IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.331/ALD/2018

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy Rules, 2016.)

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE
(NOW PUNJAB NATIONAL BANK)
Having its Head Office At:
Plot No.4, Sector 10, Dwarka, New Delhi-110075.
Having its Branch At:
Hapur, Garh Road, District Hapur-UP.

.....FINANCIAL CREDITOR

Versus

SIMBHAOLI SUGAR LTD.
Having Registered Office At:
DISTRICT- HAPUR, UTTAR PRADESH-245207.

.....CORPORATE DEBTOR

Order pronounced on 11th July, 2024

Coram:

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

Appearances:

Sh. Ashok Bhatnagar, Adv.	:	For the Financial Creditor
Sh. Krishnendu Datta Sr. Adv. and Sh. Rohan Gupta, Adv.	:	For the Corporate Debtor

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ORDER

1. This Application has been initially filed on 17.09.2018 by the Oriental Bank of Commerce as the Applicant/Financial Creditor/ OBG under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "***IBC***") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Simbhaoli Sugars Limited (hereinafter referred as "***Respondent/Corporate Debtor/Cd***") in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 1,03,61,04,783.00 (as on 31.07.2018) with further interest @ 1 Default Yr MCLR + 1.75% (which is the 10.40% p.a. at present) per annum in default, declaring date of default being 31.08.2016.

2. Subsequent to filing of the Application, as mentioned in para 1 above, an Interlocutory Application, IA No.21/2021 was filed on 18.11.2020, substituting the name of Applicant in favour of Punjab National Bank since the Ministry of Finance vide its notification dated 04.03.2020 and exercising its power conferred u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, amalgamated Oriental

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Bank of Commerce and United Bank of India with Punjab National Bank w.e.f. 01.04.2020 wherein Punjab National Bank is the transferee bank and all assets and liabilities of Oriental Bank of Commerce stand merged/amalgamated in Punjab National Bank. As per the scheme of amalgamation, after the commencement of the amalgamation scheme, the Oriental Bank of Commerce shall vest or be deemed to vest or be taken over by the Transferee Bank without requiring any Act, deed, consent or instruments for transfer of the same. Therefore, the Transferor Bank shall henceforth be termed as Punjab National Bank. Consequently, in the present order, Punjab National Bank would be referred to as Applicant/Financial Creditor.

3. It is stated in Part-IV of the Application that to finance the liability of the Corporate Debtor a total credit facility of Rs.110,00,00,000/- (Rupees One Hundred and Ten Crore Only) has been extended by the Applicant Bank to the Corporate Debtor vide Facility Letter No CN0017/L/SSL/2015-16 dated 29.01.2016 and Loan Agreement executed between Applicant and Borrower Company dated 14.03.2016 along with Common Loan Agreement dated 14.03.2016 as mentioned in Part IV of the Application. Details of disbursement under the above facility

has been annexed as Annexure A-6 to the Application. Details of securities created on these loans are given in Part V on Pg 13-14 of the Application.

4. Subsequently, as stated in the Application, the Corporate Debtor started defaulting in repayment of the principal amounts and interest and other charges in respect of the said Credit Facilities. As per the facility agreement of Term Loan, the Corporate Debtor was required to make 60 structured quarterly instalment payments after the moratorium period up to 31st March 2016 and monthly interest payments. The Corporate Debtor failed to repay monthly interest payments on a regular basis and a total debt of Rs. 1,30,04,81,590 was due and payable from the date of default till the date of filing of this application. Accordingly, the default date is 31.08.2016. Consequent to the above default occurring on 31.08.2016 in repayment of loans and interest, the Lender Bank classified the account of the Corporate Debtor as NPA on 30.11.2016.

5. As mentioned in the application, the Corporate Debtor failed to register the subservient first pari-passu charge on all moveable and immovable fixed assets of the Corporate Debtor in favour of the Financial Creditor with the Registrar of Companies, despite

receiving a no objection letter from the State Bank of India on 28.06.2016. Further, the Corporate Debtor pledged a Term Deposit Receipt ("TDR") of Rs. 5,00,00,000 as an additional security for the repayment of the Term Loan Facility and further executed an undertaking for loan assistance against the TDR in favour of the Financial Creditor on 13.04.2017. Moreover, the Applicant also conducted several meetings for the discussion of the restructuring of the loan account of the Corporate Debtor but they failed to submit any restructuring proposal in favour of the Applicant.

6. In respect of the outstanding amount of Rs.125.40 crores as on 31.10.2017, a legal notice dated 29.10.2017 and a recall notice dated 01.11.2017 was issued by the Applicant Bank calling upon the Corporate Debtor to pay this outstanding amount within 15 days of receipt of the notice i.e. 16.11.2017. The Respondent in response to the same submitted its reply acknowledging its liability and also submitted a restructuring proposal. However, the same was rejected by the Applicant.

7. Thereafter, an application bearing OA no. 1240 of 2017 was also filed by the Applicant before the Debts Recovery Tribunal-II, New Delhi which is pending adjudication.

8. Therefore, an aggregate outstanding Rs.130.04 Crores is still due and payable by the Corporate Debtor as on the date of filing of this Application with the default date being 31.08.2016 on which first default on repayment of principal amount of debt under each loan facility as well as interest amount thereon has occurred.

9. In the support of the above debt and default, particulars of financial debt along with supporting documents have been produced such as the copy of sanction letter dated 29.01.2016, copy of loan agreement dated 14.03.2016 and copy of common agreement dated 14.03.2016 records and evidence of default have been filed as mentioned in Part V of the application, which includes the CIBIL Report generated for the Credit Facility sanctioned by the Applicant Bank attached at Annexure 15 (pgs 240- 504) of Petition and further, through filing of a supplementary affidavit dated 30.01.2024, brought on record the NeSL Reports dated 25.04.2022 showing that the aforementioned loan facility extended by the Applicant Bank to Corporate Debtor has moved to the status of Default and is deemed to be authenticated.

