IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

C.P. (IB) No.89/BB/2021
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

State Bank of India
Stressed Assets Management Branch,
R/Off: LHO Office Complex, 2nd Floor,
No.65, St. Marks Road,
Bengaluru – 560 001. ... Petitioner/Financial Creditor

VERSUS

M/s. Supreme Overseas Exports
India Private Limited
R/Off: No.44/1, 16th Cross, K.R. Road,
Jayanagar, 7th Block,
Bangalore – 560 082. ... Respondent/Corporate Debtor

Order delivered on: 07.06.2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. Vishaka, Adv.
For the Respondent : Mr. Deepak Basavaraj, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application has been filed by State Bank of India(Stressed Assets Management Branch (for brevity 'Petitioner/Financial Creditor') through its Authorised Signatory, namely, Mr. M Ramakrishna Shenoy (Assistant General Manager), under Section 7 of the IBC, 2016, r/w Rule

—sd—

4 of the I&B (AAA) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Supreme Overseas Exports India Pvt. Ltd. (for brevity as 'Respondent /Corporate Debtor').

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

(1) **State Bank of India,** was incorporated on 01.07.1955 under the State Bank of India Act, 1955 having its branch office at LHO Office Complex, 2nd Floor, No.65, St. Marks Road, Bengaluru-560001.

(2) **M/s. Supreme Overseas Exports India Pvt. Ltd.** is a Private Limited Company incorporated on 04.09.1998 under the Companies Act, 1956, bearing CIN: U19111KA1998PTC024166. The Nominal Share Capital of the Company is Rs.5,00,00,000/- (Rupees Five Crore only) and Paid-up Share Capital is Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakh Only) having its registered office at No.44/1, 16th Cross, K. R. Road, Jayanagar, 7th Block, Bengaluru-560082.

(3) It is stated that various credit facilities were sanctioned to the Corporate Debtor from time to time. Many of these loan facilities were continuous in nature and loan amounts were withdrawn continuously as per the requirement of the Corporate Debtor. Credit facilities of Rs.22.65 Crores were first sanctioned to the Corporate Debtor on 17.11.2000. Subsequently, on request of the Corporate Debtor, the Credit facilities were renewed/enhanced on various dates i.e. on 07.06.2001, 12.06.2003, 04.03.2005, 11.03.205, 31.07.206, 29.09.2010, 03.03.2011, 31.12.2011, 30.04.2012, 30.08.2012, 10.08.2013, 11.03.2014, 13.11.2014, 06.03.2018, 18.06.2018. The credit facilities were last sanctioned on 18.06.2018 for an amount of Rs.51.55 Crores.

(4) Credit facilities outstanding as on 31.07.2021 are as under:

Facility	Account Number	Debt (In Rupees)

— sd —

EPC	57035337935	Principal : 25,14,46,705/- Interest : 3,33,24,675/- Penal Interest: 2,41,92,044/- **Total : 30,89,63,424/-**
SLC	67304457580	Principal : 2,74,34,105/- Interest : 94,87,134/- Penal Interest: 30,35,101/- **Total : 3,99,56,340/-**
TL	37772970329	Principal : 2,92,27,206/- Interest : 40,29,065/- Penal Interest: 15,76,720/- **Total : 3,48,32,991/-**

(5) It is stated that stock of raw materials, packing materials, consumable stores and spares, stock-in-process, finished goods, book debts and other current assets are the Security No.1 in the name of Supreme Overseas Exports India Pvt. Ltd. The first security was created on 07.06.2001 vide an agreement of Hypothecation and subsequently extended by executing supplemental hypothecation agreement from time to time. Charge on security was last extended on 07.03.2018 vide Supplemental Agreement of Hypothecation. The estimated value of the Security is Rs.53.89 Crores as per Audited Balance Sheet as on 31.03.2019. The copies of the Agreement of Hypothecation dated 07.06.2001 and Supplemental Agreement dated 07.03.2018 is produced in the Petition.

