(9)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP(IB)/127 (CHE)2022

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***SELVA DEVELOPERS PRIVATE LIMITED***

PIRAMAL CAPITAL & HOUSING FINANCE LIMITED
(FORMERLY DEWAN HOUSING FINANCE CORPORATION LIMITED)
Registered Office at :
601, 6th Floor, Amiti Building,
Agastya Corporate Park Kanmani Junction,
Opp. Fire Station, LBS Marg,
Kurla (W) Mumbai,
Maharashtra – 400 070

... Financial Creditor

-Vs-

SELVA DEVELOPERS PRIVATE LIMITED
No.106J/88E, Millerpuram Road,
Palai Road West,
Thoothukudi – 628008

...Corporate Debtor

Order Pronounced on ***31st March 2023***

CORAM:

Justice RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor	*: Om Prakash Senior Counsel for Deepika Murali, Advocate Aravind Raj, Advocate*
For Corporate Debtor	*: Pawan Jhabakh, Advocate*

O R D E R

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **PIRAMAL CAPITAL & HOUSING FINANCE LIMITED (FORMERLY DEWAN HOUSING FINANCE CORPORATION LIMITED)** (hereinafter referred to as 'Financial

Creditor') on 25.05.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **SELVA DEVELOPERS PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Non-Banking Financial Company. The registered office address of the Financial Creditor as per the Application is stated to be situated at No.601, 6th floor, Amiti Building, Agastya Corporate Park Kamani Junction, Opp. Fire Station, LBS Marg, Kurla (W) Mumbai – 400 070. Further, Part-I lays down the Authorized Signatory of the Financial Creditor to be one Mr. Sathanbabu Mathankumar, Authorised Signatory of the Financial Creditor by virtue of a verifying Affidavit dated 24.05.2022 which is placed at Page Nos.21 to 22 of the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on

30.08.2007 with CIN: U70101TN2007PTC064564. The registered office of the Corporate Debtor as per the MCA master data is situated at No.106J/88E, Millerpuram Road, Palai Road West, Thoothukudi – 628008.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Anil Kumar Khicha, Reg. No. IBBI/IPA-001/IP-P00422/2017-18/10745.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.75,00,52,572/- (Rupees Seventy Five Crores Fifty Two Thousand Five Hundred and Seventy Two Only)which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 09.08.2017.

6. Part V of the application describes the particulars of Financial Debt, documents and the list of documents between the Financial Creditor and the Corporate Debtor is reproduced hereunder:

   a) Sanction letter dated 26.09.2014 with reference number DHFL/2014-15/PF/PB/921
   b) Common Loan Agreement dated 26.09.2014 executed by the Corporate Debtor along with the Co-Borrowers.
   c) Memorandum of Deposit of Title Deeds dated 29.09.2014 registered as document number 4342/2014 at the Sub-Registrar office of Pudukottai.

d) Demand Promissory Note dated 26.09.2014 executed by the Corporate Debtor along with the Co-Borrowers.
e) Deed of Personal Guarantee dated 26.09.2014 executed by: (a) T.Jhonson (b) J Samuel Jeffson, (c) Anny Johnson, (d) G.Ponraj, (e) N.Thivagaran, (f) G.Selvaraj Moses, (g) K.Illango,(h) N.Palanikumar and (i) A.D.Selvakumar Samvel in favour of the Financial Creditor herein.

