IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CP (IB) No.404/(PB)/2024

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016.

IN THE MATTER OF:

IDBI BANK LIMITED

Through Authorized Representative
Deputy General Manager.
IDBI Tower,
WTC Complex Cuffe, Parade,
Colaba, Mumbai - 400005 **Applicant/Financial Creditor**

Versus

M/s HIL (India) Limited.
Registered Office: SCOPE Complex,
Core - 6, 2nd Floor, 7 Lodi Road,
New Delhi – 110003
CIN No.:U24211DL1954GOI002377

Respondent/Corporate Debtor

Order Pronounced On: 30.07.2025

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI RAVNIDRA CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Financial Creditor: Mr. Sanjay Bajaj, Mr. Shivam Takkar Adv.

For the Corporate Debtor: Mr. Yashvardhan, Mr. Gyanendra Shukla Adv.

O R D E R

The present application has been filed by IDBI Bank Limited (hereinafter referred to as 'Applicant'/ 'Financial Creditor') on 10.07.2024, u/s 7 of the Insolvency and Bankruptcy Code, 2016 ('The Code'), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against M/s HIL (India) Ltd.(hereinafter referred to as ('Respondent'/Corporate Debtor') for a financial default of Rs. 29,60,00,905/ (Rupees Twenty Nine Crore Sixty Lakh Nine Hundred and Five only) as on 07.06.2024.

PARTIES

1. The 'Financial Creditor' (FC) herein is IDBI Bank Limited incorporated on 27.09.2004 under the Companies Act 1956 (1 of 1956) and is a Banking company within the meaning of Section 5(c) of the Banking Regulation Act 1949, having its registered office at IDBI Tower, WTC Complex Cuffe, Parade, Colaba, Mumbai - 400005. The Financial Creditor is represented through Mr. Arunkumar P, Deputy General Manager.
2. The Corporate Debtor (CD) herein is M/s HIL (India) Ltd. (CIN:U24211DL1954GOI002377), represented through Mr. Balendra Prasad Mishra, having its registered office at SCOPE Complex, Core - 6, 2nd Floor, 7 Lodi Road, New Delhi – 110003. The respondent herein was incorporated on 11/03/1954 with a Paid Up Capital of Rs. 91,33,24,000 (Ninety One Crore Thirty Three Lakh Twenty Four Thousand Only) and Authorized Capital of Rs. l,00,00,00,000 (One Hundred Crore Only). Therefore, this Bench has jurisdiction to deal with this application. A copy of Company's Master Data has been annexed at Page 90 of the application.

BRIEF FACTS

1. It is submitted by the Financial Creditor that Southern Pesticides Corporation Ltd. ("Principal borrower") for the purpose of setting up a plan for the manufacturer of Benzene Hexachloride Technical at Kavvurm, West Godavari

District, Andhra Pradesh, availed credit facilities from the Financial Creditor and vide letter dated 03.02.1983 the Financial Creditor sanctioned Rupee Term Loan for an amount of Rs. 280 lakhs to the Principal Borrower and thereby entered into a Loan/Hypothecation Agreement dated 25.05.1983. It is stated that Borrower further availed a foreign currency loan facility of US $ 4,31,500/-, (Rs. 40 Lacks) as per the sanction letter dated 03.02.1983 and entered into the Loan Agreement dated 25.05.1983**,** further, the borrower requested to convert the undisbursed amount with respect to the 2nd Loan Agreement into a Rupee Term Loan. The said request was duly approved by the Applicant to the tune of Rs. 13 Lakhs on 26.05.1986 and thereby executed a Loan Agreement dated 04.08.1986.

2. In pursuance of the above loan agreement, the Corporate Debtor i.e. M/s HIL (India) Ltd. executed a deed of corporate guarantee dated 21.11.1988 in favor of the Financial Creditor against all loan facilities availed by the principal borrower. It is stated that since the principal borrower could not adhere to the terms and conditions of the repayment schedule as per the loan agreement, the account of the Principal Borrower was declared as NPA on 31.03.1994

3. Consequent thereupon, it is stated that the FC issued a legal demand notice dated 02.05.1994 to the Principal Borrower and the Corporate Debtor herein and that the FC by way of letter dated 01.07.1994 invoked the corporate guarantee. The letter dated 01.07.1994 has been annexed as **Annexure A-4** of the application**.** It is stated that that pursuant to the default committed by the Principal Borrower and the CD herein, the FC filed an Original Application on 19.04.2002 before the Debt Recovery Tribunal bearing OA No. 253/2002 for recovery of Rs. 19,32,20,414/- (Rupees Nineteen Crores Thirty-Two Lakhs Twenty Thousand Four Hundred and Fourteen only) against both the Principal Borrower and the CD herein and that the tribunal issued a recovery certificate bearing RC No. 431 of 2018 against both the Principal Borrower and the CD herein on 26.07.2018. The recovery certificate has been annexed as **Annexure A-8** of the application.

4. In respect of principal borrower it is stated Hon'ble High Court of Andhra Pradesh had wound up the Company and appointed an Official Liquidator on

01.04.2002 in pursuance of the opinion of Board of Industrial and Financial Reconstruction ("BIFR").

5. Further, it is stated by the Financial Creditor that the Balance sheet of the Corporate Debtor for the Financial Year 2020-2021 reflects that the CD has provided a counter guarantee in favour of the FC for securing the credit facility availed by the Principal Borrower. Further, the CD has acknowledged the debt in the offer letter dated 18.04.2022 and 02.06.2022.

Thus, in view of the aforesaid facts, it is the stand of the FC that the CD has not disputed the position of outstanding dues, rather has acknowledged the dues and the dues have not been paid till date. Therefore, the FC has filed the present application.

Submissions of the Ld. Counsel appearing for the Corporate Debtor:

Notice was issued to the CD for filing of reply. After due service, the Corporate Debtor appeared through its counsel and filed its reply denying averments made in the Section 7 application on the following grounds:

a. Firstly, it is submitted by the CD that the application is liable to be dismissed on the ground that the application filed by FC is time barred. It is vehemently argued by the CD that as per Article 137 of the Limitation Act, an application under Section 7 of the IBC has to be filed within a period of three years from the date when the right to apply accrues, as the account of the Principal Borrower was declared as NPA on 31.03.1994. The liability of the Principal Borrower and the Corporate Guarantor being co-extensive, the limitation period for filing against both started on 31.03.1994, and further that the Corporate Guarantee was invoked on 01.07.1994, the present application has been filed on 13.06.2024. Therefore, the present application is time barred.

   In addition to above, the Corporate Debtor in its brief note dated 03.12.2024 has also submitted that the present application is defective since the Financial Creditor has not mentioned the date of default. To strengthen its argument, the CD has relied upon the decision of Hon'ble

NCLAT in *Ramdas Dutta v. IDBI Bank Limited & Anr., Company Appeal (AT) (Ins) No. 1286 of 2022.*

b. Secondly, it is submitted by the CD that the application is defective and is liable to be dismissed on the sole ground. To strengthen its argument, it is submitted by the CD that the as per Section 215(2) of IBC, 2016 read with regulation 20 (1A)of IBBI (Information Utilities) Regulations, 2017 it is mandatory for the FC to file the information of default with the information utility and file the record of default with respect to the CD along with the application. In the present facts the FC has failed to file the record of default with respect to the Respondent herein. The FC has only attached the record of default for the Principal Borrower i.e. Southern Pesticides Corporation Ltd. Further it is stated that, detailed calculation of debt is also a mandatory requirement which has also not been filed along with the application.

c. Thirdly, it is submitted by the CD that the application filed by the petitioner is an attempt to convert the present proceedings into a recovery proceedings, which is against the object of the IBC, 2016. Further, the Respondent herein is not insolvent or incapable of meeting its liability, it is a solvent company and therefore, the present case is not a fit case for the exercise of jurisdiction under Section 7 of the Code.

The FC filed its rejoinder to the reply filed by the CD, denying the grounds raised therein. We have heard Ld. Counsel for both the parties and perused the documents submitted. In our considered view, it would be convenient to deal the present application Issue wise.

Analysis and Findings

ISSUE-1

Whether the present application filed under Section 7 of the Code is time barred under the provision of IBC, 2016 read with Limitation Act, 1963?

