



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)
KOLKATA

C.P. (I.B)1084(KB)2020

Date of Order:30.09.2026

IN THE MATTER OF:

CFM ASSET RECONSTRUCTION PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013 (CIN No.: U74140GJ2015PTC083994) registered with Reserve Bank of India as an asset reconstruction company pursuant to Section 3 of SARFAESI having Mobile No. 022-40055280 and having PAN:AAGCC1296B having its registered office at A/3, 5th Floor, Safal Profitaire, Near Prahlad Nagar, Ahmedabad-380 015, Gujarat and corporate office at 1st floor, Wakefield House, Sprott Road, Ballard Estate, Fort, Mumbai 400 038, P.S & P.O. - Ballard Estate.

...Applicant

VERSUS

SRI MUNISUVRATA AGRI INTERNATIONAL LIMITED, a Company registered under the companies act, 1956 with CIN:U51226WB1992PLC056951 and having its registered office at 16 British India Street, 2nd Floor, Kolkata-700069

...Respondent

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CORAM:

Shri. Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Counsel appeared through physically or virtually

For the applicant	Ms. Tannya Baranwal, Adv. Ms. Vansika Khaitan, Adv. Ms. Zeenat Shabab, Adv.
For the respondent	Mr. D.N. Sharma, Sr. Adv. Ms. Shreya Choudhary, Adv. Ms. Zeba Khan, Adv.

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, MEMBER (JUDICIAL)

1. The CFM Asset Reconstruction Private Limited, claiming itself to be Financial Creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as “the IBC” or “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) with a prayer to trigger Corporate Insolvency Resolution Process (Hereinafter referred as “CIRP”) in respect of respondent Company Sri Munisuvrata Agri International Limited, (hereinafter to be referred to as “the corporate debtor”).

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2. Mr. Tapan Panda, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of the Board meeting dated 14.09.2019 has been placed on record as **ANNEXURE 1** at pages 27-28 of the application.
3. The Respondent Company Sh. Munisuvrata Agri International Limited against whom initiation of CIRP has been prayed for, was incorporated on 11.11.1992. Since the registered office of the respondent corporate debtor is situated at West Bengal and hence, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. Briefly stated the case of the applicant is that a working capital consortium agreement was entered into on December 7, 2006, between the corporate debtor and five banks namely, Bank of Baroda, State Bank of India, Syndicate Bank, UCO Bank and Canara Bank whereby and thereunder the consortium of banks had agreed to fund the working capital requirement of the corporate debtor (both fund and non-fund based) for a maximum principal limit of Rs. 103 crores. On September 22,



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2008, a supplemental consortium agreement was entered into with the corporate debtor wherein apart from the five banks which were already parties to the original working capital consortium agreement, four other banks, including the predecessor in interest of the present Financial Creditor, had agreed to become part of the working capital consortium agreement for the purpose of enabling higher credit limit facilities to be availed by the corporate debtor for meeting its working capital requirement.

4.1 Under this supplemental consortium agreement, the predecessor in interest of the Financial Creditor agreed to provide credit facilities to the Corporate Debtor to the extent of Rs. 4.25 crores Fund-Based facility and Rs. 25.75 crores non-funded facility for meeting its letter of credit and bank guarantee requirements, making a total exposure of a maximum limit of Rs. 30 crores. The other accompanying agreements including a Deed of Guarantee dated September 22, 2008 was executed by the directors of the corporate debtor.

4.2 The predecessor in interest of the Financial Creditor agreed in principle for sanction of the enhanced credit facility to the Corporate Debtor, which was earlier known as LMJ International Limited by its facility letter dated April 1, 2010. By a further supplemental consortium agreement dated



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August 17, 2010, it was, inter alia, agreed to enhance the overall principal limit of credit facility to be availed by the corporate debtor from Rs. 30 crores to Rs. 50 crores under both Fund and Non-fund based facility, supported by a Deed of Guarantee dated August 17, 2010 executed by the directors of the corporate debtor.

