the Financial Creditor, therefore, the Financial Creditor cannot state that the Corporate Debtor has failed to make any payment towards the repayment of the Financial Debt Amount. Even this statement is erroneous and misleading for reasons stated hereinbelow.

    i. When the account of any company becomes an NPA, no transactions are allowed in the said account. However, the Corporate Debtor is allowed to continue with the business operation / transaction with 10% cut back ("Cut Back Amount") to preserve the value of the account maintained with the Applicant. The payments recovered from the Corporate Debtor, i.e., the Cut Back Amount (ranging from 10% initially to 1% now of total transaction value) in holding on operations is appropriated in the account. The Corporate Debtor is deliberately trying to mislead this Tribunal by creating an impression that the Corporate Debtor has been paying

money to the Applicant. This is nothing, but the Cut Back Amount and the Corporate Debtor is not doing this on its own volition.

ii. The lenders have always extended support to the Corporate Debtor, especially, during the outbreak of the Covid-19 virus, when the Corporate Debtor has been allowed to do the business at 0% cutback also. Further, the Corporate Debtor has accepted the sanction letter provided by the Applicant dated June 4, 2019, ("Sanction Letter") for holding on operation with above arrangement. However, it has come to the knowledge of the consortium of lenders including the Financial Creditor that the Corporate Debtor has routed approximately INR 600 Crore during the period June 4, 2019 to February 29, 2020 through Kotak Mahindra Bank, which (at that time) was not a member of the consortium. This was in violation the terms of the Sanction Letter. A copy of the Sanction Letter is annexed as Exhibit E to the Rejoinder. The explanations provided by the Corporate Debtor for diverting the funds has not been accepted by the members of the consortium and the same is under review. Upon completion of the review process, the Financial Creditor will take appropriate measures. The discussion pertaining to the diversion is noted in the minutes of the meeting of the lenders held on July 06, 2020 ("**MoM**"). A copy of the MoM is annexed as Exhibit F to the Rejoinder. In view of the same, the Lenders could not receive the eligible Cut Back amount due to diversion of funds through KMB.

iii. Therefore, as the Applicant had allowed the Corporate Debtor to operate their account for the purposes of their business, the payments made by Corporate Debtor in the said account, are in the nature of Cut Back Amounts. These amounts rightfully belong to the Lenders since it is part of the holding on operations. Further, the

payment recovered from the Corporate Debtor is not even sufficient for clearing the minimum interest and as such the dues are still outstanding.

30. The Corporate Debtor has alleged that the application filed by the Financial Creditor has been filed in violation of the letter and spirit of the RBI Circular dated June 7, 2019 ("RBI Circular") which mandated that all the Creditors of an entity ought to act together. Further, the Corporate Debtor has wrongly mentioned that all the other lenders of the Respondent are desirous of resolving the debt of the Respondent, outside the framework of the Code.

    i. The interpretation of the RBI Circular by the Corporate Debtor is completely erroneous and misconceived. The RBI Circular does not contain any provision which restricts any Lender from approaching this Tribunal. It is a Lenders' prerogative to approach this Tribunal by exercising their statutory right under the Code. No RBI Circular can restrict the exercise of this statutory right.

    ii. Further a transaction to be undertaken with the Asset Reconstruction Company ("ARC") is not the prerogative of the Corporate Debtor, as it is a recovery action undertaken between the lenders and the ARC without the involvement of the Corporate Debtor. Also, the provisions of Code also do not stipulate a provision which restricts the Applicant in filing a petition under Section 7 of the Code. The intent of the Code is to ascertain quick and effective resolution and preserve the assets of the Corporate Debtor.

