

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 1104/MB/2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

In the matter of

**Hewlett Packard Financial Service (India)
Private Limited**

Having its address at – 24, Salarpuria Arena,
Hosur Main Road, Adugodi, Bangalore –
560030, Karnataka, India

..... Petitioner/ Financial Creditor

Versus

Suumaya Industries Limited

Having its address- Wing B, 20th Floor,
Lotus Corporate Park, Western Express
Mumbai-400063, Goregaon (E),
Maharashtra, India

..... Respondent/Corporate Debtor

Order Delivered on :- 06/12/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Nikhilesh K. i/b Soloman

For the Corporate Debtor : Adv. Rohan Marathe

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. The present Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Hewlett Packard Financial Service (India) Private Limited** (hereinafter called Financial Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Suumaya Industries Limited** (hereinafter called Corporate Debtor) by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called "the Code") for resolution of an unresolved Financial Debt of Rs. 27,49,76,788.22/- (Rupees Twenty-Seven Crores Forty-Nine Lakhs Seventy-Six Thousand Seven Hundred and Eighty-Eight and paise Twenty-Two only)

The submissions of the Financial Creditor are as follows:

2. Suumaya Industries Limited (hereinafter referred to as "Corporate Debtor") was desirous of availing financial assistance from Hewlett Packard Financial

Services (India) Private Limited (hereinafter referred to as "Financial Creditor") for purchasing equipment from third-party suppliers for conducting its business. Accordingly, the Corporate Debtor approached the Financial Creditor to avail leasing and financing of such equipment. On 11th October 2021, pursuant to multiple discussions between the Financial Creditor and the Corporate Debtor, the Financial Creditor and the Corporate Debtor executed a Master Rental and Financing Agreement #5583128700 (hereinafter referred to as "MRFA").

3. It was agreed under the MRFA, that the Corporate Debtor and the Financial Creditor will execute loan financing with charge schedule/s wherein the Corporate Debtor would purchase equipment selected by it from a third-party supplier in the name of the Corporate Debtor and the Financial Creditor would fund/finance such equipment by making necessary payment to such third-party supplier at the request of the Corporate Debtor. Further, as per the terms of the MRFA, the equipment would remain hypothecated with the Financial Creditor until the Corporate Debtor would repay the loan to the Financial Creditor. Hence, the nature of transaction was that of a financial lease.

4. The parties also entered into the following Schedules:-
("Schedules") on the terms and conditions as elaborated therein

Schedule #	Date of commencement	Expiry date of the Schedule	Disbursement by the Financial Creditor (INR)
Loan Financing and Charge Schedule #55831287001NDLBSIA1	01.11.2021	31.10.2023	18,00,00,000

Loan Financing and Charge Schedule #55831287001NDLBS2A1	01.01.2022	31.12.2023	9,49,76,788.22
Total Loan amount disbursed			27,49,76,788.22

5. Thus, accordingly, the Corporate Debtor selected the equipment that it wanted to purchase from Iris Computers, a third-party seller, and during the period of October 2021 till January 2022, the Financial Creditor disbursed an amount of INR 27,49,76,788.22/- (Indian Rupees Twenty-Seven Crores Forty-Nine Lakhs Seventy Six Thousand Seven Hundred Eighty Eight and paise Twenty Two only) towards financing the equipment.

6. The Corporate Debtor had also executed a Bank Guarantee dated 31.12.2021 bearing number 6122421BG0001815 for an amount of INR 1,43,00,000/- (Indian Rupees One Crore Forty-Three Lakhs only) issued by the State Bank of India ("Bank Guarantee") in favour of the Financial Creditor as a further security to ensure repayment of the dues under the MRFA and the Schedules. As against the disbursement amount, and as per the terms and conditions of the MRFA and the Schedules, the Corporate Debtor was required to pay quarterly lease rents in arrears as stipulated thereunder, along with the financing interest rate till the expiry of the Loan Financing Schedules.

7. However, the Corporate Debtor failed to make the payment in a timely manner. The Corporate Debtor failed to pay the financial lease rentals for the quarter of April to June 2022 for the second Schedule, i.e. Loan Financing and Charge Schedule #55831287001NDLBS2A1, and thus, the first default occurred on 30th June 2022.

