IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.166/MB-IV/2023

Under Section 7 of the I&B Code, 2016

In the matter of:

IDBI Bank Limited

[CIN: L65190MH2004GOI148838]

…Financial Creditor/Applicant

V/s

Textrade International Limited

[CIN: U74110MH2004PLC147108]

...Corporate Debtor/Respondent

Order pronounced on: 04.07.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Prakash Shinde a/w Mr. Astha Ojha & Ms. Meghna Arvind i/b MDP & Partners, Ld. Counsel
For the Respondent(s)	:	Mr. Shyam Kapadia i/b Aniruth Purushothaman, Ld. Counsel

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 166/MB/C-IV/2023 filed by IDBI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Textrade International Limited (CIN: U74110MH2004PLC147108), the Corporate Debtor, on 02.07.2022.

   1.1. This Application has been filed by Mr. Durga Prasad Chanapati, Deputy General Manager of the Financial Creditor in terms of Authority Letter / Power of Attorney dated 24.05.2022, claiming a default of Rs. 35,42,28,430.06/- (Rupees Thirty Five Crore Forty Two Lakh Twenty Eight Thousand Four Hundred Thirty & Paisa Six only).

   1.2. The date of default is stated as 31.01.2019 in Parv IV of the Application and the Applicant has annexed CIBIL report of the Corporate Debtor dated 18.05.2022 and Record of Default issued by NeSL, the Information Utility.

2. The Financial Creditor submits that the Corporate Debtor is a Public Limited Company limited by shares and engaged into production of Lounge textiles (curtains, cushions, soft throws, rugs, etc), Bedroom textiles (bed sheets sets, pillow cases, cushions, curtains, rugs), Bathroom Textiles (bath, hand and face towels, bath mats, shower curtains) and Kitchen and table linen.

   2.1. The Corporate Debtor approached the Lenders Consortium including Canara Bank (erstwhile Syndicate Bank) as the Lead Bank, IDBI Bank (Financial Creditor), Indian Overseas Bank, Central Bank of India and Export Import Bank of India for availing various Credit Facilities in the form of Working Capital for an amount aggregating to Rs. 152 Crores, and the Financial

Creditor vide Sanction Letter dated 11th March, 2014 sanctioned Credit Facilities to the Corporate Debtor in the nature of Working Capital aggregating to Rs.20 crores and VBD limit of Rs.5 crores.

2.2. The Financial Creditor submits that pursuant to the amount sanctioned by the Financial Creditor, to secure the Credit facilities, following documents were executed between the Financial Creditor, other Consortium Lenders and the Corporate Debtor:

a. Interse Agreement dated 28th April, 2014;

b. Letter of Authority dated 28th April, 2014 to Canara Bank to act as the lead bank;

c. Working Capital Consortium Agreement dated 28th April, 2014;

d. Joint Deed of Hypothecation dated 28th April, 2014 creating 1st Pari-Passu charge of the Corporate Debtor's current asset as **"Primary Security", and** 1st Pari Passu charge with other Working Capital Lenders by equitable Mortgage of office premises at Shivai Industrial Estate along with leasehold rights of factory lands and building by way of mortgage/hypothecation and machinery and other moveable/chargeable assets of the Corporate Debtor situated at Sachin, SEZ, Surat as a collateral security;

e. Demand Promissory Note dated 28th April, 2014 for an amount of Rs.115,00,00,000/-;

f. Request for Overdraft facility dated 28th April, 2014 for limit of Rs.115,00,00,000/- in current account;

g. Agreement for opening Inland Irrevocable Letter of Credit of Rs. 37 crores;

h. Deed of Guarantee dated 28th April, 2014 by the Personal Guarantors in favour of the Consortium Lenders;

2.3. Further, the Corporate Debtor approached other members of the Consortium Lenders for increase in the Working Capital Facilities in addition to its existing facilities and the Consortium Lenders sanctioned credit facilities aggregating to Rs. 175 crores and to secure the additional credit facilities following documents were executed between the Corporate Debtor and the Financial Creditor along with the other Consortium Lenders:

a. First Supplemental Interse Agreement dated 6th May, 2015;

b. First Supplemental Working Capital Consortium Agreement dated 6th May, 2015;

c. First Supplemental Joint Deed of Hypothecation dated 6th May, 2015 and by the way of said Agreement, the Corporate Debtor agreed to create *inter alia* in favour of the Lenders Consortium by way of first charge of properties more particularly described in Schedule-I to the said Joint Deed of Hypothecation;

d. Demand Promissory Note dated 6th May, 2015 for Rs. 175 crores;

e. Undertaking from the Corporate Debtor dated 6th May, 2015 not to offload shares, divert bank borrowings, invest any money in shares etc., without obtaining NOC from Canara Bank (Lead Bank);

f. Undertaking from the Corporate Debtor dated 6th May, 2015 for giving an unqualified right to the Consortium Lenders to disclose or publish the name/s of the directors of the Corporate Debtor;

g. Letter dated 6th May, 2015 from the Corporate Debtor, as well as letter of even date for disclosures;

h. Letter/s dated 6th May, 2015 from the personal guarantors of the Corporate Debtor for non-receipt of commission;

i. Deed/s of Guarantee dated 6th May, 2015 by the personal guarantors of the Corporate Debtor in favour of the Consortium Lenders

2.4. Thereafter, the credit facilities were enhanced to Rs. 175 crores, and subsequently to Rs. 206.10 crores by the consortium lenders and fresh documents were executed for the enhanced facility and the terms and conditions were later modified by Sanction Letters dated 29th January, 2016, 15th June, 2017 and 16th October, 2017.

