



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

CP (IB) 1802/MB/2019

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.

State Bank of India

[PAN- AACCS8577K]

Having Office at: State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai, Maharashtra- 400021.

...Financial Creditor/Petitioner

Versus

Auro Gold Jewellery Private Limited

[CIN: U51398MH1993PTC074600]

Reg. Office- 70/70A, Laxmi Premises, Sheikh Memon Street, 1st Floor, Zaveri Bazar, Mumbai- 400002.

...Corporate Debtor/Respondent

Order Delivered on 18.11.2022

Coram:

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

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

Appearances:

For the Financial Creditor : Amir Arsiwala, Counsel

For the Corporate Debtor : Manoj Mishra, Counsel

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by State Bank of India

("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Auro Gold Jewellery Private Limited**, ("the Corporate Debtor").

2. The Corporate Debtor was incorporated on 20.10.1993 under the Companies Act, 1956. The registered office of the Corporate Debtor is situated at 70/70A, Laxmi Premises, Sheikh Memon Street, 1st Floor, Zaveri Bazar, Mumbai- 400002. Therefore, this Bench has jurisdiction to deal with this petition.
3. The total amount of debt alleged to be in default is Rs. 468,49,72,838.84 (Rupees Four Sixty Eight Crores Forty Nine Lakh Seventy Two Thousand Eight Hundred Thirty Eight and Eighty Four Paise Only) as on 07.03.2019. The date of default is 30.09.2014.

Submissions made by the Financial Creditor by the way of Petition:

4. It is the case of the Financial Creditor that pursuant to the request of the Corporate Debtor, the Financial Creditor vide their Sanction Letter dated 20.08.1997 (Exhibit: "H", Page No. 193 to 205, Volume I and Volume II) sanctioned credit facilities in the form of Fund Based Working Capital, and Non- Fund Based capital amounting to INR 1,17,17,000 (Rupees One Crore Seventeen Lakh Seventeen Thousand Only).
5. Further the Corporate Debtor in order to secure the aforesaid credit facilities executed an Equitable Mortgage dated 7th October, 1994. Thereafter the Financial Creditor executed an Agreement of Loan for Overall Limit dated 4th September, 1997 (Exhibit: "LL", Page No. 893 to 895, Vol.). Subsequently, the Financial Creditor executed an

Agreement of Hypothecation dated 4th September, 1997(Exhibit: "JJ", Page No. 862 to 879, Vol.) and thereafter executed a Memorandum of Deposit for Creation of Charge dated October, 1994, memorandum of Agreement dated 7th October, 1994 (Exhibit: "HH" page nos. 799 to 803, Volume- IV).

6. Further the Corporate Debtor had subsequently made applications for renewal and enhancement of further facilities and accordingly the Financial Creditor granted a renewal vide their Sanction Letter dated 4th April, 2000 for advance of INR 2,10,00,000/- (Rupees Two Crores and Ten Lakhs only) (Exhibit: "I" page nos. 206 to 221, Volume- II).
7. Pursuant to the various facilities and renewals granted by the Financial Creditor various Security documents were accordingly executed by the Corporate Debtor to secure the loan amount. Supplemental Agreement of Loan for Increase in the Overall Limit dated 18th April, 2000 (Exhibit: "MM" page nos. 896 to 911, Volume- V) was executed. Thereafter, Supplemental Agreement of Hypothecation of Goods and Assets for Increase in Overall Limit dated 18th April, 2000 were executed. Subsequently, the Corporate Debtor executed a Letter regarding Grant of Individual Limits within the Overall Limit dated 18th April, 2000.
8. Further, pursuant to the requests made by the Corporate Debtor the Financial Creditor once again renewed and enhanced the credit facilities vide their Sanction Letter dated 15th October, 2001 to the extent of Rs.548.00 Lakhs (Exhibit: "J" page nos. 222to 235, Volume- II). Subsequently, in order to secure the aforesaid credit facilities, the securities granted earlier were extended. Thereafter, the Corporate Debtor executed an Agreement of Loan for Overall Limit dated 5th January, 2002. (Exhibit: "PP" page nos. 946 to 1002, Volume- V and



Volume VI). Subsequently, the Corporate Debtor executed an Agreement of Hypothecation of Goods and Assets dated 5th January, 2002 (Exhibit: "OO" page nos. 928 to 945, Volume- V). Further, the Corporate Debtor executed a Letter regarding grant of Individual Limits within the Overall Limit dated 5th January, 2002 (Exhibit: "QQ" page nos. 1003 to 1005, Volume- VI). Moreover, the Corporate Debtor executed a Memorandum of Deposit for creation of charge for term loan (Exhibit: "SS" page nos. 1020 to 1027, Volume- VI) dated 5th January, 2002. Thereafter, a Deed of Indemnity dated 31st January, 2002 dated 5th January, 2002 was executed. Thereafter, the Corporate Debtor executed a Deed of Guarantee dated 5th January, 2002 (Exhibit: "RR" page nos. 1006 to 1019, Volume- VI).