6. Before delving into the issue, it is noteworthy to mention the relevant provision of the Code:

> ***Section 6.*** *Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter*
>
> ***Section7.*** *(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*
>
> *Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*
> *(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
>
> *(3) The financial creditor shall, along with the application furnish—*
> *(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
> *(b) the name of the resolution professional proposed to act as an interim resolution professional; and*
> *(c) any other information as may be specified by the Board.*
>
> *(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default*

from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)

(5) Where the Adjudicating Authority is satisfied that—

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

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

7. An application under section 7 of the Code is initiated by a FC either by himself or jointly with other FC's for initiation of Corporate Insolvency Resolution Process (CIRP) against CD, where there exist a 'debt' and a 'default', meaning, when a debt becomes due and is not paid, the FC under section 7 has a right to file an application under Section 7 of the Code. Under Section 7(2) of The Code read with The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short ***'AA' Rules, 2016***), a FC is required to apply in the Form 1 (*as provided in Rule 4 of 'AA' Rules, 2016*) accompanied with documents and records as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (in short ***" CIRP Regulations,"***). The Form-1 comprises Part 1 to V where Part IV and V, requires particular of '***Financial Debt***' and the '***Date of Default'***. At present we will only deal with 'Date of Default' being one of the primary issues in the present application. The Particulars of the *Date of Default* mentioned under Form 1, Part IV, of the present application is extracted below:

2.	Amount Claimed to be in default and date on which the default occurred.	Rs. 8,56,51,126/- (Rupees Eight Crore Fifty Six Lakh Fifty One Thousand One Hundred and Twenty Six Only) along with future interest @12% p.a from 25.12.2003 till date of recovery as per DRT Recovery Certificate issued by Hon'ble DRT-I, Hyderabad on 26.07.2018. Accordingly, current dues as on 07.06.2024 works out to Rs. 29,60, 00,905/- (Rupees Twenty Nine Crore Sixty Lakh Nine Hundred and Five only) along with *pendent-lite* and future interest from 07.06.2024 till payment, actual realisation in full duly shown in the calculation sheet which is annexed herewith as **Annexure A/2**. Further, the statement of account annexed as annexure with this Application as **Annexure A/3**. However, the Borrower did not maintain financial discipline and its loan/facility accounts remained continuously irregular despite repeated requests and reminders given by the Applicant Bank/Financial Creditor to the Borrower and the Corporate Debtor. That due to continuous default on the part of the Borrower and the Respondent Company/Corporate Debtor, and the account of the Borrower was classified as a "Non-Performing Assets" on 31.03.1994. The Financial Creditor having been left with no other alternative but to resort to legal action thereby issued a Demand notice dated 02.05.1994 to the Borrower and the

8. In Part IV of the Form-1 as extracted above, the FC mentions the Date of NPA as 31.03.1994. The CD in its reply submits that the application is liable to be dismissed on the ground that the application filed by FC is time barred since the application has to be filed within a period of three years from the date when the right to apply accrues. In this backdrop, it is relevant to understand that the adjudicating authority under the present legislation has a very limited role to play while admitting or rejecting an application filed under section 7 of The Code. One of the important factor to be considered in an application under section 7 is the existence of debt and the 'non payment of debt" i.e. default (***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1)***. This is also evident from the bare language mentioned under Section 6 and 7 of The Code.

9. As has been settled by the Hon'ble Supreme Court in catena of judgments that the Limitation Act, 1963 is applicable to the proceedings under the Code, 2016 ***(B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11***

SCC 633). The basic idea behind the application of the Limitation Act, 1963 is not to give life to time barred debts ***(Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1)***. The mentioning of Date of Default in the Form-1 under Part IV is for the purposes of reckoning of the Limitation Period within which a FC has to exercise his rights and that FC does not sleep over his right. Section 238 A of the Code provides for the provision of the Limitation Act, 1963 to apply to proceedings before the Adjudicating Authority. Accordingly, the time period for filing the application u/s 7 of the Code is governed by Article 137 of the Schedule to the Limitation Act, 1963 which provides for exercising the right within period of 3 years, from the date when the right to apply accrues. Hence, the Financial Creditor has to file the application within 3 years from the date when the right to apply accrue i.e. the date of default ***(Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330).***

10. In the facts of the present case, the date of NPA has been mentioned as 31.03.1994 and that the guarantee was invoked by letter dated 01.07.1994, it is the stand of the CD that the liability of principal borrower and guarantor being co-extensive, therefore the present application filed against the guarantor in 2024 after 30 years (from 1994) is time barred. In this context, it is relevant to mention that, the FC had also filed an Original Application bearing no. (OA No. 253/2002) before the DRT against the Principal Borrower as well the CD and a recovery certificate bearing no RC No. 431 of 2018 was issued by the Debt Recovery Tribunal on 26.07.2018 against both the Principal Borrower as well as the CD. The copy of the certificate has been annexed as **Annexure A-8** of the application. Admittedly, once the recovery certificate is issued a fresh cause of action will ensue giving a fresh lease of life to the debt and the FC has a right to initiate proceedings under Section 7 of the IBC from date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues ofthe CD to the FC, under thejudgment and/or decree and/or in terms of the certificate ofrecovery, or any part thereof remained unpaid. In this context, reliance is placed on **Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and another (2021) 10 SCC 330).** The relevant portion of which is extracted below:

136. A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate.

140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.

Further in ***Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186***, one of the issue before the Hon'ble Supreme Court was as to whether the issuance of Recovery Certificate in favor of the FC would give rise to fresh cause of action to initiate proceedings under Section 7 of the Code. It was held as under:

26. *Though all these issues have been elaborately considered by this Court in Dena Bank[4], we would only be concerned with the issue, as to whether the issuance of the recovery certificate in favour of the "financial creditor" would give rise to a fresh cause of action to initiate proceedings under Section 7 IBC. ….*

86. *To conclude, we hold that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC.* ***As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate****.*

The dictum laid down in ***Kotak Mahindra Bank Limited (Supra) was followed in Virigineni Anjaiah v. Pridhvi Asset Reconstruction & Securitization Co. Ltd., 2024 SCC OnLine NCLAT 568***:

Points of Determination:

14. In view of the discussions above following points arise for our consideration:

a. Whether the NCLT has erred in holding that the liability arising out of the decree obtained in DRT-I, Hyderabad on 19.02.2019 and the consequent Recovery Certificate issued on 09.07.2019 is a financial debt within the meaning of section 5(8) of IBC, 2016?

b. Whether the FC/Respondent being the holder of such a decree and such Recovery Certificate, is entitled to initiate CIRP under section 7 of IBC, 2016 as on 24.10.2021 the date on which he filed the Application under section 7 of IBC, 2016 before NCLT, Hyderabad?

c. Whether such Application is barred by limitation as laid down under section 238 of IBC r/w Article 137 of Limitation Act, 1963?

Analysis:

15. *With regard to point in 12(a)(b), the appellant has cited 3 Judgments of NCLAT, namely Judgment dated 05.02.2021 in the matter of Ashok Agarwal v. Amitex Polymers in CA(AT) (Ins) No. 608/2020, Judgment dated 12.03.2020 in the matter of Ishrat Ali v. Cosmos Cooperative Bank Ltd. in CA (AT) (Ins) 1121 of 2019 and Judgment dated 14.08.2020. In the matter of Sushil Ansal v. Ashok Tripathy in CA(AT) (Ins) No. 452/2020. In all these Judgments, NCLAT has taken the view that a Financial Creditor does not include the Decree holder within the definition of section 5(7) of IBC, 2016 and that the claimed amount is an adjudicated amount under a decree and not against a debt disbursed. The Respondent has countered the same by stating that matter has reached a finality with the decision of the 3-Judge bench the Hon'ble Supreme Court in the case of Kotak Mahindra Bank Limited v. A. Balakrishnan, (2022) 9 SCC 186. In the said Judgment Hon'ble Supreme Court has held that*

Kotak Mahindra Bank Limited (Supra):

"84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate the CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."

With this ruling it is crystal clear that a liability in respect of a claim arising out of a Recovery Certificate would be a financial debt within the meaning of section 5(8) of IBC and that the holder of such Recovery Certificate would be a financial creditor as per section 5(7) of IBC and would be entitled to initiate CIRP.

