NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 1808 (ND)/2019

In the matter of:

TATA CAPITAL FINANCIAL SERVICES LIMITED

11th Floor, Tower A, Peninsula Business Park,

Ganpatrao Kadam Marg, Lower Parel,

Mumbai - 400013

...Applicant Company/Financial Creditor

V/s

BALDEO METALS PRIVATE LIMITED

M-15, New Mandoli Industrial Area,

Saboli, Shahdara,

New Delhi-110045

...Respondent Company/Corporate Debtor

SECTION: U/S 7 of IBC, 2016

Order delivered on 04.06.2020

Coram:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. KAPAL KUMAR VOHRA, HON'BLE MEMBER (T)

For the Petitioner: Adv. Savyasachi K Saha
For the Respondent: Adv. Gaurav Srivastava

ORDER

Mr. Abni Ranjan Kumar Sinha, Member (Judicial)

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of its inability to liquidate its financial debt.
2. The Applicant is a non-banking financial company, registered with the Reserve Bank of India.
3. The Corporate Debtor is in the business of sale and purchase of metals, specifically copper.
4. Brief facts of the case are as follows:
   i. The Corporate debtor applies for a channel finance loan to the tune of INR 4,50,00,000/- vide Loan Application Form dated 06.02.2018.
   ii. The Applicant issued a Sanction Letter dated 22.02.2018 sanctioning the channel finance facility of INR 4,50,00,000/- to the Corporate debtor for the purpose of channel finance loan, in the terms and conditions set out therein, which was accepted by the Corporate Debtor.
   iii. Pursuant to the Sanction Letter, the following financing documents are executed:

a. Channel Financing Agreement dated 06.03.2018 for a term of 12 months for INR 4,50,00,000/- by the Applicant and the Corporate Debtor.

b. Pursuant to the CF Agreement executed above, the Corporate Debtor also executed a power of attorney dated 06.03.2018 in favour of the Applicant in order to enable the Applicant to enforce its rights therein, in the event of default by the Corporate debtor.

c. Deed of hypothecation dated 06.03.2018 was executed by the Corporate Debtor in favour of the Applicant wherein the Corporate Debtor has granted the Applicant charge over all the assets of the Corporate Debtor.

d. Irrevocable power of Attorney dated 06.03.2018 was executed by the Corporate debtor in favour of the Applicant in order to enable the Applicant to enforce the deed of hypothecation, in event of default by the Corporate Debtor.

e. Net worth affidavits dated 06.03.2018 were also executed in favour of the Applicant by Mr. Prashant Goyal and Mr. Shyam Bihari wherein they disclosed their representative net worth as INR 29.103 Crore and INR 18.363 Crore respectively.

f. In order to provide guarantee, Mr. Prashant Goyal and Mr. Shyam Bihari, Directors of Corporate debtor, executed a letter of guarantee dated 06.03.2018, jointly

and severally guaranteeing the repayment of the loan amount of INR 4,50,00,000/- on demand along with interest, penal/additional interest, other lawful charges, costs, expenses and other monies payable, in the event of default by the Corporate Debtor.

g. The Corporate Debtor also executed a letter of undertaking cum indemnity dated 06.03.2018 in favour of the Applicant indemnifying the Applicant.

iv. Vedanta Limited vide letter dated 09.03.2018 assured the Applicant about the sound condition of the Corporate Debtor and undertook to stop supplying material to the Corporate Debtor immediately without any demur on receiving any information of such default from the Applicant and shall continue such stop supply until it receives any information otherwise from the Applicant.

v. On the request of the Corporate Debtor, the Applicant issued an addendum communication dated 06.07.2018 modifying the terms of the Facility and permitted the facility to be utilised for purchasing raw material from Vedanta Limited as well as Hindalco Industries Limited. Consequently, the security/ collateral was modified to the first and exclusive charge by way of hypothecation on inventory purchased from Vedanta Limited and Hindalco Industries Limited funded by the Applicant, both present and future. Therefore, parties executed the following documents:

a. Amended sanction letter dated 06.07.2018 issued by the Applicant and accepted by the corporate debtor.

b. Change of terms letter dated 07.07.2018 executed by the Applicant, Corporate Debtor and Directors of Corporate debtor.

