

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

CP (IB) 301/MB/C-1/2022

Under section 7 of the Insolvency and Bankruptcy Code,
2016 read with Rule 4 Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

Yes Bank Limited

[CIN: L65190MH2003PLC143249]

YES Bank House, Off Western Express Highway,
Santacruz East, Mumbai - 400055

...Applicant/Financial Creditor

Versus

Zee Learn Limited

[CIN: L80301MH2010PLC198405]

Continental Building, 135, Dr. Annie Besant Road,
Worli, Mumbai - 400018

... Respondent/Corporate Debtor

Order Delivered on 10.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Vyankatesh Dhond, Sr. Advocate
a/w Ms. Vinodini Srinivasana,
Advocate i/b Mr. Dharmesh Jain,
Advocate

For the Liquidator : Mr. Krishnendu Datta, Sr. Advocate
a/w Mr. Rohit Gupta, Advocate a/w
Tasneem Zariwala a/w Saurabh
Nikalje i/b Vidhii Partners

ORDER

Per Coram:

1. The present petition is filed by Mr. Piyush Ranjan, Senior Vice President of YES Bank, on behalf of **Yes Bank Limited** (hereinafter referred to as “the Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) again **Zee Learn Limited**, (hereinafter referred to as “**the Corporate Debtor**”).
2. The Corporate Debtor was incorporated on 05.08.2010 under Companies Act, 1956. Its registered office is situated at Continental Building, 135, Dr. Annie Besant Road, Worli, Mumbai - 400018. Hence, this Tribunal has the jurisdiction to entertain this petition.
3. The total amount of debt alleged to be in default is Rs.4,689,990,947.45 (Rupees Four Billion Six Hundred and Eighty Nine Million Nine Hundred And Ninety Thousand Nine Forty Seven and Four Five Paise Only). Out of this, the Principal amount is Rs.4106758668.88/- and Rs.583,232,278.57/- is the amount of interest. The date of default is 02.08.2021.

Submissions of the Financial Creditor by the way of Petition:

4. The Financial Creditor had issued Facility Letters dated 30.03.2016 in respect of three borrowers, i.e. Zee Learn Education Society (Letter Bearing No. **YBL/MUM/FL/1462A/2015-16**), Gyanmala Public Education Trust (Letter Bearing No. **YBL/MUM/FL/1462B/2015-16**) and Mount Litera Education Foundation (Letter Bearing No. **YBL/MUM/FL/1462/2015-16**), (hereinafter referred to as **“Borrowers”**). Copies of the Facility Letters are annexed as Annexure G, Annexure H and Annexure I respectively, to the Petition.
5. Following the facility letters, Loan Agreement and Master Facility Agreement dated 20.06.2016 were entered into between the Financial Creditors and the Borrowers. The copies of the Loan Agreement and Master Facility Agreement is annexed as Annexure J, Annexure K, Annexure L, Annexure M and Annexure N to the Petition.
6. Pursuant to the loan agreements, the Financial Creditor provided the following loan to the Borrowers:

Sr. No.	Name of Entity	Description of Facility	Amount Sanctioned (in Rupees)	Date(s) of Disbursement
1.	Zee Learn Education Society (“ZLES”)	Term Loan	55,00,00,000	22.11.2016
		Overdraft	8,00,00,000	Revolving Facility

2.	Gyanmala Public Education Trust (“GPET”)	Term Loan	20,00,00,000	22.11.2016
		Overdraft	4,00,00,000	Revolving Facility
3.	Mount Litera Education Foundation (“MLEF”)	Term Loan	65,00,00,000	29.06.2016
		Overdraft	8,00,00,000	Revolving Facility

7. The Financial Creditor further issued a facility letter dated 22.03.2018 bearing no. **YBL/MUM/CIB/FL/0854/2017-18**, to Taleem Research Foundation (“**Borrower**”). A copy of the facility letter dated 22.03.2018 is annexed as Annexure “V” to the Petition.
8. Consequently, a Loan Agreement dated 21.09.2018 was executed between the Financial Creditor and Taleem Research Foundation. A copy of the Loan Agreement dated 21.09.2018 is annexed as Annexure “W” to the Petition.
9. Pursuant to the Loan Agreement, the Financial Creditor sanctioned an amount of Rs.160,00,00,000 on 23.03.2018 towards Term Loan-1 and Rs.150,00,00,000 on 23.03.2018 towards Term Loan-2 to Taleem Research Foundation.
10. The financial debt in the captioned petition arises from Deeds of Guarantee executed by the Corporate Debtor. Vide Deed of Guarantee

dated 20th June 2016, the Corporate Debtor guaranteed the facilities extended to three principal borrowers viz. (i) Mount Litera Education Foundation (ii) Zee Learn Education Society (iii) Gyanmala Public Education Trust (Petition, Vol. II, Annex. S/Pg. 328).

11. There was a default on the part of the Principal Borrowers to repay the Loan Amount as mentioned above.
12. Hence, the Deed(s) of Guarantee were invoked by Notice(s) of Demand dated 02.08.2021 served on the Corporate Debtor by the Financial Creditor. The particulars of the Notices of Demand are as follows:

<i>Principal Debt in respect of which Guarantee was invoked</i>	<i>Reference</i>
Zee Learn Education Society	<i>Petition, Vol III, Annexure GG/Pg. 509</i>
Mount Litera Foundation	<i>Petition, Vol III, Annexure FF/Pg. 505</i>
Gyanmala Public Education Trust	<i>Petition, Vol III, Annexure HH/Pg. 513</i>
Taleem Research Foundation	<i>Petition, Vol III, Annexure II/Pg.517</i>

13. The Corporate Debtor has not paid the amount under the Notices of Demand, and is thus, in default. It is the factum of non-payment, by the Guarantor, despite receipt of Notices invoking the Guarantee, that constitutes the default.

