

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.112/BB/2019
U/s 7 of I&B CODE, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. State Bank of India
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021.

- Petitioner/Financial Creditor

Versus

M/s. Bharath Infra Exports and Imports Ltd.
3rd Floor, Gold Tower, No. 50,
Residency Road,
Bengaluru – 560 025.

- Respondent/Corporate Debtor

Order pronounced on: 22nd December, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. S.S. Naganand, Senior Advocate with
Ms. Gayatri Mohite, Advocate and
Smt. P. Chitra Nirmala, AGM, SBI

For the Respondent : Mr. Dayananda Reddy,
Chairman and Managing Director

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Petition has been filed by M/s. State Bank of India (hereinafter referred to as 'Petitioner / Financial Creditor') U/s7 of the I&B Code, 2016 R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Bharath Infra Exports and Imports Limited (hereinafter



referred to as 'Respondent / Corporate Debtor') on the ground that it has committed default for a total outstanding amount of ₹146,93,93,281.78/- (Rupees One Hundred Forty Six Crore Ninety Three Lakh Ninety Three Thousand Two Hundred and Eighty One and Seventy Eight Paise Only) as on 31.01.2019 including Principal and Interest.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

- (1) M/s. State Bank of India (hereinafter referred to as 'Petitioner / Financial Creditor') is incorporated on 01.07.1955 with Identification Number TAN – MUMB14834B PAN – AAACS8577K and having its registered office at State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai-400021.
- (2) M/s. Bharath Infra Exports and Imports Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Company incorporated on 17.07.2007 under the provisions of Companies Act, 1956 with CIN: U51909KA2007PLC043387 and having its registered office at 3rd Floor, Golden Tower, No. 50, Residency Road, Bengaluru – 560025. Its Authorised Share Capital is ₹250,000,000/- and Paid-up Share Capital is ₹250,000,000/-.
- (3) The Financial Creditor sanctioned fund based and non-fund based facilities to the Corporate Debtor as follows:

Sl. No	Particulars	Fund Based Credit Facility (INR in Crore)	Non-Fund Based Credit Facility (INR in Crore)	Total Facility (INR in Crore)
i.	Financial Assistance vide Sanction Letter dated 18.05.2009	10	40	50
ii.	First Enhancement vide Sanction Letter dated 22.11.2010	15	50	65
iii.	Second Enhancement Vide Sanction Letter dated 07.03.2012	22.50	75	97.50
iv.	Third Enhancement vide sanction Letter dated 23.03.2015	45	112.22	157.22
v.	Renewal/Review of Working Capital Limit as on 31.10.2016	20	110.26	130.26

- (4) It is submitted that the first default in repayment of letter of credit occurred on 20th October, 2016. As a result of which, on 17th January

2019 the said Account of the Corporate Debtor was declared as Non-Performing Asset (NPA) in terms of the Reserve Bank of India Guideline.

- (5) It is stated that on 21.05.2019 by way of Memorandum of Deposits of Title Deed, security was created by the Corporate Debtor through its Directors and the details of the security are given in its schedule. The said deposit was confirmed by a Letter in Form A dated 06.01.2011, Letters dated 21.05.2009, 07.01.2011, 20.03.2012, and 04.06.2015 by a registered Memorandum confirming extension of Deposit of the Title Deeds dated 06.01.2011, 19.03.2012, 23.09.2012 and 23.05.2015, the Corporate Debtor confirmed the continuation of the security. By Hypothecation Agreement dated 21.05.2009 executed by Corporate Debtor in Form No.C2, movable properties were hypothecated which were continued from time to time as per various documents. The hypothecation/charge is registered with the Registrar of Companies and the same is inspected and certified by a CA as on 29.09.2018. The indebtedness of the Corporate Debtor is verified by CIBIL in its Commercial Credit Information Report dated 07.02.2019.
- (6) It is stated that the statement of accounts of cash credit facilities availed by the Corporate Debtor are produced by the Financial Creditor. They relate to the period 2015 to 12.03.2018. The said account statement shows a debit balance of ₹16,37,03,353/- on 31.11.2015. The said statement of account is continued upto 31.12.2016 wherein the balance as on the said date is ₹123,53,90,795.03/-. The statement at page 833 and page 834 filed along with the Petition indicates the interest accrued on the said account from 01.01.2017 up to 31.01.2019 which amounts to ₹5,37,17,555/-. The Financial Creditor has also filed a Certificate dated 11.04.2019 under the Banker's Book Evidence Act, 1891 in regard to the above-mentioned statement of account. Hence, it is stated that the claim amount is established by authentic documents.
- (7) It is stated that personal guarantees have been given, guaranteeing the repayment of the facilities availed by the Corporate Debtor. The

Corporate Debtor stopped servicing the loans and outstanding thereby committing default on 21.10.2016. The account of the Corporate Debtor was declared NPA on 17.01.2017.

- (8) The Financial Creditor has filed OA 725/2018 before the Debt Recovery Tribunal (DRT) Bengaluru against the Corporate Debtor and the guarantors for recovery of ₹131,32,38,186.76/- which is pending adjudication. In the said proceedings, the Corporate Debtor has filed a counter claim against the Financial Creditor claiming a sum of ₹838 Crore as damages in addition to various other smaller amounts under various heads. The counter claim filed in O.A.No.725/2018 is not a matter which needs to be considered at the stage of admission in these proceedings. The Hon'ble Supreme Court in Swiss Ribbons (P) Ltd. Vs. Union of India (2019) 4 SCC 17 has laid down that" *Equally, counter claims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan. Also there is nothing in the Code which interdicts the Corporate Debtor from pursuing such counter claims in other judicial fora...."*
- (9) It is also stated that the proceedings under SARFAESI were instituted to recover the security interest by issuing the Demand Notice on 22.05.2018 and subsequently a Possession Notice on 03.11.2018. The same are challenged by the Corporate Debtor in SA No. 444/2018 which is pending before DRT, Bengaluru.
- (10) Further, the Corporate Debtor has instituted criminal proceedings against the Financial Creditor and its officers, vide FIR bearing No.145/2019 dated 02.01.2019 and the said proceedings are stayed by the Hon'ble High Court of Karnataka in Criminal Petition 9481/2018. One of the Directors of the Corporate Debtor has filed a private complaint bearing P.C.R. No.16121/2018 dated 14.01.2019 before the Jurisdictional Magistrate at Bengaluru for the offence of Defamation U/ss 499 and 500 of Indian Penal Code against Financial Creditor and its officers.



