

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-I  
KOLKATA.**

**CP (IB) No. 203/KB/2021**

*A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.*

In the matter of:

**CFM Asset Reconstruction Private Limited**  
[CIN: U67100GJ2015PTC083994]

*...Financial Creditor*

*Versus*

**Jagdamba Industries Limited**  
[CIN: U465999WB1993PLC058944]

*...Corporate Debtor*

**Date of pronouncement: 22/08/2023**

**Appearances (through video conferencing):**

For the Financial Creditor : Mr. Ratnanko Banerji, Senior Advocate  
: Mr. Vikram Wadhera, Advocate  
: Mr. Indradeep Basu, Advocate

For the Corporate Debtor : Mr. Pranav Kohli, Senior Advocate  
: Mr. Rishav Banerjee, Advocate  
: Mr. Ritoban Sarkar, Advocate  
: Mr. Farhan Mirza, Advocate  
: Mr. Amit Chowdhury, Advocate

**Coram:**

**Rohit Kapoor** : **Member (Judicial)**  
**Balraj Joshi** : **Member (Technical)**

**ORDER**

**Per Rohit Kapoor, Member (Judicial)**

1. This Court convened through hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by CFM Asset Reconstruction Private Limited, represented by **Shri Tapan Panda**, authorized *vide* a Board Resolution dated 27.05.2021<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Jagdamba Industries Limited (“Corporate Debtor”)**.
3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. **Rs.219,33,26,766.46/- (Rupees Two Hundred Nineteen Crore Thirty Three Lakh Twenty Six Thousand Seven Hundred Sixty Six and Forty Six only)**, part –IV of the Petition contains details of financial debt for an amount of as on 30.04.2021.
5. The Corporate Debtor was incorporated on 16 March 2010, having CIN: U465999WB1993PLC058944, under the Companies Act, 1956. It’s registered office is at 8/C M.D. Road, 4<sup>th</sup> Floor, Suite No. 15, Kolkata-700007. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 26 July 2021 before this Adjudicating Authority on the ground that **the Corporate Debtor has defaulted to make a payment of a sum of Rs.219,33,26,766.46/- (Rupees Two Hundred Nineteen Crore Thirty Three Lakh Twenty Six Thousand Seven Hundred Sixty Six and Forty Six only)** as on 30.04.2021.

*Submission of learned Counsel appearing for the Financial Creditor are summarized herein after:*

7. The learned Counsel submitted that the Financial Creditor is an asset reconstruction company under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the SARFAESI Act) and a financial institution within the meaning of Section 2(h)(ia) of the Recovery of Debts & Bankruptcy Act, 1993. The Financial Creditor is the assignee of all debts due and payable by the Corporate Debtor in favour of IDBI

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<sup>1</sup> Annexure B at Page 65-66 of the Petition

Bank, Central Bank of India and Indian Bank amounting to Rs. 219,33,26,744.46/- as on 30<sup>th</sup> April 2021. The Financial Creditor became the assignee of debts alongwith all underlying security interest in respect of the Corporate Debtor vide three assignment deeds, details of which are as follows:

Particulars of the assignor	Date of assignment deed
IDBI Bank	24 <sup>th</sup> March, 2017
Central Bank of India	13 <sup>th</sup> June, 2018
Indian Bank	16 <sup>th</sup> April, 2018

8. The Corporate Debtor took loans from the aforesaid banks on various occasions and defaulted in repaying the same one after the other. The date of declaration of NPAs by the said banks are as follows:

Particulars of Bank	NPA dates
IDBI Bank	30 <sup>th</sup> November 2014
Central Bank of India	30 <sup>th</sup> May 2015
Indian Bank	7 <sup>th</sup> January 2015

9. The Financial Creditor submits that pursuant to the assignment of debts by the abovementioned Banks, it took steps under the SARFAESI Act, 2002 for enforcement of its security interest and recovery of dues. It was restrained from initiating proceedings under the IBC, 2016 due to lockdown/restrictions imposed on account of the spread of COVID – 19 pandemic and was unable to initiate proceedings earlier in time. However, in view of the suo-moto cognizance taken by the Hon'ble Supreme Court of India in Writ Petition Civil No. 3/2020 extending limitation on 23<sup>rd</sup> March 2020<sup>2</sup>, 8<sup>th</sup> March 2021<sup>3</sup> and and 27<sup>th</sup> April 2021<sup>4</sup> the claim of the applicant is filed within limitation. Details of the applications filed against the Corporate Debtor filed before the respective DRTs are as follows:

Bank	O.A No.	DRT	Order date
IDBI Bank	O.A. 608 of 2016	DRT-I	24.02.2020

<sup>2</sup> Pg. No. 1456-1457 at Volume IX of the Petition

<sup>3</sup> Pg. No. 1458-1460 at Volume IX of the Petition

<sup>4</sup> Pg. No. 1461-1466 at Volume IX of the Petition

Central Bank of India	O.A. 701 of 2016	DRT-II	18.03.2019
Indian Bank	O.A. 201 of 2017	DRT-I	09.03.2021

10. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor has acknowledged its liability in the financial statements as well.
11. The Ld. Counsel further submitted that the contention of the Corporate Debtor that the Assignment Agreements are insufficiently stamped and therefore the Applicant does not fall under the definition of a Financial Creditor in terms of Section 5(7) of the Code in as much since the debt has not been legally assigned or transferred and has relied upon the judgment of Hon'ble High Court at Gujarat in **Shivam Water Treaters (P) Ltd. vs. Union of India**<sup>5</sup> wherein it was held that it is obligatory on the part of the Tribunal to examine such documents before taking further steps in accordance with the Code.
12. In response to the same, the Ld. Counsel for the Financial Creditor submits that payment of stamp duty is exempted for assignment of debt under SARFAESI Act, 2002. He placed reliance upon **Section 5 (1A)** of the SARFAESI Act, 2002 as amended w.e.f. from 1<sup>st</sup> September 2016 which states as follows:

*“1A- Any document executed by any bank or financial institution under sub – section (1) in favour of the asset reconstruction company acquiring Financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899*

*Provided that the provisions of this sub – section shall not apply where the acquisition of the financial assets by the asset reconstruction companies for the purposes other than asset reconstruction or securitization”*

13. The Ld. Counsel for the Financial Creditor also referred to Section 8F SARFAESI Act, 2002 which has been further amended w.e.f. from 1<sup>st</sup> September 2016 which states as follows:

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<sup>5</sup> [2018 SCC OnLine Guj 4922]

*“8F- Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp-duty –*

*Standing anything contained in this act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of security interest Act, 2002 (54 of 2002) in favour of any asset reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, shall not liable to duty under this Act”.*

14. The Ld. Counsel has also placed reliance on the challans enclosed to the respective Assignment Agreements issued by the concerned Registrar of Assurances evincing payment of stamp duty. He further placed reliance on a judgment of the Hon’ble NCLAT in **Lalan Kumar Singh vs. Phoenix ARC Private Limited & Anr.**<sup>6</sup> wherein it is stated that that the issue of assignment of debt cannot be disputed by the parties and/or the same cannot be decided by the Hon’ble Adjudicating Authority while filing a reply to the notice issued during the admission of application under Section 7 of the Code. Relevant paragraphs of the said judgment are as follows:

*“15. The loan agreement contains a covenant that the loan can be assigned in part or in whole without permission of the borrower.*

*16. The appellant has challenged the ‘Deed of Assignment executed between the HSBC and Phoenix, but while filing a reply to the notice issued during the admission of application under section 7 of the I and B code, such issue cannot be raised as it cannot be decided by the adjudicating authority on objection”*

