

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

**Coram: Shri Madan B. Gosavi, Hon'ble Member (Judicial)
Shri Virendra Kumar Gupta, Hon'ble Member (Technical)**

**CP(IB) No. 540/KB/2018
CA(IB) No.1060/KB/2019**

In the matter of:

An application for initiation of Insolvency Resolution Process under Section 7(1) read with Sections 14 & 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

- And -

In the matter of:

Religare Finvest Limited, company incorporated under the Companies Act, 1956 having its registered office at 2nd Floor, Rajlok Building, 24, Nehru Place, New Delhi, South Delhi-110 019.

... .. **Petitioner/Financial Creditor**

- Vs. -

Bharat Road Network Limited, a company incorporated under the Companies Act, 1956 having its registered office at Mirnala Gardens, 5B/1, Topsia Road (East), Kolkata-700 046, West Bengal.

... .. **Respondent/Corporate Debtor**

Counsels on record:

1.	Mr. Ratnanko Banerji, Sr. Advocate	}	
2.	Mr. Shaunak Mitra, Advocate	}	
3.	Ms. Urmila Chakraborty, Advocate	}	... For Petitioner / Financial Creditor
4.	Mr. Saubhik Chowdhury, Advocate	}	
5.	Mr. Dripto Majumdar, Advocate	}	

1.	Mr. Jishnu Saha, Sr. Advocate	}	
2.	Mr. Jishnu Choudhury, Advocate	}	
3.	Mr. Rishav Banerjee, Advocate	}	... For Respondent/Corporate Debtor
4.	Mr. Aishwarya Kumar Awasthi, Advocate	}	
5.	Mr. Rajarshi Banerjee, Advocate	}	

Date of Hearing : 20.08.2019
Date of Pronouncement of Order: 28 . 08. 2019

ORDER

Per Virendra Kumar Gupta, Member (T)

1. This petition has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016) by Religare Finvest Limited - the Financial Creditor, to initiate Insolvency Resolution Process against Bharat Road Network Limited, being Corporate Debtor.
2. The facts, in brief, are that the Financial Creditor is a Non-Banking Financial Company ("NBFC") engaged in the business of giving loans and advances to various parties. The Financial Creditor and Corporate Debtor executed a Memorandum of Understanding ("MoU") on 14th December 2016 whereby Rs.50,00,00,000/- (Fifty Crores only) were given by the Financial Creditor to Corporate Debtor as short term loan for one year carrying an interest at the rate of 12.50% per annum, payable on quarterly rest. It was also stipulated that the principal amount along with interest was payable on 14th December 2017. It is because of default by Corporate Debtor in repayment of said loan along with interest that present petition has been filed. The amount due and payable has been stated at Rs.51,30,13,699/- as on 27.02.2017.
3. The Ld. Senior Counsel for the Financial Creditor narrated the basic fact and contended that the Financial Creditor was a NBFC having requisite licence / authorisation to carry on the business as a NBFC. The Ld. Senior Counsel pointed out that there was no dispute as regards the amount disbursed / genuineness of MoU dated 14.12.2016. The Ld. Senior Counsel further submitted that the short-term loan was repayable on 14.12.2017, but the Operational Creditor failed to repay principal sum along with interest and thus, committed breach of MoU. The Financial Creditor, on such breach, issued loan recovery notice on 28.02.2018 to pay the impugned sum and interest thereon. The Ld. Senior Counsel also drew our attention to page 45 of the Reply Paper Book containing details about

outstanding loan of the Financial Creditor and specifically drew our attention to 14 (ii), wherein the particulars of the Financial Creditor and terms & conditions were also mentioned. It was also submitted that the Corporate Debtor had disclosed the fact of application being filed against the Corporate Debtor under Section 7 of IBC 2016 and as on 31.03.2019, the amount outstanding plus interest thereon was mentioned. Thus, according to Ld. Sr. Counsel for the Financial Creditor, there was no dispute with regard to default committed by the Corporate Debtor in respect of financial debt which was due and payable; hence, Insolvency Resolution Process was to be initiated. The Ld. Sr. Counsel submitted that the Financial Creditor proposed that Mr. Soumendra Poddar may be appointed as Interim Resolution Professional ("IRP"), who was registered, and he had no disciplinary proceedings pending against him.

