S.No. 3

IN THE NATIONAL COMPANYN LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **27.06.2022** AT 10:30 AM THROUGH VIDEO CONFERENCE

IA(IBC) 18/2022 in CP(IB) No. 109/7/HDB/2020
& CP(IB) No. 109/7/HDB/2020
U/s 7 of IBC,2016

IN THE MATTER OF:

Syndicate Bank **…Financial Creditor**

Vs

Kranthi Edifice Pvt Ltd **…Corporate Debtor**

CORAM

DR.VENKATA RAMAKRISHNA BADRINATH NANDULA,HON'BLE MEMBER(JUDICIAL)
SH.VEERA BRAHMA RAO AREKAPUDI,HON'BLE MEMBER(THECNICAL)

ORDER

Order in CP(IB) No. 109/7/HDB/2020 pronounced. Recorded vide separate sheets.

In the result, the Company Petition is allowed and the Corporate Debtor is put under CIRP as per the terms and conditions mentioned therein.

IA No. 18/2022 is dismissed.

Sd/-
MEMBER(T)

Sd/-
MEMBER(J)

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

IA No.18 of 2022
in
CP (IB) No.109/7/ HDB/2020

Application under section 65 of I&B Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

In the matter between:
M/s Kranthi Edifice Private Limited
A company having its Registered Office
Situated at: H. No.3-5-784/2/8/A,
Sri Sai Sree Heights
Opp. Pardha Gate, King Koti
Hyderabad – 500 029
Telangana State.

.. **Applicant**
Corporate Debtor

VERSUS

Syndicate Bank
Door No.16/355 & 16/365/A
Manipal -576 104, Udupi District
Karnataka State.
And acting through its Branch at
Stressed Assets Management Branch
H. No.6-3-639/ 640/642, Flat No.1-4
1st Floor, Golden Edific Complex
Khairatabad, Hyderabad-500004.
Telangana State
Represented by its authorised representative
Gadi Vamseedher Naidu, Chief Manager.

.. **Respondent**
Financial Creditor

Date of order : 27th June 2022

Coram:
HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

Parties / counsels present:

For the Petitioner: Shri S. Ravi, Senior Advocate.

For the Respondent: Shri Dishit Bhattacharjee, Advocate assisted by Shri Prasoon Das, Advocate.

PER BENCH

ORDER

The corporate debtor/ Kranthi Edifice Private Limited has filed this Interlocutory Application against the OC/ Canara Bank praying this Adjudicating Authority as under:

> *" .. this Hon'ble Tribunal may be pleased to dismiss the company petition with exemplary costs for being filed with a mala fide intention to initiate corporate insolvency resolution process .. .."*

2. Most of the averments and the contentions as put-forth by the applicant in this IA dated 04.01.2022 are repetition of what has been stated by the Corporate Debtor in its Counter dated 10.11.2021. However, the averments made in this IA are summarised as under:

2.1 The applicant/ Corporate Debtor in in infrastructure business for 35 years and has successfully executed a number of public work projects in Andhra Pradesh and Telangana. The Corporate Debtor is maintaining account with Financial Creditor for last 35 years and availing loan facilities from the Financial Creditor. The applicant/ company is presently having sanction limit of Rs.12 crores as working capital limit (fund based) and Rs.110 crores as Bank Guarantee (non-fund based).

2.2 Due to wrongful invocation of Bank Guarantees by a beneficiary to the tune of Rs.8.40 crores, the Financial Creditor issued Demand Drafts in favour of the beneficiary as a consequence of wrongful invocation. The Financial Creditor has arbitrarily converted non-fund liability of Rs.8.40 cores into fund-based liability of Rs.8.40 crores to the Working Capital Overdraft Account and declared the account of the Corporate Debtor as NPA

2.3 The Corporate Debtor has reiterated the details of such invocation of Bank Guarantees as was stated in para 18, page 6 of Counter dated 10.11.2021 to illustrate how Financial Creditor has unilaterally invoked the Bank Guarantees during 2018-2020 on its own when the beneficiaries have primarily sought for extension. Copies of the requests by the beneficiaries seeking primarily extension/ revalidation of each of the aforementioned Bank Guarantees are produced at **Annexure-1 (Colly),** page 14-48 to this IA. Copies of letters issued by respondent no.1/ Bank issuing Demand

Drafts instead of extending/ revalidating the Bank Guarantees by fastening liability on the Corporate Debtor are at **Annexure-2 (Colly.)**, page 49,

2.4 By virtue of the above documents the applicant/ Corporate Debtor contends that the Financial Creditor has arbitrarily and illegally fastened liability of about Rs.66 crores on the applicant/ Corporate Debtor without any fault of the applicant/ Corporate Debtor. Such fastening of liability by the Financial Creditor on the Corporate Debtor led to serious losses sustained by the Corporate Debtor.

