**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**BENGALURU BENCH**

C.P.(IB)No.216/BB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

**In the matter of:**

AXIS BANK LIMITED
Registered address at
Trishul, 3rd Floor,
Opposite Samartheshwar Temple,
Law Garden, Ellis Bridge,
Ahmedabad - 380006. - Petitioner/Financial Creditor

**Versus**

KARUTURI GLOBAL LIMITED
204, Embassy Centre 11,
Crescent Road,
Bangalore – 560001. - Respondent/Corporate Debtor

**Date of Order: 02 August, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Mr. B.N. Harish, Advocate
Ms. Poornima Hatti, Advocate
Ms. Aparna Ravi, Advocate

For the Respondent : Shri. Vivek Holla, Advocate
Shri. Naman Jhabakh. K, Advocate
M/s Holla & Holla

Per: **Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)**

**ORDER**

1) The Company Petition bearing No. C.P. (IB) 216/BB/2018 is filed by M/s. Axis Bank Limited U/S 7 of the Insolvency and Bankruptcy Code 2016 R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s Karuturi Global Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed a default of Rs. 86,60,30,519.03 (Rupees Eight Six Crore, Sixty Lakhs, Thirty Thousand and Five Hundred and Nineteen and Zero Three Paise) which includes Principal amount and Interest as on 31.07.2018.

2) Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

   a) M/s. Axis Bank Limited (Petitioner/ Financial Creditor) is a banking company incorporated on 03.12.1993, bearing CIN: L65110GJ1993PLC020769 and having its registered office at "Trishul", 3rd Floor, Opposite Samaratheshwar Temple, Law Garden Ellis Bridge Ahmedabad, Gujarat – 380006, India.

   b) M/s. Karuturi Global Limited (Respondent/ Corporate Debtor) is a Company incorporated on 26.12.1994 bearing CIN No. L01122KA1994PLC016834 and having its registered office at No. 302, Embassy Centre, 11, Crescent road, Bangalore-560001. It is Authorised Share Capital is Rs.1,75,00,00,000/- and Paid-up Capital of the Company is Rs.1,09,47,26,648/-

   c) The Corporate Debtor had approached the Financial Creditor in July 2010 and the Financial Creditor sanctioned various facilitates, inter alia, ranging from Foreign Bill Discounting (FBD)/Export Bill Rediscounting (EBRD), Export Packing Credit (EPC), Pre-shipment Credit in Foreign Currency (PCFC), Loan risk equivalent (LER), Cash Credit and Short Terms Loans over a period between 2010 and 2015. Subsequently, the Corporate Debtor defaulted in making repayment of the facilities as per the sanction terms. Consequently, the account of the Corporate Debtor was classified as NPA with effect from 31.08.2015 and an amount of Rs. 86,60,30,519.03 (Rupees Eight Six Crore, Sixty Lakhs, Thirty Thousand and Five Hundred and Nineteen and Zero Three Paise) which includes Principal amount and Interest is claimed to be in default as on 31.07.2018.

d) The aforementioned loan/credit facilities availed by the Corporate Debtor have been inter alia secured by various assets. After availing the aforementioned credit facilities, the Corporate Debtor failed to repay the same along with the prescribed interest, within the stipulated period. The Corporate Debtor acknowledged its liabilities to the Financial Credit at various points of time in writing vide Acknowledgement of Debt dated 30.10.2010, 17.10.2012 and 12.08.2016.

3) The Petitioner has further filed written submission on 11.06.2019 stating as follows:

a) The Corporate Debtor is engaged in the business of growing of flowers and other agricultural products with operations spread across Ethiopia, Kenya and India.

b) The Respondent had approached the Petitioner in 2010 for sanction of various credit/loan facilities. The said credit facilities were renewed, reviewed and enhanced from time to time. The

Respondent have also availed some new creditor facilities. The details of the credit facilities availed by the Respondent/Corporate Debtor are as under:

| Nature of Facility | Sanctioned amount (INR) | Date of disbursement |
|---|---|---|
| FBD/EBRD<br><br>FBD: Foreign Bill Discounting<br><br>EBD: Export Bill Discounting | 12,00,00,000.00 | 06.03.2012 and 01.03.2013 |
| EPC/PCFC (Sublimit of FBD/EBRD)<br><br>EPC: Export Packing Credit<br><br>PCFC: Pre-shipment Credit in Foreign Currency | (5,00,00,000.00) | 02.08.2010, 30.08.2010, 02.11.2010 and thereafter on various occasion |
| CC (Sublimit of FBD/EBRD)<br><br>CC: Cash Credit | (12,00,00,000.00) | 28.03.2012, 29.03.2012, 30.03.2012, 31.03.2012, 03.04.2012 and thereafter on various occasion |
| Short Term Loan-1 | 20,00,00,000.00 | 22.05.2015 and 25.05.2015 |
| Short Term Loan-2 | 33,00,00,000.00 | 01.12.2015 |

| | | |
|---|---|---|
| LER<br>LER: Loan Equivalent Risk | 1,00,000,000 | |
| **Total** | **66,00,00,000.00** | |

c) It is submitted that the aforementioned loan/credit facilities availed by the Respondent have been inter alia secured by various assets and personal guarantees from its Directors. Details of the assets provided by the Corporate Debtor as collateral security are as follows:

(i) Equitable mortgage Created by Respondent/Corporate Debtor

a) Site bearing No.47, present Corporation No.7, situated at Railway Bridge Road (presently know as Hare Krishna Road), Kumara Park East, Bangalore.

b) Shop No.303, present corporation NO. 71/47, 3rd floor of the building known as Embassy centre, Corporation No.11 (Old No.5) Cresent Road, Kumara Park East, Ward No.77, Bangalore.

c) Shop No. 304, present corporation No. 71/47, 3rd Floor, of the building known as Embassy Centre, Corporation No.11 (old No.5) Crescent Road, Kumara Park East, Ward No. 77, Bangalore.

The applicant has initiated proceedings under the SARFAESI Act in relation to properties (b) and (c) above and has sold the same.

(ii) Equitable mortgage created by individuals viz:

a) Sai Ramakrishna Karuturi, Managing Director, Chairman

b) Anitha Karuturi, Director

c) T. Vasundhara Karuturi; and

d) Yeshoda Karuturi, Director

Immovable property in Hanumanthapuram Village, of Denkaikotta taluk and attached to Denkanikotta Sub Registration District and Krishnagiri District under various survey number.

(iii) Hypothecation of assets

a) Respondent assets, produced with the application

b) Assets of individuals at Ayyur village, Geddahalli post, Hanumanthapuram, Panchayath, Denkanikotta Taluk and Krishnagiri District.

(iv) Pledge

a) First priority pledge over 6,00,000 fully paid up equity shares of INR 10/- each paid up value of Karuturi Foods Private Limited held by the corporate Debtor.

d) The Petitioner submits that the Directors of the Respondent have also furnished various Personal Guarantees in respect of the sanction facilities availed by it.

e) The Respondent after utilising the entire loan proceeds have failed to make repayments of the loan dues as agreed and have not serviced the interest thereon as per the terms and conditions agreed between the parties.

f) The Respondent has acknowledged its liabilities to the Petitioner at various points of time in writing vide Acknowledgment of Debt dated 30.10.2010, 07.04.2012 and 12.08.2016 produced along with the application.

g) The Petitioner further states that the said account of the Respondent was also declared a Non-Performing Asset, with effect from 31.08.2015. Accordingly, on 26.09.2016, the Petitioner issued a recall notice calling upon the Respondent to repay the outstanding dues along with applicable interest, on or before 29.06.2016.

h) The Respondent failed to respond to the said recall notice and also did not clear its outstanding dues within the aforesaid timeline. Despite repeated requests from the Petitioner, the Respondent has failed to clear its outstanding dues, till date. Therefore, the Petitioner has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2017 on August 28, 2018.

i) It is submitted that the present application is a clear case of Respondent committing default in respect of a financial debt. In order to establish such a debt, the Petitioner has relied on various documents which have been referred to in the Application. The issuances of various AODs by the Respondent to the Petitioner at different intervals of time and the bank statements furnished, clearly demonstrates the default committed by the Respondent in the credit facilities extended to it by the Petitioner.

j) The Petitioner submits that Petitioner approached the Hon'ble Debt Recovery Tribunal at Bengaluru to initiate recovery proceedings against the Respondent and Karuturi Foods Private Limited in the year 2016. It is relevant to state that the Respondent remained absent in the said proceedings and an order dated 27.10.2018 was passed by the Hon'ble DRT, Bengaluru admitting the debt of the Respondent and allowing the Petitioner to recover the outstanding dues from the Respondent. The amounts due towards the subject matter credit facilities extended by the Petitioner amount to INR 66,00,00,000/- towards the Respondent and by the said order the Hon'ble DRT, Bengaluru admitted the liabilities of the Respondent.

k) It is submitted that the Petitioner also relies on the CIBIL Report generated by the Petitioner which records the defaults committed by the Respondent under each credit facility.

| Facility | Sanctioned Loan | Outstanding Balance | Page reference in CIBIL Report |
|---|---|---|---|
| Short term Loan2 | 33,00,00,000 | 35,06,66,337 | Page No.37 |
| Short term Loan 1 | 20,00,00,000 | 20, 77, 65, 114 | Page No. 33 |
| Cash Credit | 12,00,00,000 | 12,80,21,298 | Page No. 34 |

l) It is submitted that the aforesaid documents are sufficient record of evidence of default of payment in this case under Section 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

m) It is submitted that the present application has been filed against the Respondent, in view of the default in payment towards the loan extended by the Petitioner. Default is defined in Section 3 (12) of the IBC in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. It is also submitted that the present application has been filed along with all the documents, records and evidence of such default as required under Rule 4 of the Rules.

