

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.58/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Xander Finance Private Limited

Registered Office at 101, 5 North Avenue,
Maker Maxity, Bandra Kurla Complex,
Bandra East, Mumbai
Maharashtra – 400051

... Financial Creditor

VERSUS

Valdel Engineers and Constructors Private Limited

Registered Office at KCN Tower, No.27,
Race Course Road, Bengaluru
Karnataka – 560001

... Corporate Debtor

Order delivered on 02.06.2023

Coram: 1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. C.K. Nandakumar (Sr.Adv) with
Shri MB Anirudh

For the Respondent : Shri. K.G. Raghavan (Sr.Adv) with
Shri Perikal K.Arjun & Shri Shashank J.,

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This present Company Petition has been filed on 15.03.2022 by **Xander Finance Private Limited** (for brevity 'Financial Creditor') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution

Process (CIRP) against **Valdel Engineers and Constructors Private Limited** (hereinafter called as 'Corporate Debtor'), on the ground that it has committed default for total amount of Rs.18,96,38,464/- (Rupees Eighteen Crores Ninety Six Lakhs Thirty Eight Thousand Four Hundred and Sixty Four Only) as on 01.11.2021. This comprised of the Principal amount of Rs. 1,21,52,460/-, Interest Rs. 5,98,737/- and the default interest delayed/unpaid payments and covenants defaults Rs. 17,60,96,028/- and the tax deducted at source and not deposited Rs. 7,91,239/-.

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

(i) It is stated that the Financial Creditor advanced a Rupee Term Loan Facility to Valdel Holdings (India) Private Limited ("Principal Borrower") for a sum of Rs. 50,00,00,000/- (Rupees Fifty Crores only) ("Rupee Term Loan") under the Master Facility Agreement dated March 31, 2018 read with the Agreement of Modification dated March 23, 2020 to the Master Facility Agreement (hereinafter referred to as "Modified Agreement"), executed between Valdel Real Estate Private Limited, Mr. Mathikere Jayaram Shantaram, Ms. Anita Shantharam (hereinafter collectively referred to as "Schedule I Persons"), Valdel Holdings (India) Private Limited ("Principal Borrower") Xander Finance Private Limited ("Financial Creditor/ Lender") and Catalyst Trusteeship Limited ("Security Trustee").

(ii) It is further stated that as per the Master Facility Agreement, the Rupee Term Loan was made available by the Financial Creditor/ Lender herein to the Principal Borrower, payable within a period of 42 (forty-two) months from the disbursement date and the same was secured, inter alia, by a Deed of Corporate Guarantee dated December 28, 2020 executed by the Corporate Debtor in the favour of Catalyst Trusteeship Limited as the Security Trustee and the Financial Creditor as the Lender, wherein the Corporate Debtor herein unconditionally and irrevocably guaranteed payment and due discharge by the Principal Borrower under the Master Facility Agreement. In view thereof, the liabilities of the Principal Borrower and the Corporate Debtor being the Corporate Guarantor of the Principal

Borrower, are co-extensive and therefore, they are jointly and severally liable to make timely payment/repayment of monies towards principal and interest and all other overdue amount including but not limited to the accrued and applicable default interest to the Financial Creditor.

(iii) Accordingly, as of 01.11.2021, the Principal Borrower defaulted in its repayment obligation for the instalment for the month of October 2021, pursuant to which the Financial Creditor addressed several correspondence calling upon the Principal Borrower as well the Corporate Debtor to repay its debts. An Event of Default Notice dated 01.12.2021 was also addressed to the Principal Borrower and the Corporate Debtor, pursuant to which several emails demanding the payment were exchanged between the parties. In fact, by an email dated December 27, 2021, the Principal Borrower acknowledged its default. By an email dated January 7, 2022, the Financial Creditor invoked the Corporate Guarantee of the Corporate Debtor. Furthermore, since the instalment for the month of October 2021 that was due on November 1, 2021 remained unpaid for a period of 90 days, the account was also classified as a Non-Performing Asset as on January 29, 2022.