9. Further the Corporate Debtor had subsequently made applications for renewal of further facilities and accordingly the Financial Creditor granted Sanction Letter dated 12th September, 2002. (Exhibit: "K" page nos. 236 to 250, Volume- II) wherein Credit Facilities to the extent of Rs. 798 Lakhs was granted. Thereafter, a Supplemental Agreement of Loan dated 27th September, 2002 (Exhibit: "VV" page nos. 1041 to 1047, Volume-VI) was executed between the Corporate Debtor and the Financial Creditor. Furthermore, Supplemental Agreement of Hypothecation and Assets dated 27th September, 2002 (Exhibit: "UU" page nos. 1032 to 1040, Volume- VI) was executed by the Corporate Debtor. Thereafter, the Corporate Debtor executed a Letter regarding grant of Individual Limits dated 27th September, 2002 (Exhibit: "TT" page nos. 1028 to 1031, Volume-VI).
10. The Credit facilities were renewed and enhanced to the extent of Rs. 1098 Lakhs vide Sanction letter dated 4th February, 2003 (Exhibit: "L" page

nos. 251 to 265, Volume-II) at the request of the Corporate Debtor. In lieu of the same, a Board Resolution dated 5th February, 2003 confirming the availing of the Credit Facility was passed. In order to secure the aforesaid credit facilities, the earlier securities were stood continued and an additional security was created. In furtherance of the aforesaid credit facilities, the Corporate Debtor executed a Supplemental Agreement of Loan dated 19th February, 2003. Further, the Corporate Debtor executed a Letter regarding Grant of Individual Limits dated 19th February, 2003.

11. Pursuant to the repeated requests made by the Corporate Debtor, the Banks and the Corporate Debtor renewed and enhanced the credit facilities to the extent of Rs. 1950 Lakhs and executed a Sanction Letter dated 28th October, 2003 (Exhibit: "M" page nos. 266 to 275, Volume II). In furtherance of the same, the Corporate Debtor passed a Board Resolution dated 30th October, 2003 confirming the availing of the Credit Facility. Further, in order to secure the aforesaid credit facilities, the Corporate Debtor and the Banks executed a Supplemental Agreement of Loan for increase in overall Limit dated 13th November, 2003 (Exhibit: "ZZ" page no nos. 1063 to 1069, Volume-VI).
12. Further, the Corporate Debtor executed a Letter regarding grant of Individual Limits dated 10th November, 2003. Thereafter, executed a Pledge Letter dated 9th December, 2003. Thereafter, the Corporate Debtor executed a Memorandum of Entry for extension of Mortgage dated 13th November, 2003 and a Confirmation Letter dated 13th November, 2003.
13. Subsequently, the Corporate Debtor once again made requests to the Financial Creditor for Commercial advances, in furtherance of which

the Financial Creditor renewed and granted credit facilities to the extent of Rs. 2250 Lakhs vide Sanction Letter dated 23 June, 2004(Exhibit: "N" page nos.276 to 277, Volume II). Furthermore, in order to secure the aforesaid credit facilities, Corporate Debtor executed a Supplemental Agreement of Loan for increase in Overall Limits dated 23rd July, 2004. Thereafter, the Corporate Debtor executed a Supplemental Agreement of Hypothecation of Goods and Assets dated 23rd July, 2004. Thereafter, the Corporate Debtor executed a Supplemental Deed of Guarantee dated 13th July, 2004. Furthermore, the Corporate Debtor executed a Letter regarding grant of Individual limits dated 23rd July, 2004.

14. Subsequently, another Sanction Letter dated 28th September, 2004 (Exhibit: "O" page nos. 278 to 294, Volume II) was granted in consequence of the Corporate Debtor making requests to the Financial Creditor for Commercial advances. In lieu of which the Financial Creditor renewed and granted credit facilities to the extent of Rs. 2900 Lakhs pursuant to the request made by the Corporate Debtor. Thereafter, the Corporate Debtor executed a Supplemental Agreement of Hypothecation of Goods and Assets dated 29th September, 2004 (Exhibit: "AAA" page nos. 1070 to 1078, Volume- VI). Accordingly, the Corporate Debtor executed a Letter regarding grant of Individual limits dated 29th September, 2004 and Memorandum of Deposit for creation of further charge dated 15th October, 2004.