31. In its Reply, the Corporate Debtor has specified that one of the members of the Consortium being the Federal Bank has already assigned its loan in favour of Kotak Mahindra Bank. Further, the Corporate Debtor has specified that it is at an advanced stage of discussion with one Phoenix

ARC Private Limited being part of the Kotak Mahindra Bank Group for the purposes of achieving a resolution.

i. One of the banks have assigned their debt to a bank and the amount of the debt is fairly insignificant compared to the total outstanding debt due to the entire consortium. Federal Bank Limited has assigned its loan to Kotak Mahindra Bank at a discounted price on the principal amount and writing off their balance exposure including interest. Federal Bank's share is only INR 33.93 Crore viz., merely 3.37% of total outstanding consortium debt.

ii. Further, as discussed in various consortium meetings held in 2018 and 2019, none of the resolution plan nor any recovery, materialized till date due to the incompetent and non-cooperative management of the Corporate Debtor. Further, the Applicant has also mentioned in the consortium meeting held on November 25, 2019, regarding their intention to proceed with recovery action under the provisions of the Code, due to the perennial NPA status of the account of the Corporate Debtor.

iii. Further, the assignment of loan of Federal Bank Limited in favour of Kotak Mahindra Bank was post the filing of the captioned petition, i.e. post January 17, 2020. Therefore, KMB was aware of the application filed by the Applicant and knowingly they entered into a transaction with Federal Bank Limited and became a member of the consortium, post the captioned petition filing date. In view of the same, KMB cannot file any intervention application at this stage for delaying the admission process against the Corporate Debtor.

32. In the Sur-rejoinder, the Corporate Debtor has alleged that as the Corporate Debtor's account was declared an NPA on October 24, 2016 and the present Application being filed on January 17, 2020, the Application is barred by law of Limitation. The allegation made by the

Corporate Debtor is completely baseless and is devoid of any merits. Further, the Corporate Debtor had not raised this allegation in its Reply, therefore, it is very clear that this allegation is an after-thought made with an intention to delay the admission of the captioned petition.

i. The Corporate Debtor has completely ignored the Revival Letter dated March 11, 2019 and Revival Letter dated July 24, 2020, in which letter it expressly admitted its liability and extended the period of limitation "in writing" in accordance with Section 18 of the Limitation Act, 1963. By virtue of such admission in writing, the limitation period stood extended by a fresh period of 3 years from the date of such writing. A copy of the Revival letter dated March 11, 2019 and July 24, 2020 is annexed and marked hereto as **Exhibit "A" Colly**.

ii. Section 18 of the Limitation Act reads as under:

"18. Effect of acknowledgment inwriting —

*(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made inwriting signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation. — For the purposes of this section, —*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal*

*to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word "signed" means signed either personally or by an agent duly authorized in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

iii. As per the RBI guidelines (Income Recognition and Asset Classification Master Circular dated July 15, 2015), if a company fails to repay the loan liability sanctioned to the borrower under corrective action plan, then the asset classification of the borrower will be considered from the cutoff date considered for the implementation of the corrective action plan ("**CAP**"). In this account, under CAP, long term working capital loan was sanctioned in 2016 and due to payment default the Statutory Central Auditors of the Applicant has classified the account as an NPA on December 31, 2017, with effect from October 24, 2016 i.e. from the implementation date of corrective action plan. In any case, the Corporate Debtor has issued Revival Letters on March 11, 2019 and July 24, 2020. Even if we were to presume that the date on which the account became NPA was October 24, 2016, even then the Revival Letter issued by the Corporate Debtor on March 11, 2019 (viz., within expiry of 3 years from October 24, 2016) would give the Applicant a fresh limitation period of 3 years from March 11, 2019. Further, by issuing another Revival Letter on July 24, 2020, the Applicant has got a fresh limitation period for 3 years from July 24, 2020. In view of the Revival Letters issued by the Corporate Debtor on March 11, 2019 and July 24, 2020, this argument of the Corporate Debtor must fail.

iv. In addition to the above, the Corporate Debtor has also reflected the debt owed to the Applicant in its balance sheet for the year ending March 31, 2019. A copy of the entire balance sheet is annexed as Exhibit D to the Rejoinder. Acknowledgement of the debt in the balance sheet also extends limitation.