Therefore, since the Principal Borrower failed to honour its obligations under the Master Facility Agreement despite various reminders and requests made by the Financial Creditor, the Financial Creditor invoked the Deed of Guarantee. Furthermore, the Financial Creditor also addressed a Recall Notice dated February 1, 2022, to inter alia, the Principal Borrower as well as the Corporate Debtor, to recall the entire principal amount, interest amount, default interest amount and the TDS payable and thereby sought the payment/repayment of the then outstanding amount. However, only an amount of Rs.24,84,297/- was paid by the Principal Borrower instead of the entire amount that was due, owing and payable by the Corporate Debtor under the Master Facility Agreement. Further to the Recall Notice, a letter dated February 24, 2022 was addressed by the Financial Creditor to the Corporate Debtor providing reconciliation of the amount payable as on February 23, 2022, i.e. Rs.18,96,38,464 (Rupees Eighteen Crore Ninety-Six Lakhs Thirty-Eight Thousand Four Hundred Sixty-Four only).

3. The Corporate Debtor has filed its objections vide Diary No. 3275 dated 29.07.2022, and the rejoinder has been filed by the petitioner vide Diary No. 4231 dated 07.10.2022 which is taken on record.
4. Heard learned Counsel for the Financial Creditor and for the Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder. On 06.01.2023 and 21.02.2023, the learned counsels were directed to file written submissions/brief synopsis but not more than four pages in total along with the copies of the citations on which they were placing reliance on.
5. The compliance to the above order was filed vide diary no 1309 dated 07.03.2023, in which it was explained by the petitioner as under:-
 - (i) The respondent has contended that the revised repayment schedule sent by the Petitioner to the Respondent vide an e-mail dated September 02, 2021, is a standalone agreement that has superseded all previous contracts, including the Master Facility Agreement dated March 31, 2018. The said revised schedule was sent by the Petitioner to the Respondent after the earlier conditional no-objection certificate dated July 02, 2021, was terminated vide a letter dated August 18, 2021, on account of failure on part of the Respondent to adhere to the terms of the no-objection certificate dated July 02, 2021. The Petitioner, at all times, has kept the terms of the Master Facility Agreement intact and it was never agreed between the parties that the terms of the Master Facility Agreement be superseded by the revised schedule. Therefore, the revised schedule that does not provide for default interest, can't be said to have superseded the MFA.
 - (ii) The Principal Borrower failed to discharge its obligation to create a charge on the Project 2 Units and the undivided share in the Project 2 Land. However, the same was not agreed upon The Petitioner, has issued several verbal reminders to the Principal Borrower calling upon it to fulfil its obligations. As the same was not done, the Petitioner and the Principal Borrower indulged in e-mail correspondence from

February 04, 2019, to February 25, 2019, wherein the Petitioner repeatedly requested and reminded the Principal Borrower to perfect the security interest as contractually required under the Master Facility Agreement. The conditional no-objection certificate issued by the security trustee was conditional upon the Principal Borrower repaying an amount of Rs. 2,45,75,877/- on or before July 07, 2021. However, as the Principal Borrower failed to meet the condition, the said conditional no-objection certificate stood revoked in its entirety and the terms and conditions of the Master Facility Agreement, including those of the Deed of Corporate Guarantee dated March 31, 2018, were reinstated.

(iii) The Respondent has contended that the threshold limit was not met on the alleged ground that there remains only a default amount of Rs. 46,01,401/-. However, from the correspondence available on record, particularly the letter dated February 24, 2022, it is clear that the amount in default is clearly well above the threshold as required under the Code and hence, the captioned Company Petition is maintainable. The Petitioner denies the calculation of the Respondent, and submits that the default amount is of Rs. 18,96,38,464/- as is stated in the Company Petition. The Respondent has also sought to contend that the 'default interest' clause, which is a contractual provision covered under the Master Facility Agreement dated March 01, 2018, is inapplicable. However, the Petitioner at all times, has maintained that the outstanding due payable by the Respondent were subject to levy of default interest under the Master Facility Agreement.

(iv) It is submitted that considering that the Master Facility Agreement prescribes a specific schedule for repayment, which is breached by the Respondent, the Respondent cannot assume that the partial amounts paid belatedly in contravention of such schedule, will be accepted without protest and without applicability of any interest (or default interest) as per the terms of the said Master Facility

Agreement. It is submitted that such interest/ default interest has been levied in terms of the Facility / Loan Agreement executed with the Respondent. The petitioner denies that the 'default interest' was in the nature of "Liquidated damages"; and it is as per the contractual agreement.

