IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301- **C.P.(IB)/161(AHM)2023**
ITEM No.302 **IA/1343(AHM)2023 in C.P.(IB)/161(AHM)2023**

Order under Section 7 IBC

IN THE MATTER OF: C.P.(IB)/161(AHM)2023

DCM Shriram Credit & Investments Ltd ....**Applicant**
V/s
The Maharaja Salt Works Company Pvt Ltd ....**Respondent**

And
Order under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF: IA/1343(AHM)2023
The Maharaja Salt Works Company Pvt Ltd ....**Applicant**
V/s
DCM Shriram Credit & Investments Ltd ....**Respondent**

Order delivered on: 13/08/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

CP(IB)/161(AHM)2023
along with
IA/1343(AHM)2023

[An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of **M/s. The Maharaja Salt Works Company Pvt. Ltd.**

CP(IB)/161(AHM)2023
DCM Shriram Credit & Investment Limited
Having its Head Office at:
2nd Floor, World Mark-I, Aerocity,
New Delhi-110037

...Applicant/Financial Creditor

VERSUS

M/s The Maharaja Salt Works Company Private Limited
Having Address at:
Lavanpur, Village Bodki, Taluka
Maliya Miyana, District Morbi,
Gujarat- 363673

...Respondent/Corporate Debtor

IA/1343(AHM)2023

M/s The Maharaja Salt Works Company Private Limited
Having Address at:
Lavanpur, Village Bodki, Taluka
Maliya Miyana, District Morbi,
Gujarat- 363673

...Applicant/CD

VERSUS

DCM Shriram Credit & Investment Limited
Having its Head Office at:
2nd Floor, World Mark-I, Aerocity,
New Delhi-110037

...Respondent/FC

Order pronounced on: 13.08.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance

For the Applicant	: Mr. Navin Pahwa, Sr. Adv. a.w. Mr. Ravi Pahwa, Adv.
For the Respondent	: Mr. Sourabh Soparkar, Sr. Adv. a.w. Mr. Jaimin Dave, Adv.

ORDER

1. The Present Application was filed on 09.06.2023 by the Applicant- DCM Shriram Credit & Investments Limited (hereinafter referred to as **"Applicant/Financial Creditor"**) against the Respondent- M/s. The Maharaja Salt Works Co. Pvt. Ltd., (**"Respondent/Corporate Guarantor"**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **"IB (AAA) Rules, 2016"**) for

initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.11,30,03,498/-** including interest.

2. **Part-I of the Form-1** reveals that the Applicant is a Financial Institution which was incorporated on 10.07.1992. The Applicant is having address at: 2nd Floor, World Mark-I, Aerocity, New Delhi-110037.

3. It is submitted that the present application has been filed by Mr. B.K. Khurana, being the Authorized Representative of the Applicant. That Mr. B.K. Khurana is authorized to sign the documents on behalf of the Applicant in terms of the Board Resolution dated 14.01.2020 (at Page 15 of CP).

4. **Part-II of the Form-1** states that the Corporate Debtor - M/s. The Maharaja Salt Works Company Pvt. Limited was incorporated on 17.08.1943 under CIN: U14220GJ1943PTC000790, having its registered office at: Lavanpur, Village Bodki, Taluka Maliya Miyana, District Morbi, Gujarat- 363670.

5. **Part-III of the Form-1** reveals that the Applicant has named IP Mr. Sunil Kumar Kabra, having Registration No. IBBI/IPA-001/IP-P01011/2017-18/11662 under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP)**. A copy of Form-AA is attached as **Annexure-C**.

6. **Part-IV of the Form-1** indicates, as on 01.04.2023, the amount in default is Rs.13,47,29,121/-(inclusive of interest) till 21.03.2023. Further, the Applicant has issued a Notice dated 06.04.2023 to the Corporate Debtor u/s 13(2) of the SARFAESI Act. A copy of Notice to the Corporate Debtor u/s 13(2) of the SARFAESI Act is annexed in the petition as **Exhibit P**.

7. The Applicant has relied upon the following documents: -

Annexure	Particulars
G	Hypothecation Agreement dated 03.03.2020
H	Mortgage Deed dated 03.03.2020
I Colly	Guarantee Deeds dated 03.03.2020.
J	Non-Disposal Undertaking, Promissory Note dated

	03.03.2020.
K	Long Term Salt Supply Agreement dated 03.03.2020.
L	Tripartite Agreement dated 03.03.2020.
N	Recall Notice dated 06.03.2023.
O	Corrigendum Notice dated 14.03.2023 to Recall Notice dated 06.03.2023.
P	Notice dated 06.04.2023 issued u/s 13(2) of SARFAESI Act.

8. It is submitted by the Applicant that the present application which is filed on 09.06.2023 is within the period of limitation.

