



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
Court-I**

**IA No. 1606/2024
and
CP (IB) No. 325/Chd/Pb/2023**

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

IN THE MATTER OF IA No. 1606/2024:

JCT LTD,
HAVING ITS REGISTERED OFFICE AT G.T. ROAD,
PHAGWARA, DISTT. KAPURTHALA,
THAPAR COLONY PHAGWARA, KAPURTHALA,
PUNJAB, INDIA, 144401,
THROUGH ITS AUTHORISED REPRESENTATIVE

...APPLICANT

VERSUS

PHOENIX ARC PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT 3RD FLOOR,
WALLACE TOWERS
(EARLIER KNOWN AS SHIV BLDG),
139-140/B/1,
CROSSING OF SAHAR ROAD AND WEST E-WAY,
VILE PARLE EAST, MUMBAI,
MAHARASHTRA- 400057, INDIA,
THROUGH ITS AUTHORIZED REPRESENTATIVE

..RESPONDENT

IN THE MATTER OF CP (IB) No. 325/Chd/Pb/2023:

1. Phoenix ARC Pvt. Ltd

Registered Office:
5th Floor, Dani Corporate Park,
CST Road, Kalina, Santacruz East,
Mumbai-400 098
Through Harsh Magia, Senior Manager

2. Phoenix ARC Pvt. Ltd.

Trustee of Phoenix Trust FY 19-5 Scheme G
(Financial Creditor)



Registered Office:
5th Floor, Dani Corporate Park,
CST Road, Kalina, Santacruz East,
Mumbai-400 098
Through Harsh Magia, Senior Manager

....PETITIONER/FINANCIAL CREDITOR

VERSUS

JCT Ltd.

Having its registered office at:
Village Chohal,
Distt. Hoshiarpur, Punjab-146 024
Through its Managing Director
Mr. Samir Thapar
Also At:
601, Prabhat Kiran,
17 Rajendra Place
Through its Director

...CORPORATE DEBTOR

Judgment delivered on: 25.10.2024

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Umesh Kumar Shukla, Member(Technical)

Present:

For the Petitioner- Financial Creditor in main petition : Mr. Manish Jain, Advocate
Ms. Divya Sharma,
Advocate

For the Respondent- Corporate Debtor in main
petition and applicant in IA 1606/2024

: Mr. Anand Chhibbar, Senior
Advocate Mr. Vaibhav Sahni,
Advocate Ms. Swati
Vashisth, PCA



Per: Harnam Singh Thakur, Member (Judicial)

Umesh Kumar Shukla, Member (Technical)

IA No. 1606/2024

This present application is filed by corporate debtor-**JCT Ltd.** (hereinafter referred to as '**Applicant**') against petitioner-**Phoenix Arc Pvt. Ltd.** (hereinafter referred to as '**Respondent**') under Section 60(5) of the IBC, 2016 for placing on record the documents and to adjourn the case beyond 01.08.2024 that is the date fixed by the Hon'ble High Court in view of the JLM Minutes dated 15.07.2024 wherein the financial institutions have asked the Applicant to submit the revised Resolution Plan.

2. The brief facts of the case are that this petition is pending adjudication before this Adjudicating Authority. A writ petition CWP No. 15450 of 2024 has been filed before the Hon'ble Punjab and Haryana High Court, for the arbitrary actions of the financial institutions for continuously rejecting the Resolution Plans proposed by the Applicant. It is submitted that the Corporate Debtor is willing to settle its dues with the banks and therefore, the Corporate Debtor submitted the first Resolution Plan in May 2023, the second in October 2023, third Resolution Plan dated 29.03.2024 which were declined by Indian Bank without any clarifications and without conducting the Joint Lenders Meeting. The Corporate Debtor came up with a more suitable Plan dated 29.04.2024, where prospective buyers were willing to pay 15-20% of the sale value in advance (letters of intent of buyers and the minutes of the meeting dated 01.05.2024 are annexed). Corporate Debtor requested multiple times to Indian Bank via emails dated 01.05.2024, 06.05.2024, 07.05.2024 and 11.05.2024 to conduct a Joint Lenders' Meeting for



