

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 698(PB)/2020**

IA-5728/2022.

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016.

IN THE MATTER OF:

ICICI BANK LTD.

HAVING ITS REGISTERED OFFICE AT:

**ICICI BANK TOWER, NEAR CHAKLI CIRCLE, OLD PADRA ROAD,
GUJARAT, VADODARA-390007**

HAVING ITS PRINCIPAL/REGIONAL OFFICE AT:

**ICICI BANK TOWER, NBCC PLACE, BHISHM PITAMAH MARG,
PRAGATI VIHAR, NEW DELHI-110003**

CIN: L65190GJ1994PLC021012

.....APPLICANT/FINANCIAL CREDITOR

VERSUS

M/s AVANTHA HOLDINGS LTD.

HAVING ITS REGISTERED OFFICE AT:

THAPAR HOUSE, 124, JANPATH, NEW DELHI-110001.

CIN: U67120DL1998PLC198627

.....RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 02.03.2023

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ICICI BANK LTD. vs. M/s AVANTHA HOLDINGS LTD.
IA-5728/2022 IN CP (IB) – 698 (PB)/2020

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Financial Creditor : Mr. Krishnendu Datta, Sr. Adv. With Mr. Navneet Gupta, Ms. Shilpa Thakur, Ms. Vidushi and Ms. Neha Aggarwal, Advs.
For the Corporate Debtor : Mr. Alok Dhir, Ms. Varsha Banarjee & Mr. Kanishk Khetan, Advs.

ORDER

PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

Brief Facts:

1. **CP (IB) – 698(PB)/2020** is an Application filed by **ICICI BANK LTD.**, the Financial Creditor (FC)/Applicant on 28.02.2020, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC,2016**") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("**Adjudicating Authority Rules**"), for initiating the Corporate Insolvency Resolution Process ("**CIRP**"), declaring moratorium and for appointment of Interim Resolution Professional ("**IRP**"), against the Corporate Debtor (CD)/Respondent viz. **M/s AVANTHA HOLDINGS LTD.**, on the ground that the Corporate Debtor has defaulted to make payment of a sum of USD 37,336,292.22 as on 31.01.2020 (it is noted that One USD was equal to approximately Rs.70 as on 31.01.2020, therefore USD 37,336,292.22 was equal to approximately Rs.

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- 261,35,40,440 – Rupees Two Hundred Sixty One Crores Thirty Five Lakhs Forty Thousand Four Hundred Forty Only).
2. **IA-5728/2022** is an Application being jointly preferred by ICICI Bank Limited ("**Financial Creditor**") and Avantha Holdings Limited ("**Corporate Debtor**") under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking deferment of the **Company Petition (IB) No. 698(PB)/2020**, in view of the ongoing mutual settlement discussions between the Financial Creditor and the Corporate Debtor.
 3. That the Financial Creditor ("**FC**") was incorporated on 05.01.1994 and registered under the provisions of the Companies Act, 1956 as Non- govt. Company having CIN:L65190GJ1994PLC021012 and also a Banking Company within the meaning of Section 5(c) of the Banking Regulation Act, 1949. The Authorised Share Capital of the FC is INR 2499,99,99,500 (*Rupees Two Thousand Four Hundred Ninety Nine Crores Ninety Nine Lakhs Ninety Nine Thousand Five Hundred Only*) and the Paid-up Share Capital of the FC is INR 1394,25,93,500 (*Rupees One Thousand Three Hundred Ninety Four Crores Twenty Five Lakhs Ninety Three Thousand Five Hundred Only*).
 4. The Corporate Debtor ("**CD**") was incorporated on 29.05.1998, as a Company Limited by Shares (Non- govt. Company) having CIN: U67120DL1998PLC198627, under the Companies Act, 1956. The Authorised Share Capital of the CD is INR 515,87,00,000 (*Rupees Five Hundred Fifteen Crores Eighty Seven Lakhs only*) and the Paid-up Share Capital of the CD is INR 4,55,00,000 (*Rupees Four Crores Fifty Five Lakhs only*). On the date of application, the CD is engaged in activities auxiliary to financial intermediation, except insurance and pension funding. The Registered Office

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Address of the CD is THAPAR HOUSE, 124, JANPATH, NEW DELHI-110001. Therefore, this Bench has jurisdiction to deal with this application. A true copy of the Company Details/Master Data relating to the CD downloaded from the website of the Ministry of Corporate Affairs as on 12.09.2019 is on **Page 33-34 of the Application**).