v. Further, in the case of *Yogeshkumar Jaswantlal Thakkar v Indian Overseas Bank & Ors. [Company Appeal (AT) (Insolvency) No.236 of 2020]*, the Hon'ble NCLAT has held that:

*36. The Present case centers around mixed question of 'Facts' and 'Law'. The 1st Respondent/Bank, as per the format, as mentioned at para 20 of this judgement, had given the date of Default/NPA as 01.01.2016 and that the Section 7 of the application of I&B Code was filed before the Adjudicating Authority 01.04.2019, by the 1st Respondent / Bank. Prima facie, the Appeal needs to be allowed, if this is the single ground. However, in the instant case, the 1st Respondent/Bank had obtained balance confirmations certificate, the last one being 31.03.2017 as mentioned elaborately in Para 21 of this judgement. Although, this Appellate Tribunal had largely held in Rajendra Kumar Tekriwal Vs. Bank of Baroda in Company Appeal (AT) (Ins) No. 225 of 2020 and in Jagdish Prasad Sarada Vs. Allahabad Bank in Company Appeal (AT) (Ins) No. 183 of 2020, (both being three Members Bench) had taken a stand that the Limitation Act, 1963 will be applicable to all NPA cases provided, they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963, the extension of the period can be made by way of Application under Section 5 of the Limitation Act, 1963 for condonation of delay; however, the peculiar attendant facts and circumstances of the present case which float on the surface are quite different where the 1st Respondent/Bank had obtained Confirmations/Acknowledgments in writing in accordance with Section 18 of the Limitation Act periodically. As a matter of fact, Section 18 of the*

*Limitation Act, 1963 is applicable both for Suit and Application involving Acknowledgment of Liability, creating a fresh period of limitation, which shall be computed from the date when the Acknowledgment was so signed.*

33. Also, in the matter of *Manesh Agarwal v Bank of India & Ors. [Company Appeal (AT) (Insolvency) No. 1182 of 2019] and in the matter of Anubhav Anilkumar Agarwal v Bank of India [Company Appeal (AT) (Insolvency) No. 1504 of 2019]*, the Hon'ble NCLAT had passed a similar order considering Section 18 of the Limitation Act and the acknowledgement which is 19 provided in writing for the extension and has held that the petition is not barred by limitation.

34. In the Rejoinder, the Corporate Debtor has alleged that the Records filed with the Information Utility were not filed by the Financial Creditor "along with the petition" as required under Section 7 of the Code.

i. The Applicant had submitted the default records for the Corporate Debtor with the Information Utility i.e. National EGovernance Services Limited ("NeSL"). The default records obtained from NeSL are conclusive proof of the default committed by the Corporate Debtor. The Applicant had not submitted the default records of NeSL at the time of filing of the captioned Application as the Applicant was under the process of submitting the same, and also, there was no mandatory requirement to file the same. The Order mandating filing of the default records was passed post filing of the captioned Application. Therefore, the Applicant did not file the default records from the Information Utility at the time of filing of the Application i.e. on January 17, 2020. In any event, the Applicant has now submitted the default records obtained from NeSL. Therefore, the question of default by the Corporate Debtor does not arise as the default records of NeSL are binding and can be accepted as a proof of default by the Corporate Debtor. Copies of

the records submitted by the Applicant on March 11, 2020 and as generated by NeSL. The same has been annexed as Exhibit C to the Rejoinder.

ii. The captioned Application was filed on January 17, 2020. Pursuant to an administrative order dated May 12, 2020, Hon'ble NCLT Principal Bench directed all applicants filing under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") to mandatorily file default records from the Information Utility ("**Order**"). However, by its subsequent circular dated August 13, 2020, this requirement has now been made optional ("**Circular**"). A copy of the Order and the Circular is annexed to the Rejoinder. Further, vide an order dated August 18, 2020, in the matter of Univalue Projects Private Limited v. Union of India (W. P. No. 5595 (W) of 2020), the Hon'ble High Court of Calcutta has held that the Order is ultra vires to the provisions of Companies Act, 2013 and the Code ("**High Court Order**").

