

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)
CP (IB) 16/CHD/PB/2022 & IA No. 2837/2023

IN THE MATTER OF:

Canara Bank

Through Assistant General Manager Sh. Arvind Kumar

Having its Head office at
112, J.C. Road, Bangalore,
Having its Branch office at
Circle office Plot No. 1, 4th Floor,
Sector 34, Chandigarh

... Applicant

VERSUS

M/s. Gurdas Agro Private Limited

Through Managing Director

Having its registered office at
2301, Bhupindra Flour Mills Aggarsein Nagar,
Amrik Singh Road, Bathinda-151001

... Respondent

And in the matter of IA No. 2837/2023

M/s. Gurdas Agro Private Limited

Through Managing Director

Having its registered office at
2301, Bhupindra Flour Mills Aggarsein Nagar,
Amrik Singh Road, Bathinda-151001

...Applicant

VERSUS

Canara Bank

Through Assistant General Manager Sh. Arvind Kumar

Having its Head office at
112, J.C. Road, Bangalore,
Having its Branch office at
Circle office Plot No. 1, 4th Floor,
Sector 34, Chandigarh

...Respondent

Section: 7 of the IBC, 2016 read with Rule 11 NCLT Rules, 2016

CORAM

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (JUDICIAL)
SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Adv. Rakesh Gupta, Adv. Yogesh Kumar
Mr. Ranjeet Kumar, Branch Manager

For Respondent : Sr. Advocate Munisha Gandhi
Adv. Vaibhav Sharma, Adv. Salina Chalana

Judgement

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

IA No. 2837/2023

This IA has been filed by the Corporate Debtor **M/s. Gurdas Agro Private Limited** seeking dismissal of Section 7 petition filed by the Financial Creditor **Canara Bank**, being barred by Section 10-A of the IBC.

2. The facts as stated by the Applicant in the IA are as follows:
 - i. The Section 7 petition is not maintainable as the date of default falls within the period covered by Section 10-A of IBC, which creates a bar to the filling of application under Section 7 in relation to default committed on or after 25th March, 2020 for a period of six months, which was further extended till 24th March 2021. The section 10A is prefaced with a non-obstante provision which has the effect of overriding sections 7, 9 and 10.

- ii. The Financial Creditor has admitted in Part IV of FORM 1, in the Section "Particulars Of Financial Debt", under the head "Amount Claimed To Be In Default And The Date On Which The Default Occurred" as under:

*"As the Corporate Debtor defaulted in the payment of interest and principal amount in other accounts resulted in **classifying account NPA by the Canara Bank on 03.08.2020.**"*

Therefore, the Financial Creditor cannot invoke Section 7 of the IBC for the said default, as per the proviso to Section 10-A, which states that *"no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf."*

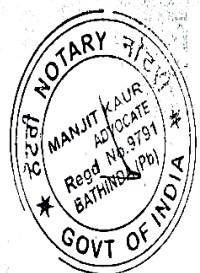
- iii. Applicant/CD has relied upon the judgement by Hon'ble Supreme Court of India in the matter of **Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited** as well as on the judgement passed by Hon'ble NCLT, New Delhi Bench in the matter of **DB Power Limited Vs. M/s Krete Energy (1) Private Limited.**

3. It is further submitted that the corporate debtor M/s. Gurdas Agro Private Limited also sought information under RTI from the Petitioner bank regarding the date of default of the loan accounts/credit facilities of the Respondent maintained with the said bank. In response thereto, the bank categorically mentioned dates of default to be 18.04.2020, 15.04.2020 and 17.05.2020 for the loan

accounts/credit facilities availed by the Respondent. A copy of the information received by the Applicant herein/ Corporate Debtor under the RTI Act reads thus:

ANNEXURE-1

S.No.	LC REFERENCE NO	LC AMOUNT	LC ISSUE DATE	LC EXPIRY DATE	BILL NO	BILL AMOUNT	BILL LODGING DATED/DATE	BILL MATURITY DATE	DATE OF DEFAULT	BILL DEVOLVEMENT DATE (BILL PAYMENT DATE)
1	MOSIOUU19320001	17,64,86,445.00	19-11-2019	30-11-2019	MOSHILU193240002	17,64,86,445.00	19-11-2019	17-04-2020	18-04-2020	04-05-2020
2	MOSIOUU193190003	9,91,43,144.00	15-11-2019	01-03-2020	MOSHILU193200002	9,91,43,144.00	15-11-2019	14-04-2020	15-04-2020	04-05-2020
3	MOSIOUU193190002	4,75,00,000.00	15-11-2019	16-02-2020	MOSHILU193200001	4,75,00,000.00	16-11-2019	14-04-2020	15-04-2020	04-05-2020
4	MOSIOUU193200002	17,74,96,947.00	19-11-2019	30-11-2019	MOSHILU193240001	17,74,96,947.00	19-11-2019	17-05-2020	18-05-2020	18-05-2020



Manjit Kaur

Is the true copy
MANJIT KAUR
 Advocate & Notary
 Bathinda (PB)
 6284221661

AS AGRO (P) LTD.
 3rd flr
 TOR/AUTH. SIGN.

4. On the issuance of notice, the Respondent/Financial Creditor through its Assistant General Manager, Sh. Ranjeet Kumar filed its Reply dated 13.02.2024 and Additional Affidavit dated 14.02.2024 stating mainly, the following:

- i. Section 10A provides for defaults which occurred during the said period, however, the provision of section 10A of IBC, 2016 does not bar filing of the insolvency petitions for which date of default still continues. The intent of the legislature was to secure those entities, which defaulted in their payments/ re-payments due towards their creditors, due to the reasons of COVID-19. However, in the case in hand, the date of default is a continuous one and the corporate debtor has also defaulted for repayment of the credit facilities as whole towards the petitioner financial creditor when the same was recalled.

- ii. The petitioner financial creditor has only mentioned the date of NPA in the petition to be 03.08.2020 and has not mentioned the Date of default. The system acknowledges the default committed by the debtor on 30.03.2021. Although, the account had become as a Non-Performing Asset as per Master Circular with effect from 03.08.2020 however, because of the moratorium granted, the account was not even classified as NPA as per the Master Circular on that day and the date of the classification of account as NPA was 30.03.2021. The same is also reflected in the Demand Notice issued u/s 13(2) of the SARFAESI Act, 2002, which is attached by the petitioner financial creditor in its petition at Annexure-1/43. From the same it is clear that the date of NPA of the accounts of the present corporate debtor is 30.03.2021 and it was due to clerical error that the date of NPA was mentioned as 03.08.2020 wrongly in Part IV of section 7 petition. And the said date of NPA, i.e., 30.03.2021 does not fall within the period of default as specified under section 10A of the IBC, 2016. Moreover, the default of the corporate debtor towards the petitioner financial creditor accrued on 30.03.2021 when the account of the corporate debtor was classified as NPA, when the entire credit facilities were recalled by the petitioner bank on account of default on 30.03.2021. Thus the present application filed by the corporate debtor is liable to be dismissed.
- iii. The default as envisaged under the IBC is different than the date of NPA as envisaged in the Master Circular of RBI. IBC does not define the term NPA which is only defined in the Master Circular on prudential norms


whereas the default in the present case occurred as per the account books of the bank on 30.03.2021 and consequently, demand notice under Section 13 (2) of SARFAESI Act, 2002 was issued on 31.03.2021.

- iv. Further, the applicant has also acknowledged its debt towards the petitioner financial creditor by way of giving an offer of OTS by way of letter dated 21.01.2024. In the said letter also, the corporate debtor has acknowledged its debt towards the petitioner financial creditor and thus the default on part of the corporate debtor exists.
- v. The plea of the corporate debtor is that the default date of the corporate debtor falls within the period as specified under section 10A. Even if the contention of the corporate debtor is considered for a moment, and the amount of default during the period as specified u/s 10A of the IBC, 2016 is removed for calculation of the amount due towards the petitioner financial creditor, even then the default amount of the corporate debtor due towards the petitioner financial creditor would be more than Rs. one crore and the said default is still continuing as on date.

