

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 171/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 21.08.2019**

Name of the Company: IFCI Ltd.

V/s.

RMOL Engineering and Offshore Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	VISHAL RAVAL ZINDAGI LLP	Adv	App ^t	
2.	Rakhee Patel and Kanya Shah	Adv.	Corporate Debtor	

ORDER

The Parties are represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 21st day of August, 2019.

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP (IB)No.171/7/NCLT/AHM/2017

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

IFCI Limited

Earnest House
9th Floor, NCPA Marg
Nariman Point
Mumbai-400 021

..... Petitioner
(Financial Creditor)

Versus

M/s.RMOL Engineering and Offshore Ltd.

(Erstwhile Reliance Marine & Offshore
Ltd.)

Survey No.658
Village Rampara-II
Taluka Rajula and Village Lunsapur
Taluka Jafrabad, Amreli-365 560
Gujarat

..... Respondent
(Corporate Debtor)

Order delivered on 21st August, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

Appearance:

Mr. P.V. Dinesh, Sr. Advocate, along with Mr. Vishal Raval,
Advocate, for the Petitioner-Financial Creditor.

Mr. Saurabh Soparkar, Sr. Advocate, along with Mr. Raheel S. Patel
Advocate and Ms. Kamyas S. Shah, Advocates, i/b Nanavati
Associates, for the Respondent-Corporate Debtor.

✓



ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The present Application is filed by the Petitioner-Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'I & B Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for short] to initiate Corporate Insolvency Resolution Process against M/s. RMOL Engineering and Offshore Ltd. (erstwhile Reliance Marine & Offshore Ltd.) [hereinafter referred as 'Respondent-Corporate Debtor].

2. The present petition was originally filed by the Petitioner-Financial Creditor before this Tribunal on 10th November, 2017, for initiating Corporate Insolvency Resolution Process against the Respondent – Corporate Debtor, viz., **Reliance Marine and Offshore Ltd.** However, the petitioner-financial creditor filed Miscellaneous Application No.08 of 2019 for amending the cause title of the petition i.e.to change the name of the corporate debtor from Reliance Marine and Offshore Ltd. to **RMO Engineering and Offshore Ltd.** This Adjudicating Authority allowed the application and permitted to the petitioner-financial creditor to carry out necessary/suitable amendment in the present IB Petition.



Accordingly, the present petition has been amended suitably and taken on record.

3. It is stated that the Respondent-Corporate Debtor Company, viz., RMOL Engineering and Offshore Ltd., was incorporated on 04.06.2012, under the provisions of the Companies Act, 1956, having its registered office at Survey No.658, Village Rampara-II, Taluka Rajula and Village Lunsapur, Taluka: Jafrabad, Amreli-365 560, Gujarat.
4. The Authorized Share Capital of the respondent-corporate debtor company is Rs.5,00,000/- (Rupees Five Lakhs only) and the Issued and Paid Up Capital of the respondent-corporate debtor company is Rs.5,00,000/- (Rupees Five Lakh only).
5. It is the case of the petitioner that the Financial Creditor has provided certain corporate loan facilities to the corporate debtor to the tune of **Rs.202,22,00,000/-**. The details/particulars of such loan facilities and the amount of loan disbursed to the respondent are described well in prescribed Proforma under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 7 of the Code, which are described as under:

✓

✓

Part-IV

Particulars of Financial Debt		
1.	Total amount of debt granted and date(s) of disbursement	<p>Corporate Loan sanctioned on 30th March, 2013 for a sum up to Rs.202,22,00,000/- (Rupees Two Hundred and Two Crore and Twenty Two Lakh only) to M/s. Pipava Marine and Offshore Ltd. which is taken over by Reliance Marine & Offshore Ltd. (Corporate Debtor)</p> <p><u>Date of Disbursement</u> 50 Crore on 19.09.2013 50 Crore on 20.09.2013 50 Crore on 23.09.2013 52.22 Crore on 24.09.2013</p>
2.	Amount claimed to be in default and the date on which the default occurred	<p>Rs.159,61,82,597/- (Rupees One Hundred Fifty Nine Crore Sixty One Lakh Eighty Two Thousand Five Hundred and Ninety Seven only) as on 30th September, 2017 (Outstanding amount) along with further interest @18.50% per annum and penal interest thereon until payment and/or realization; (Sale proceeds of Rs.28.14 crore realized from pledged shares available as one of the security to the Loan is pending appropriation.</p>

6. It is stated that at the request of the Respondent-Corporate Debtor, i.e. erstwhile, named as, **Pipavav Marine and Offshore Limited** and **Reliance Marine Offshore Ltd.** The Petitioner had sanctioned and disbursed aforesaid credit facilities recoverable with applicable interest and executed necessary loan agreements with the Respondent-Corporate Debtor.



7. In order to secure such credit facilities, the corporate debtor company, through its authorized signatory/director, has duly executed various security documents in favour of the Petitioner-Financial Creditor. The Petitioner-Financial Creditor has annexed with the present application copy of the loan documents/security documents executed by the borrower/co-borrowers/guarantors, which are described as below:

1	Copy of the Memorandum of Entry dated 24 th June, 2014
2	Copy of the Memorandum of Entry dated 21 st March, 2015
3	Copy of Deed of Personal Guarantee dated 1 st April, 2013
4	Copy of Deed of Corporate Guarantee dated 25 th June, 2013
5	Copy of Agreement for Pledge of Shares dated 10 th July, 2013 executed by SKIL Infrastructure Limited in favour of the Financial Creditor
6	Copy of Agreement for Pledge of Shares dated 19 th July, 2013 executed by Metropolitan Industries in favour of the Financial Creditor
7	Copy of Corporate Loan Agreement dated 30 th March, 2013
8	Copy of Irrecoverable Power of Attorney dated 10 th July, 2013
9	Copy of Irrevocable Power of Attorney dated 19 th July, 2013
10	Copy of Declaration and Undertaking by M/s.Budding Mercantile Co. Pvt. Ltd. and M/s. Winsome Realty Pvt. Ltd. dated 23 rd April,2014
11	Copy of Declaration and Undertaking by M/s. Ashwini Infrastructure Pvt. Ltd. dated 20 th March, 2015.
12	Copy of Letter dated 13 th July,2017 received from the corporate debtor