10. Given the details and supporting pieces of evidence, showing a total debt of Rs.130.04 crores owed by the Corporate Debtor is in default which is more than the threshold limit as averred by the Applicant Bank and discussed in the aforementioned paras, the present Application u/s 7 of the I & B Code, 2016 has been filed to initiate CIRP against the Corporate Debtor, initially filed on 17.09.2018 by the Oriental Bank of Commerce but later substituted by Punjab National Bank as Applicant/Financial Creditor vide order dated 14.12.2021 of this Tribunal after the Oriental Bank of Commerce has amalgamated with Punjab National Bank w.e.f. 01.04.20 as discussed in para 2 of this order.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

11. The Respondent Corporate Debtor filed its Reply on 15.09.2019. The contentions raised in the Reply against the averments made in the Application are briefly discussed as under: -

(i) The Corporate Debtor submitted that the Applicant Bank failed to certify the statement of accounts acknowledging their debt, in terms of the Bankers Book Evidence Act, 1891 as well as furnishing the record of default with the Information Utility despite its being operational and functional. Moreover, strongly contending that such

inherently defective petition deserves to be rejected in limine and the petition is liable to be dismissed by this Hon'ble Tribunal.

(ii) The Corporate Debtor had invested around Rs. 500 Crores which was majorly financed through loans in UP State Sugar Industry Promotion Policy to obtain various incentives /reimbursements /rebates in a span of ten years. However, the policy rescinded in 2007 due to which the company suffered liability of Rs. 300 Crore approximately up to March 2018. The action taken to rescind the policy was challenged by the Corporate Debtor as well as various owners of the sugar industries before the Hon'ble High Court and the Apex Court. The Hon'ble Supreme Court vide its order dated 07.03.2018, clubbed the various different petitions and dismissed the same. The Corporate Debtor further approached the Hon'ble High Court and the Hon'ble Court vide its order dated 12.02.2019 allowed the petition and concluded the following: "*Petitioners are entitled for consideration of all benefits in the form of exemptions/remission/reimbursements as per the Sugar Industry Promotion Policy-2004 and various Notifications issued thereunder from time to time for the entire period of validity of the Policy in the light of the observations made above.*"

(iii) As submitted by the Corporate Debtor, the deteriorating financial position of the Corporate Debtor was also due to the applicability of higher State Advised Price of Sugarcane in comparison to the Fair and Remunerative Price announced by Central Government. This resulted in accumulation of arrears of cane which became overriding

liability for the Corporate Debtor. Further, due to the stringent restrictions imposed by the Central Government on the sale of stock of the sugar have rendered the CD incapable to sell its proceeds.

(iv) In view of the above situation, the Corporate Debtor and the Oriental Bank of Commerce (hereinafter referred as "OBC") had executed an MOU for a scheme arrangement focused on financing individual sugarcane farmers with sugar mills. The Corporate Debtor availed an amount of Rs. 148.59 Crore under the scheme. As per the Uttar Pradesh (Regulation of Supply and Purchase) Act, 1953, 85% of the sugar sale proceeds are statutorily tagged for utilization for cane payment only. However, the mentioned 85% was not sufficient enough to take care of the entire cane dues in number of seasons.

(v) Further, a public Interest Litigation (PIL) bearing No. 29523 of 2014 was filed by Bhartiya Kisan Mazdoor Sangathan before the Hon'ble High Court of Allahabad for expediting the cane payments to farmers in the larger interest of the farmer community. The Hon'ble Bench vide its order dated 05.09.2014 directed the sugar mills for selling 15% of entire sugar stocks held by them and depositing the entire sale proceeds in specially earmarked cane payment accounts and the same shall be monitored by the Collector of each district. It is further submitted by the Corporate Debtor that OBC was well aware of the intricacies of the above-mentioned judgement. Therefore, in compliance with the above directions prioritizing the

cane payments was critical for the operational survival of the Corporate Debtor.

(vi) It has been submitted by the Corporate Debtor that despite the above status, they have paid in excess of Rs. 90 crores to the Applicant Bank towards the interest and principal between 2013 to January 2015. Further, an amount of Rs. 16.57 crores have also been paid to the Applicant Bank for the period between 2016-17 and 2017-18, 2018-19 and 2019-20.

(vii) The Respondent Corporate Debtor further states that around June 2013, the OBC reported KYC related discrepancies in the accounts of few farmers. The necessary rectification and vetting of the farmers were verified by OBC and no discrepancy was communicated to the Corporate Debtor. The same was reported to the District Magistrate of Hapur by OBC through letter dated 19.06.2014. Further, auditors of the Applicant bank have verified the accounts and confirmed the satisfactory compliance of the sanction letter and other documents. The Corporate Debtor submitted that even after the verifications undertaken by OBC, the bank classified the account of Corporate Debtor as "purported suspicious fraud" and resorted to providing for 25% provisioning in accordance with the RBI circular dated 01.04.2015 and further filed Fraud Monitoring Returns (hereinafter referred as FMR) with RBI in May 2015, thereby resulting in delaying the process of realignment of the loans agreed to by the other banks. It is further brought to notice that

such classification was clearly against the internal finding, verification of accounts and reports of the auditors on the basis of which corporate loan was sanctioned in favour of the Corporate Debtor.

(viii) Relying on above developments. OBC had filed an application (OA No. 26 of 2015) under section 19 of the RDDB&FI Act 1993 before the Hon'ble Debt Recovery Tribunal, Lucknow for invoking the corporate guarantee of the Corporate Debtor under the loan facility. It was informed to the Corporate Debtor that the application is filed to keep the claim alive since the prescribed period of limitation i.e., 3 years was expiring. But there was no intention of taking any further coercive steps.

(ix) The Corporate Debtor has contended that OBC sanctioned a fresh corporate loan of Rs. 110 crores upon clear examination of the account of the Corporate Debtor without taking into account the filing of FMR in May, 2015. However, as a result of the filing of Fraud Monitoring Return in May 2015, the sanction granted in February 2015 for the above loan could not be implemented. It is vehemently contended by the Corporate Debtor that against the 11 lenders, OBC was representing less than 10% of the Debt of the Corporate Debtor and has unilaterally taken the arbitrary step of filing FMR with the RBI.

(x) Further, emphasising on the Minutes of the JLF held on 22.12.2015 and 05.02.2016, the Corporate Debtor highlighted that it was unanimously agreed in the JLF

meeting that the matter between the Corporate Debtor and OBC stands resolved consequent to receipt of the RBI clarification for sanction and release of corporate loan/ closure of Farmer's accounts and agreement between them for OBC to file consent decree before the Hon'ble DRT, Lucknow, thereby, establishing no irregularity with the Corporate Debtor.

