



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Company Petition No. (IB)-204(ND)/2023**

**IN THE MATTER OF:**

**Central Bank of India**

Having head office at:  
Chander Mukhi, Nariman Point,  
Mumbai, Maharashtra – 400021

**And having branch office at:**

Stressed Asset and Management Branch  
Jeevan Tara Building,  
Parliament Street,  
New Delhi - 110001

**... Applicant**

**VERSUS**

**AL Nafees Frozen Food Exports Private Limited**

Having registered office at:  
6, Central Lane,  
Bengali Market,  
New Delhi - 110001

**... Respondent**

**Section: 7 of IBC, 2016**

**Order Delivered on: 04.07.2023**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Mr. Vishal Hirawat and Mr. Abhishek Devgan

**For the Respondent** : Adv. Sunder Khatri, Adv. Shital Khatri,  
Adv. Naman Khatri, Adv. Puja Chaurasia



## **ORDER**

**PER: SH. L. N. GUPTA, MEMBER (T)**

Central Bank of India (for brevity, the '**Applicant**') has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. AL Nafees Frozen Food Exports Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s AL Nafees Frozen Food Exports Private Limited is a Company incorporated on 30.10.1987 with CIN U74899DL1987 PTC029635 under the provisions of the Companies Act, 1956 having its registered office at 6, Central Lane, Bengali Market, New Delhi – 110001, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs.13,10,00,000/- and the Paid-up Share Capital of the Company is Rs.13,06,20,500/- as per Master Data.

3. The Applicant has submitted that the Bank had sanctioned a Working Facility Credit Limit of Rs. 97,00,00,000/- Crores in several tranches. To support its contentions, the Applicant has annexed the statement of account for the loan account of the Respondent at Annexure A-4 from page no. 44 to 54, the first and last of the statement is reproduced overleaf for immediate reference:



STATEMENT OF ACCOUNT

CENTRAL BANK OF INDIA
SAMDEL\_SAM-DELHI
Jeevan Tara Building,
Parliament Street,
Postcode: 110001
Branch Code : 5132
GSTIN:07AAACC2498P125

AL NAFEEES FROZEN FOOD EXPORT PVT LTD
6,CENTRAL LANE
BENGALI MARKET
N DELHI
110001

Account No. : 3106782996

Product : EPC ORDER CORPORATE

Nomination: N

Date : 13/03/2023

Time : 17:15:27

E-mail :

Currency : INR

Cleared Balance : 78,27,00,532.32Dr

Uncleared Amount :

0.00

Limit : 93,00,00,000.00

Drawing Power :

0.00

Int. Rate : 2.0000 % p.a.

Statement From 07/02/2011 to 13/03/2023

Page No. : 1

Table with columns: Value Date, Post Date, Details, Chq.No., Debit, Credit, Balance. Includes rows for Brought Forward, various TRF transactions, and Carried Forward.

Page Summary

Dr. Count 2

Cr. Count 10

3,60,00,000.00

5,49,71,298.89

\*\*\* Toll Free No. 1800221911\*\*\*\*\*

This is system generated statement hence signature or seal is not required

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STATEMENT OF ACCOUNT

AL NAFEEES FROZEN FOOD EXPORT PVT LTD Account No. : 3106782996 Page No. : 298

Value Date	Post Date	Details	Chq.No.	Debit	Credit	Balance
		BROUGHT FORWARD :				93,77,14,806.19Dr
18/05/17	18/05/17	3464 8025837442 1PC BY TRF.			10,36,435.62	92,92,21,908.91Dr
19/05/17	19/05/17	TRF FROM 03214816027 TO TRF.		7,00,000.00		92,99,21,908.91Dr
19/05/17	19/05/17	3464 8025837442 1PC BY TRF.			30,70,899.30	92,68,51,009.61Dr
22/05/17	22/05/17	TRF FROM 03214816027 TO TRF.		80,00,000.00		93,48,51,009.61Dr
23/05/17	23/05/17	3464 8025837442 1PC TO TRF.		28,00,000.00		93,76,51,009.61Dr
24/05/17	24/05/17	3464 8025837442 1PC TO TRF.		35,00,000.00		94,11,51,009.61Dr
24/05/17	24/05/17	3464 8025837442 1PC BY TRF.			34,36,203.42	93,77,14,806.19Dr
25/05/17	25/05/17	INWARD RECEIPT TRF FROM 03214816027 TO TRF.		36,00,000.00		94,13,14,806.19Dr
26/05/17	26/05/17	3464 8025837442 1PC TO TRF.		22,00,000.00		94,35,14,806.19Dr
26/05/17	26/05/17	3464 8025837442 1PC BY TRF.			23,80,936.64	94,11,33,869.55Dr
29/05/17	29/05/17	TR TRF FROM 03214816027 BY TRF.			39,94,999.60	93,71,38,869.95Dr
29/05/17	29/05/17	BPC1026 TRF FROM 03214816027 BY TRF.			42,34,818.33	93,29,04,051.62Dr
01/06/17	01/06/17	BPC1025 TRF FROM 03214816027 TO TRF.		25,00,000.00		93,54,04,051.62Dr
01/06/17	01/06/17	3464 8025837442 1PC BY TRF.			24,38,972.90	93,29,65,078.72Dr
02/06/17	02/06/17	TR INT7 TRF FROM 03214816027 BY TRF.			37,19,604.00	92,92,45,474.72Dr
02/06/17	02/06/17	3464 BPC 2017 10 BY TRF.			10,24,270.00	92,82,21,204.72Dr
		3464 TPA 2017 11				
		CARRIED FORWARD :				92,82,21,204.72Dr

