



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB)/705(ND)/2021

U/s 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Ugro Capital Limited

.... PETITIONER/ FINANCIAL CREDITOR
Vs.

Samyak Metals Private Limited

.... RESPONDENT/CORPORATE DEBTOR

Order delivered on: 14.09.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

SH. L.N. GUPTA, HON'BLE MEMBER (T)

ORDER

PER: SH.DHARMINDER SINGH, MEMBER(JUDICIAL)

The Ugro Capital Limited, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Samyak Metals Private Limited, referred to as the Corporate Debtor on the ground that corporate debtor committed a default in payment of Rs. 2,59,31,269/-.

2. It is appropriate to mention that the applicant Ugro Capital Limited is a company registered under the provisions of the erstwhile Companies Act, 1956 on 10.02.1990 having its branch office situated at 1st Floor 19, Arunanchal Building, Barakhamba Road,

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New Delhi-110001. Mr. Ashish Kumar Tomar, duly authorized on behalf of applicant vide Resolution dated 31.12.2020, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent corporate debtor.

3. The Respondent Company M/s. Samyak Metals Private Limited (CIN No. U72900 DL2000 PTC106569) against whom initiation of Corporate Insolvency Resolution Process has been prayed for. It is a company incorporated under the provisions of the erstwhile Companies Act, 1956 on 03.07.2020 having its registered office situated at 441-B, 2nd Floor, Katra Nabi Bux, Sadar Bazar, New Delhi-110006. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal is having territorial jurisdiction.
4. The case of the applicant precisely is that the corporate debtor had availed financial facility from the financial creditor, Ugro Capital Limited by way of renewed master facility agreement dated 28.01.2021. It is submitted that corporate debtor availed chain finance facility in terms of cash credit limit/ revolving loan facility in respect of sales invoices raised by the corporate debtor for purchase of goods or raw materials as required for the expansion of its business. Therefore, as per part IV of the application it has claimed that as on 12.04.2021, a sum of Rs. 2,59,31,269/- is due and payable by the respondent company.
5. The Corporate Debtor has filed its reply cum objections. The averments of the corporate debtor in the reply in brief are as below:-
 - a. It is submitted that the parties do not have a financial creditor and borrower relationship as the primary and principal borrower which is Kiran Udyog Limited has not been made a party to the present application and no

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document has been placed on record by the applicant demonstrating that it has approached the principal borrower for repayment of any money.

- b. Further Kiran Udyog Limited and the applicant had approached the respondent and indicated that both had entered into the Master Service Agreement (MSA) dated 20.02.2019. Kiran Udyog Limited and the applicant represented that the respondent could supply goods to M/s Kiran without any issues or concerns with respect to payments, as the payments towards the invoices raised would be credited into the designated account of the respondent by the petitioner without delay, but at a discounted rate and M/s Kiran would repay the said amount to the petitioner before the due date as per the mechanism prescribed under MSA.
- c. Furthermore, the applicant has to receive payment from the Kiran Udyog who was the principal borrower and the respondent who was a supplier to Kiran Udyog supplied the goods and receive the payment of such goods from the applicant at the instance of Kiran Udyog.

6. The applicant has filed its rejoinder to the reply submitted by the corporate debtor. The submissions of the petitioner in the rejoinder are stated herein in brief:-

- a. It is submitted that there is no payment on discounted rate rather it is credit facility where amount was disbursed against each invoice after deducting the advance interest and the primary responsibility rests with the respondent in terms of clause 5 of Master Facility Agreement 28.01.2021
- b. It is stated that the Respondent is misleading facts as Respondent himself approached the Applicant and entered in Facility Agreement. Nevertheless, it is a fact that the Renewed Facility Agreement was executed with the Applicant/Corporate Debtor on 28.01.2021
- c. It is stated that the respondent itself approached the Petitioner through Kiran Udyog Pvt. Ltd. (KUPL) for the purpose of short-term credit facility for the goods supplied to the KUPL. That after due compliance and upon detailed verification of credit bureau the petitioner provided the credit facility to the respondent. It

- sd -
111 |



is further stated that MSA is a separate agreement executed between KUPL and petitioner, the respondent is not the party to that, hence the respondent cannot establish the relationship between the KUPL and Petitioners.