(6) It is also stated that machinery and other movable assets of the Corporate Debtor, including machinery spares, tools and accessories and other movables, both present and future are the Security No.2 in the name of Supreme Overseas Exports India Pvt. Ltd. The estimated value of the Security No.2 is Rs.14.86 Crores as per Audited Balance Sheet as on 31.03.2019. The copies of the Agreement of Hypothecation

-sd-

dated 07.06.2001 and Supplemental Agreement dated 07.03.2018 is produced in the Petition.

(7) It is also stated that all the piece and parcel of land and building thereon bearing Municipal No.44/1, Ward No.58, K. R. Road, 7th Block Jayanagar, Bangalore along with all airways, waterways, electricity & sewerage connections and easement rights and standing is the Security No.3 in the name of Supreme Overseas (now Supreme Overseas Exports India Pvt. Ltd.). The land is more fully described in the sale deeds as under:

(a) All that piece and parcel of the land bearing Old Sy. Nos. 39/2B, 39/2C-1, 39/2C-2, situated of Yediyur village, Bengaluru, measuring East to West Northern side 49.0 feet, East to west Southern side 53.0 feet, South to North Eastern side 28.0 feet and South to North Western side 25.0 feet, in all 1359.0 sq.ft (126.00 Sq. Mtrs) together with 2 Sqr Industrial Shed, standing in the name of Supreme Overseas (Now Supreme Overseas Exports India Pvt. Ltd.) and bounded on the east by remaining property bearing no.39/2B, 2C & 2C2, West by K R Road, North by remaining property No.39/2B, 2C & 2C2, South by remaining property no.39/2B, 2C & 2C2.

(b) All that piece and parcel of land measuring100 (One Hundred feet) East to West and 110 (One Hundred Ten feet), North to South situated in the North-Western corner of the property comprised in the plot of 1 Acre and a half bearing old Sy. Nos. 39/2B, 39/2C-1, 39/2-C2 of Yediyur village, Bengaluru South Taluk, purchased by the M/s. International Chemical & Biological Institute Pvt. Ltd (hereinafter called the Vendor) and bearing the present BDA No. NIL and Bangalore Corporation No.44, 59th Sub-Division together with all easementary and proprietary rights attached thereto, standing in the name of Supreme Overseas (now Supreme Overseas Exports

-sd-

India Pvt. Ltd.) and is bounded on the east by property of the vendor remaining out of the whole property as mentioned above, west by BDA (Corporation) High Road, (New K R Road), north by Road running from Kanakapura/ to Karisandra/ Road village and is popularly called as Kanakpura Road and Cross, south by remaining property of the vendor out of the whole property and retained by the Vendor. The estimated realizable value of the Security No.3 is Rs.27.81 Crores as per Valuation Report dated 20.1.2021 carried out by the Financial Creditor. The copy of the Memorandum of Deposit of Title Deeds dated 30.04.2018 is produced in the Petition.

(8) It is stated that all the piece and parcel of the residential converted land bearing old no.27/2, New Sy. No.27/3, converted vide order No. RAGK/ALN(RA)/CR/67/2014-15 dated 03.11.2014 by Deputy Commissioner, Ramanagara, having extent of 1-10 (One Acre and Ten Guntas), situated at Bidadi Village, Bidadi Hobli, Ramanagara Taluk, ramanagara District, is the security No.4 standing in the name of Mr. M S Sriharsha and bounded as under:

(9) East by land belongs to Siddappa, West by land belongs to M S Sriharsha, North by land belongs to Sy No.27/1, South by Baredoddi Village boundary. The Security No.4 was created on 07.03.2018 vide Memorandum relating to Deposit of Title Deeds dated 30.04.2018 and the estimated realizable value is of Rs.2.94 Crores as per Valuation report dated 19.01.2021 carried out by the Financial Creditor. A copy of the Memorandum for Deposit of Title Deeds dated 30.04.2018 is produced in the petition.