Corporate Debtor further contends that in addition to OBC, the Corporate Debtor has various lenders and a total borrowing of Rs. 1436.92 crores as on December 2018 wherein the OBC as per its claim only represents less than 10% of the total debt exposure of the Corporate Debtor. Further, the Corporate Debtor relied on the minutes of the JLF meeting held on 24.06.2016, establishing that the steps taken by OBC were without any mandate hence, arbitrary. The relevant extract of the meeting is reproduced below for ease of reference:

"***4. Status of disbursement of Corporate Loan of OBC***

Mr. Kaushik asked OBC about the status of disbursement of Corporate Loan to SSL. Mr. Jindal, OBC informed the lenders that the same was delayed due to approval of replacement of Personal Guarantee of Mr. Gurpal Singh with that of Ms. Gursimran Kaur Mann from the existing consortium. He further informed that all the documentation formalities have already been completed and they will disburse the same immediately after approval of replacement of guarantee by consortium.

Ms. Priyanka Ojha, Exim Bank asked OBc, whether the name of the company will be removed from CRILC platform. Mr. Jindal informed that OBC will approach the relevant authorities for removal of SSL's

name immediately after disbursement of loan and closure of farmer's accounts.

6. Letter received from the RBI regarding fraud reported in the account of the Company

Mr. Kaushik informed the lenders that they have received a letter from RBI dated 26.02.2016 stating that the account of SSL has been reported as Fraud by some bank and sought clarification w.r.t. conduct of account with SBI.

He further informed that SBI has replied to the above letter stating that there was no suspected fraud detected in the conduct of account of the Company with their bank. He mentioned that consortium banks had also got a Special Investigative Audit (SIA) conducted and the auditor made certain observations regarding the conduct of the facilities which were duly replied by the Company and those replies were discussed in the previous JLF and the report was treated as closed. There was no mention of any instance of "Fraud" in the Special Investigation Audit Report also."

(xi) The Debt Recovery Tribunal, Lucknow vide its order dated 16.03.2016 disposed off the application (O.A. No. 26 of 2015) as a joint application was filed by the Corporate Debtor and OBC seeking for the disposal of the same.

(xii) The Corporate Debtor further submitted that the Debt realignment scheme of Corporate Debtor was initially approved in March 2015 but due to the steps taken by OBC, the scheme was finally approved in February 2016. Further, additional amount of Credit assistance to the tune of Rs. 100 Crore, which was intended to address the Cane Gap and optimize facility operations, including the installation of pollution control equipment to meet

regulatory norms for operating 300 days annually, could not be achieved as the same was not disbursed.

(xiii) Corporate Debtor further contended that the corporate loan of Rs. 110 crores was revalidated by OBC in November 2015 and disbursed on 29-01-2016. Moreover, in view of the revalidation of the corporate loan, all steps undertaken by the Applicant Bank including the FMR were reversed and deemed to be withdrawn.

(xiv) In view of the continuous downfall of the sugar industry, the debt realignment scheme could not be implemented which led to the consequent denial of a Corporate Loan of Rs. 100 crores by the lenders. Further, through a circular dated 13.06.2016, RBI prescribed a scheme for sustainable structuring of stressed assets and all the lenders including OBC, agreed to explore the options of restructuring. The suggested Debt resolution scheme was broadly based on the classification into two streams i.e., realization from sale of sugar and other receipts on the basis of tagging compliance. Accordingly, a moratorium of one year was given to the Corporate Debtor in the proposed scheme to settle the cane gap in priority before start of debt repayments. Thus, in the JLF meeting held on 27.11.2017, the debt realignment proposal was approved by a majority of 68% in value and 50% in number. OBC, not in favour of the proposal, disapproved the resolution and instead filed the application of insolvency proceedings before the tribunal for repayment of the loan without consulting the JLF lenders.

RBI, in accordance with Section 35A and 35 AA of the Banking Regulation Act, 1949 and Section 45 of RBI Act, 1934, issued notification No. RBI/2017-18/131 dated 12.02.2018, directing the withdrawal of all schemes, including sustainable structuring of stressed assets, with immediate effect and provided that the only way of debt resolution outside the IBC be through the consent of all lenders i.e., 100% concurrence. In adherence to the said notification, a meeting of the JLF was held on 09.03.2018, wherein it was recorded that the entire restructuring approach adopted in the JLF meeting dated 27.11.2017 could not be pursued any further on account of the directives contained. The relevant extract of the circular dated 12.02.2018 is reproduced below for ease of reference:

"V. ***Withdrawal of extant instructions***

18. The extant instructions on resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR, and Scheme for Sustainable Structuring of Stressed Assets (S4A) stand withdrawn with immediate effect. Accordingly, the Joint Lenders' Forum (JLF) as an institutional mechanism for resolution of stressed accounts also stands discontinued. All accounts, including such accounts where any of the schemes have been invoked but not yet implemented, shall be governed by the revised framework."

(xv) In the JLF meeting held on 12.06.2018, it was expressly advised to all lenders including OBC, not to take any unilateral action and to consider only a common

approach which all lenders would approve to resolve the debt of the Corporate Debtor. Further, the JLF lenders in its meetings appointed M/s Alvarez & Marshal India Pvt. Ltd. as their Financial Advisor for assisting in debt resolution strategy. It is further submitted that in the JLF meeting held on 20.08.2018, the financial advisor informed the lenders about the discussions with various Asset Reconstruction Companies and various other alternatives to obtain the total debt resolution for the Corporate Debtor. It has also been submitted that an Expression of Interest dated 27.08.2018 was received by a well-known global investor and was under discussion.

(xvi) Corporate Debtor aggrieved by the insolvency proceedings filed by OBC, filed a petition (WP No. 1124 of 2018) before the Hon'ble Supreme Court challenging the RBI circular dated 12.02.2018 along with the consequential insolvency proceedings. The Corporate Debtor contended that the impugned RBI Circular is arbitrary and violative of Article 14 of the Constitution of India as it results in setting aside of the debt resolution plan, approved with the super majority of 68% by the Joint Lenders Forum and thereby leading to filing of the insolvency proceedings by OBC which constitutes only 10 % of the entire debt, without having any regard to the resolution plan. It was further mentioned that in accordance with the provisions of IBC, a Resolution plan shall stand approved with 66% approval of the lenders whereas the Paragraph 5 of the impugned circular causes a condition wherein approval

of all the lenders is required for the approval as well as the implementation of the Resolution plan, thereby creating chances for a lender even with minimum percentage to stall the resolution plan. The relevant para 5 of the impugned circular is reproduced below:

"C. ***Implementation Conditions for RP***

5. A RP in respect of borrower entities to whom the lenders continue to have credit exposure, shall be deemed to be 'implemented only if the following conditions are met:

a. the borrower entity is no longer in default with any of the lenders;

b. if the resolution involves restructuring; then

i. all related documentation, including execution of necessary agreements between lenders and borrower / creation of security charge / perfection of securities are completed by all lenders; and

ii. the new capital structure and/or changes in the terms of conditions of the existing loans get duly reflected in the books of all the lenders and the borrower."

