

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP(IB) 93/7/NCLT/AHM/2020 With
IA 882 of 2020

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 02.03.2021

Name of the Company:

L & T Finance Ltd
V/s
Essar Shipping Ltd

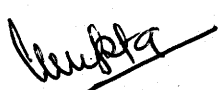
Section:

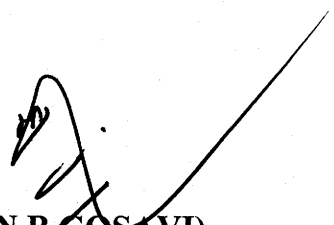
60(5) r.w Rule 11 /7 of Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 2nd day of March, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.93/7/NCLT/AHM/2020

with

IA No. 882 of 2020

(Application for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :

L & T Finance Limited

7th Floor, Technopolis,
A-wing, Plot No. 4
Block BP Sector-V,
Kolkata-700091

..Financial Creditor

V/s

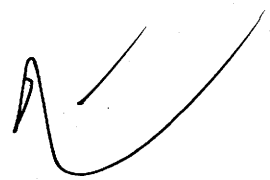
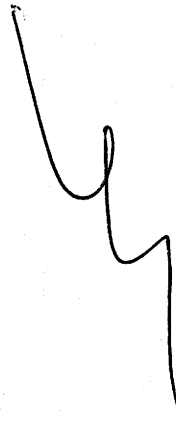
Essar Shipping Limited

EBTSL Premises ER-2,
Building (Admn. Building) Salaya 44 KM,
P.B. No. 7, Taluka: Khambhalia,
Devbhumi Dwarka,
Khambhalia Jamnagar-361305

..Corporate Debtor

Order Reserved on 8th February, 2021
Order Pronounced on 2nd March, 2021

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)



Appearance:

Learned Senior Counsel Mr. Manish Bhatt a.w. Learned Counsel Mr. Arjun Sheth appeared for the Financial Creditor

Learned Senior Counsel Mr. Saurabh Soparkar a.w. Learned Counsel Mr. Vishal Dave & Learned Counsel Mr. Nipun Singhvi appeared for the Corporate Debtor

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER(T)]

1. This Application is filed by the **L & T Finance Limited** (hereinafter referred to as the 'Financial Creditor') under Section 7 of the Insolvency & Bankruptcy Code, 2016, r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016, to start Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP') against the **Essar Shipping Limited** the Corporate Debtor.
2. The facts, in brief, are that Original Financial Creditor gave loan to M/s. Essar Oilfield Service (India) Ltd., a group Company of Corporate Debtor. A sum of Rs. 69.20 Crores had been disbursed on 28.03.2014. The Corporate Debtor provided Corporate Guarantee in relation to such loan amount.

Corporate Guarantee was executed on 27.03.2014. The original Financial Creditor got merged into the present Financial Creditor. The Corporate Debtor defaulted in repayment of loan as per the terms and conditions of loan agreement. Several demand notices were issued to both Principal borrower as well as Corporate Debtor from time to time. Winding up proceedings were also initiated which were withdrawn due to amendment agreement entered into between financial creditor and principal borrower on 04.05.2017. Subsequently, due to non-payment of loan as per revised schedule recall notice had been given on 29.10.2018. Second letter was issued on 08.02.2019. In both these letters, Principal Borrower as well as Corporate Debtor were the addressee. Subsequently, settlement talks were also initiated between the parties. Correspondences also happened in that regard. However, the same remained without any success. Ultimately, this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 was filed on 21.01.2020.

Contentions of the Financial Creditor :

3. Learned Senior Counsel Mr. Manish R. Bhatt appeared for the Financial Creditor and drew our attention to the facility agreement between the Principal Borrower and Financial Creditor dated 27.03.2014. Our attention was also drawn to the Deed of Corporate Guarantee dated 27.03.2014, executed by and between the Corporate Debtor and the Financial Creditor. Our attention was drawn to the various terms and conditions of such Guarantee to show that, it was the case of continuing Guarantee which could be invoked in case of default by the Principal Borrower as per Deed of Guarantee. The Corporate Debtor was liable to pay the liability of the Principal Borrower to the Financial Creditor. It was pointed that the Original Financial Creditor got merged with the Applicant. Thereafter, it was pointed out that, there was an Agreement between the Financial Creditor and the Principal Borrower on 04.05.2017, whereby payment schedule was revised, therefore, it amounted novation of the contract, hence, liability of the Corporate Debtor also stood amended. In this regard, it was

emphasized that the Corporate Debtor vide its letter dated 13.09.2019 had acknowledged the said Amendment Agreement dated 04.05.2017. Thus, according, to the Learned Senior Counsel as per the Amended Agreement dated 04.05.2017, the payment as per the revised plan was also not made and this application was filed within three years there from, hence, not barred by limitation.