6. The compliance to the above order by the respondent was filed vide diary no 1003 dated 21.02.2023, in which it was explained as under:-

(i). In accordance with the MFA, Valdel Holdings has made regular payments to Petitioner towards the Principal Amounts and the Interest in accordance with the repayment schedule under the MFA along with certain additional lump sum/OTS payments. In this regard, on March 29, 2021, the Security Trustee issued a conditional No- Objection Certificate ("**First NOC**") for release of certain securities mortgaged to Petitioner under the MFA, on an OTS payment of Rs. 21.75 Crore by Valdel Holdings to Petitioner. The same was duly paid on March 31, 2021. On June 24, 2021, the Security Trustee issued another conditional No-Objection Certificate ("**Second NOC**") for release of existing charge over Project 1 Land and Collateral 2, on another OTS payment of Rs. 32 Crore by Valdel Holdings to Petitioner. The same was duly paid on June 28, 2021. The Security Trustee issued another conditional No-Objection Certificate dated July 02, 2021 ("**Third NOC**") for release of existing charge over Project 2 and for closure of the loan account, on a payment of Rs. 2,45,75,877/- by Valdel Holdings to Petitioner. Valdel Holdings paid an amount of Rs.1,45,75,877/- by July 12, 2021. A bare perusal of the Third NOC elucidates that despite Valdel Holdings not creating charge over Project 2 Units, Petitioner had agreed to release the charge over the Project 2 Units. Such action further affirms the factum that Petitioner had not raised an objection regarding the non-creation of charge over the Project 2 Units and was satisfied with non-creation of the same. Therefore, Petitioner having approved the same, cannot now

deny and allege that non-creation of charge amounts to an Event of Default under the MFA. Even at the time of issue of Third NOC, the amount outstanding was only Rs.2.45 Crore as against which a sum of Rs. 1.45 Crore was paid by July 12, 2021 Furthermore, the Third NOC clearly states that only the amount specified thereunder would change, if the same was not paid before July 07, 2021.

(ii) Due to the delay in the payment of balance amount of Rs. 1 Cr, the third NOC was withdrawn on 18.08.2021. However, immediately thereafter, the petitioner issued a revised payment schedule on 02.09.2021 (Annexed at P.108-109 of objections); inclusive of a penalty of Rs. 70 Lakhs. The Revised Schedule modified the terms of the MFA as the same provided for revised Principle, Interest, Accrued Interest and Default Interest that was payable by Valdel Holdings. As such, the terms of the MFA stood modified in view of the issuance of the Revised Schedule and the terms of the MFA was no longer binding on the parties as they were now required to act and perform in accordance with the Revised Schedule.

(iii) Under the Revised Schedule, a sum of Rs. 1,41,73,149 was payable in September 2021; Valdel Holdings has repaid Rs. 95,71,748 and only a balance of Rs. 46,01,401 is due. The present action of Petitioner in demanding excessive, usurious and exorbitant interest evinces the malice of Petitioner to make unlawful gains at the cost of Valdel Holdings and Respondent. It is pertinent to note that a significant number of transactions have transpired between Valdel Holdings and Petitioner between the period of March 31, 2021 and July 12, 2021. Additionally, payments were made between August 27, 2021 and February 05, 2022, and between March 23, 2022 and June 20, 2022. The Respondent is a profit-making company that has been maliciously dragged into these proceedings in the absence of a "default" as defined under Section 3(12) of the Code, and when a dispute exists

between Valdel Holdings and Petitioner regarding quantum of amount payable.

(iv) As per the Revised Schedule dated 02.09.2021; the terms of the MFA for levying of Interest, Accrued Interest and Default Interest stood superseded. **As per the MFA, Service Interest is @ 12% p.a., Accrued Interest is@ 3% p.a. and Default Interest is@ 24% p.a. (on a compound interest basis) whereas per the Revised Schedule, Interest is@ 13.5% p.a., Accrued Interest is @3% p.a. [Annex I@ Pg. 109 of Statement of Objections of Respondent] and Default Interest is@ 7.5% p.a. (on a simple interest basis) [Annex P@Pg. 4-13 of Memo for Production of Additional Documents dated January 21, 2023 of Respondent].** It is pertinent to note that Petitioner has computed the monthly instalments on the basis of Default Interest@ 7.5% p.a. between the period September 2021 and January 2022 (i.e., pursuant to issuance of the Revised Schedule), on a simple interest basis, on the delayed payments made by Valdel Holdings. **(Annex P & Annex Q of Memo dated January 21, 2023)**