Page Summary Dr. Count 3 Cr. Count 6 83,00,000.00 1,77,93,601.47

\*\*\* END OF STATEMENT \*\*\*  
TRUE COPY  
\*\*\*\* Toll Free No. 1800221911\*\*\*\*



4. The particulars of the total unpaid Financial Debt claimed including the total amount of default and the date of default are mentioned by the Applicant in Part IV of the application, which reads thus:

**PART – IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>		
1.	<b>TOTAL AMOUNT OF DEBT GRANTED AND DATE(S) OF DISBURSEMENT</b>	<b>Rs.97,00,00,000/- (Rupees Ninety Seven Crores Only) as Working Facility Credit Limit.</b>  Credit Limit was disbursed in several tranches as depicted in the statement of Accounts.  True copy of the statement of account for the loan account of the Corporate Debtor is annexed herewith and marked as <b>ANNEXURE A-4.</b>
2.	<b>AMOUNT CLAIMED TO BE IN DEFAULT AND</b>        <b>DATES ON WHICH THE DEFAULTS OCCURRED</b>	<b>Rs.83,17,66,730.65/- (Rupees Eighty three crores seventeen lacssixty six thousand seven hundred thirty and paisa sixty five only) approximately inclusive of interest on loan amount and other charges, as on 03.03.2023 along with further interest till the date of actual payment</b>  Copy of the computation sheet of the total outstanding debt as on Rs.83,17,66,730.65/- is annexed herewith as <b>ANNEXURE A-5.</b>  <b>30.10.2017   (Date of declaration of Bank Account of Corporate Debtor as NPA)</b>  <b>16.11.2019   (Corporate Debtor failed to comply with the terms of OTS Scheme)</b>

5. As per Part IV of the application reproduced above, the Applicant has claimed an outstanding debt of Rs.83,17,66,730.65/- inclusive of interest on the loan amount and other charges as of 03.03.2023 along with further interest till the date of actual payment and relied on 30.10.2017 as the date of default.



6. The Applicant has relied upon the following documents to prove the existence of its Financial Debt.

- i) Copy of Board Resolution dated 03.09.2010 passed at Board Meeting of the Respondent to accept/obtain various credit facilities to the tune of Rs. 115 Crores from the Applicant.
- ii) Copy of Board Resolution dated 14.12.2011 passed at Board Meeting of the Respondent to accept/obtain Ad-hoc FBWC of Rs.9.00 Crores from the Applicant.
- iii) Copy of Recall Notice dated 23.07.2018
- iv) Copy of Demand Notice dated 25.10.2018 under Section 13(2) of SARFAESI Act, 2002 demanding repayment of Rs. 94.77 along with future interest.
- v) Copy of OTS proposal dated 20.06.2019 by Respondent.
- vi) Copy of OTS acceptance letter dated 16.11.2019 issued by the Applicant.
- vii) Copy of Demand Notice dated 04.05.2022 under Section 13(2) of SARFAESI Act, 2002 demanding repayment of Rs.157.27 crores along with future interest.

7. Based on the aforesaid facts and documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On issuance of the notice, Respondent has filed its reply and written submission stating the following:

8.1 The present application is barred by limitation since the account of the Respondent was declared as NPA in the year 2017.



8.2 The present application is in violation of Section 215 of IBC 2016 since no record of Information Utility has been annexed.

8.3 The Respondent for the purposes of its business had availed Working Capital credit facilities from “Consortium Banks” i.e., Central Bank of India and Union Bank of India (erstwhile Corporation Bank). All security Assets were hypothecated in favour of the Consortium of Banks with *pari passu* charge of each of the consortium bank member.

8.4 In the instant case, the Central Bank of India has filed the application without arraying Union Bank of India as a co-applicant. The ratio of the Judgement dated 15.11.2022 passed by Hon’ble NCLAT in “Rakshit Dhirajlal Doshi vs. IDBI Bank Limited” (2023) 147taxmann.com355 (NCLAT-New Delhi) is squarely applicable in the present case.