2.5. The Corporate Debtor vide Revival Letter/Confirmation Letter dated 6.5.2015, 24.3.2017, 1.3.2019, & 15.5.2019 confirmed that it had availed Working Capital Credit Facilities from the Consortium Lenders and executed documents in respect there of; and also confirmed and acknowledged all the documents were subsisting, valid, effective and enforceable against the Corporate Debtor. Further, the dues are reflected in the Financial Statements of the Corporate Debtor for Financial year 2020-21.

2.6. The Corporate Debtor committed breach of conditions of sanction and defaulted in the payment of principal and interest in respect of the credit facilities availed. The Financial Creditors repeatedly called upon the Corporate Debtor and the Personal Guarantors to make payment and regularise the account however they failed and neglected to do so. In view of the same the account of the corporate debtor was declared as Non – Performing Asset **('NPA")** by the Financial Creditor on 1st May 2019.

2.7. The Financial creditor vide Recall and Guarantee Invocation Notice dated 9th August 2019 and 26th August 2019 addressed to the Corporate Debtor and the Personal Guarantors called upon the Corporate Debtor and the Personal Guarantors to repay the amounts, however the Corporate Debtor and

Personal Guarantors failed to make payments. The Financial Creditor by their Corrigendum's both dated 25th November 2019 to their earlier notice dated 9th August 2019 and 26th August 2019 corrected the for certain factual discrepancies that had crept in their earlier notice.

2.8. The Corporate Debtor vide its reply dated 9th September 2019 to the Financial Creditor's Recall and Guarantee Invocation Notice dated 9th August 2019 and 26th August 2019 requested the Financial Creditor to withhold any action initiated by the Consortium Lenders.

2.9. In December 2019, the Corporate Debtor had submitted the resolution plan to Canara Bank requesting for Restructuring of account. Subsequently, Canara Bank convened a Joint Lenders Meeting on 11.12.2019 wherein all lenders agreed to take up the proposal with their sanctioning authority subject to project viability study and conclusion of forensic audit. The Techno Economic Viability study was carried out by Canara Bank which was concluded in August 2020. Further, Canara Bank appointed Brickwork Rating India Pvt. Ltd. (BWR) for Independent Credit Evaluation (ICE) of Residual Debt under new RBI Circular on Resolution of stressed assets-Revised Framework.. The resolution plan submitted by the corporate debtor failed to obtain the requisite ICE RP4 rating.

2.10. The Lead Bank, on behalf of Consortium Lenders including the Financial Creditor, issued Demand Notice under Section 13(2) of the SARFAESI Act, 2002 on 15th February, 2020 addressed to the Corporate Debtor and Personal Guarantors which recorded the defaults committed by the Corporate Debtor and called upon the Corporate Debtor to make payments of the outstanding dues demanded total dues of Rs 212,11,41,182.75 together with interest at contractual rate less charges, costs and expenses incurred/ to be incurred payable by the Corporate Debtor. However, the Corporate Debtor failed to make requisite payments as called upon.

2.11. Further, Canara Bank (Consortium Lead), on behalf of consortium issued notice u/s 13(2) of SARFAESI Act, 2002 on 15th February, 2020, and symbolic possession of registered office at Sakinaka, Mumbai and factory at Surat was taken on 4th October, 2021 and on 5th October, 2021 respectively.

2.12. The Corporate Debtor vide its reply dated 18th February 2020 to the said demand notice requested the Consortium Lenders to withdraw the said demand notice and continue to extend cooperation towards the implementation of the proposed resolution plan for the revival of the company.

2.13. The Lead Bank vide its reply dated 3rd March 2020 to the Corporate Debtors reply dated 18th February 2020 called upon the Corporate Debtor to pay the outstanding dues of the Consortium Lenders failing which the Consortium Lenders would proceed under the provisions of SARFAESI Act, 2002.

2.14. Thereafter, the Corporate Debtor offered a One Time Settlement proposal to the consortium banks. The said OTS was discussed by the consortium banks in the Joint Lenders Meeting held on 22nd December, 2021. It is submitted that as the said OTS was not viable and on a very lower side, the same was rejected and communicated vide e-mail dated 29th December, 2021 to the Corporate Debtor.