16. *With regards to point 13 (c) the Appellant vehemently argues that the debt was classified as NPA on 31.10.2015 and 3 year limitation period expired on 31.10.2018 and during this period he has not acknowledged the debt and that as per decisions of Hon'ble Supreme Court in the matter of Hargovind Bhai Dave v. Asset Reconstruction Company (India) Ltd. (Civil Appeal No. 4952/2019) and in the matter of BK Educational Services Pvt. Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633, the filing of application under section 7 of IBC on 24.10.2021 is clearly barred by limitation of 3 years. The Respondent does not dispute these proceedings: he merely states that the position with respect to limitation has evolved over time and has reached a finality with the Judgment rendered by Hon'ble Supreme Court in the matter of Dena Bank (now Bank of Baroda) v. C. Sivakumar Reddy and Kotak Mahindra Bank Ltd. v. A. Balakrishnan. It is seen that AA/NCLT has also relied on the Judgment in respect of Dena Bank v. C. Sivakumar Reddy to come to the conclusion that the section 7 application in the instant case is not barred by limitation. Hon'ble Supreme Court in the said Judgment (Dena Bank v. C. Sivakumar Reddy) Civil Appeal No. 1650/2020 has categorically held that;*

"135. The judgment and order/decree of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC."

"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate

Insolvency Resolution Process, within three years form the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

This has been affirmed by the decision of 3-member Bench of Hon'ble Supreme Court in the case of Kotak Mahindra Bank Ltd. v. A. Balakrishnan in following words:

Kotak Mahindra Bank Limited (Supra):

"84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (B) of section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate the CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."

This being the correct position in law, the section 7 application of FC/Respondent is clearly not barred by limitation as date of filing is 24.10.2021 which is within the 3 years of the date of decree (19.02.2019) and of date of issue of Recovery Certificate (19.07.2019)

(Emphasis Supplied)

11. Therefore, in line with the principle as enunciated above, issuance of recovery certificate gives rise to fresh cause of action and the financial creditor has a right to initiate proceedings under Section 7 of the IBC, 2016 from the date of

judgment/decree or within 3 years from the date of issuance of the certificate of recovery.

12. At this juncture, the CD in its note dated 03.12.2024 has stated that even if the limitation starts from the date of issuance of recovery certificate i.e. 26.07.2018*(in the present case)* the petition is still barred by limitation as the limitation for filing the present petition has expired way back on 26.07.2021, further it is stated that the Recovery Certificate dated 26.07.2018 issued by the Hon'ble DRT, Hyderabad, is unenforceable as on that date as the Principal Borrower was under liquidation**.** In this context, it is noteworthy to place on the suo-moto order passed by Hon'ble Supreme Court of India in SuoMotu Writ Petition (C) No. 3 OF 2020, wherein the period of 15.03.2020 till 28.02.2022 has been excluded from the purview of computation of limitation period. In such view, the FC gets time till (2023) to file the application, however in between the FC has relied upon various acknowledgments including Balance sheet for FY-2020-2021 and settlement proposal dated 18.04.2022 and 02.06.2022 of the CD which have been disputed by the Corporate Debtor. Consequently, it would be relevant to adjudicate the objection raised by CD regarding the alleged acknowledgment letter and the balance sheet for the FY-2020-2021.

13. In the note dated 03.12.2024 it is iterated by the CD that the even if it assumed that the Recovery Certificate give a fresh cause of action, then also the acknowledgment of debt should have been within 3 years from 26.07.2018, in the present case firstly there is no acknowledgment of debt by the CD and secondly letter dated 18.04.2022 and 02.06.2022 are beyond the period of 3 year. It is trite in law that Section 18 of the Limitation Act, 1963 applies to the IBC Proceedings. Section 18 of the Limitation Act, 1963 is extracted below for ready reference:

18. Effect of acknowledgment in writing.—

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

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

14. Section 18 of the Limitation Act, 1963 postulates that once an acknowledgement is done before the expiry of the prescribed period of limitation a fresh cause of action ensues thereby giving a fresh lease of period. In the present facts and circumstances, the CD states that firstly there is no acknowledgment by the CD, secondly the letter dated 18.04.2022 and 02.06.2022 are beyond the period of 3 years. However, it is noted that the Financial Creditor has attached the Balance Sheet of the CD for the FY-2020-2021, wherein the debt has been acknowledged and shown as Long Term and Short-Term Borrowings (Ref: Annexure A-5 @pg.

30, Ref: Document - II (Colly) @relevant pg. 336. The relevant portion of the Balance Sheet is extracted below:

BALANCE SHEET AS AT 31st MARCH, 2021
CIN : U24211DL1954GOI002377

Particulars	Note No.	AS AT 31.03.2021 Rs. In Lakhs	AS AT 31.03.2020 Rs. In Lakhs
I EQUITY AND LIABILITIES			
1) Shareholders' Funds			
Share Capital	1	9,133.24	9,133.24
Reserves and Surplus	2	2,221.48	2,277.41
2) Non Current Liabilities			
Long Term Borrowings	3	5,732.60	1,000.00
Other Long Term Liabilities	4	1,625.14	1,579.98
Long Term Provisions	5	3,624.43	2,964.87
3) Current Liabilities			
Short Term Borrowings	6	13,406.99	15,000.43
Trade Payables	7	12,921.41	16,795.37
Other Current Liabilities	8	15,006.48	13,490.94
Short Term Provisions	9	387.75	554.87
TOTAL		**64,059.52**	**62,797.11**
II ASSETS			
1) Non Current Assets			
Property, Plant & Equipment			
i) Tangible Assets	10	4,524.58	4,805.80
ii) Capital Work-in-Progress	10	1,056.10	1,655.51
iii) Intangible Assets	11	523.76	600.35
Non Current Investments	12	5.20	5.20
Long Term Loans and Advances	13	-	-
Other Non Current Assets	14	23.40	23.40
2) Current Assets			
Inventories	15	9,453.72	8,600.38
Trade Receivables	16	38,953.46	39,319.37
Cash and Cash Equivalents	17	207.06	454.02
Short Term Loans and Advances	18	785.48	620.10
Other Current Assets	19	8,526.76	6,712.98
TOTAL		**64,059.52**	**62,797.11**

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Additional Notes to Accounts 33
The accompanying note forms an integral part of these Financial Statements

As per our report of even date attached
For Khanna & Annadhanam
Chartered Accountants
FRN: 01297N

For and on behalf of Board of Directors

Sd/-	Sd/-	Sd/-	Sd/-
(B. J. Singh)	(S. P. Mohanty)	(Rajesh Kumar S. Choubey)	(Divya Sharma)
Partner	CMD & Director Finance	General Manager (Finance)	Company Secretary
Membership No.007884	(Additional Charge)		
	DIN : 05336787		

Place - New Delhi
Date - 20.12.2021
UDIN - 21007884AAAACW2176

33.1 (a) Contingent Liabilities and Commitments (To the extent not provided for)
Rs. in Lakhs

Particulars	As at 31st March' 2021	As at 31st March' 2020
Contingent Liabilities		
a) Claims against the company not acknowledged as debts		
Taxation -	1294.79	1294.79
Others -	157.14	157.14
b) Pay Revision Arrear of Officers & Workmen Employees (1.1.2007/1.04.2007 to 27.04.2011)	497.57	506.20
Penal Interest on Govt. Loan @2.75%	690.59	578.27
Commitments		
a) Estimated amounts of contracts remaining to be executed on the capital account and not provided for	37.90	105.64
b) Bank Guarantees and Letter of Credit	2,837.79	2,924.38
c) Others	261.71	274.51
TOTAL (A+B)	5,777.49	5,840.93

(b) Company had provided a counter guarantee of Rs.2,265.00 lakhs in favour of Southern Pesticides Corporation Limited, earlier subsidiary of the company, which got liquidated vide Hon'ble High Court of Andhra Pradesh order dated 2nd April, 2002. As on 31st March 2021 the counter guarantee has no validity. However, if counter guarantee is invoked by Financial Institutions, Govt. of India will provide support, as approved by Cabinet Committee on Economic Affairs (CCEA) on 27th July, 2006.

(c) The company's investment in Southern Pesticides Corporation Limited of Rs.496.66 lakhs (49,666 shares of Rs.1,000 each) was written off in the year 2009-10, this was against the order dated 02nd April, 2002 of The Hon'ble High Court of Andhra Pradesh for winding up of Southern Pesticides Corporation Limited and subsiquently disposal of all assets and liabilities by official liquidator. Therefore no statement of subsidiary company as required u/s 129 of the Companies Act, 2013 is provided herewith.