- (11) It is also stated that the Financial Creditor has issued a Notice dated 04.07.2019 to the Corporate Debtor and its Directors to show cause as to why they should not be declared as wilful defaulters.
- (12) The existence of the debt is clearly established by the plethora of documents executed by the Corporate Debtor, its directors and guarantors. The statements of account duly certified and maintained in the normal course of banking proves that the transactions and sum due and payable by the Corporate Debtor.
- (13) It is further stated that it is apparent and obvious that not having any defence to the non-payment of sums due the Corporate Debtor and its Directors have resorted to multifarious litigation strategy to browbeat the Financial Creditor. All proceedings instituted by the Corporate Debtor are frivolous and the pendency of such frivolous and vexatious claims constitute no answer to the present Petition as laid down by the Hon'ble Supreme Court in *Innoventive Industries Limited vs. ICICI Bank & Anr.* [(2018) 1 SCC 407].
- (14) The Corporate Debtor unsuccessfully sought to stall the recovery proceeding by filing a WP No.63350/2016, before the Hon'ble High Court of Karnataka, which was withdrawn by it on 13.06.2018. It also filed a Petition before the National Consumer Redressal Commission (NCRC) bearing CC No.2973/2017 and withdrew the same on 20.03.2018.
- (15) It is stated that the defence urged has no substance in as much as the incorrect debits referred to by the Corporate Debtor have already been reversed under intimation to the Corporate Debtor vide letter dated 04.11.2016 and 28.11.2016.
- (16) The Financial Creditor has to satisfy this Tribunal that a default has occurred. The alleged dispute does not detract from the fact that the debt is due and the Corporate Debtor has not demonstrated or proved that the sum is not payable to the Financial Creditor under any provision of law or contract. Such a plea has not even been raised by the Corporate Debtor. Merely referring to all the proceedings pending does



not mean that the proceedings under I&B CODE should be stalled. The object of I&B CODE is elaborately illustrated by Hon'ble Supreme Court in *Swiss Ribbons (P) Ltd. Vs. Union of India (2019) 4 SCC 17* which mandates that this Tribunal ought to proceed expeditiously and pass appropriate orders within the time frame indicated by law.

- (17) It is stated that it is also a settled law that a Financial Creditor may resort to more than one proceeding against the Corporate Debtor, the securities held and guarantors which are available to it under the SARFAESI Act, R.D.B Act, and the I&B CODE. Each of these proceedings are in aid of the other and one does not exclude the other. Reference is invited to the decision of the Hon'ble Supreme Court in *Transcore vs. Union of India & Anr. [(2008) 1 SCC 125]*.
- (18) Finally, it is stated that the sum outstanding as on 31.01.2019 is ₹146,93,93,281.78/-. The money is due to a reputed Financial Creditor which is a Public Sector Bank and it is in public interest to expeditiously take up the insolvency resolution proceedings as envisaged under I&B CODE by the appointment of an Insolvency Resolution Professional. Such action is in the interest of both the Financial Creditor and the Corporate Debtor and indeed it is in the interests of the entire body of creditors and shareholders of the Corporate Debtor.
3. In its Additional Affidavit filed on 11.07.2019, the Petitioner has again made a mention of its proceedings filed by it before the DRT bearing OA No. 725 of 2018 for a claim of Rs 131,32,38,186,78; counter claim of Rs 838,00,00,000/- and the objections thereto filed by the Corporate Debtor; appeal filed by the Corporate Debtor under section 17 of the SARFAESI Act, 2002 against its recovery actions; criminal complaint bearing PCR No. 16121 of 2018 filed against the Financial Creditor and its employees; and FIR bearing No. 145 of 2019 filed against its employees under various sections of the IPC. Supporting documents have been filed.
4. The Company Petition is opposed by the Respondent by filing the statement of objections dated 23.07.2019, by inter alia contending as follows:



- (1) It is contended that the Financial Creditor filed this application entirely based on imaginary occurrence of default by merely depending on their own statement of account and CIBIL, reports which are based on the unilateral entries made by Financial Creditor. The said entries of statement of bank are baseless, false, frivolous and hence the Corporate Debtor completely denies the allegations pertaining to the debt and default of the Financial Creditor and shall be dismissed in *limine*.
- (2) It is stated that on 22.06.2015 the then AGM and the Chief Manager of Financial Creditor acted as agents of SBI Life Insurance Company and has illegally transferred Rs.2.03 crores from the account of Corporate Debtor towards the SBI Life Insurance in the greed of earning commissions from SBI Life Insurance Company. Subsequently, the Corporate Debtor filed a criminal case against the Financial Creditor and its officials in regard to the above, and FIR has been registered.
- (3) On questioning the said illegal debits, as a counter blast the Financial Creditor indulged in committing further illegalities and debited alleged OD penal interest from the account of the Corporate Debtor with an ulterior motive to spoil the credentials of the Corporate Debtor and to block it to move other Bank. The illegal debits of alleged OD penal interest for 5 consecutive months from 31.01.2016 to 31.05.2016 are as follows: Rs.92,550/- on 31.01.2016; Rs.1,25,025/- on 29.02.2016; Rs.1,22,270/- on 31.03.2016; Rs.1,00,738/- on 30.04.2016; and Rs.1,16,438/- on 31.05.2016. These are enclosed by the Financial Creditor itself along with this Petition at page numbers 659, 679, 704, 722 & 737 respectively. Thus, total amount of Rs.5,57,021/- is debited from the Corporate Debtor's account without any default or irregularity of the Corporate Debtor. This is also contested before DRT in OA No.725/2018. Penal interest had to be charged as per the terms of the agreement, but no document to prove the alleged default of the Corporate Debtor has been produced. This violated RBI guidelines, fair



banking lending norms and the sanction terms and illegal as LCs obtained by the Corporate Debtor only for 3 months.

- (4) It is also stated that the Financial Creditor debited 0.30% as acceptance charges which is not applicable to bills drawn under branches own LCs. The said fact is evident from the financial creditor letter dated 06.03.2014.
- (5) It is further contended that the Financial Creditor has also charged irrational LC commissions where the bank has charged Rs.4,24,634/- towards the LC opening of Rs.7,68,57,500/- and that the bank has charged Rs.2,90,148/- on 25.02.2016 towards the LC opening of Rs.7,50,82,500/-.
- (6) Further, by virtue of mandatory obligation u/s 215(2) of the Code, the Financial Creditor updated information in NSEL website on 10.04.2019 and stated that Rs.157.22 crores of loan is sanctioned to the Corporate Debtor. On being strongly opposed on 12.04.2019, the Financial Creditor reduced its claim from Rs.157.22 crores to Rs.20 crores by updating its information on 22.05.2019. The Corporate Debtor denied the liability of the said amount.
- (7) It is also contended that the particulars of financial debt have been allegedly shown by the Financial Creditor as Rs.130.26 crores. But *the Financial Creditor has failed to produce the sanction letter for the same, sanction date, proof of execution of documents, date of disbursement etc.*
- (8) It is further contended that the Corporate Debtor never suffered any loss in its business and never been in default, it promptly repaid the loan within the stipulated period and till today, the business is being carried out without any loss and is making payments of salaries, electricity bills, phone bills and all the statutory payments like ESI, PF of employees, Professional Tax, Income Tax, TDS and GST on time.
- (9) It is submitted that the financial creditor has not taken the value of stocks and receivables of the Corporate Debtor which are around ₹ 138 crore in its audited books of account as on date and the receivables of

Corporate Debtor are more than the alleged debt of Rs 113.38 crore. The present market value of the said assets are around ₹ 215 crore. The financial creditor cannot file the present petition when the Corporate Debtor is holding stocks and receivables, personal guarantees and immovable assets worth around ₹ 406 crore as per audited valuation. The present value of these is more than ₹ 500 crore by virtue of appreciation. The financial creditor has therefore failed to prove that the Corporate Debtor has become insolvent.