5. **Submission of the Financial Creditor:**

- a) That M/s Mirabelle Trading Pte. Ltd¹ ("**the Borrower**"), a subsidiary company of the Corporate Debtor, approached the Financial Creditor for grant of a certain Credit Facility in the nature of Letter of Credit to the extent of USD 50.00 million and assured that the Corporate Debtor, being the parent/holding company would ensure that the Borrower shall maintain financial discipline in the account. The Board of Directors of the Corporate Debtor in their meeting held on 14.05.2014 resolved to execute an irrevocable undertaking in favour of the Financial Creditor in connection with the Credit Facility.
- b) Accordingly, the Financial Creditor on the strength of the board resolution passed by the Corporate Debtor vide Credit Arrangement Letter ("**CAL**") dated 04.06.2014 sanctioned Letter of Credit Facility of USD 50.00 million ("**Credit Facility**") to the Borrower on the terms and conditions as contained therein. It was one of the conditions of sanction that the Corporate Debtor shall provide an undertaking in the form and manner acceptable to the Financial Creditor to top up any shortfall in the "Debt Service Reserve Account" ("**DSRA**") on behalf of the Borrower by way of infusion of funds in the DSRA within two

¹ M/S. Mirabelle Trading Pte Ltd is located at 101 Cecil Street, 19-13 Tong Eng Building Singapore 069533 Singapore. This Company deals in Export under Chemical Wood Pulp, Soda or Sulphate, other than Dissolving Grades Category.

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business days of DSRA Top Up Date but not later than the LC expiry date.

- c)** Accordingly, the following documents were executed by the Borrower in favour of the Financial Creditor
- i). Facility Agreement dated 06.06.2014:
 - ii). Debenture Agreement dated 06.06.2014:
 - iii). Debt Service Reserve Account Pledge Agreement dated 06.06.2014.
- d)** The Corporate Debtor vide letter dated 06.06.2014 further undertook that the cash proceeds received from the royalty contract with M/s Ballarpur Industries Ltd shall be deposited in a designated account maintained with ICICI Bank India and any withdrawal or debit of the discounted royalty receivables or any part thereof from the said account shall be subject to the prior written consent of the Financial Creditor.
- e)** Accordingly, an amendatory Facility Agreement dated 08.01.2015 was executed between the Borrower and the Financial Creditor. The Financial Creditor vide CAL dated 21.10.2015 reduced the Credit Facility from USD 50.00 million to USD 40.00 million to the Borrower on the terms and conditions as contained therein. Accordingly, a Letter of Amendment dated 03.11.2015 was executed between the Borrower and the Financial Creditor.
- f)** The Financial Credit vide CAL dated 07.10.2016 reduced the Credit Facility from USD 40.00 million to USD 30.00 million to the Borrower on the terms and conditions as contained therein. The Financial Creditor vide renewal CAL dated 12.04.2018 further renewed the Credit Facility to the Borrower on the terms and conditions as contained therein. It is submitted in this CAL, the Borrower admitted that there were outstanding

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LCs of USD 28.21 million issued by ICICI Bank as on 31.03.2018.