8. As no payments were forthcoming, the Financial Creditor issued multiple payment reminders to the Corporate Debtor including Demand Letters dated 21st July 2022 and 1st August 2022, 12th August 2022 and various emails and telecons, however the same was to no avail.
9. Left with no recourse, the Financial Creditor issued a Notice dated 21st September 2022, calling upon the Corporate Debtor to repay the outstanding dues within 7 days from date of Notice, failing which the Financial Creditor would terminate the MRFA and the Schedules. However, the Corporate Debtor failed to clear the outstanding dues and made only a meagre payment of INR1,61,01,648/- (Indian Rupees One Crore Sixty-One Lakhs One Thousand Six Hundred and Forty-Eight only) as against the outstanding amount of INR 6,71,46,911.68/- (Indian Rupees Six Crores Seventy-One Lakhs Forty Six Thousand Nine Hundred Eleven and Paise Sixty Eight only) as of October 2022. The Corporate Debtor also made a meagre payment of INR 100000/- (Rupees one Lakh only) on 18th May 2023.
10. Seeing no other alternative, the Financial Creditor, through its advocates, issued a legal notice dated 1st June 2023 terminating the MRFA and the Schedules and calling upon the Corporate Debtor to, inter alia, repay the outstanding amount of INR 22,93 ,915/- (Indian Rupees Twenty Two Crores Ninety Three Lakhs Twenty Five Thousand Nine Hundred and Fifty only) (including the arrears of lease rentals as well as the future outstanding amount) as on 1st June 2023, within a period of 7 (Seven) days from 1st June 2023.
11. Hence, as on 1st June 2023, the MRFA and the Schedules stood terminated and the Corporate Debtor became liable to pay not only the outstanding

amounts towards the arrears of the financial lease rentals but also the future receivables, as stipulated under the MRFA and the Loan Financing Schedules. However, the same was of no avail. No payments were forthcoming from the Corporate Debtor. Instead the Corporate Debtor vide its response dated 7th June 2023 denied payment of the outstanding dues on false pretext. The Financial Creditor vide its advocates response dated 31st August 2023 once again called upon the Corporate Debtor to make payment of the outstanding dues, however in vain. As on 1st June 2023, an amount of Rs. 22,93,25,915/- (Indian Rupees Twenty-Two Crores Ninety-Three Lakhs . Twenty-Five Thousand Nine Hundred and Fifty only) (including the arrears of lease rentals as well as the future outstanding amount) was due and payable by the Corporate Debtor to the Financial Creditor.

12. Left with no other recourse, the Financial Creditor presented the said Bank Guarantee to the State Bank of India, Bandra-Kurla Complex Branch and accordingly received an amount of Rs. 1,43,00,000/- (Rupees One Crore Forty-Three Lakhs only) as against the outstanding amount, and on 6th September 2023, received the amounts under the Bank Guarantee. The Financial Creditor adjusted this amount against one of the several outstanding invoices, being Invoice No. 230001393666 for an amount of Rs. 2,58,99,714/- (Rupees Two Crores Fifty-Eight Lakhs Ninety-Nine Thousand Seven Hundred and Fourteen only).
13. Even after invoking the Bank Guarantee and encashing the amounts thereunder, the Corporate Debtor is liable to make the outstanding payment to the Financial Creditor, and as of 30th September 2023, an amount of Rs. 23,44,62,904.48 (Rupees Twenty-Three Crores Forty-Four Lakhs Sixty-Two Thousand Nine Hundred and Four and paise Forty-Eight only) is due and

payable from the Corporate Debtor to the Financial Creditor. In view of the aforesaid, the Corporate Debtor has defaulted in making payment of total financial debt amount of Rs. 23,44,62,904.48 (Rupees Twenty-Three Crores Forty-Four Lakhs Sixty-Two Thousand Nine Hundred and Four and paise Forty-Eight only) (including the arrears of lease rentals as well as the future outstanding amount) under the MRFA and the Loan Financing Schedules, as on 30th September 2023. Hence the petition.