n) It is submitted that from the various annexures, records of default furnished along with the application, it can be easily demonstrated that a default has been committed by the Respondent and the application is complete as per Section 7 (5) of the IBC.

o) The Petitioner submits that the Respondent has remained absent in these proceedings before this Hon'ble Tribunal and in the recovery proceedings before the Hon'ble DRT, Bengaluru. Hence it

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p) The Petitioner has duly proposed name of Mr. Ghanshyam Das Mundra, a Resolution Professional to act as the Interim Resolution Professional in terms of Section 7 (3) (b) of the IBC. Mr. Ghanshyam Das Mundra is registered with Insolvency and Bankruptcy Board of India and he has given his consent for being appointed as the Interim Resolution Professional.

q) The Petitioner submits that in SIDBI vs Bajrangali Alloys Private limited, the Hon'ble NCLT, Kolkata had held that:

*"On the above basis, it is thus apparent that the application filed by the Financial Creditor under Section 7 of the IBC deserves to be allowed as a default has occurred and the application is complete and there are not disciplinary proceedings pending against the proposed resolution professional".*

r) Further in Alchemist Assets Reconstruction Co. Pvt Limited v. Monet Exports Private Limited the Principal Bench of the NCLT, Delhi held that:

*"It is evident from the record that the petition has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 read with Section 7 of the IBC. We are satisfied that the amount was duly disbursed and a default has occurred. The petition under sub-section 2 of Section 7 is complete. No disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the petition warrants admission."*

On the basis of the above, it is submitted that the Application filed by the Petitioner under Section 8 of the IBC deserved to be allowed.

s) It is submitted that all the requirements of Section 5 (7) and sub-section (3) and Section 7 of the IBC have been fulfilled, and therefore, the application for initiation of insolvency resolution process against the Respondent ought to be admitted by this Hon'ble Tribunal.

4) The Respondent has filed a Preliminary Statement of Objection dated 17.07.2019, by inter alia, contending as follows:

a) The Respondent states that the petition filed is false, frivolous, vexatious and not maintainable in law. The petition lacks bonafides and is liable to be dismissed in limine.

b) The Respondent is a private limited company incorporated on 26/12/1994 under the Companies Act, 1956 having its registered office at 204, Embassy Centre 11, Cresent Road Bangalore within the jurisdiction of this Hon'ble Court. The Respondent is involved in the business of cultivation and export of Floriculture. The authorised capital of the Respondent is 149.75 crores comprising of 149.75 crores shres of Rs.1 each issues, subscribed and paid up capital of the respondent is Rs. 149.75 crore comprising of 1,49,75,00,000/- equity shares of Rs.1/- each. The subscribed capital of the Respondent Company is Rs.149,75,00,000/-. The Respondent is a profit making company and its profits for the last year are Rs. 4.21 crore. The Respondent is a financially sound and it has assets to a sum of Rs. 1506.37 crore.

c) The Applicant/Financial Creditor in its petition has suppressed all material facts from this Hon'ble Tribunal and on this ground itself the petition is liable to be dismissed.

d) The present petition is also liable to be dismissed on the ground that the alleged claims made by the applicant relates to a loan allegedly relates to the year 2010 which is hopelessly barred by limitation.

e) The Respondent states that the present petition is also liable to be dismissed as the application cannot pursue two parallel remedies for the same cause of action.

f) The present petition is totally misconceived and has been filed only to coerce the Respondent to pay certain sums which are disputed by the Respondent and legally unenforceable. The Applicant has not approached this Hon'ble Tribunal with clean hands and therefore the present petition is liable to be dismissed with heavy costs on this ground alone.

g) The present petition is also liable to dismissed on the ground that the applicant itself has transferred the monies to the Dubai Branch and therefore the Petition is liable to be dismissed on this ground as well.

h) The Respondent states that the petition is also liable to be dismissed as the applicant has already approached the Hon'ble Debt Recovery Tribunal, Bangalore with the respect to the alleged claims.

i) The petition is also liable to be dismissed as parts of the alleged claims are also part of an arbitration which is going on in London.

j) The Respondent is a financially sound company having more than 6000 employees and therefore the present petition is also liable to be dismissed on this ground as well.

k) The alleged liability claimed by the applicant is far inferior to the assets owned by the Respondent.

l) The Respondent submits that on perusal of petition and the documents annexed, it is evident that the facts are disputed, complicated and complex in nature and in a jurisdiction vested