14. The particulars of the default are, therefore, as follows:

Date of Default	02.08.2021, being the date on which the Notices of Demand under Deed(s) of Guarantee were served on the Corporate Debtor.
Principal Amount	Rs.410,67,58,668.88/-
Interest	Rs.58,32,32,278/-
Total Default	Rs.468,99,90,947/-

15. It is un-disputed that the Principal Borrower has failed to pay. The Notices of Demand was issued to the Guarantor pertaining to the debt and default. The fact that the aforesaid financial debt is due and payable to the Financial Creditor is self-evident from the records maintained by the Central Repository of Information on Large Credits ("CRILIC"), in respect of the Principal Borrowers. CRILIC is a database set up by the Reserve Bank of India to collect, store and disseminate credit data to lenders.

16. The CRILIC records show that each of the Principal Borrowers is in default in respect of the principal debt, and therefore that the Financial Creditor was entitled to invoke the Guarantee. The Statement of Accounts of each principal borrower also demonstrates default. The details of default of each of the Principal Borrowers are given as follows:

Principal Debtor	Remarks in the CRILIC Records	Statement of Accounts
Zee Learn Education Society	The CRILIC records show that the account is “sub-standard” (<i>vide Petition, Vol I, Annexure F/Pg. 31-33 at Pg.32</i>)	Statements of Accounts (upto 31 st December 2021) at Vol. IV, Annexure NN/Pg. 556,558,560,566,569,570,572 and 574)
Mount Litera Foundation	The CRILIC records show that the account is “sub-standard” (<i>vide Petition, Vol I, Annexure F/Pg. 36-38 at Pg.37</i>)	Statements of Accounts (upto 31 st December 2021) at Vol. IV, Annexure NN/Pg. 578 - 599)
Gyanmala Public Education Trust	The CRILIC records show that the account is “Doubtful-1” (<i>vide Petition, Vol 1, Annexure F/Pg. 40-41 at Pg.40</i>)	Statements of Accounts (upto 31 st December 2021) at Vol. IV, Annexure NN/Pg. 639-658)
Taleem Research Foundation	The CRILIC records show that the account is “Doubtful-1” (<i>vide Petition, Vol 1, Annexure F/Pg. 34-35 at Pg.34</i>)	Statements of Accounts (upto 31 st December 2021) at Vol. IV, Annexure NN/Pg. 600- 638)

17. It is further submitted by the Financial Creditor that the Financial Creditor had provided credit facilities of Rs.25,00,00,000 (Rupees Twenty-Five Crore Only) to the Corporate Debtor which are not yet recalled. The present petition does not include such borrowing of the Corporate Debtor.

18. The Financial Creditor has also relied on the judgement of the Hon'ble Supreme Court in Syndicate Bank v. Channaveerappa Beleri, wherein it was observed,

“12. We will examine the meaning of the words 'on demand'. As noticed above, the High Court was of the view that the words 'on demand' in law have a special meaning and when an agreement states that an amount is payable on demand, it implies that it is always payable, that is payable forthwith and a demand is not a condition precedent for the amount to become payable. The meaning attached to the expression 'on demand' as 'always payable' or 'payable forthwith without demand' is not one of universal application. The said meaning applies only in certain circumstances.

...

“13. What then is the meaning of the said words used in the guarantee bonds in question? The guarantee bond states that the guarantors agree to pay and satisfy the Bank 'on demand'. It specifically provides that the liability to pay interest would arise upon the guarantor only from the date of demand by the Bank for payment. It also provides that the guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Bank by the borrower. The terms of guarantee, thus, make it clear that the liability to pay would arise on the guarantors only when a demand is made. [Article 55](#) provides that the time will begin to run when the contract is 'broken'. Even if [Article 113](#) is to be applied, the

time begins to run only when the right to sue accrues. In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by the Bank and it was refused by the guarantors. When a demand is made requiring payment within a stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.”

“14. We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years,

even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful :

Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1.4.1991. Let us further say a demand is made by the creditor against the guarantor for payment on 1.3.1993. Though the limitation against the principal debtor may expire on 1.6.1994, as the demand was made on 1.3.1993 when the claim was 'live' against the principal debtor, the limitation as against the guarantor would be 3 years from 1.3.1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 1.6.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.9.1994 would not be valid or enforceable.

Submissions of the Corporate Debtor by the way of Affidavit in Reply:

19. The Loan obtained by the Corporate Debtor from the Petitioner is standard:

- i. The above Petition has been filed against the Corporate Debtor in its alleged capacity as Guarantor to four Borrowers viz. a) Zee Learn Education Society, b) Taleem Research Foundation, c)

Gyanmala Public Education Trust and d) Mount Litera Education Foundation.

- ii. The Corporate Debtor is itself a Borrower of the Petitioner, having availed a loan of Rs.25 crores from the Petitioner on 03.01.2017. The Corporate Debtor has been regularly paying the installments falling due under the said loan and the said loan account is standard as on date. The Corporate Debtor is neither a defaulter nor has been declared NPA by the Petitioner.
20. The Petitioner, without enforcing the securities provided by the four Borrowers abovenamed, has filed the present petition.
 21. The Corporate Debtor is in the field of education and runs pre-school centres in 800 cities in India as more particularly set out hereinafter. An order of admission against the Corporate Debtor will cause severe financial loss and prejudice to it apart from disrupting the academic year of its students and affecting the livelihood of its teachers and staff.
 22. **Yes Bank Ltd., (Yes Bank) does not have locus to file the Petition against Corporate Debtor:**
 - i. The Petitioner has filed the Petition based on an alleged Deed of Guarantee dated 20th June 2016. The said Deed has been executed by the Corporate Debtor in favour of Axis Trustee Services Ltd., the Security Trustee. Yes Bank is neither a party nor a signatory to

the said Deed. Infact, it is pertinent to state that the Corporate Debtor has not executed any document in favour of Yes Bank. As per the terms and conditions contained in the said Deed of Guarantee, the Security Trustee is empowered to take action against the Corporate Debtor in case of default. However, the above Petition is filed not by the Security Trustee but by Yes Bank.