(v) Vide Notice dated February 01, 2022 ("**Recall Notice**") **(Annex W @ Pg. 343 of Petition)** the petitioner has recalled the entire loan facility of Rs. 50 Crore when the total amount payable under the Revised Schedule was only Rs. 1,41,73,149. Petitioner alleged that Rs. 13,07,53,587 (Rs. 1,21,52,460 as Principal, Rs. 4,25,147 as Interest and Rs. 11,73,26,995 as Default Interest) was due and payable by Valdel Holdings, Guarantors and Respondent. Petitioner erroneously alleged that the non-creation of charge over Project 2 Units tantamounted to an Event of Default under the MFA. Petitioner also failed to clarify the manner in which the Default Interest was calculated. Thereafter, Petitioner issued an addendum to the Recall Notice ("**Addendum**") and arbitrarily and without any details or clarification revised

the outstanding payable to Rs. 18,96,38,464 (**Annex AA @Pg. 350 of Petition**). It is pertinent to note that the alleged debt amount has increased by nearly 6 Crores within a period of 3 weeks.

(vi) As per Section 62 of the Indian Contract Act, 1872 ("**Contract Act**") if a contract is altered by mutual consent between the concerned parties to a contract, then the old contract need not be performed [**Chrisomar Corporation v. MJR Steels Private Limited and Anr. (2018) 16 SCC 117, para 36-39@Pg. 579-580 - Vol. 2**]. The Revised Schedule is a superseding and stand- alone agreement between Petitioner and Valdel Holdings and the same also provides the various interest components payable on the Principal Amount. Since, the erstwhile repayment schedule and the interest payable under the MFA is substituted by way of the Revised Schedule, the terms and conditions stipulated in the former cease to apply. [**Union of India v. Kishorilal Gupta & Bros., 1953 SCC OnLine Cal 10, para 30-40@ Pg. 592-594 - Vol 2; R.N. Kumar v. R.K. Soral, (1998) 2 SCC 508, para 4@ Pg. 598 - Vol 2**].

(vii) Furthermore, as the Revised Schedule has modified the terms of the MFA, Petitioner cannot now levy Default Interest at 24% p.a. on a compound interest basis, retrospectively from May 11, 2018; whereas the Revised Schedule provides for Default Interest at 7.5% p.a. on a simple interest basis.

(viii) **Valdel Holdings as of date has paid Rs. 49,56,25,591/- towards the Principal Amounts and Rs. 27,22,16,517/- towards Interest (Annex G @ Pg. 96-102 of Statement of Objections of Respondent) against a loan sanction of Rs. 50 Crore.** As highlighted above, Respondent disputes the Default Interest amount alleged in the Petition and is not liable to pay the same. Furthennore, Valdel Holdings in accordance with the Revised Schedule has paid a substantial portion of the Principal,

Interest, Accrued Interest and Default Interest denoted thereunder and the balance amount currently payable is only Rs. 46,01,401 (Annex R @Pg. 29 of Memo for Production of Additional Documents dated January 21, 2023 of Respondent) which is well below the pecuniary threshold of Rs. 1 Crore stipulated under Section 4 of the Code.

7. The learned counsel placed the reliance on various citations vide D.No. 422; and Additional documents filed vide D.No. 421 (Additional Documents) dated 23.01.2023 and the same has been taken on record.
8. During the course of proceedings before the Tribunal, Shri C.K. Nandakumar, Ld. Sr. Counsel for the Petitioner invited our attention to the various documents specifically the Master Facility Agreement (MFA) dated 31.03.2018. It is pointed out here that the Respondent-Corporate Debtor (CD) in this case was the Corporate Guarantor, whereas, the Principal Borrower was M/s. Valdel Holdings (India) Private Limited. In accordance with the MFA, there was a stipulation of 15% of interest rate whereas the default interest rate of 24% was also mentioned, for which the relevant Clauses of the document filed being MFA as well as the Deed of Guarantee were referred to. In so far as the acknowledgement of the debt is concerned, the Counsel referred to the part payments made against the loan which is treated as acknowledgement for the purpose of determining the date of limitation.
9. On behalf of the Respondent, Shri K.G. Raghavan, Ld. Senior Counsel, stated that some crucial documents along with latest correspondences were suppressed in the Petition and a separate Memo was filed vide Diary No.421 on 23.01.2023 for production of additional documents. It is contended by the Counsel that there were three NOCs issued followed by regular payments made to the Petitioner towards the Principal amount and the interest along with certain additional lump sum / OTS payments as per the conditions given in the NOCs. The Security Trustee issued 1st NOC on