(10) It is stated that all the piece and parcel of the residential converted land bearing old no.27/2, New Sy. No.27/4, converted vide order No. RAGK/ALN(RA)/CR/68/2014-15 dated 03.11.2014 by Deputy Commissioner, Ramanagara, having extent of 1-10 (One Acre and Ten

—sd —

Guntas), situated at Bidadi Village, Bidadi Hobli, Ramanagara Taluk, Ramanagara District, is the security No.5 standing in the name of Mr. M S Sriharsha and bounded as under:

(a) East by land belongs to late Nagaiah's property, West by land belongs to late Chikkanagaiah and B.G Honnashetty's property, North by land belongs to Sy. No.27/1, South by Baredoddi Village. The Security No.5 was created on 18.06.2018 by way of Equitable Mortgage vide Memorandum relating to Deposit of Title Deeds dated 20.06.2018 and the estimated realizable value is of Rs.2.94 Crores as per Valuation report dated 29.01.2021 carried out by the Financial Creditor. A copy of the Memorandum for Deposit of Title Deeds dated 20.06.2018 is produced in the petition.

(11) The Record of Defaults with the Information Utility as submitted to and held by National E-Governance Services Limited (NeSL) for the following accounts:

Term Loan

(a) Unique Debt Identifier No: AAACS8577K

(b) Debt Reference Number:00000037772970329

(c) Sanction Debt Amount: Rs.3,15,00,000/- (Rupees three Crores and Fifteen Lakhs only)

(d) Debt Start Date: 26.06.2018

(e) Date of Default: 30.09.2019

(f) Days Past due: 517

(g) Default Amount/total Outstanding: Rs.2,92,27,206/- (Rupees Two Crores Ninety Two Lakhs Twenty Seven Thousand Two Hundred and Six only)

-Sd-

A copy of the NeSL Registration Certificate pertaining to Debt Reference Number 000037772970329 is produced in the Petition.

Export Packing Credit

(a) Unique Debt Identifier No:AAACS8577K
(b) Debt Reference No:00000057035337953
(c) Sanction Debt Amount: Rs.25,00,0,000/-
(d) Debt Start Date: 07.06.2021
(e) Date of Default: 30.09.2019
(f) Days Past Due: 517
(g) Default Amount/Total outstanding 25,14,46,704/-

A copy of the NeSL Registration Certificate pertaining to Debt Reference Number 00000057035337953 is annexed to this Petition.

Stand By Line of Credit:

(a) Unique Debt Identifier No: AAACS8577K

(b) Debt Reference No: 00000067304457580

(c) Sanctioned Debt Amount: Rs.3,00,00,000/-

(d) Debt Start Date: 08.12.2014

(e) Date of Default: 30.09.2019

(f) Days Past Due: 517

(g) Default Amount/ Total Outstanding: Rs.2,74,34,105/-

A copy of the NeSL Registration Certificate pertaining to Debt Reference Number 00000067304457580 is annexed to this Petition.

3. Since the Respondent/Corporate Debtor failed to file the reply, in spite of availing substantial time and number of opportunities, on 26.04.2022 the following order was passed:

-sd-

(1) Heard Ms. Vishaka, learned Counsel for the Petitioner and Shri Deepak Basavaraj, learned Counsel for the Respondent.

(2) On 16.03.2022, the following order was passed:

"1.Heard Ms. Vishaka, learned Counsel for the Petitioner and Mr. Prathap K., learned Counsel for the Respondent.

2. On 08.02.2022 the following order was passed:

"1. Heard Ms. Divya R., learned Counsel for the Petitioner and Shri Prathap K., learned Counsel for the Respondent.

2.The learned Counsel appearing for the Respondent seeks time to file reply. He is permitted to file reply within three weeks from today, after service on the other side. The Petitioner shall file rejoinder, if any, thereto within two weeks from the date of receipt of a copy of reply, after service on the other side.

3.If any of the parties failed to complete their part of pleadings, their respective right stand forfeited and the C.P. will be decided based on the record available on the next date of hearing.

4.List the C.P. on 16.03.2022."

3.In spite of the same, no reply is filed, hence, its right for filing the reply is forfeited.