राष्ट्रीय कम्पनी विधि अधिकरण बेंगलुरु बेंच National Company Law Tribunal Bengaluru Bench with the this Tribunal, it could not be established that there is an admitted sums to be payable by the answering Respondent and the applicant is required to establish that there is a legally enforceable debt to be paid by the Respondent to the Petitioner.

m) The proceedings are summary in nature, and complicated questions of fact may not be adjudicated and determined. Therefore, in the present case, it is just and proper that this Hon'ble Tribunal may not entertain the present petition as the Applicant in order to establish the fact of liability of debt, is required to approach the appropriate forum.

n) The present petition is liable to be dismissed on the ground that the petitioner has failed to establish any prima facie case against the Respondent for admitting the present petition. The Applicant has failed to show that the Respondent has failed to re-pay the alleged loan.

o) In fact the applicant themselves have given a no-due certificate dated 26.10.2016, for the loans availed by the Respondent and therefore the present petition is liable to be dismissed on that ground as well.

p) Some of the loans claimed in this petition, were never disbursed to the defendant. A loan of Rs. 20,00,00,000/-. These sums alleged to have been disbursed on 22.05.2015 are indeed disbursed to Karuturi Foods Pvt Limited to the extent of Rs.15,00,00,000/-. The bank statement of Karuturi Foods (Private) Limited of Axis Bank, clearly evidences that a sum of Rs.15,00,00,000 is disbursed on 22.05.2015 to Karuturi Foods (P) Limited. The Axis Bank statement of Karuturi Global Limited wherein a JV is passed by the bank debiting these these loans to Karuturi Global on 22.05.2015 under loan number 915060022400296.

q) The sum of Rs.15 crore was further paid to Piramal Estates on the same day. Piramal Estates had loaned to Karuturi Foods (P) Limited a sum of Rs.17,00,00,000 on 31.03.2015 to pay Axis Bank (Dubai). The above Rs.15 crore was disbursed to Karuturi Foods to repay Piramal Estates for the loan received to repay Axis Bank itself. Karuturi Foods (P) Limited have subsequently been liquidated by NCLT- Bangalore, and Axis Bank has recovered through this liquidation as the major creditor the sums advanced.

r) The Respondent submits that a sum of Rs. 5,00,00,000 was similarly disbursed to Karuturi Floritech (P) Limited on 25.05.2015. The Axis Bank statement of Karuturi Global Limited, wherein a JV is passed by the Bank debiting these two loans to Karuturi Global on 22.05.2015 and 25.05.2015 as Anx under loan number 915060022400296.

s) The Bank has disbursed loan of Rs. 5,00,00,000 on 25.05.2015 to Karuturi Floritech Private Limited this loan does not prevail to Karuturi Global Limited and the same was transferred to Karuturi Foods Private Limited and was again repaid in Axis Bank Dubai Branch.

t) The entire loan is a fabrication and a lie, as it was never disbursed to the Karuturi Global Limited in the first place. The loans advanced to Karuturi Floritech (P) Limited were in turn paid to Karuturi Foods (P) Limited Rs. 6,00,00,000, who in turn with other receipts from KGL paid Piramal to repay the sums paid by Foods to service Axis Bank in Dubai.

u) The loan amount of Rs.5,00,00,000 and Rs.15,00,00,000 was never received by Karuturi Global Limited it was sanctioned to different entities and a wrongful interest of a sum of Rs.

3,33,90,328 has been charged to us, hence the company has disputed the same in City Civil Court, Bangalore.

v) The Swastik Safe gave a loan of Rs. 24.62 crore to Karuturi Foods Private Limited on 29th September 2015 and Rs.1.5 crore on 30th September 2015. The loan was transferred to Karuturi Floritech Private Limited on 30th September 2015. Karuturi Floritech Private Limited transferred the said loan received from Swastik Safe Investment to Axis Bank Dubai.

w) The Axis Bank Limited has sanctioned a loan of Rs. 33,00,00,000 to Karuturi Global Limited on 1st December 2015 on the same day the money was transferred to Karuturi Foods Private Limited to the extent of Rs. 28,15,00,000. The money was transferred from Karuturi Foods Private limited to the extent of Rs. 27, 45,00,000 to Swastike Safe on 01st December 2015. The Company has borrowed only Rs. 12.5 crore and balance is already paid to Axis Bank Dubai. For 12.5 crores bank has already seized securities worth more than 20 crores.

x) This entire loan is a fabrication and a lie, as it was never disbursed to the Karuturi Global Limited in the first place. But was refunded to KGL on 1.12.2015 for advances made on 29.09.2015. A working capital loan ending 912030013441189 of Rs. 14 crores was sanctioned to the Company on 28.03.2012, at 12% and it was renewed on 11.11.2013/23.11.2015 date and since than has not been renewed and is time barred. The claim of the bank on this loan is mis calculated.

