

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1337/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

Bank of India

[CIN: U99999MH1906PLC000243]

...Financial Creditor/Applicant

V/s

**Marine Drive Hospitality & Realty
Private Limited**

[CIN: U70100MH2004PTC149602]

...Corporate Debtor/Respondent

Order pronounced on: 04.07.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Karan Bhide a/w Mr. Yash
Pandya i/b. MV KINI Law Firm

For the Respondent(s) : Mr. Yash Momaya a/w Mr.
Akash Agarwal i/b ABH Law
LLP

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1337/NCLT/MB/C-IV/2022 filed by Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Marine Drive Hospitality & Realty Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

1.1 The Application is filed on 12.12.2022 by Mr. Harish V, Assistant General Manager, authorized by the Financial Creditor vide Authorization Letter dated 2.12.2022, claiming default amount of Rs. 760,38,97,217.87 (Rupees Seven Hundred Sixty Crore, Thirty-Eight Lakh, Ninety-Seven Thousand, Two Hundred Seventeen and Paise Eighty-Seven Only only) plus further interest as on 30.09.2022.

1.2 The workings for computation of amount in default is reproduced hereinunder:

The computation of amount in default outstanding as on 30.09.2022 owed to Bank of India [Financial Creditor] by M/s Pune Buildtech Private Limited [Corporate Debtor]

[Amount in Rupees]

Nature of Facility	Outstanding as on NPA date 31.12.2015	Unapplied Interest up to 30.09.2022	Penal Interest Up to 30.09.2022	Recovery made post NPA	Total Dues as on 30.09.2022
Term Loan	240,60,79,293.00	523,54,29,204.89	60,88,719.98	437,00,000.00	760,38,97,217.87
Gross Total					760,38,97,217.87

[Supporting Bank Statement in respect of the subject loan account bearing number 016065410000261 is enclosed]

2. The case of the Financial Creditor is as under:

- 2.1 The Financial Creditor had sanctioned Term Loan of Rs. 225 Crore to M/S Pune Buildtech Private Limited (Principal Borrower) vide its Sanction Letter dated 25.09.2013 for construction of residential towers in Yerwada Pune.
- 2.2 The Corporate Debtor extended their guarantee in favour of Financial Creditor guaranteeing the repayment of the said Term Loan together with interest and other charges by executing the Deed of Guarantee dated 30.09.2013.
- 2.3 The Corporate Debtor, Guarantor to the facility extended to the Principal Borrower, is a real estate development company which builds customized office spaces, retail shops, mass residential housing and cluster redevelopment of old housing, operating in and around Mumbai.
- 2.4 To secure the Term Loan, the Principal Borrower alongwith the Corporate Debtor herein has created equitable mortgage in favour of the Financial Creditor. The said creation of mortgage was also Registered with RoC vide Registration of Charges dated 14.11.2013. The

said loan is secured by the primary securities owned by the principal borrower, and is further secured by following collateral securities -

- i. Extension of charge on DB Hill Park admeasuring 80934 sq.mt located at Malad bearing C S No. 827A/4A of Malad (E), Taluka Boriwali, MSD, owned by Mr. Tarashankar Chaubey and D B Realty Pvt. Ltd. holds development right.
- ii. Extension of charge on leasehold rights of Resham Bhavan property admeasuring 1161.34 sq.mt bearing CS No. 1680 of Fort, Mumbai owned by Government of Maharashtra and Lease Hold rights are held by D B Realty Ltd.
- iii. Subservient charge on residual value on Hotel Le Meridien [now Hotel Hilton] bearing old Plot No. Y new Plot no. D, CTS No. 41(part) 47 (part) and 41/B/3/B at village Banpada,

Taluka Andheri East, Mumbai owned by BD
& P Hotels Pvt. Ltd.

- 2.5 The Term Loan, originally sanctioned, was repayable in 21 equal monthly instalments of INR 10.71 crores each commencing 15 months from the date of first disbursement i.e., from February, 2015. Last instalment of INR 10.80 crores payable on October, 2016. Door to door tenor of 3 years from the date of first disbursement. In view of the extension of moratorium period by one year as sought by the Corporate Debtor, the Repayment Schedule has been changed/ modified whereby the door to door tenor was enhanced to four years and the loan was repayable in 21 monthly instalments of Rs. 10.71 Crores, first instalment was payable in February 2016 and last instalment in October 2017.
- 2.6 The Principal Borrower could not complete the project and stopped construction work somewhere in September, 2016 due to shortage of funds. The Financial Creditor

consistently followed up with the Principal Borrower to regularize the above accounts.

- 2.7 The Principal Borrower, despite regular follow up from the Financial Creditor, did not take any steps to regularize the accounts. Due to non-payment of interest from August 2015 onwards, the account has been classified as NPA w.e.f. 31.12.2015 in accordance with guidelines of Reserve Bank of India. Subsequently, Authorized Officer of the Financial Creditor issued notice under Section 13(2) of SARFAESI Act, 2002 to the Principal Borrower.
- 2.8 Since, there was no positive response to the Notice issued under Section 13(2) from the Principal Borrower, the Financial Creditor was constrained to issue Legal Notice on 14.08.2020.
- 2.9 The Financial creditor issued Recall/Invocation Notice dated 27.10.2022 to the Corporate Debtor, i.e M/s Marine Drive Hospitality & Realty Private Limited invoking the Guarantee given by it and also demanding payment of INR 760,38,97,217.87 (Indian Rupees Seven Hundred Sixty Crore, Thirty-Eight Lakh, Ninety-Seven Only) plus,

further interest at applicable rate, costs, dues, and expenses that may accrue from 01.10.2022 till total repayment and settlement of dues by the Corporate Debtor. It is also pertinent to note that, till date there has been no reply to the Recall Notice dated 27.10.2022 issued to the Corporate Debtor.