- g)** However, the Borrower started committing default and failed to make payment/repayment of the bills under the LCs issued by the Financial Creditor. Further, the Borrower as well as the Corporate Debtor also committed various other breaches of the terms and conditions of the transaction documents. Thus, the Financial Creditor vide demand notices dated 03.05.2018, 10.05.2018, 16.05.2018, 22.05.2018, 20.06.2018, 26.06.2018 and 01.08.2018 called upon the Corporate Debtor to infuse funds in terms of undertaking/guarantee given by it. However, despite issuance of the aforesaid demand notices, the amount demanded has not been paid.
- h)** When despite repeated requests and reminders the default was continuing, the Financial Creditor vide notice of default and reservation of rights dated 12.06.2018 called upon the borrower and the Corporate Debtor to pay the overdue amount of USD 19,179,769.49 as on 31.05.2018 together with further interest and other charges.
- i)** In view of the aforesaid default and to assure the Financial Creditor of the repayment of the dues under the Credit Facility, one M/s Ballarpur Paper Holdings B.V.², a private company with limited liability incorporated in the Netherlands having registration No. 34259940 agreed to provide guarantee to the Financial Creditor.
- j)** That, despite requests and reminders, the default was not rectified, the Financial Creditor called upon vide its letter dated

² Ballarpur International Graphic Paper Holdings (BIGPH), a company incorporated in the Netherlands. BIGPH owns subsidiaries which are leading pulp and paper manufacturers in India and Malaysia. BIGPH is a step-down subsidiary of Ballarpur Industries Limited ("BILT" or the "Company" and BILT together with its subsidiaries referred to as the "Group"), which is head quartered in India.

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05.09.2018 to the Guarantor to pay the outstanding amount of USD 30,341,609.84 as on 31.08.2018. However, despite receipt of the said demand notice, the Guarantor neglected and failed to make payment of the due amount to the Applicant's Bank. That as the default continued, the Financial Creditor against continuing default *vide* Demand letters dated 27.09.2018, 13.11.2018, 19.12.2018, 21.02.2019 and 19.08.2019 called upon the Borrower and/or the Corporate Debtor to pay the outstanding amount. It is submitted that *vide* letter dated 19.08.2019, the Corporate Debtor was called upon to pay a sum of USD 34,841,858.31 as on 31.07.2019.

- k)** The Financial Creditor has placed the following documents on record:
- i.** True Copy of Resolution dated 14.05.2014 passed by the Board of Directors of the Corporate Debtor (**Ref: Page 42 – 43 of the application**).
 - ii.** True Copy of Credit Arrangement Letter dated 04.06.2014 issued by ICICI Bank Ltd. (**Ref: Page 44 – 53 of the application**).
 - iii.** True Copy of Amendatory Credit Arrangement Letter dated 04.06.2014 issued by ICICI Bank Ltd. (**Ref: Page 54 – 55 of the application**).
 - iv.** True Copy of Debenture agreement dated 06.06.2014 executed between Corporate Debtor and ICICI Bank, Bahrain Branch. (**Ref: Page 129 – 164 of the application**).
 - v.** True Copy of Debt Service Reserve Account Pledge agreement dated 06.06.2014 executed between Corporate Debtor and ICICI Bank, Bahrain Branch. (**Ref: Page 165 – 181 of the application**).

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- vi. True Copy of the Central Repository of Information on Large Credits Report (CRILCR). (**Ref: Page 319 – 320 of the application**).
 - vii. True Copy of Statement of Account duly certified under the Bankers Book Evidence Act, 1891. (**Ref: Page 321 – 325 of the application**).