OTHER DOCUMENTS TO PROVE THE EXISTENCE OF FINANCIAL DEBT AND CONSEQUENT DEFAULT IS AS FOLLOWS:

a) Statutory Notice issued under Section 13(2) of the SARFAESI Act dated 13.08.2015 read along-with a subsequent letter dated 23.09.2015 are annexed hereto as Annexure XV.

b) Letter dated 16.06.2017 issued by the Borrower Jeffson Universal Logistics Private Limited on behalf of the Corporate Debtor and other Borrowers to the Financial Creditor annexed hereto as Annexure XVII.

c) Letter dated 12.03.2018 issued by the Borrower Jeffson Universal Logistics Private Limited on behalf of the Corporate Debtor and the Borrowers to the Financial Creditor, annexed hereto as Annexure XVIII.

d) Legal Notice dated 10.02.2021 issued by the Counsel of the Financial Creditor for invocation of the Deed of Guarantee dated 26.09.2014, annexed hereto as Annexure XIX.

e) Legal Notice dated 20.11.2021 issued by the Counsel of the Financial Creditor reiterating the Legal Notice dated 10.02.2021 annexed as Annexure XX

f) Notice dated 25.04.2022 issued by the Financial Creditor to the Corporate Debtor and 18 other Co-Borrowers and the 9 personal guarantors demanding repayment of the loan amount. The same is annexed hereto as Annexure XXI.

7. It is significant to point out here that the one M/s.Jeffson Universal Logistics Private Limited along with 19 other Associate Companies including the Corporate Debtor herein (as co-borrowers) have requested the Financial Creditor to grant financial assistance towards Mortgage Loan. Subsequently,

there was a debt and default by the said M/s.Jeffson Universal Logistics Private Limited with 19 other Associate Companies and hence this Tribunal vide its order dated 16.03.2023 in an Application filed by the Applicant herein against M/s.Jeffson Universal Logistics Private Limited in CP(IB)/122(CHE)/2022 initiated the Corporate Insolvency Resolution Process as against M/s.Jeffson Universal Logistics Private Limited. The extract of the same is reproduced hereunder;

> 7. It is submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor along with 19 other associate companies viz. (i) St. John Freight Systems Limited, (ii) Shaft Developers Private Limited, (iii) Grouse Promoters Private Limited (iv) Venue Developers Private Limited (v)Venue Promoters Private Limited (vi) Navigator Creators Private Limited (vii) Dublin Promoters Private Limited (viii) Pristine Promoters Private Limited, (ix) Seastar Realtors Private Limited (x) Camel Shelters Private Limited (xi) Nellai Realtors Private Limited (xii) Daffodil Shelters Private Limited (xiii) Fauna Realtors Private Limited (xiv) Porpoise Realtors Private Limited (xv) Miller Builders Private Limited (xvi) Gulls Realtors Private Limited (xvii) Selva Developers Private Limited (xviii) Navigator Developers Private Limited (xix) Shaft Promoters Private Limited (collectively referred to as "Borrowers") requested the Financial Creditor to grant financial assistance towards Mortgage Loan. The Financial Creditor vide its sanction letter dated 26.09.2014 bearing number DHFL/2014-15/PF/PB/921 had sanctioned a loan to the tune of Rs 20,00,00,000/- (Rupees Twenty Crores Only) jointly to Corporate Debtor and the Co-Borrowers (hereinafter referred to as "Facility"). The Loan was to be secured by joint mortgage of immovable properties owned by the Corporate Debtor and the Co-Borrowers. The Corporate Debtor also passed a Board Resolution dated 26.09.2014 accepting the terms of the Sanction Letter and further confirming that the Corporate Debtor's immovable property would be furnished as security towards availing the said Facility.

7.1. From the perusal of the sanction letter, it is evident that the Corporate Debtor and the Co-Borrowers have jointly signed the sanction letter affirming their acceptance to the terms and conditions stipulated in the sanction letter. The key terms of the sanction letter are tabulated hereunder:

S.No	Particulars	Details
1	Loan limit	Rs.20,00,00,000/-
2	Tenure	60 Months
3	Rate of Interest	5% P.A. above RPLR of the Financial Creditor at monthly rest payable monthly.
4	Security	i) Mortgage of land admeasuring 648.40 acres (earlier mortgaged to the Financial Creditor for the then existing loans in the year 2011). ii) Mortgage of land admeasuring 22.12 acres owned by Miller Builders Private Limited and Gulls Realtors Private Limited at Tuticorin District.
5	Personal Guarantee	Irrevocable Personal Guarantee of the following Directors, with a combined net-worth of Rs. 247.77 Crores: T.Johnson,J Samuel Jeffson, Anny Johnson, G.Ponraj, N. Thivagaran, G. Selvaraj Moses, K. Ilango, N.Palanikumar, Selvakumar Samvel.