9. In the **synopsis** filed by the Applicant along with the Company Petition it is submitted:-

   i. The respondent approached Applicant, which is a NBFC, for assistance in obtaining a Rupee Loan facility to the extent of INR 10,00,00,000/- (Rupees Ten Crores only) to the extent of 75% of the total investment in development of the salt works at their Versamedi unit and additional loan facility to the extent of INR 1,50,00,000/- (Rupees One Crore Fifty Lacs only) for the purpose of removal of existing charge on their current assets.

   ii. The Applicant agreed for the said financial assistance on execution of Rupee Loan Agreement as well as other consequential agreements such as Hypothecation agreement, Mortgage deed, Guarantee Deeds, Non-Disposal Promissory note, etc. Undertaking,

iii. Respondent agreed to pay interest on the principal amount and on the additional loan, at the interest rate specified in Schedule-I to the Rupee Loan, agreement provided that any interest accrued and remaining outstanding on the final repayment date shall be paid on that date.

iv. Respondent vide Tripartite Agreement authorised DCM Shriram Limited to deduct from the invoices of the material supplied by the Corporate Debtor sum of Rs. 125 per MT and to pay the same to the Applicant towards the loan amount of Rs. 10,00,00,000/- (Rupees ten crores only) and authorised DCM Shriram Limited to deduct from payment Rs. 25 per metric ton towards the additional loan to the extent of Rs. 1,50,00,000/- (Rupees one crore fifty lakhs only) and pay to the Applicant towards the repayment of the loan amount of Rs. 11,50,00,000/- (Rupees eleven crore fifty lakhs only) along with interest.

v. It was agreed that the respondent shall pay directly @ Rs.125/- per MT and Rs.25/- per MT to the Applicant on each invoice amount and the DCM Shriram Limited would pay the complete invoice amount directly to the respondent.

vi. The respondent having agreed to adhere to the Supply Agreement as well as the Repayment Schedule, the Applicant advanced a total loan of Rs. 11,30,03,498/- on different dated as below:

Date	Amount(in Rs.)
21.03.2020	1,45,00,000.
02.04.2020	1,00,00,000
07.04.2020	65,71,000
16.05.2020	1,13,00,000.
06.07.2020	1,62,00,000.
01.10.2020	78,39,068.
20.10.2020	68,81,250.
01.01.2021	56,27,915.
05.2021	46,95,379
20.04.2021	30,00,000.
22.04.2021	40,00,000.
25.05.2021	30,00,000.
10.01.2022	50,00,000.
18.01.2022	30,37,000.
21.03.2022	5,56,000
13.04.2022	5,42,000
26.04.2022	16,61,680
10.05.2022	23,00,175

27.05.2022	24,61,650
17.06.2022	21,22,818
18.07.2022	16,57,563
Total	**11,30,03,498**

vii. As per payment schedule, the first instalment was due by respondent to Applicant on 30.9.2020 and thereafter, the respondent was to make payment of Rs. 43,87,500 by 31.3.2021.

viii. However, the respondent failed to supply the contracted quantity to DCM Shriram Limited which resulted in the default in the payment as per the Schedule. As against the supply of 2 Lakh MT per year till today, respondent hardly supplied 30,831 MT over a period from April 2020 to 31st May 2023 to DCM Shriram Limited and only a payment of Rs. 9,35,000/- (Rs. 4,40,000 towards principal and Rs. 4,95,000 towards interest) have been made as against the repayment schedule and apart from that no other payment was made by the Corporate Debtor.

ix. The Applicant raised demand from the respondent.

x. As per the case of respondent, respondent had a meeting with DCM Shriram Limited and requested them to take the burden of interest to the extent of Rs.2.22 crores upon themselves which according to them they have agreed subject to terms and conditions as incorporated in the said minutes.

xi. However, the respondent failed to fulfil its obligations agreed to in the said Minutes. Hence, the minutes dated 31.7.2021 lost its significance.

xii. It is stated that there is a financial debt and the Corporate Debtor has committed a default in respect of that financial debt. It is further submitted that the default has occurred on 1.4.2021 and has continued thereafter, despite revision in repayment schedule, the Corporate Debtor failed to refund the amount as stipulated therein.

xiii. It is submitted by the Applicant that the Applicant lastly issued Recall Notice dated 6.3.2023 and thereafter, Corrigendum Notice dated 14.3.2023 to Recall Notice dated 6.3.2023 to the respondent.