6. **Submission of the Corporate Debtor:**

The Corporate Debtor filed its reply on 23.07.2021 and submitted that:

I. THE PETITIONER IS NOT A FINANCIAL CREDITOR IN THE ABSENCE OF ANY FINANCIAL DEBT BEING EITHER DUE OR PAYABLE BY THE CORPORATE DEBTOR

- a) At the outset, it is submitted that the Petition under reply is legally not tenable under Section 7 of the Code. The Petitioner is not a Financial Creditor as defined under Section 5(7) of the Code, which states that a "financial creditor" *"means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to"*.
- b) It is further submitted that in terms of Section 5(8) read with Section 7 of the Code, the Petitioner has no legal right or basis to be treated as a Financial Creditor.
- c) As per clause 17 of the Facility Agreement dated 06.06.2014, the Borrower was required to open and maintain a Debt Service Reserve Account ("**DSRA**") wherein a Minimum Balance, as specified in the said Facility Agreement was required to be maintained by the Borrower at all times.
- d) It is submitted that the DSRA was opened by the Borrower and was held in its own name. The said DSRA was merely pledged to the Petitioner through a Pledge Agreement dated

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06.06.2014, however, the ownership of the said DSRA remained with the Borrower. The Borrower was to maintain the minimum balance in the said DSRA, which would act as margin money towards the issuance of the Letters of Credit by the Petitioner. The liability of the Respondent/CD towards the Petitioner is only with respect to the infusion of funds into the DSRA in the event of any shortfall in the minimum balance.

- e) Thus, the responsibility of the Respondent/CD was restricted to meet the shortfall in the DSRA, which is clearly not a liability of repayment of any Financial Debt to the Petitioner. It is further submitted that there was no disbursement of debt by the Petitioner to the Respondent/CD.
- f) In light of the above section, a right to payment is an essential ingredient for establishing a claim of one person against another. Analysis of the above Undertaking, it is evident that there was no right to payment accruing to the Petitioner viz-a-viz, the Respondent/CD. The Respondent/CD merely had to meet the shortfall in the DSRA in case the Borrower would not be able to maintain the same.

II. WITHOUT PREJUDICE, THE RESPONDENT IS DIRECTED TO RETAIN FUNDS/OTHER ASSETS AND RESTRAINED FROM DISPOSING OF, SELLING, OR ALIENATING, IN ANY OTHER MANNER, ITS ASSETS OR DIVERTING FUNDS, IN TERMS OF THE CONFIRMATORY ORDER DATED 11.03.2020 PASSED BY THE SECURITIES EXCHANGE BOARD OF INDIA.

- a) Without prejudice to the above mentioned submission, it is submitted that the Respondent/CD has been directed by the Securities and Exchange Board of India ("**SEBI**") to retain funds/other assets to the extent of receivables outstanding to a

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company, CG Power and Industrial Solutions Limited, and is further restrained from disposing of, selling or alienating, in any other manner, its assets or divert funds, till further orders of the SEBI.

- b) It is submitted that the SEBI had initiated an inquiry into the affairs of CG Power and Industrial Solution Limited and on 11.03.2020 passed a Confirmatory Order under Section 11(1), 11(4) and 11B of the SEBI Act, 1992. The Respondent/CD was also made party to such proceedings as Noticee No. 6, wherein the following directions were issued by the SEBI:

"(iv) Noticees no. 6-8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited, are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG Power and Industrial Solution limited, as mentioned at Table XII of paragraph 30A. To the extent of their liability, the aforesaid Noticees are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders. Noticee 8 shall however, be permitted:- (a) to make payments towards dues to statutory authorities; (b) incur expenses towards provident fund, pension and gratuity, insurance and similar other expenses; (c) to make payments/wages to employees/retainer/staff security guards, etc. and (d) to make payments towards legal expenses. Further, Noticee 6 shall continue to abide by the directions issued vide SEBI letter dated October 16, 2019. Additionally, Noticee 6 shall be permitted to make payments towards legal expenses."

Copy of the Confirmatory Order passed by the SEBI on 11.03.2020 is annexed and marked as **ANNEXURE R-2 (Ref: Page 27 – 200 of the reply)**.