7.2. The Sanction letter dated 26.09.2014 issued by the Financial Creditor and acknowledged by the Corporate Debtor and the Co-Borrowers is annexed as *Annexure IX* of the application typeset.

7.3. Consequently, the Corporate Debtor along with the Co-Borrowers have jointly executed a Loan Agreement dated 26.09.2014 in favour of the Financial Creditor, wherein the terms and conditions of the Facility has been detailed thereto. From the perusal of the loan agreement, the following are the terms agreed to:

a) The Co-Borrowers jointly and severally covenant to repay the Facility together with the interest accrued thereon at the rate stipulated in the sanction letter. (refer Clause 3)

b) The Co-Borrowers further agree that in case of occurrence of event of default or delay in payment of the Facility or the Equated- Monthly Interest, the Co-Borrowers shall be liable to pay additional interest at the rate as mentioned in the sanction letter. Further, the obligation to pay

such additional interest shall not deprive the Financial Creditor its right to enforce the loan. (refer Clause 4).

c) The Co-Borrowers jointly undertake that the repayment of the Facility together with the interest, additional interest, cost, charges and expenses shall be secured by all the securities provided to the Financial Creditor and by the Co-Borrowers (refer Clause 5).

d) The Co-Borrowers represents that they will not alienate, create any lien, charge, pledge, mortgage or other encumbrances over the security and will not borrow any money against the said security from any other person without the previous written consent of the Financial Creditor in writing. (refer Clause 6.1).

e) The Events of default and its related consequences are detailed in clause 7.

7.4.The Common Loan Agreement was executed by the Corporate Debtor and Co-Borrowers in favour of the Financial Creditor on 26.09.2014. Thus, from a review of the Loan Agreement, it is evident that the Corporate Debtor and the Co-Borrowers are jointly and severally liable for the due repayment of the entire Facility along with the interest accrued thereon.

7.5. On 26.09.2014, in pursuance to the Loan Agreement, the Corporate Debtor and the Co-Borrowers jointly executed a Demand Promissory Note, promising to pay jointly and severally to the Financial Creditor the facility together with the interest accrued thereon and the said Demand Promissory Note is placed at *Annexure XI* of the application typeset.

7.6.It is further submitted that in consideration of the Facility extended by the Financial Creditor to the Corporate Debtor and the Co-Borrowers and as a security for such Facility, the Directors of all the Co-Borrowers (including the Corporate Debtor) namely: (a) T.Johnson, (b) J Samuel Jeffson, (c) Anny Johnson, (d) G.Ponraj, (e) N.Thivagaran, (f) G. Selvaraj Moses, (g) K. Ilango, (h) N.Palanikumar and (i) A.D. Selvakumar Samvel, executed a deed of Personal Guarantee dated 26.09.2014 in favour of the Financial Creditor, and thereby guaranteed the performance of the obligations of the Co-Borrowers in accordance with Sanction Letter and Agreement. Such guarantee was unconditional, continuing and irrevocable and the said Deed of Personal Guarantee is placed at *Annexure XII* of the Application typeset.