Reply filed on behalf of the Corporate Debtor:-

14. In the reply, the contents of the Company Petition have been denied in toto and nothing stated therein shall be deemed to be admitted on my behalf for want of non-traverse. It has further been claimed that the said Company Petition suffers from the faults of Suggestio Falsi and Supressio Veri and is not maintainable as the Petitioner is not a 'financial creditor' nor the purported sum claimed against the Respondent is a 'financial debt'.
15. It is further stated that SIL is a solvent company which is a going concern and currently has around 40 employees and it also had six subsidiary companies. The corporate debtor is also publicly listed on the National Stock Exchange and as on the date of filing the present Reply, SIL's market capitalization is around Rs. 68 crores. It has no secured or unsecured creditors. Due to the above stated reasons, de hors the merits of the Financial Creditor's claim, SIL ought not to be admitted into the insolvency resolution process. It is settled law that IBC cannot be used as a tool for recovery of monies.
16. It is further submitted that the background, out of which the present matter arises, is that the Financial Creditor and the Corporate Debtor entered into a Master Rental and Financing Agreement ("MRFA") on 11th October 2021

and subsequently also entered into two (2) Loan Financing with Charge Schedules ("LFCs") on 1st November 2021 & 1st January 2022, respectively. Without going into the contents and merits of the MRFA and the LFCs, it is undisputable that the Financial Creditor arbitrarily terminated the MRFA on 29th September 2022, claiming alleged default on behalf of the Corporate Debtor. De Hors the legality of the termination of the MRFA, it is submitted that it is an admitted fact that on 14th October 2022, the Financial Creditor and the Corporate Debtor entered into an informal payment plan. It is further submitted that the Corporate Debtor was paying Rent to the Financial Creditor at regular intervals in pursuance of the informal payment plan. Despite the same, the Financial Creditor took the drastic step of filing the captioned Petition, almost thirteen months after the purported termination of the MRFA. The Financial Creditor in the Petition has alleged that they were forced to file the present Petition as no payments were forthcoming and the informal payment plan had failed, while also admitting that the Corporate Debtor had paid at least an amount of Rs. 1,61,01,648/- (Rupees One Crore Sixty One Lakh One Thousand and Forty Eight Only) under the informal payment plan. Further, the period over which the said amount of at least Rs. 1,61,01,648/- (Rupees One Crore Sixty One Lakh One Thousand and Forty Eight Only) was received by the Financial Creditor, is also deliberately suppressed from the averments in the Petition.

17. The Corporate Debtor states that the Petition ought to be dismissed as the Corporate Debtor has repeatedly contended in various correspondence and communication that an event of "default" as defined under Section 3 (12) of the I&B Code has not occurred. In furtherance thereof, it is pertinent to mention that the Financial Creditor has not annexed any documents which are mandatory as per Section 7(3) of the I&B Code as read with Regulation 2A

of the IBBI (Insolvency Resolution Process for Corporate Persons) 3 Regulations, 2016 ("Regulations").

Section 7(3) of the I&B Code reads as follows:

"(3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board. "

Further, Regulation 2A of the Regulations reads as follows:

"2A. Record or evidence of default by financial creditor.

For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:- (a) certified copy of entries in the relevant account in the bankers ' book as defined in clause (3) of section 2 of the Bankers 'Books Evidence Act, 1891 (18 of 1891); (b)an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired "

18. On a conjoint reading of the above two (2) clauses, it is abundantly clear that the Financial Creditor ought to have annexed the relevant documents being either of the following:
- a. Record of default recorded with information utility; or
 - b. Such other record (relating to the default); or
 - c. Evidence of default; Along with and in aid of the above, the Financial Creditor ought to also have annexed either of the following documents:
 - d. i. Certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 3 of the Bankers' Book

Evidence Act, 1891; or ii. An order of a court or tribunal that has adjudicated upon the non-payment of a debt.

19. On a bare perusal of the Petition, it is clear that none of the above document(s) have not been produced by the Financial Creditor. This is even more pertinent in view of the fact that the Corporate Debtor vide its reply letter dated 7th June 2023 (Exhibit N to the CP) has categorically stated that there is no default on behalf of the Corporate Debtor.
20. Furthermore, it is worthwhile to mention that the Corporate Debtor made several payments under the informal payment plan amounting to at least an amount of Rs. 1,61,01,648/- (Rupees One Crore Sixty-One Lakh One Thousand and Forty Eight Only), However, the Financial Creditors have claimed purported default under the MRFA and the LFCS as well as the informal payment plan. In these circumstances it becomes increasingly necessary that the Financial Creditor ought to have relied upon documents and proofs as mandated under Section 7(3) of the I&B Code as read with Regulation 2A of the Regulations. Needless to reiterate that in this context, the Corporate Debtor has repeatedly maintained the fact that there is no "default" on their behalf.
21. It is well established that a proceeding under Section 7 of the I&B Code is a procedure which does not require evidence to be lead in respect of "debt" and "default" as the same are expected to be brought out by the Financial Creditor through the certified bank account statements which are duly authorized under the Bankers Book Evidence Act, 1891 and hence their authenticity & validity need not be proven. The Financial Creditor has averred in the Company Petition that these documents are "Not Available" with them. In