(xvii) The Hon'ble Supreme Court vide order dated 02.04.2019 in ***Dharani Sugars Chemical Ltd v. Union of India and Others Transferred Case (CIVIL) NO.66 OF 2018 In Transfer Petition (CIVIL) NO.1399 OF 2018***, declared the RBI Circular dated 12.02.2018 ultra vires as a whole and directed it to be of no effect in law. It was further held that "*consequently all action taken under the said circular, including the action by which the Insolvency Code has been triggered must fall along with the said circular*".

(xviii) In view of above directions, the Corporate Debtor continued to pursue negotiation with the lenders for the resolution of debt through the ARC route on top priority and further with the consent of all lenders except OBC,

various efforts were made for debt resolution through a global investor in stressed assets in the consortium meetings of JLF held on 22.01.2019 and 27.03.2019.

(xix) Subsequent to the quashing of the Circular dated 12.02.2018, the RBI issued fresh Circular on 07.06.2019 focusing on the framework for resolution of the stressed assets. The circular further reiterated that all the lenders may enter into Inter Creditor Agreements and shall decide on restructuring strategy including the nature and implementation of the resolution plan, which may even include filing for Insolvency through NCLT, by the lenders representing 75% by value of outstanding credit facilities and 60% of the lenders number, which shall further be binding upon the Lenders.

(xx) In compliance with the above stated circular, it is submitted by the Corporate Debtor that it has a total borrowing of 1436.92 crore in which OBC as per its claim represents less than the 10% of the total debt exposure of the Corporate Debtor. However, the OBC has initiated insolvency proceedings in exclusion of the approvals of the other lenders. It is being contended by the Corporate Debtor that despite the resolution plan under active consideration by all the lenders, OBC cannot be permitted to initiate the insolvency proceedings without the unanimous considerations of the JLF lenders. They can now exercise such right under the framework of RBI and also noted that the Punjab National Bank was also in favour for a One Time Settlement.

(xxi) It is stated that the Corporate Loan sanctioned by OBC was scheduled to be paid by the year 2021, and hence had not become due or payable as yet and furthermore, the entire debt of the Corporate Debtor had been approved to be restructured by super majority of the Joint Lenders Forum before being set aside by the RBI Circular dated 12.02.2018. The Corporate Debtor placed reliance on the judgement passed by the Hon'ble Supreme Court in the matter of ***Innoventive Industries Ltd. V. ICICI Bank & Anr., cited at (2018) 1 SCC 407*** wherein the Hon'ble Court held that the Corporate Debtor in a petition under Section 7 of IBC can duly place for consideration before the Adjudicating Authority relevant facts objecting to the maintainability of a petition under Section 7 of the IBC. Hence, submitted that there is no existence of default in terms of section 3(12) of IBC.

(xxii) The default amount claimed by the financial creditor is incorrect as well as exaggerated and the Financial Creditor has charged erroneous interest. The Corporate Debtor placed reliance on the judgement passed by the Hon'ble NCLAT in the matter of ***Starlog Enterprises Ltd. V. ICICI Bank Ltd., Co. Appeal No. 5 of 2017***, wherein the Hon'ble NCLAT was of the following view: -

"21. Showing an incorrect claim, moving the application in a hasty manner and obtaining an ex parte order from the 'adjudicating authority' which admitted such an incorrect claim, the Financial Creditor cannot disprove its mala fide intention by stating that the claim submitted is correct amount. The I&B Code does not provide for any such mechanism where post-admission, the applicant

financial creditor can modify their claim amount.22. In some of the cases, an insolvency resolution process can and may have adverse consequences on the welfare of the company. This makes it for the 'adjudicating authority to adopt a cautious approach in admitting insolvency applications and also ensuring adherence to the principles of natural justice."

(xxiii) Further the CD states that the applicant has already filed an Original Application (O.A. No. 1240 of 2017) before the Hon'ble Debts Recovery Tribunal, New Delhi wherein the alleged amount of Rs.120,91,36,001/- has been claimed and further a counter-claim of Rs. 655,00,00,000 has been filed by the Corporate Debtor which is pending for adjudication before the Hon'ble DRT, Delhi. It is thus, submitted that the Section 7 petition is not maintainable since the claim is disputed and counter claim pending for adjudication before the competent jurisdiction is much higher than the alleged claim of the Applicant Bank.

(xxiv) Corporate Debtor contended that the conduct of the Applicant Bank is contrary to the object and purpose of the IBC, 2016 since the sole intent of OBC of initiating the proceedings is recovery. Further, OBC has maliciously filed the instant petition with sole intent of jeopardising the resolution which was approved by the members of the Joint lender forum. The Corporate Debtor supported its contention by relying on the judgement passed by the Hon'ble NCLAT in the matter of ***Andhra Bank v. M/s F.M. Hammerle Textiles Ltd., Company Appeal (AT)(Ins.) No. 61 of 2018*** wherein the Hon'ble Tribunal held that the IBC consolidates the laws relating

to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals, in a time bound manner and for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment. Further, it was also held that the Corporate Insolvency Resolution Process is not a recovery proceeding and cannot be termed to be litigation between two adversaries.

12. Given the details and facts submitted in the Reply as discussed above, the Corporate Debtor has prayed for not admitting this Petition/Application since the Applicant/Petitioner is interested in the recovery of their dues and not the rehabilitation of the stressed company. Hence, the present Application/Petition is filed with malicious intention and is an abuse of the legal process. And liable to be rejected.

REJOINER ON BEHALF OF THE FINANCIAL CREDITOR

13. A Rejoinder has been filed by the Applicant on 22.09.2019 countering all the contentions raised in the Reply of the Corporate Debtor. The Applicant has made the following averments in the Rejoinder:

(i) The statement of account has been duly verified and evidenced under the Bankers Book Evidence Act. Further,

CIBIL report of the Corporate Debtor has also been produced with the petition filed under section 7 of the IBC.

(ii) The Applicant asserts that they have proceeded under section 7 of the Code independent of the circular of the RBI dated 12.02.2018. Therefore, the reliance on the judgement passed by the Hon'ble Supreme Court in ***Dharani Sugars Chemical Ltd v. Union of India dated 02.04.2019*** by the Corporate Debtor on the insolvency proceedings initiated by the Applicant is devoid of merit and holds no relevance. The aforesaid judgement of the Hon'ble Supreme Court is confined to the validity of the circular.