15. The Financial Creditor has placed on record the following documents which includes:

- a. Copy of the Certificate of Incorporation of the Applicant (**Annexure A @ Page 61-64 of the Petition**)

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<sup>6</sup> [2018 SCC OnLine NCLAT 835]

- b. Copy of the Board Resolution dated 27th May 2021 whereby the Applicant has authorized Mr. Tapan Panda to be the true and lawful Attorney **(Annexure B @ Page 65-66 of the Petition)**
- c. Copy of the Memorandum of Association, Articles of Association of the Corporate Debtor **(Annexure C @ Page 67-105 of the Petition)**
- d. Copy of the Certificate of Incorporation dated 16th March 2010 of the Corporate Debtor consequent upon change of name. **(Annexure D @ Page 106 of the Petition)**
- e. Copy of the Master Data of the Corporate Debtor**(Annexure E @ Page 107 of the Petition)**
- f. Table being compilation of amounts disbursed under various heads along with the dates of sanction letter**(Annexure F @ Page 108 of the Petition)**
- g. Compilation of total outstanding dues as on 30th April 2021 **(Annexure G @ Page 109-111 of the Petition)**
- h. Copy of a Certificate of Registration of Charge issued by the Registrar of Companies**(Annexure H @ Page 112-146 of the Petition)**
- i. Copy of the order dated 24th February 2020 passed by Learned Debts Recovery Tribunal I, Kolkata in O.A. 608 of 2016 **(Annexure I-1 @ Page 147 of the Petition)**
- j. Copy of the order dated 18th March 2019 passed by Learned Debts Recovery Tribunal II, Kolkata in O.A. 701 of 2016 **(Annexure I-2 @ Page 148 of the Petition)**
- k. Copy of the order dated 9th March 2021 passed by Learned Debts Recovery Tribunal 1, Kolkata in O.A. 201 of 2017 **(Annexure I-3 @ Page 149 of the Petition)**
- l. Copy of the Sanction Letter dated 12th June 2010 bearing no. IDBI.KBO.No. 272/2010-11/SME (JIL) **(Annexure J-1 @ Page 150-157 of the Petition)**
- m. Copy of the Extract of the Minutes of the Meeting of the Corporate Debtor dated 15th June 2010 **(Annexure J-2 @ Page 158 of the Petition)**
- n. Copy of the Demand Promissory Note for a sum of Rs. 1500 lakh dated 22nd June 2010 **(Annexure J-3 @ Page 159 of the Petition)**

- o. Copy of the Demand Promissory Note Delivery Letter dated 22nd June 2010 (**Annexure J-4 @ Page 160 of the Petition**)
- p. Copy of Continuing Security Letter dated 22nd June 2010 (**Annexure J-5 @ Page 161 of the Petition**)
- q. Copy of the Undertaking of negative lien dated 22nd June 2010(**Annexure J-6 @ Page 162-164 of the Petition**)
- r. Copy of the Letter of Undertaking for completion of pre-disbursement condition executed by the Corporate Debtor dated 22nd June 2010(**Annexure J-7 @ Page 165-168 of the Petition**)
- s. Copy of the Letter of Undertaking for over run dated 22nd June 2010. (**Annexure J-8 @ Page 169-172 of the Petition**)
- t. Copy of the Undertaking for Non- Disposal of Shareholdings dated 10<sup>th</sup> August 2010 (**Annexure J-9 @ Page 173-181 of the Petition**)
- u. Copy of the Loan cum Hypothecation Agreement dated 22nd June 2010 (**Annexure J-10 @ Page 182-205 of the Petition**)
- v. Copy of the Board Resolution of the Corporate Debtor dated 15th June 2010 (**Annexure J-11 @ Page 206-207 of the Petition**)
- w. Copy of the Demand Promissory Note Delivery Letter dated 23rd February 2011(**Annexure J-12 @ Page 208 of the Petition**)
- x. Copy of the Demand Promissory Note Delivery Letter dated 23rd February 2011 (**Annexure J-13 @ Page 209 of the Petition**)
- y. Copy of Continuing Security Letter dated 23rd February 2011(**Annexure J-14 @ Page 210 of the Petition**)
- z. Copy of the Loan Agreement dated 23rd February 2011 (**Annexure J-15 @ Page 211 to 239 of the Petition**)
- aa. Copy of the Undertaking of negative lien dated 23rd February 2011 (**Annexure J-16 @ Page 240-242 of the Petition**)
- bb. Copy of the Letter of Undertaking for over run dated 23rd February 2011 (**Annexure J-17 @ Page 243-246 of the Petition**)
- cc. Copy of the Undertaking for Non- Disposal of Shareholdings dated 23rd February 2011(**Annexure J-18 @ Page 247-255 of the Petition**)
- dd. Copy of the Deed of Hypothecation dated 23rd February 2011(**Annexure J-19 @ Page 256-267 of the Petition**)

- ee. Copy of the modified sanction letter dated 5th March 2011 being IDBI.KBO/1233-2010-11/SME/JIL (**Annexure J-20 @ Page 268-269 of the Petition**)
- ff. Copy of the Board Resolution of the Corporate Debtor dated 7th March 2011(**Annexure J-21 @ Page 270 of the Petition**)
- gg. Copy of the Stipulations and Covenants contained in the Common Loan Agreement dated 12<sup>th</sup> April 2011 entered into between IDBI Bank Limited and Central Bank of India(**Annexure J-22 @ Page 271-311 of the Petition**)
- hh. Copy of the letter of Restructuring of existing Term Loan including sanction of Funded Interest Term Loan bearing no. IDBI/488/PSG/JIL/2013-14 dated 28th December 2013(**Annexure J-23 @ Page 312-327 of the Petition**)
- ii. Copy of the Board Resolution dated 27th December 2013(**Annexure J-24 @ Page 328-333 of the Petition**)
- jj. Copy of the Demand Promissory Note dated 30th December 2013 in respect of the Funded Interest Term Loan (**Annexure J-25 @ Page 334 of the Petition**)
- kk. Copy of the Demand Promissory Note Delivery Letter dated 30th December 2013 in respect of the Funded Interest Term Loan (**Annexure J-26 @ Page 335 of the Petition**)
- ll. Copy of the Loan Agreement dated 30th December 2013 in respect of the Funded Interest Term Loan. (**Annexure J-27 @ Page 336-360 of the Petition**)
- mm. Copy of the Declaration and Undertaking dated 3rd January 2014. (**Annexure J-28 @ Page 361-390 of the Petition**)
- nn. Copy of the Assignment Agreement dated 24th March 2017 between IDBI Bank and the Applicant registered in Book I, Volume No. 1903-2017 being no. 190301779 for the year 2017. (**Annexure J-29 @ Page 391-450 of the Petition**)
- oo. Copy of the Sanction Letter dated 6<sup>th</sup> March 2009 bearing no. MAMRA/2009-09/35/261. (**Annexure K-1 @ Page 451-459 of the Petition**)