8. In addition to the above, the Petitioner-Financial Creditor also filed its written submission in support of its case. The relevant paragraphs thereof are being reproduced hereinbelow:

2. *It is submitted that the default on the part of the Corporate Debtor is proved by way of documents produced by the Applicant as well as those admitted by the Corporate Debtor.*
3. *The Applicant has produced ledger statement as on 30th September, 2017, certified under the Bankers Books of Evidence Act (at pages 122 to 133). The Deputy General Manager of the Applicant has certified that an amount of INR 1596182597.00 is due as on 15.9.2017 (Page 125).*
4. *It is submitted that the interest rates charged by the Applicant is fully in accordance with the contract entered into between the Applicant and the Respondent Company. The said contract is produced as Exhibit I, at pages 82 to 121. The Article-I of the contract deals with the interest chargeable. It is submitted that the Applicant has charged interest only in accordance with the contractual terms between the parties. Since it is a contractual obligation that is specifically laid out in the said contract, the Respondent is forbidden to question the clauses of the contract and in case of any variance, it would amount to the substitution of terms of the contract, which is impermissible in law.*
5. *It is submitted that the events of incidence of default is also specifically provided for in the contract in Article XI. The contention of the Respondent that the Applicant ought to have exhausted all avenues in the event of default before filing a petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("I & B Code") is not justifiable in law, as the provisions of I & B Code have overriding effect over other legislations. It may kindly be noted that as per Section 7 of the Code, once the requirements of debt and default are fulfilled, the Corporate Debtor has to be admitted into the corporate insolvency resolution process.*
6. *It is a settled position of law that as per the provisions of section 7 what is relevant is the existence of debt and default within the meaning of Section 7. Clause 6.3 which has been heavily relied upon by the Respondent is reproduced as under:*
7. *As stated above, clause 6.3 begins with the words "In the event of default". Once default is proved and if it is shown to be more than One Lakh rupees, section 7 would kick in and this Hon'ble Tribunal is statutorily bound to initiate the resolution process against the corporate debtor subject to other provisions of I & B Code.*

8. *It is submitted that even otherwise, in the present case debt and default are admitted by the Respondent corporate debtor. The Respondent has filed objections to the Application. Annexure R-4 produced at page 236 of the counter objection is an e-mail communication that specifically admits the default.*
 9. *The Respondent has also admitted an upfront payment of INR 5 crores during the negotiations for settlement. Thus, the admission of debt and default on the part of the Corporate Debtor is irrefutable.*
 10. *It is submitted that the cheques issued by the Respondent had bounced and that is reflected in the statement of accounts produced along with the Application. It may be noted that even the Respondent does not have a case that there is no debt or default that is less than One lakh.*
 11. *It is submitted that the appropriation of the amounts received by way of selling the shares pledged is strictly as per the terms of the contract. The Respondent has no case that the value of those shares would discharge the entire debt. As per the series of judgments of the Hon'ble Supreme Court and Hon'ble Appellate Authority, what is relevant is as to whether the applicant has made out a case establishing default under Section 7 of the Code.*
 12. *In view of the above submissions, it is respectfully submitted that the objections of the Respondent have no relevance and the Petitioner, by its own documents have conclusively proved the existence of debt and default for the purposes of section 7 of I & B Code. Hence, it is humbly prayed that this Hon'ble Tribunal may be pleased to admit the petition and initiate the corporate insolvency resolution proceedings against the Respondent company.*
9. In addition to the above stated contentions, the petitioner in response to some information/clarification as sought for by this Adjudicating Authority, further filed a supplementary affidavit. The relevant paragraphs of the same are being reproduced hereinbelow;
3. *It is submitted that the default on the party of the Corporate Debtor is proved by way of documents produced by the Applicant as well as those admitted by the Corporate Debtor.*
 4. *The Applicant herein had sanctioned loan to the Corporate Debtor, i.e. Pipavav Marine and Offshore Limited (now renamed as RMOL*

Engineering and Offshore Limited) for an amount of INR 202.02 Crores with the following securities;

- i. Pledge of shares of Pipavav Defense and Offshore Engineering Company Limited (Now RNEL), Everonn Education, and Skill Infra Limited.
- ii. Exclusive mortgage on industrial plot of land Jhansi.
- iii. Mortgage on second charge basis on 9 acres of land at Navi Mumbai
- iv. Personal Guarantees of Mr. Nikhil Gandhi & Mr. Bhavesh Gandhi
- v. Corporate Guarantee of RNEL
- vi. PDCs

5. Due to the defaults on the part of the Corporate Debtor, Financial Creditor herein was constrained to initiate enforcement actions on the securities available. This led to discussions between the Pledgers and the Applicant / Financial Creditor herein. Pursuant to the said discussions, it was agreed that instead of release of shares (due to the takeover of the Borrower Company by Reliance Group) as claimed by the pledgers, the sale proceeds of the shares were appropriated towards the dues of the subsidiaries where the Pledgers too had financial indebtedness. Further, the shares were replaced with tangible securities in the form of mortgage of Jhashi and Uran Land on exclusive first charge basis. The letter of the Pledgers, dated 22.11.2017, is produced herewith and marked as Annexure-A/1.

6. The total liquid assets/securities/pledge shares etc. with the Applicant herein against the debt of RMOL and those that are sold/exhausted with amount realized and also those that are still unexhausted and available to the Applicant herein along their respective present market value is as follows:

- At the time of disbursement of the loan:

1,54,25,819 shares of Skill Infra Ltd.
70,00,000 shares of PDOECL (RNEL)
8,00,000 shares of Everonn Education
2 nd Charge on land on 9 acre at Uran, Navi Mumbai (was also charged to IFCI venture)
CG of RNEL
PG of Mr. Nikhil Gandhi & Mr. Bhavesh Gandhi
PDC

- Over the course of the loan agreement, some shares were sold for clearance of default and top-up for maintaining the

stipulated security cover. However, 1st charge on Jhansi Land of 88 acres was added as security available to the Financial Creditor herein.

- After appropriation of INR 21 crores to IFCI Venture and IFCI factors, the change in security structure was as follows:

Before Appropriation	After Appropriation
8530460 shares of Skil Infrastructure	1,84,30,460 shares of SKIL Infrastructure
2 nd charge on Uran land of 9 acres with IFCI venture	Exclusive charge on Uran land of 9 acres
1 st charge on Jhansi land	Exclusive charge on Jhansi land plus additional 18 acres of Land at Jhasi.