2.10 The Principal Borrower and Corporate Debtor were, however, acknowledging the debt due to the Financial Creditor from time to time by submitting Acknowledgement of Debt. The last letter of acknowledgement was submitted on 08.03.2021.

2.11 At the same time, the Principal Borrower has submitted OTS proposals on multiple occasions since 2017. The last such OTS proposal was submitted on 30.08.2022 offering an OTS amount of Rs 254 crores. The Financial Creditor, however, did not consider the subject OTS proposal on the grounds that the amount offered in the OTS proposal is too low compared to the liability outstanding and the value of the immovable properties held as security. The said

decision of the Financial Creditor was communicated to the Principal Borrower vide letter dated 28.10.2022.

2.12 The Financial Creditor has filed NESL report dated 17.08.2022 in the name of Corporate Debtor viz M/s Marine Drive Hospitality & Realty Private Limited showing default as 30.08.2015.

Reply by the Respondent/Corporate Debtor

3. The Corporate Debtor has filed affidavit in reply dated 27.04.2023 submitting that the Petition is not maintainable under the Code and is liable to be dismissed in-limine. The Respondent is not a purported “Corporate Debtor” as to describe the Respondent as a “Corporate Debtor” is a gross mischaracterization, leaving the incorrect impression that the Respondent is liable to be admitted to CIRP. The Respondent submits that the Petition is liable to be dismissed on following reasons:

- a. The Petition is prohibited by Section 10A of the Code;
- b. The Petitioner’s claims are time barred and are barred by limitation;

- c. The Petitioner is barred by the Inter Lender Agreement;
- d. Purported debt is not crystalized;
- e. The Petition is an abuse of process of law;
- f. Insufficient stamp documents;

3.1 Assuming for the sake of argument, whilst denying, the Petitioner's formulation of its own case, the Petition is directly barred and prohibited by Section 10A of the Code. Section 10A read with Notification of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 dated September 23, 2020, expressly bars the filing of any Petition inter alia under Section 7 of the Code for any default arising on or after March 25, 2020 and for a period of one year thereafter, i.e. until March 24, 2021.

3.2 In the Petitioner's formulation of its own case, the last acknowledgement received by the Petitioner from the Principal Borrower towards the purported default occurred on March 8, 2021 for a purported sum of Rs.236,36,79,674/- (Rupees Two Hundred Thirty- Six Crores Thirty-Six Lath Seventy-Nine Thousand Six

Hundred and Seventy-Four only). Therefore, it is the Petitioner's case that the "default" occurred on March 8, 2021, which is between March 25, 2020 and March 24, 2021. Accordingly, in view of Section 10A of the Code, the Petition is not maintainable and ought to be dismissed at the threshold, with costs.

3.3 In view thereof, Section 10 A of the Code squarely bars and prohibits the Petitioner from filing the present petition.

3.4 Strictly without prejudice to the above, and assuming only for the sake of argument whilst otherwise vehemently denying the Petitioner's case, on the Petitioner's own framing of it's case, it's claims are barred by limitation, as the Petitioner has claimed that the Principal Borrower committed default on 31.12.2015 and the present petition is filed on 12.12.2022.

3.5 All of the aforementioned facts have been suppressed by the Petitioner from this Hon'ble Tribunal. Even after filing the captioned Company Petition, the representatives of the Petitioner and Principal Borrower are in midst of

discussing OTS proposals. In the facts of the present case, the Principal Borrower and the Petitioner in a meeting held on January 20, 2023 were actively discussing the without prejudice OTS proposals. The Principal Borrower, thereafter, vide its letter dated January 27, 2023 addressed to the Petitioner recorded the discussion held in the said meeting. The Principal Borrower proposed a cumulative settlement with a payment schedule for payment of Rs.540.70 Crores for settling the purported debt due and payable by the Principal Borrower and other two entities of the DB Group. In the letter, the Principal Borrower proposed an OTS of Rs.374.38 Crores with a repayment schedule which was further revised vide its letter dated February 8, 2023. This proposal is under active consideration. Pertinently, at every instance, the Principal Borrower has improvised its OTS. Thus, given the extremely attractive offer made by the Principal Borrower and also the value of the Principal Borrower's assets, it is incumbent upon the Petitioner to accept the same. The Respondent understands that the Principal Borrower's

OTS proposal was attractive and acceptable, such that Allahabad Bank, now merged with Indian Bank, has accepted it.

3.6 The aforementioned facts and documents go to show that this is not a fit case for the invocation of the Code, and that the Petitioner is acting in a demonstrably high-handed, mala fide and illegal manner, and is attempting to misuse the provisions of the Code in a manner not contemplated by law. The attempt to initiate corporate insolvency resolution process through the captioned Petition is a clear misuse of the provisions of the Code.

3.7 As set out above, the Principal Borrower has also availed of credit facilities from Punjab National Bank and Allahabad Bank, now merged with Indian Bank, for the Project. The total borrowing of the Principal Borrower from the Petitioner, Punjab National Bank and Allahabad Bank, now merged with Indian Bank, ("Consortium") is thus INR 286 Crore. The Respondent believes that the Petitioner, Punjab National Bank and Allahabad Bank, now merged with Indian Bank, have entered into an inter-

lender agreement in respect of their loans to Respondent, which is confirmed by the copy of the Inter Lender Agreement dated June 2, 2014. The present Petition is ex facie barred by the provisions of the Inter Lender Agreement, to which the Petitioner is a party, and the terms of which the Petitioner is bound by. The Inter Lender Agreement is entered into for the benefit of all members of the Consortium, including Punjab National Bank and Allahabad Bank, now merged with Indian Bank, whose concurrence is required for the steps being taken by the Petitioner.