Going Concern
Company is making nominal profit but two units of the company i.e. Udyogamandal in Kerala & Bathinda in Punjab are suffering losses, all round efforts are being made by company for turnaround through increase in capacity utilization and with the new product lines like Long Lasting Insecticidal Net (LLIN), the plant of which has been setup at Rasayani in Maharashtra & commercial production has been started. Further few new projects like BTI, Bio-Pesticides & Neem Based Projects will be setup with the funding of UNIDO.
In view of the above, in the opinion of the management, the existence of the company on a going concern basis will not at all be affected in the foreseeable future. Further some operational restructuring is also under consideration with the support of administrative ministry i.e. Ministry of Chemicals & Fertilizers, department of chemicals and petrochemicals. Hence, the management does not envisage any issues on the "Going Concern" assumption in application and preparation of its financial statement.

In Response to the same, the CD states that as per the financial statement placed on record, the same do not amount to any acknowledgement and even if it assumed that it is an acknowledgment, the same is not unqualified. Further, the said corporate guarantee appears under the head "Contingent Liability" in the standalone Financial Statements of Corporate Debtor for the period 01.04.2019-

31.03.2020. Note 31(2) clearly states that in case the counter guarantee given by the Company in favour of Southern Pesticides Corporation (shown above as Contingent Liability), is invoked by Financial Institutions, Govt. of India will provide support, as approved by Cabinet Committee on Economic Affairs (CCEA) on 27.07.2006. That Note (b) of 33 of standalone Financial Statements of the Corporate Debtor for the period 01.04.2020-31.03.2021 (for contingent liabilities) clearly states that the corporate guarantee in question has no validity as on 31.03.2021. Similarly, reliance has been place on Note 33.1 (b) of the Annual Report of the Corporate Debtor and in the year 2022-2023 there is no reference of any debt or guarantee given to principal borrower.

15. It is only unqualified acknowledgment of liability which extends period of limitation. And that entry in balance sheet has to be read along with notes/explanation. Reliance has been placed with *State Bank of India v Krishidhan Seeds Pvt. Ltd., (2023) 1 SCC 209, Asset Reconstruction Company (India) Ltd. v Bishal Jaiswal and Anr., (2021) 6 SCC 366 and SVG Fashions Pvt. Ltd. (earlier known as SVG Fashions Ltd.) v. Ritu Murli Manohar Goyal& Anr., (2023) 2 SCC 2025, Syndicate Bank v R. Veeranna and Ors., (2003) 2 SCC 15.*

16. In this regard, it would be noteworthy to mention as to what amounts an acknowledgement of debt within the prescinds of Section 18 of the Limitation Act, 1963 has to be measured on the touchstone of law laid down by Hon'ble Supreme Court in ***Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, 1961 SCC OnLine SC 147***

> *Section 19(1) says, inter alia, that where before the expiration of the period prescribed for a suit in respect of any right, an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.* ***It would be noticed that some of the relevant essential requirements of a valid acknowledgment are that it must be made before the relevant-period of limitation has expired, it must be in regard to the liability in***

respect of the right in question and it must be made in writing and must be signed by the party against whom such right is claimed. *Section 19(2) provides that where the writing containing the acknowledgment is undated oral evidence may be given about the time when it was signed but it prescribes that subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received; in other words, though oral evidence may be given about the date oral evidence about the contents of the document is excluded. Explanation 1 is also relevant.* ***It provides, inter alia, that for the purpose of s. 19 an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come, or is accompanied by a refusal to pay, or is coupled with &.,claim to a set off, or is addressed to a person other than the person entitled to the right.***

It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledge judgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at

the date of the statement. *In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly s. excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly G. without intending to admit the existence of jural relationship such intention could' be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in* ***s. 19****, and there is really no substantial difference between the parties as to the true legal position in this matter.*

It is often said that in deciding the question as to whether any particular writing amounts to an acknowledgment as in construing wills, for instance, it is not very useful to refer to judicial decisions on the point. The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document, and so unless words used in a given document are identical with words used in a document judicially considered it would not ,serve any useful purpose to refer to judicial precedents in the matter. However, since decisions have been cited before us both by the learned Attorney-General and Mr. Viswanatha Sastri we propose to refer to them very briefly before turning to the document in question.

(Emphasis Supplied)

17. Section 18 of the Limitation Act relates to the effect of acknowledgement in writing and, under sub-section (1) thereof, 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 in writing, signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. Explanation (a) thereto provides that, for the purpose of Section 18, an

acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right. To constitute an acknowledgment, there must, upon the fair construction of the letter- read in the light of the surrounding circumstances, be an admission that the writer owes the debt. ***(Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67***;

18. Further in ***Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd., (2004) 12 SCC 360,*** it was held as under:

> ***14.*** *According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed.* ***It is well settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.***
>
> *15. The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement*

is excluded but surrounding circumstances can always be considered. Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. (See Shapoor Freedom Mazda v. Durga Prosad Chamaria [AIR 1961 SC 1236] and Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd. [(1971) 1 SCC 67 : (1971) 2 SCR 623]) So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.

In **J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd: (2008) 2 SCC 444,** the Delhi High Court held that a fresh period of limitation, from the date of the acknowledgment of debt or liability, starts only in case the said acknowledgment is made before the expiry of the period of limitation prescribed in the statute; this would be evident from a bare perusal of the Section itself which opens with the words "Where the expiration of the prescribed period for a suit or an application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing." The acknowledgement need not amount to a promise to pay. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. If the statement is fairly clear, then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making

the admission intended to refer to a subsisting liability as at the date of the statement.

It is to be borne in mind that the liability of the CD flows from the Deed of Guarantee. In the present case the deed of guarantee is unconditional, irrevocable. The relevant portion of the deed of guarantee is extracted below:

14. This Guarantee shall not be wholly or partially satisfied or exhausted by anypayments made to or settled with IDBI by the Borrower and shall be valid and binding on the Guarantor and operative until repayment in full of all monies due to IDBI under the said Agreement.

15. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by IDBI as provided in Clause 20 hereof shall be sufficient notice to or demand on the Guarantor.

18. This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Borrower repays in full the said Loans together with all interest, liquidated damages, commitment charges, costs, charges and all other monies that may from time to time become due and payable and remain unpaid to IDBI under the said Agreement.

From a bare perusal of the covenants of the deed of guarantee it can be seen that the same is unconditional and is continuing guarantee and shall remain in force till the time borrower repays in full. Therefore, it cannot be said that the corporate guarantee in question has no validity as on 31.03.2021. Secondly, it is stated that the liability

appearing in the balance sheet is contingent liability and the acknowledgment is conditional and if the aforesaid guarantee is invoked, the Govt. would provide the support. It is observed that the notes to accounts, clearly mentions that the counter guarantee has been given in favour of Southern Pesticides Corporation Limited. The same has not been denied by the CD. The deed of guarantee clearly states that the guarantee is unconditional and shall remain in force, till the time full payment is not made. In view of the legal position discussed above w.r.t. acknowledgment it is crystal clear that even if the acknowledgment does not explicitly mentions the exact nature of liability, the statement must, portray the relationship between the debtor and the creditor, The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement.

In the present scenario, the notes to accounts are clear and categorically provide for the liability of the CD. The acknowledgement in the balance sheet is clear. Even if the Govt. is to support the CD, that in no way absolves the liability of the CD to pay. From the conjoint reading of the deed of guarantee and the balance sheet it is clear that liability of the CD subsists at the relevant time. The argument that the acknowledgement is conditional cannot be sustained in view of the above analysis. It is clear from the above analysis that the liability has been acknowledged in the balance sheet (*as mentioned above)* and the aforesaid acknowledgement falls within the corners of the law laid down by the Hon'ble Supreme Court. Further, in continuation of the same, the CD states that the letters dated 18.04.2022 and 02.06.2022 are not within the limitation period and are not per se acknowledgements.

For Clarity, letter dated 18.04.2022 and 02.06.2022 are extracted below:

समृद्धि एवं सुरक्षा

हिल (इंडिया) लिमिटेड
(पूर्व में हिन्दुस्तान इन्सेक्टिसाइड्स लिमिटेड)
(भारत सरकार का उद्यम)

HIL (INDIA) LIMITED
(Formerly Hindustan Insecticides Limited)
(A GOVERNMENT OF INDIA ENTERPRISE)

PROTECT TO PROSPER

33

Ref No. AC-89/SPEC

Dated: 18.04.2022

To
The Asstt General Manager,
IDBI Bank Limited,
NPA Management Group #5-9-89/1&S,
Chapel Road,
Hyderabad 500001

Kind Attn.: Mr Mallikarjun, AGM

Re: Offer for settlement to Guarantor under SARAL KARJ BHUGTRAN YOJNA -II (SKBY-ii) 2020-21 Southern Pesticides Corporation Ltd (SPCL) (Under Liquidation)

Dear Sir,

Please refer to your letter No. IDBI/NMG-Hyd/333/SPCL/2020-21 dated 30.12.2020 on the above subject.