- Present security:

Pledge of 1,06,591 shares of Everonn Education having NIL valuation since share is unlisted because of ban by SEBI
Pledge of 1,84,30,460 shares of SKIL infrastructure with valuation of around Rs.10 crores However, the share trading volume is very low
CG of RNEL
PG of Mr. Nikil Gandhi & Mr. Bhavesh Gandhi
Exclusive Mortgage of 9 acres land at Navi Mumbai
1 st charge on exclusive basis on industrial plot of land at Jhansi of 106 acres

7. It is submitted that, on the basis of the above, it is clear that even if the sale proceeds realized from the sale of shares was appropriated or adjusted towards the dues of the Corporate Debtor, there is still a huge liability of more than INR 100 crores owed to the Financial Creditor / Applicant herein as on date. Since the debt and default is persisting, the present petition under section 7 of I & B Code filed by the Financial Creditor herein is liable to be admitted.

8. It is submitted that the due after exhausting/selling the liquid assets/securities/pledge shares etc. is as follows:

- The Principal Outstanding is INR 1,13,74,87,500.00, and;
- The Interest outstanding is INR 90,59,19,986.30 as on 15.03.2019 (since interest is payable half yearly the next due date of interest shall be 15.09.2019)

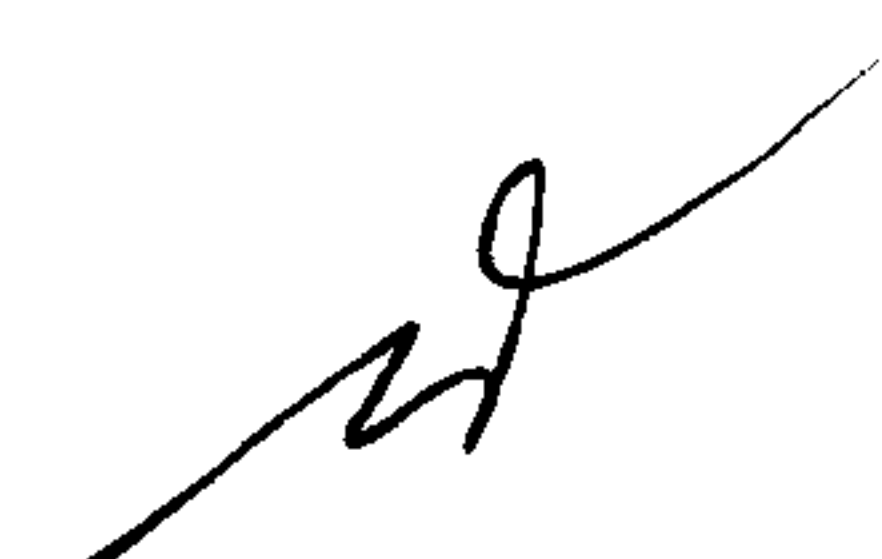
9. As on 16.08.2019, the total debt due is INR 222,08,49,156.30 which is bifurcated as follows:
- Principal Outstanding is Rs.113,74,87,500.00
 - Interest Outstanding is Rs.90,59,19,986.30 (up to 15.03.2019)
 - Other Charges Rs.89925/-
 - Interest Accrued (from 15.03.2019 to 16.08.2019) is INR 17,73,51,745/-
10. As per corporate loan agreement dated 30.03.2013 between the Corporate Debtor, i.e., PMOL (now RMOL) and the Financial Creditor herein, the Corporate Debtor was liable to pay the principal due in 16 equal instalments each of INR 12,63,87,500/- from 15.03.2013 to 15.12.2017. Page 35 of the said agreement, i.e, Schedule III – Amortization Schedule lays out this schedule with respective dates for paying the instalments.
11. The disbursement of the loan amount was supposed to happen on 30.03.2013, however, due to delayed submission of required pre disbursement conditions, disbursement was done in the following tranches:

19/09/13	5000,00,000.00
20/09/13	5000,00,000.00
23/09/13	5000,00,000.00
24/09/13	5222,00,000.00

The revised repayment schedule is produced herewith and marked as **Annexure-A/2** for the kind reference of this Hon'ble Tribunal. It is submitted that the respondent corporate debtor **had paid the seven instalments from 15.12.2014 till 15.06.2016 but defaulted on all the instalments due from 15.09.2016 onwards.**

12. In view of the above submissions, it is respectfully submitted that the objections raised by the Respondent corporate debtor have no relevance and the Petitioner, by its own documents have conclusively proved the existence of debt and default for the purposes of section 7 of I & B Code. Hence, it is humbly prayed that this Hon'ble Tribunal may be pleased to admit the petition and initiate the corporate insolvency proceedings against the Respondent Company".

✓



10. In response to the above stated pleadings of the petition, the corporate debtor company made appearance through its Ld. Counsel and filed its reply/objection by opposing the IB Petition. The relevant extract thereof are being reproduced hereinbelow:

2. *It is stated that the Petition is not maintainable and deserves to be dismissed for the reasons set out herein amongst other reasons, each of which is without prejudice to the other and in the alternative.*

3.1 *The Corporate Debtor i.e. Reliance Marine and Offshore Limited ["RMOL"], is a Company incorporated under the provisions of the Companies Act, 1956 and is inter alia engaged in the business of Offshore business pertaining to oil and gas. The Corporate Debtor was earlier known as Pipavav Marine and Off-Shore Ltd., which name was subsequently changed to Reliance Marine and Offshore Ltd. w.e.f. 11.03.2016.*

3.2 *The Corporate Debtor as it then was i.e. M/s. Pipavav Marine and Offshore Limited entered into a Corporate Loan Agreement dated 30.03.2013 ("Corporate Loan Agreement") with the Financial Creditor for a corporate loan of amount of **Rs.202,22,00,000/- (Rupees Two Hundred and Two Crores Twenty Two Lakhs only)**. It is pertinent to note that as per the said Agreement, the tenure of the Loan is 5 years from the date of disbursement of the loan. In respect of the facilities, the Loan Agreement, enabled pledge of shares of Reliance Defense and Engineering Company Limited, Everonn Education Ltd. and SKIL Infrastructure Ltd. furnished Personal Guarantee of Mr. Nikhil Gandhi and Mr. Bhavesh Gandhi, furnished Corporate Guarantee of RDEL, enabled creation of mortgage of properties situated at Navi Mumbai and Jhansi, Uttar Pradesh, etc. and enabled creation of securities for securing the loan sanctioned by the Financial Creditor.*