- pp. Copy of Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 28th July 2009. **(Annexure K-2 @ Page 460-464 of the Petition)**
- qq. Copy of the Common Loan Agreement dated 7th August 2009. **(Annexure K-3 @ Page 465-506 of the Petition)**
- rr. Copy of the Declaration dated 30th March 2009. **(Annexure K-4 @ Page 507-508 of the Petition)**
- ss. Copy of the Sanction Letter dated 13th October 2010 being no. MAMRA:CMD:37:10-11:10. **(Annexure K-5 @ Page 509-522 of the Petition)**
- tt. Copy of the Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 13th October 2010. **(Annexure K-6 @ Page 523-525 of the Petition)**
- uu. Copy of the Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 4th February 2011. **(Annexure K-7 @ Page 526-528 of the Petition)**
- vv. Copy of the Sanction Letter bearing no. MAMRAB/CMD/2011-12/38 dated 24th August 2011. **(Annexure K-8 @ Page 529-536 of the Petition)**
- ww. Copy of the Demand Promissory Note for Rs. 24.60 crore dated 7th January 2012. **(Annexure K-9 @ Page 537 of the Petition)**
- xx. Copy of the Demand Promissory Note Delivery dated 7th January 2012. **(Annexure K-10 @ Page 538-539 of the Petition)**
- yy. Copy of the Facility Agreement cum Deed of Hypothecation dated 7th January 2012. **(Annexure K-11 @ Page 540-558 of the Petition)**
- zz. Copy of the Supplementary Agreement dated 7th January 2012. **(Annexure K-12 @ Page 559-560 of the Petition)**
- aaa. Copy of the Working Capital Consortium Agreement dated 16th May 2012. **(Annexure K-13 @ Page 561-592 of the Petition)**
- bbb. Copy of the Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 14th May 2012. **(Annexure K-14 @ Page 593-596 of the Petition)**
- ccc. Copy of the Letter of Intent dated 1st June 2013 to continue the Equitable Mortgage. **(Annexure K-15 @ Page 597-598 of the Petition)**

- ddd. Copy of the Sanction Letter bearing no. MAMRA/CREDIT/2012-13/03/493 dated 11th March 2013 **(Annexure K-16 @ Page 599-600 of the Petition)**
- eee. Copy of the Sanction Letter bearing no. MAMRA/CREDIT/2013-14/03/561 dated 24th March 2014. **(Annexure K-17 @ Page 601-606 of the Petition)**
- fff. Copy of the Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 28th March 2014. **(Annexure K-18 @ Page 607-609 of the Petition)**
- ggg. Copy of the Demand Promissory Note for Rs. 30.00 crore dated 28th March 2014. **(Annexure K-19 @ Page 610 of the Petition)**
- hhh. Copy of the Letter of Continuity dated 28th March 2014. **(Annexure K-20 @ Page 611-612 of the Petition)**
- iii. Copy of the Term Loan Agreement dated 28th March 2014. **(Annexure K-21 @ Page 613-619 of the Petition)**
- jjj. Copy of the Letter of Continuity dated 28th March 2014 in respect of the Book Debts hypothecated. **(Annexure K-22 @ Page 620-621 of the Petition)**
- kkk. Copy of the Letter of Undertaking dated 28th March 2014. **(Annexure K-23 @ Page 622-625 of the Petition)**
- lll. Copy of the Supplementary Agreement dated 28th March 2014. **(Annexure K-24 @ Page 626-628 of the Petition)**
- mmm. Copy of the Consent Clause dated 28th March 2014 for disclosure by Applicant to CIBIL. **(Annexure K-25 @ Page 629-632 of the Petition)**
- nnn. Copy of the Sanction Letter bearing no. MAMRAB/CMD/2014-15/03/277 dated 27th March 2015. **(Annexure K-26 @ Page 633-634 of the Petition)**
- ooo. Copy of the Demand Promissory Note for Rs. 2.00 crore dated 28th March 2015. **(Annexure K-27 @ Page 635 of the Petition)**
- ppp. Copy of the Letter of Continuity dated 28th March 2015. **(Annexure K-28 @ Page 636-637 of the Petition)**
- qqq. Copy of the document of Overdraft/Cash Credit for a sum of Rs. 2.00 crore dated 28<sup>th</sup> March 2015. **(Annexure K-29 @ Page 638-642 of the Petition)**

- rrr. Copy of the Supplementary Agreement dated 28th March 2015.  
**(Annexure K-30 @ Page 643-644 of the Petition)**
- sss. Copy of the Letter of Waiver for presentment of Demand Promissory Note dated 28th March 2015. **(Annexure K-31 @ Page 645 of the Petition)**
- ttt. Copy of the Minutes of the Meeting of the Board of Directors of the Corporate Debtor dated 28th March 2015. **(Annexure K-32 @ Page 646-647 of the Petition)**
- uuu. Copy of the Letter of Intent dated 28th March 2015. **(Annexure K-33 @ Page 648-649 of the Petition)**
- vvv. Copy of the letter(s) dated 14th May 2015, 28th May 2015 and 2<sup>nd</sup> June 2015 issued by Central Bank of India to the Corporate Debtor. **(Annexure K-34 @ Page 650-653 of the Petition)**
- www. Copy of the letter(s) dated 21st July 2015 and 24th July 2015 issued by Central Bank of India to the Corporate Debtor. **(Annexure K-35 @ Page 654-657 of the Petition)**
- xxx. Copy of the Assignment Agreement dated 13th June 2018 between Central Bank and CFM Asset Reconstruction Private 5384/2018. Limited bearing no. **(Annexure K-36 @ Page 658-767 of the Petition)**
- yyy. Copy of the Board Resolution dated 7<sup>th</sup> August 2007. **(Annexure L-1 @ Page 768-769 of the Petition)**
- zzz. Copy of the Demand Promissory Note for Rs. 475 lakhs dated 17<sup>th</sup> September 2007. **(Annexure L-2 @ Page 770 of the Petition)**
- aaaa. Copy of the Power of Attorney granted by the Corporate Debtor in favour of Indian Bank for collection of Bills, Book Debts and other receivables on 17th September 2007. **(Annexure L-3 @ Page 771-772 of the Petition)**
- bbbb. Copy of the Agreement of Irrevocable Letter of Credit/Authority for payment granted to Indian Bank dated 17th September 2007. **(Annexure L-4 @ Page 773-779 of the Petition)**
- cccc. Copy of the Sanction Letter bearing no. STR/CR/JFSL/103/2009-10 dated 18th June 2009. **(Annexure L-5 @ Page 780-783 of the Petition)**
- dddd. Copy of the Board Resolution dated 3rd July 2009. **(Annexure L-6 @ Page 784-785 of the Petition)**

- eeee. Copy of the Joint/Single Demand Promissory Note for Rs. 6 crore dated 4th July 2009. **(Annexure L-7 @ Page 786 of the Petition)**
- ffff. Copy of the Joint/Single Demand Promissory Note for Rs. 5 crore dated 4th July 2009. **(Annexure L-8 @ Page 787 of the Petition)**
- gggg. Copy of the Power of Attorney granted by the Corporate Debtor in favour of Indian Bank for collection of Bills, Book Debts and other receivables on 4th July 2009. **(Annexure L-9 @ Page 788-789 of the Petition)**
- hhhh. Copy of the Agreement for increase of cash credit limit to Rs. 11 crore dated 4th July 2009. **(Annexure L-10 @ Page 790-791 of the Petition)**
- iiii. Copy of the acknowledgment of debt cum security executed by the Corporate Debtor dated 26<sup>th</sup> April 2011. **(Annexure L-11 @ Page 792-795 of the Petition)**
- jjjj. Copy of the sanction letter bearing no. STR:CR:JIL:2012-13 dated 2nd April 2012. **(Annexure L-12 @ Page 796-805 of the Petition)**
- kkkk. Copy of the letter of acceptance dated 11th May 2012 being JIL/55/12-13/IB issued by the Corporate Debtor. **(Annexure L-13 @ Page 806 of the Petition)**
- llll. Copy of the Board Resolution of the Corporate Debtor dated 11th May 2012. **(Annexure L-14 @ Page 807-812 of the Petition)**
- mmmm. Copy of the Working Capital Consortium Agreement dated 16th May 2012. **(Annexure L-15 @ Page 813-845 of the Petition)**
- nnnn. Copy of the Inter Se Agreement between Central Bank of India and Indian Bank dated 16th May 2012. **(Annexure L-16 @ Page 846-858 of the Petition)**
- oooo. Copy of the Letter of Undertaking dated 16th May 2012. **(Annexure L-17 @ Page 859-860 of the Petition)**
- pppp. Copy of the Balance Confirmation dated 16<sup>th</sup> (th) May 2012. **(Annexure L-18 @ Page 861-864 of the Petition)**
- qqqq. Copy of the Sanction Letter issued by Indian Bank dated 31st May 2013. **(Annexure L-19 @ Page 865-878 of the Petition)**
- rrrr. Copy of the Letter of Acceptance dated 12th August 2013 being no. JIL/102/13-14/IB issued by the Corporate Debtor. **(Annexure L-20 @ Page 879 of the Petition)**