4. The Ld. Senior Counsel for the Corporate Debtor initiated his arguments by drawing our attention to the provisions of Indian Stamp Act, 1899 and referred to Section 2(5) of the said Act. He contended that MoU was "Bond" within the meaning of the provision of said Section 2(5) and stamp duty was liable to be paid on such MoU as per Article 15 of Schedule 1 of that Act. The Ld. Senior Counsel further submitted that MoU dated 14.12.2016 created an obligation / liability on the part of Corporate Debtor and such MoU was not an instance of acknowledgement of existing liability, but such MoU was Bond within the meaning of provisions of Indian Stamp Act. The Ld. Senior Counsel further contended that irrespective of the nomenclature of an agreement / arrangement, if such agreement / arrangement came within the purview of provision under sub-section 2(5)(a) / 2(5)(b) of Indian Stamp Act, 1899, then, such agreement / arrangement would be treated as Bond and in case requisite stamp duty had not been paid, then, such document was not enforceable at law. He further contended that such document could not be considered as an evidence as per the provisions of section 35 of Indian Stamp Act, 1899. For these propositions, reliance was placed on the following judicial decisions:-

- i) Bengal Paper Mills Co. Ltd. vs. The Collector of Calcutta & Ors. – AIR 1976 SCC Cal 416;
- ii) State of Kerala & Ors. vs. McDowell & Co. Ltd. – 1994 Supp (2) SCC 605;

- iii) Lexicon Finance Ltd. vs. Park Securities Ltd. – AIR 2004 Bom 115;
- iv) SMS Tea Estates Pvt. Ltd. vs. Chandmari Tea Co. Pvt. Ltd. – (2011) 14 SCC 66;
- v) Garware Wall Ropes Ltd. vs. Coastal Marine Constructions & Engineering Ltd. – 2019 SCC Online SC 515;
- vi) Darothi Mukherjee vs. Ajoy Kumar Ghosh & Ors. – Manupatra MANU/WB/1307/2016 in F.A.M.T. No. 955 of 2016 and C.A.N. Nos. 9211 and 10875 of 2016, Order dated 15.11.2016.

5. The Ld. Senior Counsel, thereafter, drew our attention to the structure of the Corporate Debtor and financial status to show that the Corporate Debtor was a core investment company within the meaning of the provisions of Section 45JA and 45M of the Reserve Bank of India Act, 1934 read with Section 45-I(c) of the said Act. The Ld. Senior Counsel also submitted that Corporate Debtor had become a Non-Banking Financial Company as on 31st December 2018 and most certainly as on 31.03.2019. Hence, it was not a corporate person within the meaning of Section 3(7) of IBC 2016. He also drew our attention to provisions of Section 3 (16) and 3 (17) of IBC 2016. He emphatically pointed that company was authorised and/or eligible to carry on the business as NBFC within the meaning of relevant provisions of Reserve Bank of India Act, 1934 (“RBI Act, 1934”), hence, was a financial service provider and, therefore, proceedings under Section 7 of IBC 2016 could not be initiated against the Corporate Debtor. As regards the registration of Corporate Debtor as NBFC with RBI, the Ld. Senior Counsel contended that for the purpose of IBC 2016, the aspect of eligibility for authorisation was to be considered as against the requirement of registration for being classified as financial service provider. The Ld. Senior Counsel also submitted that an application for registration as NBFC had already been filed with the RBI.

6. Lastly, the Ld. Senior Counsel submitted that the petition filed under section 7 of IBC 2016 was not maintainable because the Power of Attorney / Authority given to the person who signed the requisite form did not specifically contain the provision authorising the said person to file / initiate proceedings under IBC 2016. To further buttress the point, the Ld.

Senior Counsel drew our attention that this defect was tried to be corrected in the board resolution passed subsequent to filing of this petition.

