



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.38/ALD/2022**

*In the matter of  
An application 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)*

*In the matter of:*

**TATA CAPITAL FINANCIAL SERVICES LIMITED**

*Having its Registered Office at 11<sup>th</sup> Floor, Tower A,  
Peninsula Business Park, Ganpatrao Kadam Marg,  
Lower Parel, Mumbai-440013 and  
branch office at 7<sup>th</sup> Floor, Videocon Tower,  
Block E-1, Jhandewalan Extension,  
New Delhi-110055.*

**..... Applicant/Financial Creditor**

***Versus***

**M/S SHANTI REFRIGERATION INDUSTRIES PRIVATE LIMITED**

*Having its Registered Address at:  
Plot No. 27 and 8, Sector-7, IIDC,  
SIDCUL Pant Nagar, Uttrakhand-263 153.*

**.....Respondent/Corporate Debtor**

**Order pronounced on 01.09.2023**

***Coram:***

Mr. Praveen Gupta. : Member (Judicial)  
Mr. Ashish Verma : Member (Technical)

***Appearances:***

Sh. Nishant Mehrotra, Adv. : *For the Financial Creditor*  
Corporate Debtor : *Ex-parte v.o.d. 22.05.2023*



## ORDER

1. The Present Application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**I & B Code, 2016**”) by the Applicant/Financial Creditor namely, Tata Capital Financial Services Limited (TCFSL) seeking initiation of the Corporate Insolvency Proceedings against the Corporate Debtor i.e M/s Shanti Refrigeration industries Limited read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.
  
2. The Applicant i.e Tata Capital Financial Services Limited is a company incorporated on 19.11.2010 under the Companies Act, 1956 and is registered as Non-Banking Financial Institution (NBFC) with the Reserve Bank of India (hereinafter after referred to as “**Applicant/Financial Creditor**”). The Applicant vide its Board Resolution dated 22.12.2017 authorized its Managing Director & CEO for initiation of Insolvency Resolution Process, who in turn vide order dated 21.12.2019 appointed Mr. Sushant Sharma, the Regional



Collection Manager (North) as an authorized representative in the present case. Copy of Board Resolution dated 22.12.2017 and order dated 20.12.2019 are annexed as **Annexure-B** with the Application.

3. The Corporate Debtor i.e M/s Shanti Refrigeration Industries Private Limited was incorporated on 08.10.2007 having CIN i.e U74991UR2007PTC032487. The Authorized Share Capital of the Company is Rs. 15,85,00,000 and paid-up Share Capital is Rs. 13,27,98,900. The Registered office of the company is located at Plot No.27 and 8, Sector -7 I IDC, SIDCUL Pant Nagar, Uttarakhand-263153.
4. For availing the loan facility, Mr. Radhey Shyam Rambihari, Mr. Ashish Radhey Shyam Shukla and Ms. Bindu Tripathi, who are currently serving as directors of the Corporate Debtor submitted a loan application to the Financial Creditor. Details of financial facilities availed by the Corporate Debtor has been given below in the table: -



**TABLE:- DETAILS OF FINANCING FACILITIES AVAILED BY THE CORPORATE DEBTOR  
FROM THE FINANCIAL CREDITOR**

<b>Sanction Letter 1-27.01.2015</b>							
Master Invoice Discounting Facility Agreement dated 29.01.2015				Letter of Guarantee 1 dated 29.01.2015			
<b>Sanction Letter 2-16.12.2015</b>							
Invoice Discounting Facility Agreement Dated 24.12.2015		Working Capital Loan Demand Agreement Dated 24. 12.2015		Letter of Guarantee 2 dated 24.12.2015		Letter of Revival dated 24.12.2015	
<b>Sanction Letter 3-26.08.2016</b>							
Master invoice Discounting Facility Agreement dated 22.11.2016 (Agreement 3)		Working Capital Loan Demand Agreement 22.11.2016 (WCDL Agreement 2)		Letter of Guarantee 3 dated 22.11.2016		Letter of undertaking cum Indemnity dated 28.11.2016	Affidavit of Net Worth dated 15.11.2016
<b>Sanction Letter 4-06.03.2017</b>							
Master Invoice Discounting Facility Agreement dated 07.03.2017 (Agreement 4)	Working Capital Loan Demand Agreement 07.03.2017	Letter of Guarantee 4 dated 07.03.2017	Demand Promissory Note 10.03.2017	Letter of Confirmation of Balance 15.03.2017	Letter of Undertaking cum Indemnity dated 10.03.2017	Letter of Undertaking cum Indemnity dated 30.06.2017	Affidavit of Net Worth dated 07.03.2017
<b>Sanction Letter 5-14.08.2017</b>							
Master Invoice Discounting Facility Agreement dated 18.08.2017 (Agreement 5)	Working Capital Loan Demand Agreement 18.08.2017	Loan cum Hypothecation cum Guarantee Agreement dated 18.08.2017 (Term Loan Agreement 2)	Letter of undertaking cum Indemnity dated 18.8.2017	Letter of Guarantee 5 dated 18.8.2017	Affidavit of Net Worth dated 18.8.2017	Addendum Sanction Letter 24.02.2017	
<b>Sanction Letter 6-09.10.2018</b>							
Master Invoice Discounting Facility Agreement dated 09.10.2018 (Agreement 6)		Working Capital Loan Demand Agreement 09.10.2018		Channel Finance Agreement 09.10.2018		Letter of Guarantee 6 dated 09.10.2018	Affidavit of Net Worth dated 09.10.2018
<b>Sanction Letter 7-15.10.2019</b>							
Loan cum Guarantee Agreement (Invoice Discounting) dated 17.10.2019 (Agreement 7)		Working Capital Loan Demand Agreement 17.10.2019		Channel Finance Agreement 17.10.2019 (Channel Finance Agreement 2)		(03) Renewal Letters dated 17.10.2019	
<b>Sanction Letter 8-10.01.2020</b>							
Addendum Agreement (Invoice Discounting) dated 10.01.2020	Addendum Agreement (Working Capital Facility ) dated 10.01.2020	Addendum Agreement (Channel Finance Agreement )	Deed of Hypothecation (Deed of Hypothecation 2) dated 10.01.2020	(03) Renewal Letters dated 10.01.2020		Addendum Sanction Letter 07.02.2020	