- ii. The Petitioner has relied upon the notice of invocation of the Deed of Guarantee dated 20.06.2016. As stated above, it is only the Security Trustee who has been empowered and given the right to initiate action against the Corporate Debtor and not the Petitioner and hence the Petitioner could not have issued the notice of invocation of guarantee. The said invocation is itself thus bad in law and not sustainable.

23. The accounts of the Borrowers could not have been declared as NPA:

- i. Without prejudice to the aforesaid, it is the Petitioner's case that the accounts of the respective Borrowers were classified as NPA on the following dates:
 - a. Borrower No.1 was classified as NPA on 31.03.2021 with effect from 20.02.2021;

- b. Borrower No.2 was classified as NPA on 31.03.2021 with effect from 01.11.2020;
 - c. Borrower No.3 was classified as NPA on 31.03.2021 with effect from 22.11.2020 and,
 - d. Borrower No.4 was classified as NPA on 31.03.2021 with effect from 28.12.2020.
- ii. As per the RBI Circular dated 27.03.2020 and 23.05.2020, the Banks and NBFCs were permitted to grant moratorium for the installments falling due between 01.03.2020 to 31.05.2020 and 01.06.2020 to 31.08.2020. The RBI under its Guidelines dated 23.05.2020 bearing reference no. RBI/2019-20/244 DOR.No.BP.BC71//21.04.048/2019-20 mandated that the accounts which were standard as on 29.02.2020, even if overdue, the moratorium period, whenever granted in respect of term loans, were to be excluded by the lending institutions from the number of days past due for the purpose of asset classification under IRAC norms. The asset classification for such accounts shall be determined on the basis of revised due dates and revised repayment schedule. In view of the above circulars, the Banks/FI/NBFCs were not allowed to declare the account of the borrowers as NPA during the said moratorium period.

- iii. The Hon'ble Supreme Court in the matter of *Gajendra Sharma Vs. Union of India*, after considering that the government was terming the pandemic as a 'force majeure' situation to allow deferment of payment of loans, whereas the banks were charging interest on interest and seeking to downgrade credit rating and asset classification because of non-payment of installments towards debt servicing, vide its interim order dated 03.09.2020, directed the Banks/FI/NBFCs that the accounts which were not declared as NPA till 31.08.2020, will not be declared as NPA till further orders.
- iv. In furtherance to the above, the Hon'ble Supreme Court in *Small Scale Industrial Manufactures Association Vs Union of India (UOI) & Ors., Writ Petition No.476/2020* along with connected matters, vide its order dated 23.03.2021 vacated the interim relief granted earlier i.e. of not declaring the accounts of borrowers as NPA. The Hon'ble Supreme Court also granted Moratorium during pandemic period from March 2020 upto 31.08.2020 and further on 10.09.2020 observed relating to charging of compound interest and credit rating/downgrading facility during Moratorium Period.

- v. Thus, in view of the above orders, the Petitioner could not have classified the accounts of the respective Borrowers as NPA on the dates as stated above, as till passing of the order dated 23.03.2021 there was a clear bar on declaration of the account of the borrowers as NPA for the accounts which were not declared as NPA till 31.08.2020. Admittedly, the accounts of the Borrower were not declared as NPA as on 31.08.2020.
- vi. Therefore, the declaration as NPA of the Borrowers' accounts, if at all, could be done only after 23.03.2021. The entire action of the Petitioner to declare the accounts of the respective borrowers as NPA w.e.f. from the dates mentioned above, has fallen foul of the orders of the Hon'ble Supreme Court. Consequently, the entire amount could not have been recalled by the Petitioner nor could the alleged guarantee be consequently invoked against the Corporate Debtor. The alleged invocation of Guarantee is therefore bad in law and not sustainable for this reason also.

24. Petition has been filed against Corporate Debtor for Corporate Guarantees alleged to have been given for four different borrowers. The Petition is not maintainable owing to misjoinder of parties and cause of action.

- i. Section 7 of the Code provides for the filing of an application for initiating of corporate insolvency resolution process against the corporate debtor by itself or jointly with other financial creditors or by any other person on behalf of the financial creditor as may be notified by the Central Government. Section 7 of the Code does not provide for clubbing of different causes of action in one petition. In the present case, the Petitioner has clubbed the alleged corporate guarantees given by the Corporate Debtor to secure payments of different borrowers under different loan facilities/transactions, granted at different points of time under different sanction letters and security documents, which have been declared NPA on different date (though incorrectly) and which have different claims, as stated hereinbelow:
 - a. for a Term loan of Rs.55,00,00,000 and Overdraft facility of Rs.8,00,00,000 sanctioned to Borrower No.1 in the year November 2016;
 - b. for Term Loan 1 of Rs.160,00,00,000 and Term Loan 2 of Rs.150,00,00,000 sanctioned to Borrower No.2 in the year March 2018

- c. for Term Loan of Rs.20,00,00,000 and Overdraft facility Rs.4,00,00,000 sanctioned to the Borrower No.3 in the year November 2016.
- d. for Term Loan of Rs.65,00,00,000 and Overdraft facility Rs.8,00,00,000 sanctioned to Borrower No.4 in the year June 2016
- ii. The Petitioner has filed the Petition on a basis of a consolidated claim of Rs.468,99,90,947.45/- The Petitioner has thus clubbed four separate claims arising out of four independent transactions that each Borrower has entered into with the Petitioner. The same is evident and can be verified from the documents annexed to the Petition. The Petitioner thus could not have filed a single Petition against the Corporate Debtor.
- iii. The above submission is fortified by Rule 38A of the National Company Law Tribunal Rules 2016, which stipulates that a petition shall be filed based upon a single cause of action.
- 25. Petitioner could not have claimed amounts during the Moratorium under the sanction letters of the Borrower Nos. 3 and 4 i.e Gyanmala Public Education Trust and Mount Litera Education Foundation respectively:**