10. To this the respondent filed a **reply** on 17.10.2023 vide Inward Diary dated D4097. The brief contentions of the Respondent in reply are as under:-

i. The First contention of the Respondent is that an Arbitration Proceeding is pending between the Applicant and the Respondent at the Arbitration Tribunal Delhi. There are OMPs filed i.e. O.MP. No. 90/2023 and O.M.P(COM)105/2023 before the Hon'ble High Court and vide order dated 14.04.2023 Hon'ble Delhi H.C. records that the dispute so raised in the said O.M.P are arbitrable in nature. vide order dated 22.03.2023 Hon'ble Delhi H.C. appointed Ld. Sole Arbitrator to adjudicate the alleged claims of DCM Shriram Ltd. The nature of transaction being composite and arbitral in nature and till the time the same is not adjudicated as under the arbitration Tribunal the application made under 7 is needed to be rejected.

ii. That the Applicant is not a Financial Creditor. It is submitted that the Applicant does not fall within the definition of Financial Creditor as defined u/s 5(7) of the code because of two reasons:

a) The transaction entered between the parties herein is not in the nature of 'financial debt' as defined under section 5(8) of the code and

b) the Applicant having breached the contract between the parties, is disentitled from claiming any relief before the Hon'ble Tribunal.

iii. That there is no consideration for the time value of money. It is submitted that that the joint reading of the Agreement for Supply of Industrial Grade Salt, Tentative Supply and Repayment Schedule to the Loan Agreement (which was revised from time to time on 26.03.2021, 31.07.2021, 17.11.2021, 23.12.2021 and 17.02.2022 considering the ground situation and technical and the Tripartite Agreement (Clause No.3) it can be said that there is no fixed period for repayment of loan or completion of supply agreement which are tentative in nature and resulting in extending the period of supply thereby the repayment being tentative in nature This leads to the conclusion that the nature of transaction has no relevance as regard to time value of money.

iv. That there is absence of any debt and restricting of arrangement. It is submitted that there is no debt against the present alleged Corporate Debtor which is contrary to the submissions of the Applicant, the inter alia, the alleged CORPORATE DEBTOR has to make recovery of Rs. 30.66 cr from the present Applicant and Rs 21.75 cr counter claim against DCM Shriram ltd. That the order passed in No. O. M. P. (1) (COMM.)-90/ 2023, it is crystal clear that the agreement signed between Applicant and the Respondent and DCM Shriram Ltd is still in existence, therefore Applicant herein cannot recall the said loan agreement signed between Applicant and respondent.

v. That there is breach of Rupee Loan Agreement by Applicant for Disbursal of the amount. It is submitted that the petition has been filed by the Applicant to takeover the land of the Replying Respondent by fraudulently initiating CIRP against it. I say that the company petition is nothing but a dishonest attempt by the Applicant at the behest of its holding company i.e. DCM shriram ltd to defer its liability and its duties specified in the various agreements executed between the

Applicant, Respondent and DCM Shriram ltd and hence need to rejected at its as section 7 of IBC no such application is maintainable under the ground of default of Applicant for disbursement of loan as per the schedule II of the rupee loan.

vi. That there is fraud by DCM Shriram Ltd. and Applicant in Collation. It is submitted that as per section 65 of the IBC action need to be take on the persons / company who initiates the CIRP with fraudulent or malicious intent by dismissing the application made under section 7 application and by imposing the penalty for such offence as defined in above section since it is clear that Respondent along with its sister concern DCM Shriram ltd has played fraud on the Replying Respondent and entangle into the entering into contracts and allegedly create a default and then trying to take over the unit no 2 situated at vesramedi of the Replying Respondent and played fraud by changing the content of Annexure D of supply agreement

vii. That there is illegal act of threating and manhandling and depositing of blank dated cheques though nothing is due and sending illegal recall notice which bad in law.

viii. That Breach of Rule 4(3) of the I&B (Application to Adjudicating Authority) Rules, 2016. The Respondent further states that the application filed by the Applicant is against the rules and regulations under the Insolvency Code and the NCLT rules. The Respondent states that the Applicant has served a copy of the application before filing it with the registry of the Hon'ble Tribunal whereas as per the mandatory rules, the Respondent ought to supply that copy to the Applicant which is filed with the Hon'ble Tribunal. Therefore, service of the application filed by the Applicant has to be done after filing the same with Hon'ble Tribunal and not before filing of the application. That as per Rule 4(3) of the 1 & (Application to Adjudicating Authority) Rules, 2016, the Applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the alleged corporate debtor. Therefore, instead of serving the filed copy of the application, the Applicant has served a copy of the application before filing it which is in breach of Rule 4(3).