7. The Ld. Senior Counsel for the Financial Creditor, in the Rejoinder, submitted that none of the conditions mentioned in clause 2(5)(a) and section 2(5)(b) of the Indian Stamp Act were satisfied, hence, MoU was not to be construed as Bond. He also contended that MoU in fact witnesses an existing obligation as on the date of MoU, hence, for this reason also, the said document could not be termed as Bond within the meaning of provisions of section 2(5)(a) / 2(5)(b) of the Indian Stamp Act, 1899. He thereafter contended that, in any case, for the purpose of invoking provisions of IBC 2016, existence of default in respect of a debt becoming due and payable duly supported by evidence of such default was sufficient. He again reiterated that from the perusal of Corporate Debtor's own admission in the annual financial statements with regard to such default being committed, no other legal aspect was to be considered. In this regard he again drew our attention to pages 21 and 45 of the reply affidavit. He further drew our attention to page 3 of the reply by Corporate Debtor that Corporate Debtor was a listed company engaged in business of development, implementation, operation and maintenance of road / highway projects in India and was operating through SPCS / SPVS by investing in equity and debt instruments of its SPVs, hence, such business model could not convert the Corporate Debtor into a NBFC. He further drew our attention to the application filed by the Corporate Debtor with RBI for grant of registration to commence on the business of a core investment company and submitted that such application had been pending with the RBI and in the said application the company had itself mentioned that they were desirous of commencing / carrying on the business of a non-deposit taking systematically important core investment company and, therefore, based upon their own admission, the company could not be considered a financial service provider within the meaning of provisions of Section 3(17) of IBC 2016.
8. The Ld. Senior Counsel for the Financial Creditor further contended that in case of M/s. HDFC vs. RHC Holding Pvt. Ltd. in CA(AT)(Insolvency) No.26 of 2019, order dated 10th July, 2019, the Hon'ble National Company Law Appellate Tribunal held that financial service

provider did not come within the meaning of Corporate Person / Corporate Debtor and there was no dispute with this proposition if such Corporate Person was having requisite licence, which was the case there, as Corporate Debtor was holding the certificate of registration granted by RBI and thus, this case in fact, supported the cause of financial creditor as in the present case such registration was lacking with the Corporate Debtor.

9. The Ld. Senior Counsel for the Financial Creditor, thereafter, placed strong reliance on the decision of the Principal Bench of NCLT in the case of M/s. Jindal Saxena Financial Services vs. Mayfair Capital Pvt. Ltd., as reported in 2018 SCC Online NCLT 93 for the proposition that even all NBFCs were not to be considered as financial service provider in terms of provisions of Section 3(17) of IBC 2016.
10. We have heard both the parties and also perused the material on record.
11. (i) It is noted that Financial Creditor is a registered NBFC with RBI having requisite authorisation to carry on business as NBFC. In the course of its business, it has granted short term loan to the Corporate Debtor. Such short term loan was given on interest and payable after one year as per the terms and conditions agreed by and between the parties, through MoU dated 14.12.2016. The amount of loan and rate of interest is not in dispute. It is also not in dispute that the Corporate Debtor has failed to repay the loan along with interest accrued thereon. Hence, the Financial Creditor has filed an application for initiation of Insolvency Resolution Process under Section 7 of the IBC 2016.

(ii) First preliminary objection raised by Corporate Debtor is that petition is not maintainable due to insufficient stamp duty being paid in relation to such MoU. To deal with this plea, firstly we would examine the scheme of IBC 2016 relating to initiation of CIRP by Financial Creditor. Section 4 of IBC 2016 provides the minimum threshold limit of Rupees One Lakh of default for initiating insolvency and liquidation of Corporate Debtors. As per section 6, when a Corporate Debtor commits a default, a Financial Creditor or Operational Creditor or the Corporate Debtor may initiate Corporate Insolvency Resolution Process (CIRP) in respect of such Corporate Debtor. Thus, on occurrence of a

default, the outcome is initiation of CIRP and the rationale behind for fixing such mandatory threshold limit is to detect, at early stage, the signs of insolvency and take corrective measures to secure the interest of various stakeholders. As per provisions of Section 7(1), Insolvency Resolution Process can be initiated against a Corporate Debtor when a default has occurred and the Financial Creditor files evidence of default along with the application. As per section 3(12) of I&B Code, 'default' means non-payment of a debt which has become due and payable and is not paid by the Corporate Debtor. 'Debt' as per clause 3(11) means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. This takes us to look at the meaning of 'claim' which is defined in section 3(6) of the I&B Code, 2016 and reads as under:-

"3(6) "claim" means –

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured."