		dated 10.01.2020			
<b>Sanction Letter 9-07.04.2021</b>					
Loan cum Guarantee Agreement (Invoice Discounting) dated 08.04.2021 (Agreement 8)	Loan cum Guarantee Agreement (Working Capital Demand Loan Agreement, WCDL Agreement 6) dated 08.04.2021 (Agreement 7)	Loan cum Guarantee Agreement (Channel Finance Agreement) dated 08.04.2021	(03) Renewal Letters dated 08.04.2021		
<b>Sanction Letter 10-03.06.2021</b>					
Renewal Letter dated 06.06.2021 Invoice Discounting	Renewal Letter dated 06.06.2021, Channel Finance	Renewal Letter dated 06.06.2021, Working Capital Demand Loan			

5. The Financial creditor vide sanction letter reference no. CF/SID/VOLTAS/7668 dated 27.01.2015 granted Sales invoice discounting facility for working capital requirement of the Corporate Debtor for sum of Rs. 15,00,00,000 (Rupees Fifteen Crores only) for a period of 12 months from the date of sanction ("Sanction Letter 1"). Copy of sanction letter dated 27.01.2015 has been annexed as **Annexure-H** with the Application.
6. For this purpose, the Financial Creditor and Corporate Debtor executed Master Invoice Discounting Facility Agreement on 29.01.2015 for amount of loan of Rs.15,00,00,000. Mr. Radhey Shyam Rambihari, Mr. Ashish Radhey Shyam Shukla and Ms. Bindu Tripathi are the personal guarantors for which they executed irrevocable and unconditional guarantee vide letter of Guarantee dated



29.01.2015 for repayment of the loan amount jointly and severally.

- 7.** The Corporate Debtor put forth the request of renewal of the loan facility amount of Rs.15,00,00,000 which financial creditor renewed vide sanction letter reference no. CF/SID/Luc/1071075 dated 16.12.2015 and granted separate Short Tem Working Capital Facility of Rs.2,00,00,000 (Rupees Two Crores only) which is also known as Working Capital Facility, on terms and condition specified therein (“Sanction letter 2”). Working Capital Facility is granted for the period of 12 months from the date of sanction. Copy of Sanction letter dated 16.12.2015 has been annexed as **Annexure –K** with the Application.
- 8.** In pursuant to sanction letter 2, Financial Creditor and Corporate Debtor executed Invoice Discounting Facility Agreement dated 24.12.2015 and Working Capital Demand Loan Agreement (WCDLA) dated 24.12.2015. Copy of Invoice Discounting Facility Agreement dated 24.12.2015 and Working Capital Demand Loan Agreement (WCDLA) dated



24.12.2015 are annexed as **Annexure L and M** respectively with the Application.

