



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

Sr No. 5
C.P.(IB)/1402(MB)2020

CORAM:

SMT. ANURADHA SANJAY BHATIA,
MEMBER (T)

SMT. SUCHITRA KANUPARTHI,
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **07.03.2022.**

NAME OF THE PARTIES: BANK OF BARODA

Vs.

KESAR TERMINAL AND INFRASTRUCTURE LIMITED

SECTION: Sec 7 of IBC 2016

ORDER

1. Order Pronounced. Petition admitted.

Sd/-
ANURADHA SANJAY BHATIA
Member(Technical)

Sd/-
SUCHITRA KANUPARTHI
Member(Judicial)

/z/



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH**

CP(IB)-1402/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

Bank of Baroda

...Financial Creditor

v/s.

**Kesar Terminal and Infrastructure
Ltd.**

...Corporate Debtor

Order Reserved on: 04.01.2022

Order Pronounced on: 07.03.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner: Mr. Shyam Kapadia a/w. Mr. Abdullah Qureshi a/w.

Mr. Nishitha Nambiar, Advocates

For the Respondent: Mr. Rishabh Shah a/w Ms. Saakshi Saboo, Advocates

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Bank of Baroda**, ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process



(CIRP) against **Kesar Terminal and Infrastructure Ltd.** (“the Corporate Guarantor ”), [CIN: U74120MH2011PLC222597].

2. The Corporate Guarantor is a company incorporated on 30.09.2011 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Oriental House, 7, Jamshedji Tata Road, Churchgate, Mumbai – 400 020. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Case:

3. The Borrower approached the Petitioner and requested to grant various financial facilities from time to time. The Petitioner had executed Common Loan Agreement dated 11.10.2011 and Concession Agreement dated 24.10.2011 with the Corporate Debtor. Thereafter, the Petitioner sanctioned Term Loan on 17.04.2012. The Petitioner executed Lenders Agent Agreement dated 11.10.2012, Deed of Hypothecation Agreement dated 11.10.2012, Inter Creditor Agreement dated 11.10.2012, Escrow Agreement dated 11.10.2012 and Substitution Agreement dated 11.10.2012 with the Corporate Debtor.
4. The Petitioner further executed Amended No.1 Common Loan Agreement on 03.03.2017 and review of Term Loan dated 07.07.2016 and Master Joint Lenders Agreement dated 03.03.2017.
5. Corporate Guarantee was also executed by the Corporate Guarantor herein dated 11.10.2012 and Bank Guarantee dated 19.10.2012 and 18.02.2016 in favour of the Petitioner.
6. The Borrower has issued Renewal Letters dated 06.10.2017 and 09.02.2018. They further issued Letter of Acknowledgement of Debt by Borrower/Guarantor dated 13.06.2018 to the Petitioner.



7. The Petitioner has enclosed the Order of this Tribunal in CP (IB)-4252/MB/2018 dated 29.07.2019, wherein the Tribunal has granted liberty to enforce the Debt Agreement as per Law.
8. The Petitioner has claimed an outstanding debt of Rs.88,10,11,929.62 as on 31.10.2020. The date of default as claimed is 31.08.2017. The date of NPA is 20.11.2017. The list of loan facility granted to the Borrower is as follows:

Dena Bank Account No.	Corresponding Bank of Baroda Account	Facility	Principal outstanding (in Crs)	Interest	Total Outstanding
98957023904	258506000000410	Term Loan-I	2,60,69,173.53	1,59,65,798.37	4,20,34,971.90
98957023905	258506000000411	Term Loan-II	12,66,70,994.34	10,36,28,808.62	23,02,99,800.96
98957023910	258506000000412	Term Loan-III	1,58,63,328.46	88,28,852.26	2,46,92,180.72
98957023911	258506000000413	Term Loan-IV	3,28,59,652.01	2,53,73,963.88	5,82,33,615.89
98957023931	258506000000414	Term Loan-V	5,51,11,584.18	4,45,42,702.03	9,96,54,286.21
98957023932	258506000000415	Term Loan-VI	3,20,87,100.75	2,62,50,270.75	5,83,37,371.50
98957023935	258506000000416	Term Loan-VII	2,39,99,999.60	1,94,05,121.25	4,34,05,120.41
98957023936	258506000000417	Term Loan-VIII	1,79,99,999.16	1,09,02,308.01	2,89,02,307.61
98957023937	258506000000418	Term Loan-IX	73,99,999.90	22,24,037.65	96,24,037.55
98957023938	258506000000419	Term Loan-X	2,55,99,998.32	2,12,96,114.35	4,68,96,112.67
98957023952	258506000000420	Term Loan-XI	3,79,99,999.16	3,07,12,643.17	6,87,12,642.33
98957023953	258506000000421	Term Loan-XII	4,77,99,999.47	3,97,65,294.42	8,75,65,293.89
		BG LIMIT	750,00,000.00		750,00,000.00
		LB Charges	76,54,188.00		76,54,188.00
		TOTAL	53,21,16,016.88	34,88,95,912.74	88,10,11,929.62

9. The list of documents attached/annexed to the petition are as follows:

1.	Copy of Concession Agreement dated 24.10.2011	Exhibit-Q
2.	Copy of Lenders Agent Agreement dated 11.10.2012	Exhibit-R
3.	Copy of Inter Creditor Agreement dated 11.10.2012	Exhibit-S
4.	Copy of Escrow Agreement dated 11.10.2012	Exhibit-T



5.	Copy of Corporate Guarantee executed by Kesar Terminal & Infra Ltd. dated 11.10.2011	Exhibit-U
6.	Copy of Substitution Agreement dated 11.10.2012	Exhibit-V
7.	Copies of Bank Guarantee dated 19.10.2012 & 18.02.2016	Exhibit-W
8.	Copies of Renewal Letters dated 06.10.2017 and 09.02.2018	Exhibit-X
9.	Copy of Letter of Acknowledgement of Debt by Borrower/Guarantor dated 13.06.2018	Exhibit-Y

10. The Petitioner has enclosed details of loan and interest charged therein and the amounts outstanding as per the table below:

BOB TL	Edb TL	PRINCIPAL	INTEREST	TOTAL CLAIM AS ON 31.10.2020
25850600000410	098957023904	2,60,69,173.53	1,59,65,798.37	4,20,34,971.90
25850600000411	098957023905	12,66,70,994.34	10,36,28,806.62	23,02,99,800.96
25850600000412	098957023910	1,58,63,328.46	88,28,852.26	2,46,92,180.72
25850600000413	098957023911	3,28,59,652.01	2,53,73,963.88	5,82,33,615.89
25850600000414	098957023931	5,51,11,584.18	4,45,42,702.03	9,96,54,286.21
25850600000415	098957023932	3,20,87,100.75	2,62,50,270.75	5,83,37,371.50
25850600000416	098957023935	2,39,99,999.16	1,94,05,121.25	4,34,05,120.41
25850600000417	098957023936	1,79,99,999.60	1,09,02,308.01	2,89,02,307.61
25850600000418	098957023937	73,99,999.90	22,24,037.65	96,24,037.55
25850600000419	098957023938	2,55,99,998.32	2,12,96,114.35	4,68,96,112.67
25850600000420	098957023952	3,79,99,999.16	3,07,12,643.17	6,87,12,642.33
25850600000421	098957023953	4,77,99,999.47	3,97,65,294.42	8,75,65,293.89
	BANK GTY	7,50,00,000.00		7,50,00,000.00
	LB CHARGES	76,54,188.00		76,54,188.00
	TOTAL	53,21,16,016.88	34,88,95,912.74	88,10,11,929.62

11. Statement of Accounts showing the outstanding amount due is annexed with the Petition. The letter of acknowledgement issued by the Borrower and Corporate Guarantor dated 13.06.2018 is annexed below:



14/06/18

**LETTER OF ACKNOWLEDGEMENT OF DEBT BY BORROWER
AND/OR GUARANTOR**

ACKNOWLEDGEMENT OF DEBT

To
The Branch Manager
DENA BANK
Corporate Business Branch-II
Mumbai.