y) We have paid back in excess of interest Rs. 7.35 crore. The interest due on this account, ledger provided as anx is 6.48 crores for 4.5 years. The debits on this account are 13.83 crores, which show an unexplained debits amount to Rs.7.35 crores amounting to principal repayment, not duely reflected by the bank. Apart from which we have also paid Rs. 2.56 crore which has been wrongfully adjusted towards loan account ending 296 (disbursed to Foods 15 crores and Floritech 5 crore as part of 20 crore loan above). And Rs. 1.27 crore paid against this loan has been wrongfully adjusted towards loan ending 181 (paid to Axis Bank as part of 33 crore loan above). So Respondent has repaid Rs.11.18 crore out of the principal outstanding of Rs.11 crores. The property bearing 303-304 Embassy centre has since been sold under Sarfeasi for a sale consideration of Rs. 2.49 crore. The account has been in credit of Rs.2.67 crore. Consequently the respondent does not owe Axis Bank any sums at all and the Respondent is due a refund of Rs. 2.67 after reconciliation.

z) The Respondent submits that no board resolution is accompanied as is mandatory for such confirmation of liabilities by a public limited company.

aa) The Bank Manager who has signed the application is not authorised to sign the Form 5. Also, the manager has been given Power of Attorney in the year 2010 which was valid for a particular transaction of giving bank loan. Hence the resolution should be supported by way of Power of Attorney which is missing in this present application.

bb) The sanction of 66 crore was disputed on all occasion which can be seen vide the emails exchanged between the Company and Bank.

cc) The Respondent submits that ROC has taken on record Form CHG-1 suo-motto on back end basis without serving a copy on the company to represent for the same, this whole sanction was doubted on various occasion the same can be understood vide

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emails exchanged between the company and authorised representative of bank.

dd) The loan was provided for the purpose of covering interest portion of a foreign subsidiary which is duly acknowledged by bank vide its statement.

ee) The bank has withheld an amount of 4 million as a fees for availing 188 million of credit facilities. The refund of which is asked on various occasion but still they have not provided the same.

ff) The bank has title papers relating to land situated in HOLLETA, ETHOIOPIA a subsidiary of a company in Ethiopia the value of which is close to 8 million dollars, if these documents are provided to us we can clear their outstanding. These documents are withheld without any sufficient legal documents not they form part of any loan transaction.

gg) The Bank has appointed a Forensic auditor R. Kabra and Company, the Forensic audit is awaited, the bank pursuing the claim prior to receipt of forensic audit will be detrimental to true outstanding will pre-empt the process, they are suppressing the audit from last 9 months stating KGL does not owe them any money.

hh) The loan was originally granted to the extent of 10 crores, further the company has not received any loan amount, since the arrangement was to receive in one country and pay back the same in foreign bank. The purpose of which was never known to us.

ii) The Respondent submits that the Deputy Director of the Bank was on the Board of the Directors of the Company wherein he is fully aware of the transaction undertaken by the company thereto

राष्ट्रीय कंपनी विधि अधिकरण बेंगलुरु बेंच National Company Law Tribunal Bengaluru Bench the bank has fraudulently initiated this proceedings to circumvent the transaction not in the preview of the company.

jj) The amount of loan granted is in dispute as the never received the said loan and the documents are signed without the knowledge of Board of Directors.

kk) The Bank has no proof to claim the acts of the Company are authorised by Board of Directors. Acknowledgement of debt is subject to proof to provide BR of defendant the bank cannot issue a loan by a resolution of BR it is an act of illegality.

ll) The Respondent submits that the company is a Public Listed company on BSE and NSE, the Bank has sanctioned the loans to subsidiary the company has neither received the amount nor it has stood guarantee for the loan provided.

5) The Applicant/Petitioner has filed the rejoinder under Rule 42 of the National Company Law Tribunal Rules, 2016 on 22.07.2019 stating as follows:

a) The Respondent has not produced any authorisation demonstrating that the authorised representative has the authority to act on behalf of the Respondent, as required by Rule 31 of the national Company Law Tribunal Rules, 2016. Therefore, the objections filed cannot be taken on record and/or considered.

b) The Applicant submits that the contents of the statement of objections are false and wholly baseless. The contents are denied in toto, save and except whatever is specifically admitted herein. Anything that has not been specifically admitted is hereby denied. Nothing shall be deemed admitted for want of specific traversal. It is also relevant to note that the objections are vague and unsubstantiated both in law and on facts.

c) It is submitted that the Respondent has wilfully misrepresented and obfuscated facts in order to evade its lawful obligation of repaying the total loan amount of Rs. 66,00,00,000 (Rupees Sixty Six Crores only) along with interest to the Applicant. The objections contain numerous contradictions, general statements unsupported by factual details and loopholes and the Respondent has failed to provide any supporting documentation for the statements contained therein. Further, the Respondent, in an effect to confuse and obfuscate the facts, has made references to various other entities and proceedings that are totally unrelated to the Claim Amount owed by the Respondent to the Applicant. Without prejudice, following is a para-wise traversal of the objections.