2.5 The Corporate Debtor contends that on one hand the Financial Creditor has issued Demand Drafts in favour of the beneficiaries when they asked for extension/ revalidation of the Bank Guarantees, which led to losses sustained by the Corporate Debtor and on the other hand the Financial Creditor has filed application under section 7 of the I&B Code, 2016. Copies of payments of more than Rs.26 crores made by the applicant/ Corporate Debtor to the respondent/ Financial Creditor are at **Annexure-3** (page 59-90). It is submitted that the beneficiaries are willing to return the Demand Drafts/ amounts to the Financial Creditor, provided the Financial Creditor revalidates/ extends the Bank Guarantees as the said Bank Guarantees are required by the beneficiaries only for security purpose till completion of work. In fact, Irrigation and Command Area Development, Government of Telangana vide its letter dated 05.11.2018 (Annexure-4, page 91) had requested the Financial Creditor to revalidate the Bank guarantee despite issuance of the Demand Draft. It is therefore, contended that once all the invoked Bank Guarantees are revalidated, viz. the actions of the Financial Creditor are reversed, the applicant would have no liability whatsoever.

2.6 The applicant/ Corporate Debtor has challenged the action of the Financial Creditor by way of W.P. No.6589 of 2020 in the Hon'ble High Court of Telangana. The Hon'ble High Court vide order dated 24.04.2020 (Annexure 7, page 113) has issued interim directions as under:

> *" .. Hence, there shall be interim direction to respondent no.1 not to take any coercive steps pursuant to letter dated 08.04.2020 and letter dated 15.04.2020 including handing over of demand drafts to be issued in favour of respondent no.7."*

2.7 The respondent/ Financial Creditor has filed criminal complaint dated 27.04.2020 (Annexure 8, page 116) with the CBI, viz. after interim order dated 24.04.2020 passed by the Hon'ble High Court. The Corporate Debtor has filed W.P. No.10597 of 2020 against the arbitrary action of the Financial Creditor in issuing Show Cause Notices dated 18.01.2020 and 06.03.2020.

3. Therefore, the Point that requires the due consideration by this Tribunal is:

> **Whether the present insolvency resolution proceedings as initiated by the financial creditor are fraudulent, malicious and not for the purpose of resolution of insolvency?**

4. Heard Shri S. Ravi, learned Senior Advocate for the applicant/ Corporate Debtor and Shri Dishit Bhattacharjee, learned counsel for the respondent/ Financial Creditor and perused the documents produced before us.

POINT.

Whether the present insolvency resolution proceedings as initiated by the financial creditor are fraudulent, malicious and not for the purpose of resolution of insolvency?

5. According to the learned senior counsel for the applicant/ Corporate Debtor, invocation of the Bank Guarantee provided by the Corporate Debtor itself being wrongful, the Applicant Bank instead of denying payment to the beneficiary, entertained invocation of the Bank Guarantee and after thus making wrongful payment to the beneficiary, claimed the said amount as financial debt due and payable by the corporate debtor, which debt would not have come in existence but for wrongful invocation and payment. Hence the application filed for initiation of CIRP against the Corporate Debtor is not only *mala fide and fraudulent*, but also unsustainable, hence liable to be dismissed.

6. Per contra, the learned counsel for the respondent/ Financial Creditor would contend that the plea that honouring Bank Guarantee at the behest of the beneficiary by the Financial Creditor is illegal and contrary to the terms of the Bank Guarantee besides, *mala fide* and fraudulent, is totally baseless and unsustainable. Learned counsel would further contend that the Bank Guarantee being an independent

contract governed by the terms and conditions of the said Bank Guarantee, therefore, challenge, if any, to the Bank Guarantee cannot come under the purview of proceedings being under I&B Code. Learned counsel would further contend that even if the plea that invocation of Bank Guarantee is illegal is accepted, without admitting the remedy of the petitioner lies elsewhere for damages. Therefore, under the guise of the above plea the Corporate Debtor cannot seek dismissal of the present application, which is filed on account of default committed by the Corporate Debtor in payment of the financial debt. Thus, contending the applicant prayed for dismissal of this application.