the consideration of the Resolution Plan dated 29.04.2024. Emails dated 16.05.2024 were sent to Indian Bank and the Financial Creditor, stating the severe unrest among workers and aggression from fuel vendors as the workers threatened to block the mill gates and stop the fuel supply which could result in a complete shutdown of the Phagwara unit of the petitioner company. Indian Bank rejected the resolution plan dated 29.04.2024 through email dated 17.05.2024. The Applicant submitted another Resolution Plan dated 14.07.2024 along with the OTS plan which was rejected by the lenders on 15.07.2024. No Objection Certificate for sale of Hoshiarpur and Phagwara assets is yet to be provided by the lenders. The lenders and the Financial Creditors are deliberately rejecting the resolution plan in order to push the Corporate Debtor into Insolvency.

3. After hearing Learned counsels for the parties, we are of the considered view that the documents filed with this application by the corporate debtor are taken on record. However, the contention of the corporate debtor to adjourn the case beyond 01.08.2024 as per the date fixed by the Hon'ble High Court in view of the JLM Minutes dated 15.07.2024 wherein the financial institutions have asked the Applicant to submit the revised Resolution Plan cannot be considered as number of adjournments have already been given to the applicant-corporate debtor on the account of OTS-Resolution Plan and considerable time period is already elapsed. The procedure for CIRP under the code is a strict time-bound process with the objective of maximizing the value of assets of the corporate debtor. There is no stay order by the Hon'ble High Court.

4. Thus, in view of the above, the present IA No. 1606/2024 is dismissed being infructuous as it is already adjourned beyond 01.08.2024 by this authority. If



at all some settlement is arrived between financial creditors and corporate debtor. The same can be considered even after passing the order of admission to CIRP.

JUDGMENT in CP (IB) No. 325/Chd/Pb/2023

5. The present petition has been filed by Phoenix Arc Private Limited & Anr. (hereinafter referred to as 'Petitioner/Financial Creditor') through its authorised representative, Mr. Harsh Magia, Senior Manager under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s JCT Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Harsh Magia, Senior Manager with the affidavit verifying the contents of the application appended thereto.

6. The Corporate Debtor is stated to be incorporated on 28.10.1946 under the Companies Act, 1956. The company is having its registered address at Village Chohal, Distt. Hoshiarpur, Punjab. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Page 40-41 of the petition.

7. The brief facts of the petition are that the applicant acquired the debt from the corporate debtor from the Assignee banks- Allahabad Bank, SBI and PNB in respect of the Term Loan facilities availed by the corporate debtor. The corporate debtor requested Applicants for additional funding in the form of Restructuring Support Finance and New Loan respectively. Accordingly, Petitioner No. 1 granted New Loan Facility of Rs. 20.00 Crores to it. Further on the request of the Corporate Debtor, Applicant No. 2 also sanctioned a Restructuring Support Finance (RSF) Facility of Rs.20.00 Crores to it. Acceding to the request of the



Corporate Debtor, Petitioner 1 issued a Letter of Acceptance for Assigned Debt Dues, RSF Facility and New Loan Facility to the Corporate Debtor. Corporate Debtor issued a Revival Letter in favour of Axis Trustee thereby acknowledging availment of Term Loan and Working Capital facilities from assignor banks as well as from both the petitioners. Corporate Debtor failed to honor the repayment terms of the financial agreements and defaulted in repaying the outstanding dues, thus petitioners were constrained to revoke the LOA. The borrower has made the last payment of Rs. 20.00 Lacs as interest. The petitioners issued Recall cum Guarantee Invocation thereby calling upon CD to pay the amount of default i.e. Rs. 111,89,36,305/- as on 31.08.2023. The Petitioners have placed on record the record of default filed with National E-Governance Services Limited (NeSL) and the Balance Sheets of CD for the Financial Years FY 2018-19, FY 2020-21, Annual Report FY 2021-22 and Annual Report FY 2022-23.

8. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 118,24,72,334/- (Rupees One hundred and Eighteen Crores Twenty Four Lakhs Seventy Two Thousand Three Hundred and Thirty Four Only) as on 07.11.2023 with interest @16% p.a. compounded on monthly basis plus penal interest @2% p.m. till payment and date of default is 16.03.2023. However, vide order dated 18.12.2023 of this Adjudicating Authority, it was recorded that the date of default as 16.03.2023 being the date of revocation of Letter of Acceptance cannot be the same. Therefore, in compliance of the above, the affidavit was filed vide Dairy No. 03748/01 dated 09.01.2024 wherein it is deposed that the facilities granted to the corporate debtor were revoked vide Revocation Notice dated 16.03.2023. However, the corporate debtor made a payment of Rs. 20 Lakhs thereafter on 29.04.2023 and no payment has been received after that. Thus, the



date of default is 29.04.2023. Copy of Assignment Agreement dated 27.09.2018 (Annexure-A5), Restructuring support finance (RSF) Agreement (Annexure-A6), Facility Agreement (Annexure A7), Letter of acceptance (Annexure A8), Revival letter (Annexure A9), revocation letter (Annexure A10), recall cum guarantee invocation (Annexure A11), statement of account (Annexure A12), record of default regarding assigned debt (Annexure A13), record of default regarding restructuring support finance (Annexure A14), record of default regarding new loan (Annexure A15), Board Resolution dated 14.11.2018 by corporate debtor (Annexure A16), third supplemental and amendatory to the existing loan agreement (Annexure A17), security trustee deed of accession (Annexure A18), third supplemental and amendatory agreement for replacement of security trustee (Annexure A19), memorandum of entry (Annexures A20-21), Third supplemental and amendatory joint deed of hypothecation (Annexure A22), Letter of guarantee (personal) regarding restructuring support finance agreement (Annexure A23), Letter of guarantee (personal) regarding facility agreement (Annexure A24), Certificate under section 2A of Bankers book Evidence Act, 1891 (Annexures A25) entries in bankers books in books of accounts of petitioners (Annexures A26-27) Balance Sheets 2018-19,2020-21 (Annexures A28-29), Annual Report FY 2021-22 2022-23 (Annexures A30-31) are attached with the main petition.

9. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of Service was filed vide Diary No. 03748/12 dated 11.01.2024. The reply has been filed by the respondent-corporate debtor vide Diary No. 03748/14 dated 28.05.2024 wherein it is stated as under:-



9.1. The corporate debtor being part of the Thapar group is engaged in the business of manufacturing of cotton, synthetic and blended fabrics and nylon filament yarn having three units- Hoshiarpur, cotton and garmenting unit at Phagwara. The corporate debtor was the first textile manufacturer in the country to introduce eco-friendly fabrics made out of organic cotton and the textile division was the first industry to be accredited with ISO 9001 certification in 1996. The unit at Phagwara has a capacity of 63 million meters per annum. The other operations include filament yarn with a capacity of 16000 MT per annum. It was set up in the year 1980 in technical collaboration with Zimmer AG of West Germany and production started in the year 1989. The corporate debtor installed a capacity of 1,50,000 meters per day of cotton/blended fabrics, 50,000 meters per day of synthetic fabrics at Phagwara and 16 MTPA of nylon filament yarn at the Hoshiarpur plant. The corporate debtor borrowed loan and due to the substantial rise in husk price and lack of capital for plant modernisation, the Hoshiarpur unit became economically unviable, and the work therein is currently suspended owing to the paucity of working capital since the company has been under significant financial stress post COVID in 2020. Therefore, the Company has decided to monetise the assets by proposing to sell of the Hoshiarpur assets in its entirety and some selected assets from the Phagwara cotton unit. The restructuring scheme has never been admitted by the lenders and no reason for rejection has been provided. The letter of intent was received by the buyers and No Objection Certificate (NOC) was required to be issued by the lenders to conduct the sale of assets. The financial creditors



are aware that the corporate debtor is planning to get into the restructuring process as they were present in the consortium meeting dated 11.10.2023.