29.03.2021, 2nd NOC on 24.06.2021 and the 3rd NOC on 02.07.2021. It is contended that by these NOCs, release of Charge and Securities were allowed as and when substantial significant payments to the Petitioner, as per the NOCs' conditions were made. The 1st NOC was issued for release of certain securities, mortgaged to the Petitioner under the MFA on payment of Rs.21.75 Crores by the Principal Borrower (OTS payments) to the Petitioner, which was duly paid on 31.03.2021. The 2nd NOC required payment of Rs.32 Crores to the Petitioner, which was also paid on 28.06.2021; and the corresponding Securities were released. It is stated that these documents were not produced by the Petitioner and suppressed before this Adjudicating Authority (AA). At the time of 3rd NOC dated 02.07.2021, the outstanding amount was only Rs.2.45 Crores, as against which a sum of Rs.1.45 Crores was duly paid by 12.07.2021, and only Rs.1 Crore remained. It was clearly stated in this NOC that the amount specified would change only if the same was not paid by 07.07.2021.

10. It is further pointed out by the Ld. Sr. Counsel for the Respondent that subsequent to the above *vide* email dated 02.09.2021 the Petitioner issued a revised payment schedule for the CD, for the instalments from September 2021 till September 2022; showing the outstanding Principal amount at the beginning of the month, interest to be levied and the amount payable and paid during the month along with the due dates. It is contended that the terms of MFA accordingly stood modified. Further, it is stated that as per this revised schedule, only an amount of Rs.1,41,73,149/- was the outstanding amount payable in September 2021 out of which Valdel Holdings had repaid Rs.91,78,748/-; and the amount of Rs.46,01,401/- only was outstanding. In this revised payment schedule, the rates of interest, accrued interest and default interest stood revised from the MFA. In this connection, it was stated by the Sr. Counsel that as per page 24 of the CP, the Principal amount was Rs.1,21,52,460/- only and Rs.17,60,96,028/- was the amount of default interest which is the major portion. Emphasis has been placed on the reference to the rates of interest as per the MFA and as per the revised schedule forwarded with email dated

02.09.2021 and the documents filed on 23.01.2023 by the Respondents. The documents filed on 23.01.2023; which are the e-mails dated 21.12.2021 and 27.01.2022 issued by the Petitioner to the Principal Borrower, enclosing the month wise calculations from September 2021 to January 2022 for the outstanding amounts reveal that the modified rates for interest was @ 13.5%; Accrued Interest @ 3% and Default Interest @ 7.5% (simple interest) as against the stipulation of Interest @ 12%; Accrued Interest @ 3% and Default Interest @ 24% (on compound interest basis) in the MFA. Therefore, the Petitioners had themselves given the calculations based on the revised rates in the revised payment schedule.

11. Further, the Respondent's Counsel stated that the threshold jurisdiction should be seen as on the date of entertaining the Petition, and not only on the date of filing, in accordance with the general principle of Law. And with the additional documents filed on 23.01.2023 at page 29 Respondent had enclosed the payments made in response to the email dated 02.09.2021 giving the revised schedule of payment. The payments has been made as per the payment schedule attached with the additional documents filed *vide* Diary No.421 dated 23.01.2023 under the head Loan Details EMI Servicing. This document shows that the amount of Rs.46,01,401/- only was outstanding payable in September 2022.

12. Moreover, in the written submissions filed by the Petitioner on 07.03.2023 while the additional documents filed on 23.01.2023 by the Respondents were objected to, the contents of these documents were not denied. The email dated 02.09.2021 giving the revised payment schedule along with the Principal amount, Interest to be levied and Amounts payable and paid along with the Due date for every month was enclosed by the Respondent along with the Statement of Objections filed on 29.07.2022 and the same has been discussed extensively in the above written submissions filed by both the Parties. The Petitioners have repeatedly emphasised that since as against the requirement of payment of Rs.2.45 Crores in the 3rd NOC dated 02.07.2021, only Rs.1.45 Crores was paid by 12.07.2021, the 3rd NOC was revoked and therefore the terms of the original MFA were duly applicable. It