5. We heard the submissions of both parties and perused the pleadings on record, including the additional affidavits filed by both parties. Whereas, the Applicant/CD contends that the Section 7 petition is not maintainable as the date of default as mentioned in Part IV of the application and reply to an RTI falls within the period covered by Section 10-A of IBC, it is the argument of the Financial Creditor that the date of NPA of the accounts of the present corporate

debtor is 30.03.2021 and it was due to clerical error that the date of NPA was mentioned as 03.08.2020 wrongly in Part IV of section 7 petition. Further, the date of the classification of account of CD as NPA was 30.03.2021, which is also reflected in the Demand Notice issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002. At this stage, we refer to the Demand Notice issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002 (Annexure-1/43 of the Petition), which reads as under:

110) Annexure 1/43

केनरा बँक  **Canara Bank**

NOTICE TO BORROWER

REF: LUDHIANA OVERSEAS/REC/SARFAESI/GAPL
DATE: 31.03.2021

To,

1. **M/s Gurdas Agro Private Limited**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001

Through its Directors

2. **Shri Saran Dass**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001.

3. **Smt Amberli Devi**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001.(Now deceased)

Through her legal heirs

a) **Sh Gurdas Garg b) Sh Bhagwan Usa c) Sh Saran Dass d) Sh. Karam Dorn**
All sons of late Smt Amberli Devi, residents of #2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001

4. **Sh Atma Ram (Director)**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001

5. **Sh. Gurdas Garg (Guarantor)**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001

6. **Sh. Kunal Garg (Guarantor)**
#2301 Amrik Singh Road
Aggarsain Nagar Bathinda
Punjab-151001

7. **M/s GK Proteins (P) LTD (Being Corporate Guarantor)**
Shop no 2 Aggarsain Nagar,
Amrik Singh Road,
Bathinda-15001, Punjab

8. **M/s G.G. Oils & Fats Pvt Ltd. (Being Corporate Guarantor)**
Shop no 1 Aggarsain Nagar Amrik Singh Road,

Bathinda-151001, Punjab

Dear Sir,

SUB: NOTICE UNDER SECTION 13(2) OF THE SECURITISATION & RECONSTRUCTION OF FINANCIAL ASSETS & ENFORCEMENT OF SECURITY INTEREST ACT, 2002

The undersigned being the authorized officer of **Canara Bank**, Overseas branch, **Ludhiana**, appointed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred as the "Act") do hereby issue this notice to you as under:

That you noticee no. 1) M/s Gurdas Agro Private Limited through its Directors i.e. **Noticee no. 2 Shri Saran Dass #2301, Amrik Singh Road, Aggarsain Nagar, Bathinda Punjab-151001 and Noticee no. 3 Smt Ambreti Devi #2301, Amrik Singh Road, Aggarsain Nagar, Bathinda Punjab-151001** have availed credit facility / facilities stated in the "Schedule A" hereunder and have entered into security agreement/s securing the properties mentioned in **Schedule B** here under creating security interest in favour of Canara Bank supported by various loan documents were executed by you. In terms of the said agreement you have availed the financial assistance with an express undertaking that you shall repay the said loan amount in accordance with the terms and conditions of the above said agreement/s, under lawful pari-passu charge with other Consortium member bank i.e. UCO Bank.

It is pertinent to mention here that after death of Noticee no 3 Smt Ambreti Devi, you Noticee no 3(a), (b), (c) and (d) being legal heirs of noticee no 3 are equally, jointly and severally liable to repay the said loan amount in accordance with the terms and conditions of the above said agreement/s, under lawful pari-passu charge with other Consortium member bank i.e. UCO Bank.