8.5 During the pendency of the present petition, Union Bank of India had Auctioned various properties of CD and realized and distributed a huge amount among themselves (Consortium Banks) which has not been disclosed before this Tribunal.

9. The Applicant Bank has also filed its rejoinder and stated that:

9.1 The Application under Section 7 can either be filed by a single Financial Creditor or jointly with another Financial Creditor(s).

9.2 As per Judgement of the Hon’ble High Court of Calcutta in the matter of Univalue Projects P. Ltd. Vs. The Union of India & Ors. W.P. No. 5595(w) of 2020, Section 215 of IBC 2016 is directory in nature. Even otherwise, the



Applicant had annexed the record of Information Utility with its rejoinder on pages nos. 18 to 24.

9.3 The Respondent had acknowledged its debt and default in its One Time Settlement (OTS) proposal dated 20.06.2019, which is made within 03 years of NPA i.e., 30.10.2017, which is the date of default. Hence, the application is within the limitation.

9.4 The Account of the Respondent was declared as NPA on 30.10.2017 and the default first occurred on 30.10.2017. Further, the Respondent, on 20.06.2019, i.e., within 03 years from the date of default, by proposing to enter into an OTS with the Applicant, admitted the existence of debt and acknowledged the Respondent's liability to pay the debts. The OTS proposal submitted by the Respondent was approved by the Applicant Bank on 16.11.2019 and subsequently, accepted by the Respondent. Thereby, as per Section 18 of the Limitation Act, the period of limitation stood extended by further 03 years since the date of OTS i.e., 16.11.2019. Section 18 of the Limitation Act is reproduced hereunder:

*“18. Effect of acknowledgment in writing. -*

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



Furthermore, the Hon'ble Supreme Court in the matter of **Laxmi Pat Surana Vs. Union Bank of India & Anr.** has held that when the Principal Borrower/Guarantor admits and acknowledges their liability after the declaration of NPA but before the expiration of three years therefrom, a fresh period of limitation would start from the date of acknowledgment. The relevant para of the Judgement is reproduced below:

*“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” - not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. **Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the reviewed limitation accruing due to the effect of Section- 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to***



***initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be Wore the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.”***

9.5 Furthermore, the Hon'ble Supreme Court in Miscellaneous Application No. 21 of 2022 in Suo Moto Writ Petition (C) No. 3 of 2020 has directed that the period from 15.03.2020 till 28.022022 shall stand excluded for the purpose of limitation. Hence, the present Section 7 application is well within the period of limitation. The computation of the limitation period is illustrated in a tabular manner for the convenience of this Tribunal.

**Computation of limitation from 16.11.2019 (OTS date)**

16.11.2019-15.03.2020	4 months
01.03.2022-13.03.2023 (Date of filing)	12 Months and 12 days
	16 Months and 12 days

10. After hearing the submissions of both the parties and perusing the documents placed on record, this Bench observes that the Respondent has contended that the present Application is barred by Limitation whereas, the Applicant has countered the same by asserting that the instant petition is well within limitation. Accordingly, we would like to examine the contentions of the



parties as to **Whether the present Application is filed within the period of Limitation.**

11. On perusal of the records as well as the following data reflected on the website of this Tribunal, it is observed that the present Application is filed on 14.03.2023.

The screenshot shows the National Company Law Tribunal website. The header includes the logo and name of the tribunal, along with a search bar and a login button. The navigation menu includes Home, About Us, Cause List, Case Status, Judgement/Orders By, Notification, Circulars, Right To Information, Disposal Data, Careers, Display Board, E-Filing, and Contact Us. The main content area is titled "Case Number Wise Search" and shows a search result for case number 0710102023882023. The result is displayed in a table with columns for S. No., Filing No., Case No., Petitioner Vs. Respondent, Filing Date, and Status. The filing date is 14-03-2023 and the status is Pending.

S. No.	Filing No.	Case No.	Petitioner Vs. Respondent	Filing Date	Status
1	0710102023882023	C.P. (IB) - 204/2023	CENTRAL BANK OF INDIA LIMITED VS AL NAFEEES FROZEN FOOD EXPORTS PRIVATE LIMITED	14-03-2023	Pending

12. Further from the perusal of Part IV of the Application, it is noticed that the Applicant has relied on the date of NPA i.e., 30.10.2017 as the date of default.