- ssss. Copy of the WorkingCapital Agreement dated 30th August 2013.  
**(Annexure L-21 @ Page 880-913 of the Petition)**
- tttt. Copy of the Board Resolution dated 28th September 2013. **(Annexure L-22 @ Page 914-916 of the Petition)**
- uuuu. Copy of the Single/Joint Demand Promissory Note for Rs. 6 crore dated 28th September 2013. **(Annexure L-23 @ Page 917 of the Petition)**
- vvvv. Copy of the Agreement for open cash credit (Stocks/Book Debts) dated 28th September 2013. **(Annexure L-24 @ Page 918-920 of the Petition)**
- wwww. Copy of the Application cum Pledge letter for advances against deposits. dated 28th September 2013. **(Annexure L-25 @ Page 921-922 of the Petition)**
- xxxx. Copy of the letter of Balance Confirmation dated 28th September 2013. **(Annexure L-26 @ Page 923-926 of the Petition)**
- yyyy. Copy of the Sanction Letter dated 26th March 2015. **(Annexure L-27 @ Page 927-932 of the Petition)**
- zzzz. Copy of the Amended Sanction Letter dated 31st March 2015. **(Annexure L-28 @ Page 933 of the Petition)**
- aaaa. Copy of the Board Resolution dated 31st March 2015. **(Annexure L-29 @ Page 934-940 of the Petition)**
- bbbb. Copy of the Single/Joint Demand Promissory Note for Rs. 2.81 crore dated 31st March 2015**(Annexure L-30 @ Page 941 of the Petition)**
- cccc. Copy of the Single/Joint Demand Promissory Note for Rs. 1.18 crore dated 31st March 2015. **(Annexure L-31 @ Page 942 of the Petition)**
- dddd. Copy of the Letter of Continuity dated 31st March 2015. **(Annexure L-32 @ Page 943 of the Petition)**
- eeee. Copy of the Medium Term Loan Agreement dated 31st March 2015. **(Annexure L-33 @ Page 944-954 of the Petition)**
- ffff. Copy of the Funded Interest Term Loan Agreement for a sum of Rs 21 crore dated 31st March 2015. **(Annexure L-34 @ Page 955-962 of the Petition)**
- gggg. Copy of the Statement of Inventories and Receivables for OCC against Stock/Book Debts dated 31st March 2015 with a limit of Rs. 2.81 crore. **(Annexure L-35 @ Page 963-969 of the Petition)**

- hhhhh. Copy of the statement of Inventories and Receivables for OCC against Stock/Book Debts dated 31st March 2015 limit of Rs. 1.18 crore. **(Annexure L-36 @ Page 970-973 of the Petition)**
- iiii. Copy of the letter of Undertaking dated 31st March 2015. **(Annexure L-37 @ Page 974-975 of the Petition)**
- jjjj. Copy of the letter of balance confirmation dated 31st March 2015. **(Annexure L-38 @ Page 976-979 of the Petition)**
- kkkk. Copy of the Assignment Agreement dated 16th April 2018 between Indian Bank and CFM Asset Reconstruction Private Limited registered with SRO Andheri- I bearing no. 4650/4/169 of 2018. **(Annexure L-39 @ Page 980-1148 of the Petition)**
- llll. Copy of the Standalone Financial Statement of the Corporate Debtor for the period from 1st April 2015 to 31<sup>st</sup> March 2016. **(Annexure M @ Page 1149-1276 of the Petition)**
- mmmm. Copy of the Standalone Financial Statement of the Corporate Debtor for the period from 1st April 2016 to 31<sup>st</sup> March 2017. **(Annexure N @ Page 1277-1375 of the Petition)**
- nnnn. Copy of the Standalone Financial Statement of the Corporate Debtor for the period from 1st April 2017 to 31<sup>st</sup> March 2018. **(Annexure O @ Page 1376-1455 of the Petition)**
- oooo. Copy of the order dated 23<sup>rd</sup> March 2020 passed by the Hon'ble Supreme Court of India in Suo Moto Writ Petition Civil No. 3/2020. **(Annexure P @ Page 1456-1457 of the Petition)**
- pppp. Copy of the order dated 8th March 2021 passed by the Hon'ble Supreme Court of India in Suo Moto Writ Petition Civil No. 3/2020. **(Annexure P-1 @ Page 1458-1460 of the Petition)**
- qqqq. Copy of the order dated 27<sup>th</sup> April 2021 passed by the Hon'ble Supreme Court of India in Miscellaneous Application No. 665 of 2021 Suo Moto Writ Petition Civil No. 3/2020. **(Annexure P-2 @ Page 1461-1466 of the Petition)**
- rrrr. Copy of the Demand Notice under Section 13(2) of the SARFAESI Act, 2002 issued to the Corporate Debtor/Mortgagors/Guarantors dated 15th May 2021 being CFMARC/42/2020-21. **(Annexure Q @ Page 1467-1481 of the Petition)**

- sssss. Copy of the Loan Recall Notice issued to the Corporate Debtor/Mortgagors/Guarantors dated 19th April 2021 being CFMARC/24/2020-21. **(Annexure R @ Page 1482-1484 of the Petition)**
- ttttt. Copy of the Statement of Accounts maintained by IDBI Bank, Central Bank and Indian Bank along with their Certificate under Banker's Book Evidence Act. **(Annexure S, S-1, S-2 @ Page 1485-1655 of the Petition)**
- uuuuu. Copy of calculation the separate sheet along interest with Certificate under the Information Technology Act, 2000. **(Annexure S-3 @ Page 1656-1660 of the Petition)**
- vvvvv. Copy of the Deed of Hypothecation dated 22nd June 2010. **(Annexure T-1 @ Page 1661-1670 of the Petition)**
- wwwww. Copy of the Memorandum of Creation of Mortgage dated 20th October 2009. **(Annexure T-2 @ Page 1671-1679 of the Petition)**
- xxxxx. Copy of letter dated 17th September 2010 being MAMRA:CMD:37:10-11:09 issued by Central Bank of India. **(Annexure T-3 @ Page 1680-1681 of the Petition)**
- yyyyy. Copy of the Letter of Inter-Se Agreement dated 12th April 2011 between IDBI Bank and Central Bank. **(Annexure T-4 @ Page 1682-1689 of the Petition)**
- zzzzz. Copy of the Deed of Hypothecation dated 30th December 2013. **(Annexure T-5 @ Page 1690-1700 of the Petition)**
- aaaaa. Copy of the Loan Recall Notice issued by IDBI Bank dated 22nd February 2016. **(Annexure T-6 @ Page 1701-1707 of the Petition)**
- bbbbbb. Copy of the Unattested Joint Deed of Hypothecation dated 7th August 2009. **(Annexure U-1 @ Page 1708-1724 of the Petition)**
- ccccc. Copy of the Unattested Joint Deed of Hypothecation in respect of the Plant & Machinery relating to the Structural Mill Division of the Corporate Debtor dated 7th August 2009. **(Annexure U-2 @ Page 1725-1744 of the Petition)**
- dddddd. Copy of the Agreement dated 12th April 2011 between Central Bank of India and IDBI Bank. **(Annexure U-3 @ Page 1745-1753 of the Petition)**