- (10) It is further submitted that the company and its group companies are continuing its support to 7000 students an hundred and 50 physically challenged students in association with a foundation for the education of underprivileged children of the age group of 14 years. Also, since the landmark mall building is acquired by the BM RCL, the front portion of the building is under demolition. The Corporate Debtor is in the process of demolishing and reconstructing the said building to bring back the building into operational condition. If the petition is allowed it will deprive the rights of the Corporate Debtor to safeguard the asset value of the said building.
- (11) Citing the case of Swiss Ribbons Private Limited it is stated that if a debt is disputed by the Corporate Debtor the application filed for initiating CIRP has to be rejected.
- (12) It is contended that the Financial Creditor sanctioned Rs.50 crores of working capital facilities to Corporate Debtor on 05.06.2009 and enhanced to Rs.65 crores on 22.11.2010 and further enhanced to Rs.97.50 cores on 07.03.2012. But the Company has pre-closed the corporate loan of Rs.7.5 crores on 30.09.2012 due to the irrational rate of interest charged by the bank and retained only Rs.85 crores of working capital.
- (13) Again, the Financial Creditor enhanced the working capital from Rs.85 crores to Rs.110 crores on 12.02.2014, but Corporate Debtor refused the same due to the irrational charges charged by the Financial Creditor as stated above and approached the South Indian Bank for working



capital facilities. The South Indian Bank sanctioned Rs.210 crores on 21.02.2014, but the Financial Creditor illegally demanded Rs.2.2 crores as pre-closure charges to transfer the account to South Indian Bank. Hence, the Corporate Debtor could not avail the sanction facilities of Rs.210 crores from South Indian Bank. The Corporate Debtor refused to avail the sanction of Rs.110 crores and has not executed any documents to avail the same, hence the question of pre-closure charges does not arise at all. The said illegal demand of pre-closure charges has been clearly admitted by the Financial Creditor in its written statement.

- (14) The Financial Creditor further enhanced the working capital facilities from Rs.85 crores to Rs.157.22 crores on 23.03.2015 out of which Rs.45 crore was cash credit and Rs.112.22 crores was letter of credit (LC Limits).
- (15) It is submitted that to avoid conflict it requested the Financial Creditor to go for a golden handshake vide its letter dated 06.10.2016 and made a payment of Rs 10.63 crore to the CC Account on the same day. After the said payment, the fund base facilities of the corporate data reduced from Rs 45 crore to Rs 8,76,41,619. The payment of ₹ 10.63 crore and the balance towards working capital facilities as on 07.10.2016 was Rs 8,77,41,619, which is evident in volume number 3 page number 819 of this petition filed by the financial creditor itself.
- (16) By letter dated 07.10.2016 the financial creditor was again requested to adjust the above outstanding CC balance out of the FD Account of the company which comprises of ₹ 11,19,53,633 in order to clear the entire fund base facilities of ₹ 45 crore and to transfer only Rs 110 crore of LC facilities to South Indian Bank as desired by the Corporate Debtor so as to avail non-fund LC facilities from South Indian Bank. Thus without any cash transactions between the SBI and South Indian Bank, the transfer of the said Rs 110 crore of LC facilities can go smoother and faster.
- (17) However the financial creditor neither co-operated for a golden handshake nor issued any further LCs to the Corporate Debtor from



13.10.2016 without any delay/default with the intention to keep up its reputation.

- (18) It is submitted that the entire ₹ 45 crore of cash credit facilities as on 07.10.2016 and also that the entire LC payment of Rs 259,23,56,889 is paid by the Corporate Debtor from 01/04/2015 to 13/10/2016. It is also evident from document 17 that the financial creditor did not issue any LCs after 13/10/2016. Therefore it is very clear that there is no default or dues from the Corporate Debtor as on 13/10/2016 and when there is no LCs issued by the financial creditor after 13/10/2016 the question of dues for default do not arise.
- (19) It is stated that the financial creditor is solely relying on the statement of accounts which have a rebuttable presumption. The principle laid down by the honourable High Court of Bombay reported in II(2004) BC (DB) pertaining to the case of Rajkumar versus DRAT and others, in which it was held that "no presumption in law that bank documents and bank officers are always truthful and citizens or borrowers are always false or liars. Their documents shall be subjected to strict proof of Law of evidence."
- (20) It is submitted that the Financial Creditor neither transferred the account to South Indian Bank nor issued LC's. Therefore, the Corporate Debtor could not complete the supplies to its customers as per its commitments. The Financial Creditor is also well aware that as on date the customer of the Corporate Debtor is withholding payments of Rs.138 crores due to incomplete supplies, which was causing huge financial loss and damage to the Corporate Debtor.
- (21) The Corporate Debtor states that due to the illegal acts of the bank, the Corporate Debtor filed WP No. 63350 – 51 of 2016 against the financial creditor on 09/12/2016 seeking directions to the financial creditor to issue a NOC to migrate to the other bank. In the said writ petition the financial creditor filed additional statement of objections on 14/03/2017 and contended that "there is disputed facts at every stage and consequently, this honourable court may not exercise jurisdiction".



Mention has been made of the various cases filed by it to say that the issues in question of this application require elaborate evidence exclusively triable by a civil court. Hence the present application filed by the financial creditor is hit by the rule of "Acquiescence" and "Rule of estoppel".

5. Further, the Corporate Debtor vide additional written arguments dated 14.11.2019 also contended that the Financial Creditor has not furnished any relevant documents to establish its alleged claim and it is also admitted and undisputed facts that the Corporate Debtor is a running Company and the value of its assets are more than the alleged debts claimed by the Financial Creditor.
6. In the Rejoinder filed on behalf of the Financial Creditor dated 05.08.2019, apart from the facts mentioned in the Petition, and *relevant to the present proceedings, it has been submitted that:*

- (1) It was brought to the notice of the Financial Creditor that the following entries were erroneously debited by its system:

Date of Debit	Amount	Remarks
31.01.2016	92,550.00	Reversed on 31.05.2016
29.02.2016	1,25,025.00	Reversed on 31.05.2016
31.03.2016	1,22,270.00	Reversed on 31.05.2016
30.04.2016	1,00,738.00	Reversed on 06.06.2016
31.05.2016	1,16,438.00	Reversed on 06.06.2016

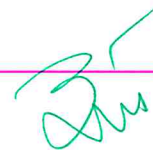
The Financial Creditor immediately reversed the wrongfully debited amount on 31.05.2016 and 06.06.2016 as mentioned above. Thereafter, the reversal of the abovementioned debit were communicated to the Corporate Debtor vide Letter dated 04.11.2016. Vide the Letter dated 04.11.2016, the Financial Creditor also clarified that the margin was increased from 10% to 15% in order to mitigate the risk perception due to over reliance on a single supplier.