(iii) The Applicant argued that the RBI circular dated 12.02.2018 does not apply to this case because the Corporate Debtor has been declared a wilful defaulter by the Applicant, which is not addressed in the circular. Additionally, the amount to be recovered is less than Rs. 2000 crores, whereas the circular specifies actions for exposures exceeding Rs. 2000 crores only.

(iv) The Applicant claimed that the Corporate Debtor has siphoned off the funds it received from the Applicant. The Applicant then reported this to the CBI and ED, as documented in the minutes of the JLF meeting on 31.07.2019. The Applicant Bank has also initiated proceedings at the Debts Recovery Tribunal, Delhi under the RBDI Act. Additionally, the Applicant argued that any financial losses suffered by the Corporate Debtor should

not justify non-payment of dues owed by it to the Applicant.

(v) It is further stated by the Applicant that the Corporate Debtor itself has produced the minutes of the meeting of JLF lenders held on 31.07.2019 in the supplementary affidavit, wherein it was noted that the Corporate Debtor's One Time Settlement (OTS) proposal needed substantial improvement in the amounts offered, and the percentage of equity should also be increased. Additionally, it was suggested that 5% of the OTS amount should be deposited in a no-lien account along with the proposal, and the repayment timeline by the Corporate Debtor should be reduced from 9 months to 6 months. Punjab National Bank (hereinafter referred as "PNB") did not consider the OTS proposal because the offered amount was deemed too low. Furthermore, PNB was pursuing recovery actions under the SARFAESI Act before the Debt Recovery Tribunal and NCLT.

(vi) The applicant states that the respondent's reliance on the JLF meeting dated 27.11.2017 is misguided since the meeting is irrelevant due to the corporate debtor's non-adherence to OTS proposals.

(vii) It is further stated by the Applicant that even in the meeting held on 31.08.2019, no concerns were raised regarding the applicability of the RBI circular dated 12.02.2018.

(viii) The Applicant further asserts that during the JLF meeting on 31.08.2019, it was made clear that the Corporate Debtor cannot misuse the State Government's sugarcane policy to divert substantial funds sanctioned by the bank, which consists of public money. Therefore, the Corporate Debtor cannot use these policies as an excuse to avoid paying the bank's dues. Additionally, the Insolvency and Bankruptcy Code does not concern itself with the State Government's sugarcane policy or the related litigation in the Hon'ble High Court and Hon'ble Supreme Court.

(ix) The Applicant contends that the dues for 2011 and 2012 have already been resolved in the O.A. case and are not relevant to the current petition. Furthermore, the Applicant states that they previously followed legal procedures while filing O.A. No. 1240 of 2017 to recover Rs. 120,91,36,001, after designating the account as NPA according to RBI guidelines. Regarding the counterclaim by the Corporate Debtor, the Applicant asserts that the Insolvency and Bankruptcy Code governs the current petition, and the issues of farmer distress and government sugar policy are not under consideration by this Tribunal.

(x) It is further stated by the Applicant that the Fraud Monitoring Returns (FMR) was done by the Applicant Bank in view of the siphoning of the funds by the Corporate Debtor towards the payment of cane growers and it was not related to the subsequent disbursal of the fresh corporate loan.

(xi) As regards the argument of the Corporate Debtor that the loan was sanctioned in February 2015 and disbursed in February 2016, it is submitted by the applicant that it was due to the various amendments suggested by the Corporate Debtor itself.

(xii) As regards the reliance placed by the Corporate Debtor on the orders passed by the Hon'ble Supreme Court and Hon'ble High Court wherein more than 85% sugar sold was tagged for utilisation of cane growers' payment and in addition to this, the remaining 15% or even less could only be utilized for the running of the units constitutes no relevancy in the facts of the present petition.

(xiii) It is submitted by the applicant that as per the terms of the sanction, the principal amount is repayable in monthly instalments and the interest shall be recoverable as and when due. Further, the Corporate Debtor has failed to deposit interest as and when due and thus, in compliance with the RBI guidelines, the applicant has classified the account of the Corporate Debtor as 'NPA' and termed them as wilful defaulter.

(xiv) The Applicant further asserted that the Corporate Debtor had submitted various OTS proposals dated 29.04.2019 amounting to Rs. 14.69 crores, then on 21.08.2019 amounting to Rs. 20 crores and finally on 14.09.2019, it stated that they are working on the amounts of OTS. On thorough analysis of the above-submitted proposals, the applicant bank rejected all the proposals due to the amount offered being too low and the same was

communicated to the Corporate Debtor through letters dated 24.04.2019, 27.08.2019 and 20.09.2019.

14. In the light of the above submissions made in the Rejoinder countering all the objections raised by the Corporate Debtor in its reply, it has been finally submitted by the Applicant that the Reply of the Corporate Debtor ought to be disregarded and Section 7 Application ought to be admitted.

MISC. APPLICATION DATED 30.04.2019 FILED BY APPLICANT

15. The Applicant filed a Misc. Application Dated 30.04.2019 which has been taken on record but the contents of the application were same as averred in the petition and rejoinder and hence, the same have not been repeated here for the sake of brevity.

REPLY FILED BY THE CORPORATE DEBTOR TO THE MISC. APPLICATION DATED 30.04.2019

16. The Corporate Debtor has filed their reply which has been taken on record and the contents of the same being similar in nature as already discussed, have not been repeated here for the sake of brevity.

SUPPLEMENTARY REPLY FILED BY THE CORPORATE DEBTOR on 10.01.2020

17. The Corporate Debtor submitted a Supplementary Reply on 15.09.2019 to bring on record the minutes from the JLF meeting held on 31.08.2019. In this meeting, it was agreed that the debt resolution proposal for the Corporate Debtor would be amicably settled only if the Corporate Debtor agreed to enhance the OTS proposal. Additionally, it was noted that the Corporate Debtor is in the process of increasing the OTS amount.

SUPPLEMENTARY AFFIDAVIT FILED BY THE CORPORATE DEBTOR.