15. Subsequently, the Financial Creditor issued another Sanction Letter dated 24th March, 2005 (Exhibit: "P" page nos. 295 to 299, Volume II) in furtherance of the requests made by the Corporate Debtor for renewal with enhancement of the existing credit facility. In consequence of

which, the Financial Creditor renewed and granted credit facilities to the extent of Rs.3300 Lakhs. Thereafter, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Supplemental Agreement of Loan dated 11th April, 2005 (Exhibit: "CCC" page nos. 1097 to 1103, Volume-VI). Thereafter, the Corporate Debtor executed a Supplemental Agreement of Hypothecation of Goods and Assets dated 11th April, 2005(Exhibit: "DDD" page nos. 1104 to 1112, Volume-VI).

16. Subsequently, the Corporate Debtor once again made requests to the Financial Creditor for renewal with enhancement of the existing credit facility, in furtherance of which the Financial Creditor renewed and granted credit facilities to the extent of Rs.2700 Lakhs vide Sanction Letter dated 14th February, 2006 (Exhibit: "Q" page nos. 300 to 313, Volume-II). Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Supplemental Agreement of Loan dated 17th February, 2006(Exhibit: "EEE" page nos. 1113 to 1119, Volume-VI). Thereafter, the Corporate Debtor executed a Supplemental Agreement of Hypothecation of Goods and Assets dated 17th February, 2006(Exhibit: "FFF" page nos. 1120 to 1128, Volume VI). Thereafter, the Corporate Debtor executed a Supplemental Deed of Guarantee dated 17th February, 2006, Letter regarding grant of Individual limits dated 17th February, 2006, and Memorandum of Deposit for creation of further charge dated 17th February, 2006.
17. Subsequently, another Sanction Letter dated 17th March, 2007 (Exhibit: "S" page nos. 354 to 365, Volume II) was granted in consequence of the Corporate Debtor making requests to the Financial Creditor for Commercial advances. In furtherance of which, the Financial Creditor renewed and granted credit facilities to the extent of Rs. 5600 Lakhs.

18. Subsequently, in or around April, 2007, the Corporate Debtor approached State Bank of Patiala, the Erstwhile Bank then which is now merged with State Bank of India and a Consortium was formed where it was agreed that the Applicant will be appointed as the lead Bank of the Consortium. Thereafter, the Consortium granted Fund based and Non fund based facilities to the Corporate Debtor. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Working Capital Consortium Agreement dated 21st April, 2007 (Exhibit: "R" page nos. 314 to 353, Volume R). Thereafter, the Corporate Debtor executed a Joint Deed of Hypothecation dated 21st April, 2007 (Exhibit: "GGG" page nos. 1129 to 1145, Volume-VI). Subsequently, the Corporate Debtor executed an inter se Agreement dated 21 April, 2007 (Exhibit: "HHH" page nos. 1146 to 1160, Volume-VI). Subsequently, the Corporate Debtor executed a security document confirming the deposit of Title Deeds for creation of Equitable Mortgage.
19. Subsequently, the Corporate Debtor again made requests to the Consortium for renewal of existing credit facility, in furtherance of which the Financial Creditor vide its Sanction Letter dated 14th November, 2008 (Exhibit: "T" page nos. 366 to 388, Volume-II) renewed and granted credit facilities to the extent of Rs. 3800 Lakhs. Further, the Corporate Debtor executed a Memorandum for extension of equitable Mortgage dated 26th March, 2009 (Exhibit: "OOO" page nos. 1253 to 1271, Volume VII). Thereafter, the Corporate Debtor executed a security document confirming Deposit of Title Deeds for extension of Equitable Mortgage.