iii. In any case, as per Section 7(3) of the Code, the Applicant is required to file the information utility or other records as an evidence for determining the default. Further, as per Section 7(4) of the Code, this Tribunal shall ascertain the existence of any default by the information utility records which are filed by the creditor. While these Records were not filed at the time of filing the Application as the same was under process, by having done so, the fact that the Corporate Debtor has defaulted is beyond question.

iv. The Hon'ble Supreme Court of India in the case of Innoventive Industries vs ICICI Bank Ltd. [ (2018) 1 SCC407], has held that (Paragraph 28 and 30):

*28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in*

*respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the application Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important.*

……

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

v. Further, there is no such requirement under the provisions of the Code for mandatory filing of utility reports with the Petition. In the

matter of Swiss Ribbons Private Limited v. Union of India [(2019) 4 SCC 17], the Hon'ble Supreme Court has held that (paragraphs 54 and 55):

*54. It is clear from these Sections that information in respect of debts incurred by financial debtors is easily available through information utilities which, under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 [—Information Utilities Regulations‖], are to satisfy themselves that information provided as to the debt is accurate. This is done by giving notice to the corporate debtor who then has an opportunity to correct such information.*

*55.Apart from the record maintained by such utility, Form I appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt: (a) Particulars of security held, if any, the date of its creation, its estimated value as per the creditor; (b) Certificate of registration of charge issued by the registrar of companies (if the corporate debtor is a company); (c) Order of a court, tribunal or arbitral panel adjudicating on the default; (d) Record of default with the information utility; (e) Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925; (f) The latest and complete copy of the financial contract reflecting all amendments and waivers to date; (g) A record of default as available with any credit information company; (h) Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891.*

vi. In the case of Mobilox Innovations Private Limited v Kirusa Software Private Limited [(2018) 1 SCC 311, the Hon'ble Supreme Court has held that:

*7. The Learned counsel went on to argue that there is a fundamental difference between applications filed by financial creditors and operational creditors. A financial creditor's application is dealt with under Section 7 of the Code, in which the adjudicating authority has to ascertain the existence of a default on the basis of the records of an information utility or other evidence furnished by the financial creditor.*

35. Post the declaration of the account of the Corporate Debtor was as an NPA, no concrete actions were taken by the Corporate Debtor to repay back the dues of lenders. Thus, one cannot conclude that Corporate Debtor is having unblemished track record in servicing its debt. Further, due to stress in the account of the Corporate Debtor, the lenders had also sanctioned Corrective Action Plan Long Term Working Capital Loan to bring normalcy in the operations of the Corporate Debtor. However, due to the incompetency of the present management, the Corporate Debtor could not make any improvement in its operations, and in turn the account was classified as NPA. Considering, no resolution is achieved for repaying the lenders, it can be construed that the promoters of the Corporate Debtor are non-committal and non-cooperative in bringing any resolution. It can be further added that none of the resolution suggested for the recovery of the account of the Corporate Debtor, i.e. SDR, S4A, Resolution plans under RBI Circular dated February 12, 2018, June 07, 2019, brand sale etc. could be implemented in the account of the Corporate Debtor because the resolution plan proposed by the Corporate Debtor were completely lacking in merits and the incompetency and non-cooperative attitude of the Corporate Debtor / present management.

    i. The Corporate Debtor is in a terrible financial condition is because of the manner in which the current management of the Corporate Debtor is running the affairs of the Corporate Debtor. If they are

permitted to continue with the affairs of the Corporate Debtor in the same manner, there is no scope for either the Applicant or any other consortium lender to recover any monies that are already due and outstanding.