- 4.3 Thereafter, the predecessor in interest of the Financial Creditor agreed in principle for sanction of the enhanced credit facility by its facility letter dated June 28, 2016 leading to a further supplemental consortium agreement dated August 11, 2016 to enhance the overall principal limit of credit facility from Rs. 50 crores to Rs. 80 crores under both Fund and Non-fund based facility, accompanied by a Deed of Guarantee dated August 11, 2016, executed by the directors of the corporate debtor. By a facility letter dated April 27, 2017, the predecessor in interest of the Financial Creditor agreed in principle for sanction of the enhanced credit facility to the corporate debtor, under which the predecessor in interest of the financial creditor allowed the corporate debtor to avail an overdraft facility within the overall sanctioned limit which was subsequently enhanced to Rs. 80 crores.



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4.4 On February 15, 2018, a further supplemental working consortium agreement was entered into between the corporate debtor and various banks including the predecessor in interest of the financial creditor, whereby the exposure of the predecessor in interest of the financial creditor was agreed to be reduced to Rs. 52.50 crores from Rs. 80 crores. In order to meet this shortfall, it was agreed that Punjab National Bank would replace the predecessor in interest of the Financial Creditor. However, the said supplemental working consortium agreement dated February 15, 2018, could not be implemented and/or acted upon by the predecessor in interest of the Financial Creditor as the said Punjab National Bank could not take steps to replace the shortfall in principal sanctioned limit, primarily because during this time, a series of fraud relating to Nirav Modi had surfaced and was put under Prompt Corrective Action category.

4.5 Consequently, the corporate debtor had started defaulting in liquidating the outstanding amount under the credit facility from March 12, 2018, and failed to service the overdraft facility account maintained with the predecessor in interest of the Financial Creditor. As such, on May 15, 2018, the predecessor in interest of the Financial Creditor issued the recall notice of acceleration of credit facilities granted



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to the corporate debtor as the borrower, and as on May 14, 2018, the total dues of the predecessor in interest of the financial creditor was Rs. 557,526,528.68/-.

4.6 Thereafter, another demand notice was sent on June 6, 2018, by the predecessor in interest of the Financial Creditor under the Deed of Guarantee which was executed by the directors of the Corporate Debtor who had given their personal guarantee. The account of the Corporate Debtor was subsequently declared as a Non-Performing Asset (NPA) on June 10, 2018, by the predecessor in interest of the Financial Creditor pursuant to the guidelines issued by the RBI.

4.7 On December 31, 2018, a registered Assignment Agreement was executed whereby and thereunder Standard Chartered Bank as Assignor had assigned the loans, which were disbursed by the Standard Chartered Bank to the Corporate Debtor, in favour of the Financial Creditor as the Assignee of the said loans, which was Rs. 887,287,220/- as on November 30, 2018. By a notice dated February 28, 2019. the Financial Creditor had informed the Corporate Debtor, including its directors who are also the guarantors in the credit facility, of the execution of the assignment agreement entered into between Standard Chartered Bank and the Financial Creditor, and the



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Corporate Debtor was called upon to repay the outstanding debt of the financial creditor being Rs. 887,287,220/-.

4.8 On March 5, 2019, the financial creditor issued a notice to the Corporate Debtors and its directors making a demand of Rs. 1,113,917,392/- plus interest. The Financial Creditor, thereafter, issued a number of demand notices to the Corporate Debtor and its directors demanding the repayment of the financial debt, last of which was sent on September 21, 2020, making a demand of Rs. 1,22,48,74,764/- which is the total outstanding sum in default as of August 31, 2020.

4.9 The Financial facilities availed by the Corporate Debtor constitute a “financial debt” within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016, and the Financial Creditor is fully entitled to maintain the present Application under Section 7 of the Code. The existence of the financial debt is evidenced by the consortium agreements, facility letters, security documents, deeds of guarantee, assignment agreement, and the demand notices.