4. Our attention was also drawn to the balance confirmation given by the Corporate Debtor on 19.03.2018. Learned Senior Counsel further submitted that on 29.10.2018, Recall Notice was given for the payment of facility loan amount. On 08.02.2019 Corporate Guarantee was invoked. It was also contended that there were various settlement proposals by the Principal Borrower from time to time. However, settlement did not take place though agreement were executed and dues admitted.

Contentions of the Corporate Debtor :

5. The Learned Senior Counsel for the Corporate Debtor appeared and he raised fundamental contention that Financial Creditor's claim was time barred. Learned Senior Counsel, in

this regard, emphasized on fact that date of invocation of corporate guarantee was the first written demand made by the Financial Creditor and the period of limitation, therefore, would commence to run from such date. Thereafter, the Learned Senior Counsel submitted that the Financial Creditor had admittedly issued written demand notices to the Corporate Debtor on 24.11.2014, 02.12.2014, 12.12.2014, 22.12.2014 and 27.01.2015. It was also contended that the Financial Creditor had issued winding up notices under Section 433 & 434 of the Companies Act, 1956 with regard to the Corporate Guarantee on 16.03.2015, which was withdrawn on 21.03.2017 without seeking any liberty to file a fresh including liberty to approach this Authority which had come into existence by that time. Thus, period of limitation ended over on 24.11.2017 and as per the Section 9 of the Limitation Act, 1963 such period continued to run irrespective of any subsequent disability or inability to institute necessary proceedings. Our attention was also drawn to the provision of Section 9 of the Limitation Act, 1963 in support of such legal

claims Accordingly, it was claimed that period of limitation i.e. three years expired on 24.11.2017.

6. It was also pleaded that material information as regards to the sequence of evidence as pointed out hereinbefore and commencement of limitation were not disclosed in Section 7 application, which amounted to material suppression of facts and for this reason also the application was liable to be dismissed.
7. As regards to the letter dated 30.09.2019, it was specifically pointed out that such letter did not acknowledge the liability to repay the debt in writing and rather it did not even mention Guarantee Claim against the Corporate Debtor. Our attention was drawn to the specific contents of this letter to point out that in this letter it was merely stated that certain agreements had been executed between the Financial Creditor and the Principal Borrower and there was no mention regarding corporate debtor's liability qua the said amendment. Taking his arguments further, the Learned Senior Counsel contended that acknowledgement of liability should be specific and explicit, wherein, intendment of such extension, in the context of dual

relationship should be established. However, such letter did not contain such narration, hence, it could not be considered as acknowledgment in writing. The Learned Senior Counsel, thereafter, contended that the letter dated 13.09.2019 being signed almost two years after the expiry of limitation on 24.11.2017. Hence, it could not extend the limitation. For this proposition, Learned Senior Counsel relied upon the decision of Hon'ble Supreme Court of India in **Sampuran Singh and ors. vs. Niranan Kaur & Ors. (23.02.1999)** held as under :

9. In his endeavour, learned Counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgement by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revive which would only start from that date of acknowledgement hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. **Section 18, Sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during**

subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.

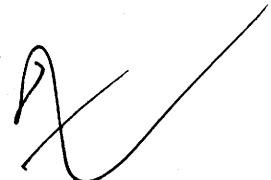
Accordingly, he summed up his arguments on this aspect by stating that there was no merit in the claims made by the Financial Creditor as regards to the claims made by Principal Borrower had acknowledged the date of default dated 04.05.2017 to 13.09.2019, which mainly constituted amendments to the facility agreement between the Principal Borrower and the Financial Creditor executed without corporate guarantor (corporate debtor) involvement or knowledge. Hence, such proposals /acknowledgment between the Financial Creditor and Principal Borrower had no bearing on the rights/liabilities of the Corporate Debtor, which was an independent entity.