13. Furthermore, as per the Application and arguments advanced by the Ld. Counsel during the hearing, the Applicant Bank had also relied upon the OTS proposal dated 20.07.2019 submitted to the Bank on 22.07.2019 to extend the period of Limitation. The said OTS proposal is reproduced overleaf:



**ANNEXURE A-18**  
**FOOD EXPORTS PVT. LIMITED**

EXPORTERS OF FRESH FROZEN/CHILLED MEAT



**Head Office :**  
6, Central Lane, Bengali Market,  
New Delhi-110001  
Ph. : +91-11-23311801,04,06,08, 47366200  
Fax : +91-11-23311815, 19  
e-mail : [alnafees@fdb.vsnl.net.in](mailto:alnafees@fdb.vsnl.net.in)  
website : [www.alnafeesgroup.in](http://www.alnafeesgroup.in)

संयुक्त बैंक ऑफ इंडिया  
कॉर्पोरेट वित्त शाखा, नई दिल्ली  
27 JUL 2019  
डा. राजेश

**Factory :**  
Hasarpur Bus Stop, Hapur Road,  
Dasna Distt., Ghaziabad (U.P.)  
Phone : 95120-2800676, 2677606  
2677856 (Reli.) : 95120-3094556  
CIN No. : U74899DL1987PTC02963

OTS/DEL/II/CENTRAL BANK/2019-04

Date: 20th July 2019

To  
The Dy. General Manager,  
Central Bank of India,  
Jeevan Tara Building,  
Parliament Street Branch,  
New Delhi-10001

Dear Sir,

**Ref :- OTS Time bound Action plan for settling the dues.**

We have for reference of our previous letter of OTS in which our willingness to settle the dues with the bank as mentioned in our OTS proposal submission letter dated 10-07-2019 of Rs 60 Cr. and deposit 10% immediate of the OTS proposal with discussion.

According to our Commitment we had deposited Rs 6 Cr. in No lien account bank A/c no.3108440881 provided by bank, Delhi. We here submit time bound plan of action to honour our commitment to repay the amount under OTS.

First the entire OTS amount Rs 60 cr. shall be paid as under :-

- 10% of the total offer i.e 6 cr. already deposited in no lien account will be transferred at the time of conveying the approval of OTS.
- 15% of the total offer shall be deposited within 90 days from the date of conveying the approval.
- 25% of the total offer shall be deposited within 6 months from the date of conveying the approval.
- 25% of the total offer shall be deposited within 9 months from the date of conveying the approval.
- 25% of the total offer shall be deposited within 12 months from the date of conveying the approval.

Some important points to be highlighted here.

• The entire valuation of Properties, Plant & Machinery as per market value is Rs 130.87 Cr. (Combined valuation of Consortium Bank- Central bank of India and Corporation Bank) in which Central Bank of India share is 50 Cr. Approx.

• The amount deducted and adjusted in PCL account since 2017-18 is 4.98 Cr.

• We had made payment of Interest and Bank Charges to Central Bank of India during the Year 2010-11 to 31<sup>st</sup> July 2016 is Rs 63.45 Cr.

• One FDR of Rs. 5.44 Cr. is with Corporation Bank will be adjusted that is equivalent to Rs.2.08 Cr.

As mentioned previously by us, company is facing acute financial crunch due to multiple factors. It is admitted that there is a decline in the growth of meat industry from 2013-14. Despite several efforts the industry could not sustain due to several factors affecting directly or indirectly the industry growth due to the same the demand of Indian Buffalo meat has been shifted to other countries. As a result the price in the International market of Indian Buffalo meat has fallen viz a viz the purchase cost of Buffalo has been increased drastically. Huge losses have been reported and losses continue to grow every day.

Further, since the demand has been affected, the debtors to whom we have exported have also been affected and their payment from their vendors has effect on them, in turn they have also stopped making the payment to us. Due to which, a huge amount of payment has been stuck in the international market and it has affected our business.

The financial crunch due to the above factors has badly damaged to our business, due to which the working capital has been eroded and has been stuck.

From the last 10 months our factory has also been closed by NGT, which has added more bone of contention and the losses has been increased due to the same. We are in process of appealing against the same, since the matter is subjudice, it may take time to open the same.

As we have always kept you aware of our efforts for sale/Joint Venture for our factory / business but due to some unavoidable circumstances our efforts goes in vein.

It is noteworthy to mention here that we have a 10 years long relationship with your bank and we acknowledge the cooperation and help extended by your bank at all times.

Upon acceptance of the OTS offer by the bank, the upfront amount may be adjusted by the bank towards the settlement and the remaining amount shall be paid according to our plan within 1 years from the date of approval and issuance of written communication of the same. In case, for any reason, we do not settle the OTS within the stipulated time frame, the upfront amount of Rs 6 Cr. So paid by us shall be forfeited and we do not have any right to seek refund of the said amount.

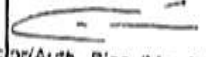
We would like to settle our dues once and for all with your bank and has the release pari passu charges of all our properties, and guarantees mortgaged with the bank, at once go. We seek your kind help and cooperation for the same.