4.10 It is submitted that in the Minutes of the Consortium Meeting dated 04.06.2018, attended by Directors of the Corporate Debtor, Mr. J.K Jain admitted to a total due amount of Rs. 220 crores payable to the consortium. Furthermore, the Corporate Debtor has admittedly



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acknowledged the debt in its proposal for settlement of dues vide letter dated 10.02.2025.

- 4.11** It is submitted that the applicant established the existence of a financial debt and the occurrence of default by the Corporate Debtor, satisfying all essential requirements for admission of an application under Section 7 of the Code.
- 4.12** Therefore, as per Part IV of the application, it is claimed that as on August 31, 2020, a sum of Rs. 1,22,48,74,764/- is due and payable by the respondent company.
- 4.13** Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Bijay Murmuria, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-N00007/2016-2017/10026 resident of C/o, Sumedha Management Solutions Private Limited, 6A, Geetanjali Apartment, 8B, Middleton Street, Kolkata – 700071 with email – id: bijay_murmuria@sumedhamanagement.com. Mr. Bijay Murmuria has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him



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that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Mr. Bijay Murmuria as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

4.14 The applicant has placed following documents on record to prove its claim:

- (i) Annexure - 2: Master Data of the Corporate Debtor;
- (ii) Annexure - 4: Copy of the working capital consortium agreement dated December 7, 2006;
- (iii) Annexure - 5: Copy of the supplemental consortium agreement dated September 22, 2008;
- (iv) Annexure - 6: Copy of the Deed of Guarantee dated September 22, 2008;
- (v) Annexure - 7: Copy of the facility letter dated April 1, 2010;
- (vi) Annexure - 8: Copy of the supplemental consortium agreement dated August 17, 2010;
- (vii) Annexure - 9: Copy of the Deed of Guarantee dated August 17, 2010;
- (viii) Annexure - 10: Copy of the facility letter dated June 28, 2016;

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- (ix) Annexure - 11: Copy of the supplemental consortium agreement dated August 11, 2016;
- (x) Annexure - 12: Copy of the Deed of Guarantee dated August 11, 2016;
- (xi) Annexure - 13: Copy of the facility letter dated April 27, 2017;
- (xii) Annexure - 14: Copy of the supplemental working consortium agreement executed on February 15, 2018;
- (xiii) Annexure - 15: Copy of the Deed of Guarantee dated February 15, 2018;
- (xiv) Annexure - 16: Copy of the recall notice dated May 15, 2018;
- (xv) Annexure - 17: Copy of the demand notice dated June 6, 2018 issued under the Deed of Guarantee;
- (xvi) Annexure - 18: Copy of the Assignment Agreement dated December 31, 2018;
- (xvii) Annexure - 19: Copy of the letter dated February 28, 2019 demanding repayment of the outstanding debt of Rs. 887,287,220/-;
- (xviii) Annexure - 20: Copy of the notice dated March 5, 2019;
- (xix) Annexure - 21: Copies of the record of Financial Information (Form-C) as obtained by the financial



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creditor from NeSL and Certificates of Registration of Modification of Charge;

(xx) Annexure - 22: Copy of the letter dated September 21, 2020 demanding repayment of the outstanding debt of Rs. 1,22,48,74,764/-;

(xxi) Annexure - 23: Computation chart/statement showing the total outstanding amount payable by the corporate debtor to the financial creditor;

5. Respondent appeared in pursuance of notice issued upon it and filed its reply stating therein that material contradictions exist regarding the purported date of default, as the NeSL record of financial information in Form C, at Pages 434 to 443, of the application, states the date of default as 10.12.2018, whereas the Section 7 petition and the Assignment Agreement, at Page 406 of Petition, Sr. No. 14, assert the date of default to be 12.03.2018, without annexing any documentary proof to substantiate such date.

5.1 The demand letter dated 21.09.2020 issued by the Financial Creditor called upon the Corporate Debtor to pay the outstanding dues during the Section 10A period, treating non-payment pursuant thereto as a default, which falls squarely within the prohibited Section 10A period and renders the petition non-maintainable.