the conspicuous facts of the present case whereby default is denied by the Corporate Debtor and also event of default is neither particularly pleaded by the Financial Creditor nor has the Financial Creditor relied upon documents and proofs as mandated under Section 7(3) of the I&B Code as read with Regulation 2A of the Regulations, the captioned Petition under Section 7 of the I&B Code is not tenable and ought to be dismissed.

22. It is further submitted that Petitioner entered into an informal payment plan ("IPP") on 14th October 2022, whereby it was agreed that Rs 6,71,46,911.68/- (Rupees Six Crores Seventy-One Lakhs Forty-Six Thousand Nine Hundred Eleven and Sixty Eight Paise Only) were due and payable by the Corporate Debtor to and that accordingly, Rs. 25,55,000/- (Rupees Twenty-Five Lakhs and Fifty Five Thousand Only) were to be paid at the end of every month from October 2022 till March 2023. Through the IPP, it was further agreed that the aforesaid amount of Rs.25,55,000/(Rupees Twenty-Five Lakhs and Fifty Five Thousand Only) would be towards the interest component and accordingly after March 2023, the Petitioner would take a decision on offering a plan for formal restructuring of alleged debt to the Corporate Debtor. In pursuance thereof, the Corporate Debtor paid the Petitioner an amount of Rs. 72 lakhs as per the IPP, which has been suppressed by the Petitioner. In this regard, it has been further submitted that it is well settled that a company, which is a going concern and solvent in nature and does not have any other creditors, ought not to be admitted into insolvency at the behest of one creditor. Admission of the Corporate Debtor into insolvency would be against the very legislative fabric of the Insolvency & Bankruptcy Code, 2016 ("I&B Code") as it would lead to value destruction of the Corporate Debtor, which is a solvent company and a going concern employing around 40 employees.

23. It is further submitted that the MRFA under which the Schedules have been executed has an arbitration clause vide clause 25.1. In fact, even in the legal notice addressed by the advocates of the Applicant dated 1st June 2023 it is mentioned that the Petitioner shall be invoking arbitration proceedings against the Corporate Debtor. However, instead of invoking arbitration proceedings, the Petitioner has deliberately chosen to approach this Tribunal under the jurisdiction of Section 7 of the I&B Code. According to the Respondent, the present dispute is a fit case to be arbitrated and hence this Tribunal ought to exercise its judicial discretion to refer the present matter to arbitration.
24. It is also stated that the transaction entered into between the parties is not a financial transaction. In fact, the transaction entered into between the parties is a lease / renting transaction, where the Petitioner is the owner of the good and the Respondent is paying rent to the Petitioner for the same. Though the transaction documents may use words like 'loan' / 'finance', a true construction and interpretation of the transaction documents shall reveal that the same are in essence a lease / renting transaction. This is inter alia evident from the fact that the Respondent has paid rent to the Petitioner for using the goods. If this was a finance / loan transaction, rent would not be paid by the Respondent to the Petitioner for using the goods. The use of the words 'loan' / 'finance' and the like in the transaction documents, clearly is a mistake and needs to be rectified. The Respondents are in the process of taking these steps. Surely until these steps are taken, this matter cannot be proceeded with.
25. It is further stated that a bare perusal of the said MRFA will make it evident that the said agreement is internally destructive and is only drawn up by the

Petitioner with a modus operandi to corner the Corporate Debtor with this frivolous proceedings. Since the transaction between the parties is not in the nature of a loan / finance or the like and is a lease / renting agreement, a petition under Section 7 of the IBC is not maintainable.