18. The Corporate Debtor at the very first instance claimed that the Applicant proceeded to initiate these proceedings independently, outside the specific framework outlined in the RBI Circular dated 07.06.2019 despite a resolution plan being under consideration. Further, it is stated that the Respondent submitted a proposal for One Time Settlement to the State Bank of India, which is the lead bank with a 15% stake in the total outstanding principal amount owed to Commercial Banks. Additionally, the Bank of India, holding a 23% stake, and the Bank of Baroda have accepted the earnest money deposited by the Respondent. They have communicated to the Respondent

that the matter will now be considered by the External Committee/Appropriate Committee of the respective Banks.

19. It is further stated that the Respondent has also sent similar One Time Settlement (OTS) offers to UCO Bank, ICICI Bank, and Exim Bank, who are actively reviewing the proposals. Copies of the communications received by UCO Bank, ICICI Bank, and Exim Bank have been attached as Annexure SA-2 to the affidavit.

20. Furthermore, OTS letters sent to Oriental Bank of Commerce and Punjab National Bank were rejected for proposing amounts deemed too low. The Respondent is now working to improve these offers for resubmission.

21. It is therefore submitted that the Resolution Plan is actively being considered by the lenders and is likely to be accepted by the majority of banks.

22. The Applicant further claims that the Financial Creditor's stake is less than 10% and they are attempting to disrupt the resolution plan, which is nearing finalization.

23. It is further submitted by Respondent that as per the RBI Circular dated 07.06.2019, the Resolution Plan implementation process must commence even before a default is reported.

Lenders are required to conduct a preliminary review of the borrower's account within 30 days of any reported default by a lender, including scheduled commercial banks. This review period is defined as the period from the reference date or from the date of the first default after the reference date.

24. It is further argued that for borrowers with an aggregate exposure exceeding Rs. 15 billion, like in the current case, the reference date has not been announced yet. Therefore, it is evident that the ongoing proceedings cannot continue once the Resolution Plan is actively being implemented, while the renewed period has not yet begun.

25. One of the consistent submission has been made by the Corporate Debtor that it has made settlement offer/resolution of debt to the Financial Creditor in the past. The Financial Creditor (SBI lead members of the JLF) on finding that such a settlement offer was not viable in terms of the loan facility granted to the Corporate Debtor, vide its communication dated 26th July, 2023 rejected the same. The said communication was challenged by the Corporate Debtor before the Hon'ble Allahabad High Court in *(Writ Petition (Civil) No. 26869 of 2023 titled as M/s Simbhaoli Sugar Limited Vs. State Bank of India and 7 others).* The Hon'ble

High Court while dismissing the aforesaid writ petition and also passing certain other orders observed that the sole intention of filing the instant petition is for holding back the NCLT proceedings. It was also observed that on the first date of hearing in the said writ petition, the counsel for the petitioner (Corporate Debtor herein in the present company petition filed under Section 7 of the Code) gave an undertaking that they are ready to deposit Rs. 20 Cr. in the No Lien Account, however, only deposited Rs. 10 Cr. and the balance was not paid. It has further been observed that it was nothing but to ploy to buy time. Subsequent proceedings taken up by the Corporate Debtor before the Hon'ble Supreme Court with respect to OTS proposal also did not find favour with the Corporate Debtor. Such proposals again being made time and again by the Corporate Debtor during the course of proceedings/hearing in the present matter have also been rejected by the Financial Creditors. We are however, not making any observations with regard to OTS proposals or its rejection by the Financial Creditors, as the same is not a controversy before us and the present petition has thus been considered on its merits in terms of the provisions of the Code.

26. In Pursuance of the directions passed by this tribunal vide order dated 11.06.2024, the Financial Creditor and Corporate Debtor have also filed their written submissions which have been taken on record and not repeated here for the sake of brevity.

27. During the course of hearing, we have noted that an order dated 14 December, 2021 has been passed by this Adjudicating Authority thereby observing that since there has been another petition filed by PNB vide CP(IB) 455/ALD/2019 and therefore, the said petition may be treated as a lead petition. However, the present petition which was of Oriental Bank of Commerce which has since then been merged in PNB, was argued at length by the Learned Counsels representing both the parties based upon facts and law and therefore, we have proceeded to decide the present petition as under IBC, the present petition filed under section 7 is considered to be independent. Accordingly, we have heard the matter and proceeded to reserve the order for the same.

FINDINGS AND ORDER

28. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate

Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto.

29. Having heard the Learned Advocates appearing for the parties and on perusal of the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, the main issues which are before us to be decided in respect of the present Application u/s 7 are:

I. Whether there is debt and default within the meaning of the I &B Code, 2016.

II. Whether the present proceeding U/s 7 of the IBC, 2016 is independent of the RBI circular dated 12.02.2018.

III. Applicability of the decision of the Hon'ble Supreme Court in Dharani Sugars & Chemicals Ltd. V. Union of India (*Transferred Cases (Civil) No. 66 and 1399 of 2018)* dated 02.04.2019 in the present petition.

30. It is an admitted fact that the Corporate Debtor has availed the Financial Facilities in the form of loans from the Financial Creditor. The loan for the amount of Rs.110 crores was sanctioned through the loan agreement dated 14.03.2016, the details of which have already been discussed in para 3 of this order. The total amount of default as stated in Part-IV of the

application is Rs. 1,03,61,04,783.00 (as on 31.07.2018) with further interest @ 1 Default Year Marginal Cost of Funds-based Lending Rate + 1.75% (which is the 10.40% p.a. at present) per annum and date of default as stated in Part-IV of the Application is 31.08.2016 due to non-repayment of monthly interest of the Term Loan. Moreover, in respect of the outstanding amount of Rs.125.40 crores as on 31.10.2017, a legal notice dated 29.10.2017 and a recall notice dated 01.11.2017 was sent by the Financial Creditor. All supporting necessary documents as required under Part V of the Application in Form-1 for section 7 application under IBC, have been filed by the Financial Creditor. The Record of Default filed by the Financial Creditor in the NeSL shows that the debt in default has been" Deemed to be Authenticated".

31. Later on, in accordance with the notification of the Ministry of Finance dated 04.03.2020, Oriental Bank of Commerce and United Bank of India were amalgamated with Punjab National Bank w.e.f. 01.04.2020 and after the commencement of the amalgamation scheme, the Oriental Bank of Commerce shall vest or be deemed to vest or be taken over by the Transferee Bank i.e., Punjab National Bank without requiring any Act,

deed, consent, or instruments for the transfer of the same. Therefore, this tribunal vide order dated 21.01.2021 substituted the Present Financial Creditor as being Punjab National Bank in place of Oriental Bank of Commerce.