Being a Government Organisation no such settlement/payment can be made without the approval of Board and Administrative Ministry. In response to your settlement offer, with the approval of Board of HIL, we have approached our Administrative Ministry i.e. Ministry of Chemicals & Fertilizers, Govt. of India for settling the matter as per clause No.IV of letter No. 52/3/2005-CH.III dated Aug.4th, 2006(copy enclosed) Ministry will provide support to HIL, in case corporate guarantee furnished by HIL are invoked by Financial Institutions who have lent funds to SPEC which had gone into liquidation.

As you are also aware that due to the COVID-19 pandemic situations, all matter dealt by Govt. or Statutory Bodies are badly effected and the above mentioned case is also one of them. Now some positive response are coming from Administrative Ministry for settlement of offer as proposed by you.

As per your settlement offer, an amount of Rs.30,90,143.28 can be paid upto 31.03.2021 and after that Rs.32,52,782.40 is payable

You are, therefore, requested to consider our request favourably and inform the settlement amount.

Thanking you,

Yours faithfully,

(S P Mohanty)
Chairman & Managing Director

Enclo: as above

(भारत सरकार का उद्यम)

HIL (INDIA) LIMITED

(Formerly Hindustan Insecticides Limited)
(A GOVERNMENT OF INDIA ENTERPRISE)

वृद्धि हेतु सुरक्षा

PROTECT TO PROSP

Ref No. AC-89/SPEC
Dated : 2nd June, 2022

To
The Asstt General Manager,
IDBI Bank Limited,
NPA Management Group #5-9-89/1&S,
Chapel Road,
Hyderabad 500001

Re: **Offer for settlement to Guarantor under SARAL KARJ BHUGTAN YOJNA -II (SKBY-ii) 2020-21 Southern Pesticides Corporation Ltd (SPCL) (Under Liquidation)**

Dear Sir,

Please refer to discussion of IDBI Official NPA Management Group with Shri DNV Srinivasa Raju, Director (Finance), HIL regarding settlement of claim of Southern Pesticides Corporation Ltd (SPCL) (Under Liquidation).

As we have already informed that Administrative Ministry i.e. Ministry of Chemicals & Fertilisers will provide support to HIL in this case and we have take up the matter with Administrative Ministry vide our letter of even reference dt.18.02.2021 & 14.04.2022 to intervene the matter on our perusal.

You are also aware that due to the COVID-19 pandemic situations, all matter dealt by Govt. or Statutory Bodies are badly effected and the above mentioned case is also one of them. Now some positive response are coming from Administrative Ministry for settlement of offer as proposed by you.

Now we are ready to settled the matter with mutual consent outside the court, you are, therefore, requested to consider our request favourably and inform the settlement amount/offer as requested earlier to us for further necessary action at our end. In case, need any clarification etc., please feel free to write.

Thanking you,

Yours faithfully,

H.S. Arora

(D N V Srinivasa Raju)
Director (Finance)

19. While referring to letter dated 18.04.2022 and 02.06.2022 it is stated by the CD in it Affidavit dated 29.05.2025 that as per letter dated 30.12.2020 of the FC, wherein an offer for settlement was proposed under the Saral Kari Bhugtan Yojna-II (SKBY-II): was subject to terms and condition including acceptance of the offer by the Corporate Debtor before 31.03.2021 along with payment of 5%

upfront payment. Therefore, the validity of the letter and the offer lapsed automatically on 31.03.2021. The letters dated 18.04.2022 and 02.06.2022 therefore, have no validity being sent beyond the prescribed time period when the offer for settlement was not even existing and therefore there was no acknowledgement and acceptance by the CD. Further in continuation it is further stated that letter for offer of settlement does not even acknowledge the debt of the Financial Creditor. the Corporate Debtor has unequivocally stated that the only competent authority to decide on the offer of the settlement is the concerned Ministry i.e. Administrative Ministry and the Board and in the absence of any approval, no offer can be accepted by the Corporate Debtor and that the letter dated 30.12.2020 only offers to settle the matter for an amount of Rs.30,90,143.29 which is below the threshold for initiation of proceedings under IBC, 2016.

In this context it is relevant to extract letter dated 30.12.2020

IDBI BANK

सीआईएन (CIN) : L65190MH2004GOI148838

Document-I (colly.) 3

Offer Letter for OTS – Saral Karj Bhugtan Yojna - II (SKBY II) : 2020-21

Ref. No: IDBI/NMG-Hyd/333/SPCL/2020-21 Date : 30/12/2020

The Managing Director,
Hindustan Insecticides Limited
(Corporate Guarantor for Southern Pesticides Corporation Ltd),
Scope Complex, Core-6,
2nd Floor,7, Lodhi Road
New Delhi – 110003.

Dear Sir / Madam,

Offer for settlement to Guarantor under
SARAL KARJ BHUGTAN YOJNA-II (SKBY-II) 2020-21
Southern Pesticides Corporation Ltd (SPCL) [Under Liquidation]

UCID -999005762

Branch-Hyderabad-SCB

IDBI Bank Ltd. has come out with a scheme, SARAL KARJ BHUGTAN YOJNA-II (SKBY-II): 2020-21 for One Time Settlement (OTS) of Non-Performing Assets. In this connection, we would like to intimate you that being the Guarantor for SPCL, the following dues to the Bank are eligible for settlement under the SKBY-II: 2020-21 subject to the following terms and conditions:

(i)Details of the accounts and settlement amount for Fund Based Exposure:

(Amt. in Rs.)

Branch & Sol ID	Loan Account No.	Principal Outstanding (GPO) as on 31.03.2020	Current Dues as on 01.10.2020	Settlement Offer Amount	Reduced Settlement Offer Amt, if paid on or before March 31, 2021.
Hyderabad SCB (133)	0133672200000532	0	11,60,447.00	0	0
	0133672200000541	0	18,23,43,543.00	0	0
	0133672200000523	0	50,708.00	0	0
	0133673200005142	5,831.00	6,41,57,687.00	1,166.20	1,107.89

	0133673200005135	47,58,081.00	92,53,14,937.00	9,51,616.20	9,04,035.39
	0133673200005104	0	2,11,35,983.00	0	0
	0133673200005128	0	4,18,97,602.00	0	0
	0133673200005111	0	6,40,06,594.00	0	0
	0133672200000550	0	19,75,735.00	0	0
	0133673200005098	1,15,00,000.00	44,17,63,340.00	23,00,000.00	21,85,000.00
Total Amount		**1,62,63,912.00**	**174,38,06,576.00**	**32,52,782.40**	**30,90,143.28**

(ii)Details of the accounts and settlement amount for Non-Fund Based Exposure: Additional amount of Rs.0/- to be deposited towards the outstanding of Rs.0/- towards Non-Fund Based facility. Any amount remaining from this after adjustment against devolvement, if any, and expiry of all the outstanding facilities would be refunded by the Bank.

(iii) Please note that any past recovery including failed OTS will not be reckoned under the scheme. Similarly, margin money, liquid securities, subsidy received are also not to be reckoned as part of the settlement amount.

(iv) 5% of the settlement offer amount to be deposited along with the acceptance of the offer letter and additional 10% at the time of issuance of sanction letter (sanction letter shall be issued within 15 days from acceptance of offer letter). Balance 85% of settlement amount to be repaid in 4 (four) monthly installments from the date of sanction (or) June 30, 2021, whichever is earlier.

2. Other Terms and Conditions:

2.1 Since the case of SPCL is pending before Court / Lok Adalat / DRT any settlement will be subject to consent decree from the respective court (if applicable).

2.2 Since SPCL has been issued notice under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest (SARFAESI) Act., 2002, this notice is without any prejudice to our rights to take / continue actions under the Act unless a compromise is settled under the present SKBY - II Scheme as stated above. In case sale of property through DRT (or) SARFAESI has been fixed, the same shall be kept on hold subject to deposit of at least 25% of the settlement amount (if applicable).

TRUE COPY

2.3 The offer for settlement is valid only if the accepted copy of this offer letter longwith 5% upfront payment is deposited before March 31, 2021, failing which, the offer for settlement shall automatically lapse thereafter.