2.15. The Financial Creditor states that the Corporate Debtor has committed serious defaults in making payments of the principle amount of the loan along with the interest and other monies and also failed to comply with the terms and conditions of the respective letters of the sanction/ loan agreements and security agreements and such huge outstanding dues have become a cause of concern for the financial creditors. Despite the issuance of the Recall Notice, the Corporate Debtor failed to repay the outstanding amount and therefore the Financial Creditor through their Advocates filed Original Application No.

615/2021 ("**OA**") before Hon'ble Debt Recovery Tribunal-1 Mumbai ("**DRT**") with respect to the outstanding amount. The said OA is pending before the Hon'ble DRT-1 Mumbai.

2.16. The Financial Creditor therefore submits that despite being accorded with a number of opportunities, the Corporate Debtor failed and neglected to pay the outstanding loan amount. The Corporate Debtor is liable to pay a total sum of Rs. 34,80,90,466.65 as on 01.06.2022 along with interest towards the facility availed by the Corporate Debtor.

2.17. The Company Petition filed by the Financial Creditor is within the four corners of the laws. It is respectfully submitted that, it is an admitted fact that there is a financial debt which is due and payable by the Corporate Debtor to the Financial Creditor, there is a default in repayment of such financial debt which has occurred on part of the Corporate Debtor.

2.18. It is further submitted that the Inter-Creditor Agreement does not bind the member banks from taking any action under the Code individually. It is submitted that the Corporate Debtor has chosen to rely on an agreement, without being a party to the same. It is further submitted that the Corporate Debtor is unaware of the purpose of an Inter-Creditor Agreement, which invariably is executed for ease of business, efficient monitoring, security creation and to observe compliance thereof. It has relied upon the Three Member Decision of Hon'ble NCLAT in the matter of **Amitabh Kumar Jha vs. Bank of India & Anr.** [Company Appeal (AT)(INS) No. 1392 of 2019], quoting the following from said decision ;

"6. Per contra, it is submitted on behalf of the 'Financial Creditor'- 'Bank of India' that the 'I&B Code' empowers a single 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process', for which consent of other 'Financial Creditors' is not required. It is submitted that since the factum of debt and default has not been

disputed, the independent right of 'Bank of India' as individual lender to enforce its rights and seek triggering of 'Corporate Insolvency Resolution Process' is not affected by the terms of CLA.

9. …It would be a travesty of justice to raise a plea that since the creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the creditor, an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the creditors in regard to their joint or individual interests…

10. The statutory right across the ambit of Section 7 of the Code cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognized by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

2.19. It has further relied upon the decision in the matter of **M/s Innoventive Industries Ltd. vs. ICICI Bank & Anr.** [Civil Appeal Nos. 8337-8338 of 2017], wherein the Hon'ble Supreme Court of India observed as 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 be 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 sub-section (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.

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 same that it is payable at some future date."*

2.20. It is submitted that mere acceptance of settlement proposal by other financial institutions does not curtail the rights of this Financial Creditor to pursue its legal remedies under this Code, nor is this Financial Creditor bound to follow the decision of other financial institutions, that too under the dictate of the defaulting Corporate Debtor. It is pertinent to submit that in the matter of **The Bijnor Urban Cooperative Bank Limited, Bijnor & others vs. Meenal Agarwal & others** [Civil Appeal No. 7411 of 2021], the Hon'ble Supreme Court held that that the grant of benefit of OTS scheme cannot be prayed as a matter of right. It further stated that no bank can be compelled to accept a lesser amount under the OTS scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

2.21. Further, in the matter of **E S Krishnamurthy & Ors. Versus M/s Bharath Hi Tech Builders Pvt. Ltd.** [Civil Appeal No. 3325 of 2020], the Hon'ble Supreme Court of India observed the following:

"16. (ii) The impugned orders are contrary to the mandate of Section 7 of the IBC. This ground has been sought to be substantiated by urging as follows:

(a) The orders of the Adjudicating Authority and the Appellate Authority are contrary to the principles enunciated in the judgment of this Court in Innoventive Industries Ltd. v. ICICI Bank ("Innoventive Industries"), with

respect to the scope and extent of the enquiry which has to be made in a petition under Section 7 of the IBC. This Court has held that while entertaining the petition under Section 7, the Adjudicating Authority has to merely satisfy itself whether a default has occurred. As such, Section 7(5) only provides the Adjudicating Authority with two options – to pass an admission order under Section 7(5)(a) or reject the petition under Section 7(5)(b). Thus, unless the debt has not become due or is interdicted by some law, the Adjudicating Authority must admit a petition under Section 7;

32. For the above reasons, we have come to the conclusion that the order of the Adjudicating Authority, and the directions which eventually came to be issued, suffered from an abdication of jurisdiction. The Appellate Authority sought to make a distinction by observing that the directions of the Adjudicating Authority were at the 'pre-admission stage', and that the order was not of such a nature which was prejudicial to the rights and interest of the stakeholders. The Appellate Authority was cognizant of the fact that even the time schedule for settlement which had been indicated by the Adjudicating Authority had elapsed, but then noted the impact of the outbreak of COVID-19 pandemic on the real estate market, including on the respondent. While acknowledging that the consent terms were "filed by some of the stake holders though may not be all encompassing", the Appellate Authority nonetheless proceeded to dismiss the appeal as not maintainable. The observation that the appeal was not maintainable is erroneous. Plainly, the Adjudicating Authority failed to exercise the jurisdiction which was entrusted to it. A clear case for the exercise of jurisdiction in appeal was thus made out, which the Appellate Authority then failed to exercise."