- i. Without prejudice to the aforesaid, the Petitioner could not have demanded payment during the moratorium granted under the sanction letters issued by the Petitioner in respect of the said borrowers.
- ii. As stated by the Petitioner, the Borrower No.3 was granted Term Loan of an amount of Rs. 20 crores vide sanction letter dated 30.03.2016. According to the sanction letter, the repayment was structured in quarterly instalments after a period of moratorium of 36 months post the first disbursement. An amount of Rs.20 crores is alleged to have been disbursed on 22.11.2016.
- iii. Accordingly, the moratorium for the said loan was to end on 22.11.2019 and the repayment was to start from next quarter i.e., March 2020. However, the Petitioner has debited the Borrower's account for the principal amount on 22.01.2018 (Page 64 of the Petition) which could not have been debited by the Petitioner under the terms of the sanction letter dated 30.03.2016.
- iv. Borrower No. 4 was granted Term Loan for an amount of Rs.65 crores, vide sanction letter dated 30.03.2016. As per the statement of account the said amount was disbursed in two tranches - Rs.55 crores on 29.06.2016 and Rs. 10 crores 22.11.2016 (Page 580 and 587 of the Petition).

- v. According to the sanction letter dated 26.03.2016, a moratorium of 36 months was to apply from the date of first disbursement and the repayment was to be done on a quarterly basis. Considering the fact that disbursement did not take place in one tranche, the Petitioner could not have claimed an installment amount of Rs.81,25,000/- on the entire loan amount of Rs.65 crores. The Petitioner ought to have fixed an installment only for the first tranche of Rs. 55 crores in the month of September 2019 and for the remaining amount after the moratorium for the said tranche was over.
- vi. Further, it is pertinent to note that the Petitioner has debited the principal amount in December 2017 (Page No. 588) which it could not have done during the moratorium period. The entire action of the Petitioner of debiting principal amounts during the moratorium is not in accordance with sanction letter which amounts to contract on the part of the Petitioner.

26. Failure of Petitioner to provide Moratorium under Covid-19 Regulatory Package of the RBI dated 27.03.2020 and 23.05.2020

- i. The Reserve Bank of India (RBI) announced certain regulatory measures to mitigate the burden of debt brought about by disruption on account of the Covid-19 pandemic and to ensure the

continuity of viable businesses vide its Circular dated 27.03.2020. By the said Circular, the RBI allowed rescheduling of payments by permitting the Lenders to grant a moratorium of three (3) months on payment of all installments falling due between 01.03.2020 and 31.05.2020. The repayment schedule for such loans as also the residual tenor was to be shifted across the board by three (3) months after the moratorium period

- ii. Thereafter, the RBI, vide its Circular dated 23.05.2020, issued detailed instructions regarding extension of moratorium and rescheduling of payments and asset classification, owing to intensification of Covid-19 disruptions. Priority to relaxing repayment pressures and improving access to working capital by mitigating the burden of debt servicing, prevent the transmission of financial stress to the real economy and ensure the continuity of viable businesses and households was the intention of the said Circular. By the said Circular, the RBI permitted the Lenders to extend the moratorium by another three (3) months i.e. from 01.06.2020 to 31.08.2020 on payment of all installments. The repayment schedule as well as the residual tenor was to shift across the board and interest was to continue to accrue during the moratorium period.

- iii. Since the Borrowers were standard accounts in March 2020, the Borrowers were entitled to the moratorium under the Circulars of RBI. The Borrowers had therefore applied for moratorium to the Petitioner under the aforesaid Circulars. However, the Petitioner only granted moratorium for the months of June 2020 to August 2020 for reasons best known to the Petitioner. Had the moratorium for the months of March to May 2020 also been granted by the Petitioner in accordance with the direction of the RBI, the accounts of the Borrowers would have continued to remain standard. Copies of the said Circulars dated 27.03.2020 and 23.05.2020 are annexed as Exhibit B Colly to the Reply. Copies of the email dated 30.04.2020, 31.05.2020, 30.06.2020 and 31.08.2020 issued by the respective borrower requesting the Petitioner for moratorium are annexed as Exhibit C Colly hereto. Copy of the email dated 30.06.2020 issued by the Petitioner to the Borrowers granting moratorium for the months starting from June 2020 to August 2020 is annexed and marked as Exhibit D hereto.
- iv. Despite the guidelines permitting the grant of moratorium of 6 months, the Petitioner granted only 3 months moratorium to the respective borrowers which is not justified and/or fair on the part of the Petitioner particularly knowing the fact that the Borrowers

being educational institutions were shut down during the Covid period.

27. Fresh Amortization was not provided after the moratorium was granted under the Circulars of RBI

- i. Under the Covid-19 regulatory package dated 27.03.2020 and 23.05.2020, the repayment schedule for such loans where the moratorium has been granted the residual tenure and the repayment schedule were to be shifted across the board by such months after the moratorium period and fresh amortization statement/recalculation of the repayment schedule with the revised due dates were required to be provided to the borrower.
- ii. The rescheduling of payments was not to be qualified as a default under the said circulars. There has been a gross violation on the part of the Petitioner in adhering to the RBI circulars. Had the Petitioner provided an afresh amortization schedule for the repayment of the amounts during moratorium, the amounts deducted by the Petitioner twice in the month of March 2020 from the accounts of the borrowers towards the principal amount could have been adjusted in March 2020 and could have been debited as per the fresh amortization schedule after the moratorium was over.

iii. Had the Petitioner followed proper guidelines under the RBI Circular, the accounts of the borrowers could not have been declared as NPA in November 2020-February 2021. The Petitioner failed to understand that the borrowers are educational institution and have not defaulted in making payment since the loans were granted to them.

28. Penal Interest charged during Moratorium under RBI circulars granted to the respective borrowers:

i. Without prejudice to the aforesaid, the Borrowers vide their emails dated 30.04.2020, 31.05.2020, 30.06.2020 and 31.08.2020 had requested the Petitioner to grant moratorium under the RBI circulars dated 27.03.2020 and 23.05.2020. Despite the same, the Petitioner has charged penal interest to the accounts of the Borrowers which is evident from the statement of accounts annexed to the Petition at Page nos. 584, 590, 596, 602, 607, 612, 617, 646. Penal interest could not have been charged by the Petitioner on the accounts of the respective borrowers as the same was not allowed by the virtue of the judgment of the Supreme Court passed in the case of *Small-Scale Industrial Manufactures Association Vs. Union of India (UOI) & Ors, Writ Petition No.476/2020*.