4.However, at the request of the learned Counsel for the Petitioner, list on 26.04.2022."

(3) In spite of the forfeiture of the right of the Respondent for filing reply, the Respondent has not taken steps. However, oral submissions made on behalf of the Respondent were heard and permitted to file written submission if any, within one week from today.

(4) Order Reserved.

The Respondent's Counsel instead of filing written submissions as permitted by this Adjudicating Authority, filed statement of objections vide Diary No.1965 dated 04.05.2022. In the interest of justice, the same is considered as reply-cum-written submissions. In the said Reply/Written Submissions the Respondent contended, inter alia, as under:

-sd-

(a) It is stated that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 and is in the business of manufacturing and exporting of leather garments and accessories for the last 44 years. The Corporate Debtor is registered under the Micro Small & Medium enterprises (MSME) on 09.01.2017 as small enterprise. The Corporate Debtor has received various awards for being the largest exporter of leather garments in India, including the national award and President's Award for the year 2013, 2014 and 2015 and "CLE Southern Regional Export Awards" presented on 31.01.2020 by the Executive Director of CLE Mr. R. Selvam, IAS. The Corporate Debtor has more than 500 employees and indirectly employed more than 200 people.

(b) The Corporate Debtor has been banking with State Bank of Travancore, commercial branch now known as State Bank of India, In-Cube Branch for the last 21 years. The Corporate Debtor has availed the following facilities from the Financial Creditor:

Nature of Facility	Account Number
MC-CC Pre-Shipment Export Package Credit (EPC)	57035337953
FCSB NONLC Bills (C&I)	67343884390
MC-CC STANDBY LINE OF CREDIT C&I	67304457580
Term Loan	37772970329

(c) It is submitted that the Corporate Debtor had submitted discounting of export bill for a sum of USD 470,000/- equivalent to Rs.3.3 Crores on 26.12.2019. The Financial Creditor after accepting the aforementioned export bill for discounting approved the discounting through Annexure-III Negotiation/Discounting of individual bills under NON-LC dated 27.12.2019.

(d) It is submitted that the Financial Creditor after approving the discounting of the bill produced as Annexure-B, did not discount the

-sd-

said bill and on the contrary issued a letter stating that the Standby Line of Credit (SLC Account) had expired on 30.09.2019 and was overdue by 87 days and the said account would be regular on payment of 2.87 Crores, failing which the account would slip into NPA and proceedings under SARFAESI Act would be initiated.

(e) The Financial Creditor in spite of having received the bill for discounting of USD 470,000 equivalent to Rs.3.33 Crores did not discount the said bill and on the contrary issued a Notice dated 01.01.2020 under Section 13(2) of the SARFAESI Act stating that the Corporate Debtor had been classified as a Non Performing Asset (NPA) on 28.12.2019 in accordance/guidelines relating to Asset Classifications issued by the Reserve Bank of India and called upon the Corporate Debtor to repay a sum of Rs.31,86,11,734/- within 60 days from the date of receipt of the Notice dated 01.01.2020.

(f) The Corporate Debtor humbly submits that the Financial Creditor vide its e-mail dated 26.12.2019 had stated that the SLC Account limit had expired on 30.09.2019. As per the Master Circular-Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advance dated 01.07.2015 issued by RBI, an asset can be declared as NPA if it has failed to pay the interest or installment of principal remains overdue for a period of more than 90 days. The Financial Creditor bring fully aware of the aforementioned facts declared the Corporate Debtor as an NPA even before the expiry of mandatory period of 90 days as prescribed by RBI.

(g) The Financial Creditor has failed to take into consideration the bill submitted for discounting on 26.12.2019 for a sum equivalent to Rs.3.33 Crores, the Financial Creditor has also ignored the approval dated 27.12.2019 given for discounting the bill submitted on 26.12.2019 and has arbitrarily proceeded to declare the Corporate

-sd-

Debtor as an NPA on 28.12.2019 even before the expiry of 90 days prescribed by RBI.