9. Personal guarantors were jointly and severally liable for the repayment of the loan amount along with interest, penal interest, other lawful charges, costs, expenses and all other monies to the financial creditor upon default or delay in repayment vide letter of Guarantee dated 24.12.2015 (letter of Guarantee 2). Copy of Letter of Guarantee 2 has been annexed as **Annexure-N** with the Application.
10. Financial creditor and Corporate Debtor along with guarantors also executed revival letter dated 24.12.2015. Copy of Revival Letter has been annexed as **Annexure-O** with the Application.
11. The Financial creditor upon further receiving the request of renewal, renewed the Invoice Discounting Facility Agreement vide Sanction Letter reference no. CF/SID/Luc/1162973 dated 26.08.2016 (Sanction Letter 3). Copy of Sanction Letter dated 26.8.2016 has been annexed as **Annexure-P** with the Application. For the purpose of this renewal, both the parties executed Master invoice Discounting Facility Agreement



dated 22.11.2016 wherein facility amount was increased by Rs.5,00,00,000 which now stood as Rs.20,00,00,000 (Rupees Twenty Crores only). Copy of Invoice Discounting Facility Agreement has been annexed as **Annexure-Q** with the Application. In addition to this, Short Tem Working Capital Loan Facility was provided for a sum of Rs. 5,00,00,000 for the period of 12 months from the date of sanction vide Working Capital Demand Loan Agreement dated 22.11.2016. Copy of Working Capital Demand Loan Agreement has been annexed as **Annexure-R** with the Application. Thereafter, Corporate Debtor executed two Demand Promissory note of Rs.5,00,00,000 (Rupees Five Crores only) and Rs.20,00,00,000 (Rupees Twenty Crores only) on 19.11.2016 in favour of the Financial Creditor. Copy of Demand Promissory Notes dated 19.11.2016 has been annexed as **Annexure-S** with the Application. Corporate Debtor also executed Letter of Guarantee dated 22.11.2016 (“Letter of Guarantee 3”) in favour of the Financial Creditor of Rs.25,00,00,000 aggregate amount of Rs.20,00,000 for all amounts due and payable including interest, penal interest, other lawful charges, costs, expenses and all other monies



payable to the Financial Creditor. Letter of Undertaking cum Indemnity dated 28.11.2016 has also been executed by the Corporate Debtor in favour of the Financial Creditor for a sum of Rs.20,00,00,000 (Rupees Twenty Crores only). Copy of Letter of Undertaking cum Indemnity dated 28.11.2016 has been annexed as **Annexure-U** with the Application.

12. After the execution of aforesaid series of transactions, Corporate Debtor further requested for renewal and enhancement of Invoice Discounting Facility. The Financial Creditor vide Sanction Letter reference no. CF/TL/SID/Luc/1224703 dated 06.03.2017 (“Sanction Letter 4”) enhanced the Invoice Discounting Facility Amount by Rs.8,00,00,000 (Rupees Eight Crores only) which now stood as Rs.28,00,00,000 ( Rupees Twenty Eight Crores only) for the period of 12 months from the date of sanction. The Financial Creditor also renewed Short Term Working Capital Loan Facility (Revolving) of Rs.5,00,00,000 (Rupees Five Crores only) for 12 months from the date of sanction. In addition to this, financial creditor also provided Equipment Finance Facility for the period of 60 months from the date of disbursement or from the date of Bill of Lading whichever is



earlier. Copy of “Sanction Letter 4” dated 06.03.2017 has been annexed as **Annexure-W** with the Application. For this purpose, both the parties executed Master Invoice Discounting Facility Agreement (“Agreement 4”) dated 07.03.2017 for a sum of Rs.28,00,00,000 with credit period of 120 days and discounting charges @11.50% and Term Loan Agreement dated 07.03.2017 for a sum of Rs.2,00,00,000 ( Rupees Two crores only) for purchasing equipment. Copy of “Agreement 4” and Term Loan dated 07.03.2016 has been annexed as **Annexure-X** and **Annexure-Y** with the Application. Corporate Debtor also executed Letter of Guarantee dated 07.03.2017 (“Letter of Guarantee 4”) in favour of the Financial Creditor of Rs.2,00,00,000 for all amounts due and payable including interest, penal interest, other lawful charges, costs, expenses and all other monies payable to the Financial Creditor. Copy of “Letter of Guarantee 4” has been annexed as **Annexure-Z** with the Application. Thereafter, Corporate Debtor executed Demand Promissory Note of Rs.28,00,00,000 (Rupees Twenty Eight Crores only) on 10.03.2017 in favour of the Financial Creditor. Copy of Demand Promissory Notes dated



10.03.2017 has been annexed as **Annexure-2A** with the Application.

- 13.** The Corporate Debtor vide letter dated 15.03.2017 confirmed the outstanding balance and informed to the Financial Creditor that Rs.23,93,25,773 (Rupees Twenty Three Crores Ninety Three Lacs Twenty Five Thousand Seven Hundred and Seventy Three only) is the total outstanding amount due and payable. Copy of letter dated 15.03.2017 has been annexed as **Annexure-2B** with the Application. Relevant Paragraph of the Letter is mentioned wherein below:-

“ ...