(I) <u>WHETHER THERE IS DEBT AND DEFAULT WITHIN THE MEANING OF I & B CODE, 2016.</u>

32. The first issue for consideration before this tribunal for the purpose of admission of application under Section 7 of the IBC is whether there is existence of "debt" and "default" committed by the Corporate Debtor.

33. The Ld. Counsel of the Financial Creditor has argued that there is an admitted debt and default which is easily evident from the Facility Letter, namely No. CN0017/L/SSL/2015-16 dated 29.01.2016 and Loan Agreement executed between Applicant and Borrower Company dated 14.03.2016 along with Common Loan Agreement dated 14.03.2016. The Corporate Debtor has admitted that the credit facility availed from the Financial Creditor is secured and the default in repayment of the credit facilities is due to the liquidity crunch caused on account of the orders passed by the Hon'ble Allahabad High Court and the Apex

Court in the matter of SLP (C) No. 1473-1474/2015 in the matter of Bajaj Hindusthan Ltd. clubbed with SLP (C) no. 2896-2897/2015 in respect of UP state Sugar Industry promotion policy, which was challenged before the Court. However, we find that after the order of Hon'ble High Court there was no hindrance in repaying the loan of the Bank as sufficient liquidity was bring generated by the Corporate debtor by its operation and such policy of state government cannot be a reason for not repaying the loan. Further, as informed by the Financial Creditor, the total amount of debt owed by the Corporate Debtor as on 31.07.2018 is Rs.103.61cr. owed to the Financial Creditor.

34. The default on the part of the CD is evident from the documents placed on record such as the CIBIL Report dated 28.08.2018 wherein it is mentioned that the M/s Simbhaoli Sugars Limited was moved to the default category and NeSL records as on 25.04.2022 showing that there is default committed by the Corporate Debtor. The relevant excerpts of the CIBIL report and the NeSL record respectively have been produced hereunder: -

"**COMMERCIAL CREDIT INFORMATION REPORT**

10. Credit Facility Details- As Borrower

Credit Facility 12.	**Type: Long term loan (period above 3 years)**	**Member: Oriental Bank of Commerce Account Number:00177025004425**	
Asset Classification/ DPO	Status	**Status date**	**Last report date**
668 Days Past Due	Not a Suit filed Case, Open, Not Wilful Defaulter	-	30-June-2018

Amount (INR)		**DATES**	**Other Details**	
Sanctioned INR.	1,10,00,00,000	Sectioned 30-JUN-2016	Repayment Frequency	Others
Drawing Power:	1,10,00,00,000	Loan Expiry /Maturity 10-MAR-2021	Tenure	0
Outstanding Balance	1,03,71,04783	Suit filed -	Restructuring Reason	0
Overdue:	43,90,70,227	Wilful Default	Asset Based security overage	Nil
High Credit	0		Guarantee coverage	Nil
Installment Amount	4,58,33,733			
Last Repaid	0			
Suit filed	-			
Written off	0			
Settled	0			

Asset Classification (AC) Days Past Due (DPD)- Upto 24 Months						
Month	May 2018	APR 2018	MAR 2018	FEB 2018	JAN 2018	DEC 2017
A/C/DPO	638 days Past Due	607 days Past Due	577 days Past Due	546 days Past Due	518 days Past Due	Doubtful
O/S Amount	1,03,81,04,783	1,03,81,04,783	1,03,81,04,783	1,03,81,04,783	1,03,81,04,783	1,03,81,04,783
Month	Nov- 2017	Oct- 2017	Sep 2017	Aug- 2017	Jul- 2017	Jun- 2017
AC/DPD	456 Days Past Due	426 Days Past Due	-	365 Days Past Due	334 Days Past Due	303 Days Past Due
O/S Amount	1,03,81,04,783	1,09,08,32,734	-	1,09,08,32,734	1,09,08,32,734	1,09,08,32,734

Month	May 2017	Apr 2017	Mar 2017	Feb 2017	Jan 2017	Dec 2016
AC/DPD	273 Days past due	242 Days past due	-	181 Days past due	-	122 Days past Due
O/S	Amount	1,09,08,32,734	-	1,09,08,32,734	-	1,09,08,32,734
Month	Nov 2016	Oct 2016	Sep 2016	Aug 2016	Jul 2016	Jun 2016
AC/DPO	91 Days past Due	Special Mention Accounts	Special Mention Accounts	Special Mention Accounts	Standard	Standard
O/S Amount	1,09,08,32,734	1,12,26,40,840	1,11,83,19,493	1,10,79,68,632	1,11,04,01,609	1,10,03,41,120

"Record Of Default/Debt/Authentication As Submitted To And Held By NeSL

Date of Submission	10-12-2019 20:31:26
Type of Submission	Default Submission
Submitted ID	10
Submitted by (CREDITOR)	M/s PUNJAB NATIONAL BANK
Debtor	M/s SIMBHAOLI SUGARS LTD
Default Amount	960975097.00
Status of Authentication by DEBTOR	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the DEBTOR, date of completion of authentication	Not Applicable

Date of Submission	10-12-2019 20:31:26
Type of Submission	Default Submission
Submitted ID	11
Submitted by (CREDITOR)	M/s PUNJAB NATIONAL BANK
Debtor	M/s SIMBHAOLI SUGARS LTD

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Default Amount	998055374.00
Status of Authentication by DEBTOR	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the DEBTOR, date of completion of authentication	Not Applicable

Date of Submission	01-01-2020 19:00:34
Type of Submission	Default Submission
Submitted ID	12
Submitted by (CREDITOR)	M/s PUNJAB NATIONAL BANK
Debtor	M/s SIMBHAOLI SUGARS LTD
Default Amount	1035796473.00
Status of Authentication by DEBTOR	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the DEBTOR, date of completion of authentication	Not Applicable

35. The debt and default further stand corroborated by a perusal of the statement of accounts of the Financial Creditor which has been filed with the instant petition. Thus, the Corporate Debtor is admittedly in default on repayment of its huge amount of loan towards the present Financial Creditor, which now has become overdue.