- d. It is submitted that the Master Service Agreement dated 20.02.2019 was executed only between the Petitioner and KUPL and respondent is not a party to that. Further, it is evidently clear that Master Facility Agreement is separate agreement between Petitioner and Respondent for Supply Chain Finance which was executed to extend the Credit Facility to the tune of Rs. 300/- Lakhs Only that was subsumed in the Facility Agreement dated 28.01.2021
- e. It is submitted that there is no composite transactions and no payment on discounted rate was done rather it is credit facility which was disbursed to the respondent against each invoice after deducting the advance interest under the Facility Agreement. It is further stated that as per terms of clause no. 5.1 of the Facility Agreement executed between Petitioner and Respondent as extracted in para 1(a) above. It is further stated that the MSA was executed between petitioner and the KUPL wherein no security has been taken, hence the question of recovery of outstanding towards the availing the security doesn't arise.
- f. It is submitted that the Corporate Debtor/Respondent accepted the terms and conditions of the Renewed Facility Agreement and accordingly a Facility Agreement dated 28.01.2021 was executed between Applicant and Corporate Debtor. It is further to make clear that the default in repayment is on part of Respondent being Principal Borrower not KUPL which is an anchor/principal in this matter and also played a limited role of Introducer.
- g. It is further submitted that the demand notice dated 20.04.2021 was issued to Respondent for reason that is KUPL is just the Anchor/principal and the liability to repay the outstanding dues with the Corporate Debtor/Respondent in terms of clause 5.1 of Facility dated 28.01.2021 since KUPL is Principal of Agreement Borrower/Respondent not Principal Borrower.

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7. The applicant has placed following documents on record to prove its claim:

- i. Certified True copy of the Authorization letter dated 31.12.2020
- ii. Certified True copy of the Sanction letter dated 23.01.2021.
- iii. Copy of the Statement of Loan Account.
- iv. Copy of the Demand Notice dated 20.04.2021 issued to the corporate debtor along with postal receipts.
- v. Copy Corrigendum to Demand Notice dated 21.07.2021 issued to the corporate debtor along with postal receipts
- vi. Certificate under section 65B of Indian Evidence Act, 1872.

8. Heard, record has been thoroughly perused. Undisputedly, the Master service agreement dated 20.02.2019 was executed between Ugro Capital Limited (here-in-after referred as "Ugro") & Kiran Udyog Pvt. Ltd. Kiran Udyog Pvt. Ltd. (here-in-after referred as "KUPL") was referred as "Principal" in the said agreement. According to said Master Agreement, the following were the condition between both Ugro Capital and Kiran Udyog the relevant paras of the agreement are as under:-

- A. *"The Principal has represented to UGRO that it is an entity engaged inter alia in the business of manufacturing of High Pressure Aluminium Die Casting Components. The Principal has a network of suppliers, who supply various, raw material, components, equipment etc. required by the Principal ("Suppliers") for the manufacture of its various products, viz. Aluminium alloys, cast iron components, wheels rims and other allied products ("Products").*
- B. *By the way of this Agreement UGRO and the Principal are desirous of entering into an arrangement pursuant to which Principal shall provide UGRO with details, information, data and documentation regarding its Suppliers which require financial assistance.*
- C. *Pursuant to this arrangement, once UGRO receives such information from Principal about its Suppliers, it will be at liberty to carry out a credit appraisal of each of the Suppliers as the case may be, referred to it by the Principal, and extend such financial assistance as it may deem appropriate at its sole discretion determine, taking into account the*

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Supplier's requirements and eligibility as per their respective financials.

D. Both the Parties accept and acknowledge that the proposed arrangement would be mutually beneficial to the Parties."

9. From the bare perusal, it is apparent that Kiran Udyog Pvt. Ltd. being Principal represented to Ugro that the same was engaged in a particular business of manufacturing of die casting components and having a network of suppliers of raw materials, accordingly, KUPL has to provide Ugro with the detail information, data and documentation regarding its supplier which require financial assistance. After execution of the said Master Agreement, another facility Agreement was to be executed between the supplier and Ugro. Thus the job of the KUPL was to introduced its supplier which require financial assistance to Ugro. Accordingly, KUPL introduced the respondent herein that is M/s Smayak Metals Pvt. Ltd(here-in-after referred as "SMPL"). to Ugro. Subsequent to that, on 28.01.2021, a "Facility Agreement" was executed between Ugro& SMPL. The relevant para of the Facility Agreement are as under:-