3.3 *The filing of the present proceedings is de hors the Corporate Loan Agreement dated 30.03.2013, which provides as under:*

"6.3 REMEDY IN CASE OF OCCURRENCE OF EVENT OF DEFAULT

In the event of default the Lender shall inter alia initiate legal action against the Borrower/pledger(s) for recovery

of the dues which may/may not include any of the following acts by the Lender:

- a) initiate legal action against the Borrower/Mortgagor and the pledger(s) for recovery of the dues.
- b) Sell the pledged shares after giving a reasonable notice and without any intervention of the courts.
- c) Exercise all or any of the rights conferred in terms of the Share Pledge Agreement and the Power of attorney, and/or in case, the Lender exercises its discretion, first to invoke the remedy available under the Share Pledge Agreement, and sell the shares and in the event of such sale, there is any shortfall in the recovery, the Lender shall proceed to recover the shortfall from the Borrower under the applicable laws.
- d) The Lender shall have the right to sell the mortgaged property in the market without any intervention of the Courts.
- e) In the event the Post Dated Cheques issued by the Borrower in favour of IFCI are dishonoured and the Borrower is unable to discharge its liability within seven (7) days from the date of dishonour of the cheques, IFCI shall have the right to take recourse to initiating appropriate proceedings in law against the Borrower for dishonour of cheques.
- f) The Lender shall reserve its right to recover the dues as per the applicable law of the Land prevailing at the time of the happening of an Event of Default.
- g) Sell the shares of escrowed in favour of IFCI through Non Disposal Agreement along with Irrecoverable Power of Attorney in the market transfer the said shares in its own name without any specific notice in this regard, and without intervention of court.
- h) The Lender shall exercise the above rights in any other order of preference as per its discretion.

Any shortfall from the sale of shares and property mortgaged shall be recoverable from the Borrower and the Guarantor(s)".

- 3.4 The Financial Creditor, vide a Notice dated 29.05.2017 had called upon the Corporate Debtor to pay an amount of Rs.143,14,20,006/- within a period of 7 days. It is pertinent to note that the said Notice was issued unilaterally and arbitrarily without giving proper reasons for issuing the said Notice even prior to the expiry of the tenure of the loan.

- 3.3 The Corporate Debtor, vide its letter dated 13.07.2017, requested the Chief General Manager of the Financial Creditor to invoke the underlying securities of pledge of shares of Reliance Defence and Engineering Limited and SKIL Infrastructure Limited, both amounting to **Rs.62.13 cores**, and thereby service the debt by adjusting the sale proceeds with the outstanding debt. The Corporate Debtor further requested the Financial Creditor to allow the Corporate Debtor to have a suitable refinancing solution so that the entire Credit Facility can be repaid in a phased manner without affecting the operations of the Corporate Debtor.
- 3.6 Despite further security of Rs.90 crores being available with the Financial Creditor, the Financial Creditor did not take steps to recover the same. The Financial Creditor instead, filed proceedings against the Corporate Debtor before this Hon'ble Tribunal. This was in complete contravention of the provisions of Clause 6.3 of the Corporate Loan Agreement which required the Financial Creditor to exhaust all available securities with it before proceeding further.
- 3.7 In spite of the aforementioned communications and without considering the interests of either RMOL or the interests of other financial creditors, and without taking steps to recover amounts held as security in terms of the Corporate Loan Agreement, the Financial Creditor has sought to invoke the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") against RNEL and has filed the present Petition under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process ("CIRP").
- 3.9 The Corporate Debtor by an email dated 22.11.2017, informed the Financial Creditor that it would be submitting a formal proposal for restructuring of the outstanding dues shortly to the Financial Creditor so as to facilitate withdrawal of the petition at NCLT. In the meanwhile, the Corporate Debtor offered to pay a token adjustable **amount of Rs.5,00,00,000/-** to demonstrate its commitment towards resolution.
- 3.11 The Financial Creditor vide an email dated 23.11.2017, informed the Corporate Debtor, that it appreciates the progress and initiative taken by them for the mutual benefit of both the institutions. However, the Financial Creditor claimed that in view of its poor financials, the proposal was rejected. This is not maintainable under the Code which is a code for reorganization and insolvency resolution of corporate persons.

3.12 *The Corporate Debtor vide an email dated 23.11.2017, clarified that it had never agreed to pay Rs.15 crore each as mentioned in the mail dated 23.11.2017 of the Financial Creditor; and at all times, its endeavour was to keep the upfront payment at the bare minimum and that it had offered to pay Rs.5,00,00,000/- upfront to work out an acceptable solution.*

4.1 *The present Petition in the current form is not maintainable inasmuch as the Financial Creditor has not stated as to how (i) the said amount of Rs.159,61,82,597/- has been defaulted by the Corporate Debtor; and (ii) the date of default is 15.09.2016.*

4.2 *The Financial Creditor has failed to produce the Computation of the amount of Default and the days of default in a tabular form, which is pre-requisite for filing of a petition under Section 7 of the Code.*

5.2 *The Corporate Debtor has vide a Letter dated 23.07.2013 had provided the Financial Creditor with 16 post dated Cheques issued in favour of the Financial Creditor against the 16 instalments payable by the Corporate Debtor. Annexed hereto and marked as Annexure-R/11 is a copy of the Letter dated 23.07.2013 along with copies of the Cheques issued by the Corporate Debtor in favour of the Financial Creditor. Assuming without admitting, the liability of the Corporate Debtor to pay the entire amount towards the loan facilities provided by the Financial Creditor, then also, the cheques issued by the Corporate Debtor is sufficient for the Financial Creditor to realize the outstanding amount, if any. In view of the issuance of the cheques in favour of the Financial Creditor, the Financial Creditor cannot in any manner claim that there is a default. In any case, the Financial Creditor has not even averred or made a statement with regards to the occurrence of the alleged default, which itself requires rejection of the present petition.*