7.7. Thereafter, it is seen from the application that the Corporate Debtor along with the Co-Borrowers jointly deposited the original title deeds of immovable properties owned by them with an intention to create equitable mortgage and executed a Memorandum of Deposit of Title Deed dated 29.09.2014, registered as document number 4342 of 2014 in the Office of Sub-Registrar at Pudukottai and thereby confirming the creation of equitable mortgage of the property admeasuring comprised within the villages of Mudivaithanenthal village, Varthagareddipatti village, Aniyaparanallur village, Aniyabaranallur village, Thimmaraja Puram, Umarikottai, Thalavaipuram, VadakkuKarasseri village, Ellainaickenpatti village, Sekkarakudi village and Singathakurichi village ("Mortgaged Property"). All the aforementioned documents have been signed and attested jointly by all the 20 borrowers. For ease of reference, the following table details the properties mortgaged with the Financial Creditor, for the total loan amount availed:

S.No.	COMPANY	ÀREA (ACRES)
1	Jeffson Universal Logistics Private Limited	44.20
2	St.John Freight Systems Limited	92.24
3	Shaft Developers Private Limited	4.95
4	Selva Developers Private Limited	6.79
5	Gouse Promoters Private Limited	37.27
6	Venue Developers Private Limited	18.93
7	Venue Promoters Private Limited	49.05
8	Navigator Devlopers Private Limited	9.26
9	Shaft Promoters Private Limited	58.26
10	Navigator Creators Private Limited	11.70
11	Dublin Promoters Private Limited	58.19
12	Pristine Promoters Private Limited	56.41
13	Sea Star Realtors Private Limited	33.81
14	Camel Shelters Private Limited	14.73
15	Nellai Realtors Private Limited	58.78
16	Daffodil Shelters Private Limited	34.54
17	Fauna Realtors Private Limited	53.50
18	Porpoise Realtors Private Limited	6.02
19	Miller Builder Private Limited	16.49
20	Gulls Realtor Private Limited	5.63
	TOTAL	670.75

7.8. Further, the charge created over the immovable properties of the Corporate Debtor and the Co-Borrowers is also captured in the ROC Charge Forms dated 29.09.2016.

DISBURSEMENT OF AMOUNT:

8. Thereafter, the Financial Creditor disbursed an amount of Rs. 19,00,00,000/- (Rupees Nineteen Crores Only) to the Co-Borrowers on 30.09.2014 and further disbursed a sum of Rs.80,00,000/- (Rupees Eighty Lakhs Only) on the same date. Thus, in total, a sum of Rs. 19,80,00,000/- (Rupees Nineteen Crores Eighty Lakhs Only) (hereinafter referred to as "Loan Amount") was disbursed as against the sanctioned limit of Rs.20,00,00,000/-, which is evident from the Loan Account Statement and the said Loan Account Statement is placed at *Annexure XIV* of the application typeset.

8.1. The details of the default, as on 31.03.2022 is provided below:

Total Outstanding dues : Rs.75,00,52,572/- (Rupees Seventy-Five Crores Fifty Two Thousand Five Hundred and Seventy Two Only)

Principal: Rs.17,79,06,000/- (Rupees Seventeen Crores Seventy-Nine Lakhs and Six Thousand Only)

Interest: Rs.57,21,26,472/- (Rupees Fifty- Seven Crores Twenty-One Lakhs Twenty Six Thousand Four Hundred and Seventy-Two Only).

Cheque Return/other charges: Rs.20,100/- (Rupees Twenty Thousand One Hundred Only)

PARTICULARS	AMOUNT IN RS.
Principal	17,79,06,000
Interest Outstanding	11,23,30,338
Additional interest	45,97,96,134
Cheque Return/ Other Charges	20,100
Balance as per statement of accounts	75,00,52,572

8.2.It is averred that the Loan Account Statement ending on 31.03.2022, reflects the dues and failure to repay the debt as per the contractual obligations and the account was classified as Non-Performing Asset (NPA) on 30.06.2015. Post such classification there had been part payments and acknowledgement of debt by letters dated 16.06.2017 and 12.03.2018 and the total outstanding dues remain unpaid till date.

8.3. It is further averred that the Loan Account Statement showing the amount due, jointly and severally payable by the Corporate Debtor and the Co-Borrowers to the Financial Creditor.