9.2. The demand notice dated 05.09.2023 under Section 13(2) of the SARFAESI Act, 2002 was issued. It is submitted that the facts are incomplete as it does not disclose the details and calculation of interest rate and penalties. There is non-disclosure of the amount pending. The SARFAESI notice is illegal and arbitrary and has not been issued through authorised office of the Financial Creditor. The corporate debtor has submitted multiple resolution plans but all have been rejected. The corporate debtor proposed the latest Resolution Plan on 01.05.2024 which was rejected on 17.05.2024 by the lead bank. The Financial creditors have considered the date of the revocation letter as the date of default i.e. 16.03.2023 as there were payments made on 29.04.2023 for Rs. 25 lakhs. The date of default is incorrect and the statement of account maintained by the petitioner shows that the account was regular and the corporate debtor was facing temporary issues prevailing in the manufacturing industry.

9.3. It is further submitted that the stress to the account being temporary in nature would not result in the corporate debtor going into CIRP. The financial creditor is duty-bound to provide the restructuring of the account prior to any notice issued wherein the substantial assets are mortgaged in favour of the Financial Creditor. The lender has failed to carry out rehabilitation and restructuring of the financial assets. The amount outstanding is calculated arbitrarily. As per RBI circular: RBI/2023-24/53 dated 18.08.2023, penalty, if charged, for non-compliance of material terms and conditions of the loan contract by the borrower shall be treated as



'penal charges' and shall not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances. There shall be no capitalisation of penal charges i.e., no further interest computed on such charges. However, this will not affect the normal procedures for compounding of interest in the loan account.

9.4. It is averred that various efforts are being made by the Corporate Debtor to resolve the issue of clearing off the liabilities but the Financial Creditor is neither cooperating with the Respondent Company and nor taking any productive steps to resolve the ongoing issue. The amount of Rs. 118 crores are not due and payable to the financial creditors. The respondent company is in the standstill situation due to the oppressive conduct of the petitioners.

10. The rejoinder has been filed by the petitioner bank vide Dairy No. 03748/19 dated 18.06.2024 wherein it is stated that while exercising jurisdiction under IBC, 2016, the NCLT has no power to adjudicate upon the measures initiated by the Financial Creditors under the SARFAESI Act, 2002. The financial creditor has relied on the judgment of ***Hon'ble NCLAT in the matter of "Mr. Amar Vohra vs, City Union Bank Ltd.; 2022 SCC OnLine NCLAT 276"***. The CD cannot take the plea before this Tribunal that the action of the petitioners taken under the SARFAESI Act against it is incomplete and does not disclose the complete details. Further, the Corporate Debtor has admitted the factum of availing the loan from its lenders including the petitioners. The CD has also admitted the default. Proceedings before this Tribunal are non-adversarial and once the CD admits to a default, this Tribunal would only be required to examine whether Form-1 is complete in all respects and that the credentials of the proposed IRP are in order.



The account statements are being maintained in accordance with the RBI Guidelines and there has been no capitalization of penal charges. The Respondent is prone to leveling wild allegations, which have no substantial basis. The objections raised by CD with respect to the date of default are incorrect. The Respondent has further admitted that it is facing financial stress in repaying its dues.

11. The short written submissions are filed by the petitioner vide Diary No.03748/13 dated 27.05.2024 and by the corporate debtor vide Dairy Nos. 03748/20 dated 21.08.2024 and 03748/29 dated 20.09.2024 reiterating the above-mentioned facts.

12. We have heard the learned counsels for the parties and have also perused the record carefully.

13. The first issue for consideration is whether the present application is filed within limitation. The corporate debtor has submitted that the incorrect date of default is mentioned by the financial creditor. In Part-IV column (2) of Form No.1 of the petition, the date of default is mentioned as 16.03.2023. However, it can be seen from the records that the date of default is clarified by the affidavit filed vide Dairy No. 03748/01 dated 09.01.2024 wherein it is deposed that the facilities granted to the corporate debtor were revoked vide Revocation Notice dated 16.03.2023. However, the corporate debtor made a payment of Rs. 20 Lakhs thereafter on 29.04.2023 and no payment has been received after that. Thus, the date of default is 29.04.2023 i.e. when the last payment was made. The present petition is filed vide Diary No. 03748 dated 20.11.2023 and was refiled on 11.12.2023. Thus, the present petition is well within the period of limitation of three years.