- 3.8 The purported debt of Rs.760,38,97,217.87 (Rupees Seven Sixty Crores Thirty-Eight Lakh Ninety-Seven Thousand Two Hundred Seventeen and Eighty- Seven Paise only) ("Purported Debt") is not crystalized. Pertinently, the Principal Borrower, in 2013, had purportedly availed a term loan of Rs.225,00,00,000/- (Rupees Two Hundred and Twenty-Five Cores only) from the Petitioner. However, all of sudden, as on September 30, 2022, the said sum increased to the Purported Debt. It is also pertinent

that the Principal Borrower has paid substantial interest on the Credit Facilities availed from the Petitioner. The Petitioner has failed to demonstrate as to how did the said sum usuriously increased to the Purported Debt. Such a significant increase to the Purported Debt as claimed by the Petitioner is not crystallized. It is trite that if a debt is not crystalized under the Code, the Petition is ought to be dismissed.

- 3.9 The calculation set-out by the Petitioner to recover the Purported Debt is calculated as on December 31, 2015. Thus, the calculation of the Purported Debt itself is wrong and erroneous and thus cannot be relied upon. The Petitioner has made a claim that an amount of Rs.760,38,97,217.87 is payable by the Respondent. In the table at page 22 of the Petition, the Petitioner has made a claim for penal interest and the Petitioner has made a claim for interest on interest. It is submitted that the Petitioner has calculated interest at the rate of 17.45% compounded with monthly rests and that such

a rate of interest is excessively high and exorbitant and also amounts to charging usurious rate of interest which is impermissible and illegal and contrary to the mandate of the Usurious Loans Act. It is further submitted that it is impermissible and illegal for the Petitioner to charge and make a claim for penal interest and make any claim for interest on interest as per settled law.

3.10 The Petition is a gross and egregious abuse of the process of law and of the provisions of the Code.

3.11 Due to non-receipt of NOCs from lenders (including the Petitioner) for sale of flats; hurdles and refusal by the Petitioner to permit the Principal Borrower is a gross and egregious abuse of the process of law and of the provisions of the Code. To make withdrawals from the escrow account for the Project leading to further delays; and the cascading effect of the above factors on the cash-flow of the Principal Borrower, that resulted in being unable to service the Credit Facilities or the

credit facilities availed from Punjab National Bank and Allahabad Bank, now merged with Indian Bank.

3.12 The global economy along with Indian economy had gravely affected due to financial crisis caused by COVID-19. The World Health Organization has declared this as a global pandemic. The stock markets across the globe have experienced heavy downfall during the financial crisis. The real estate sector was already under tremendous pressure and because of the unfortunate and unforeseen crisis, further contributed to its financial difficulties. All these reasons have led to extraordinary force majeure events which have engulfed the entire business community to face financial difficulties like ever before.

3.13 It is further submitted that every facility availed from the banks and/or financial institutions when it converts into a stressed asset because of the extraordinary circumstances prevailing in the market, as a matter of general market practise, the first viable

option rendered to the borrower is of rectification of the facilities by providing additional finance to the borrower, followed by restructuring in which the tenure of repayment of the facility is extended and the interest rate is reduced. After failure of the above two mechanisms, the banks/financial institutions opt for recovery mechanism by taking possession of the security handed over by the borrower. After failure of all the above mechanisms, insolvency/liquidation is the last resort, which is generally opted by the banks/financial institutions to recover their outstanding dues. Despite this, the Petitioner intentionally chose the last option to declare a solvent company as insolvent. The Code was enacted in order to create a comprehensive and robust framework for Insolvency and Bankruptcy proceedings against entities which are likely to become commercially unviable and perennially sick units with no chance of recovery. From the aforesaid, it is clear that the

Respondent is neither commercially unviable nor perennially sick unit. If such proceedings are filed with a sole intention to recover money, then such proceedings will be against the spirit of the Code and will be categorized as fraudulent proceedings under Section 65 of the Code for abusing the process of law.

4. The Financial Creditor filed the Additional Affidavit dated 20.02.2023 placing on record acknowledgement of debt by the Principal Borrower dated 07.01.2015, 01.11.2017, 15.05.2019 and 08.03.2021; various OTS proposals submitted by the Principal Borrower, the last being submitted on 30.08.2022; Audited Financial Statements of the Principal Borrower for the Financial Year 2017-18, 2018-19, 2019-20 and 2020-21; and Audited Financial Statement of the Corporate Debtor for the Financial Year 2020-21. The Applicant also relied upon the decisions of Hon'ble Supreme Court in the case of *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr.*, and *Suo Moto Writ Petition No. 03 of 2022*, to contend that the present Application is within Limitation period.