d) The fact that the Respondent owes the claim amount to the Applicant has been confirmed by order dated October 27, 2018 (DRT Order), passed by the Hon'ble Debt Recovery Tribunal, Bengaluru in O.A. No. 271 of 2017, has been issued for a total amount of Rs. 83, 56, 34, 496/- (Rupees Eighty Three Crores Fifty Six Lakh Thirty Four Thousand Four Hundred Ninety Six only) of which a total amount of Rs. 68, 57, 49, 487/- (Rupees Sixty Eight Crore Fifty Seven Lakhs Forty Nine thousand Four Hundred Eighty Seven only) is in respect of the Respondent herein. At page 4 of the DRT order, the dues of the Respondent totalling the claim Amount is recorded. Additionally the Respondent with the intention of harassing the Applicant and evading its obligation towards the Applicant, has employed dilatory tactics in the instant application by refusing service of notice on multiple occasion, as was observed by this Hon'ble Tribunal vide order dated May 03, 2019.

e) The Applicant submits that the Respondent issued an acknowledgement of debt dated August 12, 2016. The Acknowledgement of Debt states, *"I/We acknowledge for the purpose of Section 18 of the Limitation Act, 1963, in order to preclude any question of limitation law that I/We are liable to you for the payment of outstanding amount as mentioned in Schedule I below[ ..] together with interest',* Schedule I of the Acknowledgement of Debt unequivocally states an outstanding amount of Rs. 66,03,16, 108.91/- (Rupees Sixty Six Crore Three Lakh Sixteen Thousand One Hundred Eight and Ninety One Paise only). The Acknowledgement of debt has not been denied by the Respondent. Therefore, the instant application is well within limitation.

f) The proceedings before the Hon'ble Debt Recovery Tribunal do not run parallel to the proceedings before this Hon'ble tribunal. There is no bar to proceed to the Hon'ble Debt Recovery Tribunal and then to the present forum.

g) The Respondent has not denied the claim amount in any form or manner and has, in fact acknowledged the debt owed to the applicant, the claim amount is enforceable as confirmed by the DRT order.

h) The Respondent has provided no details of the amounts or dates on which the applicant has transferred monies to its Dubai Branch and why such transaction is relevant to the applicantion filed by the applicant.

i) The fact that the Respondent owes the Claim amount to the Applicant has been confirmed by the DRT Order.

j) The Applicant has commenced an arbitration proceeding against Karuturi Overseas Limited being the subsidiary of the Respondent

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and the Respondent is a party to such arbitration proceedings in its capacity as a corporate guarantor of Karuturi Overseas Limited. The aforementioned arbitration proceeding is not related to the present Application or the claim amount owned by the Respondent to the applicant, and are separate distinct proceedings.

k) The application and the DRT Order clearly and unequivocally establish an undisputed default on part of the Respondent. The DRT Order observes that '*the Respondent have become chronic defaulters in the loan amount and hence the applicant bank has issued Notices dated 17.09.2016 and 26.09.2016 to the Respondent and Respondent have not taken any steps to clear the dues and hence the recovery process is initiated to recover the dues*'. The Respondent has even executed the Acknowledgement of Debt, which is undisputed affirming the existence of the sums to be paid.

l) The Respondent has produced no evidence in furtherance of its false and baseless claim of the instant application involving 'complicated question of fact'. It is submitted that the Respondent in an attempt to obfuscate the facts at hand and evade its lawful obligation to pay the claim amount to the Applicant, has made statements regarding other entities and transactions that are totally unrelated to the instant application. The Respondent has stated that the "*Applicant, in order to the fact of liability of debt, is required to approach the appropriate forum*". The stated '*liability of debt*' and the fact that there has been a default has been established by the DRT order and, accordingly it is well within this Hon'ble Tribunal power to admit the instant application.

m) The Respondent has executed three acknowledgement of debt dated October 30, 2010, October 17, 2012 and August 08, 2016.