Further you Noticee no 4, appointed as director of M/s Gurdas Agro Pvt Ltd. after death of Noticee no 3 Smt Ambreti Devi. So, you noticee no 4 is also liable to repay the said loan amount in accordance with the terms and conditions of the above said agreement/s, under lawful pari-passu charge with other Consortium member bank i.e. UCO Bank.

Similarly, Noticee no 5 & 6 stood as guarantors in the aforesaid loan account and are equally, jointly and severally liable to repay the said loan amount in accordance with the terms and conditions of the above said agreement/s, under lawful pari-passu charge with other Consortium member bank i.e. UCO Bank.

Similarly, Noticee no 7 & 8 stood as Corporate Guarantors in the aforesaid loan account and are equally, jointly and severally liable to repay the said loan amount in

CANARA BANK,
TEL NO: 0161-2545174
OVERSEAS BRANCH,
LUDHIANA

EMAIL:cb2407@canarabank.com



accordance with the terms and conditions of the above said agreement/s, under lawful pari-passu charge with other Consortium member bank i.e. UCO Bank.

However, from 04/05/2020, the operation and conduct of the said financial assistance/credit facilities have become irregular. The books of account maintained by our bank shows that your liability towards our bank as on 30/03/2021 amounts to Rs. 97,56,89,906-62P (Rupees Ninty Seven crores fifty six lacs Eighty three thousand Nine hundred Six rupees and sixty Two Paise only). **Princ. Demand** in the said amount of Rs. 97,56,89,906-62P has been devolved from your current account bearing no. 2407201000332, resulting to which **See said current account has become NPA on 30/03/2021 w.e.f 03/08/2020** together with interest from 01/03/2021 including future interest.

The operation and conduct of the above said financial assistance/credit facilities having come to a standstill and as a consequence of your committing default in meeting your LC payment commitments and interest thereon, the bank was constrained to classify your all debts as Non Performing Asset (NPA) on 30/03/2021 w.e.f 03/08/2020. The Bank through this notice brings to your attention that despite repeated requests, you have failed and neglected to repay the said dues/outstanding liabilities. Therefore, the bank hereby calls upon you noticees under Section 13(2) of the SARFAESI Act 2002, by issuing this notice to discharge in full your liabilities as stated in Schedule "C" hereunder to the bank within 60 days from the date of receipt of this notice. Further you noticees are also liable to pay future interest from 01/03/2021 till the clearance of liability at the rate of 15.50% p.a. compounded monthly on current account no. 2407201000332. Further, all costs, charges, expenses and incidental expenses with respect to the proceedings undertaken by the bank in recovering for its debts will also borne by you noticees, as our bank has lawful pari-passu charge along with other Consortium member i.e UCO Bank.

Please take note of the fact that if you noticees fail to repay the bank the aforesaid debts, which are stated in Schedule "C" hereunder, till the clearance of liability along with future and penal interest and incidental expenses and costs as stated above in terms of this notice under Section 13(2) of the SARFAESI Act 2002, then bank will exercise all or any of the rights detailed under sub-section (4) (a) and (b) of Section 13, the extract of which is given here below to convey the seriousness of this issue :

13(4) a - In case the borrower fails to discharge liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover this secured debt, namely

(a) take possession of the secured assets of the borrower / mortgagor including the right to transfer by way of lease, assignment or sale for realizing the secured assets.

CANARA BANK
TEL NO: 2245174
OVERSEAS BRANCH,
LUBHANA

EMAIL:cb2407@canarabank.com



(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

and under other applicable provisions of the said Act.

You are also put on notice that in terms of section 13(13) you shall not transfer by way of sale, lease or otherwise the said secured assets which are lying mortgage with bank and detailed in Schedule "B" hereunder without obtaining written consent of the bank. It is further brought to your notice that any contravention of this statutory injunction/restraint, as provided under the said Act, is an offence and if for any reason, the secured assets are sold or leased out in the ordinary course of business, the sale proceeds or income realized shall be deposited with the bank. In this regard you shall have to render proper accounts of such realization / income.