2.22. In view of the above, the said Company Petition filed by the Financial Creditor satisfies the essential requirements of debt and default and therefore, it is a fit case for admission under Section 7 of the Code.

3. The Corporate Debtor filed its reply dated 11.4.2023 stating that the Petition filed by the Financial Petitioner is not maintainable and bad in law. The Financial Creditor Petitioner is guilty of concealing and suppressing material facts from this Hon'ble Tribunal. It has further stated that -

3.1. Pursuant to the Reserve Bank of India circular dated 07.06.2019 bearing no. RBI/2018-19/ 203 DBR.No.BP.BC.45/21.04.048/2018-19 (hereinafter referred to as 'the said RBI Circular'), the Corporate Debtor had submitted a Resolution Plan dated 02.06.2020 to Canara Bank, Indian Overseas Bank, Central Bank of India, Syndicate Bank, IDBI Bank, Export-Import Bank of India (hereinafter referred to as 'the consortium of lenders') vide email dated 17.09.2020. It is of pertinence to note that the said RBI circular states that the lenders shall initiate the process of implementing a Resolution Plan even before a default.

3.1.1. The Canara Bank being the lead bank of consortium of lenders had appointed Brickwork Ratings to provide an Independent Credit Evaluation of the Resolution Plan submitted by the Corporate Debtor. The said Resolution Plan dated 02.06.2020 did not receive the requisite RP4 rating from the Independent Credit Evaluator. The lenders discussed and deliberated the same in detail in its meeting held on 08.07.2021 and it was decided that the Corporate Debtor shall look into revising the Resolution Plan after various other observations are made by the lenders.

3.1.2. It was agreed at a meeting of the Consortium of Lenders was held on 21.01.2021 to give one more chance to the Corporate Debtor for improvement in the Resolution Plan and to obtain fresh evaluation.

3.1.3. Pursuant to the meeting of the consortium of lenders dated 21.01.2021, the Corporate Debtor has submitted revised Resolution Plans dated 10.05.2021 and 06.10.2021 to the consortium of lenders which is under consideration. The latest Resolution Plan dated 06.10.2021 is been actively considered by the consortium of lenders and the same has not been rejected by them.

3.1.4. It is pleaded that, on one hand, the consortium of lenders is considering the Resolution Plan submitted by the Corporate Debtor and on the other hand, the Petitioner has filed the captioned petition for initiating CIRP against the Corporate Debtor. It is a settled law that two parallel remedies cannot be pursued at the same time in respect of the same matter. It is of pertinence to note that the Supreme Court in the matter *of Jai Singh Vs. Union of India* on 19.11.1976 held that ***"In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time"***

3.1.5. Accordingly, in the absence of any decision of the consortium of lenders on the Resolution Plan, the Corporate Debtor cannot be termed as a defaulter and thus, the filing of the said petition when the Resolution Plan is under consideration is totally baseless and uncalled for.

3.2. The Respondent submits that the petitioner is prematurely seeking admission of the Corporate Debtor into CIRP which will not only cause irreparable harm and injury to the Corporate Debtor but will also cause severe prejudice to the other lenders and stakeholders at large.

4. The Financial Creditor filed a rejoinder dated 19.4.2023 stating that the One Time Settlement proposal to the consortium banks. The said OTS was discussed by the consortium banks in the Joint Lenders Meeting held on 22nd December

2021. It is submitted that as the said OTS was not viable and on a very lower side, the same was rejected and communicated vide e-mail dated 29th December 2021 to the Corporate Debtor. The Corporate Debtor time and again has admitted the debt due and payable to the Financial Creditor. The Corporate Debtor also admit that settlement offers were made to banks and the Corporate Debtor continues to commit defaults in discharging their obligations to the banks, subject to revival of the business. The Financial Creditor has never acted in contravention of the RBI Circulars as alleged or otherwise. The resolution plan and the revised resolution plan were not viable and therefore the same were rejected respectively.

4.1. The Applicant Financial Creditor has also filed an affidavit explaining how the present petition has been within the prescribed period of limitation, and accordingly, is not barred by Limitation.