(h) As per Section 2(o) of the SARFAESI ACT, 2002, the account which are classified as "Non-performing Assets" i.e., Sub Standard, Doubtful, Loss Assets, Out of order, etc., then only on cancelling the entire limits, or recalling the entire advance, the account ought to have been classified as NPA. Then only the provision of the NPA Act, in other words SARFAESI ACT, 2002, is applicable. In the instant case, the limits were never classified as NPA as per Section 2(o) of the Act, nor the entire limits were recalled or cancelled. But, the Financial Creditor were kept on debiting the interest, merging the interest to the Principal amount and again reversed the entire, collected processing fees for renewal of the limits, etc. which is in contrary to the norms of the classification of the account as NPA.

(i) The Financial Creditor has failed to taken into consideration the bill submitted for discounting on 26.12.2019 for a sum equivalent to Rs.3.33 Crores, the Financial Creditor has also ignored the sanction dated 27.12.2019 accorded by their own higher authority, for discounting the bill submitted on 26.12.2019 and has arbitrarily proceeded to declare the Petitioners as an NPA on 28.12.2019 even before expiry of 90 days prescribed by RBI. This is nothing but, disobeying the sanction accorded by their own higher authority. Further, there is no either modification or withdrawal or even cancellation of the said sanction, received by the Corporate Debtor.

(j) The Financial Creditor has also consideration not taken into the Notification dated 17.03.2016 bearing FIDD.MSME & NFS.BC.No.21/06.02.31/2015-16 issued by RBI. The said notification provides a frame work for implementing corrective action plan by the lender i.e., the Financial Creditor Bank herein. The said Notification

—sd—

clearly mandates the Financial Creditor to classify and refer MSME's to the committee for corrective action plan. This would help the already troubled manufacturing sectors especially MSME's like the Corporate Debtor from being declared as an NPA. This notification recommends that the Financial Creditor should identify the stress faced by an MSME's and to implement corrective action like (a) Rectification (b) Restructuring and (c) Recovery. The Financial Creditor has ignored this notification and has acted arbitrarily by proceeding to recover under SARFAESI Act without referring the Corporate Debtor to the Committee constituted for corrective action plan.

(k) The Corporate Debtor submits that the Financial Creditor vide sanction letter dated 18.06.2018 had sanctioned the Export Packaging Credit(EPC), Standby 11 Line of Credit (SLC), Term Loan, Foreign Bill Discounting (FBD) and Letter of Credit of the Corporate Debtor. Para 2 of Annexure 1 to the sanction letter dated 18.06.2018 clearly states that "the facilities has been sanctioned on 15.06.2018 and is available for a period of 12 months and that the next date of renewal of facility is 14.06.2019". The Financial Creditor deducted a sum of Rs.20,39,040/- towards Renewal of Limits processing charges from the account of the Corporate Debtor. In spite of the Financial Creditor deducting the processing charges of Rs.20,39,040/- the Financial Creditor has not issued the sanction letter for the year 2019-20.

(l) The Financial Creditor on 01.01.2020 has also issued another Demand Notice to Guarantor under Section 13(2) of SARFAESI Act, to Director of the Corporate Debtor, demanding payment of Rs.31,86,11,734/- within a period of 60 days. The Corporate Debtor refuted and denied the contentions of the Financial Creditor's demand notices by the reply dated 27.02.2020. Thereafter, the Financial Creditor through its advocate sent a reply dated 05.03.2020 to the Petitioners, merely denying the contention of the Corporate Debtor as false.

—sd—

(m) The Financial Creditor instead of abruptly insisting for repaying a sum of Rs.2.87 Crores, in a phased manner could have collected 10% of the discounted export bill value into the SLC account and thus the said Loan account would have been closed. Thereby, the ulterior motive behind in classifying the account as NPA can be visualized.

(n) The Corporate Debtor filed a Writ Petition before the Hon'ble High Court of Karnataka, challenging the aforementioned acts of the Financial Creditor. The Financial Creditor has also filed similar Petition before the Hon'ble Debt Recovery Tribunal II, bearing S.A. No.49/2021, the same is pending consideration before the Hon'ble Tribunal.