5. The Corporate Debtor filed an IA-1934/2023, after the Company Petition was reserved for the orders, challenging the Petition on insufficiency of stamps on the loan documents relying upon decision of Hon'ble Supreme Court in case of *NN Global Limited Vs. Indo Unique Flame Ltd. and Others (2023 SCC OnLine SC 495]* ("*NN Global*") stating that all the Agreements were executed in New Delhi and were stamped for Rs.100/-, save and except the Supplemental Term Loan Agreement, which was stamped for Rs.300/- in New Delhi. Amongst the aforesaid Agreements, the Mortgage Deed was executed in Mumbai, Maharashtra and was stamped at Rs.10,00,000/- (Rupees Ten Lacs only); and Joint Mortgage Deed was executed in Pune, Maharashtra was stamped at Rs.10,00,000/- (Rupees Ten Lakh only), accordingly, the documents, not having been stamped in accordance with Article 5(h)(A)(iv) of Schedule I to Maharashtra Stamp Act, 1958, cannot be enforced under law as the same does not exist in view of decision of Constitutional Bench of Hon'ble Supreme Court in case of *NN Global*. The corporate debtor

has urged this Tribunal in the said IA, after reproducing certain Paras from the said decision in support of its contentions, to consider the findings of the Hon'ble Supreme Court of India in the said judgement before passing any judgement in the Company Petition. It has further submitted that there is no doubt that the Agreements referred to and relied upon by the Petitioner in the present Petition to claim a default from the Respondent are insufficiently stamped. On the face of the Agreements, one can see that such Agreements are insufficiently stamped. It has further been submitted that If this Hon'ble Tribunal does not consider the recent judgement on insufficient stamp duty then any orders judgment passed without considering the same will open flood gates and set a dangerous precedent, where such an order will have a catastrophic impact on the matters.

5.1 This Bench finds that the corporate debtor has already taken this ground in its reply on both occasions and the Bench ought to have decided this issue in the light of judicial decisions before it. The Corporate Debtor has

given details of stamp affixed on these agreements,
which are as follows :

Sr. No.	Agreements	Place	Stamp Duty Paid
1.	Term Loan Agreement dated September 30, 2013.	New Delhi	100/ -
2.	Corporate Guarantee dated September 30, 2013 viz. DB Realty Limited, Marine Drive Hospitality Private Limited.	New Delhi	100/ -
3.	Hypothecation cum Loan Agreement dated September 30, 2013.	New Delhi	100/ -
4.	Supplemental Term Loan Agreement dated March 30, 2015.	New Delhi	300

The financial Creditor has filed written submission dated 10.5.2023 placing reliance on the decision of Hon'ble Supreme Court in the case of Innoventive Industries Limited, Bishal Jaiswal, Laxmi Pat Surana, and Dena Bank on the aspect of Limitation; decision of Hon'ble NCLAT in the case of *Sullen Synthetics Limited v. Stressed Asset Stabilization Fund (2022) ibclaw.in 904 NCLAT* on the aspect of dispute in quantum of debt claimed as due; and Hon'ble NCLAT, Chennai Bench decision in the case of *Ashique Ponnamparambath vs. The Federal*

Bank Limited (At) (CH)(Insolvency) No. 22 of 2021 on insufficiency of stamp duty, wherein it was held that “However, in addition to the Term Loan Agreement, the Financial Creditor relies on Demand Promissory Note, Hypothecation letter regarding depositing of title deed, a certified copy of the bank statement, and so many other documents filed along with the Application. Therefore, even if it is considered that the Term Loan Agreement is insufficiently stamped and it cannot be accepted in evidence, then also alleged debt and default are proved beyond doubt.”

Findings:

6. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.

6.1 The Counsel for the Corporate Debtor vehemently argued that the present petition is in nature of Recovery Proceedings and no resolution, as the mandate of IBC is, is sought to be intended by the present application. To support its contention, the Counsel drew our attention to the various OTS proposals latest being Proposal dated 31.08.2022, having been submitted by the Principal Borrower. The Corporate Debtor also placed reliance on the Hon’ble

Supreme Court's decision in the case of *Vidarbha Industries (2022 (8) SCC 352)*.

6.1.1 This Bench notices that the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC* had held that "*The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the Adjudicating Authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the Adjudicating Authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred.*"

6.1.2 Even the case of Corporate Debtor is not sustainable in view of decision in the case of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC* holding that "*it was clarified by the order in review that the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) was in the setting of*

facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries(((2018) 1 SCC 407)) and E.S. Krishnamurthy(((2022) 3 SCC 161)). The view taken in the case of Innoventive Industries(((2018) 1 SCC 407)) still holds good.”

6.1.3 Hence, this Bench does not find any merit in the argument that the said proceedings are meant to recover the outstanding and do not seek the resolution of the Corporate Debtor, as mandated under the IBC.

6.1.4 The sufficiency of security is not a relevant consideration in a proceeding u/s 7 of the Code, however it is dealt with in detail in later paras. On the contrary, it invalidates the argument of the Corporate Debtor that the present proceedings seek to recover the outstanding than to resolve the corporate debtor. A lender, having comfortable security and intending to recover its money, would prefer to take over the assets of the borrower under SARFAESI Act to have it auctioned for realisation of its outstanding.

6.2 The Corporate Debtor has further pleaded that the financial creditor has relied upon an acknowledgement dated 08.03.2021 to support its case being within the limitation period. This Bench finds that the Guarantee of the Corporate Debtor was invoked on 27.10.2022 asking it to pay within 7 days the amount claimed in default, accordingly the date of default qua corporate debtor would be 5.11.2022, considering that the notice for invocation of guarantee came to be delivered within 48 hours. The date of default qua Principal Borrower is stated as 31.08.2015 in part IV of the Form 1 forming part of the present petition and is further evidenced by the record of default at NeSL portal . The Corporate Debtor has not disputed that this is not correct date of default qua Principal Borrower and the fact of invocation of guarantee qua Corporate Debtor. Instead, the Corporate Debtor argues that fresh date of default comes into existence when the outstanding debt is said to have been acknowledged i.e. 08.3.2021 by the Corporate Debtor and the said date falls within the period prescribed in section 10A of the IBC barring filing of any application u/s 7, 9, & 10 under the IBC.