This notice of Demand is without prejudice to and shall not be construed as waiver of any other rights or remedies which the bank may have including further demands for the sums found due and payable by you. This is without prejudice to any other rights available to us under the Act and/or any other law in force.

Please comply with the demand under this notice and avoid all unpleasantness. In case of Non-compliance, further needful action will be resorted to, holding you noticees liable for all costs and consequence.

Thanking you,

Yours faithfully,

AUTHORIZED OFFICER

6. Thus, we find that the date of the classification of account of CD as NPA, as reflected in the Demand Notice dated 31.03.2021 issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor was 30.03.2021. Thus, we find merit in and accept the contention of the Financial Creditor that the date of NPA as reflected in Part IV was a clerical error and the correct date of NPA is 30.03.2021. Further, we are aware that in catena of judgements, the date of NPA and date of default has been used interchangeably. In this context, it is worthwhile to refer to the judgement passed by the Hon'ble Supreme Court in the matter of **Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.**; Civil Appeal No. 1650 of 2020. The Para 142 of the said judgement reads thus:

“To sum up, in our considered opinion an application under Section 7of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.”

7. In the sequel of the aforesaid discussion, we find the contention of the Applicant devoid of merits and **accordingly, IA No. 2837/2023 is dismissed.**

Company Petition No. (IB) 16/CHD/PB/2022

Canara Bank (for brevity, the **“Applicant”**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **‘IBC, 2016’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Gurdas Agro Pvt Ltd. (for brevity, the **"Respondent"**)

2. The Respondent namely, Gurdas Agro Pvt Ltd. is a Company incorporated on 20.10.2011 with CIN U51225PB2011PTC035570 under the provisions of the Companies Act, 1956 having its registered office at 2301, Bhupindra Flour Mills Aggarsein Nagar, Amrik Singh Road, Bathinda-151001, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs. 20,00,00,000/- and the Paid-up Share Capital of the Company is Rs. 19,85,00,000/- as per the Master Data.

3. In its application, it is averred by the Applicant that it had granted overall financial facilities of Rs. 110 crores to the respondent on 15.03.13. This included OCC of Rs. 10 crores & ILC (Inland Letter of credit) of Rs. 100 crores. Then on 26.07.2013, the facilities were converted into consortium and UCO Bank was included as other member of the consortium and the overall financial facilities granted to the respondent were enhanced to Rs. 150 crores in which the share of the Applicant was Rs. 110 crores. In the year 2015 the Applicant to the tune of Rs. 150 crores granted by the consortium to the Respondent were and the facilities

were reduced to Rs. 140 crores in which the share of the Applicant remained Rs. 100 crores in the form of ILC. The facilities granted by the Applicant i.e. Canara Bank to the tune of Rs 100 crores was renewed in the year 2018 and 2019, the terms & conditions of the renewal were conveyed to the Respondent vide sanction memorandum dated 21.07.2018 and 16.11.2019.

4. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of its application read thus:

2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>As the Corporate Debtor defaulted in the payment of interest and principal amount in other accounts it resulted in classifying account as <u>NPA</u> by the Canara Bank on <u>03.08.2020</u>. Thereafter demand notice under section 13 (2) of the SARFAESI Act, dated 31.03.2021 was issued to the corporate debtor as well as to the guarantors in the loan account of the corporate debtor demanding an amount of Rs.97,56,89 906.62/- including interest as on <u>30.03.2021</u>. The total outstanding of the corporate debtor against petitioner financial creditor is Rs.108,77,95,510.24 as on 15.11.2021 with pendent lite and future interest @ 11.45% p.a. with monthly rests along with costs. Bank account statements maintained as per the provisions of Banker's Books Evidence Act, 1891 and the calculation of accrued interest has been attached as Annexure-I/4 (Pg. 59-205) & Annexure-I/5 (Pg. 206-207)</p>
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5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 108,77,95,510.24 as on 15.11.2021. It is further submitted by the Applicant that on 31.03.2021, the Applicant Bank issued the demand notice under Section 13 (2) of the SARFAESI Act calling upon the CD and other obligors to pay an amount of Rs. 97,56,89906.62. including interest as on 30.03.2021.

