

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP No. 987/IBC/NCLT/MB/MAH/2020

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

Suraksha Asset Reconstruction
Limited (formerly known as Suraksha
Asset Reconstruction Private Limited)
20th Floor, A wing, Naman Midtown,
Senapati Bapat Marg, Prabhadevi,
Mumbai – 400 013

.....Petitioner

V/s

Sapphire Land Development Private
Limited
Room No. 05, Capri, 3rd Floor, Anant
Kanekar Marg, Bandra (east), Mumbai
– 400 051

..... Corporate Debtor

Order pronounced on: 30.04.2021

Coram :

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner : Mr. Rohit Gupta a/w Savita Nangare, Raj Dani,
Advocates i/b Atham Legal.

For the Respondent : Mr. Subir Kumar a/w Disha Shah, Advpcates i/b
SDS.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The Petitioners/Applicants viz. 'Suraksha Asset Reconstruction Limited' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Sapphire Land Developers Private Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 150,00,00,000/-, and the amount claimed to be in default is Rs. 2,06,77,51,421/- including interest. The date of default is stated to be 30.06.2017.

BRIEF HISTORY OF THE CASE

3. The Corporate Debtor has availed a Term Loan Facility of Rs. 150 crores from Yes Bank Limited (Original Lender) on 23.09.2016. The Corporate Debtor has executed various financial and security documents in favour of the original lender on 24.09.2016.

4. The aforesaid loan was disbursed in the following manner:

Date	of	Amount	of
Disbursement		Disbursement	

26.09.2016	145,00,00,000/-
27.02.2017	5,00,00,000/-
Total	150,00,00,000/-

The date of defaults as mentioned in the petition in form 1 is 30.06.2017 and the outstanding dues is as follows;


Principal Outstanding Dues	Rs. 150,00,00,000/-
Interest	Rs. 48,59,07,541/-
Penal Interest	Rs. 8,12,17,626/-
Expenses	Rs. 6,26,254/-
Total	Rs. 2,06,77,51,421/-

5. Following are the documents evidencing the sanction and disbursement of the aforesaid Loan which are attached to the Petition;
- Sanction letter dated 23.09.2016, duly accepted by the Corporate Debtor.
 - Loan Agreement dated 24.09.2016.
 - Demand Promissory Note and Letter of Continuity dated 24.09.2016.
 - Undertaking cum Indemnity dated 24.09.2016.
 - Board Resolution, passed in Annual General Meeting held on 12.09.2014.
 - Board Resolution passed in meeting held on 24.09.2016.
 - Further Housing Development and Infrastructure Ltd. has executed Corporate Guarantee dated 24.09.2016 in favour of the Original Lender.
 - Deed of Mortgage dated 26.09.2016.
 - Deed of Corporate Guarantee executed by HDIL in favour of Original Lender dated 24.09.2016.

- j. Mr. Sarang Wadhwan and Mr. Rakesh Wadhwan had executed Personal Guarantee in favour of the Original Lender to secure the said term loan facility of Rs. 150 crores.
- k. CIBIL report dated 27.11.2019.

6. The financial assets pertaining to the Corporate Debtor along with all the right, title and interest of the Original Lender therein together with the underlying security interest created thereof was assigned by the Original Lender in favour of the Petitioner, acting in its capacity as the trustee of Suraksha ARC -013 Trust, vide Assignment Agreement dated 06.07.2017 under the provisions of the SARFAESI Act, 2002.

7. The Petitioner has enclosed the particulars of the financial debt and the securities held by the Petitioner in part 5 of Form 1 which includes several properties and list of mortgages and charges created their in. The list of properties is reproduced as below;