7. It is submitted that NeSL Certificate produced by the Corporate Debtor (Memo dated 17.09.2019 Doc.3) the Account No.30770234121 pertains to the Cash Credit Facility availed by the Corporate Debtor which records a debt of Rs.113,37,61,348.00 as total outstanding amount and the amount overdue as Rs.93,37,61,348.00. The Account No.32528232072 pertains to a current account facility availed by the Corporate Debtor. The current account is used for transactions on day to day basis by any business concern, whereas Cash Credit Account, Term Loan Account reflects the Financial Facilities obtained by such debtor. Hence, the claim of the Corporate Debtor that the balance of Account No.32528232072 pertains to current account shows nil is incorrect.
8. Subsequent to 07.10.2016, the LCs had devolved and were debited to the cash credit account which led to the debt due and which is claimed in the present Petition (Affidavit dated 23.09.2019 Doc.A). Hence, the reason for dispute recorded by NeSL is prior to 07.10.2016.
- (1) A Forensic Audit Report dated 26.11.2018 submitted by Ernst & Young LLP shows huge financial regularities in the affairs of the Corporate Debtor and misappropriation of funds by the Director Mr Dayanand and siphoning of monies amounting to Rs 8,12,00,000/- to his family members personal accounts. A CBI complaint has been filed against the Director in this regard.
 - (2) The Director of the Corporate Debtor has registered an FIR bearing No. 145 of 2019 against the officials of the Financial Creditor under various sections of the IPC, as a counter blast to its actions under the SARFAESI Act, 2002.
 - (3) As on 31.01.2019 the overall outstanding debt is Rs 146,93,93,281.78 including interest of Rs 33,56,31,933/-, for which the Corporate Debtor is in default as per the I&B CODE, 2016.
 - (4) As regards the averments made by the Corporate Debtor in its Statement of Objections, such as that Rs 2,03,00,000/- were illegally transferred towards SBI Life Insurance, which are reflected in its Audited Balance Sheet as Non-Current Assets for the YE 2015-16; the 5 illegal debits; and charging of higher LC Commissions nothing is



- brought on record to establish that there was any fraud or forgery to project the Corporate Debtor as a defaulter.
- (5) Regarding the NeSL website it is reiterated that the claim has not been reduced from Rs 157.22.crore to Rs 20 crore. As updated on 10.04.2019 the total sanction was Rs 157.22 crore of which Rs 20 crore was Fund based Loan and the balance was Non-fund based Loan.
 - (6) Regarding the sanction letters etc. for availing financial assistance, attention is drawn to Anns. K,N,Q and T to documents filed in support of Form 5.
 - (7) The Financial Creditor has not relied only on Statements of Account and CIBIL report. The Statement of Account of the Financial Creditor, ie. a Bank is valid proof / evidence in support of the debt by the Corporate Debtor and a certified Copy of the same is legally recognised as a proof of the debt owed. The Corporate Debtor has not pointed out any entries which are highly disputed.
 - (8) It is submitted that there is no nexus between the financial assistance availed by the Corporate Debtor and the sanction of Rs 210 crore by South Indian Bank, of which it has no knowledge.
- 9.** In its rejoinder the financial creditor has denied all the allegations made by the Corporate Debtor. It is stated that the Corporate Debtor who availed financial assistance and enhanced the same by giving collateral security of its immovable properties as well as personal guarantees which are on record. The present petition is in accordance with the rules stipulated under the I&B Code and its Rules. The petition was filed by Mr B Narasimham, AGM who was duly authorised to represent the financial creditor in these proceedings. These proceedings are not malicious or fraudulent and section 65 of the code is not attracted.
- 10.** The financial creditor is not aware of any loan of Rs 210 crore being granted by South India bank hence such a loan and the charging of pre-closure charges are not interconnected. The Corporate Debtor has admitted that it had paid LC payments up to 13.10.2016 and this clearly shows that it has



defaulted in making any further payments to the financial assistance availed by it.

11. The review of LC margins from 10% to 15% was accepted and approved by the sanctioning authority and conveyed to the Corporate Debtor. This was to mitigate the risk perception due to overreliance on a single supplier by the Corporate Debtor. The same was not challenged by the Corporate Debtor. No stock valuation of the assets and receivables of the Corporate Debtor was conducted and it is denied that the financial creditor is intentionally hiding the value of stocks and valuables of ₹ 138 crore. It was also unaware of the receivables of the Corporate Debtor from its customers. The WP No. 63350-51 filed by the Corporate Debtor was withdrawn by it by order dated 05.06.2018. The subject matter of the proceedings are in no way related to the issues involved in the present proceedings and in any case the same have since been withdrawn by the Corporate Debtor vide order dated 20.03.2018. Similarly, the matters pending before the DRT are completely different in nature than the proceedings before this Tribunal.
12. In the Sur rejoinder filed by the Corporate Debtor on 05.08.2019, it has denied all the allegations made by the Financial Creditor in its Petition/Additional Affidavit. It has reiterated that the Petitioner has not fulfilled the necessary requirements as mandated by Rule 26 of the NCLT Rules 2016 and hence needs to be dismissed. It is stated that the various cases mentioned by the Financial Creditor are pending before the different Courts and DRT. However, it is denied that it has filed any criminal case against the employees of the Financial Creditor. Hence the contents of the Additional Affidavit are false and misleading.
13. The Corporate Debtor has filed Objections cum Explanations on 13.08.2019, to the Rejoinder filed by the Financial Creditor on 05.08.2019. Apart from what has been submitted and explained earlier, it is submitted that:
 - (1) Since the Financial Creditor has not replied to its objections with regard to the LC charges for 5 months, and acceptance charges of 0.30%, the




Corporate Debtor's contentions should be deemed to have been accepted by the Financial Creditor. Similar is stated to be the position with regard to the payment of Rs 10.63 crore to the CC Account, and its request to adjust the outstanding CC balance against its FD Account etc.; and its counter claims before other Courts/Tribunals, on account of which its contentions be accepted and the Petition be dismissed.

- (2) Reference has been made to the pending proceedings before the DRT where its contentions with regard to the payment of the entire working capital have not been denied by the Financial Creditor. Further, its contentions denying the entries of the bank statement, NPA, debt and default in its objections filed in 11.07.2019 have not been replied by the Financial Creditor.
 - (3) It is stated that in its rejoinder dated 05.08.2019 that the Financial Creditor has admitted the debt of Rs 131,32,38,186.78 as also the counter claim of Rs 838 crore which are pending before the DRT.
 - (4) The Corporate Debtor has denied that funds had been siphoned off by the Director of the Corporate Debtor. It is stated that the sequence of events of declaring the account as NPA, filing of criminal cases by the Corporate Debtor, the forensic audit, application before the NCLT and submissions made thereafter, makes it clear that the Financial Creditor never intended to make any contention with regard to the forensic audit in its main petition. Hence the allegations regarding it being a wilful defaulter and siphoning off of funds are false and baseless based on fabricated records.
14. The Financial Creditor vide Addl. affidavit filed on 23.09.2019 stated that NeSL has recorded that the entire cash credit facilities had been cleared on 07.10.2016. But subsequent to that the LCs mentioned in Doc No. A had devolved and were debited to the CC A/c which lead to the debt due as claimed in the present application. Copies of LCs with Bill Nos. have been filed along with list of non-payment of bills drawn under LCs between 20.10.2016 and 26.12.2016. This NeSL certificate (Document No. B) pertains to the Cash Credit Account and as per the same the outstanding

amount is Rs 149,52,46,292.78. List of securities created by way of charge/mortgage is also mentioned.