5. The Corporate Debtor has filed a sur-rejoinder dated 4.5.2023 stating that the Corporate Debtor had submitted a Resolution Plan dated 06.10.2021 which was considered by the Consortium of Lenders. Pursuant to various discussions and personal meetings regarding the Resolution Plan for the Settlement of the Debt of the Corporate Debtor, the Corporate Debtor sent a letter dated 25.04.2023 to the Lead Banker of the Consortium of Lenders viz. Canara Bank, Stressed Asset Management Branch, Bandra-Kurla Complex, Mumbai, and expressed its desire to submit a more comprehensive resolution plan for consideration and settlement of debt. The Corporate Debtor has relied upon the letter dated 25.04.2023 sent by the Corporate Debtor and acknowledged as ‘Received’ by Canara Bank on 26.04.2023 in this relation. The said letter was replied by the Canara Bank vide its letter dated 26.04.2023 to the Corporate Debtor stating that the Corporate Debtor is at liberty to submit any proposal for settlement/resolution of the dues and in case of receipt of such proposal, the same will be examined on merit and would be placed before the consortium of

lenders for suitable decision. However, the bank reserves rights to accept /reject the proposal based on merit.

5.1. Accordingly, it was pleaded that, pursuant to the aforesaid letter, the Corporate Debtor shall submit a fresh Resolution Plan to Canara Bank after the process of price discovery to ascertain the value of the Corporate Debtor is completed, and argued that it is apparent from the aforesaid letter sent by Canara Bank to the Corporate Debtor, that they would consider a Plan sent by the Corporate Debtor.

5.2. The Corporate Debtor has also drawn our attention to clause 11 of Inter-se Agreement dated 28.14.2014 entered by the consortium lenders, which provides that "*Each of the said Banks hereby agrees that all acts deeds and things done in accordance with this Agreement by the Lead Bank shall be construed as acts, deeds and things done by each of them and each of the said Banks undertakes to ratify and confirm all and whatsoever the Lead Bank shall do or cause to be done for itself and on their behalf. The Lead Bank shall not be liable to the Member Bank for any act, deed or thing to be done or omitted to be done or omitted to be done in good faith under this Agreement*".

5.3. Accordingly, it was argued that since Canara Bank has conveyed to the Corporate Debtor, vide letter dated 26.04.2023, that they will considering the fresh offer/Resolution Plan which shall be submitted by the Corporate Debtor, the aforesaid action and decision of Canara Bank will be binding on the Financial Creditor herein as well since it is a part of the Canara Bank Consortium. Therefore, considering that a Resolution Plan will be submitted by the Corporate Debtor after the process of price discovery to ascertain the value of the Corporate Debtor is completed, this Petition should be dismissed as it is pre-mature.

5.4. It is also submitted without prejudice that the captioned Company Petition filed by the Financial Creditor under FORM 1 is defective, as the Petition was filed on 02.07.2022 and it remained under objection for more than 7 (seven) months. In the meantime, the Authorisation For

Assignment dated 28.01.2022 issued to Mr. Bimal Kumar Agarwal, the Interim Resolution Professional proposed by the Financial Creditor, which was valid till 27.01.2023, has expired i.e., even before the captioned Company Petition was numbered. Further, it is of pertinence to note Regulation 7A of the IBBI (IP) Regulations which states that an insolvency professional shall not accept or undertake an assignment after 31st December 2019 unless he holds a valid authorisation for assignment on the date of such acceptance or commencement of such assignment, as the case may be. The Corporate debtor has relied upon decision of Hon'ble NCLAT in para 46(d), in the matter of CA V. Venkata Sivakumar. Thus, as the Proposed Interim Resolution Professional does not hold a valid Authorisation for Assignment, the captioned Company Petition filed by the Financial Creditor is defective and hence liable to be dismissed in accordance with Section 7(5) of the Code.

6. This Bench heard both the Counsel and perused the material available on record.

6.1. It is not in dispute that The Corporate Debtor has duly acknowledged the existence of financial debt due to the Applicant Financial Creditor, as well as to other Consortium Lender Banks, and default in repayment of such debt.

6.2. The first default occurred on 31.01.2019. It is also not in dispute that the Corporate Debtor has acknowledged the debt vide Revival Letter/Confirmation Letter dated 6.5.2015, 24.3.2017, 1.3.2019, & 15.5.2019. Also, the Corporate Debtor submitted Resolution Plan dated 10.05.2021 and 06.10.2021; and also submitted an OTS proposal in Nov./Dec., 2021. Besides this, the Corporate Debtor has again approached the Lead Bank, Canara Bank, to allow it to file revised resolution plan vide its letter dated 25.04.2023 and has heavily relied upon this communication to demonstrate its bona-fide to settle the debt due to the Financial Creditors, including the applicant. Further, the debt owed to the Applicant Financial

Creditor is also acknowledged in the audited financial statements of the Corporate Debtor for the financial year ending on 31.3.2021, as is evident from the perusal thereof. Accordingly, this Bench is of the considered view that the present application, having been filed on 2.7.2022 is well within the limitation period, as the last confirmation dated 15.05.2019 further extends the period till 14.5.2022, and the last resolution plan submitted on 6.10.2021 is another acknowledgement within extended period of limitation 14.5.2022, thereby further extending the limitation till 5.10.2024.