The Petitioner has not reversed the penal interest as evident from the statement of accounts annexed to the Petition.

- ii. Apart from the above, it is pertinent to state that interest due in the account of the Borrower Nos.2 and 4 was converted into a Funded Interest Term Loan in September 2020. The account of the Borrowers was, therefore, admittedly standard as on the said date. If that be so, the account of the Borrower Nos.2 and 4 could not have been classified as NPA on 01.11.2020 and 22.11.2020 respectively. No demand for payment could thus have been made and recall notice could not have been issued by the Petitioner to the said Borrowers.
- iii. Consequently, no notice of invocation of guarantee could have been issued to the Corporate Debtor, assuming the same could be issued by the Petitioner.

29. Without prejudice to the aforesaid contention, the Petition is not maintainable on account of section 10A of the Code:

- i. An Ordinance was promulgated by the President of India on 05.06.2020 by which section 10A was inserted in the Code, which reads as follows:

“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a

corporate debtor shall be filed, for any default arising on or after 25th March 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020"

- ii.* The Petitioner has classified as NPA the accounts of the respective Borrowers in the following manner:
- a.* Zee Learn Education Society, (Borrower No.1) was classified as NPA on 31.03.2021 with effect from 20.02.2021,
 - b.* Taleem Research Foundation (Borrower No.2) was classified as NPA on 31.03.2021 with effect from 01.11.2020,
 - c.* Gyanmala Public Education Trust (Borrower No.3) was classified as NPA on 31.03.2021 with effect from 22.11.2020 and

- d.* Mount Litera Education Foundation (Borrower Nod) was classified as NPA on 31.03.2021 with effect from 28.12.2020.
- iii.* Section 10A prohibited the filing of fresh application in relation to defaults occurring on or after 25.03.2020. Section 10A was notified on 05.06.2020. The Ordinance and the Amending Act enacted by Parliament, adopt 25.03.2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period".
- iv.* The Financial Creditor has filed the Petition on the basis of the date of default of the respective Borrowers occurring during the period of pandemic, which makes Section 10A applicable to the case of the Corporate Debtor. As mentioned above, there is an embargo on filing of application under the Code after the cut off date of March 2020 extended till one year. The Petition filed by the Petitioner against the Corporate Debtor on the basis of the date of default crystallized on 20.02.2021 in respect of Borrower No.1, 01.11.2020 in respect of Borrower No.2, 22.11.2020 in respect of Borrower No.3 and 01.12.2020 in respect of Borrower No. 4 is not maintainable as the legislature has clearly indicated that "no

application ever be filed" for the initiation of CIRP for the said default occurring during the said period i.e. from 25.03.2020 extended for a period of 1 year and the same has been upheld by the Hon'ble Supreme Court in the judgment of *Ramesh Kymal v. M/s. Seimens Gamesa Renewable Power Pvt Ltd. (2021)3 SCC 224.*

30. The Deed of Guarantee dated 20.06.2016 being insufficiently stamped as per the provision of Maharashtra Stamp Act 1958, therefore cannot be looked into by this Tribunal.

- i. The stamp duty paid on the said document is only Rs.100. The Petitioner has brought the said document into the State of Maharashtra for the purposes of filing the present Petition against the Corporate Debtor. As per the requirement under section 19 of the Maharashtra Stamp Act, 1958 the said document or copy thereof (as the case may be) is required to be stamped in accordance with the Maharashtra Stamp Act, 1958. In the absence of such payment, such document cannot be looked into by this Tribunal.
- ii. The stamp duty payable on the aforesaid document in the State of Maharashtra is more than the stamp duty paid on the document in New Delhi. By virtue of Sections 18, 19, 33 and 34 of the Maharashtra Stamp Act, 1958, this Tribunal cannot act upon the

Deed of Guarantee which is not sufficiently stamped as per the provisions of the Act and is bound to impound the said document and send the same to the appropriate authority who is required to deal with the same in accordance with Sections 37 and 39 of the Maharashtra Stamp Act 1958.

31. Complete statement of account not annexed to the Petition

- i. The Petitioner has failed to annex the current account statement of the borrowers to substantiate its case of disbursement made to the respective borrowers. The Corporate Debtor states that it is not the principal borrower to know if the disbursement has been made by the Petitioner under each loan facilities alleged to have been sanctioned by it to the different borrowers.
- ii. From a perusal of the statement of account annexed to the Petition it can be seen that there are errors in the value dates of the statement of accounts which itself shows that the entries of the statement of accounts produced by the Petitioner are not accurate and hence cannot be relied upon.
- iii. On enquiring with the Borrower, it appears that there are amounts which are shown in the Statement of accounts which were not even disbursed to the respective Borrowers by the Petitioner. The amount of Rs.81,25,000 seems to not have been disbursed at all in

the account no.016LAMP201390003 alleged to be the statement of account of Borrower No.4. Similarly, there is amount of Rs. 2,62,52,000 and Rs. 3,75,00,000 which has been claimed to have been disbursed to Borrower No.2 by the Petitioner on 18.05.2020 in Account No. 184LAMP201380001. The said amounts have not been disbursed to the respective Borrowers. Furthermore, the account of Borrower No.3 shown to have received an amount of Rs.25,00,000 in Account No. 136LAMP201330002 which also does not appear to be true.

- iv. The Petitioner has filed the present Petition on the basis of incomplete documents. The Petitioner has not annexed the statement of account of Zee Learn Education Society i.e., Borrower no.1 to the Petition and has claimed an amount of Rs.724,384,377.02/- against the loan granted to the said Borrower. Section 7 of the Code requires the Financial Creditor to provide all the documents and evidences to show that there is default by the Corporate Debtor in making the payment of the dues of the said Financial Creditor.