Yours faithfully,

Deputy General Manager
(For IDBI Bank Limited)

Accepted the offer of Settlement under SKBY – II (SKBY-II) : 2020-21

20. Reference be made to SARAL KARJ BHUGTAN YOJNA-II 2020-21. While perusing the scheme it is observed that the scheme was launched by the bank to curtail the NPAs and resolve the existing NPAs since the NPAs were increasing affecting the banks due to higher provisioning. In view of reducing the NPA and maximize recovery, the bank came up with the scheme as a preferred way of resolution of NPA account, providing an opportunity to the borrower, for one time settlement or Negotiated settlement. The relevant portion of the scheme is provided below:

Non-Discretionary & Non-Discriminatory OTS Scheme for NPA/TWO cases with GPO upto Rs.10 Crore for all Verticals

SARAL KARJ BHUGTAN YOJNA-II : 2020-21 (SKBY-II: 2020-21)

Various efforts are being taken by the Bank to contain the NPAs and resolve the existing NPAs. However, the end-level NPAs are increasing which is adversely affecting the Bank's bottom-line due to higher provisioning. It is necessary to adopt a focused approach to maximize recovery and reduce the NPA level. One of the effective and most preferred ways of resolution of NPA accounts is One Time Settlement (OTS)/Negotiated Settlement (NS) which also help in saving time, money and efforts.

1.2 The disruption created by the Covid-19 pandemic has adversely affected entire economy and eventually, repayment capacity of the borrowers has also got affected. Local authorities/SLBC/Courts in some of the States have directed not to initiate harsh recovery actions against borrowers and put restrictions on sale of mortgaged properties/securities.

1.3 In view of the above and in order to give further impetus to the recovery efforts, new Non-Discriminatory and Non-Discretionary settlement scheme viz. **"Saral Karj Bhugtan Yojna-II 2020-21 (SKBY-II: 2020-21)"** is being launched which is a combination of both the earlier schemes (SKBY & I-ARMY), with some modifications over earlier two schemes. Bank's Board at its meeting held on

21. The purpose of the scheme was to resolve maximum NPA accounts without resorting to lengthy & cumbersome recovery actions against the defaulting borrowers/guarantors and to maximize recovery through amicable settlement process out of NPAs. Through the scheme the bank gave an option in the form of offer for settlement to the guarantor/borrower to pay as per the timelines provided under the scheme including 5% of the offer amount along with acceptance of the offer letter. It can be clearly inferred from the scheme and letter of offer that it is a one time scheme offered to borrower for settlement to

reduce the NPAs in the books of account of the bank. In case the offer is not accepted by the borrower/ guarantor, in such scenario, in no way the liability to pay the amount is absolved.

22. Assuming there was no scheme being floated by the bank, in such scenario the borrower/guarantor would have been liable to pay the debt amount. Consequently, in present scenario the scheme is for the benefit of the borrower *(to pay in installments)* and the bank since reducing NPA in its books of accounts. Further, from the perusal of the scheme it is crystal clear that bank owing to Covid-19 and since repayment capacity of the borrowers has been affected. Local authorities/SLBC/Courts in some of the States have directed not to initiate harsh recovery actions against borrowers and put restrictions on sale of mortgaged properties/securities, in view of the same the scheme was launched. Now reference could be made to offer letter dated 30.12.2020 *(as extracted above),* ***clause 2 "Terms and Condition"*** *also specifies:*

> *2.2 Since SPCL has been issued notice under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest (SARFAESI) Act., 2002, this notice is without any prejudice to our rights to take I continue actions under the Act unless a compromise is settled under the present SKBY - II Scheme as stated above. In case sale of property through DRT (or) SARFAESI has been fixed, the same shall be kept on hold subject to deposit of at least 25% of the settlement amount (if applicable).*

23. Meaning thereby, if no settlement is arrived at between the parties as per this offer letter, the Bank has shall continue to take under the SARFAESI Act, 2002, which clearly postulates that, the offer of settlement is one time for the benefit of parties, and in case not accepted, by the borrower, the Bank would be fully authorized to recover as per law. Further, it is to be noticed that if the borrower submits that the offer of settlement was not accepted within time, in such scenario how the borrower place the offer before the ministry for approval.

24. Now we resort to the letter dated 18.04.2022 and 02.06.2022. Perusal of letter dated 18.04.2022 shows that the CD has approached the Ministry for the approval for settling the matter. And it is stated that amount of Rs. 30,90,143.28 (Thirty Lakh Ninety Thousand One Hundred Forty Three and Twenty Eight Paisa Only) can be paid upto 31.03.2021 and after that Rs.32,52,782.40 (Thirty Two Lakh Fifty Two Thousand Seven Hundred Eighty Two and Forty Paisa) is payable. This letter is an offer to the Bank. Further perusal of letter dated 02.06.2022, it is clearly mentioned that the CD is ready to settle the matter outside the court. Relevant portion of the letter is again extracted below for ready reference:

> Now we are ready to settled the matter with mutual consent outside the court, you are, therefore, requested to consider our request favourably and inform the settlement amount/offer as requested earlier to us for further necessary action at our end. In case, need any clarification etc., please feel free to write.

This clearly shows, that the CD is acknowledging its debt and ready to settle the matter outside the court. Further, it can observed that the CD is requesting the Bank to inform the settlement/offer amount, which clearly postulates that the amount specified in the letter dated 18.04.2022 is an offer amount from the Borrower while acknowledging the debt. Therefore, in view of the above analysis, we find that the letter dated 18.04.2022 and 02.06.2022 clearly acknowledges the debt. We do not find force in the argument posed by the CD. The letters dated 18.04.2022 and 02.06.2022 are well within the period of limitation from the issuance of the recovery certificate, considering the acknowledgement in the balance sheet for the FY-2020-2021 (*as discussed above).*

25. In addition to above, the CD in its brief note dated 03.12.2024 has also submitted that the Financial Creditor has not even mentioned the date of default and therefore the application should be dismissed. The CD relies upon *Ramdas Dutta v. IDBI Bank Limited & Anr., Company Appeal (AT) (Ins) No. 1286 of 2022*. Be that as it may, it is relevant to mention that in its reply the CD itself stated that default started on 31.03.1994 (Para9) and that the application is time barred since filed after 30 years i.e. in the year 2024. The relevant portion of the reply is extracted below:

7. That it is submitted that, as per the Financial Creditor's own admission in Part IV of the application, it is evident that on 31.03.1994, the account of the Principal Borrower, Southern Pesticides Corporation Limited, was classified as a Non-Performing Asset due to a failure in repayment. Subsequently, on 02.05.1994, the Financial Creditor issued a demand notice to both the Principal Borrower and the Corporate Debtorfor repayment of the outstanding dues. Furthermore, on 01.07.1994, the Financial Creditor had invoked the corporate guarantee provided by the Corporate Debtor. However, the present application has been filed by the Financial Creditor on 13.06.2024, after more than 30 years of the date of default, with malicious intent to revive a time-barred debt.

9. That it is submitted that the intent of the IBC is not togive a new lease of life to debts that are time-barred. The Hon'ble Supreme Court,National Company Law Appellate Tribunal and this Tribunal has time and again reiterated that the limitation period for filing an application under Section 7 of the IBC for the initiation of CIRP begins from the date of default. In the present case, the default occurred on 31.03.1994, when the account of the principal borrower was classified

as a Non-Performing Asset ("NPA"). The law is clear that the limitation period of three years for filing an application under Section 7 of the IBC commences from the date of default. Furthermore, the liability of the principal borrower and the corporate guarantor under the IBC is co-extensive, meaning that the limitation period for filing an application under Section 7 against both the guarantor and the borrower begins from the same date i.e. when the principal borrower's commits default.

In this context, the CD cannot approbate and reprobate and take contradictory stands. Further in *Laxmi Pat Surana* v. *Union Bank of India*' it was held as under:

> *"**43.** Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to nonpayment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of*

the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC."