- eeeeee. Copy of the Inter-se Agreement dated 16th May 2012. (**Annexure U-4 @ Page 1754-1765 of the Petition**)
- ffffff. Copy of the Inter-Se Agreement dated 30th August 2013. (**Annexure U-5 @ Page 1766-1781 of the Petition**)
- gggggg. Copy of the Deed of Hypothecation to secure Demand Cash Credit against Goods dated 28th March 2014. (**Annexure U-6 @ Page 1782-1821 of the Petition**)
- hhhhhh. Copy of the Deed of Hypothecation of Book Debts to secure Cash Credit facility dated 28th March 2014. (**Annexure U-7 @ Page 1822-1830 of the Petition**)
- iiiiii. Copy of the notice issued under Section 13(2) of the SARFAESI Act, 2002 dated 24th August 2015 along with postal receipts Acknowledgment Due Card. (**Annexure U-8 @ Page 1831-1837 of the Petition**)
- jjjjjj. Copy of the Loan Recall Notice dated 3rd October 2016 on behalf of Central Bank of India through its Advocate to the Corporate Debtor. (**Annexure U-9 @ Page 1838-1843 of the Petition**)
- kkkkkk. Copy of letter dated 27th August 2007 issued by West Bengal Financial Corporation permitting the Corporate Debtor to create Second Charge in favour of Indian Bank in respect of the Fixed Assets and Current Assets. (**Annexure V-1@ Page 1844 of the Petition**)
- llllll. Copy of the Agreement of Hypothecation of movables dated 17<sup>th</sup> September 2007. (**Annexure V-2@ Page 1845-1854 of the Petition**)
- mmmmmm. Copy of the Agreement for second charge of machineries/movables dated 17th September 2007. (**Annexure V-3@ Page 1855-1858 of the Petition**)
- nnnnnn. Copy of the Agreement for Hypothecation of Goods received under advance payment guarantee's/LC's etc. dated 17<sup>th</sup> September 2007. (**Annexure V-4@ Page 1859-1865 of the Petition**)
- oooooo. Copy of the Agreement of Hypothecation of Movables dated 4th July 2009. (**Annexure V-5@ Page 1866-1871 of the Petition**)
- pppppp. Copy of the Agreement for second on charge machineries/movables dated 4th July 2009. (**Annexure V-6@ Page 1872-1875 of the Petition**)

- qqqqqq. Copy of the Tripartite Agreement dated 7th March 2012 between the Corporate Debtor, West Bengal Financial Corporation and Indian Bank dated 7th March 2012. **(Annexure V-7@ Page 1876-1903 of the Petition)**
- rrrrrr. Copy of the Joint Deed of Hypothecation dated 16th May 2012. **(Annexure V-8@ Page 1904-1924 of the Petition)**
- ssssss. Copy of the Letter confirming creation of equitable mortgage dated 18th May 2012. **(Annexure V-9@ Page 1925 of the Petition)**
- tttttt. Copy of the letter confirming creation of equitable mortgage dated 18<sup>th</sup> May 2012. **(Annexure V-10@ Page 1926 of the Petition)**
- uuuuuu. Copy of the Joint Deed of Hypothecation Agreement dated 30<sup>th</sup> August 2013 **(Annexure V-11@ Page 1927-1946 of the Petition)**
- vvvvvv. Copy of the Inter-Se Agreement dated 30th August 2013. **(Annexure V-12@ Page 1947-1962 of the Petition)**
- wwwwww. Copy of the Agreement for Hypothecation of Moveable dated 28th September 2013. **(Annexure V-13@ Page 1963-1971 of the Petition)**
- xxxxxx. Copy of the Agreement for extension of hypothecation /pledge of moveables dated 28th September 2013. **(Annexure V-14@ Page 1972 of the Petition)**
- yyyyyy. Copy of the letter of extension of Equitable Mortgage dated 10th October 2013. **(Annexure V-15@ Page 1973 of the Petition)**
- zzzzzz. Copy of the Letter confirming creation of Equitable Mortgage in favour of the Applicant dated 17th February 2014 by the Corporate Debtor. **(Annexure V-16@ Page 1974-1976 of the Petition)**
- aaaaaa. Copy of the Letter confirming creation. of Equitable Mortgage in favour of Indian Bank dated 17th February 2014 by the Corporate Debtor. **(Annexure V-17@ Page 1977-1978 of the Petition)**
- bbbbbb. Copy of the Agreement of Hypothecation of Moveables for Rs. 2.81 crore dated 31st March 2015. **(Annexure V-18@ Page 1979-1994 of the Petition)**
- cccccc. Copy of the Agreement for Hypothecation of Movables for Rs. 1.18 crore dated 31st March 2015. **(Annexure V-19@ Page 1995-2010 of the Petition)**

- ddddd. Copy of the Letter confirming extension of Equitable Mortgage in favour of the Applicant dated 4th April 2015 by the Corporate Debtor. **(Annexure V-20@ Page 2011 of the Petition)**
- eeeeee. Copy of the Demand Notice dated 28th January 2017 along with the postal receipts issued on behalf of Indian Bank. **(Annexure V-21@ Page 2012-2017 of the Petition)**
16. Central Bank of India pursuant to a Deed of Assignment dated 13<sup>th</sup> June 2018 and Indian Bank pursuant to a registered Deed of Assignment dated 16<sup>th</sup> April 2018 assigned in favour of the Applicant the entire debt together with underlying security interest in respect of the Corporate Debtor.
17. The Applicant was however restrained from initiating proceedings under the Insolvency & Bankruptcy Code, 2016 on account of the lockdown/restrictions imposed by the Central/State Government to curb the spread of COVID – 19 pandemic and was unable to initiate proceedings earlier in time. In view of the suo-moto cognizance taken by the Hon'ble Supreme Court of India in Writ Petition Civil No. 3/2020 extending limitation on 23<sup>rd</sup> March 2020 (Pg. No. 1456-1457 at Volume IX), 8<sup>th</sup> March 2021 (Pg. No. 1458-1460 at Volume IX) and 27<sup>th</sup> April 2021 (Pg. No. 1461-1466 at Volume IX).
18. In view of the classification of the account of the Corporate Debtor having stood classified as a Non Performing Asset, acknowledgment of liability in the financial statements of the Corporate Debtor as well as the relaxation granted by the Hon'ble Supreme Court of India in view of the lockdown/restrictions imposed by the Central/State Government to curb the spread of COVID – 19 pandemic, the claim of the Applicant is within the period of limitation and valid under the Insolvency & Bankruptcy Code, 2016
19. The payment of stamp duty is exempted for assignment of debt under SARFAESI Act, 2002 and placed reliance upon **Section 5 (1A)** of the SARFAESI Act, 2002 as amended w.e.f. from 1<sup>st</sup> September 2016 which states as follows:

*“1A Any document executed by any bank or financial institution under sub – section (1) in favour of the asset reconstruction company acquiring Financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899*

*Provided that the provisions of this sub – section shall not apply where the acquisition of the financial assets by the asset reconstruction companies for the purposes other than asset reconstruction or securitization]*”

20. Section 8F has been further amended w.e.f. from 1<sup>st</sup> September 2016 which states as follows:

*“8F Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp-duty –*

*Standing anything contained in this act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of security interest Act, 2002 (54 of 2002) in favour of any asset reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, shall not liable to duty under this Act]*”

21. Notwithstanding the above, the Applicant has placed reliance on the challans enclosed to the respective Assignment Agreements issued by the concerned Registrar of Assurances evincing payment of stamp duty.