6.3. There is no dispute that even the Consortium lead banker called upon the Corporate Debtor to pay the debt in default on behalf of all Member Bank and also issued notice u/s 13(2) of the SARFAESI Act, 2022 on 15.02.2020. Further, the symbolic possession of the office and factory premises of the Corporate Debtor was taken over by the lead banker. It is also not in dispute that no OTS proposal or Resolution Plan is pending for consideration with the Lead Bank or the Applicant Bank. The two Resolution Plan(s) submitted earlier as well as OTS proposal submitted in the year 2021 were rejected by the Consortium Bankers.

6.4. The Ld. Counsel for the Corporate Debtor vehemently argued that the Corporate Debtor is actively considering the revising its earlier resolution plan, which came to be rejected by the Consortium after finding the same as unviable; and to buttress this contention, it relied upon a letter dated 26.4.2023 from the Lead Banker i.e. Canara Bank in response to Corporate Debtor's letter dated 25.04.2023. On perusal of this Letter dated 26.04.2023, this Bench finds that the Canara Bank has not committed the consortium to any such proposal and its response was general in nature. The said letter stated that "<u>the Corporate Debtor is at liberty to submit any proposal for settlement/resolution of the dues and in case of receipt of such proposal, the same will be examined on merit and would be placed before the consortium of lenders for suitable decision. However, the bank reserves rights to accept /reject the proposal based on merit</u>". The Ld. Counsel concluded from this that the Lead Banker has consented to consider its proposal again, hence, any unilateral action by the Applicant Financial Creditor, pending such request, is de hors the Inter-se Agreement amongst the Lender Banks, and accordingly such action is barred by such Agreement. The Ld. Counsel relied upon decision of 3 Member Bench of Hon'ble NCLAT, New Delhi in the matter of ***Mr. Rakshit Dhirajlal Doshi Vs. IDBI Bank Ltd. (2022) ibclaw.in 932 NCLAT, wherein the issue "****whether IDBI Bank alone could have filed the petition for the insolvency resolution*" was decided holding that "*that the 'Event of Default' cannot be declared by an individual bank under the individual financing documents of the participating banks in the Bank of Baroda consortium and recourse must be taken to the Security Trustee Agreement and the Inter-se Agreement*" and "*in view of the stipulations and provisions in the Inter-se Agreement of which the Respondent IDBI Bank was a signing party, and the provisions of the Security Trustee Agreement entered into between the Bank of Baroda (as a Lead Bank of the consortium) and the guarantor FIPL and IL&FS Trustee Company Limited, the IDBI Bank could not have acted unilaterally in either declaring an 'Event of Default' regarding repayment its loan facilities granted to the borrower Doshion and later seeking repayment of the loan from the guarantor Fivebro International Private Limited.*", and argued that only the lead bank i.e. Canara Bank could have initiated any proceeding for default in the credit facilities owed by the Corporate Debtor to consortium members bank in terms of Inter-se Agreement.

6.4.1. Per Contra, the Applicant Financial Creditor has relied upon decision of 3 Member Bench of Hon'ble NCLAT in the matter of ***Amitabh Kumar Jha Vs. Bank of India & Anr [2020] ibclaw.in 101 NCLAT*** holding that "*the statutory right across the ambit of Section 7 of the 'I&B Code' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognised by the statute as a permissible mode would not override the statutory mechanism and right created and enforceable under statute.*" and

"*The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed.*". The Ld. Counsel further argued that this decision was followed by the Coordinate Bench of Hon'ble NCLAT Chennai in the matter of ***GVK Energy Ltd. Vs. Axis Bank Ltd. (2023) ibclaw.in 271 NCLAT***.

6.4.2. This Bench finds that none of the Counsel could confirm whether the decision in case of Amitabh Kumar Jha (Supra) was brought to the knowledge of Hon'ble Bench in the case of Rakshit Dhirajlal Joshi (Supra), also whether the decision in the case of Rakshit Dhirajlal Joshi (Supra) was brought to the knowledge of Hon'ble Bench in the case of in the case of GVK Energy Ltd. (Supra). This Bench further finds that Hon'ble Judicial Member, Justice M. Venugopal was common member in both the matters i.e. Amitabh Kumar Jha (Supra) and GVK Energy Ltd. (Supra).

6.4.3. At this juncture, it would be apposite to notice the findings of the Hon'ble NCLAT in Amitabh Kumar Jha (Supra) and Rakshit Dhirajlal Doshi (Supra. In the case of Amitabh Kumar Jha (Supra), which is prior decision on the issue.