20. Subsequently, the Financial Creditor issued another Sanction Letter dated 24th March, 2009 (Exhibit: "U" page nos. 389 to 397, Volume II) in furtherance of the requests made by the Corporate Debtor for sanction of ad hoc Export Packing Credit Metal Gold Limit. In consequence of which, the Financial Creditor granted credit facilities to the extent of Rs. 25 Crores. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed an Agreement of Loan dated 26th March, 2009 (Exhibit: "III" page nos. 1161 to 1218, Volume-VI and Volume VII). Thereafter, the Corporate Debtor executed an Agreement of Hypothecation of Goods and Assets dated 26th March, 2009 (Exhibit: "LLL" page nos. 1228 to 1245, Volume- VII). Chain of other documents were executed between the corporate debtor and the Financial Creditor including Letter regarding grant of Individual limits dated 26th March, 2009 and Memorandum for extension of equitable Mortgage dated 26th June, 2009. Thereafter, the Corporate Debtor executed a Confirmation of Deposit of Title Deeds dated 21st July, 2009.
21. Subsequently, the Corporate Debtor once again made requests to the member Banks in Consortium for Commercial advances, in furtherance of which the Financial Creditor vide its Sanction Letter dated 23rd October, 2009 (Exhibit: "V" page nos. 398 to 415, Volume- II and Volume III) renewed and granted credit facilities to the extent of Rs.6000 Lakhs. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor have executed security documents in favour of the Consortium. Thereafter, the Corporate Debtor executed a Letter of Authority to Lead Bank from State Bank of Patiala dated 26th November, 2009 (Exhibit: "MMM" page nos. 1246 to 1247, Volume VIII). Thereafter, the corporate Debtor executed a Supplemental Working Capital Consortium Agreement dated 26th November, 2009

(Exhibit: "KKK" page nos. 1224 to 1227, Volume-VII). Thereafter, the Corporate Debtor executed a Supplemental Joint Deed of Hypothecation dated 26th November, 2009 (Exhibit: "JJJ" page nos. 1219 to 1223, Volume- VII). Subsequently, the Corporate Debtor executed an Inter se Agreement dated 26th November, 2009 between the consortium Banks (Exhibit: "NNN" page nos. 1248 to 1252, Volume-VII). Thereafter, the Corporate Debtor executed a Memorandum of Entry for Extension of Mortgage dated 26th November, 2009 (Exhibit: "PPP" page nos. 1272 to 1287, Volume- VII).

22. Subsequently, the Corporate Debtor made requests to the Financial Creditor for Sanction of Metal Gold Loan in furtherance of which the Financial Creditor granted a loan vide their Loan Agreement dated 30th January, 2010 and have granted loan facility under its scheme of metal (Gold) Loans. Thereafter, the Corporate Debtor executed a Memorandum of Entry for Creation of Mortgage dated 23rd January, 2010. Thereafter, the Corporate Debtor executed a Declaration and Confirmation of Deposit for creation of Joint Mortgage dated 25th January, 2010.
23. Subsequently, the Corporate Debtor once again made requests to the Consortium of Banks for renewal of existing credit facilities, in furtherance of which the Consortium renewed and granted credit facilities vide Supplemental Working Capital Consortium Agreement dated 27th July, 2010(Exhibit: "RRR" page nos. 1295 to 1298, Volume-VII). Subsequently, the Financial Creditor granted credit facilities to the extent of Rs.6360 Lakhs. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed security documents in favour of the member banks of the Consortium. Thereafter, the

Corporate Debtor executed a Supplemental Joint Deed of Hypothecation dated 27th July, 2010 (Exhibit: "QQQ" page nos. 1288 to 1294, Volume- VII). Subsequently, the Corporate Debtor executed a Supplemental Inter se Agreement dated 27th July, 2010 (Exhibit: "SSS" page nos.1299to 1303, Volume- VII). Thereafter, the Corporate Debtor executed a Memorandum of Entry for Extension of Mortgage dated 27th July, 2010, Declaration and Confirmation of Deposit for creation of Joint Mortgage dated 28th July, 2010.

24. Subsequently, the Financial Creditor issued another Sanction Letter dated 21 December, 2010(Exhibit: "W" page nos. 416 to 432, Volume III) to the extent of Rs. 6360 Lakhs in furtherance of the requests made by the Corporate Debtor for sanction of credit facilities. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor have extended the earlier securities and have executed the mortgage deed in respect of two immovable properties.
25. Further facility was granted of Rs.7860.00 Lakhs by the Financial Creditor vide their Sanction Letter dated 22nd February, 2011(Exhibit: "X" page nos. 433 to 443, Volume- III) in furtherance of the requests made by the Corporate Debtor for sanction of grant of credit. Pursuant to the Sanction letter the corporate debtor have executed an Agreement of Loan dated 22nd February, 2011. Thereafter, the Corporate Debtor executed a Supplemental Agreement of Hypothecation of Goods and Assets dated 22nd February, 2011 (Exhibit: "TTT" page nos. 1304 to 1322, Volume VII). Thereafter, the Corporate Debtor executed a Supplemental Working Capital Consortium Agreement dated 22nd March, 2011(Exhibit: "UUU" page nos. 1323 to 1326, Volume VII). Thereafter, the Corporate Debtor executed a Supplemental Joint Deed

of Hypothecation dated 22nd March, 2011(Exhibit: "VVV" page nos. 1327 to1331, Volume- VII). Thereafter, the Corporate Debtor executed a Supplemental Inter se Agreement dated22nd March, 2011 (Exhibit: "WWW" page nos. 1332 to 1336, Volume- VII).