8.1 *It is also submitted that various parties have challenged the constitutional validity and legality of Section 7 of the Code before the High Court of Gujarat and even other High Court. In the event that the said provision is struck down, then the present process would have an irreversible affect and therefore, it would be in the fitness of justice and equity that the present petition be kept in abeyance till the High Courts arrive at a decision.*

11. In addition to the above, the corporate debtor filed its written submission. For the sake of convenience, the

relevant paragraphs of the same are being reproduced hereinbelow:

2.2 *The Corporate Debtor as it then was i.e. M/s. Pipavav Marine and Offshore Limited entered into a Corporate Loan Agreement dated 30.03.2013 ("Corporate Loan Agreement") (Please refer Page Nos.82 to 121 to the Application) of the said Application with the Financial Creditor for a corporate loan of an amount of Rs.202,22,00,000/- (Rupees Two Hundred and Two Crores Twenty Two Lakhs only). It is pertinent to note that as per the said Agreement, the tenure of the Loan is 5 years from the date of disbursement of the loan. In respect of the facilities, the Loan Agreement, enabled pledge of shares of Reliance Defense and Engineering Company Limited ["RDEL"], Everonn Education Ltd. and SKIL Infrastructure Ltd. furnished Personal Guarantee of Mr. Nikhil Gandhi and Mr. Bhavesh Gandhi, furnished Corporate Guarantee of RDEL, enabled creation of mortgage of properties situated at Navi Mumbai and Jhansi, Uttar Pradesh, etc. and enabled creation of securities for securing the loan sanctioned by the Financial Creditor. The detailed particulars of the securities furnished and executed by the borrower in pursuance to the Loan Agreement are as under:*

Sr. No.	Securities / Documents
1	<i>Agreement of pledge of shares of Reliance Defence and Engineering Limited and Everonn Education Limited and 10.07.2013 by SKIL Infrastructure Limited together with Irrecoverable Power of Attorney [Please refer Page Nos.51 to 66 to the Application].</i>
2	<i>Agreement for pledge of shares of SKIL Infrastructure limited dated 19.07.2013 by Mr. Nikhil Gandhi and Mr. Bhavesh Gandhi (Partners of M/s. Metropolitan Industries) together with Irrecoverable Power of Attorney [Please refer Page Nos. 67 to 81 to the Application]</i>
3	<i>Deed of Personal Guarantee dated 01.04.2013 executed by Mr. Nikhil Gandhi and Mr. Bhavesh Gandhi in favour of the Financial Creditor. [Please refer Page Nos. 24 to 36 to the Application]</i>
4	<i>Deed of Corporate Guarantee dated 25.06.2013 executed by Reliance Defence and Engineering Limited in favour of the Financial Creditor; [Please refer Page Nos. 37 to 50 to the Application]</i>
5	<i>Declaration & Undertaking executed by Ashwini Infrastructure Private Limited dated 20.03.2015 in respect of land admeasuring 4.02 hectares situated at village Keygaon, Taluka Uran, District Raigad, Maharashtra on second charge</i>

	<i>basis, [Please refer Page Nos.170 to 177 to the Application]</i>
6	<p><i>Declaration and Undertaking executed by Budding Mercantile Company Private Limited and Winsome Realty Private Limited dated 23.06.2014 in respect of the following properties total admeasuring 35.79 hectares on second charge basis:</i></p> <p><i>a) All that piece and parcel of land comprising in Khata No.52,163,181,162 and 24 situated at village Dongri, District Jhansi, Uttar Pradesh admeasuring 17,325 hectares or thereabouts owned by Budding Mercantile Company Private Limited.</i></p> <p><i>b) All that pieces and parcels of land comprising in Khata No.52,163, 164, 181 and 232 situated at village Dongri, District Jhansi, Uttar Pradesh admeasuring 18,462 hectares or thereabouts owned by Winsome Realty Private Limited</i></p> <p><i>[Please refer Page No.161 to 168 to the Application].</i></p>

- 2.4 *The Financial Creditor, vide a Notice dated 29.05.2017 had called upon the Corporate Debtor to pay an amount of Rs.143,14,20,006/- within a period of 7 days. It is pertinent to note that the said Notice was issued unilaterally and arbitrarily without giving proper reasons for issuing the said Notice even prior to the expiry of the tenure of the loan. [Please refer Page Nos.225 to 231 to the Objections]*
- 2.5 *The Financial Creditor, vide its letter dated 07.07.2017 and 12.07.2017, informed the Corporate Debtor that it has a right to enforce the securities available with it and that the Financial Creditor had already initiated the process of enforcing the right to sell the shares and recover over dues. [Please refer Page Nos.232 to 235 to the Objections]*
- 2.6 *Further, the Corporate Debtor, vide its letter dated 13.07.2017, requested the Chief General Manager of the Financial Creditor to invoke the underlying securities of pledge of shares of Reliance Defence and Engineering Limited and SKIL Infrastructure Limited, both amounting to Rs.62.13 cores, and thereby service the debt by adjusting the sale proceeds against the outstanding debt. The Corporate Debtor had further requested the Financial Creditor to allow the Corporate Debtor to have a suitable refinancing solution so that the entire Credit Facility can be repaid in a phased manner without affecting the operations of the Corporate Debtor [Please refer to Page Nos.236 to 237 to the Objections].*
- 2.7 *Pursuant to its earlier Notices dated 07.07.2017 and 12.07.2017 and a letter dated 14.07.2017 addressed to the Corporate Debtor, the Financial Creditor, on 13.07.2017 and 14.07.2017 had sold the pledged shares [Please refer to Page No. 238 to the Objections].*

2.8 The Corporate Debtor vide its letters dated 18.07.2017 and 20.07.2017 requested the Financial Creditor to adjust the sale proceeds of the sale of shares of Reliance Defence and Engineering Limited and SKIL Infrastructure Limited against the over dues amounting to Rs.62.13 crores. The Corporate Debtor had also requested to provide the Corporate Debtor with the balance outstanding with a detailed account statement for reconciliation. [Please refer Page Nos. 239 to 240 to the Objections].