ix. That collusion with DCM Shriram Ltd. under composite Agreement. It is submitted that the entire arrangement with the Replying Respondent was to entangle the Replying Respondent by Applicant and its sister concern DCM Shriram ltd since they have acted in collusion and hand in glove to usurp the unit of the Replying Respondent by allegedly creating default like scenario and then making an application under CIRP to the your honourable tribunal to take over the unit under alleged default by the Replying Respondent the above can the stated for the following reasons:

a. It is submitted that the collusiveness of the aforesaid Loan agreement can be seen by Recall Letter dated 06.03.2023 by Applicant to Replying Respondent and letter dated 06.03.2023 written by the Applicant to DCM Shriram ltd thereby clandestinely prompting it to take over the plant no 2 of Versamedi Unit of this Replying Respondent is also writ large from the fact that on the very next day i.e., 07.03.2023 (Document No.43 to the said LOD), vide a Letter by DCM Shriram ltd to Replying Respondent calling for an Arbitration claiming 49 Cr Approx as damages on account of the alleged claim that due to non-supply of salt by this Replying Respondent basis the quantities mentioned in the "Tentative" Supply schedule and not as per the Actual Purchase Orders issued by the DCM Shriram ltd on this Replying Respondent.

b. It is submitted that while Mr. B.K.Khurana is stated to be one of the principle officers of the Applicant, it has deliberately concealed that he is also one of the principles officer of DCM Shriram ltd.

c. It is submitted that under such a scenario when the arrangement / agreement is under undue influence of collusion between sister concerns and the act done is without any default of the Replying Respondent and is done for illegally taking over the unit of the Replying Respondent under 7 of IBC should be rejected.

x. That out of Limitation & section 10 A cannot be used a shelter and alleged date of default. The entire application of the Applicant is out of limitation and it is barred by limitation.

It is submitted that Replying Respondent has stated the date of default as 01.04.2021 as per his whims and wishes. As per their own admission in the recall notice dated 06.03.2023 paragraph no.11, the default has occurred from the date of inception of contract i.e. 03.03.2020 and going by such admission statement by the Applicant itself, it becomes crystal clear that the application is barred by limitation of 3 years from the date of default.

It is submitted that the present Petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") is not maintainable in view of Section 10A of the Code inserted by IBC (Second Amendment) Act, 2020. Since the government has suspended initiation of insolvency proceedings under Section 7 of the Code with respect to default arising on or after 25-03-2020 for a period of one year with an objective to relieve the Corporate Debtors from the financial stress owing to shutdown of business during subsistence of COVID-19 pandemic.

xi. That the alleged date of default is false/incorrect. It is submitted that the first disbursal has been made by the Respondent on 21.03.2020 as regard to the additional loan of 1.5 cr and last disbursal was made by the Respondent on 18.07.2022 as regard to the 10cr development loan. From the contents of company petition preferred by the Respondent, it is evident that disbursal has been made by the Respondent after the purported date of default i.e. 30.09.2020. The focal point of the code is default in fulfilling repayment obligations of a corporate entity, where a 'default' as defined under section 3(12) of the code has occurred. Furthermore,

xii. That the Petition is out of limitation and is barred by limitation. Respondent has stated the date of default as 01.04.2021 as per his whims and wishes. As per their own admission in the recall notice dated 06.03.2023 paragraph no.11, the default has occurred from the date of inception of the contract i.e. 03.03.2020 and going by such admission statement by the Applicant itself, it becomes crystal clear that the application is barred by limitation of 3 years from the date of right to apply accrues or as per the alleged default date which the Applicant had concealed i.e. 01.04.2020 date of the alleged first date of disbursal on the additional loan of Rs 1.5 cr from the date of filing of an application under IBC. It is stated that the 3 years have been elapsed.

xiii. That initiation of CIRP against the Corporate Debtor would be contrary to the scope and objective of the code.

xiv. It is submitted that as per the agreements executed between the Applicant, Respondent and DCM, the liability to pay the dues of the Applicant was of DCM and not of the Respondent. Respondent has been in this business for over four decades and it has never defaulted in any of its debts before any bank or any party. The intent of the Code is resolving the sick and distressed companies through CIRP. The intent was never to put fully functional, solvent company into insolvency, which has the potential business and making revenues to meet its liabilities or else it will put good companies to insolvency which can be proved from the financial of the respondent and that the respondent will produce its financial as and when required.

xv. That this Tribunal is not a Recovery Forum. The Applicant triggering insolvency process for recovering monies and taking over the entire operations of the Respondent under various agreements is not warranted. Corporate Insolvency Resolution Process cannot be initiated for recovery of money.

11. A **Rejoinder** is filed by the Applicant to the reply submitted by the Corporate Debtor on 02.01.2024 vide inward diary no. D5472. The Applicant denied all the

contentions raised by the respondent and made submissions in the rejoinder which are stated as under:

i. It is stated that there is no arbitration agreement between the Applicant and the Respondent. The arbitration filed against the Applicant is just to frustrate the proceedings before this Tribunal.

ii. It is submitted that the Respondent sometime in the year February & March 2020 through its Directors, approached Applicant for assistance in obtaining a Rupee Loan facility to the extent of INR 10,00,00,000/- (Rupees Ten Crore only) to the extent of 75% of the total investment in development of the salt works at the Respondent's Versamedi unit and additional loan facility to the extent of INR 1,50,00,000/- (Rupees One Crore Fifty Lacs only) for the purpose of removal of existing charge on the current assets belonging to the Respondent.