*We refer to the facility of Sales Invoice Discounting of **Rs.24,00,00.000/- (Rupees twenty Crore only) (“the Facility”)** granted by you to us vide your **Sanction Letter dated 26-08-2016** on the terms and conditions set out therein and in **Agreement 22-09-2016** (“said Facility Agreement”) entered into by us with you.*

*We hereby confirm and acknowledge that the total outstanding amount due and payable to you under the Sales Invoice Discounting Facility as on **15.03.2017** is **Rs.23,93,25773.00/- (Rupees Twenty three Crore Ninety three Lacs twenty five Five thousand seven hundred seventy three only)** and undertake to make payment of the aforesaid amount in the manner set out in the said Facility Agreement.”*



**14.** The Corporate Debtor executed Letter of Undertaking cum Indemnity dated 10.03.2017 and 30.06.2017 for a sum of Rs.28,00,00,000 and Rs.2,00,00,000 respectively in favour of the Financial Creditor. Copy of letter of Undertaking cum indemnity dated 10.03.2017 and 30.6.2017 has been annexed as **Annexure-2C and Annexure-2D** with the Application.

**15.** Corporate Debtor further approached to the Financial Creditor with a request of renewal and enhancement of Invoice Discounting Facility Agreement dated 06.03.2017 of Rs.28,00,00,000. The financial creditor upon sanctioned of the said request and accordingly both the parties executed the following documents: -

**a.** The Financial Creditor vide sanction letter reference no.CF/EF/SID/Del/1425591 dated 14.08.2017 (“Sanction Letter 5”) enhanced the existing facility amount of Rs.28,00,00,000 by Rs.12,00,00,000 which now stood as 40,00,00,000 (Rupees Forty Crores only) for the period of 12 months from the date of sanction and renewed the short term working capital loan facility (Revolving ) of Rs.



5,00,00,000 upto 12 months from the date of sanction. Copy of (“Sanction Letter 5”) has been annexed as **Annexure -2G** with the Application.

- b.** For this purpose, both the parties executed Master Invoice Discounting Facility Agreement (“Agreement 5”) dated 18.08.2017 for a sum of Rs.40,00,00,000 with credit period of 120 days and discounting charges @11 % and Working Capital Demand Loan Agreement dated 18.08.2017 (WCDLA 3”) for a sum of Rs.5,00,00,000 (Rupees Five crores only) for working capital requirement. Copy of “Agreement 5” and “WCDLA 3” has been annexed as **Annexure-2H** and **Annexure-2I** with the Application.
- c.** Both the parties have also execute Loan cum Hypothecation cum Guarantee Agreement dated 18.08.2018 (“Term Loan Agreement 2”) for a sum of Rs.5,00,00,000 with rate of interest of Rs.11.75 % p.a along with moratorium of 06 months. Copy of Loan cum Hypothecation cum Guarantee Agreement dated 18.08.2018 (term Loan Agreement 2) has been annexed as **Annexure 2J** with the Application.



**d.** Thereafter, the Guarantors of the Corporate Debtor have executed Letter of undertaking cum Indemnity on 18.08.2017 for an aggregate sum of Rs.40,00,00,000 (Rupees Forty Crores only). Copy of Letter of Undertaking cum Indemnity dated 18.08.2017 has been annexed as **Annexure -2K and 2L** with the Application.

**16.** The Financial Creditor introduced specific modifications through an addendum, as per sanction reference no.CF/TL/SID/Luc/1224703-1 dated 24.02.2018. These modifications pertain to the Equipment Term Loan Facility, originally granted for an amount of Rs.2,00,00,000 under sanction reference no. CF/TL/SID/Luc/1224703 dated 06.03.2017. These adjustments were made in response to a request from the Corporate Debtor, who provided a revised list of equipment. For this purpose both the parties further executed Irrevocable Power of Attorney on 28.03.2018 for the Equipment Term Loan of Rs.2,00,00,000. Copy of Irrevocable Power of Attorney dated 28.03.2018 has been annexed as **Annexure -2O** with the Application.



17. The Financial Creditor upon the request of the Corporate Debtor renewed the invoice sanction Discount Facility vide Sanction Letter Reference no.CF/WCDL/SID/CF/Del/1749325 dated 09.10.2018 (“Sanction Letter 6”) for a sum of Rs.40,00,00,000 (Rupees Forty Crores Only) for the period of 12 months from the date of sanction and enhanced the short term working capital loan facility amount by Rs.3,00,00,000 (Rupees Three Crores Only) upto 12 months from the date of sanction. Copy of “Sanction Letter 6” has been annexed as **Annexure-2P** with the Application. The financial creditor upon sanctioned of the said request and accordingly both the parties executed the following documents:-

- a. For this purpose, both the parties executed Master Invoice Discounting Facility Agreement (“Agreement 6”) dated 09.10.2018 for a sum of Rs.40,00,00,000 with credit period of 120 days and discounting charges @11.75 % and Working Capital Demand Loan Agreement dated 09.10.2018 (WCDLA 4”) for a sum of Rs.8,00,00,000 (Rupees Five crores only) for working capital requirement. Copy of “Agreement 6” and “WCDLA 4” has been annexed



as **Annexure-2Q** and **Annexure-2R** with the Application. Thereafter, Channel Finance Agreement was executed between both the parties for a sum of Rs.2,00,00,000 (Rupees Two Crores Only) on 09.10.2018. Copy of Channel Finance Agreement 09.10.2018 has been annexed as **Annexure- 2S** with the Application.