(iii) The IBC, 2016 defines "debt" as an obligation or liability in respect of a claim which reveals the legislative intent that meanings of "debt" and "claim" be co-extensive. Thus, the meaning of "claim" is crucial to our analysis. A "claim" is a "right to payment, whether or not such right is" and from this it is apparent that expansive language has been applied in defining both the terms. The existence of right to payment is a pre-condition to bring a default within the definition of the term "claim". To establish existence of right to payment, one of the tests which has been evolved by Courts is "the conduct test". Under the conduct test, a right to payment arises when the conduct giving rise to the alleged liability occurred. Another test is "the pre-petition relationship test" which requires some pre-petition relationship such as contract, exposure, impact or

privity, between debtor's pre-petition conduct and the claimant in order for the claimant to hold a section 3(6) claim.

(iv) It is further apparent that the term 'claim' has been defined in widest possible manner so that lender's right to receive payment can be enforced in variety of situations or conversely, it contemplates that all obligations to the extent possible of the corporate debtor would be dealt within the insolvency and bankruptcy proceedings. For example, on occurrence of default, even if a claim is disputed, financial creditor can seek refuge under I&B Code to initiate CIRP process. Similarly, whether loan is secured or unsecured, in both these situations CIRP process can be initiated when a default occurs in repayment of loan.

(v) 'Claim' has been defined also to include a right to payment whether or not such right is legal or equitable. We need to elaborate on these two aspects in detail. In the definition, 'claim' has been mentioned as right to payment which may or may not be legal. On the face of it appears as if both legal and illegal claims can be considered but, in our view, this definition cannot be extended to include debt/claim arising out of contract/obligations relating to illegal activities or activities which are of criminal nature under any law for the time being in force as debt/claim arising out of such activities are against public policy and void *ab initio* and only covers other infirmities which result into non-enforceability of contracts in civil laws such as legal incapacity of the person executing a contract or insufficiency of stamp duty paid on the instrument or lack of valid licence, registration, authorisation or Board resolution or other technical breach/defects etc. which would not absolve the corporate debtor under IBC,2016 from facing CIR Process. It is further noteworthy that enforceability subject to limitations of Public Policy and agreement being void *ab initio* has not been made a pre-condition in IBC, 2016 as Financial Creditor as per section 5(7) means only person to whom a financial debt is owed. Financial debt as per section 5(8) means a debt along with interest, if any, which is disbursed against time value of money and includes different kinds of transactions and whenever such transactions take place that by-itself is suffice to create an event or conduct which may give birth to claim

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subsequently. Further, we are of the considered view that obligation to pay loan is not created by the instrument, but it arises from promise to repay such loan which law always implies when money is borrowed. Having said so, the legal infirmities regarding initiation of CIR Process under IBC could be: (i) the amount of debt is less than Rs. One Lakh, (ii) default has not occurred, (iii) claim is barred by limitation. In case of financial debt, even if it is disputed, such dispute will not create any limitation / embargo on initiation of CIR Process on the happening of the event of default.

(vi) Further, Regulation 8(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 provides as to how the existence of debt due to financial creditor would be proved. The said clause 8(2) is reproduced hereunder:-

"8(2) The existence of debt due to the financial creditor may be proved on the basis of-

- (a) the records available with an information utility, if any; or*
- (b) other relevant documents, including -*
 - (i) a financial contract supported by financial statements as evidence of the debt;*
 - (ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*
 - (iii) financial statements showing that the debt has not been paid; or*
 - (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.*

Form C has been prescribed in this regard which is reproduced as under :-

FORM C

SUBMISSION OF CLAIM BY FINANCIAL CREDITORS

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

[Date]

From

[Name and address of the financial creditor, including address of its registered office and principal office]

To

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The Interim Resolution Professional / Resolution Professional,
 [Name of the Insolvency Resolution Professional / Resolution Professional]
 [Address as set out in public announcement]

Subject: Submission of claim and proof of claim.