Nature of Security	Security Details (SLDPL - TL INR 150 Cr)
	1. Exclusive charge by way of Registered Mortgaged on 88,827 sq. ft. in Dreams Mall, Bhandup and 8,039 sq.ft in Harmony Mall, Goregaon (Both owned by HDIL)
	2. Exclusive charge by way of Assignment/ Hypothecation of entire current and future Rent Receivables/ license fee/ amenities fees or any other form of receipts for the area as mentioned in the point (1) above.
	3. Exclusive charge by way of Assignment/Hypothecation on the receivables of the EPC contract between SLDPL and Privilege Power & Infrastructure Pvt. Ltd. (PPIPL) for infrastructure development of Planet HDIL project at Virar.
	4. Extension of charge on registered mortgage on 3 multiplexes and Food court & Entertainment zone in Dreams Mall having built-up area of 89,173.6 sq ft. (owned by HDIL)
	5. Extension of charge on Assignment/ hypothecation of entire lease rent receivables/ security deposit/license fees and all other receipts/ receivables (both present and future) from the 4 multiplexes at Annexe Mall, Kandivali, Harmony Mall, Dreams Mall, Bhandup and Kuiraf Broadway, Vasai
	6. Extension of charge on Pari-passu charge on the entire project land of ~135 acres (owned by PPIPL) at Virar (including current assets), and ~102 acres (owned by HDIL) at Sasunavghar, Virar
	Extension of charge on below properties already charged to YBL for facilities sanctioned to HDIL:
a. Exclusive charge by way of registered mortgage on the development rights (for unsold area of 8 lac sq.ft) with respect to land admeasuring ~8 acres, situated at Project "Majestic", Nahur	

- c. Registered mortgage (for unsold area) with respect to unsold units of Project "Metropolis", Andheri (W) (Project 2) (owned by HDIL)
- d. Hypothecation on all movable and current assets (present and future) including receivables of Project "Metropolis" (Project 2) and "Galaxy" at Kurla (E) (Project 3) with Escrow receivables (owned by HDIL)
- e. Registered mortgage on development rights with minimum saleable area of 2 lac sq. ft. (BUA 15,999 sq. mt) of commercial space at Project "Meadows", Siddharth Nagar, Goregaon, (Project 4) including hypothecation on all movable and current assets (both present & future) including sale proceeds of lease/rental receivables (owned by Guruashish Construction Pvt. Ltd.)
- PG of Promoters Mr. Rakesh Wadhawan and Mr. Sarang Wadhawan
- CG of Housing Development and Infrastructure Limited

Projects in brief:

- Project 1 - SRA Project "Majestic Towers" situated at Andheri West, Mumbai on land measuring ~ 8.0 acres comprising of 4 saleable towers (total area of ~ 13 lacs sq. ft.) and 4 Rehab towers (built up area ~ 9.1 lacs sq. ft.)
- Project 2 - Project "Metropolis" situated at Four Bungalows, Andheri (W), Mumbai with minimum saleable area of ~7 lacs sq.ft.
- Project 3 - "Galaxy Apartments" situated at Kurla (E), Mumbai with minimum saleable area of ~5 lacs sq.ft.
- Project 4 - Project 'Meadows' situated at Sector R10, Siddharth Nagar, Goregaon (W), Mumbai with built up area of ~6.31 lacs Sq ft including commercial and residential project (of which minimum saleable area of 2 lacs sq. ft. (BUA 15999 sq.mtr) of commercial property to be taken as YBL security)

Of the all above mentioned securities, there are securities which are common / extended for other existing YES BANK exposure, in case of any recovery from these common / extended securities, the proceeds will first be utilized for clearance of outstanding management fees and expenses towards the trust, any further monies will be then be appropriated between Trust & other YES BANK loans on a pari - passu basis, or else as mutually decided and documented at a later point in time.

SUBMISSIONS BY THE CORPORATE DEBTOR IN REPLY:

8. The Corporate Debtor in its reply has challenged the maintainability of the section 7 Petition filed by the Petitioner.

9. The Petitioner ought to have disclosed about the pendency of such proceedings before Court 3 NCLT, Mumbai which has directed bearing on section 7 Petition against the Corporate Debtor.

10. The I.A. No. 3473 of 2019 is now reserved for orders by Court III, NCLT (Mumbai Bench) and hence this Tribunal may defer the hearing of the present petition till the outcome of I.A. No. 3473 of 2019 file by the present Applicant itself.

11. The Corporate Debtor submits that by virtue of the said contract made between HDIL and Mazda Estate Pvt. Ltd., which needs to be decided by Court III, NCLT (Mumbai Bench) provides for manner of repayment of debt owed by the Corporate Debtor to the Petitioner herein. Hence, it is submitted that in the event, Court III, NCLT (Mumbai Bench) decides I.A. 3473 of 2019 in favour of the Applicant, the entire debt owed to the Applicant herein will be paid to the Applicant herein in the manner provided in the said Contract.