The account of the Respondent was declared Non-performing assets with effect from August 31, 2015.

n) The applicant has issued a No-dues Certificate dated October 26, 2016 for closure of Term Loan bearing account number 912060039649971 for an amount of Rs. 20,00,00,000/-. The said loan was repaid and closed on June 28, 2013. The said Term Loan bearing account number 912060039649971 does not constitute part of the claim amount.

o) The Respondent is obligated to pay the amount disbursed to it by the applicant along with interest, and subsequent transfer or usage of funds by the Respondent have no bearing on the instant claim. The liquidation proceedings pertaining to Karuturi Foods Limited have no connection with the instant application. The Applicant has filed its claim in respect of the amounts owed to it by Karuturi Foods Private Limited with the liquidator, Mr. Anil Kumar Birla on August 12, 2018. The Applicant has not recovered any amounts from the said liquidation proceedings as the liquidator is adjudicating the claims. The Respondent is a Corporate Guarantor for the creditor facilities availed by Karuturi Foods Private Limited, however the said corporate guarantee is not part of the claim amount in the instant application. The liquidation proceedings of Karuturi Foods Private Limited are unrelated to the instant application against the Respondent and the Respondent has brought in these facts solely in an attempt to obfuscate the relevant facts and mislead this Hon'ble Tribunal.

p) The Applicant states that on May 25, 2015 a loan amount of Rs. 5,00,00,000/- as a short term loan was disbursed to the account of the Respondent and the Respondent has an obligation to repay the said loan with interest to the Applicant. The manner in which the Respondent has transferred or utilized funds loaned to it by the Respondent do not have any effect on the liability of the Respondent to repay the amounts along with interest to the Applicant. The pending proceedings mentioned by the Respondent have no bearing on the instant proceedings. The Respondent with malafide intention of misleading this Hon'ble Tribunal, and creating a false impression that instant proceedings involve complicated questions of facts has referred to irrelevant details that have no bearing on the liability of the Respondent towards the Applicant.

q) The Applicant submits that on December 01, 2015, a loan amount of Rs. 33,00,00,000/- as a short term loan was disbursed to the account of the Respondent. Subsequent utilisation or transfers of amounts disbursed to the Respondent have no bearing on the instant proceedings or on the liability of the Respondent towards the Applicant.

r) The Applicant submits that the Respondent has not stated the loan amount in question that has been refunded. It is re-iterated that the limitation period has commenced on August 28, 2016, when the acknowledgement of Debt was issued.

s) The Petitioner states that the authorised representative has been specifically authorised to represent the Applicant by way of Board Resolution dated August 23, 2017, passed by the Committee of whole-time directors, wherein Mr. Suresh Pai has been duly authorised at Entry 53.

t) The petitioner has never attempted to combine the three loans disbursed to the Respondent. It is specifically denied that the loans were declared as Non-performing Asset on August 31, 2018; such declaration occurred on August 31, 2015.

u) The Petitioner submits that the DRT Order and the Respondent's Acknowledgement of Debt are evidence that the Respondent has defaulted on the Claim Amount.

v) Para 38 of the Statement of objection states that the Respondent "can clear their outstanding" if documents are provided, which contradicts other statement in statement of objections, including the statement in para 34, that the sanction of Rs. 66,00,00,000/- was disputed.

w) The Petitioner has appointed R. Kabra and co., as forensic auditor in November 2018, to conduct a forensic audit of the Respondent. The Respondent has not co-operated with the forensic auditor in providing the requested information and accordingly, the forensic audit is yet to be completed.

x) The Petitioner states that M/s. Karuturi Foods Private Limited a subsidiary of the Respondent, is currently under liquidation

y) The loans disbursed by the Petitioner to the Respondent have been sanctioned pursuant to loan documentation executed by the Respondent and the said borrowings have been authorised by Board Resolution of the Board of Directors of the Respondent vide board resolution dated May 18, 2015 and November 21, 2015.

z) The Applicant has produced the bank statement for the bank accounts that the Applicant maintains for the Respondent in relation to the loan facilities and the said bank statements reflects that the loan amount have been disbursed to the Applicant and not to other subsidiary company.

aa) The documents produced with the application and DRT order clearly establish the debt due by the Respondent and all averments made by the Respondent in the objection are liable to be rejected as false.

राष्ट्रीय कम्पनी विधि अधिकरण बेंगलूरु बेन्च National Company Law Tribunal Bengaluru Bench

6) Heard Shri B.N. Harish, learned Counsel for Petitioner and Shri. Vivek Holla, learned Counsel for Respondent. We have carefully perused all the pleadings made by both the parties, supporting documents and also extant provisions of the Code.

7) The learned Counsel for Petitioner while reiterating various averments made in the pleadings raised for the petitioner, has further submitted that the instant Company Petition is filed in accordance with law and the debt and default in question is not in dispute and IRP suggested is qualified professional duly registered with IBBI. Therefore, it is urged the Tribunal to admit the instant Company Petition by initiating CIRP as prayed for.

8) Shri. Vivek Holla, the learned Counsel for Respondent has opposed the maintainability of the Company Petition by inter alia contending that the instant Petition made by the Petitioner under Section 7 of the Code, is barred by limitation, as the Petitioner is seeking to initiate insolvency proceedings against the Respondent, in relation to a loan allegedly relating to the year 2010. Further, the Petition is liable to be dismissed on the ground that the Petitioner has failed to establish prima facie case against the Respondent.