iii. It is reiterated that the Applicant is a Non-Banking Financial Company. It is denied that the Applicant is an alter ego of DCM Shriram Limited and is engaged in the manufacturing of Chemicals, Sugars, and various other items. It is submitted that the Applicant and DCM Shriram are two different entities under law, carrying on different businesses and are distinct entities and are run by different Boards. It is therefore submitted that the Respondent is trying to mix-up the issues by stating that there is an Arbitration Agreement filed between the parties and pending at New Delhi, whereas the fact remains is that there is no arbitration agreement between the Applicant and Respondent and the Applicant has not invoked any arbitration proceedings.

iv. It is reiterated that the Applicant is a Financial Creditor as stipulated under Sec.5(7) of IBC. The Applicant falls under Sec.5(8)(a) & (f) of IBC which is money borrowed against payment of interest. It is stated that Section 5(8)(f) includes any amount raised under any other transaction including any forward sale or purchase agreement having the commercial effect of the borrowing. Therefore, the Applicant certainly can be construed as a Financial Creditor as defined u/s. 5(7) of IBC who has disbursed a financial debt as defined u/s. 5(8) of IBC.

v. It is denied that there is no time value of money. The mere fact that the amount was disbursed with a stipulation of interest shows the fact that there was consideration of time value of money. The definition of "time value of money is very wide. Therefore, there is no consideration of the time value of money in the transaction entered into between the parties.

vi. The Respondent company has failed to re-pay loan to the Applicant and therefore, the Applicant has recalled the entire loan vide letter dated 06.03.2023. It is stated that there is thus a debt which exist in the eyes of law for which the present petition is maintainable. The Respondent by imposing its own mis-interpretations to various clauses / agreements between the parties cannot escape its liability to repay loan amount to the Applicant and thus cannot defeat the legitimate claim of the Applicant to which it is legally entitled to. It is stated that the alleged counter claims raised by the Respondent against the Applicant and DCM Shriram Limited is nothing but an attempt made by the Respondent with ulterior motives to defeat the legitimate claims of the Applicant for getting back its loan disbursed to Respondent and interest thereon and thus not maintainable under law.

vii. It is denied that there is any breach of Rupee Term Loan Agreement by the Applicant. The Respondent has accepted that amount was disbursed to the Respondent.

viii. It is denied that the Applicant has played any fraud on the Respondent. It is denied that the transactions between the parties had technically commenced prior to March 2020. It is denied that the Applicant did adhere to the Rupee Term Loan Agreement and disbursed the amount belatedly.

ix. I deny that the Applicant has not complied with Rule 4(3) of I&B Application to Adjudicating Authority) Rules, 2016. I say that the Applicant served the advance copy of petition upon ments Ltd.

x. It is denied that there is any collusion between the Applicant and DCM Shriram Limited or the Applicant and DCM Shriram

Limited have any intention to usurp the unit of the Respondent by creating default like situation as wrongly and vaguely alleged by the Respondent. I say that the Applicant is a wholly owned subsidiary of DCM Shriram Limited but is a separate legal entity as per the Companies Act, 2013.

xi. It is denied that the petition filed by the Applicant is barred by Sec.10A of IBC. It is denied that the petition filed by the Applicant is not within limitation. It is stated say that a bare perusal of the payment schedule annexed with the Rupee Term Loan Agreement would make it clear that the obligation on the part of Respondent was to make payment of the installments on certain dates. The Respondent agrees that for the months between 1.4.2020 and 31.3.2021, the Respondent cannot invoke the jurisdiction of this Tribunal. However, for the defaults that occurred after 1.4.2021, the Applicant is in his right to approach this Tribunal. When the date of default is 1.4.2021, the petition is filed within three years from the date of default and therefore, the petition is within the period of limitation.

12. The Applicant filed a Purshis on 26.02.2024 to place on record an Email dated 05.01.2024 addressed by NESL to the Applicant stating that the authentication status of Corporate Debtor could not be categorized since the MCA

and Form-C email attempts have failed due to e-mail bouncing back.

13. The Respondent filed an additional Affidavit on 09.04.2024 vide inward diary no. D3061 to correct the inadvertent mistakes in Reply filed by the Respondent on 17.10.2023. Also producing the statement of claim filed by the DCM Shriram Limited against the Corporate Debtor before Hon'ble Arbitral Tribunal.

14. To the above Additional Affidavit, the Applicant filed the reply to the said affidavit on 29.04.2024 vide diary no. D3632 stating that the statement of claim pertains to the dispute between DCM Shriram Limited and the Corporate Debtor and not the Applicant i.e. DCM Shriram Credit & Investment Limited.