6.2.1 This Bench finds the said argument is ex-facie illegal and not in accordance with stated position in numerous decisions of higher courts, wherein it has been consistently held that the default arises when the debt due is not paid and the subsequent events do not give rise to any fresh date of default. The subsequent acknowledgement acknowledges the liability and does not cause any default having come into existence.

6.3 The Corporate Debtor has also argued the date of default qua Principal Borrower, as stated in Part IV of Form 1 forming part of the petition, is 31.12.2015, and accordingly, the period of limitation runs from the said date of default. The present petition is filed on 12.12.2022, hence, the said application, having been filed beyond a period of 3 years from the date of default, the present application deserve to be dismissed on ground of limitation.

6.3.1 This Bench notices that the Principal Borrower has acknowledged the debt of Rs. 228,55,21,768/- vide acknowledgement dated 07.01.2015. Further, the debt was acknowledged on 01.11.2017, 15.05.2019 and 08.03.2021. The acknowledgment dated 15.05.2019 confirms the debt of Rs.236,92,95,293/- as due and

payable as on 31.12.2018 plus uncharged interest w.e.f.31.12.2015. In view of said acknowledgement, the period of limitation extends upto 14.04.2022 and thereafter upto 07.03.2024 vide last acknowledgement dated 08.03.2021.

6.3.2 This Bench also finds that the Principal Borrower has acknowledged the said debt in its audited financial statement for the year ended on 31.03.2018, 31.03.2019, 31.3.2020 and 31.03.2021, which contains the corresponding amounts for the preceding year also. The said financial statements clearly show that the Principal Borrower owes debt to the applicant bank, and such acknowledgement extends the period of limitation.

6.3.3 Further, in the case of *Tejas Khandhar Vs. Bank of Baroda (2022) ibclaw.in 496 NCLAT*, it was held that “*Keeping in view the aforementioned ratio laid down by the Hon’ble Apex Court in ‘Dena Bank (now Bank of Baroda)’ (Supra), this Tribunal is of the considered view that the OTS proposal dated 01.08.2016 and the subsequent one on 27.03.2018 falls within the definition of the ambit of ‘acknowledgement of debt’ as envisaged under Section 18 of the Limitation Act, 1963*”. Thus, the various OTS proposals vide letters beginning from 22.06.2017

and ending on 31.10.2022 further extends the period of Limitation.

6.3.4 In the case of *Dena Bank Vs. C. Shivakumar Reddy and Anr (2021) ibclaw.in 69 SC*, the Hon'ble Supreme Court held that acknowledgement of debt in the audited financial statements is a valid acknowledgement of debt u/s 18 of the Limitation Act, thus the period of limitation further gets extended.

6.3.5 Nonetheless, in the case of Suo Moto Writ Petition (C) No. 3 of 2020 in Re: Cognizance For Extension of Limitation, the Hon'ble Supreme Court ordered to exclude the period from 15.03.2020 to 28.02.2022 for the purpose of computation of Limitation Period vide its order dated 10.01.2022. In view of this also read together with acknowledgement dated 01.11.2017, the present Petition can be held to have been filed within the period of Limitation. Hence, this contention of the Corporate Debtor is rejected.

6.4 The Corporate Debtor has challenged the maintainability of this Petition on the ground of insufficiency of stamp duty paid on loan / mortgaged documents in view of decision of *N.N. Global Mercantile Private Limited (Supra)*. The corporate

debtor has contended that the Term Loan Agreement including the other ancillary agreements as mentioned aforesaid, on the basis on which the Petitioner is seeking reliefs, are not valid and legally enforceable for reason of it being insufficiently stamped under applicable law on the ground that the Term Loan and other ancillary agreements are executed in New Delhi, save and except the Supplemental Agreement which was executed in Mumbai. Thus, once such agreements are relied upon by the Petitioner before this Hon'ble Tribunal, which is exercising its jurisdiction in Mumbai, such agreements are known to be brought in Maharashtra. Once brought into Maharashtra for purpose of filing the present Petition under the Code, it is liable to payment of stamp duty under Maharashtra Stamp Act, 1958. It is further stated that as per the provisions of the Stamp Act, the Term Loan Agreement is liable to payment of stamp duty under Article 5(h)(A)(iv) of Schedule 1 of the Stamp Act, which provides payment of stamp duty at the rate of 0.2% of the amount agreed in the contract.

6.4.1 It is also contended that, in the present case, the Term Loan Facility, which was sanctioned to the Respondent was Rs.225 Crores. Therefore, the agreed contractual

value under the Term Loan Agreement is clearly over Rs. 10 Lakh. In view thereof, 0.2% of the total contract value i.e. Rs. 225 Crores will be levied. 0.2% of 225 Crores is Rs.45 Lakh which will be payable as the stamp duty on the Term Loan Agreement. The Petitioner has admittedly paid only Rs. 100/- as evident from the stamp affixed on the Term Loan Agreement. In view of the insufficiently stamped agreement, this Hon'ble Tribunal cannot act and give effect to such agreement. Likewise, the other ancillary agreement inter alia Hypothecation Agreement which is also executed in New Delhi is stamped only at Rs. 100/- in place of Rs. 45 Lakh when the same is relied upon by the Petitioner in the State of Maharashtra. Even in the case of Mortgage Agreement, which is executed in Mumbai, Maharashtra, there is a deficient stamp duty of Rs. 35 Lakh as only Rs.10 Lakh is paid instead of Rs.45 Lakh. Considering while executing the Agreements, the requisite stamp duty was not paid, in addition thereto, penalty at the rate of 2% per month shall be levied on such Agreements. Therefore, in view of the insufficient stamp duty, this Hon'ble Tribunal

cannot take into account such Agreements and give effect thereto.