is noticed that the Principal Borrower was intimated of the revocation of the 3rd NOC *vide* letter dated 18.08.2021, however, the revised payment schedule issued by the Petitioner to the Principal Borrower was on 02.09.2021 i.e. after the revocation of the said NOC. Moreover, the subsequent two e-mails placed with the Memo of Additional Documents filed by the Respondent on 23.01.2023 are dated 21.12.2021 and 27.01.2022 and these are also issued by the Petitioners to the Principal Borrowers. Vide these e-mails, the computation for monthly schedule of payments from July 2021 till January 2022 was sent to the Principal Borrower and the details of these computation was also enclosed with these e-mails. This clearly showed that the computations enclosed by the Petitioners were on the basis of the interest @ 13.5%, accrued interest @ 3% and default interest was @ 7.5% only. It is pertinent to note here that the Petitioner has not denied the e-mails dated 02.09.2021, 21.12.2021 and 27.01.2022.

13. The timeline given in the above correspondences showed that the revised payment schedule sent by email dated 02.09.2021 was being followed by the Petitioner also in the subsequent correspondences related to demanding the monthly payments from the Principal Borrower. The contention of the Petitioner in the written submissions filed on 07.03.2023 that in the above emails sent by it, it was emphasised that default interest was applicable has not been denied by the Respondents in their written submissions filed on 21.02.2023; only the matter regarding the revised rates of interest and default interest has been emphatically underlined; which was also used by the Petitioner in its revised payment of schedule. Therefore, the contention of the Petitioner that inspite of the revised payment schedule issued on 02.09.2021, the original terms, conditions and rates of interest / exorbitant default interest as per the MFA continued to exist is not tenable on the facts of the case.
14. However, the Petitioner, even after having issued the email dated 27.01.2022, enclosing the same monthly payments details and calculations as discussed above for the months of July 2021 to January 2022, went ahead and issued the Recall Notice dated 01.02.2022, in which the entire

Loan Facility of Rs.50 Crores was recalled. In this Recall Notice, the Principal amount was stated to be Rs.1,21,52,460/- and the interest of Rs.4,25,147/- and Default Interest of Rs.11,73,26,995/-. On 24.02.2022, the Loan Recall Notice was revised giving an aggregate amount of Rs.18,96,38,464/-, which is the ultimate amount mentioned in the Petition also. It is on account of the calculation of the default interest at a compounded annual rate of 24% that this amount has been arrived at, with the quantum of interest becoming Rs.17,60,96,208/-. The Respondent has vehemently opposed this calculation on the basis of the revised payment schedule dated 02.09.2021 and the subsequent e-mails as discussed above in which the default interest was calculated @ 7.5% p.a. (simple interest) only. The Respondents have also relied upon various judgments in its submissions dated 21.02.2023 regarding the alteration of terms of contracts by mutual consent and emphasised that the revised schedule has the effect of superseding the MFA. It is also stressed upon by the Respondent that whereas the total loan sanctioned was of Rs.50 Crores, the Principal Borrower as on date had already paid Rs.49,56,25,591/- towards the Principal, amount of Rs.27,22,16,517/- towards the Interest, leaving the balance outstanding of only Rs.46,01,401/-. This being below the prescribed threshold limit of Rs.1 Crore, the Respondent has stressed that the Petition deserves to be dismissed on this count.

15.It is also stressed by the Respondents that the proceedings u/s 7 has been initiated by the Petitioners in this case utilising the provisions of the Code as a recovery proceedings instead of resolution of the Respondents and the same was impermissible under the Code in view of various judicial precedents in this regard, in particular, *Swiss Ribbons Private Limited and Anr. v. Union of India and Ors. (2019) 4 SCC 17.*

16.Having carefully considered the above submissions of the respective Parties and the sequence of the Events including the issue of revised payment schedule after mutual consent, we are of the considered opinion that the terms of the original MFA stood revised by this payment schedule indicated *vide* email dated 02.09.2021. The contention of the Applicant that due to

non-adherence of the time limit for issuance of 3rd NOC, the conditions given in the MFA continued to exist and the default interest etc., were to be calculated on the basis of original rates is not found to be acceptable on facts and in Law.

17. Accordingly, this Tribunal is of the considered opinion that this Petition is not a fit case for admission since the threshold limit as per section 4 of the code has not satisfied. Therefore, the instant petition **CP (IB) No.58/BB/2022** is hereby **dismissed**. Further, the **I.A No. 492/2022** to the CP (IB) No.58/BB/2022 is **dismissed** as infructuous. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-
(T. KRISHNAVALLI)
MEMBER (JUDICIAL)