ii. The account of the Corporate Debtor is fit for resolution under the provisions of the Code considering (i) the present management is incompetent in running the Corporate Debtor so as to repay the loan of the lenders; (ii) there is EBIDTA generation in the Corporate Debtor; (iii) resolution professional appointed by this Tribunal can remove any hurdles from the present management and thereby effectively and efficiently run the Corporate Debtor; (iv) The Corporate Debtor is itself recognizing its inherent value (land, P&M, brand value etc), with which new investor can be scouted as part of the corporate insolvency resolution process; (v) Further diversion of funds by the present management of the Corporate Debtor, if any, can be prevented; (vi) Resolution Professional will investigate into the affairs of the Corporate Debtor's past transactions as per Code and file necessary applications for setting aside fraudulent/preferential transactions; and (viii) as per the provisions of the Code, value maximization and price discovery can be achieved thereby benefitting all the stakeholders as per the Code.

36. In view of the aforestated reasons, the Applicant respectfully prays that it is just, necessary and expedient for this Tribunal to allow the captioned petition and pass an admission order against the Corporate Debtor, under Section 7 of the Code.

**SUBMISSIONS MADE BY THE CORPORATE DEBTOR BY WAY OF THE SUR-REJOINDER:**

37. In paragraph 12 of its Rejoinder, the financial Creditor has purported to contend that the Corporate Debtor's submission regrading non-filing of the 14 Agreements/ the Petition being incomplete is "technical". It has further purported to contend that the 14 Agreements were executed in Gujarat and Himachal Pradesh and that if the 14 Agreements are produced before this Tribunal, it would lead to impounding of the 14 Agreements as they attract significant stamp duty under the Maharashtra Stamp Act, 1958. The Financial creditor has along with its rejoinder also purported to produce the record with the Information Utility.

38. The IBC provides for a specific manner in which an application is to be filed with details of the required documents to be furnished with an application. The Financial Creditor has opted to file the present Petition on the basis of the 14 Agreements. The financial Creditor cannot be allowed to the violate the requirement of the IBC by (i) deliberately not following the statutory provisions in this regard and (ii) avoiding placing the 14 Agreements before this Tribunal on the bogey of stamp duty.

39. The Hon'ble supreme Court of India in the case of *Surendra Trading company v. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. (2017) 16 SSC 143 (Paragraphs 21-24)* has inter alia held as under:

    a. *First stage under the IBC is the filing of the application. When the application is filed, the Registry of the adjudicating authority is supposed to Scrutinize the and to find out as to whether it is complete in all respects or there are certain defects.*

    b. *If there are defects, the applicant will be notified of those defects so that they are removed. Once the defects are removed then the application would be posted before the Adjudicating Authority.*

    c. *Till the objection are removed it is not to be treated as an application validly filed inasmuch as only after the application is complete in every respect it is required to be entertained.*

40. The present Application is ex-facie incomplete as documents which are mandatorily required by the IBC and Rule to be annexed along with the Petition are missing from the Application. It is submitted that in these circumstances., as per the law laid down by the Hon'ble Supreme Court of India in the case of *Surendra Trading*, the Petition being defective ought never to have been posted for hearing before this Tribunal as it could not have been treated as an Application validly filed. In any event and without prejudice to the above it is submitted that the present Application being incomplete, defective and not in accordance with the provisions of the IBC and the Rules, is now required to be dismissed.

41. It is settled law that when any statutory provision envisages a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed in the said Act- *J & K Housing Board & Anr. v. Kunwar sanjay Krishan Kaul & Ors. (2011) 10 SCC 714 @ paragraph 32*. Thus, the mandate of Section 7 read with Rule 4 of the Rules and Form 1 cannot be deviated from.

42. The IBC is a status has very drastic consequences for a Corporate Debtor. The provisions of the IBC therefore, must be strictly interpreted and construed. In the case of *Vir Vikram vaid b. Offshore Testing & Inspection Services Pvt. Ltd*. This Tribunal by its Order dated 7th July 2017 has inter alia held that a running concern is to be declared bankrupt or insolvent if the insolvency process is commenced under the IBC and therefore, judicial discipline requires the adoption of a strict interpretation of the language used in the IBC.