8. For the proposition the date of default would not change on the basis of unilateral actions of the Financial Creditor and there cannot be two defaults in respect of the same debt. Learned Senior Counsel relied upon the judicial decisions of the Hon'ble Apex Court, in ***B.K. Educational Services Private Limited vs. Parag Gupta and Associates (11.10.2018 - SC)*** and the ***Hon'ble NCLAT, in State Bank of India vs. Krishidhan Seeds Pvt. Ltd. (17.11.2020 - NCLAT)*** to contend that in the present case, Financial Creditor had filed an application under section 7 of the Insolvency & Bankruptcy Code, 2016 on 20.01.2020, which was barred by limitation, hence, liable to be dismissed.
9. The Learned Senior Counsel, thereafter, made a plea that current applicant had no *locus standi* as it was not a 'Financial Creditor' within the meaning of term contemplated by the IBC 2016 because no documents to the effect of assignment of debt had been made in favour of the current application by the Original Financial Creditor though Original Lender merged with the Applicant in scheme of amalgamation.

10. Learned Senior Counsel for the Corporate Debtor, thereafter, took shelter of Section 131 of the Indian Contract Act, 1872 for the proposition that any variance in the terms of contract between the principal debtor and the creditor, discharges surety as to transactions subsequent to the variance. In the present case, the facility agreement had been extensively amended by the amendment agreement dated 04.05.2017 and, therefore, Corporate Debtor stood discharged. Plea was also taken that this Authority had no jurisdiction to entertain and dispose of this application as the Mumbai NCLT was the correct forum. For this proposition he relied on the judicial decision of ***PNB Vs Essar Shipping Limited numbered as CP (IB)175/2019.***

Rejoinder of the Financial Creditor :

11. Learned Senior Counsel for the Financial Creditor in the rejoinder, submitted that an application had been filed on the basis of Letter of Authority supported by the Board Resolution, hence, it was compiled all the requirements of the law. For this proposition he relied upon the decision of Hon'ble NCLAT in the case of ***Palogix vs. ICICI.*** As regards to the record of



default as per the Information Utility, it was contended that it was not compulsory. Thus, the plea as regard to that aspect of the Corporate Debtor having no merit. As regards to the locus of the Applicant, it was contended that assets and liabilities had been taken over pursuant to amalgamation order and, therefore, no other documents were required to be executed.

12. Learned Senior Counsel for the Financial Creditor submitted that winding up proceeding initiated by the L & T against the Corporate debtor had been withdrawn on the basis of amendment agreement dated 04.05.2017 and E-mail Dated 07.03.2017 which had been issued by the Financial Creditor to the borrower, wherein, the Corporate debtor had also been copied and default took place qua the Principal borrower in the year 2018 pursuant to recall notice dated 29.10.2018 issued by the Financial Creditor to the borrower and the Corporate Debtor and thereafter pursuant to invocation of guarantee vide its letter dated 29.10.2019 and considering the fact that Corporate debtor had acknowledged its liabilities on 13.09.2019 after the invocation notice, the debt was not barred

by limitation. As regards to the aspect of variance of the facility agreement, it was contended that the corporate debtor had expressly admitted its liability vide letter dated 13.09.2019 and as per the terms and conditions of the guarantee also, the Corporate debtor was not absolved due to any settlement or modification of arrangement between Financial Creditor & Principal Borrower. Hence, this plea of the Corporate Debtor was liable to be rejected.

13. It was also claimed that this Authority had jurisdiction to decide this issue and for this proposition, he relied on the decision of Hon'ble Supreme Court in the case of **SBI vs. Ramakrishnan**, wherein the Hon'ble Supreme Court observed as follows:

"It is for this reason that sub-section (2) of Section 60 speaks of an application relating to the "bankruptcy" of a personal guarantor of a corporate debtor and states that any such bankruptcy proceedings shall be filed only before the National Company Law Tribunal. The argument of the learned counsel on behalf of the Respondents that "bankruptcy" would include SARFAESI proceedings must be turned down as "bankruptcy" has reference only to the two Insolvency Acts referred to above. Thus, SARFAESI proceedings against the guarantor can

continue under the SARFAESI Act. Similarly, sub-section (3) speaks of a bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any Court or Tribunal, which shall stand transferred to the Adjudicating Authority dealing with the insolvency resolution process or liquidation proceedings of such corporate debtor. An "Adjudicating Authority", defined under Section 5(1) of the Code, means the National Company Law Tribunal constituted under the Companies Act, 2013.... The scheme of Section 60(2) and (3) is thus clear – the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal....However, the Tribunal is to decide such proceedings only in accordance with the Presidency-Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub-section (4), which states that the Tribunal shall be vested with all the powers of the Debt Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not take effect, as the Debt

Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under Section 179 of the Code, as the said Section has not yet been brought into force. Also, we have seen that Section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower Debt Recovery Tribunals to try such proceedings, has also not been brought into force. It is thus clear that Section 2(e), which was brought into force on 23.11.2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contained in Section 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the Corporate Insolvency Resolution Process in the Statement of Objects of the Amendment Act, 2018."

Findings:

14. We have considered the submissions made by both the parties and material on record. After reserving the matter for order a controversy arose regarding E-mail dated 07.03.2017 as the Corporate Debtor submitted that this was an additional document submitted with the short notes of arguments submitted by the Financial Creditor and the main problem was that in the short notes it had been stated that the Corporate

Debtor had been copied this e-mail which was factually incorrect entities to whom this e-mail was copied were different group entities of the Corporate Debtor. Accordingly, the Learned Senior Counsel submitted that the Corporate Debtor could not be impleaded by agitating such practice. Thus, considering all these facts and arguments made, we will dispose of the matter.

15. As far as technical claim made by the Corporate Debtor that the person who signed the did not have proper authority is without any merit as apparent from the submissions made by the Financial Creditor. In this regard, we have also perused the copy of the Board Resolution attached with the petition whereby authority has been given. Thus, this contention of the Corporate Debtor is rejected. Similarly, record of default as per the Information Utility is not compulsory, hence, this contention of the Corporate Debtor also fails. It is also not in dispute that the Original Financial Creditor is amalgamated with the Petitioner- Financial Creditor as per the provisions of law governing such amalgamation, hence, for this reason, the claim made by the Corporate Debtor as regards to the locus of

the Financial Creditor is not valid in law, hence, rejected. Another contention which has been made regarding jurisdiction of this Bench on the basis of the fact that proceedings under IBC 2016, were pending before the NCLT, Mumbai Bench, hence, NCLT Mumbai Bench had jurisdiction to deal with this application. In this regard, we have perused provisions of Section 60(2) of the IBC 2016, which give jurisdiction in respect of Corporate Guarantee to the Bench who is seized with the Corporate Insolvency Resolution Process or liquidation process and which is pending. In this regard, it is clear from the scheme/provisions of the IBC 2016, that CIRP starts when an application filed under Section 7/9/10 is admitted or Liquidation proceeding starts, thereafter, or under Section 59 in case of Voluntarily Liquidation application filed by the Corporate person. This is not so in case of Principal Borrower though the application has been filed i.e. CIRP is still into commenced. Accordingly, this ground of the Corporate Debtor is also found devoid any merits, hence, rejected.

As regards to the plea of non-assignment of debt by the Original Financial Lender, hence, this application was not maintainable, we hold that there is no merit in this claim for the simple reason that as per the facility, agreement itself lender includes its successor for title and as a consequence of amalgamation the current applicant is the Successor of Original Financial Lender and not an assignee.

Having dealt with the technical points raised by the Corporate Debtor, in our view, it would not out of place to mention that we are dealing with an economic legislation, where parties, who are liable to repay the loan takes such pleas just to avoid their obligation and such practice could not be allowed to succeeded except when there is a some fundamental principles of law such as debt being barred by limitation is involved or there exists some deficiency which is fatal to the jurisdiction of this Authority or where such application has been filed with malicious intent. None of these factors exists for the present application.