14. The second contention on behalf of the corporate debtor is that several resolution plans were submitted and were rejected by the financial creditors. The plans were proposed in May 2023, October 2023 and the third resolution plan dated 29.03.2024, amended plan dated 29.04.2024 based on the Letter of intent were submitted. For the last plan, the emails dated 01.05.2024, 06.05.2024, 07.05.2024, 11.05.2024 were exchanged between the parties requesting the Joint Lenders meeting. However, the plan was declined on 17.05.2024 and the new plan was submitted on 14.07.2024 alongwith OTS plan, which was rejected on 15.07.2024. However, this contention of the corporate debtor cannot be considered as it has defaulted in making the payments and the amount is due on part of the corporate debtor.

15. The third contention on part of the corporate debtor is that there were illegal proceedings under the SARFAESI Act, 2002 as it was incomplete and did not disclose the complete details and calculation in respect of the interest rate and penalties. The corporate debtor has placed reliance on the judgment passed by the ***Hon'ble High Court of Gujarat in the case of Punjab National Bank v. M/s Mithilanchal Industries Private Limited LPA No. 159 of 2020 & 160 of 2020*** wherein it is stated that it is necessary for the tribunal to examine the validity of notice and discharge of obligation of the Secured Creditor.

However, this plea of the corporate debtor cannot be considered as it is not within purview of this Bench in view of the judgment passed by Hon'ble NCLAT in the matter of ***Mr. Amar Vohra (supra)***. Thus, this plea is devoid of legal force.

16. The fourth contention on behalf of the corporate debtor is that under Section 7(5) of the IBC, 2016, there is the word "May", in admitting or rejecting the application which means that there is a discretionary power and is not a



mandatory provision to push the corporate debtor into CIRP. The corporate debtor has placed reliance on the following judgments passed by the Hon'ble Supreme Court:-

E.S Krishnamurthy & Ors v. Bharat Hi-Tech Builders Pvt. Ltd. (2022) 3

Supreme Court Cases 161 wherein it was held that:

“24. On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the expression “it may, by order” while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available.

27. The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.

28. Undoubtedly, settlements have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of the IBC is to facilitate insolvency resolution “in a time bound manner” for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by the IBC”.

Vidharbha Industries Power Limited v. Axis Bank Limited (2022) 8

Supreme Court Cases 352 wherein it was held that:



76. The fact that Legislature used ‘may’ in Section 7(5)(a) of the IBC but a different word, that is, ‘shall’ in the otherwise almost identical provision of Section 9(5)(a) shows that ‘may’ and ‘shall’ in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary. An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

77. On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.

78..... The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor.

79.....If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid.

81. The title “Insolvency and Bankruptcy Code” makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP.

88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative.



The above judgments itself explain the power of this Adjudicating authority for admitting the CIRP after taking into consideration the relevant documents and facts of the each case judiciously. However, in the present case the debt is admitted by the corporate debtor itself as he has several times offered the OTS proposals for settling the disputed amount.

Thus, the authorities relied upon by the corporate debtor passed by the Hon'ble Supreme Court in ***E.S Krishnamurthy & Ors and Vidharbha Industries Power Limited (Supra)*** are distinguishable, as the facts of these cases are different from the facts of the present case.

17. The fifth contention on behalf of the corporate debtor is that the financial creditor has calculated the amount due to them without any basis by charging the interest on interest arbitrarily, thus capitalising the interest and including it in the means of earning revenue. It is further submitted that as per RBI circular RB1/2023-24/53 dated 18.08.2023, the penalty if charged for non-compliance of material terms and conditions of loan contract by the borrower shall be treated as penal charged and not to be levied in the form of penal interest. The reliance is placed by the corporate debtor on the case of "***Central Bank of India Vs. Ravindra and others***" (2002) 1 SCC 367" wherein it was held that the penal interest should not be capitalized. Further, there is no complete details and calculations in respect of Interest rate and penalties being charged by, the Financial Creditors. Therefore, there is complete non-disclosure and concealment in respect of the alleged amount outstanding by the CD.