15. The Respondent filed the Purshis on 20.06.2024 for submission of proof of payment of cost in compliance of the order dated 14.06.2024.

16. The Respondent filed an additional Affidavit on 20.06.2024 vide inward diary no. D4729 to show that issues with respect to the disbursal of the loan within the

stipulated time and the obligation of the Corporate Debtor of DCM Shriram Ltd. to repay the loan are pending adjudication at large before the Ld. Arbitrator.

17. The Respondent filed an Affidavit on 20.06.2024 vide inward diary no. D4816 to place on record Convenience Compilation of the matter.

18. The Respondent filed an additional Affidavit on 09.07.2024 vide inward diary no. D5473 in compliance with orders dated 21.06.2024 and 09.07.2024 to place on record copy of an email dated 19.02.2022 indicating confirmation by Corporate Debtor about the 5th revised repayment schedule received from Applicant on 17.02.2022. Respondent has also shared a signed copy of the 5th revised repayment schedule vide email dated 24.02.2022 with the Applicant.

19. The Applicant also filed an additional Affidavit on 26.07.2024 vide Inward Diary No. D5838 in response to the Additional Affidavit of the respondent dated 09.07.2024 stating that neither the alleged 5th revised loan repayment schedule was ever accepted and signed by the

Applicant nor it was ever acted upon as the Corporate Debtor had never made any repayment of the loan amount as per the revised schedule. The Applicant placed undisputed Facts of the case which are as below:

a) There is disbursement of amounts by the Applicant to the Corporate Debtor;

b) The Corporate Debtor has defaulted in making payments of the amounts of debt due to the Applicant which is more than Rupees One Crore.

c) The Corporate Debtor has also given balance debt confirmation in writing to the Applicant;

d) The Corporate Debtor has executed a Deed of Mortgage dated 3.3.2020 in favour of the Applicant to secure the repayment of the amounts disbursed by the Applicant to Corporate Debtor;

e) The Directors of the Corporate Debtor viz. Shri Dinesh Parasrampuria, Smt. Aruna Parasrampuria and Shri Sureshchandra Parasrampuria have also executed Deed of Guarantees dated 3.3.2020 in favour of Applicant;

f) Charge on the immovable properties is registered by the Corporate Debtor in favour of the Applicant u/s. 77 of the Companies Act, 2013;

20. Reliance has been placed on the following judgements by the Applicant which was submitted across the bar:

Scope of Section 7 Petition

i. *(2023) 8 SCC 387 M. Suresh Kumar Reddy Vs. Canara Bank &Ors.*

ii. *(2018) 1 SCC 407 Innoventive Industries Limited Vs. ICICI Bank & Anr.*

iii. *(2023) 3 SCC 753 Orator Marketing Private Limited Vs. SamtexDesinz Private Limited.*

iv. *(2019) SCC Online NCLAT 1132 Gaurav Agrawal, Director M/s. Albus India Ltd. Vs. Tuf Metallurgical (P) Ltd. &Anr.*

v. *(2019) SCC Online NCLAT 52 Shailesh Sangani Vs Joel Cardoso &Anr.*

vi. *Company Appeal (AT) (Ins) 1264 of 2019 Mukesh Kumar Aggarwal Vs. Anurag Gupta.*

vii. *(2023) 240 Comp Case 132 (NCLT) Edelweiss Asset Reconstruction Ltd. &Anr. Vs. NainaNitin Desai.*

Section 10A of IBC

viii. *(2024) 242 Comp Case 429 NainaNitin Desai Vs. Edelweiss Asset Reconstruction Ltd. &Anr.*

ix. *(2023) SCC Online NCLAT 467 NainaNitin Desai Edelweiss Asset Reconstruction Ltd. &Anr.*

<u>**While admitting an application u/s.7 of IBC, existence of debt and default needs to be examined and not quantum of debt**</u>

x. *2022 SCC Online NCLAT 147 Rajesh Kedia v. Phoenix ARC (P) Ltd.*

xi. *2023 SCC Online NCLAT 299 Guruprasad V. Hishobkar v. Shree Aahraya Saouhard Credit Scoiety Ltd.*

<u>**There is no bar to initiate CIRP u/s. 7 of IBC even if arbitration proceeding is pending.**</u>

xii. *CP (IB) 156(PB)/2017 (NCLT, Delhi) (DoD: 30.6.2017) Reliance Commercial Finance Ltd. vs. Ved Cellulose Limited.*

xiii. *Arb. P. 212 of 2024, IA 9821 of 2024 (Delhi High Court) (DoD: 22.5.2024) Pitambar Solvex Pvt. Ltd. & Anr. vs. Manju Sharma & Ors.*

xiv. *2021 (6) SCC 436 Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund.*

<u>IA/1343(AHM)2023</u>

21. Present Application was filed by the Respondent in main Petition under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National

Company Law Tribunal Rules, 2016 seeking following prayers:

i. *To dismiss Company Petition (IB) No.161(AHM)filed by the Financial Creditor under Section 7 for initiation of CIRP against the Application;*

ii. *To allow the Applicant to file its Affidavit in Reply to the Company Petition in case prayer clause(a) is rejected by this Hon'ble Tribunal;*

iii. *To pass any such Order or Orders as this Hon'ble Tribunal may deem fit and expedient;*

22. The facts of the above Interlocutory Application is same as the reply filed in the main Petition hence no need to repeat the same.