2.9 Further, even after sale of the aforementioned pledged shares, below mentioned securities were/are still lying with the Financial Creditor for liquidation purpose

Sr. No.	Particulars	Rate	Value at present (in Rs.) (in Crs.)
1	SKIL Shares held by Nikhil Gandhi and Bhavesh Gandhi (85 Lakh shares)	Rs.34.70/- share	29
2	Everon Education Shares held by SKIL (1.07 lakh shares)	*Not currently traded)	
3	Third Party Land at Navi Mumbai (9 acres)	Rs.1.86 Cr/Ha	7
4	Third Party land at Jhansi (88.39 acres)	Rs.1.50 Cr/Ha	54
5	Corporate Guarantee of RNEL		
6	Personal Guarantee of Mr.Nikhil Gandhi and Mr.Bhavesh Gandhi		
	TOTAL		90

2.10 Thus, despite further security of Rs.90 crores being available with the Financial Creditor, the Financial Creditor did not take steps to recover the same. The Financial Creditor instead, filed proceedings against the Corporate Debtor instead, filed proceedings against the Corporate Debtor before this Hon'ble Tribunal. It is submitted that the said action on part of the Financial Creditor was in complete contravention of the provisions of Clause 6.3 of the Corporate Loan Agreement which required the Financial Creditor to the exhaust all available securities with it before proceeding further. It is submitted that in spite of the aforementioned communications and without considering the interests of either the Corporate Debtor or the interests of other financial creditors, and without taking steps to recover amounts held as security in terms of the Corporate Loan Agreement, the Financial Creditor has sought to invoke the provisions of the Code against the Corporate Debtor and has held the present Petition under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process.

2.12 Subsequently, the Corporate Debtor by an email dated 22.11.2017, informed the Financial Creditor that **it would be submitting a formal proposal for restructuring of the outstanding dues shortly to the Financial Creditor so as to facilitate withdrawal of the petition, filed before this**

Hon'ble Tribunal. In the meanwhile, the Corporate Debtor offered to pay a token adjustable amount of Rs.5,00,00,000/- to demonstrate its commitment towards resolution.

[Please refer page No.241 to the Objections]

2.14 Further, the Financial Creditor vide an email dated 23.11.2017, had informed the Corporate Debtor, that it appreciates the progress and initiative taken by them for the mutual benefit of both the institutions. However, the Financial Creditor claimed that in view of its poor financials, the proposal was rejected; It is submitted that this is not permissible under the Code as the enactment of the same is for reorganization and insolvency resolution of corporate persons.

[Please refer Page No. 243 to the Objections]

2.15 The Corporate Debtor, in response to the aforementioned email dated 23.11.2017, vide its email dated 23.11.2017, clarified that it had never agreed to pay Rs. 15 crores each as mentioned in the mail dated 23.11.2017 of the Financial Creditor; and at all times, its endeavour was to keep the upfront payment at the bare minimum and that it had offered to pay Rs.5,00,00,000/- upfront to work out an acceptable solution.

[Please refer Page No. 244 to the Objections]

12. The Petitioner contends that at the time of availing the credit facilities, the respondent-corporate debtor company, including the co-borrowers/guarantors had agreed to and assured the Petitioner-Financial Creditor that the loan/credit facilities as availed by it would be repaid as per the terms and conditions of the repayment schedule of the Loan Agreement(s), but the same could not be materialised despite its repeated requests, reminders and personal follow-up, the respondent-corporate debtor company/its borrower/its guarantors did not pay the remaining/outstanding instalments to the petitioner-financial creditor.

✓

[Handwritten signature]

13. Even the Respondent-Corporate Debtor could not come forward to make upfront payment of **Rs.15 crore** for debts restructuring and to explore possibility for settlement. In fact, the corporate debtor also had offered payment of Rs.5 crore as upfront payment, which was not acceptable to the petitioner, being too low offer, as the outstanding debt is more than of Rs.100 crores. Thereafter, the corporate debtor did not even make payment such Rs.5 crores as offered by itself as upfront payment towards proposed settlement. Thus, it is evident that the corporate debtor has not denied its principal loan liability, but only disputing amount of debts due and payable. While undisputedly, the default of debt is more than Rs.150 crore, even as per the amount of upfront payment for settlement is more than above Rs.15 crores, as the bank itself insisted for making payment of Rs.15 crores initially so as to consider the debts restructuring scheme. Moreover, the corporate debtor itself has offered Rs.5 crores as upfront payment towards its proposal for settlement and for restructuring of debts, which is self-evident that the default of debts has been occurred and which is more than Rs.5 crore as admitted by the corporate debtor itself. Hence, Corporate Insolvency Resolution Process can be triggered in respect of the corporate debtor company on this limited ground alone by

↙



declaring Moratorium and by appointing an Interim Resolution Professional.

14. The Petitioner-Financial Creditor, in support of the present IB Petition, has duly filed a copy of Power of Attorney, issued by the Authorized Signatories of the Petitioner-IFCI Limited, whereby it has authorized Ms. Sara Najmi, Assistant General Manager (Law) Petitioner, for the purpose of filing the present IB petition on its behalf, such Power of Attorney/Authorization seems to be in order and can be acted upon for the purpose of filing the present IB Petition.
15. In addition to the above, the Petitioner-Financial Creditor duly proposed the name of the IRP, **Mr.S. Gopalakrishnan**, Registration No. IBBI/IPA-002/IP-N00151/ 2017-18/10398 (having address at Unit No.1507, 15th Floor, B-Wing, One KBC, Plot No.C-66, G-Block, BKC, Bandra East, Mumbai-400 051, E-mail Address: gopi63.ip@gmail.com), in respect of the present Insolvency Application, which satisfy the requirement of Section 7(3)(b) of the I & B Code. In addition to the above, the Petitioner-Financial Creditor has further annexed a Written Communication (Exhibit-B) received from the proposed Interim Resolution Professional by giving his consent in prescribed Form 2 and further declaring that there is no disciplinary proceeding pending against him.

16. We heard the rival submissions made by the Ld. Counsel, Mr. P.V. Dinesh along with Mr. Vishal Raval for the Petitioner-Financial Creditor and Mr. Saurabh Soparkar, Senior Advocate, along with Mr. Raheel S. Patel, Ms. Kamyas S. Shah, Advocates, for the Respondent-Corporate Debtor. We examined the pleadings of the present IB Petition as well as reply/objection filed by the corporate debtor and have also gone through the written argument filed by the Ld. Counsels for both the parties. We perused the Loan documents annexed therewith.