32. Discrepancy in the Certificates under Bankers Book Evidence Act, 1891:

- i. The claim of the Petitioner is based on an alleged statement of accounts which does not adhere to the provisions of the Bankers Book Evidence Act, 1891 particularly in relation to certification.
- ii. Such account does not enjoy the presumption under Section 4 thereof which is in any case only prima facie.
- iii. The Petitioner has not annexed certificate as required under Section 2 A (a) of the Bankers Book Evidence Act, 1891, a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager,
- iv. The Certificate under section 2A (b) is signed by the Chief Information Officer, Mr. Mahesh Ramamoorthy. The certificate under section 2 A(b) as annexed at page 41B to 41F of the Petition needs to be certified by the person in charge of computer system.
- v. The Certificate does not comply with the provision of clause (e) to (g) of the section 2(A) of the Bankers Book Evidence Act. Moreover, the Certificate under section 2 A(c) is fallacious. The certificate under section 2 A (c) is devoid of particulars as necessarily required under the section. Section 2 A (c) is reproduced hereunder. –

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system

operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.

- vi. A bare perusal of the Certificate under section 2 A(c) at page 41C shows that the certificate is not as per the requirements stipulated above. In view thereof, the certificate being devoid of particulars cannot be received as evidence. Since the certificates cannot be read in evidence, the entire authenticity of the accounts fails. The Petition thus also fails.
- vii. The Chief Information Officer has authenticated the statement of accounts not provided with the certificate. The Certificate certifies the current account statements of each borrower which are not even part of the Petition. Further wrong account number been mentioned in the certificate for the facility granted to the Borrower No.2.
- viii. The Certificate has been given for the statement of accounts which are not even forming part of the Petition. The Petitioner has not taken the printout of such statement of accounts and neither the Chief Information Officer has verified the statement of accounts before giving the certificate for the same. This itself shows the

authenticity of the Certificate issued by the Chief Information Officer under the Bankers Book Evidence Act.

- ix. The Bankers Book Evidence Act, 1891 provides for the conditions which are to be followed while submitting bank records as Evidence in a court of law. Section 4 of Banker's Book Evidence Act 1891, deals with the mode of proving such bank records. Bank records should be accompanied by a certificate in accordance with section 2(8) and 2A of the Act. The certificate is to ensure the accuracy and reliability of the entry in banking records. The printout of entry or copy of such printout along with the certificate by the branch manager/principal accountant and the person in charge of the computer resource which generated that entry together makes a "certified copy". A certified copy of any entry of banker's book shall be admissible prima facie as Evidence.
- x. On 24.04.2009, RBI published a notification advising State and Central Co-operative Banks to comply with the provisions of Banker's Books Evidence Act, 1891 while furnishing certified copies and computer printouts to courts. The notification further says that if such statutory certification is not complied with, the courts will not be obliged to admit the document in Evidence without any further proof. Therefore, the same principle applies to

the Petitioner. The claim of the Petitioner is not maintainable under the Corporate Guarantee Agreement.

33. The claim of the Petitioner is not maintainable under the Corporate Guarantee Agreement:

The alleged Deed of Guarantee dated 20.06.2016, cannot be enforced against it as the Guarantee was given towards the principal amount sanctioned to 4 borrowers viz. Mount Litera Education Foundation, Zee Learn Education Society, Gyanmala Public Education Trust and Digital Ventures Private limited. Out of the 4 borrowers, Digital Ventures Private Limited was not even disbursed the loan amount sanctioned by the Petitioner. The amount of Rs.185,00,00,000/- mentioned in the Deed of Guarantee is therefore not the total amount of loan sanctioned to the Borrowers and the same is therefore incorrect.

34. The Petitioner has been sufficiently secured and an action under SARFAESI Act has already been initiated by the Petitioner:

The Petitioner is sufficiently secured which can be seen from the schedule of the properties annexed at Annexure E to the Petition. The Petitioner has taken action against the said secured assets of the Borrowers by issuing notice under section 13(2) of SARFAESI Act upon the said Borrowers.

35. Suppression of facts:

The Petitioner has suppressed the fact that the Petitioner has also preferred an Original Application No.245. of 2022 before the Tribunal at Delhi against the Borrower No.2 and the Corporate Debtor seeking a declaration relating to default/ date of default and the quantum of debt. Once having subjected itself to the adjudicatory mechanism under the Recovery of Debts and Bankruptcy Act, 1993 the Petitioner is forbidden from seeking this Authority's adjudication over the same acts/actions/facts/claims which are being adjudicated by the DRT.

Rebuttal of the Financial Creditors by the way of Affidavit in Rejoinder:

36. The Corporate Debtor guaranteed the facilities extended to Taleem Research Foundation vide Deed of Gurantee dated 22.10.2018 A copy of the Deed of Gurantee dated 22.10.2018 is annexed as Exhibit A to the Rejoinder.

37. Under the Deeds of Guarantee the Corporate Debtor has undertaken that the guarantee shall be paid, without demur or protest, on receipt of notice in writing from Security Trustee/Financial Creditor that a specified amount is due. The Deeds of Guarantee expressly provide that such a demand is final and binding and cannot be questioned by the Corporate Debtor. It is undisputed that such Notice(s) of Demand dated 02.08.2021 were served on the Corporate Debtor by the Financial

Creditor and it is equally undisputed that the Corporate Debtor has failed to pay the amounts demanded within the time stipulated in the Deeds of Guarantee. The factum of 'debt' and 'default' is therefore proved, and this Petition deserves to be admitted.

38. Contention that the loan obtained by the Corporate Debtor from the Petitioner is "standard":

The Section 7 Petition has been filed in respect of the financial debt and default arising from inter alia the Deeds, of Guarantee dated 20.06.2016 and 22.10.2018, whereby the Corporate Debtor has guaranteed the due repayment of facilities extended to the principal debtor therein. It appears to be the Corporate Debtor's case that, apart from extending a guarantee as aforesaid, it has borrowed an independent and distinct facility of INR 25 crores as borrower from the Financial Creditor. As such, this is completely irrelevant and not at all material to the present Petition.