Dear Sir,

A/c Kesar Multimodal Logistics Limited

1. I/We refer to the credit facility/ies granted to me/us and the charge by way of Hypothecation/Pledge of Goods/Mortgage on my/our Current Assets and/or on movable plant & machineries and/or on my/our immovable property/ies as mentioned in the document/s executed by me/us in your favour to secure all sums due and payable in respect of the said credit facility/ies.
2. I/We do hereby confirm that all the security document/s executed by me/us and the security/ies created by me/us in favour of you in respect of the said credit facility/ies are subsisting, valid and effective and are fully enforceable against me/us and that I/we am/are liable to you in accordance with the terms thereof.
3. I/We also do hereby admit, confirm and acknowledge my/our liability and accept my/our indebtedness to you that at the foot of my/our relative borrowal account/s, the following amount/s which includes interest up to July 2017 is/are due and payable by me/us to you together with further interest, interest-tax, as applicable, costs, charges and expenses and other moneys in terms of the security document/s. My/Our liability shall remain in full force with all relative securities, agreements and obligations as mentioned therein.

Sr. No	Nature of Credit Facility/ies	Sanctioned amount (Rs. in crores)	Amount Outstanding Rs. (as of 02-06-2018)
1	Term Loan-I	4.20	3,78,19,388.46 ✓
2	Term Loan-II	13.72	12,66,70,994.34 ✓
3	Term Loan-III	1.96	1,58,63,328.46 ✓
4	Term Loan-IV	4.06	3,28,59,652.01 ✓
5	Term Loan-V	5.82	5,51,11,584.18 ✓
6	Term Loan-VI	3.25	3,20,87,100.75 ✓
7	Term Loan-VII	2.40	2,39,99,999.16 ✓
8	Term Loan-VIII	1.82	1,81,99,999.60 ✓
9	Term Loan-IX	0.74	73,99,999.90 ✓

Stamp: MULTIMODAL LOGISTICS
Stamp: M. H. Zaidi, 14 June 1980



Sr. No	Nature of Credit Facility/ies	Sanctioned amount (Rs. in crores)	Amount Outstanding Rs. (as of 02-06-2018)
10	Term Loan-X	2.56	2,55,99,998.32 ✓
11	Term Loan-XI	3.80	3,79,99,999.16 ✓
12	Term Loan-XII	4.78	4,77,99,999.47 ✓
13	Bank Guarantee [Financial/Performance]	9.00	7,50,00,000.00 ✓

4. This acknowledgement of debt is given by me/us for the purposes of Section 18 of the Limitation Act, 1963 and in order to preclude any question being raised on limitation regarding my/our liability to your Bank for the payment of the said outstanding amounts in respect of the present as well as my/our future indebtedness and liabilities in respect of the said credit facility/ies together with interest, interest-tax, if any, costs, charges, expenses and other moneys in terms of all relative security document/s, security/securities and obligations as mentioned therein.

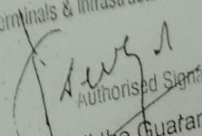
Dated at Mumbai this the 13th day of June 2018.

Yours faithfully,
 For Kesar Multimodal Logistics Ltd.
 Signatory

(Signature/s of the Borrower/s)

We Kesar Terminals and Infrastructure Limited the guarantor/s, concur in the foregoing confirmation and acknowledge and declare that the Letter of Guarantee dated 11-10-2012 signed by me/us is in full force and effect and that I/we am/are and will remain liable to you thereunder in accordance with the terms thereof.

Dated at Mumbai this the 13th day of June 2018

Yours faithfully,
 Terminals & Infrastructure Limited
 Authorised Signatory
 (Signature/s of all the Guarantor/s)

Reply by the Corporate Guarantor:

12. The Corporate Guarantor contented that the Borrower raised preliminary issue of limitation, forum shopping and maintainability of the Petition



and further claims whether the Petition is filed beyond the period of three years of limitation and hence it is barred by limitation. The date of default as shown in the Petition is 31.08.2017. However, the Petition has filed on 18.11.2020 which is beyond three years.