On the other hand, it is contended on behalf of the financial creditor that the account statements are being maintained in accordance with the RBI Guidelines and there has been no capitalization of penal charges.

It is seen from the records that the total amount claimed by financial creditors in the case in hand is Rs. 118,24,72,334/- (Rupees One hundred and Eighteen Crores Twenty Four Lakhs Seventy Two Thousand Three Hundred and Thirty Four Only). Even if, the interest component is not added to the total amount claimed by the financial creditors, then also the principal amount is above the threshold limit of one crore which is due on the part of the corporate debtor. Therefore, this contention of the corporate debtor cannot be considered.

18. The sixth contention on behalf of the corporate debtor is that the corporate debtor is the solvent company, as it has 339 acres of land and machinery worth Rs. 122 crores alongwith 800 employees working for 5000 families. The company is a going concern and a viable company that can pay the debt if No Objection Certificate (NOC) for the sale of Hoshiarpur and Phagwara assets are given by the banks-petitioner. and cannot be admitted to CIRP as admitting the company into CIRP would defeat the objectives of the Code. The corporate debtor has placed reliance on the following case:-

***Anita Jindal Vs. M/s Jindal Buildtech Pvt. Ltd. & Anr. Company
Appeal (AT) (Ins.) 512 of 2021.***

“14. The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be 'Reorganisation' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. The Parliament has made a conscious effort to ensure that there is a significant difference between 'Resolution' and 'Recovery'. The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is 'maximising the value of assets' in the process of 'Resolution'. In 'MobiloX Innovations Private Limited' Vs. 'Kirusa Software Private Limited', (2018) 1 SCC 353, the Hon'ble Apex Court



has examined in detail the United Nations Legislative Guide on Insolvency, in which the IBC finds its roots. Any Application to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of 'Reorganising' or 'Resolution of the Company' does not arise. This Tribunal in 'Binani Industries Limited' Vs. 'Bank of Baroda & Anr.', Company Appeal (AT) (Ins.) No. 82 of 2018, has differentiated between 'Recovery' and 'Resolution' and has observed that IBC is not a Recovery Proceeding. 'Recovery' dispossesses the 'Corporate Debtor' of its assets while a Resolution is an effort to keep it afloat. Further, this Tribunal in 'Asset Advisory Services' Vs. 'VSS Projects', CP (IB) No. 96/7/HDB (2017), and also in 'Praveen Kumar Mundra' Vs. 'CIL Securities Ltd.', 2019 SCC OnLine 20 | Page Company Appeal (AT) (Insolvency) No. 512 of 2021 NCLAT 334, has noted that CIRP cannot be initiated with fraudulent and malicious intent 'for any purpose other than the Resolution of Insolvency or Liquidation' and therefore it is clearly covered under Section 65 of the Code”.

The corporate debtor has also relied upon the judgments in the matter of **-Anita Jindal, HDFC Bank Ltd. Vs. John Energy Ltd. CP(IB)/02(AHM) 2022 by Hon'ble NCLT, Ahmedabad, Tricolite Electricals Industries Ltd. Vs. WIPRO Ltd. 2023 SCC OnLine NCLAT 598, Logwell Logistic & Aviation Services (OPC) Pvt. Ltd. Vs. VelankanibElectronics Pvt. Ltd. (2020) SCC OnLine NCLT 8163, Pratiksh Pramod Rai Vs. Mylaw Learning Resources Pvt. Ltd. 2023 SCC OnLine NCLT 12347, Ram Kumar Yadav (now deceased) through his LRs Vs. Jindal Buildsys Ltd. 2023 SCC OnLine NCLT 14824** wherein it is mentioned that the CIRP cannot be initiated if the company is a going concern and the position of the company is viable.