- A. The Lender, being a systematically important non-deposit taking NBFC is engaged in the business of inter alia lending, and is registered as a non-banking financial company (NBFC) with the Reserve Bank of India ("**RBI**").*
- B. The Borrower is engaged in the business specified in the Schedule of Terms and the Borrower is a supplier of the Goods. The Borrower inter alia supplies the Goods to the principal specified in the Schedule of Terms ("**Principal**"). Pursuant to the delivery of Goods by the Borrower to the Principal, the Borrower raises an invoice on the Principal for the same specifying the date of invoice, the description of Goods and the amount payable by the Principal under such invoice ("**Invoice**"), and the Principal is required to pay the Borrower the amounts specified in the Invoice, within the time period mutually agreed between the Borrower and Principal ("**Credit Period**") and recorded in a contract executed between them.*
- C. The Lender and the Principal have executed an agreement on the date specified in the Schedule of Terms ("**Service Agreement**"), in terms of which the Principal has inter alia agreed to identify and recommend suppliers from its network to the Lender, for the purpose of short term financing from the Lender. The Lender will, based on the*



recommendation of the Principal and subject to the terms of this Agreement, provide the Facility (defined below) to the Borrower, which monies shall be considered as payment towards the Accepted Invoice (defined below).

D. Relying upon the representations and information provided by the Borrower in this Agreement, the Lender has agreed to grant the Facility to the Borrower on terms and conditions hereinafter mentioned.

10. SMPL was referred as "Borrower" whereas Ugro was referred as "Lender" in the Facility Agreement. According to the facility agreement lender agrees to grant/make available to the borrower credit facility as per the scheduled of terms. On the request of respondent, the applicant herein was to make the disbursement. The same was to be repaid by the respondent being borrower along with interest. The relevant clauses of extended facility and repayment are as under:-

2. THE FACILITY

*2.1 The Borrower shall execute the **Schedule of Terms**, as approved/ stipulated by the Lender, for availing the Facility, pursuant to this Agreement.*

*2.2 The Lender hereby agrees to grant/ make available to the Borrower, and the Borrower hereby agrees to avail from the Lender pursuant to the Sanction Letter, the Facility, subject to the credit limit specified in the **Schedule of Terms** and subject to the terms and conditions contained in the Facility Documents.*

*2.3 The Borrower agrees and acknowledges that each Facility shall be solely used and applied towards the purpose as specified in the **Schedule of Terms** ("Purpose").*

3. DISBURSEMENT OF FACILITY

3.1 Subject to the terms of the Facility Documents, the Borrower shall be entitled to submit a Disbursement Request for each Facility to the Lender, along with (as stipulated by the Lender) (i) a copy of the purchase order issued by the Principal to place orders for purchase of Goods from the Borrower and in respect of which the Accepted Invoice was issued, and for (ii) a copy of the Accepted Invoice in respect of which the Borrower intends to obtain a Facility, and for (iii) a copy of the Material Receipt Note. The Disbursement Request shall be issued by the Borrower no later than



the Availability Period and 1 (one) Business Day prior to the proposed date of drawdown.

- 3.2 Disbursement of the Facility shall be made by the Lender at its discretion as per the mode of disbursement set out in the **Schedule of Terms** in respect of an unpaid Accepted Invoice having a minimum value as set out in the **Schedule of Terms**, and the date of remittance by the Lender shall be the date of disbursement ("**Disbursement Date**"). The Facility shall be remitted by the Lender subject to deduction of Interest payable on the Facility and the Charges

4. **INTEREST AND ADDITIONAL INTEREST**

- 4.1 Interest shall be payable from the Disbursement Date until the Final Settlement Date. Interest payable from the Disbursement Date until the expiry of the Credit Period shall be deducted by the Lender from the Facility at the time of its disbursement to the Borrower. In the event all Outstanding Amounts are not received by the Lender by the end of the Credit Period, the Borrower shall be liable to pay Interest to the Lender for the period from the expiry of the Credit Period until the Final Settlement Date. The Borrower shall also be liable to pay Additional Interest on the Facility or other Outstanding Amounts for the period after the Credit Period until the Final Settlement Date, at such rate as specified in the **Schedule of Terms**.