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- 5.2 The credit facility constitutes an on demand and/or recallable loan in terms of Clause 8 of the Consortium Lending Supplemental Working Capital Consortium Agreement dated 15.02.2018, which does not prescribe any repayment schedule whatsoever.
- 5.3 The default, if any, must be established through a valid notice of demand with sufficient proof of delivery under Section 27 of the General Clauses Act, 1897. It is submitted that, assuming without admitting the date of default to be 12.03.2018, it is implausible that a default would occur within less than a month from the execution of the Supplemental Working Capital Consortium Agreement dated 15.02.2018, prior to the filing of the instant petition on October 10, 2020.
- 5.4 That prior to the alleged default, the Corporate Debtor was a profit-making reputed Export House, having earned a profit of Rs. 46,78,35,000/- as on March 31, 2017; however, on 13.03.2018, the Reserve Bank of India issued Circular No. 20 directing authorised dealer banks to discontinue the practice of issuing Letters of Undertaking (LoUs) and Letters of Comfort (LoCs) for trade credits for import into India with immediate effect. This abrupt policy change severely impacted the Corporate Debtor, whose export



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business relied heavily on LoUs and LoCs, rendering letters of credit aggregating to Rs. 580 crore/ Rs. 58,09,03,419/- immediately repayable and jeopardising its 180-day repayment schedule.

5.5 That despite subsisting consortium agreements, member Banks stopped providing buyer's credit facilities and failed to convert non-fund based credit facilities into short-term fund based facilities to assist the Corporate Debtor in tiding over the crisis. It is further submitted that the Punjab National Bank was embroiled in a scam and placed under the Prompt Corrective Action framework, as a result of which it deliberately failed and neglected to disburse the agreed enhanced limit of Rs. 26 crore under the Supplemental Working Capital Consortium Agreement dated 15.02.2018, which was intended to replace the reduced share of the predecessor-in-interest.

5.6 The predecessor-in-interest of the applicant exerted undue pressure and made wrongful demands upon the Corporate Debtor without ensuring that Standard Chartered Bank disbursed the enhanced limit in compliance with the Supplemental Inter-se Agreement dated 15.02.2018. The Lead Bank, Bank of Baroda, also failed to take steps or issue directions upon the member banks to ensure due compliance.



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- 5.7 The operations of the Corporate Debtor were crippled by external actions of the Income Tax authorities and the consortium banks. The Income Tax Department passed assessment orders and issued demand notices dated 28.12.2017 for an aggregate sum of Rs. 173,79,79,370/-, followed by attachment notices dated 15.02.2018 and 27.03.2018 under Section 226(3) of the Income Tax Act, 1961 sent to the consortium banks. Although these attachment notices applied strictly to moneys due from the banks to the Corporate Debtor and could not apply to undisbursed loan facilities, the consortium banks wrongfully and illegally stopped the operation of all bank accounts of the Corporate Debtor, bringing its business to a complete standstill.
- 5.8 Despite requests made in consortium meetings held on 23.04.2018, 10.05.2018, and 04.06.2018, the Lead Bank, Bank of Baroda, failed to seek legal opinion or resume account operations.
- 5.9 That, after the Corporate Debtor filed an application under Section 10 of the IBC on 27.04.2018, member banks directly approached domestic debtors of the Corporate Debtor who owed Rs. 249 crore, including Rs. 221 crore in undisputed debts, demanding direct payment to the banks. This provided an opportunity to the debtors to refuse payment, causing an

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estimated loss of Rs. 176.8 crore to the Corporate Debtor, shattering its market reputation, and leaving it unable to dispose of perishable stocks worth Rs. 213,47,77,555/-, thereby pushing the Corporate Debtor into default through no fault of its own.