7. *In the aforenoted Judgment, the Hon'ble Apex Court has clearly laid down the principle that the 'date of default' does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of default' defined under Section 3(12) of the Code is to mean 'non-payment of a debt which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'.*

8. *It is also seen from the Balance Sheets that there has been an 'acknowledgement of liability' upto the years 2018-2019. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is 'barred by Limitation' is untenable as at the cost of repetition we hold that as per the ratio of the Hon'ble Apex Court in 'Laxmi Pat Surana' (Supra) the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets.*

The dictum was followed in ***Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622.*** Perusal of the same, it is clear that that ordinarily the Date of NPA can be considered as Date of Default but the right to apply under the Code accrues once there is a default (which is three months prior to Date of NPA). Hence, in the present case, even if we consider the Date of Default to be three month prior to the Date of NPA i.e. from 31.12.1993, the right to file the application was to be exercised within 3 years. In the present scenario, the date of NPA as mentioned is 31.03.1994. Subsequently, there is a recovery certificate dated 26.07.2018, from where the fresh cause of action starts giving a fresh lease of limitation, from where the limitation for filing the present application starts. Therefore, on a mere technical objection raised by the CD, the petition cannot be dismissed for otherwise what is a genuine claim. Even in such an eventuality, the AA can exercise power under 7(5)(a) of the code, but in the present case, the limitation has to be taken from the date of issuance of the recovery certificate, much less than what has already been admitted by the CD in its reply (as extracted above).

26. In Ramdas Gupta (supra), the petition was not dismissed on the ground of non-mentioning of the date of default but since the acknowledgement was not within the period of 3 years, the Hon'ble NCLAT dismissed the petition being barred by limitation. Therefore, we do not find force in the argument posed by the CD. Thus, in our view the stand taken by the CD, that the applicant has not mentioned the Date of Default, is wholly misconceived as the Adjudicating authority is hardly left with any discretion to refuse the admission of the application under Section 7 once it is satisfied that the default has occurred ***(M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387):***

> ***11.*** *Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:*
>
> *"**3. Definitions**.—In this Code, unless the context otherwise requires—*
>
> ***

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

Therefore, in the light of the above analysis, we do not find force in the arguments posed by the CD. The present petition is well within the limitation period. Thus, Issue No.1 is answered accordingly.

ISSUE-2

Whether filing of record of default is mandatory qua the guarantor under Section 7 read with Regulation 20 of the IBBI (CIRP) Regulations, 2016?

27. It is submitted by the CD that the application is defective and is liable to be dismissed on the ground that the as per Section 215(2) of IBC, 2016 read with regulation 20 (1A) of IBBI (Information Utilities) Regulations, 2017 it is mandatory for the FC to file the information of default with the information utility and file the record of default with respect to the Corporate Debtor along with the application. In the present facts, the FC has failed to file the record of default with respect to the Respondent herein. The FC has only attached the record of default for the Principal Borrower. In this context, relevant provisions of the code are extracted below:

Section7....

(3) The financial creditor shall, along with the application furnish—

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

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

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

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished *by the financial creditor under sub-section (3)*

215. Procedure for submission, etc. of financial information. –

(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

(2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

Further Regulation 20 and 21 of the IBBI (Information Utilities) Regulations, 2016 read as follows:

20. Acceptance and receipt of information.

An information utility shall accept information submitted by a user in Form C of the Schedule.

[(1A) Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21.

(2) On receipt of the information submitted under sub-regulation (1) [or sub regulation (1A), as the case may be], the information utility shall-

(a) assign a unique identifier to the information, including records of debt;

(b) acknowledge its receipt, and notify the user of- (I) (ii) (iii)

(i) the unique identifier of the information;

(ii) the terms and conditions of authentication and verification of information; and

(iii)the manner in which the information may be accessed by other parties.

***21. Authentication of default**.*

(1) An information utility shall expeditiously undertake the process of authentication and verification of information of default as soon as it is received.

(2) For the purpose of sub-regulation (1), the information utility shall-

(a) deliver the information of default to the debtor seeking confirmation of the same within[seven days];

(b) remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow [seven days] each time for the debtor to respond;

(c) deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

(i) registered with the information utility by him, failing which,

(ii) recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories or any other statutory repository as approved by the Board, failing which,

[(iii) submitted in Form C of the Schedule:

(A) by a financial creditor, which is a bank included in the second schedule of the Reserve Bank of India Act, 1934;

(B) by any other creditor, in respect of a debtor other than the corporate debtor as defined in section 3(8) of the Code.

[(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the following Tables.

28. It is to be noted that once a Section 7 application is filed before this Adjudicating Authority, the application has to accompany the record of default or any other record or evidence of default as may be specified as per Section 7(3)(a) of the Code. Regulation 2A of the CIRP Regulations, 2016 is extracted below:

> ***2A. Record or evidence of default by financial creditor.***
> *For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-*
> *(a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891);*
> *(b)an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.]*

Perusal of the same, postulates that for a Section 7 application, the creditor can furnish and rely upon other records or evidence of default as well. Regulation 20(1A) cannot be read to mean that an application filed under Section 7 which is not supported by information of default of information utility is to be rejected. If the FC has filed other evidence to prove default which is contemplated by the AA Rules, 2016 and the CIRP, Regulations 2016, the said application has to be considered. Reliance is placed on ***Vijay Kumar Singhania Vs Bank of Baroda and Ors. Company Appeal (AT) (Insolvency) No.1058 of 2023:***

> *28. Regulation 20 of the IBBI (Information Utilities) Regulations, 2017 as amended w.e.f 14.06.2022 i.e. Regulation 20(1A) requires Financial Creditor before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility*

shall process the information for the purpose of issuing record of default in accordance with regulation 21. The submission is that after insertion of the above sub-regulation (1A) in Regulation 20, now no application can be filed under Sections 7 and 9 if it is not accompanied by record of default issued by Information utility as contemplated by Regulations 20 and 21. Regulation 20 although has been amended w.e.f 14.06.2022 but there is no amendment either in Section 7 of the IBC which empowers Financial Creditor to file record of the default recorded in the information utility or such other record and default as may be specified or in Rules 2016 or CIRP Regulations 2016. ***The statutory scheme, thus, contemplates furnishing record of default by the financial creditor as recorded with the information utility or such other record or evidence of default as may be specified.*** *We have already noticed that the record of default for purposes of Section 7(3)(a) has been specified by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.* ***Thus, record of default recorded with the information utility is not the only document which hasto be furnished by financial creditor. Financial creditor is at liberty to submit such other record of default as may be specified which is a statutory provision contained in Section 7.*** *Further Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 clearly refers to provide for record or evidence of default by financial creditor. We have also noticed that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which are Rules framed by the Central Government provides for filing of the application under Section 7 in Form-1 and under Form-1, Part-V under 'particulars of financial debt (documents, records and evidence of default)', it is not only the record of default with information utility but other record of default has also been contemplated. We have noticed that Regulations framed by the Board as per Section 240(1) has to be consistent with provisions of the Code and the Rules.* ***If Regulation 20(1A) is to be read as Regulation now mandating the Financial Creditor to file only the record of default in the information utility, the said Regulation will***

not be consistent with provision of Section 7(3) of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which provides that what documents have to be filed by the Financial Creditor*. Sub-rule (1) of Rule 4 provides for documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thus, CIRP Regulations 2016 are referred to in Rule 4 sub-rule (1)hence, the interpretation of Regulation 20(1A) as put by the Counsel for theAppellant shall also not be consistent with Rule 4. When Section 240 itself provides that regulations have to be consistent with provision of Code and Rules, no regulation can be implemented or enforced which is not in consonance with the Code and the Rules.*

29. From the above examination of statutory scheme, Rules and Regulations, it is clear that Regulation 20(1A) cannot be read to mean that after the said amendment brought in regulation w.e.f 14.06.2022 an application filed under Section 7 which is not supported by information of default from an information utility is to be rejected and if the Financial Creditor has filed other evidence to prove default which is contemplated by the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said application has not to be considered. *We, thus, are of the considered view that even after amendment of Regulation 20 by insertion of Regulation 20(1A) w.e.f 14.06.2022, Financial Creditor is entitled to file evidence of record of default as contemplated by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We, thus, do not find any substance in the submission of the Appellant that since Financial Creditor has not filed the record of default from an information utility, Section 7 deserves to be rejected.*

31. Thus, we are of the view that the Adjudicating Authority has correctly repelled the contention of the Appellant that in absence of a record of default recorded by information utility, the application filed under Section 7 may not be admitted.