16. Now, we move forward to look into the aspect relating to the liability of the Corporate Debtor as Guarantor in terms of

provisions of Guarantee executed by the Corporate Debtor. It is noted that, both facility agreement between the Principal Borrower as well as Corporate Guarantee by the Corporate Debtor for and on behalf of the borrower have been signed on 27.03.2014. The amendment agreement between the Principal Borrower and Financial Creditor has been signed on 04.05.2017. It is further noted that the Guarantor has provided Guarantee at the request of the Borrower in respect of the facility provided by the lender to the borrower. It is also noted that Guarantor has given guarantee after understanding the terms and conditions of the facility agreement. Clause 6, 7 and 8 of deed of are important, hence, reproduced as under :

Clause -6 The Guarantor hereby agree that without the concurrence of the Guarantor, the Borrower and the Lender shall be at liberty to vary, after or modify the terms and conditions of the Facility Agreement and/or any other Transaction Documents and in particular to defer, postpone or revise the payment/performance of any of the Guaranteed Obligations on such terms and conditions as may be considered necessary by the Lender, including any increase in the rate of interest. The Lender shall also be at Liberty to absolutely dispense with or release all or any of the security / securities furnished or required to be furnished by the Borrower to the Lender to secure the Guaranteed obligations in terms of the Facility Agreement. The Guarantor agrees that its liability under the Guarantee shall in no manner be affected by any such variations, alternations,

modifications, waiver, dispensation with or release of security, and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver, dispensation with, or release of security.

Clause 7- The Lender shall have full liberty, without notice to the Guarantor and without in any way affecting this Guarantee to exercise at any time and in any manner any power or powers reserved to the Lender under the Facility Agreement to enforce or forbear to enforce payment of the Guaranteed obligations or any part thereof due to the lender or any of the remedies or securities available to the Lender; to enter into any composition or compound with or to grant time or any other indulgence or facility to the Borrower; and the Guarantor shall not be released by the exercise by the Lender of its liberty in regard to the matters referred to above or by any act or omission on the part of the Lender or by any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor AND the Guarantor hereby waives in favour of the Lender so far as may be necessary to give effect to any of the provisions of this Guarantee, all the suretyship and other rights which the Guarantor might otherwise be entitled to enforce.

clause-8 This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any Instrument(s) executed or to be executed by the Borrower in favour of the Lender shall, at the time when the proceedings are taken against the Guarantor under this Guarantee, be outstanding or unrealized or lost".

17. From perusal of the above clauses it is noted that no concurrence of the Guarantor is required in case of terms and conditions of the facility agreement are modified or payment/performance schedule is revised.

18. Further, Clause-10 states that Guarantor had agreed for the conditions that Principal Borrower could avail further financial assistance or other facilities and even in that situation the subject guarantee would not be affected or vitiated in any way but will remain in force and binding on the Guarantor (Corporate Debtor)
19. Clause-11 provides that any understanding or arrangement between the lender/other guarantor, if any, will also not discharged Guarantor from its obligation in the said Guarantee.
20. Clause-16 provides that Guarantee shall be a continuing one and shall remain valid and binding on the Guarantor in full force and effect until payment/performance of the Guarantee obligations to the satisfaction of the Lender.
21. Clause-17 provides that Guarantee shall be irrevocable and the obligations of the Guarantor were not subject to receipt of any prior notice by the Guarantor or by the borrower and the demand or notice by the lender except in the manner provided in Clause -23 thereof.

22. Clause-19 provides with various circumstances wherein the liability of the Guarantor under this guarantee shall not be affected. Clause-23 provides as to how any demand for payment or notice under this guarantee would be communicated.
23. Clause-23 provides that period of limitation shall commence only after the notice of demand or payment is served and it is proved that envelope containing notice was posted and such posting of the notice shall be conclusive as against the Guarantor even the it was returned unserved on account of refusal of the guarantor or otherwise. For the sake of ready reference, this clause is reproduced as under :

clause-23 " Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post or facsimile to or left at the address specified in Schedule I hereto/the last known address of the Guarantor and shall be assumed to have reached the addressee in the course of post, if given by post, or, if sent by facsimile, or confirmation or transmission to the correct facsimile number as specified in Schedule I hereto, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that he envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor, even though it was returned unserved on account of refusal of the Guarantor or otherwise.