5.10 The respondent on the legal bar of res judicata and lack of maintainability, submitted that all previous attempts to initiate CIRP against it have failed and were rejected by judicial orders that have attained finality. In the Section 10 petition C.P. (I.B) No.615/KB/2018 filed by the Corporate Debtor, the Lead Bank, Bank of Baroda, filed a Joint Affidavit on 12.07.2018 on behalf of all consortium members giving no-objection to CIRP; however, this Tribunal vide final order dated 15.11.2018 dismissed the Section 10 petition holding that no demand notice had been issued by any bank and no account was declared NPA, explicitly observing that the Corporate Debtor could not have been in default prior to 27.04.2018. The appeal therefrom was dismissed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) on 24.01.2020 (where Standard Chartered Bank was Respondent No. 7). Subsequently, the Lead Bank, Bank of Baroda, filed a Section 7 petition being C.P. No.



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1541 of 2018 arising out of the identical loan documents, credit facilities, and agreements.

5.11 This Tribunal vide order dated 05.03.2020 dismissed the Section 7 petition holding that the Lead Bank failed to establish the alleged date of default as 28.02.2018 or NPA classification as 29.05.2018.

6. The applicant has submitted that the respondent reliance upon the Order dated 15.11.2018 passed by this Tribunal dismissing the petition filed by the Corporate Debtor under Section 10 of the IBC to insinuate that there was no default by the Corporate Debtor as on 15.11.2018 is wholly misconceived. Such reliance is unsustainable inasmuch as: (i) the observations of this Tribunal regarding default were vitiated due to non-production of any loan agreements, in the absence of which the repayment obligations and consequence of default could not be looked into, and (ii) observations were made as on the date of filing of the application, whereas the predecessor-in-interest of the Financial Creditor issued the recall notice only on 15.05.2018, leading this Tribunal to conclude that there could be no default in the absence of any demand for repayment by the Banks.



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- 6.1 The observation of the Tribunal that proceedings under Section 10 of the Code were initiated with mala fide intention to defraud its creditors has no bearing in the present proceedings.
- 6.2 Insofar as contention of the applicant that Standard Chartered Bank was neither a party to, nor did it at any point of time participate as a party in the Section 10 proceedings initiated by the Corporate Debtor, admittedly, Bank of Baroda, being the Lead Bank of the Consortium, had furnished a No Objection affidavit on behalf of the members of the Consortium for initiation of the Section 10 proceedings; however, such consent or affidavit furnished by Bank of Baroda in its capacity as the Lead Bank cannot, by any stretch, be construed as participation by Standard Chartered Bank in the said proceedings, particularly when Standard Chartered Bank was neither impleaded as a party nor had itself taken any steps or made any submissions therein.
- 6.3 The Hon'ble NCLAT, in appeal preferred by the Corporate Debtor against order of the NCLT, observed that certain allegations of fraud had been raised by the shareholders of the Corporate Debtor, but was not inclined to adjudicate upon the question whether the Corporate Debtor is a 'solvent company' and if any amount has been siphoned by the



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Corporate Debtor, thereby committing fraud. The said appeal was dismissed by the Hon'ble NCLAT while observing that the Section 10 petition was initiated maliciously and that the said order shall not affect the Section 7 petition moved by Bank of Baroda. The dismissal of the Section 7 proceedings moved by Bank of Baroda does not bar the institution of the present Section 7 Application.

7. The respondent filed supplementary affidavit dated 11.11.2024 stating therein that, in Company Appeal (AT) (Insolvency) No.635 of 2020 preferred before the Hon'ble NCLAT, the present Financial Creditor substituted Bank of Baroda upon assignment of debt, and vide order dated 10.08.2021 unconditionally withdrew the appeal "*without liberty to challenge the same Impugned Order*". Consequently, the findings in the order dated 05.03.2020 attained finality and bind the present Financial Creditor, barring the instant petition under the principles of res judicata, constructive res judicata, issue estoppel, and estoppel.