26. Besides, the Corporate Debtor has paid in excess to Petitioner towards the Rental of the Products, as the property was never in the ownership of the Corporate Debtor as per the MRFA. In view thereof, it is stated that the Corporate Debtor has overpaid the Financial Creditor in multi fold variables as the Corporate Debtor was liable to only pay monies being commensurate rent to the Financial Creditor.
27. It is further evident that this is a disputed question of fact and interpretation of the contract for which the disputes need to be arbitrated by the competent Arbitral Tribunal or a Court of competent jurisdiction. It is submitted that the present case is not a simple case where debt is proved by the Financial Creditor by relying on the statement of loan or other documents as contemplated under the I&B Coder and IBBI regulations. In the present case, the Financial Creditor has failed to produce any material on record to prove that there exists a Financial Debt. The Financial Creditor has also failed to prove the existence of any kind of debt that needs to be adjudicated by this Tribunal. The present petition is a dressed-up petition filed only to pressurize the Corporate Debtor.
28. It is submitted on behalf of the Corporate Debtor that on the basis of the above facts and grounds, the Corporate Debtor has made out a fit case for dismissal of the Company Petition and, therefore, the petition be dismissed with costs.

Rejoinder filed on behalf of the Financial Creditor :-

29. In the rejoinder, the Financial Creditor has reiterated the averments made in the Petition and controverted those made in the reply filed by the Corporate Debtor.

Analysis and Findings:

30. We have heard the Counsel for the parties and gone through the record.

31. During the course of the arguments, Counsel for the Financial Creditor has referred to the Master Rental and Financing Agreement dated 11.10.2021 by way of which, the Financial Creditor financed the purchase of certain equipment for the Corporate Debtor, detail of which is given in Annexure (B) attached with the Petition. Counsel for the Financial Creditor has further referred to the Loan Finance and Charge Schedules whereby a hypothecation and charge was created in favour of the Financial Creditor on the financed items. According to the Counsel for the Financial Creditor, from the terms and conditions set out in the aforesaid documents, it is abundantly evident that the transaction in question is duly covered under the definition of financial debt and, therefore, it cannot be successfully argued on behalf of the Corporate Debtor that it is not a financial debt.

32. Counsel for the Financial Creditor has further contended that existence of debt and default stands established in this case as the Corporate Debtor failed to pay the installments of rent on the financed equipment as per the terms and conditions of the Master Rental and Financing Agreement dated 11.10.2021.

33. Counsel for the Financial Creditor has further referred to the NeSL report Exhibit (G-1) which also depicts that the total outstanding dues were to the tune of Rs. 23.44 crores and the date of default is 30.06.2022. In the light of the documents available on record, it has been urged by the Counsel for the Financial Creditor that it is a fit case for admission under Section 7 of the Insolvency and Bankruptcy Code, 2016.
34. On the other hand, Counsel for the Corporate Debtor has argued that the transaction in question cannot be considered as a financial debt as in fact, the transaction in question is lease/renting transaction and the Petitioner continues to be the owner of the goods and the Respondent has been paying only rent for the same. According to the Counsel for the Corporate Debtor essentially the transaction in question is a lease and renting transaction, no Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 could have been filed and on this ground alone, the Petition is liable to be dismissed.
35. Counsel for the Corporate Debtor has further argued that the Financial Creditor arbitrarily terminated the Master Rental and Financing Agreement on 29.09.2022 even though the Corporate Debtor was paying rent at regular intervals in pursuance of the informal payment plan and no default in fact had occurred in terms of Section 3 (12) of the Insolvency and Bankruptcy Code, 2016. Counsel for the Corporate Debtor has argued that even otherwise the Corporate Debtor is a going concern and is very much solvent in nature having more than 40 employees working for it who would suffer immensely if the Corporate Debtor is pushed into insolvency.
36. Counsel for the Corporate Debtor has further argued that the object of the IB Code is to sustain the company as a going concern and not to use the proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 as

recovery mechanism. In support of his contention, Counsel for the Corporate Debtor has relied upon *Vidarbha Industries Power Limited vs. Axis Bank Limited (2022 (9) SCC 352)* whereby the Hon'ble Supreme Court held that the Corporate Debtor should not be pushed into insolvency merely because of existence of debt and its default if the company is otherwise financially sound and solvent. Counsel for the Corporate Debtor has further relied upon *Swiss Ribbons (P) Ltd. vs. Union of India (2019 4 SCC 17)* whereby the Hon'ble Supreme Court has held that IB Code cannot be used as a recovery mechanism.