15. In its Written Arguments filed on 30.09.2019, the Financial Creditor has reiterated that there is a financial debt of Rs 146,93,93,281.78 including interest of Rs 33,56,31,933, as on 31.01.2019, and that the first default occurred on 20.10.2016 and the Account was declared NPA on 17.01.2019. Computation of the debt has been furnished with a list of documents. Details as mentioned in earlier submissions have been recounted and attention is drawn to the various documents filed before this Authority with the Petition and during the course of these proceedings.
16. The Corporate Debtor has also filed written arguments on 04.10.2019. Facts as stated in its Objections and other submissions as referred to earlier, have been reiterated, such as with regard to: availing Rs 50 crore of working capital facilities in 2009; subsequent enhancements, pre-closure of capital loan of Rs 7.50 crore on 30.09.2012; further enhancement of working capital facilities from Rs 85 crore to Rs 157.22 crore of which Rs 45 crore was on account of cash credit and Rs 112.22 crore on account of LCs. Mention is again made of the illegal debits which are stated to not have been re-credited in its account; about Rs 2.03 crore illegally transferred to SBI Life Insurance.
17. The Corporate Debtor has filed a memo that 30/09/2019 stating that with an intention to avoid the verification and examination of the bank statements by the Corporate Debtor, and sought dispensation from filing three sets of the same. In its objection filed on the same day, the Corporate Debtor prayed the Hon'ble Tribunal to direct the financial creditor to serve the above statement of accounts and other documents.
18. Heard Mr. S.S. Naganand, learned Senior Counsel along with Ms. Gayatri Mohite, learned Counsel for the Petitioner, Smt. P. Chitra Nirmala, AGM (Law) of State Bank of India and Mr. Dayanand Reddy, Director, for the Respondent-Corporate Debtor. We have carefully perused the pleadings of



both the parties, the material brought on record and extant provisions of the Code and the Rules made thereunder.

19. At the very outset it may be mentioned that the present Petition is filed under section 7 of the I&B Code which deals with initiation of Corporate Insolvency Resolution Process by a financial creditor to whom a financial debt along with interest is owed. Financial debt means amounts disbursed for the time value of money, and includes Credit facilities as outlined in sections 5(7) and 5(8) of the I&B Code. We shall therefore confine our examination to these aspects of the matter and not various other issues and disputes which form part of the rival submissions.
20. It may also be emphasised that proceedings under Sections 7 of the I&B Code are summary proceedings that do not allow for any detailed scrutiny or forensic audit of, investigation into the genuineness of the documents brought on record. Other peripheral issues may create separate cause of action, and can be and have been agitated elsewhere, as these are outside our purview. The debt and default should be undisputed and clear from the records/accounts brought before us. In a recent decision of the Hon'ble NCLAT in the case of Allahabad Bank Vs Link House Industries Ltd, in CA(AT) (Insolvency) No. 1303 0of 2019, dated 20.05.2020 it was held that:

“The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the financial creditor. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the I&B Code.”

We would, therefore, draw our conclusions from what has been brought before this Adjudicating Authority.

21. We may therefore briefly address some of the issues that the Corporate Debtor has repeatedly mentioned in its objections, primarily to state that the Financial Creditor has treated it as a wilful defaulter to deliberately tarnish



and harm its business. We may make it clear that these issues may create a separate cause of action but do not fall within the ambit of the I&B Code, and hence have no bearing on the issues of debt and default as per the Code, with which we are concerned in these proceedings. Some of the issues raised are discussed as under:

- (1) The Corporate Debtor has questioned the transfer of an amount of Rs 2.03 crore towards SBI Life Insurance, and for which it has filed a criminal case against the Financial Creditor. The Financial Creditor states that that the same was well within the knowledge of the Corporate Debtor and is reflected in the balance sheet for the FY 2015-16. As this transfer is an amount claimed by the Financial Creditor and is stated to have been already appropriated by it, there is no debt due on this account and does not need any consideration by us.
- (2) Regarding the 5 debit entries repeatedly pointed out by the Corporate Debtor in its accounts between 31.01.2016 and 31.05.2016 totalling up to Rs 5,57,021/- on account of LC Commission etc., the FC states that the same have since been reversed on 31.05.2016 and 06.06.2016, and also the interest on the same has been re-credited. A glance at the CC Account of the Corporate Debtor maintained by the Bank shows three entries on 31.05.2016 with the narration "Re of OD Penalty" which are credit entries of amounts Rs 92,550, 1,25,025 and 1,22,270, which appear to be reversal entries and which add up to Rs 4,39,845. May be the balance amount has been reversed under some other narration. However, since the Financial Creditor accepts the incorrect charging of these amounts, and does not treat it as debt, the same requires no further consideration by us.
- (3) We also refrain from getting into the disputes raised by the Corporate Debtor on issues such as a charge of 0.30% debited by the Financial Creditor on account of Acceptance Charges which are stated to be not applicable to the Corporate Debtor, being on bills drawn under its own Branch LCs. Other charges levied by the Financial Creditor have also been termed as illegal by the Corporate Debtor, such as Rs 4,24,634



charged for LC opening of Rs 7.68 crore and Rs 2,90,148 without any calculation etc. Another issue is with regard to increase of margin from 10% to 15% of further LCs. The same was conveyed to the MD of the Corporate Debtor by the AGM of the SBI vide letter dated 05.10.2016 and is seen to be mentioned at item no. vii thereof. It is seen that the reason is also explained in its letter dated 04.11.2016 as being on account of its risk perception of the Corporate Debtor, in the normal course of its functioning and it is also seen that it had, after discussions, offered to lower the LC margins to the previous level. We are of the considered view that all these issues have occurred in the normal course of banking business, and any comment as to the reasons for doing so, as imputed by the Corporate Debtor neither elicits a response from us nor falls within our purview. These may at best have the effect of slightly varying the figure of debt, if any, once the same is sorted out between the two sides.

- (4) Similarly, the argument of the Corporate Debtor that it could not avail the loan of Rs 210 crore sanctioned by South India Bank on account of the Financial Creditor's demanding Rs 2.20 crore as pre-closure charges, and ultimately not transferring its debt, and suffering business losses due to the same has no bearing on the loans and facilities sanctioned to and availed by the Corporate Debtor, which are the subject matter of this Petition. In any case, since the Corporate Debtor did not move to the South India Bank these charges were not payable and hence no debt arose on this account.
- (5) The Corporate Debtor has laid several counter claims against the Financial Creditor, holding it responsible for losses incurred in its business due to actions of the Financial Creditor as discussed above, and laying a counter claim of Rs 838 crore. It has stated that its demand on these counts of non-cooperation by the Bank is far more than the debt worked out by the Financial Creditor, hence nothing is payable by it. We do not agree. This amount claimed as cost of opportunity loss due to Bank's actions or inaction does not fall within the definition of



“debt” owed by the Financial Creditor to the Corporate Debtor, as defined in the Code. Hence, the debt owed by the Corporate Debtor cannot be set off or netted off by such presumed/estimated losses. Such disputes can be agitated before any other forum, but do not fall within the purview of the IBC, and hence will not reduce or extinguish the debt owed, if any, by the Corporate Debtor.