17. It may be seen that the present IB Petition has been filed under the provisions of Section 7 of the I & B Code and Rules Applicable. The relevant provisions (of Section 7) of the IB Code reads as under;

7. Initiation of Corporate Insolvency Resolution Process by Financial Creditor.

(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:

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.

18. A perusal of the materials available on record, i.e. Loan Agreement / security documents, and in the light of the above stated statutory provisions, undisputedly establishes and confirms this fact that the Petitioner-Financial Creditor had duly sanctioned and disbursed various loan/credit facilities to the Respondent-Corporate Debtor company, i.e. erstwhile **Pipavav Marine and Offshore Limited**, the same was availed and utilized by it. Later on, the corporate debtor company was taken over by another company and renamed as **Reliance Marine and Offshore Ltd.** and it was further renamed as **RMOL Engineering and Offshore Limited**. As per loan documents available on record, the

Respondent-Corporate Debtor company duly confirmed its debts liability and even had sought for renewal of outstanding loan from time to time, but it has made default in making repayment of the same. Since the Respondent-Corporate Debtor company was irregular in making repayment of loan/credit facilities availed by it, the account of the Respondent-Corporate Debtor was classified as Non-Performing Asset (NPA) with effect from 31.03.2017 (as per the guidelines issued by the Reserve Bank of India). Thus, it may be seen that the default of debt is well established. The amount towards outstanding loan still remains as unpaid, such satisfies the requirement of Section 3(11) and (12) of the I &B Code so as to trigger the Corporate Insolvency Resolution Process in respect of the Corporate Debtor company. The relevant provisions of Section 3(11) and 3(12) of the Code may be reproduced hereunder:

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(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 repaid by the debtor or the corporate debtor, as the case may be.

19. In addition to the above, the Hon'ble Supreme Court in the matter of **M/s. Innoventive Industries Ltd. vs. ICICI Bank &Anr. [Civil Appeal Nos.8337-8338 of 2017]** has ruled such that if the Adjudicating Authority is satisfied that there is a

debt and default has been occurred, then the Adjudicating Authority is bound to admit the Application. For the sake of convenience, the relevant portion of the aforesaid Judgment of the Hon'ble Supreme Court is being reproduced hereinbelow:

"27. *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.*

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"**

20. In addition to the above, the **Hon'ble NCLAT in its another decision in Unigreen Global (P.) Ltd. V. Punjab National Bank [2018] 89 taxman.com 17/145 SCL 272 (NCL-AT)**, has pleased to observe and held as such;

"Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under section 11. If all the information are provided by an applicant as required under section 10 and form 6 and if the corporate applicant is otherwise not ineligible under section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground. Any fact unrelated or beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded Non-disclosure of any fact, unrelated to section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the corporate applicant has not come with clean handWhere the Adjudicating

↑

Authority has noticed the extraneous factors unrelated to the resolution process not required to be disclosed in terms of section 10 or Form 6 and as the suits referred to were related to dispute between third parties, and not the Corporate Debtor, the adjudicating authority erred in rejecting the application on the ground of suppression of facts”.

21. By following the above stated legal proposition as settled by the Hon'ble Supreme Court and the Hon'ble NCLAT in the above referred decisions, it is clear that this Adjudicating Authority is not expected to examine/seek for additional information/documents, which are not mandatory in the prescribed format of the application, which cannot be considered with while deciding the issue of admission or otherwise of the present IB petition, because the I& B Code itself is a self-contained Code and the theme and object of the Code is to seek resolution for the Corporate Debtor to re-organize and to maximise the assets of the company. It is not necessarily a forum for recovery of debts. Hence, in our humble view, the stipulated condition clause 6.3 of the loan agreement may not be relevant to IB proceedings nor it can forbid a party to exercise its statutory right conferred to it under the provisions of the I & B Code, because the remedy provided under the code is remedy in Rem. by initiating Corporate Insolvency Resolution Process and declaring Moratorium. Hence, it cannot be treated as Forum for recovery of debts due. It is also a well settled legal position that the present I& B Code, 2016 being a self-

contained Code, having an overriding effect under Section 238 over the other Laws. Moreover, Section 11 of the Code described well about ineligibility condition to prevent from filing the IB Petition, which nowhere stipulates such that a party to contract is estopped to or prohibited to move a petition under the I&B Code in this Court, due to some agreed clause or stipulated condition in the loan agreement or such IB Petition will be subject to such agreed terms and conditions of the contract. Since Section 11 of the Code is silent in this respect nor it creates any fetter for filing such IB Petition, subject to conformity with some agreed terms. Moreover, in fact, it is a well settled legal position that a contract with consent of its parties neither can confer a jurisdiction to the Court, if the Court is not having such jurisdiction nor can oust the jurisdiction of the court of law possess. It is the competent Court of Law alone that can exercise its jurisdiction to do the justice in respect of Agreement clause, further such clause is redundant to the extent, it goes inconsistent with statute / legalisation or hit by the public policy as per Section 23 of the Indian Contract Act. Thus a contract or agreement clause cannot prevail over the statutory provision and it is redundant to this extent.

22. Our above stated findings and observations, find support from a decision of the Hon'ble Gujarat High Court in the

matter of **Snehalkumar Sarabhai vs. Economic Transport Organization (AIR 1975 Guj 72)** wherein **Hon'ble Justice M. Thakkar** (as his Lordship then was) observe and held as such;

"While parties can lawfully enter into an agreement to restrict a dispute to a particular Court having jurisdiction, that stipulation though valid cannot take away the jurisdiction of the Court, which admittedly has jurisdiction. The ouster clause can operate as estoppels against the parties to the contract. It cannot tie the hands of the Court and denude it of the Power to do justice. It is no doubt true that ordinarily Courts would respect the agreement between the Parties..... but the Courts are not obliged to do so in every case..... In this back-drop the question assumes importance whether the stipulation to confine the jurisdiction in one of the Courts rob the excluded Court of its Power to \neq the suit..... But the Court on its Part is not bound by the stipulation. The stipulation can be ignored by the excluded Court which otherwise possesses jurisdiction..... In such cases the Court will doubtless refuse to respect the contractual commitments made by the contesting parties. In such circumstances the Court should ignore the ouster clause and should exercise its jurisdiction".