(Emphasis Supplied)

29. In present scenario, the creditor has filed the record of default qua the principal borrower, though not for CD, which in our view even if not filed does not merit for consideration for rejection of the application. Therefore, perusal of the above, it is trite that a record of default is not mandatory to be filed qua the guarantor. Further, it is trite in law that the liability of the surety and the principal debtor is co-extensive **BRS Ventures Investments Ltd.**v. **SREI Infrastructure Finance Ltd. and Anr. Civil Appeal No. 4565 of 2021.**The creditor has remedies available to recover the amount payable by the principal borrower by proceeding against both or any of them**.** A guarantor's liability under a guarantee is typically independent and co-extensive with the borrower's, meaning the guarantor is liable even if the borrower defaults. While a record of default against the borrower is often relevant within the contours discusses above acting as a piece of evidence, it's not always a prerequisite for taking action against the guarantor. The Code nowhere obligates, the creditor to file a separate record of default for the principal borrower and the guarantor.

In light of the above, the argument of the CD cannot be sustained. Accordingly, Issue No.2 is answered.

Issue No.3

It is stated by the CD that the present company is neither insolvent and nor incapable of the meeting its liabilities. In this context, reference could also be made to Disclosure in auditors report relating to default in repayment of financial dues, the same is extracted below:

Disclosure in auditors report relating to default in repayment of financial dues

(viii) In our opinion and according to the information and explanations given to us, the Company has not defaulted in the repayment of loans or borrowings to banks. Further, the Company has neither availed any loan nor borrowing from financial institutions nor has issued any debenture. However, the Company has defaulted in the repayment of term loans to government as detailed hereunder: Year since which the default persisted Amount of default (In Rs. Lakhs) 2011-12 499.00 2012-13 499.00 2013-14 580.00 2014-15 580.00 2015-16 562.00 2016-17 382.00 2017-18 382.00 2018-19 300.00 2019-20 300.40 Interest due but not paid on term loans to government 3296.15 TOTAL 7380.55

Further the relevant portion of Annual Report of 2021 ·22 is extracted below:

		RSO-Pune	VAT (Maharashtra)	113,319 (Paid Rs.30,000)	2002-2003	Joint commissioner of Sales Tax(Appeals) Nagpur
		RSO-Pune	CST (Maharashtra)	68,705 (Paid Rs.25,000)	FY 2002-2003	Joint commissioner of Sales Tax (Appeals) Nagpur

vii. According to the information and explanations given to us, on the basis of our examinations of the records of the Company, the Company has not surrendered or disclosed any transactions, previously unrecorded as income in the books of accounts in the tax assessment under the Income Tax Act.1961 as income during the year.

ix. (a) In our opinion and according to the information and explanations given to us, the Company has not defaulted in the repayment of loans or borrowings from banks. Further, the Company has neither availed any loan nor borrowing from financial institutions nor has issued any debenture. However, the Company has defaulted in the repayment of Term Loans taken from Central Government as detailed hereunder:

Year since which the default persisted	Amount of default (In Rs.Lakhs)
2011-12	499.00
2012-13	499.00
2013-14	580.00
2014-15	580.00
2015-16	562.00
2016-17	382.00
2017-18	382.00
2018-19	300.00
2019-20	300.40
Sub-Total	4084.40
Interest due but not paid on term loans to the Central Government	4236.19
TOTAL	8320.59

(b) According to the information and explanation given to us and on the basic of our examination of the record of the Company,the company has not been declared a willful defaulter by the bank or the financial institution or government or government authority.

(c) According to the information and explanation given to us and on the basis of our examination of the record of the company,the company has applied the term loan for the purpose for which the loan were obtained.

(d) According to the information and explanations given to us and on an overall examination of the balance sheet of the company, we report that no funds have been raised on short -term basis by the company. Accordingly, clause 3(ix)(d) of the Order is not applicable.

(e) According to the information and explanations given to us and on an overall examination of the financial statements of the Company, report that company has not any subsidiary as defined under the Companies Act, 2013. Accordingly, Clause 3(ix)(e) & (f) of the Order is not applicable.

x. (a) According to information and explanations given by the management, Company has not raised any moneys by way of initial public offer, further public offer (including debt instruments). Accordingly, clause 3(x)(a) of the Order is not applicable.

(b) According to the information and explanations given to us and on the basis of our examination of the records of the Company,the Company has not made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year. Accordingly, Clause 3(x)(b) of the Order is not applicable.

xi. (a)According to the information made available to us and as per our best of knowledge and explanation given to us,The vigilance department of the Company, in the matter of financial irregularity of

In view of the above, disclosures, it can be seen that the CD has defaulted in its payment to the govt. which clearly postulates that the CD is a distressed company. Therefore, the argument of the Ld. Counsel for the CD that it is a solvent company cannot be sustained

In this background, an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there occurred a default in repayment thereof and these conditions are satisfied in the present case

To Summarize

1. In the light of the law laid down by Hon'ble Supreme Court, issuance of recovery certificate gives rise to fresh cause of action and the financial creditor has a right to initiate proceedings under Section 7 of the IBC, 2016 from the date of judgment/decree or within 3 years from the date of issuance of the certificate of recovery.

2. Section 18 of the Limitation Acts, 1963 applies to IBC, 2016 and that the acknowledgement should be within period specified for filing the application, The acknowledgement need not amount to a promise to pay. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must indicate the existence of jural relationship between the parties. In the present facts and circumstances of the present case, the application is well within the limitation period.

3. The Adjudicating Authority is left with no option to refuse the admission of the application under Section 7 of the Code once, it is satisfied that the default has occurred.

4. A guarantor's liability under the guarantee is typically independent and co-extensive with the borrower's, meaning the guarantor is liable even if the borrower defaults. While a record of default is relevant against a borrower within the contours discussed above, acting as a piece of evidence, its not a prerequisite for taking action against the guarantor. Therefore, the filing of a Record of Default qua the guarantor is not necessary.

5. Further from the documents on record, there exist a clear debt and default, and the argument of the counsel that the present company is a solvent company cannot be sustained. The document on record shows that it is in defaulted in repayment of term loan to the govt.

ORDER

Having regard to the conspectus of the present case (as discussed above) we are inclined to **ADMIT** the present petition bearing No. CP (IB) 404(ND)/2024 under Section 7 of IBC, 2016. Accordingly, the petition bearing no. (IB)-404(ND)/2024 filed by Petitioner under Section 7 of the IBC, 2016 for initiating CIRP against Corporate Debtor i.e. M/s. HIL (India) Ltd. is hereby ADMITTED and Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

i. As a consequence, thereof, the petition being admitted in terms of Section 7 of the IBC, 2016, the moratorium as envisaged under the provisions of Section 14(1) of the IBC, 2016 shall follow in relation to Corporate Debtor as per clauses (a) to (d). However, during the pendency of moratorium period, terms of Section 14(2), to Section 14 (3) of the IBC, 2016 shall come into force. The order of moratorium shall 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 Section 31 or passes an order for Liquidation of Corporate Debtor under Section 31 of the Code, as the case may be.

ii. The FC has proposed the name of Mr. Rohit Sehgal having registration no. as IBBI/IPA-001/IP-P00528/2017-2018/10953 as the IRP. The proposed IRP has given his written communication in Form-2 as required under Rule 9 (1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a copy of registration annexed. Copy of written consent has been annexed as Annexure A-11 at Page 84 – 87. Therefore, this Adjudicating Authority appoints Mr. Rohit Sehgal as the Interim Resolution Professional of the Corporate Debtor. The details of the IRP are as under:

Name- Mr. Rohit Sehgal
Registration No.- IBBI/IPA-001/IP-P00528/2017-2018/10953
Email Id- iamrs101@gmail.com
Address- A-604, Sujjan Vihar, Sector-43, Gurgaon, Haryana, 122002

iii. In pursuance of Section 13 (2) of the IBC, 2016, we direct the IRP to make public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by the Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

iv. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.

v. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

vi. the IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor and the action taken in compliance of Section 17, 18, 20, 25 of the Code and Regulation 3A & 4 of the IBBI (CIRP) Regulations, 2016.

vii. The FC shall deposit a sum of Rs. 3,00,000/- (Rupees Three Lac Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditor (CoC). This amount shall be adjusted towards the fees and expenses payable to the IRP/RP.

viii. The Registry is hereby directed to communicate a copy of the order to the FC, the Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from

today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the status of the Corporate Debtor, and specific mention regarding admission of this petition must be notified.

ix. The registry is further directed to send a copy of the order to the IBBI also for their record.

x. A certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities. IRP to report compliance within four weeks.

Sd/-

RAMALINGAM SUDHAKAR

PRESIDENT

Sd/-

RAVINDRA CHATURVEDI

MEMBER TECHNICAL