23. We have heard Ld. Counsel for the Applicant/Financial Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record.

24. The observation and findings of this Tribunal are as follows:-

a) The Application has been filed under section 7 by the Financial Creditor against the Corporate Debtor 'The Maharaja Salt Works Co. Pvt. Ltd.' seeking the admission of Corporate Debtor into Corporate Insolvency Resolution Process.

b) The Financial Creditor and Corporate Debtor executed following documents on 03.03.2020:

   i. *Rupee Loan Agreement*
   ii. *Hypothecation Agreement*
   iii. *Mortagage Deed*
   iv. *Guarantee Deeds*
   v. *Non-Disposal Undertaking, Promissory Note*
   vi. *Loan Term Salt Supply Agreement*
   vii. *Tripartite Agreement.*

c) It is seen that the Loan was disbursed to the Corporate Debtor Rs. 10.00 crores and additional amount of Rs.1.50 crore through Rupee Loan Agreement dated 03.03.2020 along with loan repayment schedule which was revised on various occasions up to five times. The 5th revised Repayment Schedule was sent to the Corporate Debtor on 24.02.2022 which was accepted by the

Corporate Debtor and was sent back to the Financial Creditor **but with some modification**. The Financial Creditor stated vide additional affidavit dated 230.07.2024 that they did not accept the same and never signed the said revised repayment schedule.

d) As it is seen that the 1st Default Notice was sent to the Financial Creditor by the Corporate Debtor on 17.02.2021 for delay in disbursal of development loan affecting development work which was then sent on multiple occasion last being 6th Default Notice dated 12.12.2021.

e) The Financial Creditor also issued recall notice to the Corporate Debtor on 06.03.2023 calling upon to make payment of Rs.11,25,63,498/- within 7 days. Thereafter a Corrigendum Notice dated 14.03.2023 to recall notice dated 06.03.2023 was issued for rectification of typographical error in para10 of the Notice.

f) Then the Demand Notice dated 06.04.2023 was issued u/s 13(2) of the SARFAESI Act, 2002 upon Corporate Debtor by the Financial Creditor.

g) It is seen that the Financial Creditor has produced NeSL Form-C but failed to produce Form-D before this Tribunal. However, the Financial Creditor has placed E-mail from NeSL stating that the E-mail with regards to the authentication status of Corporate Debtor bounced back.

h) Therefore, the Record of Default cannot be ascertained without authentication by the NeSL, hence we are constrained to perusal at the documents present before us.

i) As it is seen from the bank statement the amount in question was disbursed to the Corporate Debtor.

j) During the course of the hearing the Sr. Counsel for the Corporate Debtor was relying on the matter pending before the Hon'ble Arbitral Tribunal stating that NCLT proceedings should not be continued. But as per section 231 of the IBC, 2016, no other court shall have jurisdiction in respect of the matter in which the AA is empowered by this code to pass any order. The relevant section is reproduced below:

> ***"Section 231: Bar of jurisdiction***
>
> *No civil court shall have jurisdiction in respect of any matter in which the [Adjudicating Authority or the Board] is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such [Adjudicating Authority or the Board] under this Code."*

k) It can be seen from the judgment of the Hon'ble Supreme court in the matter of ***M. Suresh Kumar Reddy Vs Canara Bank & Ors.*** **(Civil Appeal No. 7121 OF 2022)** stating that in the matter of Section 7, the only thing which is to be seen while ordering in Section 7 matters is whether there is debt and default.

l) we also rely on **Swiss Ribbons Pvt. Ltd. & Anr. Vs Union of India & Ors**.(W.P.(civil) No. 99 of 2018 decided by the **Hon'ble Supreme Court** more particularly para no. 35,36 and 37 of the said Judgment which are reproduced as below:-

> "35. Insofar as set-off and counterclaim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only in one way amounts lent have to be repaid.