7.1 It is further submitted that as per Supplemental Inter-se Agreement dated 15.02.2018, the Lead Bank, Bank of Baroda, was exclusively authorised to enforce securities on behalf of the consortium. As laid down by the *Hon'ble NCLAT in Rakshit Dhirajlal Doshi vs. IDBI Bank Ltd. & Ors. [CA (AT)*



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(Ins) No. 658/2022] and affirmed by the *Hon'ble Supreme Court in Civil Appeal No. 129 of 2023*, individual consortium lenders are bound by the inter-se agreement and cannot act unilaterally.

7.2 The recent irreversible developments have rendered the present Section 7 petition infructuous, non-bona fide, and liable to be dismissed. The Financial Creditor, being an Asset Reconstruction Company, acquired the debt/security interest from member banks at steeply discounted values. The Financial Creditor has resorted to Section 13(8) and Section 13(4) of the SARFAESI Act, 2002, issuing redemption notices dated 04.10.2024 and e-auction notices dated 17.06.2025, and has proceeded to sell core immovable assets and industrial units of the Corporate Debtor at grossly undervalued reserve prices.

7.3 These actions demonstrate that the Financial Creditor is not seeking resolution of the Corporate Debtor as a going concern, but is utilizing the IBC as a coercive recovery and bargaining tool while simultaneously liquidating the Corporate Debtor's properties under SARFAESI. If the mortgaged assets are sold under SARFAESI, no property will remain for insolvency resolution, defeating the objective of the Code and rendering the Section 7 petition infructuous.



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7.4 The respondent further submitted that the Corporate Debtor has taken active steps towards settlement by submitting One Time Settlement proposals accompanied by upfront payments (including Rs. 70,000,000/- and Rs. 62,50,000/-) to consortium banks such as State Bank of India and Canara Bank, which proposals have been accepted or are under active consideration, and accounts of certain member banks stand closed upon full payment. It is also submitted that the Corporate Debtor has issued a settlement offer dated 10.02.2025 under the RBI Guidelines dated 20.01.2025 governing ARCs. Therefore, the present petition deserves to be dismissed.

8. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:

- a) Whether the present application is barred by the principles of res judicata.
- b) Whether there is debt and default as defined under the IBC Code 2016 for initiation of CIRP process against the Corporate Debtor?
- c) Whether the present petition deserves to be admitted in CIRP Process?
- d) Relief, if any, to which the applicant is entitled?



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9. Learned Counsel appearing for the applicant argued that the principle of res judicata applies only where the lawsuit involves the same parties as the previous one. It is worth noting that the Section 7 petition moved by Bank of Baroda was filed independently and not on behalf of the entire consortium of Banks.
- 9.1 The present Section 7 proceedings initiated by Standard Chartered Bank being the predecessor-in-interest of the Financial Creditor, is an independent proceeding based on its own debt and default, independent of other consortium members, and hence there is no bar on the institution of the present petition in view of the dismissal of the Section 7 petition moved by Bank of Baroda.
- 9.2 This Tribunal, while dismissing the Section 7 application filed by Bank of Baroda, had observed that the officials of Bank of Baroda had moved the said petition in collusion with the Corporate Debtor with an ulterior motive. However, the failure of Bank of Baroda to satisfy this Tribunal with regard to the alleged default of the Corporate Debtor in the said proceedings is wholly irrelevant to the present proceedings, which arise from an independent cause of action and are required to be adjudicated on their own facts and merits.



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9.3 The applicant, in its capacity of assignee of Bank of Baroda, got substituted in the appeal filed by the Bank of Baroda pertaining to its share of debt and upon such substitution, the Financial Creditor sought withdrawal of the said appeal and not the present Section 7 Application, filed on 10.10.2020, pending adjudication before this Adjudicating Authority. The Hon'ble NCLAT, while disposing of the aforesaid appeal, did not adjudicate upon the merits of the present Section 7 application or render any finding on the existence of debt or default. The said appeal having been disposed of merely as withdrawn, cannot operate to prejudice the present proceedings or have any bearing on the adjudication of the present Section 7 Application, which arises from an independent cause of action and requires to be considered on its own facts and merits.