26. Further the Corporate Debtor had subsequently made applications for advance of further facilities and accordingly the Financial Creditor granted a loan vide Sanction Letter dated 16th September, 2011(Exhibit: "Y" page nos. 444 to 445, Volume-III) for advance of Rs.8500.00 Lakhs. Pursuant to the Sanction Letter the Corporate Debtor have extended the earlier securities and have further executed a Memorandum of Entry dated 5th October, 2011. Thereafter, the Corporate Debtor executed a Supplemental Working Capital Consortium Agreement dated 5th October, 2011 (Exhibit: "XXX" page nos. 1337 to 1340, Volume- VII). Subsequently, the Corporate Debtor executed a Supplemental Joint Deed of Hypothecation dated 5th October, 2011 (Exhibit: "YYY" page nos. 1341 to 1345, Volume VII). Subsequently, the Corporate Debtor executed a Supplemental Inter se Agreement dated 5th October, 2011 (Exhibit: "ZZZ" page nos. 1346 to 1350, Volume-VII). Subsequently, the Corporate Debtor executed a Deed of Hypothecation dated 30th December, 2011.
27. Subsequently, the Applicants submit that in or around December, 2011 the Corporate Debtor approached State Bank of Bikaner & Jaipur for grant of facilities and for joining State Bank of India Consortium.
28. Further the Corporate Debtor had subsequently made applications for advance of further facilities and accordingly the Financial Creditor executed a Sanction Letter dated 3rd February, 2012 (Exhibit: "Z" page nos.446 to 452, Volume III) and further executed Supplemental

Working Capital Consortium Agreement dated 27 February, 2012 (Exhibit: "AAAA" page nos. 1351 to 1355, Volume-VIII) for advance of INR 8500.00 Lakhs. Subsequently, the Corporate Debtor executed a Supplemental Joint Deed of Hypothecation dated 27th February, 2012 (Exhibit: "AA" page nos. 453 to 457, Volume III). Thereafter, the Corporate Debtor executed a Supplemental Deed of Guarantee dated 27th February, 2012. Subsequently, the Corporate Debtor executed a Supplemental Inter se Agreement dated 21st June, 2012 (Exhibit: "CCCC" page nos. 1361 to 1366, Volume- VII). Subsequently, the Corporate Debtor executed a Memorandum of Entry for extension of mortgage dated 27th February, 2012. Thereafter, the Corporate Debtor executed a Letter confirming Deposit of Title Deeds dated 21st July, 2012. Subsequently, the Corporate Debtor executed a Memorandum of Entry for rectification of extension or Mortgage dated 21 June, 2012.

29. Further the Corporate Debtor had subsequently made applications for advance of further facilities and accordingly the Financial Creditor granted Sanction Letter dated 1 January, 2013 (Exhibit: "BB" page nos. 458 to 475, Volume III) for advance of Rs.25 Crores Only. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed an Agreement of Loan dated 3rd January, 2013 (Exhibit: "EEEE" page nos. 1372 to 1429, Volume- VII). Thereafter, the Corporate Debtor executed an Agreement of Hypothecation of Goods and Assets dated 3rd January, 2013 (Exhibit: "FFFF" page nos. 1430 to 1447, Volume- VII).
30. Subsequently, the Corporate Debtor in or around March and April 2013 approached State Bank of Bikaner & Jaipur and IDBI Bank Ltd. for grant of facilities.