We request you to release the original property documents, as and when we make payment to both banks under consortium of the particular property which we proposed to sell.

We assure you sir, that we shall make all our best efforts honestly to liquidate our liabilities in timely manners.

Request you to accord sanctions accordingly and oblige.

Thanking you,  
Yours Sincerely,  
For AL Nafees Frozen Food Exports Pvt. Ltd.  
AL NAFEES FROZEN FOOD EXPORTS PVT. LTD.

  
Director/Auth. Sign./Mg. Director  
Mohd. Mustaqeem Qureshi  
(Director)



14. We are conscious of the fact that an OTS proposal made within 03 years from the date of default has been recognized for the purpose of extending the period of Limitation. In this context, we refer to the Judgement dated 04.08.2021 of the Hon'ble Supreme Court passed in the matter of **Dena Bank (now Bank of Baroda) Vs C. Shivakumar Reddy and Anr. CIVIL APPEAL NO.1650 OF 2020**, which reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.”*

*(Emphasis supplied)*

15. In the instant case, the OTS proposal by the Applicant was made on 20.07.2019 which is well within a period of 03 years from the date of default i.e., 30.10.2017. However, the Applicant Bank has contended that the extended Limitation shall be computed from 16.11.2019, on which the OTS proposal was accepted by the Bank. Accordingly, we would like to visit the Acceptance letter of the Bank dated 16.11.2019 which is reproduced overleaf:



SAM: DEL: 2019-20: 93

16.11.2019

Al Nafees Frozen Foods Pvt. Ltd.  
6, Central Lane, Bengali Market,  
New Delhi - 110001

WITHOUT PREJUDICE

Sir,

Reg: One Time Settlement (OTS) Proposal in NPA A/c M/s. Al Nafees Frozen Food Exports Private Limited.

Ref: Your letter No. dated 20.07.2019

We are pleased to inform you that our higher authorities has approved the compromise proposal given by your company vide letter under reference, in its meeting held on 07.11.2019 vide agenda item no. CAC/222/2019-20/17/02 on the following terms and conditions:

Amount of Compromise	Rs. 61.82 Crore (Rs. 60.00 Crore + Rs. 1.82 Crore)
Repayment Terms	<p><b>Repayment schedule &amp; Repayment amount (Rs. in Crores)</b></p> <p>Rs. 6.00 Crores has been deposited as upfront.</p> <p>Rs. 1.82 Crores to be received upfront from Corporation Bank.</p> <p>Rs. 9.00 Crores shall be paid within 90 days from the date of conveying sanction</p> <p>Rs. 15.00 Crores shall be paid within 6 months from the date of conveying sanction</p> <p>Rs. 15.00 Crores shall be paid within 9 months from the date of conveying sanction</p> <p>Rs. 15.00 Crores shall be paid within 12 months from the date of conveying sanction</p> <p><b>TOTAL Rs. 61.82 Crores</b></p>
Default	In case of default in payment as per terms of sanction, the sanction will be automatically treated as cancelled.
Issuance of NOC for Release of Security	<p>As per the Bank's Recovery Policy Para 7.9.5(v) for release of Security</p> <p>"In case of NPA accounts where there are securities, the security should be released only after recovery of entire settled amount along with interest for delayed period, if any."</p> <p>However, securities be released in line with Lead Bank Corporation Bank as under:</p> <p>➤ Release of property of 6 Central Lane, Bengali Market, New Delhi.</p>

5, Jeevan Tara Building, Parliament Street, New Delhi - 110 001  
Telephone: 011-23348624, 49992200 (20 lines) Fax: 011-4353644/  
Email: samdelhi@centralbank.co.in

FOR AL-NAFEES FROZEN FOOD EXPORTS PVT. LTD.

Director/Asst. Sign./Mg. Director

TRUE COPY



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Average R.V. Rs. 18.23 Crore - our share Rs. 6.43 Crores after payment of Rs. 15.00 Crores (Rs. 6.00 Crores upfront + Rs. 9.00 Crores within 90 days) + Rs. 1.82 Crores from Corporation Bank

- Release of property of M-18/19, MIDC, Talaja Industrial Estate, Talaja, Maharashtra, Mumbai. Average R.V.-Rs. 24.84 Crores (our share Rs. 8.92 Crores) after receipt payment of Rs. 15.00 Crores

Remaining properties only after receipt of entire compromise amount of Rs. 61.82 Crores (Rs. 60.00 Crores + Rs. 1.82 Crores)

The original title deeds and the other related documents of the mortgaged properties shall be released to the borrower company only on release of the corresponding amount as indicated in the table above and only after obtaining NOC from Corporation Bank for release of properties