c. Deed of modification dared 07.07.2018 executed by the Corporate debtor amending the deed of hypothecation and extending the hypothecation over inventory purchased from Hindalco Industries Limited and funded by the Applicant.

vi. Pursuant to the above documentation in relation to the facility, the Applicant has made disbursements to the Corporate debtor.

vii. The Applicant vide letter dated 09.03.2019 called upon the Corporate Debtor to make payment of INR 3,56,44,354/- which was outstanding and due as on 09.03.2019 apart from other charges.

viii. The Applicant issued legal notice dated 22.05.2019 to make payments as per the financing documents constituted an Event of Default as per Clause VI of the CF Agreement and therefore, under Clause XV of the CF Agreement, the Applicant is entitled to recall the Facility and call upon the Corporate Debtor as well as Directors, who has provided unconditional personal guarantees in relation to the facility, to repay the outstanding Facility amount.

ix. The Applicant, in its legal notice dated 22.05.2019, called upon the corporate Debtor and the Directors to jointly and severally repay the entire outstanding dues amounting to INR 3,69,13,981.59/- which was due as on 17.05.2019, along with further interest, additional interest and cost, charges and expenses till payment and realisation thereof, failing which the Applicant shall be constrained to take such measures without prejudice to the Applicant's other rights and remedies under the said agreements or otherwise in law, to which the Applicant may be entitled to against the Corporate Debtor.

5. The Corporate Debtor in its reply dated 03.01.2020 contends that:

i. It is beyond comprehension as to how the Board of Directors of Tata Capital Financial Services Limited executes a document not on its letter head but on a document which appears to be of its sister concern.

ii. Annexure A to Board Resolution does not bear any signature of Mr. Puneet Sharma, who executed board resolution, nor of any other person.

iii. The CF Facility remains regular till the same is overdrawn by the sanctioned limited of Rs. 4.50 crores. The present facility, as alleged by the Applicant, is not a Term Loan wherein disbursement is made in one tranche to the borrower and same is serviced by payment of periodic EMIs. On the Contrary, the CF facility remains regular till the money is overdrawn by the limit sanctioned.

iv. The financial debt which is claimed by the Applicant is the outcome of incorrect and malafide keeping books of account that within a span of almost 40 days from 17.05.2019 till 27.06.2019 that a sum of Rs. 31 Lakhs has become overdue whereas from 09.03.2019 till 17.05.2019 for a period of almost 70 days approximately 13 lakhs has become overdue.

v. The Applicant in its pleading stated that "*Pursuant to the above documentation in relation to the Facility, the Applicant has made disbursements to the Corporate debtor*". It is submitted that no disbursement has been made to the Answering Respondent and the alleged statement pertaining to disbursement does not carry any debit or credit entries nor does it carry any RTGS details, cheque details or any other details by way of which said amounts have been credited in the account of Respondent.

vi. The Applicant has alleged a disbursement by way of reliance of falsified statement of disbursement to the tune of Rs. 7.99 crores (approx.). However, none of the documents (including calculation sheet and statement of account) show any debit or credit entries whereby disbursements are shown to be made to the Respondent in its bank account and similarly payments made are shown to be made by Respondent.

vii. The tenure of the Sanction letter dated 22.02.2018 expires after 12 months after sanction whereafter it has to be necessarily renewed and on non renewal limit will be blocked. In terms thereof, the tenure expires on 21.02.2019.

viii. No conditions of Section 65-B of the Indian Evidence Act have been fulfilled and the random entries generated from computers cannot relied upon without the compliance of Section 65-B of Indian Evidence Act.

ix. Also, the conditions of section 4 of Bankers Book of Evidence Act, 1891 have not been complied with.

x. There is no averment made by the Applicant that interest has been levied by the Guidelines of RBI, or any particulars of debit entries haven been shown.

xi. The rate of interest of 50.35% and 74.05% is contrary to all guidelines of RBI.

xii. Foreclosure charges of R. 18,00,000/- and GST @18% of Rs. 3,24,000/- are levied only on closure of account, by way of prepayment.

xiii. The Applicant has quoted four different amounts, none of which is tallying with the computation relied upon by the Applicant, which is uncertified and based on the whims of the Applicant.

xiv. The Applicant has vide letter dated 22.05.2019 invoked arbitration clause and specifically mentioned and presumed that there are disputes and differences to the claims. As such, the question of adjudication, even by the admission of the Applicant, is involved with respect to debt, disbursement, liability and default. Accordingly, until and unless the same is adjudicated by the process of Arbitration, the present proceedings for Insolvency cannot be resorted by the Applicant.