5. **REPAYMENT**

- 5.1 The Borrower shall repay the Facility as a bullet payment on the last day of the Credit Period being the Tenor, unless extended by the Lender at its sole discretion. In this regard, the Borrower shall issue irrevocable instructions to the Principal to deposit the Receivables to the Designated Account. The Lender shall appropriate the Receivables credited to the Designated Account towards repayment of the Facility.
- 5.2 In the event the Principal fails to deposit the Receivables into the Designated Account on the last day of the Credit Period, the Borrower shall be liable to deposit all the Outstanding Amounts (together with Additional Interest) into the Designated Account no later than 1 (one) Business Day from the expiry of the Credit Period ("**Extended Repayment Period**"). It is clarified that no notice or reminder shall be given by the Lender either to the Borrower or the Principal to repay the Facility as per the agreed time lines.

- Sd -

5.3 The records maintained by the Lender in its ordinary course of business shall be the conclusive evidence for the due amounts from the Borrower in respect of a Facility.

5.4 15% of the principal payment against each and every payment made will be considered as pre-payment of the facility without any pre-payment charges whatsoever. Prepayment of a Facility shall be permitted as per sanction letter dated 23rd January, 2021.

11. On behalf of the applicant, the sanction letter dated 23.01.2021 has been placed on record, whereby the facility of "Supply Chain Finance" was sanctioned to the limit of Rs. 3 Crores and the tenure of each facility was 90 days. Further the repayment of facility carrying interest 13% per annum. According to the facility agreement dated 28.01.2021, the disbursement was to be made on each and every request made by the respondent to Ugro accompanying with the copy of the purchase order, excepted invoice and copy of material receipt notes. The respondent herein availed the said facility and the applicant herein disburse the said amount to the respondent in various tranche against the request & invoices raised, the detail of which are as under:-

Invoice No	Invoice Submission Date	Net Invoice Amount	Loan Account Number	Account Open Date	Maturity Date	Delay Days	LPP % 36%	POS Pending	Delay Days of POS as on date 03.11.2021	Total Due As on Date
DHR/20-21/968	09-10-2020	1481735	400001SCF0031141	09-10-2020	09-01-2021	30	43902	0	-	43902
DHR/20-21/970	09-10-2020	1534005	400001SCF0031144	09-10-2020	07-01-2021	29	43877	0	-	43877
DHR/20-21/983	17-10-2020	973415	400001SCF0031596	17-10-2020	15-01-2021	21	20162	0	-	20162
DHR/20-21/1447	04-12-2020	1141650	400001SCF0035078	04-12-2020	04-03-2021	52	64183	0	-	64183
DHR/20-21/2202	30-01-2021	1810474	HCFAHMNSCF00001000598	24-10-2019	30-04-2021	-	333921	1810474	187	2144395
DHR/20-21/2206	30-01-2021	1771328	HCFAHMNSCF00001000598	24-10-2019	30-04-2021	-	326701	1771328	187	2098029
DHR/20-21/2247	02-02-2021	1781070	HCFAHMNSCF00001000598	24-10-2019	03-05-2021	-	70721	389692	184	460413
DHR/20-21/2252	02-02-2021	389692	HCFAHMNSCF00001000598	24-10-2019	03-05-2021	-	118294	655391	183	773685
DHR/20-21/2278	04-02-2021	655391	HCFAHMNSCF00001000598	24-10-2019	04-05-2021	-	79491	442832	182	522323
DHR/20-21/2273	04-02-2021	442832	HCFAHMNSCF00001000598	24-10-2019	05-05-2021	-	310811	1731473	182	2042284
DHR/20-21/2276	04-02-2021	1731473	HCFAHMNSCF00001000598	24-10-2019	05-05-2021	-	330102	1880264	178	2210366
DHR/20-21/2331	08-02-2021	1880264	HCFAHMNSCF00001000598	24-10-2019	09-05-2021	-	97833	557260	178	655093
DHR/20-21/2304	08-02-2021	557260	HCFAHMNSCF00001000598	24-10-2019	09-05-2021	-	266653	1518914	178	1785577
DHR/20-21/2330	08-02-2021	1518914	HCFAHMNSCF00001000598	24-10-2019	09-05-2021	-	186586	1062797	178	1249383
DHR/20-21/2335	08-02-2021	1062797	HCFAHMNSCF00001000598	24-10-2019	10-05-2021	-	245838	1408205	177	1654043
DHR/20-21/2345	09-02-2021	1408205	HCFAHMNSCF00001000598	24-10-2019	10-05-2021	-	283255	1622536	177	1905791
DHR/20-21/2369	09-02-2021	1622536	HCFAHMNSCF00001000598	24-10-2019	10-05-2021	-	74215	425119	177	499334
DHR/20-21/2370	09-02-2021	425119	HCFAHMNSCF00001000598	24-10-2019	10-05-2021	-	285123	1651905	175	1937028
DHR/20-21/2401	11-02-2021	1651905	HCFAHMNSCF00001000598	24-10-2019	12-05-2021	-	178082	1031745	175	1209827
DHR/20-21/2406	11-02-2021	1031745	HCFAHMNSCF00001000598	24-10-2019	12-05-2021	-	315317	1837304	174	2152616
DHR/20-21/2425	12-02-2021	1837304	HCFAHMNSCF00001000598	24-10-2019	13-05-2021	-	165451	964075	174	1129526
DHR/20-21/2427	12-02-2021	964075	HCFAHMNSCF00001000598	24-10-2019	13-05-2021	-	285526	1733480	167	2019005
DHR/20-21/2473	19-02-2021	1733480	HCFAHMNSCF00001000598	24-10-2019	20-05-2021	-	71763	435588	167	507451
DHR/20-21/2476	19-02-2021	435588	HCFAHMNSCF00001000598	24-10-2019	20-05-2021	-				
Total dues as on 03.11.2021										29232592