9.4 This Tribunal, in application filed under Section 10 of the IBC Code 2016, had observed that the date of filing of the petition was 27.04.2018, and accordingly as on the date of filing of the said petition, the credit facilities had not been recalled and hence there was no default on the part of the Corporate Debtor as on the date of filing of the said petition. The predecessor-in-interest of the Financial Creditor recalled its credit facilities only on 15.05.2018



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and thus the question of it being considered in the said Section 10 application filed on 27.04.2018 does not arise.

9.5 The contention of the applicant that the list relied upon by the Corporate Debtor is expressly titled “Details of Financing Documents”, and a recall notice, being a demand/recall communication and not a financing document, would not ordinarily form part of such a list. Accordingly, the inference sought to be drawn by the Corporate Debtor that the Recall Notice does not exist merely because it does not find mention in a list specifically confined to Financing Documents is wholly misconceived, baseless, and untenable.

9.6 The applicant submitted that, in the Minutes of the Consortium Meeting held on 04.06.2018, which was attended by Mr. J K Jain (Director of the CD), Mr. N K Jain (Director of the CD), and Mr. A K Gupta (CFO of the CD), it was expressly noted that the predecessor-in-interest of the Financial Creditor, being Standard Chartered Bank, has recalled its credit facilities. Thus, at this stage, the Corporate Debtor cannot deny receipt of the Loan Recall Notice dated 15.05.2018.

9.7 He further argued that under Section 3(12) of the IBC, a default occurs as soon as the debt, or any part thereof,



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becomes due and payable and remains unpaid. Accordingly, once the debt became due and payable on 12.03.2018 and remained unpaid, a default stood committed on that very date.

10. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No.(i)

11. The first issue that arises for our consideration and decision thereon is whether the present application under Section 7 of the Code is barred by the principles of res judicata, estoppel, and issue estoppel.
12. It is on record that an earlier Section 7 petition, being C.P. No. 1541 of 2018, was filed on similar facts and on the basis of the same set of loan documents and agreements by the lead bank of the consortium, namely Bank of Baroda for financial debt of its own share. The said petition was dismissed by this Adjudicating Authority by a detailed order dated March 5, 2020, with specific observation that the



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financial creditor had completely failed to convince this Tribunal as regards the date of default being February 28, 2018, and the classification of the account as a NPA on May 29, 2018.

13. The Bank of Baroda, the predecessor-in-interest of the applicant, preferred an appeal, Company Appeal (AT) (Insolvency) No. 635 of 2020, before the Hon'ble NCLAT. The present Financial Creditor, after acquiring the debt under an Assignment Agreement, was substituted as the appellant in the said appeal vide order dated June 22, 2021 passed by Hon'ble NCLAT.
14. The present applicant, after substitution in place of Bank of Baroda, unconditionally withdrew the said appeal in order to pursue other remedies. The said appeal was disposed of by the Hon'ble NCLAT, vide order dated 10.08.2021, as withdrawn without granting any liberty to challenge the order dated March 5, 2020, or to file a fresh Section 7 petition. Thus, the dismissal order dated March 5, 2020, has attained finality and is binding upon the present Financial Creditor qua debt assigned by the Bank of Baroda.
15. It is pertinent to note that the present petition has been filed by the applicant on the basis of debt assigned in its favour by Standard Chartered Bank, one of the Member of Bank



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of Baroda Consortium. This Adjudicating Authority, in case of C.P. (I.B) No. 272/KB/2024 in case titled as Bank of India Vs. Pallishree Limited held that:

“Each Member of the Consortium/Financial Creditors can independently file an application under Section 7 of the IBC Code 2016 for initiating the Corporate Insolvency Resolution Process(CIRP) based on its own debt and default, independent of other consortium members. The right of the applicant Bank/Financial Creditor to initiate insolvency process is not restricted by consortium agreement entered Consortium Members.”