22. In addition to the same, the Applicant/Financial Creditor has placed reliance on the following judgment to state that the issue of assignment of debt cannot be disputed by the parties and/or the same cannot be decided by the Hon’ble Adjudicating Authority while filing a reply to the notice issued during the admission of application under Section 7 of the Code:

(i) *Lalan Kumar Singh vs. Phoenix ARC Private Limited & Anr. [2018 SCC OnLine NCLAT 835] where the Hon’ble NCLAT, New Delhi Bench has held as follows @ paragraphs 15 & 16*

*“15. The loan agreement contains a covenant that the loan can be assigned in part or in whole without permission of the borrower.*

*16. The appellant has challenged the ‘Deed of Assignment executed between the HSBC and Phoenix, but while filing a reply to the notice issued during the admission of application under section 7 of the I and B code, such issue cannot be raised as it cannot be decided by the adjudicating authority on objection”*

23. The Financial Creditor has proposed the name of Mr. Aditya Kumar Tibrewal, registration number IBBI/IPA-001/IP-P00743/2017-2018/11249, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule

9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

***Submissions by the Ld. Counsel appearing for the Corporate Debtor are summarized herein after:***

24. In its Reply Affidavit it has raised the point of maintainability of the petition. In para 3(e) one preliminary contention of the Corporate Debtor is as follows:

*“3(e) The purported deed of assignment executed between the Financial Creditor and the respective banks are insufficiently stamped and have not been registered with the authority having jurisdiction over the land and as such no cognizance should be taken on such deed of assignment.”*

25. The Ld. Counsel also placed reliance on certain judgments on the point that it is always open to the Corporate Debtor to point out to the Adjudicating Authority that default has not occurred to the applicant, in absence of any valid assignment of debts as defined under Section 5(7) of the Code. The judgments cited are as follows:

- a. *Shivam Water Treaters (P) Ltd. v. Union of India, 2018 SCC OnLine Guj 4922 - para 23, 24, 27 and 29.*
- b. *Phoenix ARC v. Cherupusham Films Pvt. Limited C.P (IB)/51/KB/2022 - para 12, 13 and 14.*

26. It was submitted that as per Section 5(7) of the IBC, 2016, "financial creditor" means "any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to", but in the instant case there is no legal assignment of debt by any of the three banks as the assignment deeds executed by these banks in favour of the Financial Creditor are insufficiently stamped and improperly registered, rendering these assignment deeds non-est in law. Therefore, CFM does not come within the ambit of Section 5(7) of IBC, 2016.

27. As per Section 35 of the Indian Stamp Act, 1899, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties' authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped. The importance of stamp duties and the treatment to insufficiently stamped documents has been recently propounded by the Constitution Bench of

Hon'ble Supreme Court in **NN Global Mercantile Pvt. Ltd. v. Indo Unique Flame**<sup>7</sup>

28. In written submission filed by Corporate Debtor, it is mentioned, that as per Article 23 (Conveyance) of the Schedule I to the Indian Stamp Act, 1899, any assignment deeds are chargeable to stamp duty. The stamp duties payable on such deeds as relied upon by the Financial Creditor as amended in the State of West Bengal is 6%, 7% and 5% of the market value of the property, whereas the stamp duties paid in the instant case are mentioned below:

<b>Assignment Deed</b>	<b>Purchase Consideration</b>	<b>Stamp Duty Paid</b>
IDBI Bank	Rs. 25,89,00,000	Rs.1,00,020 (<0.04%)
Indian Bank	Rs. 96,00,00,000	Rs.1,01,500 (~0.01%)
Central Bank of India	Rs. 34,00,00,000	Rs.50(<0.000015%)

29. It is further mentioned in written submissions, section 5(1A) of the SARFAESI Act, 2002 read with Section 8F of the Indian Stamp Act, 1899 exempts any document, executed by any bank or financial institution under Section 5(1) of the SARFAESI Act, 2002 in favour of any asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation, from stamp duty in accordance with the provisions of the Indian Stamp Act, 1899. However, in terms of the Proviso to 5(1A) of the SARFAESI Act, 2002, this exemption from stamp duty does not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation. The present petition filed before this Adjudicating Authority is for purpose other than the asset reconstruction or securitisation i.e., for corporate insolvency resolution process, that is to say, the exemption from such duty is only limited to the extent it is used for the purposes of asset reconstruction or securitisation but not for any purpose other than it as is the case in the instant petition.

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<sup>7</sup> (Civil Appeal No. 3802-3803 of 2020)

30. Apart from the above, the assignment deed, as in the present case, requires compulsory registration under Section 17(1) of the Registration Act, 1908. According to **Section 28 of the Registration Act, 1908**, any such document must be registered in the office of a Sub-Registrar within whose sub- district the whole or any portion of the property to which such document relates is situated. In the instant case, the assignment deed executed between CFM and IDBI has been registered in Kolkata whereas no property in the said deed is situated in Kolkata. Similarly, the assignment deed executed between CFM and Indian Bank has been registered by the office of Sub-Registrar Andheri (District Mumbai Suburban) whereas no property mentioned in the said deed is situated there. The assignment deed executed between CFM and Central Bank of India has been registered at Kolkata whereas the said deed deals exclusively with the corporate debtor Jagdamba Industries Ltd and the only property involved is situated in Durgapur.
31. It was also submitted that Section 49 of the Registration Act, 1908 renders any document required to be registered, under Section 17 thereof, to be inadmissible unless it has been registered in terms of the provisions of the Registration Act, 1908. In **M/s Veena Textiles Ltd. & Anr. v. The Authorised Officer, IFCI Ltd. & Anr., W.P. No. 8761 of 2014 decided by the Madras HC on 01-08- 2014**, the deed of assignment which was in violation of Section 28 of the Registration Act, 1908 was held to be null and void and the first respondent therein was held not empowered to act legally and to initiate proceedings under SARFAESI Act against the petitioners therein in pursuance of such deed of assignment. Therefore the assignment deeds are null and void and the Financial Creditor is not entitled to act legally and to initiate proceedings under the IBC.
32. Therefore, from the above submissions it may be noted that there was no legal assignment of any financial debt in favour of the Financial Creditor and in view of Section 5(7) of IBC, 2016, the Financial Creditor failed to qualify under the said definition. Hence, the Section 7 Application so filed shall be dismissed.

***Analysis and Findings:***

33. Heard the learned Counsel appearing for the Financial Creditor and the Corporate Debtor and perused the records and case law referred.