12. The said contract is signed by HDIL (currently undergoing CIRP) through its Directors/Promoters (currently in judicial custody) and hence, the Corporate Debtor is unable to produce a copy of the said contract. The said contract clearly states the manner in which the debt was to be transferred as agreed by the Applicant itself. Is it submitted before this Tribunal to direct the Applicant to produce a copy of the said contract as it directly affects the subject-matter of the present Petition.

13. The Corporate Debtor further submits that the said Petition is not maintainable in law and is liable to be dismissed at the threshold on the following grounds, each of which are taken without prejudice to the other;

- a. The Corporate Debtor submits that the Corporate Debtor had availed the Term Loan facility from Yes Bank and had executed various security documents in order to secure the same. It is further submitted that the Corporate Debtor had amongst other securities, created an exclusive charge on the right, title and interest of the HDIL – the Corporate Guarantor of the Corporate Debtor in the entire present and future free same development

potential/rights arising out of all that piece and parcel on non-agricultural land admeasuring in aggregate 37698.12 sq. mtrs. In the Registration Sub-District of Sandra Suburban and other related and ancillary identified business activities and on all the present and future structure and construction thereon.

- b. The Corporate Debtor further submitted that the Petitioner herein by virtue of the Assignment Agreement has stepped into the shoes of the Original Lender to recover the monies from the Petitioner and in order to reduce the liability in the books of HDIL and to smoothly complete the Rehab Component under the Slum Rehabilitation Scheme and the Free Sale Project, entered into an Agreement with HDIL with a specific purpose of the transferring the said Majestic Towers Project in the name of "MAZDA Estate Private Limited" (the Purchaser).
- c. The Corporate Debtor submits that the Petitioner herein has filed M.A. 3473 of 2019 before Court III, NCLT, Mumbai Bench for the purpose of seeking directions from the Tribunal in relation to transfer of Majestic Towers Project on the basis of the said Contract wherein the consideration for such transfer of Majestic Towers Project to Mazda Estate Pvt. Ltd. was the reduction of book debt which includes the debt claimed by the Applicant herein against the present Corporate Debtor.
- d. The Corporate Debtor submits that the M.A. is "reserved for orders" by the Court III, NCLT, Mumbai Bench. The said M.A. along with the other connected Applications is now listed on 17.02.2021 wherein the Court III, NCLT, Mumbai Bench will pass orders.
- e. The Corporate Debtor humbly submitted and prayed before this Tribunal that the hearing of the captioned petition be deferred until the said M.A. is decided on merits on the legal reasoning that it is

Petitioner who seeks to enforce the said Contract and if allowed by the Court III, NCLT, Mumbai Bench, the present Applicant herein has agreed for repayment in the manner detailed out in the said agreement.

- f. The Corporate Debtor further submits that in the event of said petition is allowed/admitted by this Tribunal, the same will lead to an unwarranted/double benefit to the Petitioner at a loss to Corporate Debtor.
- g. It is further pertinent to note that, the asset/security in question i.e. Majestic Towers Project itself is an asset worth more than 1100 crores and that said M.A. is decided in favour of the Petitioner, the captioned petition before this Tribunal consideration would in itself be infructuous as the debt amount claimed by the Petitioner would not subsist and the present petition would stand on no grounds.
- h. The Corporate Debtor submits that the conduct of the Petitioner is purely to squeeze the Corporate Debtor and to keep all the remedies open to resuscitate its claim. That the Petitioner on one hand has filed its claim before the Resolution professional, which is already admitted in its entirety, and on the other hand has filed the said M.A. 3473 of 2019 before the Court III, NCLT, Mumbai Bench to give effect to the said agreement and to get the Majestic Towers Project transferred in its name and now has come before this Tribunal to initiate the Section 7 proceedings against the Corporate Debtor for the same set of reliefs and for the identical claim.
- i. It is further important to note that, the Petitioner has also filed its claim before the Resolution Professional of HDIL to the tune of Rs. 191 crores and that the same is admitted in its entirety by the Resolution Professional of HDIL.