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- c) As per the Confirmatory Order, the receivables shown as outstanding to CG Power and Industrial Solutions Limited, as mentioned at Table XII of paragraph 30A of the Confirmatory Order amounts to Rs. 1006.22 crores.
- d) That during the pendency of such proceedings, an Interim Order was also passed by the SEBI on 17.09.2019, wherein, the Respondent/CD was also directed to retain funds/other assets to the extent of receivable outstanding to CG Power and Industrial Solutions Limited, and was further restrained from disposing of, selling or alienating, in any other manner, its assets or divert funds, till further orders of the SEBI. Copy of the Interim Order passed by the SEBI on 17.09.2019 is annexed and marked as **ANNEXURE R-3 (Ref: Page 201 – 232 of the reply)**.

III. THE PETITION FILED UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016 IS WITHOUT PROPER AUTHORITY AND DEFECTIVE

- a) That the instant Petition has been filed without proper authority. The application is filed by the Financial Creditor through an officer/employee, namely, Mr. Abhinav Prakash, Legal Manager however, Mr. Abhinav Prakash is not authorized to file such a petition.
- b) There is neither a specific power of attorney nor a Board Resolution issued by the Financial Creditor authorizing Mr. Abhinav Prakash to file such a Petition.
- c) The issue of specific authorization for filing any application under Section 7 or 9 of the Insolvency and Bankruptcy Code,

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2016 ("**Code**") has been dealt with by the Hon'ble Appellate Authority in **Palogix Infrastructure Private Limited v. ICICI Bank Limited Company Appeal (AT) (Insolvency) No. 30 of 2017**, National Company Law Appellate Tribunal dated 20-09-2017, where it was clarified that a general power of attorney or any other such general authorization does not suffice as a valid authorization for filing an application for initiation of insolvency proceedings under the Code.

- d) It is submitted that the only form of authorization enclosed with the Petition is a general power of attorney on Page No. 35 of the Petition, which grants a general power to Mr. Abhinav Prakash to file any application/petition/legal proceedings on behalf of the Financial Creditor, however, the same is not specific to the instant Corporate Debtor.
- e) It is further pertinent to note that Mr. Abhinav Prakash is not even the authorized officer who sanctioned the alleged debts (which is the subject matter of the Petition). No document annexed to the Petition bear the signatures of Mr. Abhinav Prakash.

IV. FORM I FILED BY THE PETITIONER IS INCOMPLETE AND NOT IN ACCORDANCE WITH SECTION 7 AND SECTION 215 OF THE CODE

- a) It is submitted that Form 1 filed by the Petitioner is incomplete and not in accordance with provisions of Section 7 and Section 215 of the Code.
- b) It is submitted that in terms of Section 215 of the Code, it is mandatory for the Financial Creditor to furnish the record of default recorded with the Information Utility. It is stated that the record of default as available with the Information Utility is

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required to be annexed at Part V of Form I which the Financial Creditor has failed to provide. Section 215 of the IBC is reproduced herein below for the ready reference of this Hon'ble Tribunal:

“215. Procedure for submission, etc. of financial information.

(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

(2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified”.

- c) From the bare perusal of the above section, it is clear that it is mandatory for the Financial Creditor to submit financial information and information relating to assets in relation to which any security interest has been created with the Information Utility. It is submitted that the Information Utility i.e. M/s National E-Governance Services Limited bearing Registration number **IBBI/IU/01** is fully operational and functional and registered with the Insolvency and Bankruptcy Board of India. Copy of the details of the Information Utility as available on the website of IBBI is annexed hereto and marked as **ANNEXURE R-6 (Ref: Page 236 of the reply)**.