6.4.3.1. In the case of Amitabh Kumar Jha (Supra), it was argued by the appellant's suspended management that the 'Common Lender Agreement' clearly specified that no enforcement action will be taken without complying with the procedure laid down therein and since said procedure has not been complied with, 'Bank of India' could not take enforcement action against the 'Corporate Debtor'; and that 'Canara Bank', the lead Bank of the consortium is said to have issued notice for a meeting of consortium and the 'Corporate Debtor' is prepared to settle the dispute with all the lenders. The Hon'ble Bench noticed that "*None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the 'Bank of India' in regard to the financial debt payable to it and to the extent of its interest*" and also took note of Clause 2.2 of the 'Inter Creditor Agreement' which provided that each lender who is a member of the consortium may separately enforce its rights and no Rupee Lender having separate and independent rights shall be responsible for the obligations of any other Rupee Lender. Accordingly, the Hon'ble Bench concluded that the Clauses in the 'Inter-Creditor Agreement' would not supersede the rights and obligations of Rupee Lenders in their independent capacity and this is further re-inforced by Clause 1.3 of the 'Inter-Creditor Agreement'. Clause 1.3 of the Agreement provided that the 'Inter-Creditor Agreement' would not in any manner alter, modify or impair any of the rights vesting in the Rupee Lenders against the Borrower under the Finance Documents. Accordingly, it was held by the Hon'ble Bench in that case that "*What transpires among the Creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the Creditors in regard to their joint or individual interests, more so when in the instant case the Intervenors who are the consortium of lenders have supported the action taken by the 'Bank of India' in triggering 'Corporate Insolvency Resolution Process*"'.

6.4.3.2. In the case of Rakshit Dhirajlal Joshi (Supra), the Corporate Debtor had argued that a conjoint reading of clause 4 of the Security Trustee Agreement and clause 7 of the Inter-se Agreement leads to inescapable conclusion that even if there is a default, the lender has to act through the Security Trustee in order to take enforcement action; and that conjoint reading of clause 4 of the Security Trustee Agreement and clause 7 of the Inter-se Agreement leads to inescapable conclusion that even if there is a default, the lender has to act through the Security Trustee in order to take enforcement action, and therefore, IDBI Bank does not have the requisite entitlement to independently file application under section 7 of IBC after declaring an Event of Default. In this case, the Hon'ble Bench noticed the Clause 7.2 of the Inter-se Agreement and clause (4) of the Security Trustee Agreement in relation to the stipulation of an Event of Default and the procedure prescribed thereunder for declaration of such Event of Default, and came to conclusion that "*Thus, it is clear that even though clause 7.2 of the Inter-se Agreement stipulated that even if an individual bank wanted to declare an 'Event of Default', it had to follow the procedure set out in clause 7.2 of the Inter-se Agreement (as well as Clause 4 of the Security Trustee Agreement) and intimates the Security Trustee of its intention to declare default, it has clearly not been done by Respondent IDBI Bank. The Respondent IDBI Bank has not made any averments that it had communicated its intention of declaring an 'Event of Default' to the Security Trustee or the Lead Bank Bank of Baroda*"; and further held that "*We note that in the Impugned Order the Adjudicating Authority has relied on clause 7.5 of the Inter-se Agreement to hold that any lender is at liberty to take any decision or action on any other matter and is not required to take any approval from any other lender. We find that clauses 7.1 and 7.2 of the Inter-se Agreement clearly lay down that an 'Event of Default' is covered under the actions for which the provisions are made in the Inter-se Agreement and the modality of taking such action is clearly set out in clause 7.2. Even for the enforcement of securities, clause 7.3 of the Inter-se Agreement clearly provides that the enforcement of any or all of the securities, shall be done by the Security Trustee as per provisions of the Security Trustee Agreement on behalf of all the lenders and as instructed by the majority lenders. Therefore, clause 7.5 has to be read conjointly with clauses 7.1, 7.2 and 7.3 of the Inter-se Agreement. If that is done, we find that the action taken by the IDBI Bank* *in declaring 'Event of Default' is not in consonance with the provisions of Inter-se Agreement*." In this case, it was not the case of the Financial Creditor IDBI Bank that the consortium had taken any action under SARFAESI Act, 2002 prior to initiation of section 7 by the Applicant, hence, such action tantamount to declaration of default prior to filing of present section 7 application by it.