24. In the background of above terms and conditions of the guarantee, we need to look into significant relevant terms and conditions of facility agreement.
25. It is noted that pursuant to facility agreement in regards to the part financing against Securitization of receivable of 3 land based drilling rigs of Rs. 69.20 Crores were disbursed as per the terms and conditions of the Facility Agreement.
- Repayment period of such loan is as under :

Terms & Conditions

Borrower	:	Essar Oilfield Services India Limited ("EOSIL")												
Promoter	:	Essar Shipping Limited ('ESL') Equity to be held by Essar Oilfield Services Limited Mauritius (Wholly owned subsidiary of ESL) but all obligations of promoter to be performed by ESL.												
Lender	:	L & T Fincorp Limited ("L&T Fincorp")												
Facility	:	Rupee term loan against Securitisation of receivables of 3 land based drilling rigs ("Rigs")												
Purpose	:	Maintenance capex requirements of the Borrower (including requirements related to modification/refurbishment/upgradation/new equipments)												
Facility amount	:	Rs. 70,00,00,000 (Rupees Seventy Crores Only)												
Tenure	:	The Facility shall have door-to-door tenure not exceeding 6 years from the date of first disbursement.												
Repayment	:	The borrower shall replay the Facility in 60 structured monthly instalments (as given below) after a moratorium period of 12 months) <table><tr><td>Financial year</td><td>Repayment %</td></tr><tr><td>FY 16</td><td>15%(equal monthly)</td></tr><tr><td>FY 17</td><td>17%(equal monthly)</td></tr><tr><td>FY 18</td><td>20%(equal monthly)</td></tr><tr><td>FY 19</td><td>23%(equal monthly)</td></tr><tr><td>FY 20</td><td>25%(equal monthly)</td></tr></table>	Financial year	Repayment %	FY 16	15%(equal monthly)	FY 17	17%(equal monthly)	FY 18	20%(equal monthly)	FY 19	23%(equal monthly)	FY 20	25%(equal monthly)
Financial year	Repayment %													
FY 16	15%(equal monthly)													
FY 17	17%(equal monthly)													
FY 18	20%(equal monthly)													
FY 19	23%(equal monthly)													
FY 20	25%(equal monthly)													

Interest becomes due and payable as per this agreement immediately and is governed by following clauses :

Interest Rate	:	Prevailing L & T Infrastructure Finance Company Limited (L& T Infra) PLR-2.50% payable monthly; L & T Infra PLR is currently at 15.75% p.a. and applicable interest rate is 13.25% p.a.p.m. The interest rate would be floating and indexed to L & T Infra PLR. Accordingly, future interest rate shall be increased or decreased with the movement of the L&T Infra PLR. The interest as above, shall be payable by the borrower in arrears, on the 1st of each month (each an interest payment date). Such interest shall become payable from the first interest payment date falling immediately after the date of first disbursement of the Facility by the Lender.
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26. Thus, from the above terms and conditions, it is evident that amount due and payable is spread over five financial years. The interest liability accrues and becomes due and payable on each month basis. Accordingly, first instalment of interests has been debited on 1st May, 2014.
27. The statement of account of Principal Borrower is enclosed at page no. 8 to 13 of the paper book. From perusal of the same, it is abundantly clear that, the interest has been debited on each month starting from 1st May, 2014. The Principal amount has become due for payment after moratorium period of 12

months. As per the statement as on 27th December, 2019 Principal overdue amount stands at Rs. 42,45,38,385/-, overdue interest is Rs. 3,32,47,397/- and additional interest stands at Rs. 7,39,76,317/-.

28. In this factual background and having regard to such terms and conditions, it is noted that notice of default has been given by the Financial Creditor from time to time on the basis of loan amount including interest or interest alone becoming due and payable. First such notice has been issued on 24th November, 2014 and, thereafter, on 12th December, 2014, 17th January, 2015. On 12th December, 2014 Bank Guarantee has been invoked for a payment of Rs. 4,75,74,773/- towards interest over-dues (please refer paragraph no. 11 page no. 52 of reply of the Corporate Guarantor). Thereafter, on 29th December, 2018, notice has been issued wherein reference of earlier demand notices dated 13th July, 2017, 7th July, 2018, 22nd August, 2018, 28th September, 2018 has been given, whereby the borrower and corporate guarantor were asked to regularise repayment of outstanding amount. Thereafter, similar notice has been issued to the Principal borrower as well as the