7. At the outset it may be stated that the respondent/ Financial Creditor is a nationalised Bank and the present proceedings are initiated after the Corporate Debtor having admittedly availed both fund-based and non-fund-based credit facilities from the respondent/ Financial Creditor, had defaulted in payment of the fund-based amount and also the amount debited consequent to invocation of Bank Guarantee. The main contention of the petitioner/ Corporate Debtor is that the invocation of the Bank Guarantee is illegal and the Financial Creditor had honoured the said invocation done with a *mala fide,* intention. Even if this submission of the cd is accepted, yet insofar as the amount claimed as due and payable, includes fund-based credit facilities which are over and above the threshold limit of this Tribunal, admittedly not discharged by the corporate debtor.

8. So much so, even if the plea that invocation of the Bank Guarantee and the payment by the Financial Creditor is illegal is accepted, yet the default of the fund-based credit facilities by the Financial Creditor, being over and above the threshold limit, the it cannot be said that the entire present insolvency resolution proceedings as initiated by the financial creditor are fraudulent, malicious and not for the purpose of resolution of insolvency.

9. That apart, the Financial Creditor a Scheduled Bank initiated the present proceeding for triggering insolvency proceedings against the corporate debtor as the corporate debtor *defaulted* in repayment of the public money which was lent. Therefore, unless the corporate debtor is able to establish that the intention behind filing this application is other than CIRP against the corporate debtor or to coerce the petitioner to pay the outstanding dues, the present application is not maintainable. That apart, there is absolutely no material placed by the petitioner to show that the present petition is filed with *mala fide* or *fraudulent* intention. Hence on both these counts this application is not maintainable. Thus, the petition being devoid of merits and is liable to be dismissed.

10. Accordingly, IA No.18 of 2022 in CP (IB) No.109/7/ HDB/2020 is dismissed.

Sd/-	Sd/-
VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)	DR. N.V. RAMAKRISHNA BADARINATH MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.109/7/ HDB/2020

U/ s 7 of I&B Code, 2016 read with Rule 4 of I & B (AAA) Rules, 2016.

In the matter between:

Syndicate Bank
Door No.16/355 & 16/365/A
Manipal -576 104, Udupi District
Karnataka State.
And acting through its Branch at
Stressed Assets Management Branch
H. No.6-3-639/ 640/642, Flat No.1-4
1st Floor, Golden Edific Complex
Khairatabad, Hyderabad-500004.
Telangana State
Represented by its authorised representative
Gadi Vamseedher Naidu, Chief Manager.

.. Petitioner
Financial Creditor

VERSUS

M/s Kranthi Edifice Private Limited
A company having its Registered Office
Situated at: H. No.3-5-784/2/8/A,
Sri Sai Sree Heights
Opp. Pardha Gate, King Koti
Hyderabad – 500 029
Telangana State.

.. Respondent/Corporate Debtor

<u>Date of order: 27th June 2022</u>

<u>Coram:</u>

HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

<u>Parties / counsels present</u>:

For the Petitioner : Shri Dishit Bhattacharjee, Advocate assisted by Shri Prasoon Das, Advocate.

For the Respondent: Shri S. Ravi, Senior Advocate.

Per Bench

<u>ORDER</u>

This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by Syndicate Bank (hereinafter called the 'Financial Creditor') seeking the Corporate Insolvency Resolution Process against M/s Kranthi Edifice Pvt Ltd (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed breach in repayment and interest payment of loan accounts.

2. The petitioner is a nationalised Bank formerly known as Syndicate Bank, which got merged into Canara Bank vide Notification No.GSR 155(E) dated 04.03.2020 issued by Government of India.

3. The respondent is incorporated on 18.05.2012 as private limited company having CIN : U45400AP2012PTC081034.Its authorised capital is Rs. 23,00,00,000/- and paid up capital is Rs. 23,00,00,000/-.

4. Averments made in the application are that:

4.1 Financial Creditor that it had sanctioned and disbursed various facilities on 07.02.2013, 06.05.2016, 07.02.2013 and 06.05.2016, amounting to Rupees in crores 12.00, 12.00, 110.00 and 110.000 respectively. However, due to irregularities committed by the Corporate Debtor, its accounts have been classified as Non-performing Asset (NPA) since 06.08.2018.

4.2 The Financial Creditor has issued notice dated 29.08.2018 demanding outstanding amount of Rs.23,96,08,502/-. The Corporate Debtor has failed to make payment of outstanding dues. As on 30.11.2019 the amount due on secured overdraft facility is **Rs.74,52,87,564.93** and Bank Guarantee outstanding is **Rs.19,16,20,100.00**. Hence the present application under section 7 of the I&B Code, 2016.