43. Strict adherence with the provisions of IBC are mandatory. In the case of *Sanjeev Jain v. Etrnity Infracon pvt. Ltd. (MANU/NC/0586/2017-paragraphs 17-19),* the NCLT has held that "when the language of the code is clear and explicit the adjudicating authority has to give effect to

it by adhering to the statutory requirements in toto. The provision must be strictly followed substantially as well as procedurally."

44. The Corporate Debtor in its Affidavit in Reply dated 17th August 2020 inter alia objected to the maintainability of the Petition on the ground that the petition is incomplete as it does not enclose the financial contracts/ agreements executed between the parties that are mandatorily required to be filed along with petition. Having no answer to the Corporate Debtor's submission that the present application is incomplete, in its rejoinder, the Financial Creditor purports to produce the alleged default records of the Corporate Debtor with the Information Utility. This is not withstanding the fact that in respect to Clause 3 (page 9 of the Petition), which reads *"RECORD OF DEFAULT WITH INFORMATION UTULUTY, IF ANY"* The Financial Creditor has specifically stated "N.A.".

45. It is submitted that the present Petition under Section 7 of the IBC is not filed on the basis of any alleged default record with the Information Utility. The present Petition was filed on 17th January 2020. The Financial Creditor filed a record of the Corporate Debtor's alleged default with the Information Utility only on 11th March 2020**. (page 305 of the Rejoinder)** The Petition could never be based on the record with the Information Utility. In fact, the Petition categorically states that it is not so filed.

46. The fact that the record with the Information Utility has no application to this Petition is borne out by the contents of the Petition itself. In this regard, It is evident from (i) Form 1 Part IV clause 3 **(page 9 of the CP**) and (ii) form 1 Part V Clause 6 **(page 10 of the CP)** of the present Petition where the Financial Creditor categorically states that the "Record of Default with the Information Utility" or "A Record of Default as available with any Credit Information Company" is <u>not applicable</u>. The

stand that is now sought to be taken by the financial creditor is contrary to its own pleading.

47. The production of the record with the Information Utility by the Financial Creditor in its rejoinder does not cure the defect in the petition. As per the NCLT Rules, 2016, a rejoinder is not a matter of right. The same may be filed only for stating additional facts necessary for a just decision, with the leave of the Tribunal and not for setting right a defect the petition. Rule 42 and 55 of the NCLT Rules 2016 where reads as under:

> "42. Filing of Rejoinder: - Where the respondent states such additional facts as may be necessary for the just decision of the case, the bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent
>
> 55. pleading before the Tribunal: – no pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit."

48. In paragraph 4 at Page B of the Synopsis the Petition, the Financial Creditor has stated that it declared the account of the Corporate Debtor as an NPA with retrospective effect from 10th October 2016. Similar Statements are made in the List of Dates at page D of the Petition. The Demand Notice dated 11th November 2019 states that the Corporate Debtor's account was declared as a NPA with effect from 24th October 2016. The Petition was filed on 17th December 2020. On the Financial Creditor's own showing therefore, the Petition was filed is barred by the law of limitation.

49. With a view to prejudice this Tribunal, without any material particulars and completely as an afterthought, the Financial Creditor has contended in paragraph 16 of its Rejoinder that the Corporate Debtor has diverted

approximately Rs.600 crores. This allegation is false and is denied. The allegation of diversion is based only on the fact that the Corporate Debtor has used the account of Kotak Mahindra only for the specific collections, which was to the knowledge of the consortium member. It is not even suggested that these amounts have not been fully and properly accounted for.

50. To resolve the Corporate Debtor's debt outside the purview of the IBC, many members of the consortium of banks are already at advanced stages of discussion with Kotak Mahindra Bank and Phoenix ARC Privat Limited inter alia for the purpose of taking over the alleged debt of the Corporate Debtor. Three out of nine banks from the consortium viz. Federal Bank, IDBI Bank and Axis Bank have already assigned the Corporate Debtor's account to Kotak Mahindra Bank Group it is submitted that the remaining member of the consortium are actively in talks with the Kotak Mahindra Bank Group for assigning their respective accounts. This process is presently underway with an aim to resolve issues outside the IBC. The other 8 banks of the consortium see value in the corporate Debtor, which is a going concern, and are taking steps to resolve issue outside the IBC.