34. The only issue raised and pressed for at bar during its arguments on behalf of the Corporate Debtor is:

- a. The Assignment Deed is not registered with the authority having jurisdiction over the land.
- b. The Assignment Deed is not duly stamped.

35. While addressing his arguments, Learned Senior Counsel appearing for the Corporate Debtor has argued that since there is no valid assignment, therefore, application under Section 7(5) of the Code filed by the Financial Creditor is not maintainable.

36. In support of his arguments, Learned Senior Counsel for the Corporate Debtor relied upon para 23 and 24 of the judgment by the Hon'ble Gujarat High Court in **Shivam Water Treaters Pvt Ltd. v. Union of India & Ors.** which are as follows:

*“23. Further, it is clear from the material placed on record along with IA No. 1 of 2018 in this petition, that the Tribunal by order dated 26.2.2018 has invited objections from the petitioner on the application filed. In view of such opportunity given, if there is any objection with regard to validity of assignment deed and transfer of debt in favour of respondent No. 2 by the State Bank of India, it is always open to raise such objection by enclosing necessary documents, in which event, it is obligatory on the part of respondent No. 3 -Tribunal to examine such documents before taking further steps in accordance with the Code of 2016. In view of such opportunity provided, it cannot be said that Tribunal has no authority to look into such objections at all. When the application is filed by respondent No. 2 as financial creditor, as a assignee of debt, it is clear from the definition of financial creditor that such debt must be legally assigned or transferred to and unless it is held that debt has/been legally assigned or transferred to, respondeat No. 2 will not fit into claim of financial creditor as defined under Section 5(7) of the Code, 2016. Further, it is clear from Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 that where the application of the financial*

*creditor is under Sub-rule (1) of Rule 4, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer in favour of the applicant In view of such Rule and provision under Section 7(5) of the Code, 2016, it is for the Adjudicating Authority to satisfy on legality and validity of transfer of debt by way of assignment deed in favour of the respondent No. 2, so as to come to the conclusion that default has occurred before ordering admission of the application. In the case on hand, it is to be noted that when respondent No. 2 has come on record as assignee of financial creditor i.e. State Bank of India, the petitioner has raised preliminary objection questioning validity of transfer of debt by way of assignment in favour of respondent No. 2, which is upheld by the Tribunal, but same is set aside by this Court mainly by observing that such contentious issues can be gone into at appropriate stage of trial, but not before. On the aforesaid grounds, the petitions were allowed and the matter was carried to the Hon'ble Supreme Court, even Hon'ble Supreme Court has observed that in view of observations made by this Court in para 8 of the common judgment dated 18.10.2016 passed by this Court, order is not interfered with. Having regard to objections raised, if opportunity is not given to the corporate debtor to raise objections with supporting documents, before admitting petitions, it will run contrary to the object and scheme under Sections 7(4) and 7(5) of the Code, 2016.*

*24. Under the scheme of Insolvency and Bankruptcy Code, 2016, when the Adjudicating Authority receives application under Section 7 of the Code, 2016, for initiation of corporate insolvency resolution process by financial creditor, the Adjudicating Authority is required to ascertain the existence of a default from the records of information utility or on the basis of other evidence furnished by the financial creditor under Sub-section 4 of the Code, 2016. Only thereafter, when the Adjudicating Authority is satisfied that default has occurred, and application made under Sub-section (2) is complete, it may, by order,*

*admit such application. When the application is filed by the financial creditor as a assignee or transferee of the financial contract, the application is required to be accompanied with the copy of assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer. Same is clear from Rule 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. A cumulative reading of Section 7(4) and (5) of the Code, 2016 coupled with Rule 4 of the Rules referred above, it is clear that when transfer or assignment of debt is objected to, it is obligatory on the part of the Adjudicating Authority to deal with such objections before recording existence of default and satisfaction as contemplated under Section 7(5) of the Code, 2016. Statutory requirement of ascertainment of default brings within its wake the extension of a reasonable opportunity to the corporate debtor to substantiate by document or otherwise, to demonstrate that there is neither valid assignment of debt nor existence of default to the applicant. It is also clear from the Rules, where the application is by assignee or transferee of a financial contract, the applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor. It is clear from such provision that if the corporate debtor is having any objection on such application, on receipt of copy of the application by him, he can put forth his objection either on the validity of transfer or to show that there is no existence of default.”*

37. While dealing with the issues raised on behalf of the Corporate Debtor it is relevant to refer the following:

I. In **Kotak Mahindra Bank Ltd. v. M/s Hybro Foods Private Limited**<sup>8</sup>,  
**NCLT, Mumbai Bench** held:

*“23. With regard to the next contention raised by the Counsel for the Corporate Debtor that the documents Relied upon by the Petitioner in*

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<sup>8</sup> C.P.(IB) No. 295 of 2022 & I.A No. 2443 of 2022 , NCLT Mumbai Bench, decided on 03.03.2023

*support of its debt are insufficiently stamped. In this regard, the Ld. Counsel for the Financial Creditor has stated that the Corporate Debtor has not disputed the existence of loans. In furtherance the Corporate Debtor has also availed the said loan facility advanced by the original Lender So far as the objection with regard to the loan documents not been sufficiently stamped, it is notable that the question of insufficiently stamped loan documents is not relevant while adjudicating upon the admissibility of a Petition under Section 7 of the code. This position is also settled in **SpiceJet Limited v/s Credit Suisse AG 2022 SCC Online Mad 112**, wherein the Hon'ble Madras High Court has held as follows:*

*“... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence can not be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.”*

**(Emphasis supplied)**

**II. The Hon'ble NCLT, New Delhi Bench in the matter of M/s CFM Asset Reconstruction Private Limited v. M/s Nikhil Footwears Private Limited<sup>9</sup>**

held as follows:

*“ 9. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of transfer of rights across the ambit of Section 5(7) of the Code, therefore, the entity who received the said assignment of debt falls within the fold of 'Financial Creditor'. Further, we are persuaded by the decision of the **Hon'ble NCLAT in Lalan Kumar Singh v. Phoenix ARC (P) Ltd., [2018 SCC OnLine NCLAT 835, dated 20-12-2018]** wherein the*

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<sup>9</sup> C.P.(I.B) No. 106 (ND)/2022, NCLT New Delhi Bench, Court-IV, decided on 28.02.2023

*Hon“ble NCLAT while reiterating the objectives of the Code, 2016 observed that, “in the present case we find that the appellant has sought declaration that the assignment made by HSBC to ‘Phoenix’ as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the I&B Code” as civil proceedings akin to a trial which is not the legislative intent.”*

*11. As regards to the Corporate Debtor’s contention that the Assignment Agreement dated 18.01.2021 is not legally enforceable since the same has not been registered under Section 17 of the Registration Act, 1908, whereas on the other hand the Applicant contended that the Applicant being an Asset Reconstruction Company is exempted from Stamp Duty Payment under Section 5(1A) of SARFAESI Act read with Section 8F of the Indian Stamp Act, 1899, we find that under Section 5 (1) of the SARFAESI Act, 2002, Bank is empowered to assign loan to an Asset Reconstruction Company and specifically under Section 5(1A) of the SARFAESI Act, 2002, the documents executed by any bank or financial institution under sub-section (1) in favor of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty. Therefore, considering the exemption provided under Section 5(1A) of SARFAESI Act, 2002 we are not inclined to accept the contention that the said assignment agreement being unregistered is not legally enforceable.*