- j. The Corporate Debtor therefore submits that, the claim under the present petition filed by the Petitioner is admitted by the Resolution Professional in the CIRP process of HDIL. Hence, this Tribunal must wait for the outcome of resolution process of HDIL wherein the applicant herein has invoked its right against HDIL in the capacity of Corporate Guarantor for the loans granted by Yes Bank to present Corporate Debtor.
- k. Hence, in view of equity and justice the Corporate Debtor prays before this Tribunal to reject the said petition file by the Petitioner on the sole ground that the petition is covered by the principal of re sub-judice and the Petitioner cannot be awarded with the same reliefs, twice.

Written submissions filed by the Petitioner:

14. The Petitioner reiterated that it is an asset reconstruction company and assignee of Yes Bank Limited who had originally sanctioned and disbursed the loan that is acquired under deed of assignment dated 06 July, 2017. An amount of Rs. 150 crores was sanctioned by the original lender Yes bank on 21st September, 2016.

15. Corporate Debtor defaulted in repayment of term loan from 30 June, 2017, therefore, the committed default on 30 June, 2017. The Corporate Debtor in his reply has raised two preliminary objections regarding maintainability of the petition as it is hit by principal of res sub judice as the petitioner has filed MA no. 3473 of 2019 in CP no. 27 of 2019 before Hon'ble Bench Court 3 of NCLT Mumbai and in view of the agreement executed between HDIL and Mazda this petition may not be admitted.

16. The Petitioner further pointed out that the Corporate Debtor does not even have a copy of the agreement. The Corporate Debtor has further not stated anything about their stand taken for the transaction before the

Bench 3. The submissions of the Intervention application in Court 3 were reproduced as hereunder:

"iii. It is submitted by the Applicants that the M. A. bearing No. 3473 of 2019 has been filed by Suraksha Asset Reconstruction Ltd. (Suraksha ARC) for the purpose of seeking orders from the Hon'ble Tribunal in relation to one Project Majestic (asset owned by the Corporate Debtor, HDIL) to Mazda Estate Pvt. Ltd. on the basis of a non-concluded contract. It is submitted that the application filed by the Applicant is ultra vires of the provisions of the Insolvency and Bankruptcy Code, 2016 and is wholly against the objective of maximization of value of assets owned by Corporate Debtor under insolvency.

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"i. The Applicant/intervenor submit that IA No. 3473 of 2019 filed by Suraksha ARC is not maintainable as the said application is filed on the basis of a non-executed/concluded contract between the Corporate Debtor and Mazda Estate Pvt. Ltd., wherein Suraksha ARC is not a party. It is the case of the Applicant/Intervenor that Suraksha ARC was not even even a beneficiary under the non-concluded contract between the Corporate Debtor and Mazda Estate Pvt. Ltd".

"However, since the same never occurred, no right under the contract can be claimed by Suraksha ARC, who is at the best a third party to the contract."

17. In any event the petitioner respectfully submitted that pendency of MA has no bearing in the present case. Petitioner is entitled to procedure against borrower and guarantor simultaneously. Petitioner has sought relief along with the home buyer before NCLT Court3 to keep one of the assets out of CIRP process and the prayers filed before in the MA filed before NCLT Court3 reads as follow:

"a) That the Miscellaneous Application be allowed;

b) That this Hon'ble Tribunal direct the IRP to execute closure memorandum and handover possession of the Project Majestic viz. Business Undertaking to Mazda;

c) That this Hon'ble Tribunal issue necessary directions to the effect that the secured asset charged in favour of the Petitioner herein do not form part of the CIRP pertaining to the Corporate Debtor and is not within the purview of the CIRP initiated against the Corporate Debtor.

d) Any other and further reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case;”

18. The Petitioner in reply to the objection filed by the Corporate Debtor with regards to filling of identical claims before the resolution professional of HDIL, this Petitioner submits that in view of the judgement of State Bank of India vs. Athena Energy pvt. Ltd the present petition against the borrower is maintainable and the IA filed before Hon'ble NCLT Court III is against the guarantor.