**REBUTTAL OF FC BY WAY OF ORAL ARGUMENTS:**

51. By its judgment dated August 04, 2021 in the case of *Dena Bank v C. Shivkumar Reddy (Civil Appeal No. 1650 of 2020)* ("**Dena Bank Judgement**"), the Hon'ble Supreme Court of India has held that an application filed under Section 7 of the Code is not barred by limitation even if it is filed 3 years after Corporate Debtor's loan account is declared as Non-Performing Asset so long as there is an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of

three years, in which case the period of limitation would get extended by a further period of three years.

52. In the Sur-Rejoinder, the Corporate Debtor has alleged that as the Corporate Debtor was declared a NPA on October 24, 2016 and the present Application being filed on January 17, 2020. Hence, the Application is barred by law of Limitation. While arguing this, the Corporate Debtor has completely ignored the fact that they have issued Revival Letter to the Petitioning Creditor on March 11, 2019, which has been issued before the expiry of the limitation viz., on or before October 24, 2019. Hence, the period of limitation re-commences on March 11, 2019. Further, the Corporate Debtor has issued a second Revival Letter on July 24, 2020, which has been issued before the expiry of the limitation viz., on or before March 11, 2023. In view of the aforesaid, the Corporate Debtor's argument on limitation must fail.

53. The pleadings in the captioned matter stand completed. Therefore, when the matter was listed for hearing on August 05, 2021, the counsel for the Applicant referred to the Dena Bank Judgement and mentioned that all the frivolous defenses taken by the Corporate Debtor in their Reply / Rejoinder / Submissions pertaining to the maintainability of the petition stands dismissed, in view of the Dena Bank Judgement. Therefore, this Tribunal directed the captioned parties to file notes of submissions pertaining to the relevance of the Dena Bank Judgement to the present case.

54. In the Reply and the Sur-Rejoinder, Corporate Debtor has inter alia raised frivolous defenses pertaining to the maintainability of the captioned petition, i.e., the petition being allegedly incomplete due to non-filing of the information utility report at the time of the filing of the petition. The Corporate Debtor has, neither during the course of the oral the hearing nor in the pleadings filed by them before this Tribunal,

denied its liability to pay the outstanding debt to the Financial Creditor. As the Dena Judgement was passed on August 04, 2021, it neither forms a part of the Submissions nor the compilation of judgements which is filed by the Financial Creditor.

55. In the Reply / Rejoinder and during the course of the oral arguments, the Corporate Debtor has alleged that the Records filed with the Information Utility were not filed by the Financial Creditor "along with the petition" as required under Section 7 of the Code. Therefore, the counsel for the Corporate Debtor has alleged that on failure of the Financial Creditor to file the Information Utility report at the time of filing of the petition, the petition shall be treated as incomplete and cannot be listed for hearing. In the Submissions filed on behalf of the Applicant, the Applicant has already specified the relevant provisions and the case laws which proves that filing of the information utility report is not mandatory and that the petition is complete in all aspects. Furthermore, by way of a Rejoinder, the Applicant has brought on record the Information Utility Report, to be considered as a part of the pleadings filed in the captioned matter. According to the Dena Bank Judgment, there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed. The Supreme Court of India also held that even if the documents were brought on record at a later stage, the Adjudicating Authority was not precluded from considering the same so long as the documents were brought on record before any final decision was taken in the Petition under Section 7 of IBC.