5. The respondent/ Corporate Debtor has filed Counter dated 10.11.2021 contending that:

(i) The Corporate Debtor has not committed any default on any of the its obligations.

(ii) The person who filed this petition has no authorisation to represent the Financial Creditor. An individual director or any other persons has no power to act on behalf of the Corporate Debtor unless Board of Directors empowers him to do so.

(iii) Syndicate Bank has merged into Canara Bank vide Notification No.GSR 155(E) dated 04.03.2020 issued by Government of India. As such Syndicate Bank cannot continue and cannot file this petition with its old identity.

(iv) The Corporate Debtor has been maintaining loan account with the Financial Creditor for more than 35 years. However, in 2018, due to wrongful invocation of Bank Guarantees by a beneficiary to the tune of Rs.8.40 crores, the Financial Creditor issued Demand Drafts in favour of the beneficiary as a consequence of wrongful invocation. The Financial Creditor has arbitrarily converted non-fund liability of Rs.8.40 cores into fund-based liability of Rs.8.40 crores to the Working Capital Overdraft Account and declared the account of the Corporate Debtor as NPA on 06.08.2018, without any recall notice intimating the default.

(v) Post declaration of account of Corporate Debtor as NPA, the Financial Creditor resorted to issuing Demand Drafts in favour of beneficiary without assigning reasons. Such action proved detrimental to the interest of the Corporate Debtor as non-fund-based liability is content in nature and fund-based liability is immediately payable. Thus, the Financial Creditor has fastened unwarranted financial liability on the Corporate Debtor and thereby driven the Corporate Debtor into financial stress.

(vi) The Corporate Debtor has furnished details of such invocation of Bank Guarantees in para 18, page 6 of the Counter to illustrate how Financial Creditor has unilaterally invoked the Bank Guarantees during 2018-2020 on its own when the beneficiaries have primarily sought for extension.

(vii) Though the Bank Guarantees were admittedly not due and payable to the beneficiaries, the Financial Creditor has issued Demand Drafts unilaterally causing financial losses to the Corporate Debtor and led to artificial increase in the Corporate Debtor's liability.

(viii) After filing of the present Company Petition the following proceedings were initiated before the Hon'ble High Court of Telangana:

- The Corporate Debtor has filed Writ Petition No.6589 of 2020 and the Hon'ble High Court has passed **interim order dated 24.04.2020** in Writ Petition No.6589 of 2020 (Annexure R-3, page 72 of the petition).

- The Financial Creditor has filed Vacate Stay Petition-cum-Counter before the Hon'ble High Court. The Corporate Debtor has filed Rejoinder Affidavit thereto.
- The Corporate Debtor has filed W.P. No.10597 of 2020 before the Hon'ble High Court challenging action of the Financial Creditor in declaring the Corporate Debtor as a Non-cooperative Borrower and issuing Show Cause Notice dated 06.03.2020 to declare the Corporate Debtor as a wilful defaulter.

It is submitted by the Corporate Debtor that the Financial Creditor has not brought any of the facts of the above proceedings instituted and pending before the Hon'ble High court.

6. The Financial Creditor has filed REJOINDER dated 14.12.2021 submitting that:

(i) The present application was filed prior to Syndicate Bank got amalgamated into Canara Bank vide Notification No.GSR 155(E) dated 04.03.2020 issued by Government of India. The Financial Creditor relied on Clauses (3) and (9) of the said Notification, which envisages that proceedings pending immediately before commencement of this Scheme shall not abate, shall not be discontinued or in any way be prejudicially affected. Thus, the Financial Creditor refutes the contention of the Corporate Debtor that the Financial Creditor lacks legal identity and legal existence.

(ii) Reliance is placed on paras 12, 27, 28, 30 and 32 of the decision in M/s Innoventive Industries Limited Vs. ICICI Bank & another, (2018) 1 SCC 407,in support of its contention that once debt is established by the Financial Creditor, the application must be admitted.

(iii) Reliance is also placed on decision of this Tribunal in Canara Bank Vs. Transstroy (India) Ltd. in CP (IB) No.47 of 2018, to contend that once the Financial Creditor fulfils all the requirements of section 7(1) to (5) of the I&B Code, 2016, application is ought to be admitted.