FINDINGS

19. The Petitioner being the assignee of the said Financial asset from the original lender vide an assignment agreement dated 06.07.2017 has sought to file present application seeking recovery of 206,77,51,421/- in view of the default of non-payment of amounts by the Corporate Debtor as on 30.06.2017.

20. The Corporate Debtor had availed the term loan of Rs. 150 crores vide sanctioned letter dated 23.09.2016 from YES bank being the original lender. The Corporate Debtor had provided the personal guarantee of Mr. Rakesh Wadhwan and Mr. Sarang Wadhwan and also had provided a Corporate Guarantee of Housing Development and Infrastructure Ltd. (HDIL). The Petitioner has also enclosed the particulars of claim.

PARTICULARS OF THE CLAIM (AS ON 15.03.2020)

SURKSHA ARC -013 TRUST

Nature of facility	Cash Credit
Principal Amount Outstanding	Rs. 1,50,00,00,000
Compound Interest @ 12% per annum	Rs. 48,59,07,541
Penal interest @ 2% per annum	Rs. 8,12,17,626
Other charges @12% per annum	Rs. 6,26,254
TOTAL	Rs. 2,06,77,51,421

21. The Petitioner has also enclosed the banker's certificate under section 2A of Banker book evidence act, 1895 which certified the account statement pertaining to account no. 000181400003786 of the Corporate Debtor with YES Bank. The statement of account produced by the petitioner also confirmed the disbursement of monies to the Corporate Debtor. The Petitioner has also filed statement of account of the Corporate Debtor from 26.09.2016 to 30.07.2017 which shows the disbursement of monies and closing balance which is reproduced as below;

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT NO. 5

CP No. 987/IBC/NCLT/MB/MAH/2020

SURAKSHA ASSET RECONSTRUCTION LIMITED
Naman Midtown, A wing, 21st Floor, Senapati Bapat Marg, Elphinstone Road, Mumbai -400013



SAPPHIRE LAND DEVELOPMENT PRIVATE LIMITED (Suraksha ARC-Trust 013)

Statement of Account as on 15th March 2020

Interest Rate (in %) 12 Penal Interest (in %) 2

Amount in Rupees

Date	Principal Overdue	Interest	Penal Interest	Principal Repayment	Interest Repayment	Total Repayment	Interest O/s	Total Outstanding	No. of days
1-Jul-17	1,500,000,000	45,323,596	-	-	-	-	45,323,596	1,545,323,596	
31-Jul-17	1,500,000,000	15,749,599	2,624,933	-	-	-	63,698,129	1,563,698,129	31
31-Aug-17	1,500,000,000	15,936,869	2,656,145	-	-	-	82,291,142	1,582,291,142	31
30-Sep-17	1,500,000,000	15,606,159	2,601,027	-	-	-	100,498,328	1,600,498,328	30
31-Oct-17	1,500,000,000	16,311,928	2,718,655	-	-	-	119,528,911	1,619,528,911	31
30-Nov-17	1,500,000,000	15,973,436	2,662,239	-	-	-	138,164,586	1,638,164,586	30
31-Dec-17	1,500,000,000	16,695,814	2,782,636	-	-	-	157,643,036	1,657,643,036	31
31-Jan-18	1,500,000,000	16,894,335	2,815,722	-	-	-	177,353,093	1,677,353,093	31
28-Feb-18	1,500,000,000	15,440,839	2,573,473	-	-	-	195,367,406	1,695,367,406	28
31-Mar-18	1,500,000,000	17,278,813	2,879,802	-	-	-	215,526,021	1,715,526,021	31
30-Apr-18	1,500,000,000	16,920,257	2,820,043	-	-	-	235,266,320	1,735,266,320	30