In the instant case, the Information Utility Report was not available at the time of filing of the Application. However, the same was available at the time of filing of the Rejoinder. Hence, the Financial Creditor brought

the same on record after the filing of the Application. The relevant paragraphs of the Dena Bank judgement are as follows:

> *75. Section 7(4) of the IBC casts an obligation on the Adjudicating Authority to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor within fourteen days of the receipt of the application under Section 7. As per the proviso to Section 7(4) of the IBC, inserted by amendment, by Act 26 of 2019, if the Adjudicating Authority has not ascertained the existence of default and passed an order within the stipulated period of time of fourteen days, it shall record its reasons for the same in writing. The application does not lapse for non-compliance of the time schedule. Nor is the Adjudicating Authority obliged to dismiss the application. On the other hand, the application cannot be dismissed, without compliance with the requisites of the Proviso to Section 7(5) of the IBC.*
> *91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.*
> *137. Even assuming that documents were brought on record at a later stage, as argued by Mr. Shivshankar, the Adjudicating Authority was not precluded from considering the same. The documents were brought on record before any final decision was taken in the Petition under Section 7 of IBC.*

56. In view of the aforesaid paragraphs and the Submissions filed by the Applicant, it is abundantly clear that the petition is maintainable by law and is complete in all aspects, as per the provisions of the Code and all the defenses raised by the Corporate Debtor are nothing but an attempt to delay the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor.

57. We have heard the arguments of Financial creditor and Corporate Debtor and perused the records.

58. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the

Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

59. Also examined the facts of the case in the lights of following judgements passed by Hon'ble Supreme Court:

i. **Sesh Nath Singh & Anr. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr** ***(passed by SC - Civil Appeal No. 9198 of 2019)-*** In light of section 238A of IBC, this judgment holds that section 14 and section 18 of the Limitation Act also apply to IBC including proceedings under section 7 and section 9 of the IBC.

*"66. Similarly under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.*
*67. As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.*
*68. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order of the NCLAT does not proceed on the basis of any acknowledgment."*

ii. **Asset Reconstruction Company (India) Ltd vs. Bhishal Jaiswal & Anr.** ***(Passed by SC – Civil Appeal No. 323 of 2021)*** **-** This judgment, also refers to **Sesh Nath Singh & Anr. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr,** also holds that section 18 of the Limitation Act is applicable to IBC and further holds that entries in a Balance sheet do indeed amount to acknowledgement of debt for

the purpose of extending the limitation period under Section 18 of the Limitation Act. (Refer paragraphs: 8, 9, 16,21 and 22 to 33).

60. The Corporate Debtor's contention related to not attaching documents relied on by the Financial Creditor is dealt by the Hon'ble Supreme Court in the matter of ***Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr.*** [Civil Appeal No.1650 of 2020] where the same issue was raised, therefore the covers issue in this matter squarely the relevant portion/paras of the same is reproduced here below;

*"26. A third issue which arises for adjudication of this Court is, whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1.*

*69. The scheme of the IBC is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the Corporate Insolvency Resolution Process begins. Where any corporate debtor commits default, a financial creditor, an operational creditor or the corporate debtor itself may initiate Corporate Insolvency Resolution Process in respect of such corporate debtor in the manner as provided in Chapter II of the IBC.*

*91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.*

*144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality*

*or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."*

61. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor owes money to the Financial Creditor.

62. The Financial Creditor has proposed the name of **Mr. Avil Menezes,** Registration No. IBBI/IPA-001/IPP-00017/2016-2017/10041, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

63. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

64. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB) 331/MB/C-II/2020** filed by **Bank of India,** the Financial Creditor, under section 7 of the IBC read with

rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **VVF (India) Limited [CIN: U24296MH2010PLC210239],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the

Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Avil Menezes,** Registration No. IBBI/IPA-001/IPP-00017/2016-2017/10041, having address at 403, Crescent Business Park, Sakinaka Telephone Exchange Lane, Sakinaka, Andheri East, Mumbai - 400072, [email: avil@caavil.com] [Mobile: +91 9930061720], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Dated 23rd day of September, 2021

**Sd/-** **Sd/-**

**SHYAM BABU GAUTAM** **ASHOK KUMAR BORAH**
**Member (Technical)** **Member (Judicial)**

SAM