Madam/Sir,

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

Relevant Particulars	
1.	Name of the financial creditor
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)
3.	Address and email address of the financial creditor for correspondence
4.	Total amount of claim (including any interest as at the insolvency commencement date)
5.	Details of documents by reference to which the debt can be substantiated
6.	Details of how and when debt incurred
7.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim
8.	Details of any security held, the value of the security, and the date it was given
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan
10.	List of documents attached to this claim in order to prove the existence and non-payment of claim due to the financial creditor
(Signature of financial creditor or person authorised to act on his behalf) [Please enclose the authority if this is being submitted on behalf of the financial creditor]	
Name in BLOCK LETTERS	
Position with or in relation to creditor	
Address of person signing	

*PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

DECLARATION

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

- [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the.....day of.....20....., actually indebted to me for a sum of Rs. [insert amount of claim].
- In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
[Please list the documents relied on as evidence of claim].
- The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
- In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:
[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim].
- I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
- I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.

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Date:
Place:

(Signature of the claimant)

VERIFICATION

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

Verified at ... on this day of, 20...

(Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]

(vii) Thus, it can be seen, CIR Process can be initiated on the basis of records available with an information utility or other relevant documents as mentioned hereinbefore which include financial statements showing that debt had not been paid. Similarly, in Form C, the claim can be substantiated in the same manner. On the basis of this analysis, it can safely be concluded that purpose of documents is extremely limited and restricted only to prove the existence of debt and default thereof.

(viii) Another aspect relating to the term "claim" is that right to payment may be an equitable claim. The term 'equitable' has not been defined under IBC, 2016, hence we have to look the meaning of the term in the common parlance or, as has been noticed judicially or, as defined in the dictionary. In general parlance, the term "equitable" means, something that is fair and reasonable to all parties in a particular situation. In judicial sense, it can be explained as a remedy or solution that is ethically or legally just and reasonable under the circumstances, though, it may or may not be wholly satisfactory to any or all parties involved. The dictionary meaning of the term 'equitable' is just that confirmable to the principles of natural justice and right. Just, fair and right, in consideration of the facts and circumstances of the individual case. Existing in equity; available or sustainable only in equity; or upon the rules and principles of equity.

(ix) Another judicial principle based upon equity is principle of equitable estoppel. In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defence that is contrary or inconsistent with his or her prior action of

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conduct. Our this view can further be supported on the basis of application of doctrine of approbate and reprobate, which means that a person cannot approbate and reprobate at the same time, that is, no party can accept or reject the same instrument and cannot say at one time that the transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. In the instant case, it is the Corporate Debtor who has purchased the stamp paper for the execution of said MoU, meaning thereby that stamp duty for execution of MoU has been borne by the Corporate Debtor. It is settled judicial proposition that insufficiency of a stamp duty is a curable defect which can be cured by making up for the deficiency, hence, if the Corporate Debtor wishes to pay the stamp duty not paid, then nobody can stop but, at this stage, the Corporate Debtor being a wrongdoer at one end cannot be allowed to take advantage of its own wrong. For this reason also, the claim of the Corporate Debtor regarding enforceability of MoU is liable to be rejected.

(x) To strengthen our this view, we draw support from certain observations of NCLT Mumbai Bench in the case of Bank of India vs. Gupta Infrastructure (India) Pvt. Ltd., Order dated 01.02.2018 which is reproduced hereunder:-

"3. On looking at the terms and conditions galore in the deed of guarantee, there could not be any speck of doubt about the binding nature of the guarantee deed upon these corporate debtors. For that matter, any agreement consciously and voluntarily executed between parties is sacrosanct, upon which whole society running from thousands of years, unless such trust and belief is not present, we can't survive even for a single day, some are explicit, some are implicit, but fact of the matter is, every second of us is run on trust upon each other, wherever it is broken, there is a dispute, there is a pain to the doctrine of trust and belief, therefore before going any further, I must say that the discretion given to the courts is to see as to whether the agreement entered in between the parties is prohibited under law or as to for any other reason the agreement is invalid for the reason of incompetency of parties, unlawful object or fraud, but these reasons

have to be proved to the hilt by the person assailing it, not by the person asking relief basing on the agreement. The only ground that has to be proved by the party asserting it is execution of the agreement, if execution is admitted, then what all assailing party to do is to prove to the satisfaction of the court that though execution of instrument is admitted, it is hit by one or other ground mentioned above. The basic reason perhaps for not providing trial in IBC proceedings is, credit availed by the debtor and guarantees given by guarantors reflect in various records of the respective company, banks and RoC, therefore the defence that is being witnessed day in and day out is non-filing of certificate, some fraction of deference in computation of claim amount etc. If we see any case de-hors all these frivolous technical flaws, it will be evident that debt is availed and defaulted. So if anybody going beyond this fact, it is nothing but breach of trust, which is the basic element present in an agreement entered between the parties. We don't say that parties should not raise the defences available to them; we only say how we have to deal with administration of justice when substratum is admitted by the assailing party.