31. Further the Corporate Debtor had subsequently made applications for advance of further facilities to the Consortium of Banks and accordingly the Corporate Debtor executed a Working capital Consortium Agreement dated 10th May, 2013 (Exhibit: "GGGG" page nos. 1448 to 1452, Volume- VIII). Accordingly, the Financial Creditor granted credit facilities to the extent of Rs. 2500 Lakhs. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Supplemental Joint Deed of Hypothecation dated 10th May, 2013 (Exhibit: "HHHH" page nos. 1453 to 1460, Volume- VIII). Subsequently, the Corporate Debtor executed a Supplemental Inter se Agreement dated 10th May, 2013 (Exhibit: "IIII" page nos. 1461 to 1467, Volume- VIII). Subsequently, the Corporate Debtor executed a Memorandum of Entry dated 10th May, 2013 and also executed Declaration and Undertaking dated 11th May, 2013.
32. Further the Corporate Debtor had subsequently made applications for advance of further facilities and accordingly the Financial Creditor granted Sanction Letter dated 14th September, 2013 (Exhibit: "DD" page nos. 485 to 506, Volume- III) for advance of Rs.14000.00 Lakh. Subsequently, the Corporate Debtor executed extended the earlier securities and created additional securities by Mortgage. Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Deed of Hypothecation dated 5th October, 2013 (Exhibit: "JJJJ" page nos. 1468 to 1484, Volume- VIII). The Corporate Debtor executed a Deed of Pledge dated 5th October, 2013 (Exhibit: "KKKK" page nos. 1485 to 1496, Volume- VIII). The Corporate Debtor executed a Working capital Facility Agreement dated 5th October, 2013 (Exhibit: "LLLL" page nos. 1497 to 1527, Volume- VIII). The Corporate Debtor



executed a Memorandum of Entry dated 5th October, 2013 (Exhibit: "D" page nos. 47to 84, Volume-I).

33. Further the Corporate Debtor had subsequently made applications for advance of further facilities to the Consortium of Banks and accordingly the Consortium of Banks enhanced credit facilities vide its Seventh Supplemental Working Capital Consortium Agreement dated 4th January, 2014 (Exhibit: "NNNN" page nos. 1538 to 1546, Volume VIII).The Financial Creditor enhanced the credit facility to extend). Furthermore, in order to secure the aforesaid credit facilities, the Corporate Debtor executed a Seventh Supplemental Inter se Agreement dated 4th January, 2014 (Exhibit: "MMMM" page nos. 1528 to 1537, Volume VIII). Thereafter, the Corporate Debtor executed a Seventh Supplemental Joint Deed of Hypothecation dated 4th January, 2014 (Exhibit: "OOOO" page nos. 1547 to 1557, Volume VIII). Subsequently, the Corporate Debtor executed Memorandum of Entry dated 4th January, 2014 (Exhibit: "D" page nos. 47 to 84, Volume- I).
34. Subsequently, the account of the Corporate Debtor was classified as Non Performing Account under the guidelines of Reserve Bank of India with effect from 30th September, 2014 for the Financial Creditor.
35. Pursuant to this, the Financial Creditor on behalf of the Consortium members recalled the entire amount due and payable through Recall Notice dated 30th March, 2015 (Exhibit: "PPPP" page nos. 1558 to 1562, Volume-VIII). However, the Corporate Debtor failed to make payments.
36. Pursuant to this, the Financial Creditor had issued a Notice dated 3rd June, 2015 (Exhibit: "QQQQ" page nos. 1563 to 1571, Volume VIII) under Section 13 (2) of SARFAESI Act, 2002for recovery of outstanding

loan amount of Rs. 313,68,76,133/- (Rupees Three Hundred and Thirteen Crores Sixty Eight Lakhs Seventy Six Thousand One Hundred and Thirty Three only) as on 26.05.2015.

37. The Corporate Debtor vide Letter dated 20.04.2016 have informed the Financial Creditor that they are into financial crisis and are trying to recover dues foreign buyers and requested for extension for realizing the outstanding dues (Exhibit: "B", page no. 8 of the Additional Affidavit filed by Financial Creditor).
38. Pursuant to this the Corporate Debtor vide Letter dated 26.05.2016 had approached the Financial Creditor for revival of credit facilities and requested to provide time to streamline its business. (Exhibit: "C", page no. 9 to 12 of the Additional Affidavit filed by the Financial Creditor).
39. The Financial Creditor took symbolic possession of all the secured assets of the Corporate Debtor as per section 13(4) of the SARFAESI Act, 2002 read with Rule 8 of The Security Interest (Enforcement) Rules, 2002 on 27th May, 2016. (Exhibit: "RRRR" page nos. 1572 to 1582, Volume-VIII).
40. The directors of the Corporate Debtor vide Letter dated 01.07.2016 had duly confirmed the financial debt of Rs.56,40,49,432/- is due and payable to the Financial Creditor. (Exhibit: "D", page no. 13 of the Additional Affidavit filed by the Financial Creditor). Further, the Corporate Debtor alongwith Letter dated 07.07.2016 issued a cheque of Rs. 10 Lakhs and informed the Financial Creditor that it would deposit a sum of Rs.10 Lakhs every month henceforth. (Exhibit: "E", page no. 14 of the Additional Affidavit filed by the Financial Creditor). However,



after detailed discussion and deliberation the compromise offer of the Corporate Debtor was rejected by the Financial Creditor.