7. The Financial Creditor has filed written statement dated 04.05.2022 contending that:

(i) In order to recover dues, the Financial Creditor has initiated proceedings under the SARFAESI Act, 2002 and issued Demand Notice dated 29.08.2018 (pages 273-278) under section 13(2) of the said Act to the Corporate Debtor. As the Corporate Debtor failed to honour the said Demand Notice, the Financial Creditor has filed OA No.499 of 2019 before the Debt Recovery Tribunal (DRT), Hyderabad. The Corporate

Debtor has filed SA No.332 of 2019 before the DRT against the Financial Creditor.

(ii) The Corporate Debtor has acknowledged the debt due and payable to the Financial Creditor vide Acknowledgement of Debt dated 05.05.2019 amounting to Rs. 63,36,61,897.26 (pages 279-282 of the petition). Balance Sheet dated 31.03.2019 of the Corporate Debtor (page 509) reflects that such an amount is due and payable to the Financial Creditor.

(iii) The Corporate Debtor has offered the following settlements:

- One Time Settlement (OTS) No.KEPL/SYND/03/ 2021 dated 02.11.2021 for Rs.40.00 crores. It was rejected by the Financial Creditor on 09.12.2021.
- One Time Settlement (OTS) No.KEPL/SYND/06/ 2021 dated 21.03.2022 for Rs.40.00 crores. It was rejected by the Financial Creditor on 22.04.2022.

The Financial Creditor contends that debt is established in the present case and acknowledged by the Corporate Debtor vide Acknowledgement of Debt dated 05.05.2019 (pages 279-282 of the petition) and invokes decision in M/s Innoventive Industries Limited Vs. ICICI Bank & another, (2018) 1 SCC 407.

8. In the light of the contest as aforementioned, the **point** that emerges for consideration by this Tribunal is:

Whether there is a financial debt as claimed by the applicant which is due and payable by the respondent/ Corporate Debtor? If so, whether the Corporate Debtor defaulted in payment of the same?

9. We have heard *Shri Dishit Bhattacharjee, learned counsel assisted by Shri Prasoon Das, learned counsels for the Financial Creditor; and Shri S. Ravi, learned Senior Counsel for the Corporate Debtor. Perused the record and the case law.*

Point.

Whether there is a financial debt as claimed by the applicant which is due and payable by the respondent/ Corporate Debtor? If so, whether the Corporate Debtor defaulted in payment of the same?

10. At the outset, as regards the scope of inquiry in an application filed under section 7 of the I&B Code, 2016, we wish to refer to the ruling of the Hon'ble Supreme Court in Innoventive Industries Ltd. Vs. ICICI Bank & another (Civil Appeal Nos.8337-8338 of 2017), which ruling has been quoted with approval by Hon'ble Supreme Court in Swiss Ribbons and other rulings, wherein it is held that:

> *"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

We therefore, proceed to examine this case on hand on the touchstone of the ruling supra.

11. According to the learned Counsel for the Applicant *Shri Dishit Bhattacharjee, the Corporate Debtor having admittedly availed both fund-based (towards working capital and non-fund based (Bank Guarantee) credit facilities to the tune of* Rs.74,52,87,564.93 and Rs.19,16,20,100.00 respectively *from the Financial Creditor, since defaulted in repayment of the same, is liable to be put under CIRP as demand for payment of the defaulted amount has not been complied with. Ld. Counsel also submitted that* the corporate debtor as acknowledged the of on 05.05.2019 amounting to Rs. 63,36,61,897.26 besides that the Balance Sheet dated 31.03.2019 of the Corporate reflects that such an amount is due and payable to the Financial Creditor. Ld counsel further submitted that two OTS proposals were made by the corporate debtor on 02.11.2021 for Rs.40.00 crores and on 21.03.2022 for Rs.40.00 crores and both these proposals were rejected by the Financial Creditor on 22.04.2022.

12. Referring to the submission of the learned senior counsel for the Corporate Debtor that invocation of Bank Guarantee is wrongful and unsustainable in law, the learned counsel would contend that the Bank Guarantee is an independent contract payable without demur at the behest of the beneficiary as such the Bank had paid the

amount covered by the Bank Guarantee since invoked by the beneficiary as per the terms of the Bank Guarantee. As such it cannot be said that the Bank Guarantee has been honoured with mala fide, intention by the applicant. According to the Ld. Counsel the plea relating invocation of bank guarantee can neither be raised in the present proceedings nor this Tribunal has jurisdiction to enquire the said plea.