6. The Applicant in its rejoinder dated 25.11.2019 contends that:

i. The interest is accruing as per the terms and conditions agreed to be the respondent and the outstanding owed to the Applicant is increasing.

ii. The computation is done by the internal software of the Applicant company, the details of which re provided along with the Application as Annexure P and Annexure S respectively.

iii. It is also clarified that the computation of interest is different for separate time period as the rates of interest are fluctuating and the interest is calculated according to the outstanding amount as on any given day.

iv. The Applicant has submitted an affidavit under section 65B of the Indian Evidence Act, 1872 hereto in regard to the statement referred to by the Respondent.

v. The disbursements mentioned under Annexure P of the Application have been made in accordance to the terms and during the tenure of the Sanction Letter and the Channel Finance Agreement. All disbursements have occurred prior to the expiration of tenure and despite the same, no repayments have been undertaken by the Respondnet.

vi. A bare perusal of Section 2 of the Bankers Book of Evidence Act makes it clear that the same exclusively deals with 'banks' and the Appellant Company, being a NBFC, does not fall within the ambit of term 'banks' as NBFCs have not yet been notified under the Bankers Book Evidence Act.

vii. The terms of the Sanction Letter on Page 34 of the Application clearly provides that the interest type is to be floating.

viii. It is clarified that the figures of 50.35 and 74.05 are the amount of interest in Rupees and not the rate of interest.

ix. The foreclosure charges are exclusively with respect to the facility towards Hindalco Industries Limited which was closed by the Respondent Company prematurely, hence, the levy of foreclosure charges. On the other hand, the outstanding amount claimed is with respect to the total amount due to the Applicant in relation to Vedanta.

x. It is clarified that as per the terms of the Sanction Letter on pg 35 of the Application, foreclosure charges are to be collected along with the applicable GST which will be payable by the Application in the future, the computation of the same has been shown by the Applicant on pg 185 of the Applicant.

xi. The amount claimed by the Applicant is in accordance with the terms and conditions of the Sanction Letter and the Channel Finance Agreement.

xii. The present proceedings under the IBC are not governed by the Arbitration Clause.

xiii. Section 238 of IBC also gives it an overriding effect of the provisions of the Arbitration and Conciliation Act, 1996.

7. We have heard the Ld. Counsels for applicant as well as respondent.

8. Ld. Counsel for applicant in course of his arguments submitted that Corporate Debtor executed the following documents in relation to the Channel Finance Facility which have been referred by the applicant in the main application. He further submitted that in Channel Finance Facility, disbursements are not made directly to the respondent, but to a distributor, at the request of the respondent and therefore, the money was paid by the applicant to the distributor directly and the goods are released to the respondent by such distributor and the respondent upon further sale of the goods, repays the principal amount lent along with the interest, as per the terms of the financing documents. He further submitted that since the respondent wanted to purchase raw material from Hindalco as well as Vedanta, the relationship was accordingly modified and the following duly stamped documents were executed:

   (i) Amended Sanction Letter dated 06.07.2018 (Annexure M-page 149)

   (ii) Change of terms letter dated 06.07.2018b(Annexure N – 151)

   (iii) Deed of modification of hypothecation dated 06.07.2018 (Annexure O – page 154)

9. He further submitted that applicant has obtained data from the MCA Website, which is at page 25 of the paper book as Annexure 25, in which it is clearly mentioned a charge was created over the stocks of the respondent for an amount of INR 4,50,00,000/- which is the amount of the Channel Finance Facility on 06.03.2018 and the same was modified on 07.07.2018, which would be evident from the Annexure O of the paper book. He further submitted that applicant has duly disbursed the amount as requested by the respondent as per the statement, set out in Annexure P at page 164 in relation to Vedanta and in relation to Hindalco at page 165. He further submitted respondent is in default on 03.03.2019 and subsequently a recovery letter was issued by the applicant directly and a loan recall notice was

also issued by the legal counsel on 01.06.2019. He further submitted that as per the statement of accounts set out in Annexure S is at page 171 for Vedanta INR 3,79,07,469.89 is due and at page 185 in respect of Hindalco INR 21,71,369..74 for an amount of INR 4,00,78,839.63 is pending as on 27.06.2019, which the respondent is liable to repay.