39. It is well-settled that it is neither necessary nor mandatory to enforce the securities provided by the Principal Debtor before proceeding against the Corporate Guarantor under Section 7 of the Code.

40. Contention that Yes Bank does not have locus to file the Petition:

- i. The Corporate Debtor has sought to contend that the present Petition is not maintainable as the Financial Creditor is not a

'signatory' to the Deeds of Guarantee dated 20.06.2016 and 07.05.2018.

- ii. It is apparent that the Security Trustee signed the Deed of Guarantee as an agent and representative of the Financial Creditor, and for and on behalf of the Financial Creditor. This is the very purpose of a Security Trustee in law.
- iii. This is evident from the Deed of Guarantee dated 20.06.2016, which categorically states that the guarantee is being extended to the 'Lender' i.e. the Financial Creditor. YES Bank Ltd.
- iv. Clause 1 categorically provides that "we irrevocably and unconditionally guarantee the due payment to Security Trustee/ Lender, of all the amounts payable by the Principal Debtor to the Lender in respect of the said Facilities or under the said Agreement and together with interest (at the rate(s) determined by Security Trustee from time to time) and other charges, including all legal charges and expenses payable by the Principal Debtors under the said Agreements". Similar clauses are also incorporated in the Deed of guarantee dated 22.10.2018.
- v. The right to invoke CIRP under the Code is vested in a "financial creditor". It is apparent that it is the Petitioner which is the

financial creditor of the Corporate Debtor, and thus the Petitioner is entitled to initiate a Section 7.

- vi. Without prejudice to the other contention of the Financial Creditor, the guarantee executed for and/or for the benefit /favour of a person can always be invoked by such beneficiary.

41. The accounts of the borrower could allegedly not have been declared as NPA

- i. It is settled law that for the purposes of the Code, it is sufficient to demonstrate "a default" has occurred in respect of a financial debt. The factum of default is not contested by the Corporate Debtor.
- ii. Hon'ble Supreme Court in *Gajendra Sharma v. Union of India* passed an Interim Order dated 03.09.2020 not to declare any accounts that were not already so declared as NPA until further orders. Thus, there was no permanent bar to declaring accounts as NPA, and this was, only an interim measure until a final order came to be passed. The Corporate Debtor admits that this interim protection was vacated by the Hon'ble Supreme Court by an Order dated 23.03.2021, in *Small Scale Industrial Manufactures Association v. Union of India*. The Accounts of the principal debtor were declared as NPA on 31.03.2021, i.e. after 23.03.2021 when interim protection was vacated. As the interim protection stood vacated,

there was no bar whatsoever to declaring an account as NPA, even with effect from a prior date. Thus, the declaration of the respective principal debtors as NPA is entirely in compliance with the law laid down by the Hon'ble Supreme Court.

42. Alleged Misjoinder:

- i. The Petition inter alia arises from two Deeds of Guarantee issued by the same Corporate Debtor to the Financial Creditor. It is settled in law that a common Section 7 Petition can be filed in respect of multiple debts owned by the same Corporate Debtor to the Financial Creditor. If the Corporate Debtor's contention to the contrary is accepted, the Financial Creditor would have to file a separate Section 7 in respect of each Term Loan extended to a Corporate Debtor, and yet another Section 7 in respect of overdraft facilities etc. This is absurd and serves no purpose other than to increase the burden of this Tribunal.

43. Corporate Debtor's contention that the Financial Creditor could not have claimed amounts during the moratorium:

Under the respective Guarantee(s), the Corporate Debtor is liable to pay without any demur or protest merely on the receipt of a notice of demand from the Lender/ its Security Trustee, which is final and binding. As such, the Corporate Debtor as Guarantor is not entitled to raise any

dispute as to the amount quantum payable by the Principal Debtors. Without prejudice to the aforesaid, the alleged discrepancies set out in the Reply refer to amounts falling due in year 2018 and 2019 which were repaid by the respective principal debtors. In case there were disputes regarding amount computation, the same would not have been repaid by the principal debtors.

44. Alleged failure to provide benefits of moratorium

The question of whether or not the benefits of the moratorium were extended to the principal debtors is entirely irrelevant to determine whether the Corporate Debtor is in default. The Corporate Debtor is liable to make payment on demand under the Deeds of Guarantee and is not allowed to question or challenge the demand in any manner. Without prejudice to the aforesaid, it is also denied that the benefit of the moratorium under the RBI Circulars was not extended to the principal debtors. The benefit of the moratorium including the shifting of the residual tenure as also a fresh amortization schedule was duly extended to the principal debtors. It is denied that any amount was deducted 'twice' in the month of March 2020.

45. Section 10A of the Code

- i. The present Section 7 Petition has not been filed against the principal debtors but against the Corporate Debtor, who is the

guarantor of the said facilities. Under the terms of the Guarantee(s), the Corporate Debtor's liability is independent of the principal debts and Guarantee became due and payable merely on a notice of demand being issued to the Corporate Debtor. The Corporate Debtor was required to honour the demand without demur or protest. The debt as far as the Corporate Debtor was concerned arose when such a demand was made viz. on 02.08.2021. Under the Guarantee, payment was to be made within one week thereafter i.e. 09.08.2021. The bar under Section 10A of the Code applies only in respect of debts arising between 25.03.2020 and 25.03.2021. As the debt in question arose in August 2021, Section 10A of the Code has no application to the present Petition.

- ii. In any event, the accounts of the Principal Borrowers were also declared as NPA on 31.03.2021 (w.e.f such dates as specified), and the default in this regard is continuing. Thus, the bar under Section 10A of the Code has no application to the facts of the present case.

46. Stamping:

It is settled law that any adjudication on the issue of stamping is irrelevant and uncalled for in a Petition under Section 7 of the Code. Without prejudice to the aforesaid, it is equally well settled that a

Petition under Section 7 of the Code can be founded even on an insufficiently stamped document. Thus, the plea raised by the Corporate Debtor is devoid of any merit and deserves to be rejected in *limine*.