41. The Applicant, thereafter filed Securitization Application (S.A.) bearing no. 486 of 2016 on 26.07.2016 before Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai under section 14 of SARFAESI Act, 2002 for taking physical possession of the secured assets mortgaged in the favor of the Applicant. Thereafter, the Financial Creditor along with Consortium Members filed an Original Application before the Hon'ble Debts Recovery Tribunal at Mumbai on 5th August, 2016 (Exhibit: "SSSS" page nos. 1583 to 1670, Volume- VIII).
42. Pursuant to this, the Corporate Debtor vide Letter dated 12.08.2016 requested the Financial Creditor to adjust US \$35000 received from its foreign debtor towards payment of its legally enforceable debt. (Exhibit: "F", page no. 15 of the Additional Affidavit filed by the Financial Creditor).
43. The Applicant conducted Forensic Audit on loan account of the Corporate Debtor through Deloitte Touche Tohmatsu Pvt Ltd for the period for 1.04.2012 to 31.03.2014. Thereafter, a fraud angle re-examination was also conducted by SARG commercial - III branch of the Financial Creditor. Based upon the finding and observations of the said audit and examination, the Financial Creditor conducted a meeting of Fraud Identification Committee on 10.12.2018, wherein the loan account of the Corporate Debtor was declared as Fraud and accordingly complaint was lodged with Central Bureau of Investigation (CBI) on 15.03.2019 and 30.03.2019 by the Financial Creditor against the Corporate Debtor.



44. Thereafter, the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai vide Order dated 18.10.2019 was pleased to allow the said Securitization Application (SA) 486 of 2016 and appointed Court Commissioner to take physical possession of the secured assets. Further, the Applicant has filed a Securitization Application (SA) before Debt Recovery Tribunal DRT II, Mumbai challenging order dated 18.10.2019 for appointment of Court Commissioner for taking possession of the properties wherein vide order dated 10.12.2019, the Financial Creditor was directed to approach Chief Metropolitan Magistrate Court for modification of order to appoint Assistant Registrar in place of Court Commissioner to hand over the possession of the properties of the Corporate Debtor.
45. After exploring all the avenues of the recovery, the Financial Creditor had filed this Company Petition under Section 7 Petition before this Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016 on 03.04.2019.
46. That the Corporate Debtor had consistently acknowledged the legitimate dues of the Financial Creditor in their Letters dated 20.04.2016, 26.05.2016, 01.07.2016, 07.07.2016, 12.08.2016 which clearly amounts to acknowledgement of debt and squarely falls under the provision of Section 18 of the Limitation Act, 1963 which read as under:-
18. Effect of acknowledgment in writing-(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom



he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.-For the purposes of this section,-

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

47. In view of the same, the date of default in the present case is 02.07.2014 and 3 years gets expired on 01.07.2017 and the latest acknowledgment from the Corporate Debtor was on 20.08.2016 and the period of 3 years expires on 20.08.2019 and the Financial Creditor had filed the present Company Petition on 03.04.2019 which is well within the limitation period in view of the Supreme Court judgement in the matter of *Dena Bank (now Bank of Baroda) vs C Shivakumar Reddy*.



48. A 'Debt' within the meaning of the Code is due to the Financial Creditor from the Corporate Debtor and a 'Default' has clearly occurred within the meaning of the Code.
49. Hence, the Corporate Debtor is liable to pay an amount of Rs.468,49,72,838.84 (Rupees Four Sixty Eight Crores Forty Nine Lakhs Seventy Two Thousand Eight Hundred Thirty Eight and paisa Three Only) along with Interest.
50. Based on facts and documents produced before this Tribunal alongwith the Company Petition, it is most humbly submitted that it is a fit case for admission and initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
51. It is therefore most respectfully prayed that this Tribunal be pleased to pass appropriate orders initiating CIRP against the Corporate Debtor and all consequential directions as provided under the Code.