31-May-18	1,500,000,000	17,685,454	2,947,576	-	-	-	255,899,350	1,755,899,350	31
30-Jun-18	1,500,000,000	17,318,459	2,886,410	-	-	-	276,104,219	1,776,104,219	30
31-Jul-18	1,500,000,000	18,101,665	3,016,944	-	-	-	297,222,828	1,797,222,828	31
31-Aug-18	1,500,000,000	18,316,901	3,052,817	-	-	-	318,592,546	1,818,592,546	31
30-Sep-18	1,500,000,000	17,936,803	2,989,467	-	-	-	339,518,817	1,839,518,817	30
31-Oct-18	1,500,000,000	18,747,973	3,124,662	-	-	-	361,391,452	1,861,391,452	31
30-Nov-18	1,500,000,000	18,358,929	3,059,822	-	-	-	382,810,202	1,882,810,202	30
31-Dec-18	1,500,000,000	19,189,189	3,198,198	-	157,410,000	157,410,000	247,787,590	1,747,787,590	31
31-Jan-19	1,500,000,000	17,813,068	2,968,845	-	-	-	268,569,502	1,768,569,502	31
28-Feb-19	1,500,000,000	16,280,530	2,713,422	-	-	-	287,563,454	1,787,563,454	28
31-Mar-19	1,500,000,000	18,218,455	3,036,409	-	-	-	308,818,318	1,808,818,318	31
30-Apr-19	1,500,000,000	17,840,400	2,973,400	-	-	-	329,632,118	1,829,632,118	30
31-May-19	1,500,000,000	18,647,210	3,107,868	-	-	-	351,387,196	1,851,387,196	31
30-Jun-19	1,500,000,000	18,260,257	3,043,376	-	-	-	372,690,829	1,872,690,829	30
31-Jul-19	1,500,000,000	19,086,054	3,181,009	-	-	-	394,957,893	1,894,957,893	31
31-Aug-19	1,500,000,000	19,312,996	3,218,833	-	-	-	417,489,721	1,917,489,721	31
30-Sep-19	1,500,000,000	18,912,227	3,152,038	-	-	-	439,553,986	1,939,553,986	30

31-Oct-19	1,500,000,000	19,767,509	3,294,585	-	-	-	462,616,080	1,962,616,080	31
30-Nov-19	1,500,000,000	19,357,309	3,226,218	-	-	-	485,199,608	1,985,199,608	30
31-Dec-19	1,500,000,000	20,232,719	3,372,120	-	-	-	508,804,447	2,008,804,447	31
31-Jan-20	1,500,000,000	20,473,295	3,412,216	-	-	-	532,689,957	2,032,689,957	31
29-Feb-20	1,500,000,000	19,380,167	3,230,028	-	-	-	555,300,152	2,055,300,152	29
15-Mar-20	1,500,000,000	10,135,727	1,689,288	-	-	-	567,125,167	2,067,125,167	15

Outstanding as on 15 March, 2020

Principal o/s	1,500,000,000
Normal Interest o/s	485,907,541
Penal Interest o/s	81,217,626
Expenses to be recovered 30.11.19	626,254
Total o/s	2,067,751,421



The Petitioner has also filed the original sanction letter received by the original lender Yes Bank dated 23.09.2021. The petitioner issued default notice dated 15.06.2018.

22. The Corporate Debtor filed its reply and has not raised any dispute with regard to sanction of loan, disbursement of loan, signing of documents and default, but questioned the maintainability of this Petition under section 7, in view of the fact that the Petitioner has filed M.A. 3473 of 2019 in C.P. 27 of 2019 before Hon'ble Court 3 NCLT, Mumbai.

23. It is pertinent to note that MA 3473 of 2019 filed by the Petitioner seeking orders from the Hon'ble Tribunal in relation to the Majestic Towers Project (Asset owned by Corporate Debtor) to Mazda Estate on the basis on non-concluded contract. This application is necessarily against the Guarantor and seeking relief along with other home buyers to keep one property away from CIRP process. The application filed before Hon'ble NCLT Court III, has no bearing on the present application under sec.7 of I & B Code seeking initiation of CIRP against the Corporate Debtor (borrower) in terms of default of non-payment of debt.

24. This Bench is of the considered view that the debt of Rs. 150 crores have sanctioned and disbursed by the original lender and there is a default of payment of instalment of term loan from 30.06.2017 by the Corporate Debtor. Hence the Petition is admitted.

25. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. This petition is admitted.

26. Further that, we have also perused the Form - 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

27. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Ankur Kumar, having registration No. IBBI/IPA-002/IP-N00113/2017-18/10283 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

28. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall

not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

29. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

30. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

31. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

32. Ordered Accordingly.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)