Other Conditions

- In case of failure to pay the compromise amount within stipulated period, entire concessions will stand withdrawn and will be treated as if there was no compromise settlement in the account.
- OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the criminal case/ investigation, if any, being carried out by the CBI/Police and the same shall proceed as per law.
- Borrower shall withdraw the counter claim/criminal case filed against the bank/its officials immediately, if any.
- Charge on security/title deeds shall be released only after receipt of OTS amount along with interest, as mentioned in schedule.
- A supplementary agreement to keep the SARFAESI action in abeyance should be obtained.
- Payment of settlement amount in installments beyond 30 days will attract interest @ MCLR (1 Year) Simple on Reducing balance in terms of banks norms.**
- Stamped Undertaking to be provided by the Company stating that Bank will not be liable or responsible for any future claims and Statutory dues of the Company.
- In the event of Bank finding any misrepresentation of facts by the borrower company, bank reserves the right to withdraw the compromise settlement sanctioned and proceed legally for recovery of entire dues.
- Undertaking letter to be provided stating that any legal dispute arising on a future date will be at sole risk and responsibility of the Borrower Company and bank will not be liable with regard to any dispute/claims/injunctions.
- The name of the borrower company will appear in CIBIL as "account closed under compromise settlement" and no further exposure to be given from our bank.
- On payment of Compromise settlement amount in full, Certificate will be issued to the borrower company with a condition that the account has been settled under OTS.
- Upon failure of the borrower company to abide by the terms of

For AL-NAFEES FROZEN FOOD EXPORTS PVT. LTD.  
M. S. D. S. K.

5, Jeevan Tara Building, Parliament Street, New Delhi - 110 001  
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For AL-NAFEES FROZEN FOOD EXPORTS PVT. LTD.

Director/Auth. Sign./Mg. Director

TRUE COPY



सैन्ट्रल बैंक  
ऑफ इंडिया



Central Bank  
of India

STRESSED ASSET MANAGEMENT BRANCH - DELHI

	15 this compromise settlement, the concession granted shall stand withdrawn/cancelled automatically and the Bank will be entitled to recover the entire dues without any concession.
Committee Observations	Our approval is subject to other Banks in consortium approving the proposal on same lines.

Please submit us duplicate copy of this sanction advice duly signed by authorized signatory of company in token of acceptance of terms and conditions of sanction.

Yours faithfully,

  
V. Lakshmana Rao  
Asstt. General Manager/SAM Incharge

For AL-NAFEES FROZEN FOOD EXPORTS PVT. LTD.

  
Director/Author. Sign./Mg. Director

On perusal of the above, it is noticed that the Acceptance Letter of the Bank, issued within 3 years from 30.10.2017, was also signed by the Director of the Respondent. Hence, in our considered view, the extended period of limitation would be computed from 16.11.2019, whereafter another period of 03 years would expire on 15.11.2022.

16. The Applicant herein has also relied upon the order dated 10.01.2022 passed in Suo Motu Writ Petition (C) No. 3 of 2020 of the Hon'ble Supreme Court to substantiate that the instant application is filed within the limitation period. The said order reads thus:



“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

**II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.**

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

*(Emphasis Supplied)*

17. On perusal of the order of the Hon’ble Apex Court (supra), it is observed that the balance period of limitation remaining as of 03.10.2021 shall become available from 01.03.2022. In the instant case, in normal circumstances, the limitation would have expired on 15.11.2022, however, in the light of para II of the aforesaid order of the Hon’ble Supreme Court, the limitation period available from 03.10.2021 was of 409 days (15.11.2022 - 03.10.2021) and the same is to be made available with effect from 01.03.2022. Accordingly, the



revised limitation period comes to 409 days from 01.03.2022. The instant application having been filed on 14.03.2023 is on the 379<sup>th</sup> day (i.e., 14.03.2023 – 01.03.2022) out of 409 days available for limitation. **Hence, we conclude that the present application is filed well within the period of limitation** and therefore, we would like to proceed ahead on merits.

18. Secondly, it is contended by the Respondent that the application is barred by Section 215 of IBC 2016 since no record of Information Utility has been annexed by the Applicant. However, when we peruse the rejoinder, we find the Record of Default of Information Utility - NeSL on record, which is reproduced below.

*Annexure A-22* 18

**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED  
India's First Information Utility

**FORM D**  
**RECORD OF DEFAULT (RoD)**

*(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)*

This Record of Default is issued to the Financial Creditor M/s CENTRAL BANK OF INDIA in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s CENTRAL BANK OF INDIA
(b) Schedule-2 Bank (Y/N):	Y
(c) Name of Corporate Debtor:	M/s AL NAFEES FROZEN FOOD EXPORT PVT LTD
(d) Unique Debt Identifier Number:	AAACC2498P_3106782996
(e) Registered Address:	Chandermukhi Nariman point, mumbai
(f) Total Outstanding Amount:	782700532.00
(g) Default Amount:	147299467.00
(h) Date of Default:	30-10-2017
(i) Status of Authentication of Default:	AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(7)	23-02-2023 18:54:43	<b>AUTHENTICATED</b> Colour Code : GREEN	12-03-2023 09:04:21

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

Hence, we see no merit in this objection raised by the Respondent.