10. He further submitted that Adjudicating Authority is not required to determine the actual amount of claim which is held by the Hon'ble NCLAT in Mr. Satyaprakash Aggarwal and Ors. Vs. Vistar Metal Industries Limited (Company Appeal (AT) (Insolvency) No. 136/2018. He further submitted that Bankers Book Evidence is not applicable to the applicant, since it is a non-banking finance company and applicant has also filed an affidavit as per Section 65B of the Indian Evidence Act along with rejoinder. He further submitted that there is no requirement of the board resolution that it must have signed each and every document. He further submitted that applicant has already placed board resolution, therefore, the contention of respondent regarding the authorized representative is not liable to be accepted. He further submitted that even if arbitration proceedings have been initiated, the present application is maintainable in view of decision of the Hon'ble NCLAT held in Binani Industries Limited Vs. Bank of Baroda and Anr. (Company Appeal (AT) Insolvency No. 62/2018.

11. On the other hand, Ld. Counsel for respondent in course of his arguments submitted that no disbursement has been made to the answering respondent and the alleged statement of disbursement does not carry any debit or credit entries nor does it carry any RTGS details, cheque details or any other details by way of which the said amounts have been credited in the account of respondent or its suppliers.

12. He further submitted that under Channel Finance agreement the disbursement, as mechanized was not to be made in one tranche or in one go, rather it has to be made to the supplier on the written request made by the respondent no. 1 in the form of draw-down request. He further submitted Without specific draw down request no disbursement can be made by the applicant because the facility was for the respondent and not for the suppliers and no money could have been disbursed at the request of the supplier and unilaterally by the applicant to the supplier. In this regard relevant portion at Clause 2 at page 45 and 3 at page 46 of the petition are reproduced:

"2. Drawdown

(i) The Dealer shall be allowed to avail the said Facility only upon making a written request to Lender for drawdown of the facility in favour of the sellers and/or Lender in the format as may be determined by Lender."

"3. Disbursement

Upon receipt of a drawdown request from the Dealer (Drawdown Request), Lender may disburse such amounts mentioned therein based on the available Credit Limit, by any payment mechanism including transfers through RTGS, Electronic Fund Transfer, remittance through internal transfer between the bankers or in such other manner as Lender may deem fit by adoption of nay of the following procedures."

13. He further submitted that applicant has not annexed single draw down request in order to prove the disbursement. He further submitted that applicant refers to the statement of disbursement is neither on the letter head of the applicant nor bears any seal and signature of the institution and or person is maintaining the book of accounts. He further submitted that applicant has placed reliance upon the sanction letter, the said letter expires after 12 months after

the sanctioning orders. He has raised all the averments made in the reply.

14. Now, in the light of the submissions made on behalf of parties, we have gone through the application, reply, rejoinder and the documents filed by the respective parties and on perusal of the same, we find that Annexure C, which is at page 28 of the main application shows that respondent has applied for the Channel Finance Facility on 06.02.2018 and that was sanctioned by the applicant vide sanctioned letter dated 22.02.2018, which is at page 34 of the main application as Annexure D and we further find that Channel Finance Agreement was executed between the parties, which would be evident from the Annexure E , which is at page 39 of the main application and we further find that the Schedule 1 of the agreement which would be entered between the parties, which is at page 75 of the main application shows the name and address of the seller as Vedanta Limited and details of sanctioned letter is also mentioned in that column and we further find that additional interest is also agreed to be paid in case of default, which is at page 76 of the main application. We further find that detail of Post Dated Cheques are also mentioned at page 77 of the paper book and we further find that Power of Attorney is also enclosed with the main application at page 85, which is executed by the Director, Baldeo Metals Pvt Ltd. We also find that deed of Hypothecation is also executed by the respondent, which is at page 90 of the paper book. We further find that the letter of Guarantee is also enclosed with the main application at page 131. We further find that Channel Finance Facility was also modified vide letter dated 06.07.2018, which would be evident from the Annexure M, which is at page 149 of the paper book and a fresh agreement was executed on 06.07.2018 by which said facility is modified and name of seller as Vedanta Limited and Hindalco Industries Limited are mentioned, which would be evident from the documents enclosed at page 151 of the paper book. We further find that statement of accounts, which is