7. Rejoinder to Reply to the Corporate Debtor dated 07.09.2021

Preliminary Objections

The Financial Creditor has submitted that the present reply, filed by one Ms. Megha Bhardwaj Sablok, alleged authorised signatory of the Corporate Debtor, is liable to be rejected and taken off the records of this Hon'ble Adjudicating Authority on the ground that Ms. Megha Bhardwaj Sablok has not been authorised to file the present reply before this Hon'ble Adjudicating Authority pursuant to the alleged resolution dated 23.01.2020 passed in the meeting of the Board of Directors of the Corporate Debtor. A bare perusal of the alleged resolution dated 23.01.2020 passed in the meeting of the Board of Directors of the Corporate Debtor (**annexed as Annexure A-1 on page 26 of the reply**) does not authorise any of its authorised signatories to defend the present petition before this Hon'ble Adjudicating Authority. The authority given is general and not specific to the proceedings under the provisions of the Code. Hence on this ground alone, the reply filed by Ms. Megha Bhardwaj Sablok is not a reply filed by any authorised representative of the Corporate Debtor and is thus liable to be rejected and taken off the records of this Hon'ble Adjudicating Authority.

Preliminary Submissions

- i. It is submitted that the scope of review by the Adjudicating Authority of an application under Section 7 of the Code is limited to:
 - (a) the existence of debt and occurrence of default thereon;
 - (b) the application being complete; and
 - (c) absence of disciplinary proceedings against the proposed interim resolution professional (IRP).

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Once the aforesaid three conditions have been satisfied, the Code mandates that the Adjudicating Authority is required to admit the application.

- ii. It is denied that Form I filed by the Financial Creditor is incomplete or is not in accordance with the provisions of the Code. It is denied that the record of default as available with the Information Utility is required to be annexed with the petition which the Financial Creditor has failed to provide. As per the information available with the Financial Creditor, no record of default is available on the Information Utility or any of the Credit Information Companies. That is why the Financial Creditor stated as 'not available' in the petition with respect to the record of default with the Information Utility. Further, the report as downloaded from the website of Central Repository of Information on Large Credits ("**CRILIC**") has been attached and annexed with the list of documents. Therefore, the Financial Creditor has complied with the provisions of the law in letter and spirit. The Corporate Debtor is making a futile attempt to mislead this Hon'ble Adjudicating Authority. It is denied that non-production of the record of default on the Information Utility and/or Credit Information Companies or there being no mention of the name of the Corporate Debtor in CRILIC record proves that the Corporate Debtor has not defaulted in any payment due to the Financial Creditor. The Respondent/CD cannot raise this issue when they have admitted their liability to meet the shortfall in the payment to be made by the borrower through DSRA and when they have not annexed any proof with the reply that such shortfall was squarely met by

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them. Therefore, all these technical grounds being raised by the Corporate Debtor are devoid of any merit and are liable to be rejected.

8. **Objections by the Respondent dated 26.09.2022 to the Application dated 05.09.2022 filed by the Financial Creditor seeking permission to place on record additional documents along with Affidavit in support**

- i. It is submitted that the Applicant/FC plea to now place on record certain documents claiming them to be necessary for better adjudication of the captioned Company Petition is not only unjustified but baseless. It is further stated that the documents as sought to be placed on record by the Applicant/FC are certain balance sheets of a foreign entity, namely, Mirabelle Trading Pte Limited (hereinafter, "**Mirabelle**"), account statements and board resolutions. It is stated that none of these documents are of such nature which have come into existence recently, which warrant such circumstances for them to be brought on record. It is stated that apart from the balance sheet of Mirabelle, the other documents are of the Applicant/FC itself, i.e., Account statement and board resolution, which ought to have formed part of the Section 7 Petition at the outset.
- ii. It is relevant to mention herein that the Respondent/CD in its Reply in the first instance had clearly submitted that no debt was disbursed by the Applicant/FC to the Respondent/CD. The alleged disbursement to Mirabelle is now belatedly sought to be established by placing on record the balance sheet of Mirabelle and the details of the Debt Service Reserve Account ("**DSRA**") of Mirabelle. It is submitted that Mirabelle is a separate corporate

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entity and its Balance Sheet and DSRA statement cannot be in any manner be admitted or verified by the Respondent/CD.