- b.** The Corporate Debtor also executed Letter of Guarantee Dated 09.10.2018 ('Letter of Guarantee 6') for a sum of Rs.5,00,00,000 to repay on demand jointly and severally all sum due and payable, including interest, penal interest and other lawful charges, costs, expenses and all other monies payable thereunder on committing any default. Copy of "Letter of Guarantee 6" 09.10.2018 has been annexed as **Annexure- 2T** with the Application.
- c.** The Guarantors of the Corporate Debtor has also submitted affidavit of Net Worth dated 09.10.2018 declaring all his personal assets and liabilities. Copy of "Affidavit of Net Worth" 09.10.2018 has been annexed as **Annexure- 2U** with the Application.



**18.** The Corporate Debtor further requested to Financial Creditor for extension of Sales invoice Discounting Facility/Channel Finance Facility and Working Capital Demand Loan. The Financial Creditor vide sanction letter reference no.CF\WCDL\SID\CF\Del\SRN\2381214 dated 15.10.2019 (“Sanction Letter 7”) extended the Sales Invoice Discounting of Rs.40,00,00,000 /Channel Finance of Rs.2,00,00,000/Working Capital Demand Loan of Rs.8,00,00,000 till 06.01.2020. Copy of “Sanction Letter 7” dated 15.10.2019 has been annexed as **Annexure- 2V** with the Application. The Corporate Debtor upon sanctioned of the said request executed the following documents:-

**a.** For this purpose, both the parties executed Loan Cum Guarantee Agreement (“Agreement 7”)(Invoice Discounting) dated 17.10.2019 for a sum of Rs.40,00,00,000 and Working Capital Demand Loan Agreement dated 17.10.2019 (WCDLA 5”) for a sum of Rs.8,00,00,000 (Rupees Five crores only) for working capital requirement. Copy of “Agreement 7” and “WCDLA 5” has been annexed as **Annexure-2W** and **Annexure-2X** respectively with the Application.



- b.** Thereafter, Channel Finance Agreement was executed between both the parties for a sum of Rs.2,00,00,000 (Rupees Two Crores Only) on 17.10.2019 (Channel Finance Agreement 2). Copy of Channel Finance Agreement-2 dated 09.10.2018 has been annexed as **Annexure- 2Y** with the Application.
- c.** In furtherance of this, Corporate Debtor executed three renewal letters dated 17.10.2019 in favour of the Financial Creditor wherein it was stated that the Corporate Debtor shall continue to be liable to TCFSL for the payment of all outstanding dues together with interest, costs, charges and expenses and other monies due and payable to TCFSL under the loan facilities and all the earlier executed loan and security documents shall continue to remain in full force till the aforesaid loan facilities are fully adjusted and repaid by the Corporate Debtor to TCFSL. Copy of Renewal Letters dated 17.10.2019 has been annexed as **Annexure-2Z** with the Application. The additional information regarding the facilities availed are outlined as follows:



“.....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 17/10/2019 is Rs.5,38,93,186.98/-(Rupees Five Crore Thirty Eight Lacs Ninety Three Thousand One Hundred Eighty Six And Ninety Eight Paisa Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.

“....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 17/10/2019 is Rs 9,47,60,178.01/-(Rupees Nine Crore Forty Seven Lacs Sixty Thousand One Hundred Seventy Eight And One Paisa Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.

.....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 17/10/2019 is Rs 1,79,29,280.78/-(Rupees One Crore Seventy Nine Lacs Twenty Nine Thousand Two Hundred Eighty And Seventy Eight Paisa Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.”



19. The Corporate Debtor further requested to reduce and renewed the Sales Invoice Discounting, Working Capital Facility and Channel Finance Facility. The Financial Creditor vide sanction Letter reference no.CF/WCDL/SID/CP/Del/2961619 dated 07.04.2020 (Sanction Letter 8) reduced and renewed the following facilities whose details are mentioned below in the table. Copy of Sanction letter 8 has been annexed as **Annexure -3A** with the Application.