9) The Company Petition is filed U/s 7 of IBC, 2016, which reads as under:

> **"7.** *(1) A Financial Creditor either by itself or jointly with (other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government), may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*
>
> ***Explanation.*** *For the purposes of this sub-section, a default includes a default in respect of a financial debt owned not only*

*to the applicant financial creditor but to any other financial creditor of the Corporate Debtor.*

**(2)** *The Financial Creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*

**(3)** *The Financial Creditor shall, along with the application furnish-*

*(a)* *a record of the default recorded with the information utility or such other record or evidence of default as may be specified.*

*(b)* *the name of the resolution professional proposed to act as an interim resolution professional; and*

*(c)* *any other information as may be specified by the Board.*

**(4)** *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), 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 under sub-section (3).*

**(5)** *Where the Adjudicating Authority is satisfied that:*

*(a)* *A default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

*(b)* *Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

***Provided*** *that the Adjudicating Authority shall, before rejecting the application under clause (b) sub-section (5), give a notice to the applicant to* *rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

**(6)** *The Corporate Insolvency Resolution Process shall commence from the date of admission of the application under sub-section (5).*

**(7)** *The Adjudicating Authority shall communicate:*

*(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor.*

*(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.*

10) In the instant case, as detailed supra, it is not in dispute that Financial Creditor has sanctioned certain loan facilities to the Corporate Debtor, and it has defaulted in making repayment of the loan as per the sanction terms leading the account of the Company classified as NPA on 31.08.2015. The Financial Creditor also filed Original Application (OA.No. 271/2016) before DRT, Bangalore and the DRT has decreed an amount by issuing a Debt Recovery Certificate to collect the amount due from the Respondent.

11) On perusing the documents placed on record and in particular the Acknowledgement of Debt vide letters dated 30.10.2010, 07.04.2012 and 12.08.2016, and the Debt Recovery Certificate No. 14607 issued in favour of the Financial Creditor by the DRT, Bangalore, and the same not being paid, it has become evident that the Corporate Debtor has failed to repay the amount due to the Financial Creditor.

12) As the Financial Creditor has proved the existence of debt and default against the Corporate Debtor by showing various documents and the Debt Recovery Certificate issued by the DRT,

Bangalore, we are inclined to hold that the Financial Creditor has proved existence of debt as well as default against the Corporate Debtor.

13) Since the Corporate Debtor counsel has not come out with an argument stating that no debt is in existence or no default is in existence, we are of the considered view that this case is fit for admission.

14) We are satisfied that the instant Company Petition filed by Axis Bank (Financial Creditor), U/s 7 of IBC, 2016 is strictly in accordance with law, with substantial evidence produced in support of debt and default.

15) It is suggested that Shri Ghanshyam Das Mundra, bearing Registration Number IBBI/IPA-001/IP-P00278/2017-2018/10477, be appointed as Interim Resolution Professional (IRP). Shri Ghanshyam Das Mundra has filed Written Communication dated 11.07.2018, under Rule 9 of I&B(AAA) Rules, 2016, by inter alia, declaring that he is a qualified Insolvency Resolution Professional Registered with Indian Institute of Insolvency Professional of ICAI having Registration Number IBBI/IPA-001/IP-P00278/2017-2018/10477 and he is not undergoing any disciplinary proceedings, expressing his willingness to act as such etc. Therefore, it is fit case to initiate CIRP as prayed for.

16) In view of the above facts and circumstances of case, and by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of IBC, 2016, the following orders are passed:-

1. CP(IB)No.216/BB/2018 is hereby admitted by initiating CIRP in respect of M/s. Karuturi Global Limited i.e. the Corporate Debtor;

2. Shri Ghanshyam Das Mundra, bearing Registration No. IBBI/IPA-001/IP-P00278/2017-2018/10477 is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code, 2016 and the rules framed by the IBBI from time to time.;

3. The following moratorium is declared prohibiting all of the following, namely:

*a)* the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

*b)* transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

*c)* any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

*d)* The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

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

*f)* The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central

Government in consultation with any financial sector regulator as also not applicable to surety.

*g)* The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;

*h)* The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.

4. The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

5. IRP is further directed to strictly adhere time schedule as mentioned under the Code. And he is directed to file progress reports from time to time to the Tribunal.

6. Post the case for report of the IRP on **03.09.2019.**

**(ASHOK KUMAR MISHRA)**
**MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)**
**MEMBER, JUDICIAL**

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL
6/8/19
Deputy/[redacted]. Registrar
National Company Law Tribunal
Bengaluru Bench
Swapna - c

KR

राष्ट्रीय कम्पनी विधि अधिकरण बेंगलूरु बेन्च
National Company Law Tribunal Bengaluru Bench