13. The Corporate Guarantor contended that the Petitioner had already initiated action before DRT, Jabalpur vide OA-1738/2019 against the borrower. The Petitioners now cannot file proceedings before this Tribunal as there are disputes pending in respect of the claim and that the debt is not in default.
14. the Corporate Guarantor further submitted that the Petitioner has taken steps to initiate insolvency against Borrower and any action against the Corporate Guarantor herein will only cause prejudice to the company which is otherwise solvent.
15. The Corporate Guarantor claimed that the Petitioner has wrongly invoked the guarantee of the Corporate Guarantor which has resulted in rejection of earlier company petition vide CP-4252/2018, which was filed by the Petitioner invoking the Corporate Guarantee. Therefore, the Petitioner could not have approached this Tribunal once again for the same fact. The petition is hit by *Resjudicata*.
15. The Mandi Board vide RFP invited interested parties to bid for concession of Composite Hub for 33 years. An SPV was formed to implement, construct and operate a Composite Logistic Hub at Pawarkheda, Hoshangabad District, on a Public Private Partnership (PPP) basis, on 88.30 acres of land pursuant to the Concession Agreement signed with the Mandi Board, with the obligation, inter alia, for development of infrastructure for agricultural marketing and warehousing in the state of Madhya Pradesh and facilitate the farmers to store and market their produce to enable them to fetch fair prices, as per the recommendation of the National Agriculture Commission on a DBFOT mode. Eventually Concession Agreement was executed on 24.10.2011. In order to raise



funds for the construction and development of Logistic Hub, the Borrower approached Bank and availed a credit facility of Rs.108.11 (term loan of 99.11 crores and non-fund of Rs. 9.00 crores).

16. Dena Bank sanctioned a sum of Rs. 49.11 crores and non-fund-based facility in the form of performance guarantee (PVG) for Rs. 9 crores vide letter dated 17.04.2012, Allahabad Bank also issued sanctioned letter on 21.09.2012 in favour of Borrower and for a term loan of Rs. 22.50 crores. The Union Bank of India also issued sanctioned letter on 22.09.2012 in favour of the Borrower for a term loan of Rs. 25 crores.
17. However, due to reasons beyond their control of the Borrower, like change in technical specifications by Indian Railways, non-availability of coal for land levelling due to ban of Supreme of Court of India on soil evacuation, non-availability of railway staff, due to fire at Itarsi station and derailment at Halda station, the construction of Logistic Hub could not be completed as per plan whereas rail operation commenced on 19.04.2016. There were increase in scope of work and hence the Borrower sought enhancement of loan amount to Rs.45.34 crores, out of which, Rs.22.46 crores were sanctioned by Dena Bank. Allahabad Bank did not sanction their share of Rs.11.44 crores. Resultantly, the Borrower were constrained to rely internally generated cash / promoters' contribution to advance the construction and development of composite Logistic Hub. However, Allahabad Bank did not sanction its share of Rs. 11.44 crores and consecutively, the Borrower could not avail loan of Rs. 33.00 crores from Bank of Baroda. Then the Borrower had to use internally generated cash / promoters' contribution, which otherwise would have been used to pay the repayments of loan. The Corporate Guarantor further pointed out that the Borrower's contribution in the project turned to be around Rs. 90 crores (original promoter's contribution as per Banks sanction being Rs. 48.6 crores as against the Bank's outstanding liability of Rs. 20 crores as on 27.11.2017.