- iii. It is stated that the Applicant/FC has sought to place on record the balance sheet of Mirabelle, a foreign entity, stating that Mirabelle has allegedly acknowledged the outstanding debt owed to the Applicant/FC. In this context, it is stated that the alleged acknowledgement of debt by Mirabelle is not the subject matter of the dispute in the instant proceedings. It is stated that the Corporate Debtor and Mirabelle are independent entities having separate legal identity, thereby any alleged acknowledgement of debt by Mirabelle qua its liabilities towards the Applicant/FC is neither binding upon nor concerning the Respondent/CD. It is further stated that the alleged admission of debt by Mirabelle towards the ICICI Bank, Bahrain, whereas the captioned Company Petition is filed by ICICI Bank, Gujarat. It is stated that any alleged admission of liability by an entity to a foreign bank does not empower an Indian Bank to take the same for its benefit for initiation of any proceeding by it in India.
- iv. Without prejudice, it is further stated the Balance Sheet of Mirabelle, as sought to relied upon by the Applicant/FC, itself states at Note No. 12 "Bank Borrowings cont'd" (@Pg.42/Application) that the Respondent/CD herein has undertaken to deposit funds into Mirabelle's DSRA to ensure the Debt Service Minimum Balance is maintained. Alternatively, another statement as regards Ballarpur Paper Holdings B.V (hereinafter, "**Ballarpur**") has been made wherein, it is stated that Ballarpur had provided a guarantee to secure Mirabelle's obligation to the Bank. It is stated that the Respondent/CD herein neither comments nor is concerned

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with any alleged liability of Ballarpur towards the Bank, however, it is submitted that on mere perusal of the said Balance Sheet and reading the language of the two clauses, it is evident that the obligation of the Respondent/CD was merely "ensuring" maintenance of the minimum balance in the DSRA which is not covered under the term "guarantee". Had the intention been to bring the nature of the Respondent's obligation into the fold of the guarantee, the above clause would have been appropriately worded.

- v. It is further stated that the alleged loan to Mirabelle has been given by the ICICI Bank, Bahrain, which is a foreign entity. It is further stated that the alleged Undertaking dated 06.06.2014 executed by the Respondent/CD and Mirabelle is also in favour of ICICI Bank Limited, Bahrain Branch, which has been termed as "Lender". It is stated that the Applicant/FC has failed to make out a case as to how it, being a Bank registered in Gujarat, is authorised to file the instant proceedings on behalf of the ICICI Bank, Bahrain. It is stated that the Applicant/FC has failed to place on record any document or authorisation from ICICI Bank, Bahrain empowering the instant Applicant/FC to pursue the proceedings in India.

9. Analysis and Findings

- i.** We have heard the learned Senior Counsel appearing for the FC/Applicant and the learned Counsel appearing for the CD/Respondent.
- ii.** After hearing both the parties on a few occasions, a joint application by FC and CD in IA 5728/2022 was filed and listed on 17.11.2022. In this IA, it is prayed that the Company Petition (IB) No. 698/2020 be deferred in view of the ongoing mutual settlement discussions between the FC and CD. The

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IA-5728/2022 IN CP (IB) – 698 (PB)/2020

deferment was sought for 6 weeks. This period is since over, we are sanguine that the parties have settled the matter or have reached an advanced stage of settlement.

- iii.** In light of the above, **we are inclined to close this petition**, with the liberty to the Applicant/FC to re-open if the cause of action survives. Leaving it open to the parties to agitate all issues afresh and in accordance with the law.

10. **Order**

In light of the above facts and circumstances, it is **hereby ordered** as follows: -

- i.** The Application bearing **CP(IB)-698(PB)/2020** filed by the Applicant/FC, under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Respondent/CD, is **closed**. The Applicant/FC is at liberty to re-open the matter if the cause of action survives.
No order as to costs.
- ii.** In light of the above order, **IA-5728/2022** and other associated IAs, if any stand disposed of.
File be consigned to the record.
- iii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- iv.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
(RAMALINGAM SUDHAKAR)
PRESIDENT

-SD-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)