4. Courts normally will not go into the advantages and disadvantages of the parties, we can't get into subjective perceptions of anybody or even of us, law is set out how to deal with it, parties apply their wisdom when they enter into binding covenants they enter into contracts, Parliament applies its wisdom when a legislation is brought in, therefore discretion in between left to this Bench is judicial discretion, not to wedge into any other perception into it. Why conventional method of trial has been taken out from IBC proceedings is one – obviously to expedite the process and two – perhaps on the reason that parties cannot deny at least the entries showing in the records of companies.

(xi) From the above discussion, it can be fairly said that where Corporate Debtor has obtained a loan having time value of money or on interest, enjoyed it on the basis of subject MoU, it is both a legal and equitable obligation of a Corporate Debtor and,

simultaneously, legal and equitable right of the Financial Creditor to initiate CIR process under IBC 2016 in case of default by the Corporate Debtor in repayment thereof.

(xii) We are further of the view that admitted facts need not be proved and when it is so that is, when proof of document is not required, then, there is no need to revisit the validity of document bypassing the admission already made by the opposite party. The Corporate Debtor has admitted the fact of loan, rate of interest payable by the Corporate Debtor thereon and also default committed by the Corporate Debtor in repayment of impugned loan in its audited financial statements, hence, there is no need to look into the aspect of nature of MoU or its enforcement due to insufficiency of stamp duty.

(xiii) We also reject the contention of the Corporate Debtor regarding applicability of provisions of Indian Stamp Act, 1899 while deciding the fate of proceedings under section IBC, 2016 for the reason that the same, in our considered view, are contrary or repugnant to the provisions of IBC, 2016.

(xiv) Thus, on the basis of above discussion, we reject this preliminary objection raised by the Corporate Debtor.

(xv) The other contention taken by the Corporate Debtor is that Corporate Debtor was a financial service provider. In this regard, provisions of section 3(17) of I&B Code are crystal clear which provide that Financial Creditor is a person which provides financial services in terms of authorization issued or registration granted by Financial Creditor Regulator. In the present case, Corporate Debtor has merely applied for a licence / registration with RBI but no such authorization / registration exists on the date of accepting of short term loan or on the date of filing of petition under section 7 of IBC 2016 by Financial Creditor or even as on date; hence, this plea of the Corporate Debtor is also devoid of merits and, thus, rejected.

(xvi) We also do not find any merit that person authorized to file this petition was not having requisite authority as the Board resolution authorizing the person mentions that

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such person can file a petition before NCLT, being an adjudicating authority, for matters arising under IBC 2016.

12. In the CA (IB) No. 1060/KB/2019 filed by the Corporate Debtor, the contentions raised by the Corporate Debtor have been mentioned which have already been dealt by us herein before, hence, this CA needs no separate findings.
13. In view of the above facts and legal position and considering the fact that the petition filed by the Financial Creditor is complete in all respects and meets the requirements of section 7 read with relevant regulations. Accordingly, we are of the considered opinion that petition filed by Financial Creditor is valid in law, hence, we admit the same and order as under:-


ORDER


- i) The petition filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Bharat Road Network Limited, is hereby admitted.
- ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
 - vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
 - ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

- x) MR. SOUMENDRA PODDAR, IRP Registration No. IBBI/IPA-001/IP-P00446/2017-18/10789, E-mail: soumenpodder@hotmail.com residing at 1/427, Gariahat Road, Kolkata-700 068, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Financial Creditor to pay sum of Rs. 5,00,000/- (Rupees Five Lakh Only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii) CA(IB) No. 1060/KB/2019 stands disposed of in terms of our aforesaid order.
- xiv) List the matter on 01/10/2019 for the filing of the progress report.
- xv) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Madan B. Gosavi)
Member (Judicial)


(Virendra Kumar Gupta)
Member (Technical)

Signed on this, the 28th day of August, 2019.

Cb