- (6) We also find that the allegation made by the Petitioner, such as that of fraud and siphoning off of loaned funds obtained by the Respondent amounting to Rs 8.12 crore, and in respect of which it had got a forensic audit done on 26.11.2018, is again a dispute between the Financial Creditor and the Respondent which does not fall within the purview of the IBC and is ignored.
- 22.** We are therefore clear that the above matters pending in different fora do not have a bearing on the proceedings under the I&B Code which is an independent Code with a specific objective of Insolvency Resolution. In passing we may mention that the Financial Creditor is the biggest Public Sector Bank in India and it is highly improbable that the Bank or its officials would take the above referred actions against the Corporate Debtor or its Directors merely to tarnish its image.
- 23.** Coming to the main issues of debt and default, we find from the rival contentions that there is no dispute as far as the sanctioning of the credit facilities to the Corporate Debtor are concerned. The Corporate Debtor has been sanctioned both Fund based and Non fund based facilities from the Financial Creditor. A fund based credit limit is one where the bank gives actual cash as a loan or facility from which the Debtor can physically draw or utilise money. On the other hand, in a Non-fund based facility the bank provides services such as a Bank Guarantee (BG); or a Letter of Credit (LC) etc., at a cost, being charges and interest.
- 24.** The Fund and non-Fund based facilities sanctioned in favour of the Corporate Debtor, are as per the Petition, as under:



Sl. No.	Particulars	Fund Based Credit Facility (INR in Crore)	Non-Fund Based Credit Facility (INR in Crore)	Total Facility (INR in Crore)
i.	Financial Assistance vide Sanction Letter dated 18.05.2009	10	40	50
ii.	First Enhancement vide Sanction Letter dated 22.11.2010	15	50	65
iii.	Second Enhancement Vide Sanction Letter dated 07.03.2012	22.50	75	97.5 0
iv.	Third Enhancement vide sanction Letter dated 23.03.2015	45	112.22	157. 22
v.	Renewal/Review of Working Capital Limit as on 31.10.2016	20	110.26	130. 26

25. As regards the sanctions, it is only the last of these that the Corporate Debtor has contested for want of Sanction Order. However, we find the sanction of the facility of Rs 130.26 crore was only a renewal/review of the working capital limit, as distinct from the credit facilities sanctioned since 18.05.2009 and renewed on 22.11.2020, 07.03.2012 and 23.03.2015 when it was enhanced to Rs 45 crore and Rs 112.22 crore for fund based and non-fund based credit facilities respectively, totalling Rs 157.22 crore. These are confirmed by the evidence furnished by the Financial Creditor along with the Petition. Copies of Sanction Letters dated 18.05.2009, 22.11.2010, 07.03.2012 23.03.2015 are perused, indicating the same. The Memorandum of Agreement of Loan signed on 21.05.2009 regarding grant of credit facilities up to Rs 50 crore as also letter regarding grant of individual limits, indicating Fund and Non Fund based facilities, are also on record. Copy of the Sanction Communication Letter dated 22.11.2010 and subsequent Supplemental Agreements increasing the Limits are also on record. Against these sanctions, the Corporate Debtor has admittedly given guarantees, hypothecated / mortgaged its assets as security, copies of Memorandum Confirming the Extension of the same etc. are on record. So also Agreements of hypothecation of goods and assets executed by the Corporate Debtor, and Supplemental Agreements. Hence, on the grant of sanction of these facilities, there can be no dispute.

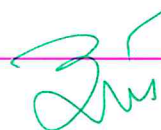
- 26.** The real dispute, as far as the IBC is concerned, appears to be with regard to the working capital facilities actually availed by the Corporate Debtor as against the above sanctions, incorrect debit entries, and whether the debts arising from the working capital facilities were fully or partly repaid and the account pre-closed so as to liquidate the dues, or written off in golden handshake. To establish its case, the Financial Creditor has relied upon the ledger accounts of the Corporate Debtor as maintained in the Bank's books, and has also filed a Certificate dated 11.04.2019 under the Bankers' Book of Evidence Act 1891. CIBIL in its Commercial Credit Information Report has certified the debts on 07.02.2019 under Outstanding balances by Credit facility Groups at Rs 118,75,18,550, and Rs 44,90,03,179 under Working Capital. The NeSL site also confirms the outstanding balances in the books of the Petitioner.
- 27.** The Corporate Debtor has been consistently denying and contesting the debt and default, even prior to the present Petition:
- (1) From the facts mentioned in its objections to the Petition filed before us, we also find mention in its Counter Claim filed in OA No. 725 / 2018 before the DRT at Bangalore. It is mentioned therein that when it noticed that the Bank was charging irrational rate of interest it pre-closed its entire corporate loan of Rs 7.50 crore along with interest on 30.09.2012. Thus it had prepaid the entire loan in 21 months instead of 60 months. It retained only Rs 85 crore of working capital facilities. It also agitated the fact that the bank was charging it higher interest by reducing its CC limit (which depends on facility used) and sanctioning a corporate loan on which higher interest was chargeable on a fixed basis. It also contended that the Company had paid all the interest, LC commissions/charges and the LC payments well in time, and the company was never in default. Similarly for FYs 2012-13 and 2013-14, 2014-15 and 2015-16 also it had paid all the interest, LC commissions/charges and the LC payments well in time, without availing any additional facilities. It is also mentioned that while agreeing to correct the errors, the Bank had not reversed the entries. It has

however cited some instances where the Bank has modified its accounts and corrected wrongly charged interest and charges etc. In fact on our examination of the CC Account we find various reversal of entries on different dates from 07.10.2016, but whether they cover all the reversals required can only be known through a dialogue between the two sides.

- (2) Similarly, in its Complaint before the NCRC, New Delhi filed on 09.10.2017, the Financial Creditor stated in response that the complaint has raised various disputed questions of fact which require elaborate evidence, and further that since the complaint involves complicated and complex questions, the same should be tried by a Civil Court which it should be granted liberty to approach. Along with this petition in the NCRC it also filed a copy of the NeSL response to the financial information of default submitted by the Bank, which was disputed by the Financial Creditor on 09.09.2019 by stating in the "Reason for Dispute" that the Company has cleared the entire cash credit facilities on 07.10.2016 itself, and thereafter it has not obtained any LC facilities. However, in the Debt Information the total outstanding amount is stated to be Rs 113,37,61,348.00. The Bank has been advised to take up with the concerned party for the resolution of the dispute.
- (3) In its representation to the Banking Ombudsman dated 04.07.2018 also the Corporate Debtor mentioned the unfair practices adopted by the bank, illegal charges levied etc. and stated that it had cleared all its working capital facility of Rs 45 crore and upto date LC payments.
- (4) In the Writ Petition filed by the Corporate Debtor on 09.12.2016 (subsequently withdrawn), the Corporate Debtor in its reply of 14.03.2017 stated that "It is relevant to point out that in the series of communications engaged by the petitioner as well as in the various documents produced by the petitioners before this Hon'ble Court, it clearly emerges that at every stage, there is a dispute regarding the factual position."