16. The Financial Creditor, having stepped into the shoes of the Standard Chartered Bank pertaining to the claim in dispute, has the right to avail the remedy to file an application under Section 7 of the Code with regard to debt outstanding relating to the Assignor Bank. The mere fact that the present applicant, having been substituted in Company Appeal (AT) (Insolvency) No. 635 of 2020 in place of Bank of Baroda, withdrew the said appeal in order to pursue other remedies does not bar to pursue remedies available to it in capacity of assignee of other Consortium Member of Bank of



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Baroda. Financial Creditor qua debt assigned by the Bank of Baroda

17. It is further noted that the availing of remedies available under the SARFAESI Act, 2002 does not bar filing of application under Section 7 of the IBC Code 2016. Therefore, present petition is not barred by the principle of res judicate as alleged by the Corporate Debtor. Accordingly, this issue is answered in favour of the Financial Creditor and against the Corporate Debtor.

Issue No.(ii)

18. It is a settled proposition of law that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 Crore. In view of the Section 4 of the Code, the moment default is of Rupees 1 Crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.
19. It is an admitted fact that on December 07, 2006, a working capital consortium agreement was entered between the corporate debtor and a five members Bank of Baroda



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Consortium had agreed to fund the working capital requirement of the corporate debtor (both fund and non-fund based) for a maximum principal limit of Rs. 103 crores. On September 22, 2008, a supplemental consortium agreement was entered into with the corporate debtor wherein apart from the original five member of Bank of Baroda Consortium, four other member banks, including the predecessor in interest of the present Financial Creditor, agreed to become part of the working capital consortium agreement for the purpose of enabling higher credit limit facilities to be availed by the corporate debtor for meeting its working capital requirement.

20. The predecessor in interest of the Financial Creditor, Standard Chartered Bank agreed to provide credit facilities to the Corporate Debtor to the extent of Rs. 4.25 crores Fund-Based facility and Rs. 25.75 crores non-funded facility for meeting its letter of credit and bank guarantee requirements, making a total exposure of a maximum limit of Rs. 30 crores which were subsequently enhanced to Rs. 50 crores for both Fund Based and Non Fund Based facilities. The said facilities were further enhanced to Rs. 80 crores for which a supplemental consortium agreement dated August 11, 2016 was executed.



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21. On February 15, 2018, a further supplemental working consortium agreement was entered into between the corporate debtor and various banks including the predecessor in interest of the financial creditor, whereby the exposure of the predecessor in interest of the financial creditor was agreed to be reduced to Rs. 52.50 crores from Rs. 80 crores.
22. The corporate debtor started defaulting in repayment of the outstanding amount under the credit facility from March 12, 2018, and failed to service the overdraft facility account maintained with the predecessor in interest of the Financial Creditor. On May 15, 2018, the predecessor in interest of the Financial Creditor issued the recall notice of acceleration of credit facilities granted to the corporate debtor as the borrower, and as on May 14, 2018, the total dues of the predecessor in interest of the financial creditor was Rs. 55,75,26,528.68/-.
23. The total outstanding due, as on August 31, 2020, is Rs. 1,22,48,74,764/- is due and payable by the respondent company. The default in repayment of loan amount occurred on 12.03.2018 which is beyond 30 days from the date of supplemental agreement dated 15.02.2018.
24. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is



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complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

25. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

Issue No. (iii)

26. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted with the following orders:

- (i) Mr. Bijay Murmuria, having registration number IBBI/IPA-001/IP-N00007/2016-2017/10026 having email -id: bijay_murmuria@sumedhamanagement.com is appointed as an Interim Resolution Professional for the corporate debtor.
- (ii) In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

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(iii) We direct the applicant Financial Creditor to deposit a sum of Rs. 3 Lakhs with the Interim Resolution Professional namely Mr. Bijay Murmuria to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

(iv) The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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



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assets or any legal right or beneficial interest therein;

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

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

- (v) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

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- (vi) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the exmanagement or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

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27. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR.R(LRA)