17. Further, it was pointed out that due to losses and unavailability of expected business and backlog of interest, the Borrower approached the Petitioner Bank for restructuring vide letter dated 03.08.2017 and 12.10.2017. The Joint Lenders meeting on 20.11.2017 the KMLL's case to be fit for restructuring, in view of the long-term viability of the Composite Logistic Hub.
18. Further, the invocation of SDR by Bank on 20.11.2017, the GLF in its next meeting on 17.01.2018 finally approved their SDR scheme in order to revitalise stress assets/ accounts of KMLL. In view of the SDR scheme, the Board of Directors of the Borrowers passed a resolution dated 13.02.2018 to issue equity as per the terms and conditions of SDR scheme. However, subject to approval of SDR plan, RBI on 12.02.2018 vide Circular No.: R-2017-18/131DBR.No.BP.BC.101/21.04.048/2017-18. The RBI withdrew all the scheme plan qua inter alia the SDR schemes which were aimed at the resolution of Stressed Asset of economy and discontinued Joint Lenders Forum.
19. Further, the Bank of Baroda communicated to the Borrower its inability to continue the SDR plan and declared the account to be NPA vide letter 28.3.2018 retrospectively w.e.f. 20.11.2017. Dena Bank (Now Bank of Baroda) abruptly froze the operations of Borrower's account on 16.02.2018. This resulted in undue hard ship to Borrower.
20. The withdrawal of RBI circular dated 12.02.2018 were challenged in the High Court of MP and Jabalpur Bench vide Writ Petition No. 12620 of 2018. The said Petition was dismissed on 02.06.2018. A special Leave Petition was filed before the Hon'ble Supreme Court on 22.10.2018 challenging the applicability of RBI Circular. The Hon'ble Supreme Court disposed the Special Leave Petition and declared the RBI circular ultra-virus.



21. On 02.04.2019, the Borrower in the consortium meeting with the consortium Banks held on 08.04.2019 requested to declare the Borrower account as standard account and implement SDR plan.
22. Despite the Hon'ble Supreme Court quashing the RBI Circular the banks backed out from the SDR plan, the Borrower filed Writ Petition 1504 of 2019 before the Hon'ble Bombay High Court on 30.04.2019 *inter alia* seeking Writ of Mandamus directing the consortium banks to reinstate the SDR plan with regard to the Borrower to its former position of implementation, as if the RBI circular dated 12.02.2018 had never been passed and set aside all consequential actions of the consortium banks.
23. The RBI issued revised Circular on 07.06.2019 providing a framework of resolution of said asset. Clause 31 of RBI Circular dated 07.06.2019 provides as follows:

"The lenders shall not reverse the provisions maintained as on April 2, 2019 in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recover or resolution following the instructions of this circular. Any RP under consideration as on the date of this circular may be pursued by lenders under this revised framework subject to meeting the requirements/conditions specified in this framework".

24. The Petitioner vide letter dated 11.06.2019 invited Borrower to consortium meeting on 14.06.2019. However, the Petitioner did not record the request of Borrower to implement the SDR scheme. Borrower further vide letter dated 24.06.2019 sought implementation of SDR as follows:
 - a. Borrower did not agree with the contention of the Bank that SDR is not a feasible proposal and reiterated that the RP in the form of SDR can be implemented in light of the Set-aside RBI Circular and by the saving Clause 31 of the Revised RBI Circular.



- b. Discussions about prospective investors and services of M/s. Aurum Equity Partners LLP engaged for the purpose of locating investors.
 - c. Positive developments and substantial improvements in the turnover and profitability.
 - d. Pendency of the Writ Petition for the implementation of the SDR scheme.
 - e. Consideration of the SDR scheme as the RP.
25. The Borrower further pointed out that the Petitioner prior to filing of the captioned Petition, filed CP-4252 of 2018 and the same was dismissed on the ground that Petition had become non-est in view of judgment of Hon'ble Supreme Court in Dharani Sugars.