NAME OF THE FACILITY	EXISTING AMOUNT	REDUCED AMOUNT	TOTAL AMOUNT	RATE OF INTEREST	TENURE
Sales Invoice Discounting Facility	40,00,00,000/-	22,00,00,000/-	18,00,00,000/-	12% p.a	12 months
Working Capital Facility	8,00,00,000/-	25,00,000/-	7,75,00,000/-	12% p.a i.e ROI equal to STLR less 5.50%	12 months
Channel Finance Facility	2,00,00,000	50,00,00,000	1,50,00,000	18.05%	12 months

- a. For this purpose, both the parties entered into three Addendum Agreements dated 10.01.2020 whose details are enumerated herein below: -



- i.** Addendum Agreement (Working Capital Facility) dated January 10, 2020 on terms and conditions specified therein. Copy of Sanction letter 8 has been annexed as **Annexure -3B** with the Application.
  - ii.** Addendum Agreement (Invoice Discounting Facility) dated January 10, 2020 on terms and conditions specified therein. Copy of Sanction letter 8 has been annexed as **Annexure -3C** with the Application.
  - iii.** Addendum Agreement (Channel Finance Facility) dated January 10, 2020 on terms and conditions specified therein. Copy of Sanction letter 8 has been annexed as **Annexure -3D** with the Application.
- b.** The Corporate Debtor has also executed Deed of Hypothecation dated 11.03.2020 in favour of the Financial Creditor for creating first and exclusive charge over the entire current assets and movable fixed assets of Aeraa Appliances. Copy of “Deed of Hypothecation 2” has been annexed as **Annexure -3E** with the Application.



c. The Corporate Debtor issued three Renewal letters dated 10.01.2020 in favour of the Financial Creditor wherein the Corporate Debtor has acknowledge and confirmed the total outstanding amount due and payable in para 03 and stated that wherein it was stated that the Corporate Debtor shall continue to be liable to TCFSL for the payment of all outstanding dues together with interest, costs, charges and expenses and other monies due and payable to TCFSL under the loan facilities and all the earlier executed loan and security documents shall continue to remain in full force till the aforesaid loan facilities are fully adjusted and repaid by the Corporate Debtor to TCFSL. Copy of Renewal Letters dated 10.01.2020 of the letters are annexed as **Annexure -3G** with the Application. The total outstanding amount due and payable as stated in para 03 are reproduced below: -

“.....

3. *We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 10-01-20202 is Rs 1,16,46,557.19/-(Rupees One Crore Sixteen Lacs Forty Six thousand five hundred fifty seven*



*and nineteen paisa Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....

3. *We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 10-01-20202 is Rs 7,00,90,703.48/-(Rupees Seven Crore ninety thousand seven hundred three and forty eight paisa Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....

3. *We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 10-01-20202 is Rs 9,26,80,430.94/-(Rupees Nince Crore Twenty Six lacs Eighty Thousand Four hundred Thirty & paisa Ninety Four Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....”

**20.** The Financial Creditor issued an addendum sanction letter reference no.CF\WCDL\SID\CF\Del\1749325-1 dated



07.02.2020 for modification of certain terms and condition with respect to sanction letter dated 09.10.2018. The Financial creditor issued Extension Letter reference no.CF/WCDL/SID/CF/Del/SRN/3873066 dated 07.04.2021 (Sanction Letter 9) upon the request of Corporate Debtor for extension of Sales invoice Discounting Facility/Channel Finance Facility and Working Capital Demand Loan. The Financial Creditor vide sanction letter 15.10.2019 (“Sanction Letter 7”) extended the Sales Invoice Discounting of Rs.18,00,00,000 ,Channel Finance of Rs.1,50,00,000 and Working Capital Demand Loan of Rs.7,75,00,000 till 05.06.2021. Copy of “Sanction Letter 9” dated 07.04.2021 has been annexed as **Annexure- 3H** with the Application. The Corporate Debtor upon sanctioned of the said request executed the following documents:-

- a. For this purpose, both the parties executed Loan Cum Guarantee Agreement (“Agreement 8”) (Invoice Discounting) dated 08.04.2021 for a sum of Rs.18,00,00,000 and Working Capital Demand Loan Agreement dated 08.04.2021 (“WCDLA 5”) for a sum of Rs.7,75,00,000 (Rupees Seven Crores Seventy Five Lakhs



only) for working capital requirement. Copy of “Agreement 8” and “WCDLA 5” has been annexed as **Annexure-3J** and **Annexure-3K** respectively with the Application.

- b.** Thereafter, Channel Finance Agreement was executed between both the parties for a sum of Rs.1,50,00,000 (Rupees One Crore Fifty Lakhs Only) on 08.04.2021. Copy of Channel Finance Agreement dated 09.10.2018 has been annexed as **Annexure- 3I** with the Application.
- c.** In furtherance of this, Corporate Debtor executed three renewal letters dated 08.04.2021 in favour of the Financial Creditor wherein it was stated that the Corporate Debtor shall continue to be liable to TCFSL for the payment of all outstanding dues together with interest, costs, charges and expenses and other monies due and payable to TCFSL under the loan facilities and all the earlier executed loan and security documents shall continue to remain in full force till the aforesaid loan facilities are fully adjusted and repaid by the Corporate Debtor to TCFSL. Copy of Renewal Letters dated 08.04.2021 of the letters are annexed as **Annexure -3L**



with the Application. The total outstanding amount due and payable as stated in para 03 are reproduced below:-

“.....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 08.04.2021 is Rs 2,24,02,160/- (Rupees two Crore twenty four Lacs and Two Thousand One hundred Sixty Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.