8.4. It is seen from the application that Statutory Notice under Section 13(2) of the SARFAESI Act dated 13.08.2015 was issued to the Corporate Debtor and to the Co-Borrowers.

8.5. The Financial Creditor considering the uncertainties faced by the Corporate Debtor and the Co-Borrowers, genuinely believing their collective promise awaited repayment of the Loan Amount. In this regard, the Financial Creditor received Rs.20,00,000/- (Rupees Twenty Lakhs Only) on 09.08.2017 as part payment towards the outstanding dues, as admitted by the Corporate Debtor and the Co-Borrowers vide letter dated 16.06.2017.

8.6. After the above payment, the Corporate Debtor and the Co-Borrowers have not come forward for repayment of the EMI towards the said Loan Amount. In this regard, the Financial Creditor had several rounds of discussions regarding the repayment of the outstanding loan dues, more particularly the discussions held on 09.03.2018, wherein the Corporate Debtor and the Co-Borrowers described various plans and strategy for mobilizing the funds required for repayment of the said Loan Amount.

8.7. The above fact has been reiterated by the Corporate Debtor and the Co-Borrowers in their letter dated 12.03.2018. In the same letter, amongst various other things, the Corporate Debtor and the Co-Borrowers, acknowledging their joint liability for repayment, requested for a One-Time Settlement and indeed confirmed that an amount of Rs. 10,00,00,000/- (Rupees Ten Crores Only) will be remitted as upfront margin contribution towards the One- Time Settlement. In the same letter dated 12.03.2018, the Corporate Debtor informed that they are expecting a considerable amount of money by mid-2018 and that they are confident of adhering to the timelines agreed between the Financial Creditor and Corporate Debtor for the repayment of the outstanding Loan Amount. On the basis of the commitment jointly provided by the Corporate Debtor and the Co-Borrowers, the Financial Creditor was anticipating regular repayment of the Loan Amount. However, it was submitted that the Corporate Debtor and the Co-Borrowers have not paid any amount after 12.03.2018 in clear breach of their promises.

8.8. In view of the continuous breach of commitment and defaults committed by the Corporate Debtor and the Co-Borrowers from the year 2018 onwards, the Financial Creditor through its Counsel, issued a Legal Notice dated 10.02.2021 for invocation of the Deed of Guarantee dated 26.09.2014.

8.9. Subsequently, a Legal Notice dated 20.11.2021 was issued by the Counsel of the Financial Creditor reiterating the Legal Notice dated 10.02.2021 and calling upon the Corporate Debtor to repay the outstanding loan amount. Due to utter silence on part of the Corporate Debtor, the Financial Creditor was constrained to issue a yet another Notice dated 25.04.2022 to the Corporate Debtor and the Co-Borrowers and the Personal Guarantors demanding repayment of the loan amount.

8.10. It is further submitted that the Corporate Debtor and the Co-Borrowers have failed to discharge their obligations for repayment of the Loan Amount and the interest accrued thereon and an Event of Default had occurred and is continuing. The Corporate Debtor and the Co-Borrowers were called upon number of times to repay the dues but in spite of various meetings, reminders and discussions, they have time and again failed and willfully neglected to repay the dues to the Financial Creditor and therefore, it is just and necessary the CIRP proceedings be initiated against the Corporate Debtor.

COUNTER FILED BY THE RESPONDENT:

9. The Learned Counsel for the Respondent had filed a counter wherein it was stated that the Date of Default provided in the application is incorrect and contrary to the settled position in law. It was further submitted that the alleged date of default as stated is factually incorrect as the alleged date of the Respondent being classified as a "Non-Performing Asset" was on the 30.06.2015 as per the Applicant filed before this Tribunal and the present application filed by the applicant is barred by limitation.