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12. Apparently, the abovesaid invoices have been duly raised and the facility was accordingly, availed during the period Oct 2019 to Oct 2020 and a sum of Rs. 2,92,32,592/- were due as on 03.11.2021. As and on 12.04.2021, a sum of Rs. 2,59,31,269/- were stated to be due which includes Rs. 78067/- as an interest after maturity. In this regard, it is worthwhile that in the facility agreement dated 28.01.2021, the events of default & Consequences thereof have been laid down under clause 10, which is as under:-

10. EVENTS OF DEFAULT AND CONSEQUENCES

- 10.1 Occurrence of any one or more of the following shall be treated as an event of default ("Event of Default"). In the event of any disagreement or dispute between the Lender and Borrower regarding the occurrence of any Event of Default, the opinion of the Lender shall be final and binding on the Borrower:
- (a) Failure by the Principal to repay the Outstanding Amounts on the last day of the Credit Period, or failure by the Borrower to repay the Outstanding Amounts before the expiry of the Extended Repayment Period,
 - (b) Any representation or warranty being inaccurate, untrue or misleading
 - (c) Breach of any covenant or any provision of the Facility Documents, or non-compliance with any applicable law, by the Borrower, or any fraud on the part of the Borrower,
 - (d) Occurrence of a Material Distruption Event or Material Adverse Effect,
 - (e) Appointment of a receiver or a liquidator in respect of all or any part of the undertaking of the Borrower, or resolution by the Borrower for undertaking voluntary winding up process, or admission of a petition for winding up/ dissolution of the Borrower, or insolvency/ bankruptcy of the Borrower,
 - (f) Any default by the Borrower under any other agreement between the Borrower and the Lender or between the Borrower and any third party lender, or declaration of moratorium in respect of any indebtedness of the Borrower, or default by the Borrower to pay and discharge statutory dues,
 - (g) Any of the promoters/directors or key management personnel of the Borrower being declared a wilful defaulter in any list published by Governmental Authorities from time to time, and/or
 - (h) Occurrence of any force majeure event or an event not in the control of Borrower
- 10.2 At any time after the happening of an Event of Default, the Lender shall be entitled to exercise the rights described hereunder and/or the rights available under applicable law:
- (a) Cancel the undisbursed amounts from any of the Facilities,
 - (b) declare that all Outstanding Amounts under this Agreement are immediately due and payable to the Lender,
 - (c) enforce the Security or part thereof as the Lender may deem fit,
 - (d) exercise Lender's lien or right of set-off with respect to any obligation of the Borrower to the Lender,
 - (e) exercise the right to apply any other money or amounts standing to the credit of the Borrower with the Lender in or toward the repayment of the Borrower's dues, without any notice to the Borrower,
 - (f) appoint a nominee director on the board of the Borrower, and/or
 - (g) Disclose any information or data relating to the Borrower including the details relating to the Event of Default to any governmental authority or Credit Information Agency, which information/ data can be processed by such governmental authority or Credit Information Agency in the manner deemed fit by them