13. Per Contra, Ld. Sr. Counsel for the *Corporate Debtor* Shri. S. Ravi, would contend that honouring the request for invocation of Bank Guarantee which is non-fund-based credit facility is wrongful and unsustainable in law, and was done with a mala fide, intention to a financial debt which unfounded. Learned counsel further submitted that the *Financial Creditor*, on 06.08.2018 has declared the account of the *Corporate Debtor* as Non-Performing Asset (NPA), even though at that point of time the total fund-based liability of the applicant/ company was within the working capital limits, if Rs.11 crore margin money as Fixed Deposit was taken into consideration. Therefore, according to the learned Senior Counsel for the Corporate Debtor, since the very invocation of the Bank Guarantee Bank Guarantee being illegal, claiming the said sum as due and payable is illegal, hence the question of default in repayment of alleged debt does not arise.

14. Having heard the learned counsels for both sides, it may be stated that the Corporate Debtor had not denied availing of the credit facilities as stated in the application, besides Bank Guarantee facility for a sum of Rs.19,16,20,100.00, from

the Financial *Creditor*. It is also not the case of the Corporate Debtor that it had discharged even the fund-based facilities extended to and availed by the Corporate Debtor. The main plea of the *Corporate Debtor* appears to be that the *Financial Creditor* has honoured the request of the beneficiary for encashment of the Bank Guarantee despite the said invocation by the beneficiary being wrongful, and then converted the aid amount into fund-based liability and claimed a debt of Rs.8.40 crores as due and payable by the corporate debtor. The corporate debtor has not denied the acknowledgement of debt dated 05.05.2019 amounting to Rs. 63,36,61,897.26 besides that the entries in the Balance Sheet of the corporate debtor dated 31.03.2019 showing that the said sum as due and payable to the Financial Creditor. That apart the two OTS proposals were made by the corporate debtor on 02.11.2021 for Rs.40.00 crores and on 21.03.2022 for Rs.40.00 crores and rejection of these proposals by the Financial Creditor on 22.04.2022 also not in dispute.

15. Hon'ble Supreme Court of India, in re, Asset reconstruction Company V Bishal Jaiswal, held that "entries in balance sheets can amount to acknowledgement of debts for the purpose of extending limitation under section 18 of Limitation Act."

16. Thus, from the aforesaid undisputed factual matrix of this case, availing *of both fund-based (towards working capital and non-fund based (Bank Guarantee) credit facilities to the tune of* Rs.74,52,87,564.93 and Rs.19,16,20,100.00

respectively *from the Applicant/Financial Creditor, besides default in payment of the fund based credit facility stands established.*

17. So much so, even if we accept the argument of the Ld. SR. Counsel for the Corporate debtor that invocation of Bank Guarantee and debiting amount covered by the Bank Guarantee to the account of the Financial Creditor is illegal and unsustainable, yet the defaulted amount under the fund-based credit facilities by the Corporate Debtor being beyond the threshold limit of this Tribunal, probing the submission of the learned Senior Counsel for the Corporate Debtor as regards the invocation of Bank Guarantee, in our considered view will not impact our above finding, and it will be a an exercise in futile. That apart, Bank Guarantee being an independent contract between the beneficiary and the Bank is governed by the terms and conditions between the said parties. So much so, when the beneficiary has invoked the same as per the terms the Banker is bound to honour the request for its encashment without any demur, unless fraud is pleaded and established.

18. Therefore, in view of our discussion as above, we are satisfied that the financial creditor has established before us that a financial debt of a sum over Rs. One crore is due and payable by the Corporate Debtor to the applicant and the Corporate Debtor has defaulted in payment of the same, hence it is a fit case to put the Corporate Debtor *in CIRP.*

19. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) *Corporate Debtor*, M/s Kranthi Edifice Private Limited *is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,*

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Ms. Kalpana G.**, having Registration No.IBBI/IPA-001/IP-P00756/2017-2018/11288, *having address:* H.No. 16-11-19/4, G-1, Sri Laxmi Nilayam, Saleem Nagar Colony, Malakpet, Hyderabad, West Marredpally, Telangana, 500036, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP filed Form-2 dated 23.06.2022. Her Authorisation for Assignment is valid till 14-11-2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

20. The petitioner is directed to communicate this order to the proposed IRP.

21. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

22. Accordingly, this Petition is allowed.

Sd/-	Sd/-
VEERA BRAHMA RAO AREKAPUDI	*DR. N.V. RAMAKRISHNA BADARINATH*
MEMBER (TECHNICAL)	*MEMBER (JUDICIAL)*

karim