Corporate Debtor on 8th February, 2019, wherein, reference of above demand notices as well as other notices have been given. Thus, we find no merit in the contentions of the Corporate Debtor (Corporate Guarantor) that guarantee is barred by limitation. Because, first liability under such guarantee should accrue and become payable then only default resulting into cause of action arise from such date of default and the period of limitation would have to be counted therefrom. In this case, there are instances of defaults being on different dates and of difference amounts. Finally, such default has occurred on 8th February, 2019 in a cumulative manner. An application under Section 7 of the Code has been filed on 21st January, 2020, hence, not barred by limitation at all. Further, if we take into cognizance letter written by the Corporate Debtor on 13th September, 2019, the same amounts to promise to pay a debt barred by limitation is for squarely falls under Section 25(3) of the Indian Contract Act, 1872 r.w. Section 127 of the same Act. For the sake of ready reference, the said letter is reproduced as under:

September 13, 2019

L&T Finance Limited
4th Floor, Brindavan Building
Plot No. 177 Vidyanagari Marg
CST Road Kalina
Santacruz Mumbai-400 098
Maharashtra 400 098

Kind Attention : Mr. Kapil Kalra- Business Head

Subject : Settlement Agreement between OGD Services Limited and L&T Finance Limited

Dear Sir,

We refer to the Rupee Term Loan (RTL) Facility of Rs. 70 Crores availed by OGD Services Limited (formerly known as Essar Oilfield Services India Limited) (OGDSL) under the Facility Agreement dated March 27, 2014 and read alongwith Amendment Agreement dated May 4, 2017.

We Essar Shipping Limited (ESL) agree and acknowledge the Settlement Agreement dated September 13, 2019 between the OGDSL and L&T Finance Limited (LTF) for the full and final Settlement of entire outstanding dues of OGDSL at Rs. 34 Crores under the aforementioned Facility Agreement.

Thanking you

For Essar Shipping Limited

sd/-

Ketan Shah
Chief Financial Officer

We also consider it pertinent to mention that provisions of Limitation Act, 1963 do not affect the provision of Section 25 of Indian Contract Act, 1872 as provided in Section 29(1) of Limitation Act, 1963.

29. The application is otherwise complete and defect free. The name of the IRP has been proposed whose consent is on record at Annexure-'O', hence, we appoint the same person as IRP against him no disciplinary proceedings are pending.
30. In view of the above facts and legal position applicable thereto, we hold that this application is deserves to be admitted.
31. In the result, the application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 stands allowed and disposed of in terms indicated above.
32. **IA No. 882 of 2020** is filed by the L & T Finance Limited seeking direction to be given to the Corporate Debtor not to create any third party interest or disposed of all the assets of the Corporate Debtor in any manner till the final disposal of the CP(IB) No. 93 of 2020. Hence, this application has become

infructuous in view of the final disposal of the main CP(IB) i.e. 93 of 2020 as of commencement of Corporate Insolvency Resolution Process Provisions of Section 14 of the Insolvency & Bankruptcy Code, 2016 would come into operation and reliefs sought in this application would automatically be applicable to the Financial Creditor. Thus, this application is dismissed and disposed of being infructuous. As a consequence of admission of main CP(IB) No. 93 of 2020, we pass following order:

ORDER

1. M/s. Essar Shipping Limited., the Corporate Debtor is admitted in Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency & Bankruptcy Code, 2016 and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(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.*
2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
3. The Financial Creditor has proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Umesh Ved**,

304, Shoppers Plaza-5, Govt. Servants Co-op Hsg. Soc. Opp. Municipal Market, C. G. Road, Navrangpura, Ahmedabad-380 009, having registration no. IBBI/IPA-002/IP-N00136/2017-18/10376 to act as an 'IRP' under Section 13(1) (c) of the Code. The IRP did not give his fee schedule.

4. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

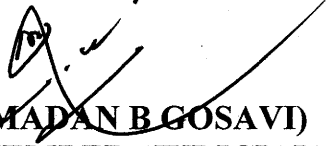
5. We direct the IRP to make public announcement of

initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two lacs only) to the IRP within two weeks from the date of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority alongwith First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities forthwith and upload the same on website immediately after pronouncement of the order.
9. Accordingly, CP(IB) No. 93/7/NCLT/AHM/2020 is allowed and stands disposed of.
10. IA No. 882 of 2020 stands dismissed being infructuous.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Signed on this day 2nd March, 2021

vc