6.5 This Bench notices that the issue for consideration before the Hon'ble Supreme Court in case of N. N. Global (Supra) was “*Whether the statutory bar contained in Section 35 of the Stamp Act applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, as being non-existent, pending payment of stamp duty on the substantive contract/instrument?*”

6.5.1 The Corporate Debtor has reproduced Para No. 69, 72, 76, 81, 96, 112, 114(v), 120 & 124 from the said decision in support of its contention.

6.5.2 In this case, the Constitutional Bench, by majority of 3:2, held at para 120 that “*An instrument, which is exigible to stamp duty, may contain an Arbitration Clause and which is not stamped, cannot be said to be a contract, which is enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. An unstamped instrument, when it is required to be stamped, being not a contract and not enforceable in law, cannot, therefore, exist in law*” and further held that “*the provisions of Sections 33*

and the bar under Section 35 of the Stamp Act, applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act, would render the Arbitration Agreement contained in such instrument as being non-existent in law unless the instrument is validated under the Stamp Act".

6.5.3 From the above proposition, this Bench notices that the Hon'ble Court held that an instrument, which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument, hence is a void contract in terms of provisions of Contract Act. Accordingly, such instrument can not be taken in evidence by the Court.

6.5.4 This Bench also notices that the Hon'ble Court held at Para 114.v, while adverting to the issue how the Courts will act when an instrument is not stamped or insufficiently stamped, that "*We may, however, qualify what we have said with a caveat. There may be cases, where no stamp duty is seen paid. It paves the way for the unambiguous discharge of duty under Sections 33 and 35 of the Stamp Act. There may, however, be cases, where it may be stamped but the objection is taken by the party that it is not duly stamped. In such cases, no doubt, it is ordinarily the duty of the Court to*

examine the matter with reference to the duty under Section 33(2). If the claim that it is insufficiently stamped, appears to the Court to be on the face of it, wholly without foundation, it may make the Reference on the basis of the existence of an Arbitration Agreement otherwise and then leave it open to the Arbitrator to exercise the power under Section 33, should it become necessary. This approach does justice to the word 'examine' in Section 33(2) of the Stamp Act while not ignoring the command of Section 11(6A) of the Act. It is not to be confused with the duty to examine prima facie whether an 'Arbitration Agreement' exists under Section 11(6A) of the Act, but is related to the duty to examine the matter under Section 33(2) of the Stamp Act".

6.6 Section 34 of the Maharashtra Stamp Act ("Stamp Act") provides that –

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument :

Provided that,—

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of—

- (i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and*
- (ii) a penalty at the rate of 2 per cent. of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument :*

Provided that, in no case, the amount of the penalty shall exceed four times the deficient portion of the stamp duty ;

b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;

6.6.1 Section 19 of Maharashtra Stamp Act provides that –

19. Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently such instrument or a copy of the instrument is received in the State,—

(a) the amount of duty chargeable on such instrument or a copy of the instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any already paid under any law in force in India

excluding the State of Jammu and Kashmir on such instrument when it was executed ;

(b) and in addition to the stamps, if any, already affixed thereto such instrument [or a copy of the instrument] shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section in the same manner and at the same time and by the same persons as though such instrument or a copy of the instrument were an instrument received in this State for the first time at the time when it became chargeable with the higher duty, and

(c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument or a copy of such instrument as if such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.

6.6.2 Section 4(1) of the Maharashtra Stamp Act provides that “Where, in the case of any development agreement, sale, lease mortgage, or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-1 for the conveyance, development agreement, lease mortgage or settlement and each of the other instruments shall be chargeable with the duty of One Hundred Rupees instead of the duty is any prescribed for it in that Schedule”. Section 4(3) further provides that “If the parties fail to determine the principal instrument between themselves then the officer before whom the

instrument is produced may, for the purposes of this section determine the principal amount”.

6.6.3 This Bench finds that Entry 6 of Schedule 1 to the Maharashtra Stamp Act deals with any instrument evidencing an agreement relating to—(1) The deposit of the title deeds or instrument constituting or being evidence of the title to any property whatever (other than a marketable security), where such deposit has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt; and Article 40 deals with MORTGAGE-DEED, not being an agreement relating to Deposit of Title Deeds, Pawn or Pledge or Hypothecation (Article 6), Bottomry Bond (Article 14), Mortgage of a Crop (Article 41), Respondentia Bond (Article 53), or Security Bond of Mortgage Deed (Article 54) when possession is not given or agreed to be given as aforesaid. The stamp duty rate prescribed, at relevant point of time, in Article 6 is 0.2 per cent. of the amount secured by such deed and in Article 40 it is 0.5 per cent. of the amount secured by such deed, subject to the maximum of ten lakh rupees.

6.6.4 This Bench finds that the Deed of Mortgage dated 15.10.2013 and Joint Deed of Mortgage dated July 28, 2014 creates a Registered Mortgage and not an agreement relating to deposit of title deeds, hence, such mortgage deed would be subject the stamp duty under Entry 40, which prescribes maximum duty of Rs. 10.00 lacs. It is not in dispute that this Mortgage deed has been executed upon payment of stamp duty of Rs. 10.00 lacs and is a registered document. Further, the said Deed of Mortgage and Joint Deed of Mortgage is the principal instrument having been executed pursuant to sanction letter dated 28.06.2013 mandating execution of necessary security documents for the sanction limits before release of such limits. Accordingly, the Term Loan Agreement and the other ancillary agreement inter alia Hypothecation Agreement, having been executed on a stamp of Rs.100/- in state of Delhi, is also sufficiently stamped in view of section 4(1) of the Maharashtra Stamp Act.