However, it is not as if a legitimate set-off is not to be considered at all. Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional, his decision being subject to challenge before the Adjudicating Authority under Section 60. Section 60(5)(c) reads as follows:

60. Adjudicating Authority for corporate persons. xxx xxx xxx (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of xxx xxx xxx

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

"36. Equally, counterclaims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan. Also, there is nothing in the Code which interdicts the corporate debtor from pursuing such counterclaims in other judicial fora. Form C dealing with submission of claims by financial creditors in the CIRP Regulations states thus:

FORM C SUBMISSION OF CLAIM BY FINANCIAL CREDITORS [Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] [Date] From [Name and address of the financial creditor, including address of its registered office and principal office] To The Interim Resolution Professional/Resolution Professional, [Name of the Insolvency Resolution Professional / Resolution Professional] [Address as set out in public announcement] Subject: Submission of claim and proof of claim.

Madam/Sir, [Name of the financial creditor], hereby submits this claim in respect of the corporate insolvency resolution process of [name of corporate debtor]. The details for the same are set out below:

Relevant Particulars Name1of the financial creditor Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual) Address 3 and email address of the financial creditor for correspondence Total 4amount of claim (including any interest as at the insolvency commencement date) Details 5 of documents by reference to which the debt can be substantiated Details 6 of how and when debt incurred.

Details 7 of any mutual credit, mutual debts,. or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim Details 8 of any security held, the value of the. security, and the date it was given Details 9 of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan List of 1 documents attached to this claim 0in order to prove the existence and non-payment of claim due to the financial creditor (Signature of financial creditor or person authorised to act on his behalf) [Please enclose the authority if this is being submitted on behalf of the financial creditor] Name in BLOCK LETTERS Position with or in relation to creditor Address of person signing * PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

DECLARATION I, [Name of claimant], currently residing at [insert address], do hereby declare and state as follows:

1. [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the day of 20, actually indebted to me for a sum of Rs. [insert amount of claim].

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[Please list the documents relied on as evidence of claim].

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim].

5. I am/I am not a related party of the corporate debtor, as defined under Section 5(24) of the Code.

6. I am eligible to join committee of creditors by virtue of proviso to Section 21(2) of the Code even though I am a related party of the corporate debtor.

Date:

Place:

(Signature of the claimant) VERIFICATION I, [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at on this day of , 20 (Signature of claimant) [Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorized for the purpose by the entity.]"

"37. The trigger for a financial creditors application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433(e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of inability to pay debts to determination of default. The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation. Four policy reasons have been stated by the learned Solicitor General for this shift in legislative policy. First is predictability and certainty. Secondly, the paramount interest to be safeguarded is that of the corporate debtor and admission into the insolvency resolution process does not prejudice such interest but, in fact, protects it. Thirdly, in a situation of financial stress, the cause of default is not relevant; protecting the economic interest of the corporate debtor is more relevant. Fourthly, the trigger that would lead to liquidation can only be upon failure of the resolution process."

m) It is seen from documents placed that there was a financial debt as amount of Rs.11,30,03,498/- crores were disbursed to the Corporate Debtor and the default is stated to be occurred on 01.04.2021. But the contention of Corporate Debtor was that the revised 5th repayment schedule will change the default date as further extension is provided. However, it is seen that the 5th revised Repayment Schedule was sent back by Corporate Debtor to the Financial Creditor with same modification. Morevoer, Financial Creditor filed an affidavit stating that they never accepted the said repayment schedule. Therefore, the repayment of debt will be followed as per original repayment schedule.

n) Further, post the 5th repayment schedule dated 17.02.2022 applicant sent the recall notice on 06.03.2023 followed by a corrigendum dated 14.03.2023 and recalled the entire loan amount of Rs. 11,30,03,498/-. Financial Creditor is claiming an amount of Rs. 13,47,29,121/- in this petition. The issue of recall notice puts the controversy regarding the 5th revised repayment schedule to rest as entire debt became due and payable.

o) As per section 3(12) of the code it is stated that default occurs when non-payment of debt wholly or partly or in installment of the amount not paid by the Corporate Debtor then there is default and from the facts and circumstances of the case it is clear that there was non-payment of the debt by the Corporate Debtor/ Corporate Debtor. the Section 3(12) is reproduced as under:-

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 [paid] by the debtor or the Corporate Debtor, as the case may be;

25. The present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

26. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

> 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 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, <u>in the case of a corporate debtor who commits a default of</u>

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

27. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for the initiation of the corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

28. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -

(i) The Respondent/Corporate Debtor- **M/s. The Maharaja Salt Works Co. Pvt. Ltd.** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

a. *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

b. *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

c. *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

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

e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

(v) As proposed by the Financial Creditor, we appoint **Mr. Sunil Kumar Kabra,** having Registration No. IBBI/IPA-001/IP-P01011/2017-18/11662, (email-), under section 13 (1)(c) of the Code to act as Interim Resolution Professional **("IRP")** of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police

Authorities to render all assistance as may be required by the IRP in this regard.

(ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

(x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

(xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

(xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

29. In view of the above observation, **CP(IB)/161(AHM)2023** is hereby dismissed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

30. In view of the above **IA No. 1343(AHM)2023** is dismissed.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

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