23. It is pertinent to mention here that above referred decision was approved by the **Hon'ble Supreme Court in the matter of ABC Laminart Pvt. Ltd. & Anr. vs. AP Agencies, Salem,** (1989) 2 SCC... page 162.
24. In addition to the above stated decision of Division Bench of Hon'ble Calcutta High Court took similar view in the matter of **Universal Petrochemicals Ltd. vs. Rajasthan State Electricity** [AIR 2001 (at page No.102)] where held that the statutory provision will obviously override any agreement between the parties and a private contract cannot override a statute. Further, the Hon'ble Calcutta High Court pleased to place reliance on the above referred decision of

✓

✓

the Hon'ble Gujarat High Court in the matter of **Snehalkumar Sarabhai vs. Economic Transport Organization** and concurred with same by observing that it is well settled principle of law that the act of the parties cannot defeat the intention of the Legislature. A statutory provision is the sovereign will of the legislature and the same binds every one and certainly the parties who are coming under it unless the provision is made subject to contract or the law is repealed or declared unconstitutional by a competent Court. It is well settled that there can be no contract which could defeat the provision of any law.

25. In view of the above stated Judicial Precedent, the objection of the respondent-corporate debtor company must fail and cannot be accepted, so as to debar the Petitioner-Financial Creditor from filing the present IB Petition. Hence, it is rejected.
26. The Respondent-Corporate Debtor in its reply/objection has raised the question of constitution validity of Section 7 & 14 of the Insolvency and Bankruptcy Code, 2016. However, it is now well settled that I & B Code has already faced reasonability test and challenges^d to its constitutional validity before the Hon'ble Supreme Court time to time in various case like **Surendra Trading Company vs. J.K. Jute Mills, Innoventive vs. ICICI Bank** (Civil Appeal No.8400 of

↖

↗

2017), etc., which upheld the reasonability of the I & B Code and further the Hon'ble Supreme Court in its recent decision in the matter of **Swiss Ribbon v/s. Union of India** (Writ Petition No.99 of 2018) and **Pioneer Urban Land and Infrastructure Ltd. vs. Union of India** (Writ Petition No.43 of 2019, decided on 9th August, 2019) has already held that the provisions of Section 7 and 9 of the I & B Code are not discriminatory to nor *ultra vires* of the Constitution of India. Hence, such plea/objection of the Respondent-Corporate Debtor must fail and liable to be rejected.

27. In the light of the aforesaid observations, we, being an Adjudicating Authority, find that the present IB Petition, filed under Section 7 of the I & B Code, is well maintainable, because as per record, the Corporate Debtor has not disputed its loan liabilities / credit facilities availed by it.
28. Thus, as per record, the default has been occurred in respect of making payment of loan amount has been occurred to the extent of **Rs.159,61,82,597/-**(Rupees One Hundred Fifty Nine Crore Sixty One Lakh Eighty Two Thousand Five Hundred and Ninety Seven only) as on 30th September, 2017 along with payment of interest as per contractual rate of interest as the date of default is mentioned as 15.09.2016, the present IB Petition is found to



be filed well within limitation and it deserves for its admission.

29. Moreover, it is a matter of record that the Corporate Debtor Company itself made a proposal for settling the debt by offering Rs.5,00,00,000/- Lakhs (Rupees Five Crores only) as a token for adjusting amount in order to show its *bona fide*. As even such amount has not been paid by the corporate debtor, it is sufficient ground for initiation of CIRP, because default is of more than Rs.1 lakh
30. Hence, the objection of the corporate debtor company, in respect of the Agreement Clause 6.3, is not legally sustainable so as to reject the present IB Petition filed by the Financial Creditor, because a contract/agreement cannot override a statute while the present IB Code is having overriding clause under Section 238 of the Code, it must prevail over the parties coming under it.
31. Further, this Adjudicating Authority is of the considered view that the I & B Code is self-contained and remedy of being sought for is the remedy in rem of the resolution and revival of the corporate debtor company.
32. Hence, this Adjudicating Authority hereby admits the Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor



company, for initiating Corporate Insolvency Resolution Process against the corporate debtor and declare moratorium with consequential directions as mentioned below:

- (i) This Adjudicating Authority hereby appoints proposed IRP, by the applicant, **Mr.S. Gopalakrishnan**, having Registration No.IBBI/IPA-002/IP-N00151/ 2017-18/10398, as “Interim Insolvency Resolution Professional” (having address at Unit No.1507, 15th Floor, B-Wing, One KBC, Plot No.C-66, G-Block, BKC, Bandra East, Mumbai-400 051,E-mail:gopi63.ip@gmail.com) under Section 13 (1) (c) of the Code.
- (ii) That the order of Moratorium under Section 14 of the Code shall come to effect from **21.08.2019** till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-section (1) of Section 31 or passes an order for Liquidation of Corporate Debtor under Section 33 as, the case may be.
- (iii) That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its

F



property including any action under the SARFAESI Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- (iv) That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
- (v) That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The IRP so appointed shall make public announcement of Corporate Insolvency Resolution Process be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
- (vii) The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *inter alia*, by Sections 17,18,20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not

✓




assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of its obligation imposed by Section 20 of I & B Code, 2016.

(ix) The Financial Creditor is directed to communicate a copy of this order to the Interim Resolution Professional, the Respondent Corporate Debtor and the Registrar of Companies, Gujarat.

33. Registry is directed to communicate a copy of this order to the Applicant-Financial Creditor, Respondent-Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities.

34. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.



(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

I am in agreement with the conclusion of the Admission of the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, with the following observations:

The Financial Creditor has claimed interest of Rs.90.59 crores on the Principal amount of Rs.113.75 crores at the interest rate of 20.50% (18.5% interest rate + 2% liquidated damages) from the date of default, i.e. 30.09.2017 to 15.03.2019.

In order to ensure a Resolution Plan for the Corporate Debtor viable and implementable in the era of Marginal Cost of funds based Lending Rate (MCLR) and competitive market, the Committee of Creditors/Resolution Applicant, while finalising Resolution Plan, may explore the possibility of loading interest rate maximum financial creditor's one year MCLR or one year MCLR + 1% from the date of default to the date of the implementation of the Resolution Plan.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)

SR