Additional reply filed by the Corporate Debtor:

26. The Borrower filed Writ Petition No.: 1504/2019 before the Hon'ble High Court for urgent ad-interim relief, on the ground that the Financial Creditor ought to have given credit of SDR Scheme in view of judgment of Dharani Sugars. The Hon'ble Bombay High Court on 24.02.2021 had granted liberty to take up all the contentions in Writ Petition No. 1504/2019 along with the Interim Application No. 5349/2021 before this Tribunal. The said Writ Petition was filed inter-alia seeking re-instatement of SDR plan which had been approved and invoked by the Financial Creditor in favour of Borrower herein.
27. The Corporate Guarantor contented that the Petitioner is estopped in law by way of principle of promissory estopped from backing out of the invocation and subsequent approval of SDR scheme. The Borrower had acted upon such promise/approval and conducted a Board meeting on 13.02.2018 wherein various resolutions were passed with respect SDR



scheme and its implementation. Therefore, the Petitioner is estopped from backing out in its commitment and approval.

Rejoinder by Petitioner:

28. The Petitioner contended that Date of Default is 31.08.2017 and limitation of three years expires on 30.08.2020 and Petition was filed on 18.01.2020 and that limitation was expanded by Hon'ble Supreme Court due to outbreak of Covid-19 from 15.03.2020 to 14.03.2021.
29. Further, that the principle of *Resjudicata* will act as a bar for initiating legal proceeding only if an earlier matter is decided by a judicial authority on merits by hearing both parties on facts & circumstances. The Petitioner filed CP-4252/2018 on the basis of RBI Circular dated 12.02.2018, however, since the same was quashed by the Hon'ble Supreme Court in Dharani Sugars, the Tribunal dismissed the Petition and granted liberty to take suitable remedial step as per law.
30. The Petitioner considered the request of the Borrower to consider the SDR scheme based on the revised Circular in its Joint Lender Forum meeting dated 14.06.2019 and opted to reject the SDR proposal due to lack of adequate cash-flow, no commitment from promoters towards their contribution and failure of the promoters to bring new investors.

Findings:

31. The legal issues arising for consideration is whether any default of non-payment of money under the loan agreement by the Borrower and whether the Petitioner Bank has rejected the SDR scheme even after the revised Circular of RBI dated 07.06.2019.
32. It is undisputed fact that monies were lent, executed Common Loan Agreement dated 11.10.2011 and Concession Agreement dated 24.10.2011, Sanctioned Term Loan on 17.04.2012. The Petitioner



executed Lenders Agent Agreement dated 11.10.2012, Deed of Hypothecation Agreement dated 11.10.2012, Inter Creditor Agreement dated 11.10.2012, Escrow Agreement dated 11.10.2012 and Substitution Agreement dated 11.10.2012 with the Corporate Debtor.

33. The Common Loan Agreement was amended on 03.03.2017 and Master Joint Lender Agreement was executed by the Petitioner with the Borrower on 03.03.2017. The Corporate Guarantee was also executed by Kesar Terminal & Infra Ltd i.e. the Corporate Debtor herein. The Borrower further issued Renewal Letter dated 06.10.2017 and 09.02.2018 and have also issued Letter of Acknowledgment of Debt on 13.06.2018. The Petitioner has also enclosed certificate under Bankers' Book of Evidence Act and therefore, claim of amount of Rs. 88,10,11,929.62 has sum outstanding towards loan account by the Borrower as on 31.10.2020.
34. It is relevant to refer to the order of this Tribunal in CP-4252/2018 dated 29.07.2019. The findings of the Tribunal are as follows:

“....

The applicant further contends that pursuant to the sudden and overnight withdrawal of SDR scheme by the RBI vide its circular dated 12.2.2018, KMLL's borrowing accounts were also declared as NPA by the Financial Creditor on 28.2.2018, with effect from November, 2017, which was about 100 days after the aforesaid accounts had been held standard, despite a default in servicing of interest, for the reason that the borrowing accounts of the KMLL were covered by the SDR scheme. The applicant has annexed the copy of the letter dated 28.2.2018 with the application, which shows that as per RBI circular dated 12.2.2018, SDR

....



By the letter of the bank written to the Corporate Debtor dated 28.02.2018, it is clear that this petition initiated based on RBI Circular dated 12.02.2018.