annexed at page 164-165, further statement of accounts annexed at 171-176 & 177-197 of the paper book. We further find that when amount was not paid then notice was given by the authorized signatory of the applicant on 09.03.2019 demanding Rs. 3,56,44,354/-. Thereafter, Legal notice was sent to the respondent, which is at page 167 of the paper book and subsequently, legal notice for recall of loan and invocation of arbitration was also sent on 22.05.2019.

15. At this juncture, we would also like to refer the reply filed by the respondent and when we have gone through the reply then we find that respondent has not denied that respondent had applied for Channel Finance Facility and same was sanctioned by the applicant rather he has taken some technical plea regarding the disbursement of the amount and these are the reasons Corporate Debtor mentioned in the reply and same was also taken in course of arguments. Ld. Counsel for respondent submitted that no direct payment has been made to respondent, in our considered view, since the respondent has applied for Channel Finance Facility, therefore, respondent agreed to pay the amount to the seller whose name appears in the Channel Finance Agreement and the Modified Channel Finance Agreement i.e. Vedanta and Hindalco, therefore, the contention of the respondent that no direct payment shall be made to them in our opinion, is not liable to be accepted.

16. Since the present application is filed under Section 7 of the IBC, therefore, we would like to refer Section 7 of the IBC quoted below:-

Section 7 of IB Code:-

> *1."A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.]
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): 1[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(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:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;
(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be".

17. At this juncture, we would also like to refer the decision in **Innoventive Industries Limited Vs. ICICI Bank reported in 2018 (1) SCC 407** and the relevant portion of the decision is quote below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which

takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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

18. From the perusal of the provision and decision, which we have referred in the aforementioned paras, we find that in order to trigger under Section 7, the Adjudicating Authority is required to satisfy the following conditions:

> *"(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:"*

If it is established that default has occurred and no disciplinary proceeding is pending against the IRP and application is complete then Adjudicating Authority has no option but to admit the application otherwise if any of the condition is lacking then application is liable to be rejected. Whether there is any dispute or not, this question is not required to be considered while considering the claim of Financial Creditor U/S 7 of IB Code.

19. When we shall consider the case in hand and the aforesaid decision and the provision then we find that in this case in hand, it is admitted fact that respondent had entered into an agreement and which is duly sanctioned by the applicant vide sanctioned letter dated

22.02.2018 and Channel Finance Facility was executed and modified on 09.03.2018 & 06.07.2018 and in that agreement, the name and address of the sellers is mentioned i.e. Vedanta and Hindalco and payment was directly made to the Vedanta and Hindalco in lieu of goods supplied to the respondent. Therefore, the contention of the respondent that payment has not been made directly to him is not liable to be accepted rather direction was given in Channel Finance Agreement. Ld. Counsel for applicant submitted that legal notice as well as recall of loan notice was also sent to the respondent, under such circumstances, we have no option but to reject the contention of the respondent and we accept the contention of the applicant that loan was duly sanctioned and disbursed but Debt has not be repaid and since there is default and application filed by the applicant is complete and applicant also proposed the name of the IRP and consent of the IRP is also enclosed at page 198-199 and there is no disciplinary proceeding is pending against him and the defaulted amount is more than Rs. 1,00,000/- is being the minimum threshold limit fixed under U/S 4 of IBC, 2016. Under such circumstances this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, **this petition is admitted.** A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

> *" (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;*
>
> *(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

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

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

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

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

20. Since, name of IPR has proposed by the Applicant, hence we appoint, Mr. Dhiren Shantilal Shah as IRP, having registration number IBBI/IPA-001/IP-P00220/2017-2018/10419 and also attached form 2 as Annexure T of the main application. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

21. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as

CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

22. Registry is directed to communicate the order with the IRP as well both the parties.

Sd/-

K. K. Vohra
Member (Technical)

Sd/-

Abni Ranjan Kumar Sinha
Member (Judicial)