19. It is contended by the Respondent that the Central Bank of India has filed the present application without arraying the Union Bank of India (the other member of the consortium) as a co-applicant. The Respondent further added that the ratio of the Judgement of Hon'ble NCLAT in "Rakshit Dhirajlal Doshi vs. IDBI Bank Limited" (2023) 147taxmann.com355 (NCLAT-New Delhi) is squarely applicable in the present case. Accordingly, we would like to visit the Judgement dated 15.11.2022 of the Hon'ble NCLAT passed in the matter of "**Rakshit Dhirajlal Doshi vs. IDBI Bank Limited and Others in Company Appeal (AT) (Insolvency) No. 658 of 2022**", wherein the following was held:

*"28. We note that in the Impugned Order the Adjudicating Authority has relied on clause 7.5 of the Inter-se Agreement to hold that any lender is at liberty to take any decision or action on any other matter and is not required to take any approval from any other lender. We find that clauses 7.1 and 7.2 of the Inter-se Agreement clearly lay down that an 'Event of Default' is covered under the actions for which the provisions are made in the Inter-se Agreement and the modality of taking such action is clearly set out in clause 7.2. Even for the enforcement of securities, clause 7.3 of the Inter-se Agreement clearly provides that the enforcement of any or all of the securities, shall be done by the Security Trustee as per provisions of the Security Trustee Agreement on behalf of all the lenders and as instructed by the majority lenders. Therefore, clause 7.5 has to be read conjointly with clauses 7.1, 7.2 and 7.3 of the Inter-se Agreement. If that is done, we find that the action taken by the IDBI Bank in declaring 'Event of Default' is not in consonance with the provisions of Inter-se Agreement. We, therefore, conclude that the Adjudicating Authority has committed an error by placing reliance on a faulty interpretation and understanding of clause 7.5 of the Inter-se Agreement.*

29. 29. From the above discussion, it is clear that the Respondent IDBI Bank was not entitled to act independently in declaring an 'Event of



*Default’ in respect of its individual loan and recalling the loan advanced by it to the borrower Doshion and seeking repayment of the said loan from the guarantor FIPL. We are, therefore, of the view that the locus standi of the Respondent IDBI Bank in taking unilateral action for declaring an ‘Event of Default’ in the repayment of the loan advanced by it is not established as the IDBI Bank being a participating bank of the Bank of Baroda consortium was bound to act under the clauses/provisions of the Inter-se Agreement and the Security Trustee Agreement.”*

.....

*“31. We note the order of NCLT in the matter of **IDBI Bank vs. Manoj Gaur (supra)** wherein it is held that if the Security Agreement lays down that the lenders shall act collectively then IDBI Bank could not have acted on behalf of all the lenders, without obtaining their formal consent and substituting itself in place of the Security Trustee. We also take note of the judgment of Hon’ble Supreme Court in the matter of **State Bank of India vs. V. Ramakrishnan (supra)** wherein the Hon’ble Apex Court has held that the continuing liability under IBC for corporate guarantees is not res-integra and shall be operative for individual guarantors. Both these judgments are, in our opinion, applicable in the present case.*

*32. On the basis of detailed discussion in the aforementioned paragraphs, we are of the clear opinion that, in view of the stipulations and provisions in the Inter-se Agreement of which the Respondent IDBI Bank was a signing party, and the provisions of the Security Trustee Agreement entered into between the Bank of Baroda (as a Lead Bank of the consortium) and the guarantor FIPL and IL&FS Trustee Company Limited, the IDBI Bank could not have acted unilaterally in either declaring an ‘Event of Default’ regarding repayment its loan facilities granted to the borrower Doshion and later seeking repayment of the loan from the guarantor Fivebro International Private Limited.”*



20. Per Contra, the Applicant in its Written Submissions has stated that the facts of Rakshit Dhirajlal (supra) are not applicable to the facts of the present case, and the Application in that case was dismissed because the event of default had not occurred. Further, the Section 7 Application in the above-referred case, was filed against the Corporate Guarantor, and the deed of guarantee was signed in favor of the Trustee Company, acting for and on behalf of the Consortium Banks. Further, Security Trustee Agreement entered into by the Banks, Security Trustee, and Guarantor provided a specific process for declaring the Event of Default, which was not followed by the Bank in the facts of that case.