47. Complete statement of accounts not annexed to the Petition:

It is denied that the Statements of Accounts contain any discrepancies whatsoever or reflect undisbursed amounts. Strictly without prejudice to the aforesaid, any dispute as to the quantum of default has no bearing on the present proceeding. Even if all the allegations of the Corporate Debtor (which are denied as both malicious and false) are taken at face value, it is apparent that the remaining amount alone is sufficient to make out a debt and default above INR 1 crore. The Petition therefore warrants immediate admission. It is pertinent to note that the statement of accounts are computer generated and certified by CIO of Yes Bank. Therefore, there is no manual intervention in preparation of the statement of accounts.

48. Alleged discrepancy in Certificates under Bankers's Book of evidence Act:

The entire argument based on the alleged non-certification of the digital statement under Section 2-A of the Bankers' Books Evidence Act is wholly misconceived. It is settled law that the provisions of the Bankers'

Books Evidence Act are not applicable to the present proceedings under the Code. In any event, the statements have been duly certified under the Act and a certificate is annexed as Annexure F-1 to the Petition.

49. Initiation of SARFAESI Action:

The Corporate Debtor has raised a plea that the Financial Creditor ought to have first enforced the security provided by the principal debtor before initiating action against the Corporate Debtor, who is the guarantor. It is well settled in law that there is no such embargo under the Code, that the Financial Creditor ought to exhaust all remedies against the principal debtor before initiating a Section 7 Petition against the Guarantor. Section 7 of the Code is a special remedy provided to Financial Creditors - the only threshold to file a Section 7 is the occurrence of a "default", which has admittedly occurred. For instance, under Clause 11 of the Guarantee dated 20.06.2016, the Corporate Debtor has undertaken that "it shall not be concerned in any manner with any other security that Security trustee/ Lender have taken or propose to take..".

50. Alleged "Suppression" of Facts

It is settled law that the mere pendency of proceedings before the Hon'ble Debt Recovery Tribunal is not a bar for initiating CIRP proceedings. In any event, the OAs filed by the Financial Creditor

before the Hon'ble Debt Recovery Tribunal, seek reliefs against the principal debtors, with the Corporate Debtor being made party in its capacity as Guarantor. The present section 7 Petition seeks reliefs against the Guarantor. There is thus no overlap between the two proceedings which arise from different causes of action.

Findings:

51. We have heard both the parties and perused the records.
52. The Corporate Debtor has contended that the said account of the Borrowers could not be declared as NPA, owing to insertion of Sec 10A in the Code vide an ordinance dated 05.06.2020, which prohibited the filing of fresh application in relation to defaults occurring on or after 25.03.2020 extended for a period of 1 year, i.e. until 25.03.2021. The same has been upheld by the Hon'ble Supreme Court in the judgment of *Ramesh Kymal v. M/s. Seimens Gamesa Renewable Power Pvt Ltd. (2021)3 SCC 224*. However, the Corporate Debtor has itself admitted that the Hon'ble Supreme Court in *Small Scale Industrial Manufactures Association Vs Union of India (UOI) & Ors., Writ Petition No.476/2020* along with connected matters, vide its order dated 23.03.2021 vacated the interim relief granted earlier i.e. of not declaring the accounts of borrowers as NPA. Accordingly, the Borrowers were declared NPA on 31.03.2021.

Hence not in contradiction of Sec 10A or the judgement of the Hon'ble Supreme Court.

53. The Financial Creditor has clarified that the debt as far as the Corporate Debtor was concerned, arose when such a demand was made i.e. on 02.08.2021. Under the Guarantee, payment was to be made within one week thereafter i.e. 09.08.2021. The bar under Section 10A of the Code applies only in respect of debts arising between 25.03.2020 and 25.03.2021. As the debt in question arose in August 2021, Section 10A of the Code has no application to the present Petition.
54. In any event, the accounts of the Principal Borrowers were also declared as NPA on 31st March 2021 (w.e.f such dates as specified), and the default in this regard is continuing. Thus, the bar under Section 10A of the Code has no application to the facts of the present case.
55. The Financial Creditor has placed on record valid deed(s) of guarantee entered into by the Corporate Debtor and Axis Trustees Services Limited, being the security trustee on behalf of the Financial Creditor, the Financial Creditor being the lender. Thus, as per the terms of the Deed(s) of Guarantee, in an event of default to repay the loan amount by the Borrowers, the Deed of Guarantee can be invoked by the Security Trustee or the Lender. Accordingly, on default by the Borrowers, the

Financial Creditor has invoked the Deed of Guarantee. Hence, there is exists a valid debt.

56. The Corporate Debtor in his entire reply has raised various defences, however he has nowhere contested the following:

- the disbursal of loan amount;
- being a guarantor to the said loan transactions and
- principal borrowers being in default.

57. The Corporate Debtor on the other hand has accepted that period of pandemic had severely impacted their business thereby impacting their revenue. All of the above facts are sufficient to prove that the Corporate Debtor's business was badly hit by the pandemic and hence it is unable to pay the amount guaranteed for.

58. Apart from the above, the Corporate Debtor has raised various other defences, which have been considered by us, we do not find merit in it. There is no defence which can justify the rejection of the captioned petition.

59. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned.

As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

60. The Financial Creditor has proposed the name of **Mr. Rohit Mehra**, Registration No. IBBI/IPA-001/IP-P00799/2017-18/11374, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
61. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
62. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 301/MB/C-I/2022** filed by **Yes Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate

Insolvency Resolution Process (CIRP) against **Zee Learn Limited** [CIN: L80301MH2010PLC198405], the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-

- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Rohit Mehra**, Registration No. IBBI/IPA-001/IP-P00799/2017-18/11374, having address at Tower A 3403, Oberoi Woods, Oberoi Garden City, Goregaon East, Mumbai, Maharashtra – 400063 Email: rohitmehra@hotmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to

IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Five Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
- (k) Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

10.02.2023
SAM/DSB

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)