(o) Further the Financial Creditor has not produced the relevant documents required like the Loan Agreement, Renewal of Loan Agreement if any. Further, the NeSL records produced by the Financial Creditor shows many of the transactions as failed authentication.

(p) The Corporate Debtor submits that it is one of the leading manufacturer and exporter of leather garments in India employing more than 500 workman and has received numerous national and state awards including the largest exporter award on 31.01.2020 grave injustice would be caused to the Corporate Debtor if the Financial Creditor is allowed to continue under SARFAESI Act. The Financial Creditor by initiating this drastic measures have not only made the Long Standing Industry to suffer financially, but also their good will and reputation in the market is tarnished, on account of ignoring "LENDERS' POLICY AND PUBLIC POLICY".

(q) The Corporate Debtor left with no other alternate but to retrench/terminate the services of the employees, with a heavy heart, who have also served the Company for more than 20-25 years. The Financial Creditor have thereby ignored their Social Responsibility.

-Sd-

(r) The Corporate Debtor since falls under the category of MSME units, the Financial Creditor ought to have extended all the benefits announced by the Ministry of Finance and RBI master circulars issued from time to time.

4. The Hon'ble Supreme Court of India in M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. In Civil Appeal Nos.8337-8338 of 2017 observed as under:

"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. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

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

-sd-

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."

5. As seen from the above enunciation of law, this Adjudicating Authority is required to decide the following issues while considering the Petition filed under Section 7 of the IBC, 2016:
   a) Whether the CP is filed within the period of limitation.
   b) Whether the Petitioner proved the debt and default thereof.
6. It is the case of the Petitioner that the loan facilities granted to the Respondent/Corporate Debtor were declared as Non-Performing Assets (NPA) on 28.12.2019. The instant CP is filed on 29.10.2021 i.e. within three years from the date of declaration of the accounts as NPA. The

-sd-

Respondent has not disputed the said fact, and hence, we hold that the CP is filed within the period of limitation.

7. The Petitioner proved the debt and default thereof by producing the various documents annexed to the CP. More importantly, the Petitioner filed Documents Nos. 102-105 which are the Record of Default issued by the Information Utility i.e. NeSL with regard to the different credit facilities granted to the Respondent/Corporate Debtor. The said Record of Defaults were clearly established that the Respondent/Corporate Debtor has "Deemed to be Authenticated" the debt and default thereof.
8. It is the settled law that if a Financial Creditor or Operational Creditor is able to produce the Record of Default issued by the Information Utility before the Adjudicating Authority, where it was shown that the Corporate Debtor "Authenticated or deemed to be Authenticated" the default, the entire burden shifts to the Respondent/Corporate Debtor to prove that there is no debt or default. In the instant case, the Respondent/Corporate Debtor failed to prove that there was no debt and default, as claimed by the Petitioner. Hence, we hold that the Petitioner proved the debt and default.
9. In the circumstances and for the aforesaid reasons and since the CP is complete and satisfies the requirements of Section 7 of IBC, 2016, the same is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
   (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
   (b) any court of law, tribunal, arbitration panel or other authority;
   (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

-sd-

(d) 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;

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

10. In Part III of Form No.1, Mr. Raghu Babu G, Registration No. IBBI/IPA-002/IP-N00025/2016-17/10053 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 18.06.2021 is found at Page No.697 of the Petition.

11. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Raghu Babu G. and there is nothing adverse against him. In view of the above, we appoint Mr. Raghu Babu G., bearing Registration No. IBBI/IPA-002/IP-N00025/2016-17/10053, registered address at EZRESOLVE LLP, 402B, 4th Floor, Technopolis, Chikoti Gardens Begumpet, Hyderabad-500016, emai-ld- raghu@ezresolve.in, Mob-9848027782, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. The IRP shall file the latest IBBI Registration Certificate within one week from today, since the certificate filed along with the CP has been expired.

12. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial

-sd-

position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

13. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

—sd—

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

—sd—

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)