- (5) It is further seen that when the Financial Creditor vide its Letter dated 21.03.2019 placed a hold on the Current A/c No. 32528232072 as according to it the total dues payable to the Bank amounted to Rs 149,52,46,292.78, the Corporate Debtor denied the same in its reply dated 10.04.2019. It was stated that when it sought a golden handshake on 06.10.2016, it cleared the entire debt of Rs 45 crore of cash credit amount and paid up to date interest and LC payments, and requested it to transfer its account to the South India Bank. It further honoured its LC payments till 13.10.2016.
28. Thus it is seen that even prior to being brought before this Tribunal by the Financial Creditor, the Corporate Debtor has vehemently disputed the claims of the Corporate Debtor, challenged its accounts and stated that all the debt already stands cleared/repaid, before the DRT, NCRC, the Banking Ombudsman and the Financial Creditor itself.
29. We have perused the Statement of the CC Account No. 30770234121 of the Corporate Debtor in the books of the Financial Creditor. This is a running account that shows debit entries on account of withdrawal on Trade Finance Account, Remittances through cheque etc., and credit entries of deposits on account of Trade Finance etc. Accounts have been filed wef 02.03.2015, when they show a debit balance of Rs 7,86,74,991.87. As per this CC Account, the debit balances stood at: as on 31.03.2015: at Rs 19,47,50,535.03; as on 31.03.2016: at Rs 8,00,23,596.33; and as on 31.12.2016: at Rs 123,53,90,795.03 (Total Debits minus total credits). It is seen that up to 20.10.2016 the debit balance in this account had remained under Rs 20 crore, but between 20.10.2016 and 31.12.2016 it has increased to Rs 123,53,90,795.03. There are several Transfer debit entries of Rs 10 crore and above in this 2 month period. This increase in the debit balance has been explained by the Financial Creditor to be on account of the LC charges which had devolved, although the Corporate Debtor states that it has paid up to date all the LC interest and charges. This requires reconciliation with the facilities actually availed by the Corporate Debtor and the LC charges levied.



30. As regards the Corporate Debtor's averment that it had pre-closed the corporate loan on 30.09.12 by paying the amount of Rs 7.50 crore, only the loan account would be closed and not the entire Working Capital Account, especially the LC account. This could be the reason why the debit balance has kept on increasing and was Rs 7,86,74,991.87 as on 02.03.2015. However, we are unable to comment on the reasons of increase from 2012 to 2015 as the CC Account for this period is not furnished. Also the Corporate Debtor contests the LC charges for this period also by stating that all the LC charges and interest have been paid by it for this period as well.
31. As regards its further contention that it paid Rs 10.63 crore and offered a golden handshake to move to South India Bank, we find that the details of payment are appearing in the account submitted by the Financial Creditor. It is seen from the CC Account of the Corporate Debtor at pages 816 and 817 of the Petitioner's Volume III, that on 06.10.2016 the debit balance was Rs 19,31,50,597.86, whereafter there are three credit entries of RTGS payments on 06.10.2016 for amounts of Rs.4,35,98,313, Rs 2,31,43,161 and Rs 3,96,16,550, which add up to Rs 10,63,58,024, leaving a debit balance of Rs 8,67,92,573.86 which became 8,77,41,619.86 after two charges of Rs 4,99,023 and Rs 4,50,023 on 06.10.2016, as contended by the Corporate Debtor. Thus these accounts reflect the Corporate Debtor's claim that it had paid the amount of Rs 10.63 crore and the remaining balance in this account was Rs 8.77 crore which it requested the Financial Creditor to adjust against its FD account of Rs 11,19,53,633 and clear the entire fund based facilities of Rs 45 crore. At the same time on 07.10.2016 there are also three major credit entries in this CC Account showing "Dep TRF", being amounts of Rs 2,57,67,514, 2,36,49,326 and 4,56,43,160 totalling to Rs 9,50,60,000. Possibly these may be the FDs transferred by the Bank to the CC Account. Thus the Corporate Debtor has been given credit for Rs 10,63,58,024 crore plus Rs 9,50,60,000 ie. Rs 20,14,18,024 on the above two dates. However, even after 07.10.2016 the CC Account shows several debit entries being charges towards rent, Trade Finance etc. and finally the closing debit balance in the CC Account as on 31.12.2016



became Rs 123.53 crore. Thus it appears that even after the payments made by the Corporate Debtor and adjustment of its FDs, there still remained a Debit balance in this account on account. This appears to be the position right since 2012. It appears that with loan and CC accounts settled, the dispute may be only on the LC charges. This requires detailed audit since the Corporate Debtor strongly contends that it had paid all the LC charges and interest etc. by 07.10.2016. But the account shows several charges levied, stated to be amounts devolved on account of LC facility provided. These may be on account of older period since after 13.10.2016 the Corporate Debtor has not availed any new LCs. This raises further dispute.

- 32.** The Corporate Debtor has contended that the entire Rs 45 crore of cash credit facilities as on 07.10.2016 and entire LC payment of Rs 259,23,56,889 was paid by it from 01/04/2015 to 13/10/2016 leaving no demand payable by it, after which date no new LCs were issued by the Bank. On a perusal of the Ledger Account filed by the Petitioner it is seen that as on 01.04.2015 the total credit in the Corporate Debtor's account was Rs 41,80,76,866 whereas as on 14.10.2016 the same stood at Rs 510,17,53,095. Thus the Corporate Debtor was given credit for having paid amounts totalling Rs 468,36,76,229 during this period. However, despite these payments, the account shows that as on 14.10.2016 there was still a debit balance of Rs 19,30,64,577.86 against the Corporate Debtor, whereas it claims that as on this date all the dues had been cleared. This needs to be reconciled. In fact as mentioned earlier even after 14.10.2016 there are numerous debit entries appearing as Withdrawal Transfer due to which the debt as per this account has increased to Rs 123,53,90,795.03, apparently on account of the LC facilities availed in the earlier periods. Each of these entries needs to be verified and reconciled.
- 33.** In view of the completely opposite stands taken by the two sides, the determination of the nature of the debit entries would require matching of the bills raised by the Financial Creditor on account of LC facilities, with the entries appearing in the Corporate Debtor's CC account maintained in the



Bank. It will also have to be ascertained whether all the bills raised are undisputed as regards the payments released by the bank, amounts repaid by the Corporate Debtor, calculation of LC charges and interest levied etc. This position clearly needs to be reconciled through a process of entry by entry scrutiny of the accounts of the Corporate Debtor from 2012 to 2016 as against the LC and other charges levied and payments made/adjusted. This would also require comprehensive scrutiny and reconciliation with the Bank records, available correspondence and decisions taken with regard to the settlement/golden handshake etc.