6. In support of its contention, the Applicant has relied upon the following documents:

- i. Sanction memorandum dated 15.03.2013.
- ii. Resolution of Board of Directors of CD dated 14.03.2013.
- iii. Form 8 showing the registration of charge of CD with ROC.
- iv. OA bearing No. 1179 of 2021 before the DRT III, Chandigarh filed by the FC under Section 19 of Recovery of Debts & Bankruptcy Act, 1992.
- v. CIBIL report of the CD.
- vi. Copy of sanction of OCC limit to the tune of Rs. 10 Crores.
- vii. Copy of sanction of the inland letter of credit of Rs. 100 Crores.
- viii. Copy of personal guarantees by Directors of the CD to secure a sum of Rs. 110 Crores availed by the CD and the Guarantee Agreement on 17.04.2013 in favour of the FC.
- ix. Sanction letter of UCO Bank.
- x. The Board of Directors of CD vide its resolution dated 06.08.2013.

- xi. Copy of consideration of the consortium of banks having sanctioned the overall financial facilities of Rs. 150 Crores, CD through its Authorized Signatory executed the working capital consortium agreement on 08.08.2013 in favour of the consortium of banks.
- xii. Joint deed of hypothecation executed by CD through its Authorized Signatory to secure a sum of 150 Crores on 08.08.2013.
- xiii. Letter of Authority executed by UCO bank on 08.08.2013 in favour of Financial Creditor acknowledging Canara Bank as the lead bank.
- xiv. The Board of Directors of CD vide its resolution dated 16.06.2016.
- xv. Supplemental Joint deed of hypothecation executed by CD through its Authorized Signatory to secure a sum of 140 Crores on 16.06.2016.
- xvi. Copy of personal guarantees by Vinod Garg along with other directors of the CD to secure a sum of Rs. 140 Crores availed by the CD and executed the Guarantee Agreement on 16.06.2016 in favour of the FC.
- xvii. The Board resolution on 15.06.2016 passed by the corporate entities being corporate guarantors.
- xviii. Letter of Authority executed by UCO Bank on 16.06.2016 in favour of financial creditor acknowledging Canara Bank as the lead bank.
- xix. The Board of Directors of CD vide its resolution dated 05.09.2017.

- xx. Copy of sanction letter of facilities granted by Canara Bank renewed in the year 2018, the terms and conditions of the renewal were conveyed to the CD vide sanction memorandum dated 21.07.2018.
- xxi. Copy of the facilities to the tune of Rs.100 crores granted to the CD was renewed in the year 2018, CD through its authorized signatory executed the letter of renewal in the favour of financial creditor on 03.08.2018.
- xxii. Copy of personal guarantees by the Directors of the CD to secure a sum of Rs. 140 Crores availed by the CD and executed the Guarantee Agreement on 03.08.2018 extending their guarantee in favour of the consortium of Banks.
- xxiii. The Board resolution on 05.09.2017 passed by the corporate entities being corporate guarantors. Authorized the directors of the companies to execute the guarantee agreements for giving its corporate guarantee to secure a sum of Rs.140 crores availed by the corporate debtor on 03.08.2018.
- xxiv. The Board resolution on 28.08.2019 passed by the corporate entities being corporate guarantors.
- xxv. Copy of the facilities to the tune of Rs.100 crores granted to the CD was renewed in the year 2019, CD through its authorized signatory executed the letter of renewal in the favour of financial creditor on 16.11.2019.