.....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 08.04.2021 is Rs 5,28,76,743/- (Rupees Five crore twenty Eight Lacs Seventy Six Thousand Seven Hundred Forty Three Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.

.....

3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 10-01-20202 is Rs 25,00,149/- (Rupees Twenty Five Lacs And one hundred Forty one) along with accrued interest and all other costs, charges, expenses and



*amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....”

**21.** The Financial creditor issued Extension Letter reference no.CF/SID-2/CF/Del/SRN/4153128 dated 03.06.2021 (Sanction Letter 10) upon the request of Corporate Debtor for extension of Sales invoice Discounting Facility, Channel Finance Facility and Working Capital Demand Loan. The Financial Creditor vide sanction letter 03.06.2021 (“Sanction Letter 7”) extended the Sales Invoice Discounting of Rs.18,00,00,000 ,Channel Finance of Rs.1,50,00,000 and Working Capital Demand Loan of Rs.7,75,00,000 till 05.07.2021. Copy of “Sanction Letter 10” dated 03.06.2021 has been annexed as **Annexure- 3M** with the Application. The Corporate Debtor upon sanctioned of the said request executed the following documents:-

**a.** The Corporate Debtor executed three renewal letters dated 08.04.2021 in favour of the Financial Creditor wherein it was stated that the Corporate Debtor shall continue to be liable to TCFSL for the payment of all



outstanding dues together with interest, costs, charges and expenses and other monies due and payable to TCFSL under the loan facilities and all the earlier executed loan and security documents shall continue to remain in full force till the aforesaid loan facilities are fully adjusted and repaid by the Corporate Debtor to TCFSL. Copy of Renewal Letters dated 07.06.2021 of the letters are annexed as **Annexure -3N** with the Application. The total outstanding amount due and payable as stated in para 03 are reproduced below: -

“.....

*3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 07.06.2021 is Rs 23,90,412/-(Rupees Twenty Three Lacs Ninety Thousand Four Hundred and Twelve Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....

*3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 07.06.2021 Rs 25,06,441/-(Rupees Twenty five Lacs Six Thousand Four Hundred and Forty One Only) along*



*with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....

*3. We hereby confirm and acknowledge that the total outstanding amount due and payable by us to you under the Facility as on 07.06.2021 is Rs 4,29,76,642/- (Rupees Four Crore Twenty nine Lakhs Seventy Six Thousand Six Hundred and Forty Two Only) along with accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility ("Outstandings") and undertake to make payment of the Outstandings in the manner set out in the Facility Documents.*

.....”

- 22.** It is contended by the Financial Creditor that Corporate Debtors as well as their executors committed default in repayment of the loan amount due and payable along with interest, additional/penal interest, other lawful charges, costs, expenses and all other monies to the financial creditor. Copy of Statements of account of various facilities availed by the Corporate Debtor is annexed as **Annexure-30** and Summary Statement Account of the Corporate Debtor has been annexed as **Annexure -3P**.



**23.** This constituted “Events of Defaults” as per master terms and condition specified in Invoice Discounting Facility, Working Capital and Channel Finance Agreements which entitled the Financial Creditor to recall the various facilities and call upon the Corporate Debtor to repay the entire amount. Accordingly, Financial Creditor issued Recall Notice dated 27.12.2021 to repay the entire outstanding amount of Rs.6,39,72,985 as on 10.11.2021 along with interest, additional interest, other lawful charges, costs, expenses and all other payments and monies to the financial creditor from the date of this notice. Copy of Recall Notice dated 27.12.2021 has been annexed as **Annexure-3Q** with the Application.

### **Findings and Order**

**24.** We have heard learned counsel appeared on behalf of the Applicant and perused the materials available on record. As per the records, the registry of this court as well as the Applicant issued notices to the Corporate Debtor but it failed to be present on various occasions. Moreover, the Corporate Debtor has not filed any reply to the petition. Therefore, this



Hon'ble Tribunal vide order dated 22.05.2023 had set the respondent as ex-parte.