6.6.5 The Corporate Debtor's contention is that the said Mortgage Agreement as well as the agreement was also exigible to stamp duty under entry-5(h)(A)(iv) of schedule

1. However, this Bench finds that the Deed of Mortgage, Joint Deed of Mortgage, the Term Loan Agreement and the other ancillary agreement inter alia Hypothecation Agreement, are sufficiently stamped and the contention of the Corporate Debtor are based on mistaken appreciation of the facts pertaining thereto. Even if the contention of the Corporate Debtor is taken into account, the said contention gives rise to issue of classification under Schedule-1 of the Stamp Act. This Bench finds that the Hon'ble Supreme Court in the case of NN Global (Supra) laid down guideline in these words *"If the claim that it is insufficiently stamped, appears to the Court to be on the face of it, wholly without foundation, it may make the Reference on the basis of the existence of an Arbitration Agreement otherwise and then leave it open to the Arbitrator to exercise the power under Section 33, should it become necessary. This approach does justice to the word 'examine' in Section 33(2) of the Stamp Act while not ignoring the command of Section 11(6A) of the Act."* Accordingly, this Bench is of the considered view that this Bench, after having recorded the findings that said documents are sufficiently stamped, can proceed further to take these documents in evidence

and leaving the issue of determination to the IRP/RP to be appointed in this case, in case the present petition is admitted.

6.7 Nonetheless, this Bench considers it appropriate to deal with the issue whether insufficiently stamped loan agreements and mortgage agreements can have a bearing on the adjudication of an application u/s 7 of the Code in case the claim can otherwise be substantiated.

6.7.1 This Bench finds that the law laid down in N N Global makes the contract, which is unstamped or insufficiently stamped, void, and the said decision further lays down the principle that such contract gets revived upon payment of duty with penalty under the Stamp Act. It follows therefrom that an instrument, insufficiently stamped or unstamped, is eclipsed by shadow of insufficiency of stamp duty paid on such instrument and cannot be taken in evidence; and once such shadow gets removed, the contract revives and becomes an enforceable instrument.

6.7.2 This Bench also finds that the law laid down in N N Global requires the Court or Public Authority to impound such instrument, in case it is unstamped or is

found insufficiently stamped prima-facie and further mandates the Court or Public Authority to ensure that the Stamp Duty is paid in accordance with the applicable Stamp Act before allowing enforcement of rights arising from such instrument.

6.7.3 The IBC was enacted to facilitate the revival of the debtor by a resolution process, and such resolution process, as contained in the IBC, does not stipulate that the enforcement of such rights in the resolution process. The Hon'ble Supreme Court in case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC* had held that “*It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors*”.

6.7.4 The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Ascertainment of

existence of debt and default is not necessarily to be evidenced by a loan agreement or ancillary agreement or mortgage agreement. Instead, it can be proved by other means, as provided in Section 7(3) of the IBC prescribing record of default recorded with the information utility or such other records or evidence such may be specified. Further, Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribed Form-1 under Chapter-II and IV of Part-II of the Code for making an Application under 7 of the Code by Financial Creditor. Part-V of this Application requires details of financial debt document records and evidence of default to be stated by the Applicant. In the present Application, the Financial Creditor has provided NESL report dated 17.08.2022, copies of entries in Banker's Book, Copy of Notice u/s 13(2) of SARFAESI, Act 2002 and copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, besides copy of Sanction Letter, Mortgage Deed & Joint Mortgage Deed, Term Loan Agreement and other ancillary agreement. The Financial Creditor also filed audited Financial Statements of the Principal Borrower for the year ended

on 31.03.2018, 31.03.2019, 31.03.2020 and 31.03.2021 as well as OTS offers made by the Corporate Debtor.

6.7.5 It is not the case of Corporate Debtor that NESL report dated 17.08.2022, copies of entries in Banker's Book, Copy of Notice u/s 13(2) of SARFAESI, Act 2002, copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, audited Financial Statements of the Principal Borrower, and OTS offers require payment of stamp duty under Maharashtra Stamp Act. This Bench finds that entries in Banker's Book evidence the amount claimed to have been given as loan, and default in payment thereof is evidenced from Notice u/s 13(2) of SARFAESI, Act 2002, copy of acknowledgement of debt dated 06.01.2015, 01.11.2017, 02.01.2019 and 08.03.2021, and audited Financial Statements of the Principal Borrower as well as OTS offer letters placed on record as demonstrated in the preceding paras. Accordingly, this Bench of the view that, even if the contention of the Corporate Debtor is accepted that the Supplemental Mortgage Deed, Term Loan Agreement and other ancillary agreement cannot be taken in evidence to establish the existence of debt and

default in payment thereof, this Bench finds that the fact of debt and default stands proved otherwise by other evidences, as is held in case of Hon'ble NCLAT, Chennai Bench decision in the case of *Ashique Ponnamparambath vs. The Federal Bank Limited* (2021) ibclaw.in 336 NCLAT.

6.7.6 This Bench finds the plea of insufficiency of stamp duty raised by the Corporate Debtor, to dislodge the present petition, is contrary to the admission of Principal Borrower while seeking disbursement of the Term Loan under these very agreements and subsequent acknowledgements, OTS proposals and its financial statements. This Bench feels that the dislodgement of the position, which remained legal for sufficiently long time as per Principal Borrower's actions, would only benefit the Principal Borrower & the Corporate Debtor at the cost of Financial Creditor, more so when the amount of deficient stamp paper was recoverable from the Principal Borrower itself.