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13. From the bare perusal of the same it is apparent that in the event of default, Ugro was entitled to exercise right and to declare that all the outstanding amounts are immediately due and payable. From the perusal of the detail of ledger place on record, it is established that the amount availed under Supply Chain finance, the same was not paid even after expiry of 90 days. Accordingly, after the default of the same, the applicant herein issued a demand notice dated 20.04.2021 and a corrigendum dated 21.07.2021. Despite that the said amount was not availed. No such dispute was ever raised.
14. Although, on behalf of the respondent, it is being argued that there was dispute between the parties and the matter was taken up through the arbitrator as the primary responsibility of the payment was of KUPL, but the same has not been arrayed his party herein deliberately. No doubt Mr. Ashfak Ahmad was appointed as Arbitrator of the parties, but the very appointment of the said Arbitrator was challenged by the respondent himself as admitted in reply. Thus, mere appointment of Arbitrator does not bar the filing of the present petition under Section 7 of the Code. So far as the question of making the payment by KUPL to Ugro is concerned, it is to be mentioned that the KUPL was only to introduce the suppliers to Ugro Capital who were in need of Financial Assistance and the Master Service Agreement dated 20.02.2019 was only to that effect. After the execution of Sanction Letter dated 23.01.2021 & Facility Agreement dated 28.01.2021, the relation of Lender & borrower has been established between Ugro & SMPL. The said agreement, though, was in response to Master Service Agreement, but the same was independently executed between Ugro & SMPL. The applicant herein succeeded in proving the fact that there was relation of Lender & borrower between both the applicant & the respondent in view of the Supply Chain Facility (CC Facility) availed by the respondent to the tune of Rs. 3 crores. The said facility very much comes under the

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definition of “financial debt” as defined under Section 5(8) of the Code,
which is as under:-

“financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

Explanation.- For the purposes of this sub-clause,-

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*
- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”*

15. The opening words of definition clause of Section 5(8) of the Code provides that a financial debt is a debt disbursement of the amount against consideration for the Time Value of Money and it includes the transaction enumerated in subsequent sub-clauses. In the present matter, the “Supply Chain Facility” was duly sanctioned by the applicant herein in the favour of the Respondent/Corporate Debtor and the said facility used to be for a period of 90 days and was



carrying interest at the rate of 13% per annum. The said fact also stands corroborated from the details of the invoices & disbursement request raised on the part of the respondent stated above in para no. 11. Thus, the said price was asserted with the length of time, according the interest was to be paid. Hence, the said transaction was having time value of money was having a commercial effect of borrowing. In this regard the reference can also be made to the citation **Anuj Jain Vs. Axis Bank Limited, Civil Appeal No. 8512-8527 of 2019 decided on 26.02.2022**, wherein it is laid down that the consideration for Time Value Money is not just limited to clause of Section 5(8), forms & essential part of all transactions listed under sub-clause (a) to (i) of the Section 5(8) of the Code, even if it is not expressly stated within those clauses. In view of the abovesaid facts and circumstances, it is established that the applicant herein is "*Financial Creditor*" and the respondent has availed "Supply Chain Facility" i.e. (CC limit) for a sum of Rs. 3 crores and after availing the same, the amount of Rs. 2,59,31,269/-, was not repaid by the respondent to the applicant herein.

16. In sequel of the abovesaid discussion, this Tribunal is of the view that the respondent duly availed the Supply Chain Facility by virtue of Sanction letter dated 23.01.2021, accordingly, a sum of Rs. 2,59,31,269/- were owed by the Corporate Debtor, which was not repaid, hence, the respondent committed default in the repayment of the same. Thus, the present application under Section 7 of the Code is maintainable, once the default pertains to more than Rs. 1 Crores.

17. A perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

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18. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.
19. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, **the present application is hereby, admitted.**
20. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Abhishek Anand, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00038/2016-2017/10077 resident of E-103, Greater Kailash Enclave-I, New Delhi-110048 with email - id. Irpepoch@gmail.com. Mr. Abhishek Anand has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Abhishek Anand as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.
21. Mr. Abhishek Anand, having registration number IBBI/IPA-002/IP-N00038/2016- 2017/10077 is appointed as an Interim Resolution Professional for corporate debtor.

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22. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
23. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Abhishek Anand to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
24. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - (c) *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - (d) *the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the corporate debtor*
 - (e) *The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearance or similar grant or given by the Central government , State Government, local authority, sectoral*

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regulator or any other authority constituted under any other law for the time being in force, on the grounds of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period”.

25. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
26. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation imposed by



Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

27. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

Sd -

(L.N. GUPTA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)