*12. In a summary proceeding like the IBC proceedings, it is out of the ambit of this Adjudicating Authority to go into the details as regard the requirement or exemption of registration of the Assignment Agreement and other related issues concerning the legality and issue of privity of parties to the Assignment Agreement dated 18.01.2021. Therefore, in this background the assignment cannot be challenged in the petition under Section 7 of the Code, 2016 and as such this issue cannot be decided by the Adjudicating Authority.*

*13. Further, it is pertinent to note that the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein i.e., CFM Asset Reconstruction Private Limited would step into the shoes of SBI (original lender) with the Assignment Deed dated 18.01.2021 executed in its favor. The contentions raised by the Corporate Debtor is accordingly repelled.”*

**(Emphasis supplied)**

III. The **Hon'ble Supreme Court of India** has in a plethora of judgments including in the matter of **Innoventive Industries Ltd v. ICICI Bank & Anr**<sup>10</sup> has held as follows:

*“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

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

IV. **While, dealing with this petition, we may further refer to** para 14 of an order passed by Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 733 of 2022 State of Rajasthan through vs Arunava Sikdar on 21 February, 2023 reproduced herein below:

*“14. The Adjudicating Authority considering the relevant documents pertaining to loans extended by the Banks as well as noticing the assignment in favour of Alchemist and ARCIL has admitted Section 7 Application. The order of admission passed by Adjudicating Authority has been affirmed by the Hon'ble Supreme Court vide its judgment dated 12.12.2018 as noted above. It is after order of the Hon'ble Supreme Court Company Appeal (AT) (Insolvency) Nos. 733, 734 & 996 of 2022 setting aside judgment of the High Court, the CIRP was revived before the Adjudicating Authority, when the Application No.*

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<sup>10</sup> (2018) 1 SCC 407

*327/JPR/2019 filed by the Appellant for summoning and impounding the documents and agreements dated 21.03.1996 executed between the Corporate Debtor and the IDBI, same being insufficiently stamped. It is relevant to notice that in Application, prayer was confined to Agreement dated 21.03.1996. The claims of Alchemist and ARCIL were admitted by the RP after considering the relevant documents filed along with the Form-C. The Adjudicating Authority in the impugned order has clearly held that the existence of debt is proved by different documents irrespective of numerous under/ over/ correctly stamped documents. In paragraph 25 of the impugned order dated 24.06.2022, following has been observed by the Adjudicating Authority:*

*"25. However, in light of pleadings, submissions made and overall assessment of the matter, we hold and concur with the view that existence of a debt can be proved by different documents/ means irrespective of numerous (under/ over/ correctly) stamped instruments, and, inter-alia, more so in this case, several diverse documents and admission of debt in pleadings, which have already been considered at the stage of admission clearly establishing debt in favour of AARCL and ARCIL. In view of entirety of the foregoing, the Application of the State of Rajasthan is rejected."*

38. In para 4 (iv) of the Reply Affidavit, the Corporate Debtor **has admitted the execution of the assignment deed** in favour of Indian Bank being one of the assignor banks:

***“The Corporate Debtor states that in the all three cases, it would appear that by the time, the purported debt was assigned in favour of the Financial Creditor, the Purported debt was barred by limitation. The documents disclosed in the present case would demonstrate that the circumstances does not exist which would extend the period of limitation for any further period”***

39. It is also significant to note, execution of agreement of loan dated 30-08-2013 placed on at page 881 has not been denied or disputed by the CD. Pg 883 of this agreement contains a clause reproduced hereinafter-

***“All which of Central Bank of India and Indian Bank are hereinafter collectively referred to as “the said Banks” or “Central Bank of India Consortium” which expression shall unless it be repugnant to the***

*subject or context thereof, include each of them or any one or more of them and their respective successors and assigns)*<sup>11</sup>

40. So, in other words, the Corporate Debtor has not denied or disputed existence of assignment deed with respect to financial assistance/loan granted by Central Bank of India. Corporate Debtor never ever in any manner whatsoever objected to this assignment.
41. Further, as brought herein above, all right in favour of assignor Bank created by virtue of loan agreement dated 30.08.2013, referred above continued in terms of above stipulation in favour of assignee, financial creditor in this petition and the financial creditor was lawfully entitled to have filed this petition. This situation squarely fits into law laid down in M/s CFM Asset Reconstruction Private Limited v. M/s Nikhil Footwears Private Limited<sup>12</sup> (*supra*), therefore, plea raised by Corporate Debtor is found to be incorrect.
42. The case law cited by the Ld. Senior Counsel for the Corporate Debtor is thus distinguishable on the basis of facts noted hereinabove in para 38 to 41 above.
43. In addition to the above, there is nothing on record put forth by Corporate Debtor to disprove existence of debt or default- the only two things as required to be established as per law laid down by Hon'ble Supreme Court in above referred case of Innoventive Industries. Arguments of Ld Counsel for Corporate Debtor raised and as noted above also do not hold water in view of two orders of NCLT Mumbai and NCLT Delhi Bench, referred herein above.
44. The fact regarding availing of financial facility by the Corporate Debtor from Indian Bank and its default in payment is ascertainable from **page 940** of the petition which is a **letter dated 31.05.2015** written on behalf of the Corporate Debtor to Indian Bank expressing its inability to pay the dues, other documents are Demand Promissory Notes executed by Corporate Debtor in favour of Indian Bank).<sup>13</sup>These

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<sup>11</sup> Page 883 of the Petition

<sup>12</sup> C.P.(I.B) No. 106 (ND)/2022, NCLT New Delhi Bench, Court-IV, decided on 28.02.2023

<sup>13</sup> Pages 941-943 of the Petition

documents are besides the other documents placed on record by the Financial Creditor as indicated above to establish the debt of the Corporate Debtor.

45. The Independent Auditor's Report of the Corporate Debtor are also annexed in the petition at **Page 1177** of the Petition. These are the reports of Standalone Statements. The following is clearly recorded at Page 1181 of the Petition at clause 8:

*“ 8. In our opinion and according to the information and explanations given to us, the Company has defaulted in the repayment of dues to banks and financial institutions.”*

Upon perusal of Page 1194 of the petition we find that it mentions about details of various banks and financial institutions including Central Bank Of India showing the borrowings of the Corporate Debtor and their outstanding dues as on 31.03.2016 can be clearly ascertained at around **Rs. 53,07,35,428/-**. This document is a part of documents as mentioned in Part-IV of Form-I of the Petition.

46. Upon the basis of the various documents placed on record in support of its claim and also taking into consideration averments in reply affidavit of CD, we have no hesitation to hold there is existence of debt on the part of the Corporate Debtor and a default as well in its repayment by the Corporate Debtor. Financial Creditor is within its right to have filed this petition.
47. Therefore, we find that the present petition filed by the Financial Creditor is complete in all respects, within limitation and deserves be **admitted**.
48. In the light of the above position of facts, record and law, it is, hereby ordered as follows: -
- a. The application bearing **CP (IB) No. 203/KB/2021** filed by CFM Asset Reconstruction Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Jagdamba Industries Limited, the Corporate Debtor, is hereby **admitted**.
  - b. There shall be a moratorium under section 14 of the IBC.

- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Aditya Kumar Tibrewal**, registration number IBBI/IPA-001/IP-P00743/2017-2018/11249, **email: [adityatibre@gmail.com](mailto:adityatibre@gmail.com)**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
  - i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
  - j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
  - k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
49. **CP (IB) No. 203/KB/2021** to come up on **06.09.2023** for filing the periodical report.
50. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

This order is pronounced on the 22<sup>nd</sup> day of August, 2023.

*(FA\_LRA)*