6.7.7 This Bench further notices that in the case of *Swiss Ribbons* (Supra), the Hon'ble Court also held that "*the interests of the corporate debtor have, therefore, been bifurcated*

and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests". In other words the present application u/s 7 of the Code does not seek enforcement of security or any loan agreement at this stage and also during the CIRP process.

6.7.8 It shall be pertinent to note that the stamp duty even if paid by the lender, is recoverable from the borrower i.e. the Corporate Debtor in the present case. This Bench is of the considered view that interest of the state shall be protected in case IRP/RP is directed to notify the collector of stamps to file its claim for a deficiency in a stamp duty in case there is an objection raised by the Corporate Debtor.

6.7.9 In view of above discussions, this Bench does not find any merit in the arguments of the Corporate Debtor on this issue.

6.8 The Corporate Debtor has filed an IA-2716/2023 on 23.06.2023 and the same was listed on 03.07.2023 praying for deferment/pronouncement of any final order/judgment in CP (IB) No.1337/MB-IV/2022 till such time the applicant/financial creditor has considered the OTS

proposal of the Principal Borrower. It is submitted that the Principal Borrower has submitted letters dated 27.01.2023, 08.02.2023 and 24.05.2023 expressing to settle the matter amicably for Rs.374.83 Crore with some modifications to the terms from time to time. The pronouncement of Order in this case of the Corporate Guarantor i.e. Marin Drive Hospitality & Realty Private Limited to the credit facilities granted to the Corporate Debtor was listed on 28.06.2023, and the pronouncement of that order came to be deferred after mentioning by the Corporate Guarantor on the ground of settlement proposal is being under consideration of the Financial Creditor/Applicant. The Financial Creditor placed on record a praecipe dated 28.06.2023 on that day stating that-

“3. In response to the prayer clause of the said Interlocutory Application, the Financial Creditor submits its current factual position as under:

- a. The Corporate Debtor submitted an OTS proposal, to the Financial Creditor for the settlement of its dues, which is under consideration with the Financial Creditor.*
- b. In furtherance of the same, the Corporate Debtor deposited INR 10 Crores with the Financial Creditor as*

a token amount in No Lien Account with the Financial Creditor.

- c. Accordingly, the OTS Amount, as offered by the Corporate Debtor, has to be paid within 90 days from the date of approval, if the same is approved.*
- d. Since the Account is classified under fraud category, the Financial Creditor is in the process of formulating a Board Policy on dealing with fraud accounts in terms of settlement, in accordance with the recent RBI Circular dated 08.06.2023.*
- e. Thereafter, the Corporate Debtor's request would be submitted to the Competent Authority for consideration as per the Financial Creditor's extent guidelines."*

6.8.1 This bench directed applicant financial creditor to be present in person through a responsible and authorized officer to update this bench about the exact facts pertaining to the OTS proposal, in view of deficient and unclear submissions in the praecipe and posted the matter on 04.07.2023 . In the meantime, this IA came to be listed for hearing on 03.07.2023. One DGM represented the Applicant/Financial Creditor, and again reiterated that the Financial Creditor is in the

process of formulating a board policy on dealing with fraud accounts in terms of settlement, in accordance with the recent RBI circular dated 08.06.2023, and submitted that the Principal Borrower's request can be submitted to competent authority for consideration/approval thereafter. The officer present in person categorically stated that he has instruction to pray for admission of the Principal Borrower into CIRP. This bench was handed over another praecipe dated 29.06.2023 from the advocate for the Financial Creditor stating that the Financial Creditor has no objection to the matter being kept in abeyance till the Competent Authority of the Financial Creditor has taken a decision in the matter.

6.8.2 This bench has considered these submissions and finds that consideration of the Principal Borrower's proposal for settlement is at premature stage in view of, formulation of a board policy on dealing with fraud accounts is still to take place. This bench further finds that the account of the Principal Borrower is in defaults since 31.10.2015 and there have been numerous OTS proposal having been discussed between the parties, however, it yielded no result.

6.8.3 This bench finds that the Hon'ble Supreme Court in the matter of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC* held that “*If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application*”. Further, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests, as held in *Swiss Ribbons Pvt. Ltd. & Anr [2019] ibclaw.in 03 SC*. In view of this, we are not inclined to entertain the prayer for deferment of pronouncement of the order in this case, more so, this application is pending for its adjudication before this tribunal for about more than a year, even though the court mandates decision on such applications within 14 days of its filing.

6.8.4 Accordingly, IA-2716/2023 is **dismissed**.

7. Since, there exist a Financial Debt of more than Rs.1.00 Crore; the Corporate Debtor has default in repayment thereof on 31.12.2015; the Petition is within Limitation period in view of various acknowledgement extending the period of limitation; and the Petition is complete and has been filed under the proper form, this Bench finds that present Petition deserves to be admitted.

8. The Financial Creditor has proposed the name of Mr. Prashant Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01368/2018-19/12131] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.
9. IA-1934/2023, and IA-2716/2023 filed by the Corporate Debtor are dismissed as not maintainable.

ORDER

- a) This Application being C.P. (IB) No. 1337/NCLT/MB/C-IV/2022 filed by Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) in the matter of Marine Drive Hospitality & Realty Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
- I. That this Bench as a result of this prohibits:
- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Prashant Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01368/2018-19/12131], Phone No. 9322743902, email- ipprashantjain@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims, in case the Funds are not found available with the Corporate Debtor by the IRP. The said amount shall be treated as Interim Finance provided by the Financial Creditor. The expenses, so incurred by IRP, are subject to ratification by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Prabhat Kumar
Member (Technical)

04.07.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)