10. It was stated in para 4 of the counter that the total amount claimed by the Petitioner is Rs.75,00,52,572/- (Rupees Seventy-Five Crores Fifty-Two Thousand Five Hundred and Seventy-Two) which includes a significant interest portion amounting to Rs.57,21,26,472/- (Rupees Fifty-Seven Crores Twenty-One Lakh Twenty-Six Thousand Four Hundred Seventy- Two) The Respondent submits that the amount claimed is inaccurate and not

in consonance with the guidelines issued by the Reserve Bank of India.

11. It was further stated that once an account is declared to be a "Non-Performing Asset" then the Bank or Financial Institution cannot treat the interest accrued thereon to be an income of the Bank or Financial Institution, as there is no interest is received under the circumstances.

REJOINDER FILED BY THE APPLICANT:

12. The Learned Counsel for the Applicant had filed the rejoinder wherein it was stated in para 4 that the Corporate Debtor's defence on the 'Date of Default is incorrect and that it is contrary to the settled position in law. The Corporate Debtor has not produced a single document neither to repudiate the Financial Creditor's claim nor to substantiate its averments. Therefore, the Corporate Debtor unequivocally admits its liability and is only attempting to raise mere technicalities. The position in law is in fact contrary to what the Corporate Debtor claims. The law on 'Date of Default' has been well settled by the Hon'ble Supreme Court in ***Dena Bank vs C.Shivakumar Reddy & Ors [Civil Appeal No. 1650 of 2020]*** wherein the Court relying on ***SeshNath Singh and Anr. v. Baidyabati Sheoraphili Cooperative Bank Ltd.,*** held that the IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act and that Sections 14 or 18 of the Limitation Act apply to proceedings Under Section 7 or Section 9 of the IBC as well.

13. The Financial Creditor appraised this Tribunal to the following documents wherein the Corporate Debtor has clearly acknowledged its liability:

a) Loan Account Statement in the name of Corporate Debtor for the facility jointly availed along with the Co-Borrowers – **Annexure XIV**

b) Letter of Declaration cum undertaking to accept payment and issue No Objection Letters documents issued by the Corporate Debtor on behalf of itself and the other Co-Borrowers - **Annexure XVII**

c) One-Time Settlement Letter issued by the Corporate Debtor on behalf of itself and the other Co-Borrowers to the Financial Creditors - **Annexure XVIII.**

14. The Learned Counsel for the Applicant has placed heavy reliance on the decision of Hon'ble Supreme Court in the matter of ***Dena Bank (Now Bank of Baroda) vs C.Shivakumar Reddy and others [Civil Appeal No. 1650 of 2020]*** wherein it was held in para 142 of the Judgement as follows:

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

15. The Learned Counsel for the Applicant has further placed reliance on the decision of Hon'ble Supreme Court in the matter of ***Consolidated Construction Consortium Limited vs Hitro Energey Solution Private Limited (Civil Appeal No. 2839 of 2020)*** wherein the Hon'ble Supreme Court relying on ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633]*** has observed that limitation does not commence when the debt becomes due but when a default occurs.

FINDINGS OF THIS TRIBUNAL:

16. Heard the submissions made by the Learned Counsel for both the parties and perused the documents including the pleadings placed on record. The Financial Creditor has disbursed a sum of Rs.19,80,00,000/- to the Corporate Debtor and the Co-Borrowers jointly as against the sanctioned limit of Rs.20,00,00,000/-, which is evident from the Loan Account Statement annexed along with the Application. There is no denial of the said fact by the Respondent in the reply filed before this Tribunal.