34. The above gap could be either on account of the Corporate Debtor's perception that when it cleared the loan in 2012 and paid Rs 10.63 crore and adjusted its FDRs in 2016, its entire Working Capital Account got liquidated. Alternatively, the charges levied by the Financial Creditor towards LC charges etc. were incorrectly charged as against the facilities actually availed and full credit was not given for the same. But it does appear strange to us that when the loan and other facilities availed from the CC Account had been entirely paid on the above two occasions, as it appears from the accounts, still huge debit balance still remains. If this is on account of the LC charges, then it appears even more surprising since the Non fund based facility itself was a maximum of Rs 112.22 crore in 2015. Even if fully utilised, the amounts payable against this facility would be for the LC charges and interest for late settlements, if any (though the Corporate Debtor asserts that it has fully paid the same from 2012 till 2016). But the debt claimed by the Financial Creditor itself is more than the LC limit. This needs to be examined and reconciled.
35. However, at this point we may mention that the Corporate Debtor's plea that the accounts maintained by the Financial Creditor are one sided and incorrect, cannot be accepted as the Corporate Debtor has itself relied upon the entries in the Ledger maintained by the Bank in pointing out specific payments made by it. The payments it claims to have made are appearing in these very accounts, such as the payment of Rs 10.63 crore referred to earlier, and seen on our cursory examination. It cannot choose to reject the



accounts or accept the same at its convenience. For example each entry in a bank customer's account, when payment or withdrawal are made mostly by cheque would be entered in the Day Book both at the time of presentation as well as its clearance, in different banks or branches. In electronic transfer every entry made by the customer or the Bank gets logged into the system which can be audited and verified. The difference could be on account of incorrect or excessive charges, missing credits and pre-closure and settlements not given effect. These need to be verified.

- 36.** The Corporate Debtor has repeatedly challenged before different authorities such as the DRT, NCRC, the Banking Ombudsman, and before different Hon'ble Courts, as also before this Tribunal, but the proceedings have not concluded. Before the NCRC, NeSL clarification and in the Court the Financial Creditor has itself stated that the problem is complicated and complex, requires examination of elaborate evidence and can be sorted out in a Civil Court only. It also appears improbable that the Financial Creditor would have further agreed to enhance the working capital facilities from Rs.85 crores to Rs.157.22 crores, out of which Rs.45 crore was cash credit and Rs.112.22 crores was letter of credit (LC Limits), on 23.03.2015 if at that point of time, there was a huge outstanding debt and if there was a default in clearing the same by the Corporate Debtor. Subsequently also the AGM in his letter dated 14.10.2016 stated: ".....look forward to your continued patronage...", as mentioned by the Corporate Debtor in his objections, indicating that the debt had been cleared or that the FC had no further issues of recovery with the Corporate Debtor with regard to recovery of debt.
- 37.** On the other hand we also find that during the hearing on 19.06.2019 the MD of the Respondent Corporate Debtor stated that if any dues were payable in spite of all the payments made, then he can settle the dues, provided the correct amount is worked out after proper reconciliation.
- 38.** We also find from the objections filed by the Corporate Debtor that the Corporate Debtor is not an insolvent company that has lost its substratum,



cannot engage in business and earn revenue, or pay its debts. As mentioned by the Corporate Debtor, it had stocks and receivables of around Rs 138 crore, the market value which was around Rs 215 crore. It is stated to be holding stocks and receivables, personal guarantees and immovable assets worth around Rs 406 crore, the present value of these is more than Rs 500 crore. These claims have not been opposed by the Financial Creditor. The valuation reports submitted by the Financial Creditor with the Petition corroborate this claim, at least in respect of immovable properties.

39. We may add that we have to take notice of the impact of the present financial distress caused by the global Novel Corona virus pandemic necessitating a nationwide lockdown in the last about 8 months that has paralysed businesses across the country. Major decisions have been taken to protect Industry from its effects, to inject economic stimulus and to revive the economy, on 24.03.2020 the minimum threshold of default was increased from Rs.1 Lakh to Rs. 1 Crore etc. Modifications and suspension of various provisions of the Code have been initiated so that companies facing financial stress due to the pandemic can be supported rather than be pushed into CIRP, else in the present scenario they may end up in liquidation and lose value further, which is not the objective of the Code. IBC itself has been suspended. Debts are being restructured as per Government guidelines. In this scenario, it cannot be ascertained as to what value the assets of the Corporate Debtor and its running business would have in the open market so as to attract a viable resolution applicant and whether it would be a fruitful exercise to push the Corporate Debtor into CIRP.
40. We find that in the latest appeal decided by the Hon'ble NCLAT in *Brig. E. S. Krishnamurthy & Ors. Vs M/s Bharath Hi-Tech Builders Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 699 of 2020, dated 30.07.2020*, this aspect was considered and it was held that:

".....we take judicial notice of the fact that normal business operations have been adversely affected by the imposition of lockdown due to outbreak of COVID-19 which has been declared



pandemic. Even after unlocking, the pace of business operations is far from normal. In these circumstances, some concession has to be given in adherence to the timelines set in terms of the impugned order. Be that-as-it-may, this situation may also have to be addressed by the Adjudicating Authority, if approached by a claimant whose claim has not been settled so far. It is not in dispute that the resolution of disputes relating to claims, more particularly Allottees in Housing Projects, has to be given primacy and pushing the Corporate Debtor into liquidation would only be the last option."

The Corporate Debtor in the instant case is also into business related to Infrastructure Development on which the hard earned income of hundreds / thousands of home buyers stands invested and is at stake.

41. In view of the foregoing, we are not satisfied that a case has been made out by the Financial Creditor for initiating CIRP against the Corporate Debtor, as of now. The disputes raised, the lack of clarity of the actual figures of debt, if any, and whether after the settlements offered by the Corporate Debtor and the payments made since 2012, and its belief that its entire CC account of Rs 45 crore had been liquidated after the payment of Rs 10.63 crore and adjustment of its FDs, require a detailed scrutiny and audit of the demands raised on account of both Fund based and Non- Fund based facilities and the amounts paid/settled, which cannot be conducted in these summary proceedings. We may mention here that this Tribunal is not a dispute resolution forum. If any disputes exist on the issues mentioned above, which appear to be present, they will have to be sorted out in some other forum. Also, in view of the present economic scenario compelling a liberal approach by the Government and suspension of IBC, the Corporate Debtor's willingness to pay any dues once the entries are reconciled, and given also the fact that the Corporate Debtor claims to be a solvent company catering to the infrastructure sector, we direct that the Financial Creditor shall reconcile the figures and thereafter may consider approaching this Tribunal for initiating a CIRP against the Corporate Debtor, if it is otherwise as per the provisions of the Code.

42. In the result, **C.P. (IB) No.112/BB/2019** is disposed of with the following observations / directions:

- (1) *The Financial Creditor shall reconcile entry by entry the accounts maintained by it with the bills raised / transactions undertaken in respect of all the Working Capital Facilities provided to the Corporate Debtor.*
- (2) *It shall be verified whether all the payments made by the Corporate Debtor were given credit and offers made by the Corporate Debtor for settlement were given effect to in the accounts as requested, provided the same were accepted in principle by the Bank.*
- (3) *In carrying out the above, the disputes other than the above verifications shall not be considered, unless they have the effect of varying the debt, if any. Examination of the debt shall be strictly as per the meaning assigned to the term "debt" in the Code, 2016.*
- (4) *The above scrutiny should be completed jointly with the Corporate Debtor in a time bound manner and as expeditiously as possible.*
- (5) *Liberty is granted to the Financial Creditor to file a fresh Petition after completing the above reconciliation and scrutiny, if so required.*
- (6) *The disposal of this Petition shall not take away from the Financial Creditor / Petitioner the right to pursue recovery of the debt in other forums, where its cases are in different stages of adjudication.*

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Krishna / Amar