21. The Applicant Bank has further relied on the Judgement of the Hon'ble NCLAT passed in the matter of "Oriental Bank of Commerce Vs M/s Ruchi Global Limited" CA (AT) (Ins) No. 378 of 2019, wherein it was observed that Corporate Debtor being non-signatory to the inter-se agreement of consortium, cannot take benefit from the same. The relevant extracts of the Judgement are reproduced below:

*8. In our view **the Agreement being Inter-se between the Banks the Corporate Debtor cannot take benefit of the Clauses in that agreement, which are binding only to the Banks. If there is a default by any member of the Consortium, it would be a matter for the other banks to be aggrieved with and Corporate Debtor cannot take benefit of the same to raise grievance.** If the Appellant Bank did not act in tune with the Consortium Agreement it may be matter of consideration for other Bank/s of the Consortium and/or Reserve Bank of India. However, there is nothing which Bars filing of Section 7 of IBC Application by the Appellant. Even if there was Clause that the Bank which wants to take action should give notice of 30 days, if notice was not given that would be a matter for the Lead bank to look into. That does not*



create Bar for the Appellant Bank to move Application under Section 7 of IBC. In judgment in the matter of **“Asian Natural Resources (India) Ltd. & Anr. Vs. IDBI Bank Ltd.”** this Tribunal has held in para 7 of the Judgment as under:

*“7. Apart from that the Inter se Agreement between different Banks is not binding in nature, the „Corporate Debtors“ not being signatories cannot derive advantage of such Inter se Agreement. This apart, the „financial creditors“ having right to file application under Section 7 of the I&B Code, individually or jointly on behalf of other „financial creditors“ as quoted below, the Inter se Agreement between the „financial creditors“ cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code.”*

*9. We are in Agreement with the observations made by the Hon’ble Bench of this Tribunal as above. We find that the judgment of the Adjudicating Authority in dismissing the Application under Section 7 because of the Consortium Agreement cannot be maintained.*

(Emphasis Supplied)

22. In view of the Judgement (supra), we agree with the contention raised by the Applicant Bank that the Respondent cannot take benefit of the inter-se agreement entered by and between the consortium of banks. We also do not find any objection raised by the Union Bank of India- the other consortium member on record.

23. During the course of the hearing on 01.06.2023, it was stated by the Respondent that it had discharged the debt of the Union Bank of India. For the purpose of immediate reference, the said order is reproduced below:



Heard the arguments advanced on behalf of the Applicant as well as the Respondent. Mr. Sunder Khatri, Ld. Counsel appearing for the Respondent submitted that the debt disbursed to the CD is not by the petitioner alone but by a consortium and the CD is in the process of settling the loan amounts with the members of the consortium. He added that CD has discharged its liabilities towards the Union Bank of India. He further submitted that the meeting of the CD with members of the consortium is scheduled to be held today and he is sanguine that the defaulted amount would be settled. On settlement for the defaulted amount between the parties, it would be open to them to move an appropriate application for directions within one week.

Ld. Counsel for the parties are directed to file written arguments not exceeding 3 pages each along with the judgments relied upon, within one week.

**Order reserved.**

Since as per its own submission during the course of the hearing, the Respondent has discharged the debt of Union Bank of India, the question of arraying the Union Bank of India as a party to the present case does not arise. Hence, we are of the view that the Judgement of Hon'ble NCLAT in the matter of "Rakshit Dhirajlal Doshi vs. IDBI Bank Limited and Others" in Company Appeal (AT) (Insolvency) No. 658 of 2022 does not help the case of the Respondent and is not applicable to the facts of the present case. Even otherwise, as per the Scheme of Section 7 of IBC 2016, an application can be filed by a Financial Creditor alone by itself or jointly with other Financial Creditors. Hence, we do not find any merit in this objection too.

24. Further, as evident from the order dated 09.06.2023 (ibid), in the interest of justice, this Adjudicating Authority had given 07 days' time to the Respondent to settle the matter and move an application if the settlement is arrived at between the parties. However, neither there is any intimation



regarding any settlement nor there is any IA on record for withdrawal of the present application.

25. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

26. As proposed by the Applicant, this Bench appoints Mr. Manohar Lal Vij as IRP having Registration No. IBBI/IPA-001/IP-P01480/2018-2019/12269,



Email ID: <[mivij1956@gmail.com](mailto:mivij1956@gmail.com)> subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

*“Mr. Manohar Lal Vij, as a IRP having Registration No. IBBI/IPA-001/IP-P01480/2018-2019/12269, E-mail ID: <[mivij1956@gmail.com](mailto:mivij1956@gmail.com)> is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.*

27. The Applicant is directed to deposit Rs.10,00,000/- (Ten Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

28. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, and the Information Utility/NeSL by the Court Officer/Registry of this Tribunal.

29. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**