17. In the present Application, the Financial Creditor has claimed a sum of Rs.75,00,52,572/- (Rupees Seventy-Five Crores Fifty Two Thousand Five Hundred and Seventy Two Only) which includes the Principal amount of Rs.17,79,06,000/- (Rupees Seventeen Crores Seventy-Nine Lakhs and Six Thousand Only) and Interest amount of Rs.57,21,26,472/- (Rupees Fifty- Seven Crores Twenty-One Lakhs Twenty Six Thousand Four Hundred and Seventy-Two Only) and cheque return charges of Rs.20,100/- (Rupees Twenty Thousand One Hundred Only). The Respondent in its reply has raised a ground that the amount claimed is inaccurate and not in consonance with the guidelines issued by the Reserve Bank of

India, since the Financial Creditor has charged interest even after the account of the Corporate Debtor has been classified as NPA. The said ground taken by the Corporate Debtor can be countenanced by the Judgment of the Hon'ble Supreme Court in the matter of ***Innoventive Industries Limited v. ICICI Bank Limited, (2018) 1 SCC 407***which is as follows;

27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. 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.

18. Thus, the moment the Corporate Debtor has committed default in repayment of the 'financial debt' and the due is more than Rs.1 Crore then the Code gets triggered and it is of no matter that the debt is disputed so long the debt is "due" and payable.

19. The second ground raised by the Learned Counsel for the Respondent was that the debt is barred by limitation as the alleged date of the Respondent being classified as a "Non-Performing Asset" was on the 30.06.2015 as the present Application was filed before this Tribunal on 25.05.2022 and as such it is barred by limitation.

20. It is seen from the records that after the amount was disbursed on 30.09.2014 and thereafter the Corporate Debtor and the Co-Borrowers have jointly repaid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) in the account of the Financial Creditor under the Head as "Loan (pre-payment)" on 09.08.2017. Further, it is also seen that on 12.03.2018, the Corporate Debtor has requested for a One Time Settlement and confirmed that an amount of Rs.10,00,00,000/- (Rupees Ten Crore only) will be paid as an upfront. Thus, as per Section 18 and 19 of the Limitation Act, 1963 the said letter dated 12.03.2018 would amount to an acknowledgment of debt. If the said date i.e. 12.03.2018 is reckoned for the purpose of limitation, then the present Application ought to have been filed on or before 11.03.2021. Admittedly the present Application was filed on 25.05.2022. In this context, it is apt to refer to the Judgment of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 wherein by its order dated 10.01.2022, it has held as follows;

"...In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply".

21. Thus, in the present case, the limitation has expired during the period between 15.03.2020 till 28.02.2022, then the limitation period is extended for a period of 90 days from 01.03.2022. Then the present Application is required to be filed on or before 30.05.2022. The Financial Creditor has filed the present Application on 25.05.2022 and thus the present Application has been filed well within the limitation period and survives.

22. The Record of Default from the 'Information Utility' which was authenticated on 31.01.2023 shows the Status of Authentication as **"Deemed to be authenticated"**. Thus, in all respects the Application filed by the Financial Creditor is complete and as such in terms of Section 7(5) of IBC, 2016 the present Application filed by the Financial Creditor is required to be admitted.

23. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

8. In the present case, it is seen that the Corporate Debtor has filed its Reply and the grounds raised in the said reply has already been dealt with by this Tribunal in the CP(IB)/122(CHE)/2022 as extracted *supra.*

9. The Hon'ble Supreme Court of India in the matter of **Laxmi Pat Surana v. Union Bank of India;*(2021) 8 SCC 481*** while dealing with the issue of initiation of CIRP as against the guarantor, has held in para 23 as follows;

"23. Indubitably, a right or cause of action would ensure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default

committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

10. Since the Corporate Debtor herein is a co-borrower in respect of the credit facilities availed by the principal borrower M/s.Jeffson Universal Logistics Private Limited, the 'debt' and 'default' on the part of the principal borrower is sufficient to admit the present case and initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

11. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

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

12. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

13. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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.

14. The Financial Creditor has proposed the name of **Mr. Anil Kumar Khicha**, (Email id: knpchennai@gmail.com), Reg. No. IBBI/IPA-001/IP-P00422/2017-18/10745 as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 25.10.2023.

15. ***Mr. Anil Kumar Khicha*** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

18. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals

forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

19. Accordingly, the present petition stands **admitted.**

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth.V