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

52. The Corporate Debtor submits that the date of default in the present case is of 02.07.2014 wherein the period of three years from the date of default have expired on 01.07.2017 and the present Petition was filed on 07.03.2019. Thus, there is a delay of 641 days which makes the present petition barred by limitation and hence not maintainable.
53. Further, the Financial Creditor has not mentioned the date of default in the petition. He has mentioned the date of NPA as 30.09.2014. In the absence of mandatory information in Part IV of form 1 the application becomes unsustainable.



54. The notice did not contain the outstanding by giving various information such as various loans/credit facility accounts and the security interest created for such liability in various heads such as nature of limit, limit, rate of interest, security agreement with brief description of securities, etc.
55. The amount of default in Part IV of Form 1 shows the default amount to be 229.5 crores, whereas the total sanction limit was only 209.5 crores. Hence, this shows that the Financial Creditors have paid an amount beyond the sanction limit, thereby allowing the account to go NPA. Since the Financial Creditor did not follow the sanction limit, it loses its right to seek remedy for commencing Corporate Insolvency Resolution Process against the Corporate Debtor.
56. The Applicant on behalf of the Financial Creditor has failed to give an affidavit for all their contentions. Hence, in absence of the same the application is not complete. Hence, the Petition should be first allowed to be rectified.
57. The Financial Creditor has failed to submit the Authorisation for Assignment (AFA) form from the proposed Resolution Professional.
58. The Financial Creditor has failed to provide information of default submitted with NESL or has not produced the CIBIL information along with application. Due to such failure the Petition is not maintainable under section 7.

Findings:

59. We have heard both the parties and perused the records.



60. This Bench relies on the order of the Hon'ble NCLAT, Delhi in ***Gouri Prasad Goenka vs Punjab National Bank & Anr on 8 November, 2019 para 11:***

“In so far as joining of issue by the Corporate Debtor qua the quantum of payable debt is concerned, same does not fall for consideration of the Adjudicating Authority at the stage of admission of the application under Section 7 of the I&B Code. The only requirement is that the minimum outstanding debt should be to the tune of Rupees One Lakh. The actual amount of claim is to be ascertained by the Resolution Professional after collating the claims and their verification which comes at a later stage. The contention raised on this score also fails.”


61. In view of the above order the contention of the Corporate Debtor in reference to the variation in the quantum of the outstanding debt stands irrelevant.
62. The learned counsel for the Corporate Debtor has also raised the defence that the Financial Creditor has mentioned the date of NPA whereas failed to mention the date of default in the Petition. However, it is a settled law that if the documents attached are sufficient to make out the date of default, same should be considered. In the present matter, documents attached, specifically Exhibit: QQQQ (pg:1564, para 6) is sufficient to make out the date of default which is found to be 02.08.2015 i.e. 60 days from notice u/s 13(2) of SARFASEI Act, 2002 dated 03.06.2015.
63. That apart, there is acknowledgment of the outstanding debt on the part of the Corporate Debtor, a fact not disputed by the Corporate Debtor.

This comes to fore from various letters dated 20.04.2016, 26.05.2016, 01.07.2016, 07.07.2016, 12.08.2016 emanating from the Corporate Debtor and addressed to the Financial Creditor wherein the Corporate Debtor has referred to the cash credit limits being enjoyed by them. They have also referred to certain repayments to the Financial Creditor and other member Bankers. This is a clear acknowledgment of the outstanding debt in writing and the Corporate Debtor cannot wriggle out of the liability so acknowledged. It is not in controversy that on the date of such acknowledgement the debt was not time barred and the Insolvency Resolution Process was triggered within the period of limitation in terms of Article 137 of the Limitation Act, computed from such date. A fresh period of limitation thus begins from 12.08.2016 and extends upto further period of 3 years i.e. 12.08.2019. Considering that the present petition was filed on 03.04.2019, it is very well within the period of limitation.

64. The Applicant on behalf of the Financial Creditor has given an affidavit for all their contentions. Hence, this contention of the Corporate Debtor to the contrary stands invalid.
65. The Financial Creditor has submitted the Authorisation for Assignment (AFA) form from the proposed Resolution Professional. Hence, this contention of the Corporate Debtor to the contrary stands discarded.
66. 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.

67. The Financial Creditor has proposed the name of **Mr. Avil Menezes**, Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041, 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.
68. 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.
69. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 1802/MB/C-I/2019** filed by **State Bank of India**, 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 **Auro Gold Jewellery Private Limited [CIN: U51398MH1993PTC074600]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- (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. Avil Menezes**, Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041, having address at 403, Crescent Business Park, Sakinaka Telephone Exchange Lane, Sakinaka, Andheri East- 400072 Email: avil@caavil.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)

18.11.2022
DSB

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)