- xxvi. Copy of the facilities to the tune of Rs.40 crores granted to the CD was renewed in the year 2019, CD through its authorized signatory executed the letter of renewal in the favour of UCO Bank on 24.04.2019.
- xxvii. Copy of personal guarantees by directors of the CD to secure a sum of Rs. 140 Crores availed by the CD and executed the Guarantee Agreement on 16.11.2019 extending their guarantee in favour of the consortium of Banks.
- xxviii. The Board resolution on 28.08.2019 passed by the corporate entities being corporate guarantors.
- xxix. Revival letter for the purpose of limitation, executed in favour of the consortium of banks by the CD on 03.08.2018 and 16.11.2019.
- xxx. Copy of security interest created by the CD over their assets, duly registered in the Central Registry.
- xxxi. Demand Notice issued by the financial creditor dated 31.03.2021.
- xxxii. Copy of Form 2 as per the provisions of rules of IBC, 2016.
- xxxiii. Proof regarding payment of application fee of Rs.25000/- being application by FC as per the provisions of Insolvency and Bankruptcy Rules, 2016.

7. Based on the abovementioned facts and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On the issuance of notice, the Respondent /CD through its Director Mr. Atma Ram filed its reply dated 20.04.23 stating mainly, the following:

8.1 In order to bridge over the temporary liquidity crunch due to Covid-19- and keep the business afloat, the respondent company vide letter dated 14.04.2020 (Annexure R-2) requested for deferment on payment towards the FLCs/ILCs which was due for payment on 14.04.2020 and stated that as outbreak in China suppressed the prices of edible oil in India, owing to which refineries were lifting cargo at slow pace and hence realization of debts was less. Thereafter with the imposition of nationwide lockdown in India, the situation worsened. However, despite being aware of the precarious situation of respondent company, the applicant bank failed to consider the above requests and consequently, 1st and 2nd LCs devolved on 14.04.2020 and 3rd LC devolved on 17.04.2020.

8.2 Respondent company made another bonafide attempt to seek assistance of applicant bank and vide letter dated 19.05.2020 (Annexure R-3), requested for conversion of Non-Fund Based ILCs Limits to Fund Based Overdraft Facility as per guidelines of the bank/RBI. However, in continuum of their malafide conduct, the said request was also not considered. Instead, due to reasons beyond the control of respondent company, remaining 4th, 5th, and 6th LCs were devolved on 15.05.2020 and the 7th LC devolved on dated 17.05.2020. Hence, it is ex facie evident that Applicant Bank at no stage cooperated with Respondent Company.

8.3 As per the RBI Master Circular dated 01.07.2015, a mandatory cure period of 90 days has to be provided. However, in the instant case without even waiting

for the 90 days' period to lapse, applicant bank illegally classified the loan account of petitioner during moratorium period granted by RBI as NPA on 03.08.2020 thereby rendering all the subsequent actions unsustainable in the eyes of law.

8.4 In order to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic and to ensure the continuity of viable businesses, certain regulatory measures were announced, including the RBI Circular DOR.No.BP.BC. 47/21.04.048/2019-20 dated 27.03.2020 and DOR.No.BP.BC. 63/21.04.048/2019-20 dated 17.04.2020 granting a moratorium of three months w.e.f. 01.03.2020 till 31.05.2020 with the avowed object of easing the financial stress that was being faced by units like respondent company "by relaxing repayment pressures and improving access to working capital, which was extended up to 31.08.2020 by virtue of subsequent circular DOR.NO.BP.BC.71/21 04.048/ 2019-20 dated 23.05.2020. And in terms of RBI Circular dated 27.03.2020, 17.04.2020 and 23.05.2020, no financial institutions were permitted/allowed to recall or to make demand during the moratorium period i.e. 01.03.2020 to 31.08.2020 granted by RBI in respect of credit facilities availed by the borrower. Hence, the amount of alleged default Rs. 97,56,89,906.62 and the date on which default occurred (03.08.2020) as stated in para IV sub clause 2 of the petition during the moratorium period is wrong and strongly denied.

8.5 The petitioner/ applicant bank also failed to serve the alleged demand notice dated 31.03.2021 upon the respondent company. Hence the main limb of section

7 of IBC-2016 with respect to default and service of demand notice have not been complied with by the petitioner/ applicant bank in order to initiate the proceeding under the IBC Act-2016.