- 25.** It is important to note that the Corporate Debtor vide letter dated 15.03.2017 has confirmed the balance of amount which is outstanding and payable to the Financial creditor as well as in renewal letters dated 17.10.2019, 10.01.2020, 08.04.2021 and 06.06.2021 while acknowledging and admitting its liability. The fact of disbursement is not in dispute. The Applicant/Financial Creditor has also filed summary of the Statements of Accounts of the Corporate Debtor reflecting the various outstanding amounts due and repayable to the financial creditor under the various facilities agreements.
- 26.** The Deed of Guarantee executed on various dates by the Corporate Debtor in favour of the Financial Creditor, clearly stipulates that *“the Borrower shall pay to TCFSL the principal amount of loan the details whereof are given in Item No. 3 (a) of the First Schedule as provided in the Loan Agreement together with the interest and additional rate of interest in the event of delayed payment plus interest tax with monthly rests*



*and all other monies payable under or in respect of the above referred Facility extended to the Borrower by TCFSL, as more particularly set out in the said Loan Agreement. Further, it stipulates that We hereby guarantee to pay on demand without demur or dispute to TCFSL at Mumbai and/or agree to indemnify and keep TCFSL indemnified, saved, defended and harmless against and in respect of any delay and default of the Borrower in payment of all amounts payable under the aforesaid Loan Agreement on the respective due dates together with interest, additional interest as more particularly mentioned in the Loan Agreement and all costs, charges, damages, losses, claims and expenses, legal or otherwise that may at any time become due to TCFSL from the Borrower and/or against which TCFSL may suffer, sustain, incur or be put to as a result of such omission, failure, delay and defaults, temporary or otherwise of the Borrower in respect of the Facility.”*

- 27.** On having seen the loan disbursement and documents, especially loan agreements executed between the parties, conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, and subsequent events



occurred in respect of non-repayment of outstanding loan amount including the interest and finally, the loan recall notice dated 27.12.2021 issued by the Financial Creditor, we are of the considered view that the Petitioner/Financial Creditor has proved the “existence of debt” and “default”. We are further satisfied that the petition has been filed well within the period of limitation. Against the averments made in the Application, the Corporate Debtor has not made any submission controverting any of the facts stated by the Financial Creditor in the Application. Under the said circumstances, we find that the debt and default on the part of the Corporate Debtor are hence proved.

**28.** In case of ***Innovative Industries Limited vs. ICICI Bank & Anr (Civil Appeal Nos.8337-8338 of 2017) dated 31.08.2017***, it has been clearly held by the Hon’ble Supreme Court that if there is a debt and default in repayment of debt and application filed by the Applicant/Financial Creditor is complete in all respect, the application under Section 7 of I & B Code 2016, is to be admitted. In the present case, we have clearly found that there is a outstanding debt of Rs.6,39,72,985 (Indian Rupees Six Crores Thirty Nine Lakhs



Seventy Two Thousand Nine Hundred and Eighty Five).including the principle amount as well as interest, which is more than the threshold limit of Rs.1 crore and default on payment of debt has also occurred since the date of default i.e 10.11.2021 as declared in the application. The Corporate Debtor has further defaulted on payment of entire loan amount after recall notice has been issued. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b) and there is no disciplinary proceeding pending against the proposed resolution professional as ascertained by the Law Research Associate (LRA) of this office discussed in subsequent para of this order. Any authorised representative of the Corporate Debtor has also not appeared before us to explain the facts and circumstances under which the Corporate Debtor defaulted on repayment. Therefore, we are satisfied that the present application filed under Section of 7 of I & B Code 2016, meets all the requirements of the provisions of clause (a) of sub-section (5) of section 7 and hence, this application deserves to be admitted for starting of CIRP proceeding against the Corporate Debtor.



**29.** In Part III of Form 1, the Financial Creditor has proposed the name of Mr. Rajesh Ramnani as Interim Resolution Professional. His Registration Number is IBBI/IPA-002/IPN00993/2020-2021/13187, R/o D-44, Second Floor, Naraina Vihar, New Delhi-10028, Email: [rajeshramnani2407@gmail.com](mailto:rajeshramnani2407@gmail.com). He has duly given his consent in Form No. 2 20.01.2022 annexed as **Annexure G** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Rajesh Ramnani, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 18 October 2023. After considering these details, we appoint Mr. Rajesh Ramnani, Registration No. IBBI/IPA-002/IPN00993/2020-2021/13187, as Interim Resolution Professional (IRP).

**30.** In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a) of the I & B



Code, 2016 against the Corporate Debtor, M/S SHANTI REFRIGERATION INDUSTRIES PRIVATE LIMITED, and accordingly, moratorium is declared in terms of Section 14 of the Code.

- 31.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.
- 32.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee.
- 33.** As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:



- a.** 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;
- b.** Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c.** Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d.** The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
- e.** It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.



- f.** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- 34.** The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.
- 35.** The Committee of the Creditors shall appoint a Resolution Professional as per section 22 of I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the time line as prescribed under the provision of section 12 of the I & B Code, 2016.
- 36.** We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to



him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

- 37.** A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
- 38.** List the matter on 06.10.2023 for filing of the progress report/ further proceeding.

*-Sd-*

**(Ashish Verma)  
Member (Technical)**

*-Sd-*

**(Praveen Gupta)  
Member (Judicial)**

***Dated : 01.09.2023***

*Ankita Sharma  
(LRA)*