37. In the end, Counsel for the Corporate Debtor has prayed for the dismissal of the Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016.
38. We have weighed the contentions raised by the Counsel for the parties and have also carefully gone through the record.
39. From a minute perusal of the Master Rental and Financing Agreement dated 11.10.2021 coupled with Loan Financing and Charge Schedules dated 01.11.2021 and 01.01.2022, it become evident that the Corporate Debtor purchased equipment from a third-party supplier and the Financial Creditor financed the same by making payments to the third-party suppliers at the behest of the Corporate Debtor. The possession of the financed equipment was retained by the Corporate Debtor for its business purposes. Therefore, it is evident that on the basis of these documents, the Financial Creditor disbursed a sum of Rs. 27.49 crores to the Corporate Debtor. As the Corporate Debtor failed to pay the financial lease rentals in timely manner and committed default, this necessitated the filing of the present Petition after

the Financial Creditor terminated the Master Rental and Financing Agreement dated 11.10.2021 and the Schedules through a legal notice dated 01.06.2023. In this connection, Counsel for the Financial Creditor has relied upon *Association of Leasing & Financial Service Companies vs. Union of India & Ors., Civil Appeal No. 9344 of 2010* whereby the Hon'ble Supreme Court has held that a finance lease transfers all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee. It was further held that in case of "finance lease", the lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets and in substance, financial lease is a financial loan from the lessor to the lessee. It was further held that if the lease is terminated prematurely, the lessor is entitled to recoup its capital investment less the realizable value of the equipment at the time and its expected finance charges. Therefore, keeping in view the law laid down by the Hon'ble Supreme Court in the above cited case, it is evident that the transaction contracted under the Master Rental and Financing Agreement is nothing but a financial debt duly covered under the definition of Section 3 (12) of the Insolvency and Bankruptcy Code, 2016. It is, therefore, cannot be successfully argued on behalf of the Corporate Debtor that the transaction in question was not a financial debt or that the Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 cannot be maintained.

40. It is further evident from the record, especially the NeSL report annexed as Exhibit (G-1) with the Petition that the Corporate Debtor had committed a default of Rs. 23.44 crores and the date of default is 30.06.2022. Even otherwise, in the reply filed on behalf of the Corporate Debtor the execution of the documents such as Master Rental and Financing Agreement and Loan Financing with Charge Schedules has not been disputed. It has also been

claimed in the reply filed on behalf of the Corporate Debtor that some part payments made by the Corporate Debtor from time to time but in any case there cannot be any doubt about the fact that dues of more than Rs. 1 crore were outstanding at the time of filing of the present Petition, which, in our considered view, is sufficient to admit the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016.

41. As regards the argument that the Corporate Debtor is a solvent company and is a going concern having more than 40 employees working over it and, therefore, it should not be admitted into insolvency, it would be worth while to mention that the Corporate Debtor has not brought on record enough material to show that the company is financially sound enough to sustain itself as a going concern. Considering the fact that the Corporate Debtor is in default of more than 20 crores in this case should by itself is sufficient to admit the Corporate Debtor into insolvency. We are further of the considered view that the law laid down by the Hon'ble Supreme in *Vidarbha Industries Power Limited vs. Axis Bank Limited (Supra) and Swiss Ribbons (P) Ltd. vs. Union of India (Supra)* can also not be applied to the facts and circumstances of the present case.
42. As a result of the above discussion, we hold that the Financial Creditor has been able to establish the existence of financial debt and its default having been committed by the Corporate Debtor and further that the present Petition has been filed within the period of limitation. Therefore, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 1104/(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Suumaya Industries Limited.**

- b. This Bench hereby **appoints Mr. Ravindra Chaturvedi**, Registration No: **IBBI/IPA-001/IP-P00792/2017-2018/11359** as the **Interim Resolution Professional** having his address at Parekh Shah & Lodha, 31E, BKC Centre, Laxmi Industrial Estate, New Link Road, Andheri (W) ,Mumbai City, Maharashtra,400053, Email id:- ravinchaturvedi@hotmail.com ; to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

43. **Accordingly, this Petition is admitted.**

44. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)