However, in the present case, if the company is viable, the debt amount should have been settled by the corporate debtor earlier itself. Moreover, the debt amount has been admitted by the corporate debtor by giving the various OTS-Resolution Plans to the financial creditors for settlement, however, the same were rejected



from time to time. For the company being going concern, even after the admission of the CIRP, the company can run as a going concern. Therefore, this contention of the corporate debtor is devoid of legal force and hence, cannot be considered. Thus the authorities **HDFC Bank Ltd, Tricolite Electricals Industries Ltd., Logwell Logistic & Aviation Services (OPC) Pvt. Ltd., Pratiksh Pramod Rai, Ram Kumar Yadav (now deceased) through his LRs (supra)** relied upon by the corporate debtor cannot be considered in the present case.

19. Last issue for consideration is whether there is a debt exceeding threshold limit of Rupees one crore and there is default in payment or not. It is observed from the record that in the present case, the default is evidenced by Assignment Agreement dated 27.09.2018 (Annexure-A5), Restructuring support finance (RSF) Agreement (Annexure-A6), Facility Agreement (Annexure A7), Letter of acceptance (Annexure A8), Revival letter (Annexure A9), revocation letter (Annexure A10), recall cum guarantee invocation (Annexure A11), statement of account (Annexure A12), record of default regarding assigned debt (Annexure A13), record of default regarding restructuring support finance (Annexure A14), record of default regarding new loan (Annexure A15), Board Resolution dated 14.11.2018 by corporate debtor (Annexure A16), third supplemental and amendatory to the existing loan agreement (Annexure A17), security trustee deed of accession (Annexure A18), third supplemental and amendatory agreement for replacement of security trustee (Annexure A19), memorandum of entry (Annexures A20-21), Third supplemental and amendatory joint deed of hypothecation (Annexure A22), Letter of guarantee (personal) regarding restructuring support finance agreement (Annexure A23), Letter of guarantee (personal) regarding facility agreement (Annexure A24), Certificate under section



2A of Bankers book Evidence Act, 1891 (Annexures A25) entries in bankers books in books of accounts of petitioners (Annexures A26-27) Balance Sheets 2018-19, 2020-21 (Annexures A28-29), Annual Report FY 2021-22 2022-23 (Annexures A30-31) are attached with the main petition. These records show that there is debt exceeding the threshold which is admitted by corporate debtor and the corporate debtor has committed default in the payment of outstanding amount despite repeated requests by petitioner-financial creditor.

20. In view of the above facts and circumstances, the present petition, being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, is admitted in terms of Section 7(5) of the IBC. In Part-III of Form No. 1, Mr. Hasti Mal Kachhara, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Form No.2 dated 27.10.2023 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Hasti Mal Kachhara is attached with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Hasti Mal Kachhara and there is nothing adverse against him. The AFA Certification is filed vide Dairy No. 03748/21 dated 12.09.2024 wherein AFA is valid upto 12.12.2024.

21. In terms of Section 14 of the Code, we also order moratorium as below:

(i) Moratorium under section 14 (1) for prohibiting all of the following, namely:

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



(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

(ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also to a surety in a contract of guarantee to a corporate debtor.



(iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.

(v) 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 Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

22. In view of the above, we appoint Mr. Hasti Mal Kachhara, Registration No. IBBI/IPA-002/IP-N00342/2017-18/10992, Email: hastimal.kachhara@gmail.com, Mobile No. 9867557660, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Hasti Mal Kachhara shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and



other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) The IRP/RP shall prepare the Audited Financial Statements as on date of the CIRP and shall submit before the CoC for consideration.
- vi.) The IRP/RP shall also ensure that all the assets appearing in the Financial Statements on the CIRP date have been considered in the valuation report and to all creditors notice under Regulation 6A of



IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is issued.

- vii.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- viii.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit



documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- ix.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government



Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- x.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- xi.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

23. The Financial Creditor is directed to deposit a sum of ₹4,00,000/- (Rupees Four Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

24. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution



Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

25. The petition is admitted accordingly.

Sd/-

(Umesh Kumar Shukla)
Member (Technical)

October 25, 2024

Tamanna

Sd/-

(Harnam Singh Thakur)
Member (Judicial)