6.4.4. This Bench finds that, in the present case, the Financial Creditor has stated in Part IV of the Application vide clause no. 22 that "*The Lead Bank on behalf of Consortium Lenders including the Financial Creditor issued Demand Notice under Section 13(2) of the SARFAESI Act, 2002 on 15th February, 2020 addressed to the Corporate Debtor and Personal Guarantors which recorded the defaults committed by the Corporate Debtor and called upon the Corporate Debtor to make payments of the outstanding dues demanded total dues of Rs 212,11,41,182.75 together with interest at contractual rate less charges, costs and expenses incurred/ to be incurred payable by the Corporate Debtor. However, the Corporate Debtor failed to make requisite payments as called upon.*"; and it is further stated at clause no. 23 that "*Further, Canara Bank (Consortium Lead), on behalf of consortium issued 13 (2) on 15th February, 2020 symbolic possession of registered office at Sakinaka, Mumbai was taken on 4th October, 2021 and symbolic possession of factory at Surat taken on 5th October, 2021*". The Recall Notice dated 15.02.2020, issued by Canara Bank, clearly lists out the date of default in relation to each consortium lender Bank, and the amount due to each member. The said notice at para 6 also clearly states that the Borrower continue to be in default of repayment of the debts owed by it to the Financial Creditors under the Financing Document(s) and Security Document(s). The Corporate Debtor had acknowledged this notice, while responding to it vide its letter dated 18.02.2020, and requested the Consortium Lenders to withdraw the said demand notice and continue to extend cooperation towards the implementation of the proposed resolution plan for the revival of the company. Accordingly, this Bench finds that the Corporate Debtor can not plead that the consortium had not declared the event of default prior to filing of present application, which came to be filed on 2.7.2022, as the letter dated 18.2.2020 emphatically demonstrate the declaration of event of default by the consortium also.

6.4.5. Having said so, this Bench finds, the decision of Hon'ble NCLAT in the case of Rakshit Dhirajlal Doshi (Supra) is distinguishable on facts on the issue of declaration of default. Accordingly, this Bench is of considered view that reliance of Corporate Debtor on the decision of Hon'ble NCLAT in the case of Rakshit Dhirajlal Doshi (Supra) is ill-founded. It is noteworthy, that the Hon'ble NCLAT in the case of Rakshit Dhirajlal Doshi (Supra) has not dealt with the issue whether, even after declaration of 'event of default' by the Member Bank in the manner provided in the 'Inter-Creditor Agreement', can it be said that the individual member is still barred from initiating proceedings u/s 7 of the Code. However, this Bench finds that the Hon'ble NCLAT in the case of Amitabh Kumar Jha (Supra) had held that "*The debtor has no locus to meddle with the internal arrangement and affairs of the Creditors in regard to their joint or individual interests, more so when in the instant case the Intervenors who are the consortium of lenders have supported the action taken by the 'Bank of India' in triggering 'Corporate Insolvency Resolution Process'. None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the 'Bank of India' in regard to the financial debt payable to it and to the extent of its interest.*". This Bench finds that, in the present case also, none of the consortium members have objected to filing of the Section 7 petition against the 'Corporate Debtor'. The Corporate Debtor is relying on the letter dated 25.04.2023 expressing its intent to file improved Resolution Plan and the reply of Lead Bank i.e. Canara Bank vide letter dated 26.04.2023 that it shall be considered on its merits. This Bench is of the considered view that the letter dated

26.04.2023 of the Lead Bank i.e. Canara Bank is merely a standard response to an offer from the Corporate Debtor reserving the rights of the lender to accept or reject it on merits. This Bench is conscious of fact that the Resolution Plan of the Corporate Debtor came to be rejected by the Consortium on earlier two occasions, and its OTS proposal was also turned down. Accordingly, the present exchange of communication is nothing but an attempt to thwart the present proceedings.

6.5. This Bench also does not find any merit in the argument of the Corporate Debtor that the present application is defective as the AFA of the proposed IRP got expired during the pendency of the present application. This Bench feels that, even if so, the said defect is curable, and can not vitiate the proceedings. The decision of Hon'ble NCLAT in the case of **CA V. Venkata Sivakumar Vs. IDBI Bank Ltd. (2022) ibclaw.in 1067 NCLAT** is distinguishable as the issue therein was '*Whether the 'Appellant' had valid Authorisations for Assignment ("AFA") on the date of his appointment as the 'Liquidator' of the 'Corporate Debtor'?*' This Bench is conscious of the fact that proposed IRP can be appointed only if he holds valid AFA on the date of his appointment, and temporary expiry of AFA during pendency of the application can not disentitle him for consideration as IRP, if he holds valid AFA as on that date.

7. In view of the foregoing discussion, this Bench is of considered view that the present petition is well within limitation, complete in all respect, and there being a default in repayment of a financial debt by the Corporate Debtor, the present petition deserves to be admitted under Section 7 of the Code.

8. The Applicant has proposed Mr. Bimal Kumar Agarwal {IBBI/IPA-001/IP-P01409/2018-19/12186} to act as the Insolvency Resolution Professional.

ORDER

9. The petition bearing CP (IB) No.166/MB-IV/2023 filed by, filed by IDBI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Textrade International Limited is **admitted**.

   a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

      i. 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;

      ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

      iii. 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 (SARFAESI) Act, 2002;

      iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

v. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

iv. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The bench hereby appoints Mr. Bimal Kumar Agarwal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01409/2018-2019/12186 and email- bimalagarwal.irp@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-	Sd/-
PRABHAT KUMAR	KISHORE VEMULAPALLI
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)
04.07.2023	