8.6 The respondent company had made earnest attempts to settle the matter by submitting one-time settlement proposal and to revive the company but the bank it adamant to close a feasible and viable unit only with a motive to alienate the same to its kith and kins.

8.7 The applicant bank has relied upon the copy of authority letter dated 13.12.2021 issued by the alleged competent authority arising by Mr. Arvind Kumar, AGM to sign the application filed by the applicant bank. However, it is worth to state that from the perusal of the said letter of authority dated 13.12.2021, there is no board resolution or any proper authorization given thus the said letter of authority cannot be relied upon any manner for purpose of giving authority to a person as per law.

8.8 Further stated that the common hypothecation agreement executed between the applicant bank and the respondent company is a complete document in itself and the same provides for appointment of arbitrator in case any dispute/liability. So, the only remedy available to the applicant bank was to invoke the said arbitration clause and to seek their claim before the arbitrator as per the arbitration and reconciliation act 1996.

9. We heard the submissions of both parties and perused the pleadings on record. The issue relating to the date of default as mentioned in the petition falling in Section 10A period has already been dealt as part of this composite

order in I.A. No. 2837/2023. Further, during the course of hearing on 15.02.2024, Ld. Counsel for the Financial Creditor stated that although the account had become NPA as per the Master Circular with effect from 03.08.2020, however because of moratorium period, the account was not classified as NPA as per Master Circular on that day and the date of classification of account as NPA was 30.03.2021. As per the application, the Applicant has claimed an outstanding "financial debt" of Rs. 108,77,95,510.24 as on 15.11.2021. It is further submitted by the Applicant that on 31.03.2021, the Applicant Bank issued the demand notice under Section 13 (2) of the SARFAESI Act calling upon the CD and other obligors to pay an amount of Rs.97,56,89906.62. including interest as on 30.03.2021. However, the Respondent argued that the petitioner/ applicant bank failed to serve the alleged demand notice dated 31.03.2021 upon the respondent company. Hence, the main limb of section 7 of IBC-2016 with respect to default and service of demand notice have not been complied with by the petitioner/ applicant bank in order to initiate the proceeding under the IBC Act-2016. However, on perusal of the Reply of the Applicant Bank in IA No. 2837/2023, it emerges that the said Demand Notice was served upon the Corporate Debtor on 09.04.2021 by way of newspaper publication and despite that the Corporate Debtor failed to make the repayment within 60 days of publication of the said notice.

10. Further, it is noticed that the Corporate Debtor in its Reply has submitted that the respondent company had made earnest attempts to settle the matter by submitting one-time settlement proposal. While perusing the Reply dated 20.04.2023, we find that the Respondent Company had proposed to the

Applicant Bank, a one-time settlement of its dues vide letters dated 17.11.2021, 12.02.2022, and 05.05.2022, which in terms of the judgment of the Hon'ble Supreme Court in **“Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.”** is an acknowledgment of debt. The relevant para of the judgment dated 04.08.2021 reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one-time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.*

(Emphasis placed)

11. In view of the OTS proposal submitted by the Corporate Debtor and consequent admission of debt, the necessity of going into other objections raised by the Corporate Debtor is obviated.

12. In view of the abovementioned discussion, we find that the Applicant bank has been able to establish the debt and default of the Respondent beyond doubt.

13. In the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”

14. As proposed by the Applicant, this Bench appoints Sh. Vivek Kumar Arora as IRP having Registration IBBI/IPA-001/IP-P00122/2017-2018/10264 Email ID: vivekkarora1@gmail.com. The antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority. This Adjudicating Authority further orders that:

Sh. Vivek Kumar Arora as an IRP having Registration No. IBBI/IPA-001/IP-P00122/2017-2018/10264, Email ID vivekkarora1@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

15. The Applicant is directed to deposit Rs. 5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

16. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI and the IRP named above, by the Court Officer/Registry of this Tribunal.

17. **The Petition stands admitted and disposed of accordingly.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)