Ld. Counsel appearing on behalf of the Financial Creditor has admitted the letter dated 28.02.2018 and petition have been filed based on circular dated 12.02.2018.

Given the judgment of Hon'ble Supreme Court in Dharani Sugars, Petition is not maintainable hence rejected. However, the petition is given liberty to file its claim by the law."

35. The Corporate Guarantor further pointed out that RBI issued revised Circular on 07.06.2019 providing a framework of resolution of said asset. Clause 31 of RBI Circular dated 07.06.2019 provides as follows:

"The lenders shall not reverse the provisions maintained as on April 2, 2019 in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recover or resolution following the instructions of this circular. Any RP under consideration as on the date of this circular may be pursued by lenders under this revised framework subject to meeting the requirements/conditions specified in this framework".

36. The Petitioner considered the request of Borrower to consider SDR scheme based on the revised Circular of RBI dated 07.06.2019, in its JLF meeting dated 14.06.2019, but evidently the Petitioner rejected the SDR proposal due to lack of adequate cash flow, no commitment from the promoters towards this contribution and failure of promoters towards their contribution and failure of the promoters to bring any new investments.



37. The Corporate Guarantor filed the reply and additional reply claiming that the Petition is barred by limitation and that the Petitioner has already filed OA-1738/2019 before DRT, Jabalpur. They also claimed that the Petitioner had earlier filed CP-4252/2018 against the same Corporate Guarantor which was dismissed by this Tribunal on 29.07.2019. Thus, the Petition is barred by *Resjudicata*.
38. Upon perusal of the above Petition, reply, additional reply, rejoinder and documents annexed to the Petition and hearing both parties, this Bench is of the opinion that the facts narrated above, clearly demonstrate the debt and the default of non-payment of dues by the Borrower/ Corporate Guarantor i.e. Corporate Debtor herein. The dismissal of the CP does not bar the filing of fresh Company Petition as the Petition was not dismissed on merits. The Petitioner in CP-4252/2018 has been granted liberty to take steps to enforce the debt as per Law. Therefore, the plea of *Resjudicata* is untenable. There is a clear debt and default in repaying the said amount by the Corporate Guarantor/ Corporate Debtor. The series of events as narrated by the Borrower with regard to the RBI Circular and relevant meetings between the parties to implement the SDR scheme is non-est in Law. This Bench concludes that statutory rights of the Financial Creditor cannot be waived or taken away by virtue of certain contractual scheme such as SDR scheme, more particularly when the SDR scheme was rejected by the Petitioner herein, due to lack of adequate cash flow, no commitment from the promoters towards this contribution and failure of the promoters to bring any new investments. The Petitioner has sought to enforce the debt under a contractual agreement and had disbursed the money to the Borrower and the Corporate Guarantor is jointly and severally liable to repay the outstanding debt of the Petitioner herein. There is clear acknowledgement of liability by the Borrower/ Corporate Guarantor herein. In view of the aforesaid facts, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.



39. The Financial Creditor has proposed Mr. Prashant Jain as Interim Resolution Professional (IRP) in the matter.

40. It is, accordingly, hereby ordered as follows: -

This Application bearing **C.P.(IB)- 1402/MB/2021** filed under Section 7 of I&B Code, 2016, presented by **Bank of Baroda**, Financial Creditor/ Petitioner against **Kesar Terminal & Infrastructure Limited**, Borrower for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- a) the institution of suits or continuation of pending suits or proceedings against the Borrower 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 Borrower 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 Borrower 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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.



- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the Borrower under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Prashant Jain, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-P01368/2018-2019/12131 [address: A501, Shanti Heights, Plot No. 2,3,9B/10, Sector 11, Koparkharine, Thane, Navi Mumbai, Maharashtra, 400709, email: ipprashantjain@gmail.com] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
41. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
42. The Registry is directed to immediately communicate this order to the Financial Creditor, the Borrower and the Interim Resolution Professional



even by way of email or WhatsApp. **Compliance report of the order by designated Registrar is to be submitted today.**

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)