36. After considering the entire facts of the case so far discussed and taking into account the decision of the Apex Court in the case of ***Innoventive Industries Ltd.*** **v. ICICI Bank (2018) 1 SCC 407** in which it has been already held that a petition under IBC be admitted if there is clear debt and default, we are of the considered opinion that in the present case, default on repayment of the debt has occurred and the Section 7 Petition filed by the Financial Creditor is complete in all aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 and attaching all the necessary supporting documents including ROD from NeSL as required in Part V of the Application. **Considering that all the above criteria are fulfilled as required under the I & B Code, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor.**

(II) <u>WHETHER THE PRESENT PROCEEDING U/S 7 OF THE IBC, 2016 IS INDEPENDENT OF THE CIRCULAR DATED 12.02.2018.</u>

37. In respect of this issue, the Ld. Counsel of the Corporate Debtor argued that the Corporate Debtor was facing a significant

financial downturn and was unable to pay off the debt due to the policies of the government and subsequent orders passed by the Courts. Consequently, the Corporate Debtor opted for restructuring to repay the undertaken loans. A debt realignment proposal was presented to the Joint Lenders Forum (JLF) under the scheme "Sustainable Structuring of Stressed Assets" issued by the Reserve Bank of India (RBI), which was approved by a super-majority of 68% of the JLF lenders. However, the issuance of the circular dated 12.02.2018 by the RBI, which mandated the immediate withdrawal of all schemes, including the Sustainable Structuring of Stressed Assets, and stipulated that debt resolution outside the Insolvency and Bankruptcy Code (IBC) required the consent of all lenders (i.e., 100% concurrence), led to the withdrawal of the restructuring approach adopted by the JLF lenders in their meeting dated 09.03.2018.

38. The Corporate debtor in his reply has acknowledged that it has a total borrowing of Rs. 1436.92 crores, wherein the Financial Creditor as per its claim only represents less than 10% of the total debt exposure of the Corporate Debtor. Furthermore, the Corporate Debtor contends that in pursuance to the issuance of

the RBI circular, the Financial Creditor, without considering the other lenders of JLF, proceeded to file for insolvency proceedings, disregarding the resolution plan approved by a super-majority of 68% of the JLF lenders and the effective restructuring measures undertaken by the Corporate Debtor. The relevant exercept of the JLF meeting dated 12.12.2017 has been produced hereunder: -

" 4. To record the mandates of member banks on the financial package and crystalize the Corrective Action Plan (CAP)

Mr. Kaushik asked all the lenders the status of their mandate w.r.t. the TEV Report/Proposed financial package. The Bank wise status of the mandate is as under:

S. No.	*Name of Bank*	*Status*
1	*SBI*	*In principally agreeable to the scheme provided there is no dissenting member and subject to approval from competent authority*
2	*PNB*	*In principally agreeable subject to approval from appropriate authority*
3	*BOB*	*Absent*
4	*ICICI*	*Absent*
5	*EXIM*	*In principally agreeable subject to approval from appropriate authority*

6	*OBC*	*Not agreeable. Loan recalled and filed recovery proceedings with DRT, Delhi on 23.11.2017*
7	*BOI*	*Sanctioned*
8	*UCO*	*In principally agreeable subject to approval from appropriate authority*
9	*DCB*	*Not agreeable*
10	*UPCB*	*Not agreeable*

As evident from the above, though the numbers required for achieving supermajority are reached (68% in value & 50% in number), however, the Scheme can be pursued further only if all the members agree to the same.

The JLF advised the Company to sort the issues amicably with the dissenting members before proceeding with the scheme. The Company was also advised to speed up this process (preferably) within 4 weeks) as the lenders which are agreeable at present may than have to explore other options if the restructuring option is not carried forward.

The lenders with agreeable mandate also opined that any lenders, who does not participate in the Proposed Scheme, shall not be allowed any participation in the free cash flow/TRA mechanism for their debt repayment.

Mr. Rama Krishna, CM, OBC informed that they have recalled their loan and filed a case with DRT, New Delhi on 23.11.2017. All the lenders opined that they should have discussed/informed the JLF before filing the application, and advised the bank that a common approach should be taken by member banks in dealing with the account."

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39. The Corporate Debtor filed a writ petition (WP NO. 1124 of 2018) to quash the RBI circular on the grounds that it is violative of Article 14 of the Constitution of India, and to restrain the insolvency proceedings initiated by the Financial Creditor pursuant to the circular. Further, the petition of the Corporate Debtor was clubbed with the main petition, i.e. Dharani Sugars *& Chemicals* Ltd.

40. The Corporate Debtor further argued that its petition was upheld in the ***Dharani Sugars & Chemicals Ltd. V. Union of India (Transferred Cases (Civil) No. 66 And 1399 Of 2018)***, where the circular dated 12.02.2018 was declared ultra vires and held to have no legal effect. It was further held that "consequently all actions taken under the said circular, including the action by which the Insolvency Code has been triggered, must fall along with the said circular." Therefore, it is argued by the CD that the Financial Creditor, in isolation and exclusion of the JLF lenders, undertook actions based on a circular, now declared ultra vires, thereby warranting the dismissal of the present petition.

41. Ld. Counsel for the Financial Creditor reiterated that the legal action undertaken by the Financial Creditor for repayment of loan was initiated prior to the publishing of the said circular.

Before filing the insolvency proceedings, the Financial Creditor had taken various steps under the law to seek repayment of the sanctioned loan, including identifying the account of the Corporate Debtor as fraud, reporting the same to CBI and ED, recalling the loan through a letter dated 01.11.2017, and further filing for recovery proceedings before the Debt Recovery Tribunal on 23.11.2017. The Financial Creditor had also sent a legal notice dated 29.10.2017 seeking repayment of the loan, to which a restructuring plan was proposed by the Corporate Debtor and submitted to the Financial Creditor on 10.11.2017. The Financial Creditors subsequently rejected the said plan on the basis that the amount offered was too low. However, to mitigate the liability, it was seen that the Financial Creditor appropriated the TDR of Rs. 5 crores provided by the Corporate Debtor as additional security for the repayment of the Term Loan Facility.

42. The Financial Creditor emphasized that the total borrowing owed by the CD to the present financial creditor was only Rs. 103.61crores which was not within the ambit of the circular and, therefore, the said circular could not have been applicable on debts owed to the present financial creditor as the said circular was applicable on an aggregate exposure of INR 2000 crores &

above, on or after 01.03.2018. It is also emphasized by the Financial Creditor that present application under section 7 was not filed in compliance of circular of RBI dated 12.02.2018 as nowhere either in the JLF meeting or in the application, it has been mentioned that the action taken by the Financial Creditor under IBC is in compliance of RBI Circular dated 12.02.2018.

43. The Financial Creditor also highlighted that the application under section 7 of IBC, 2016 was filed on 05.09.2018 which was 180 days beyond the reference date i.e., 01.03.2018 as mentioned in the RBI Circular. The relevant paragraph from the RBI Circular dated 12.02.2018 is extracted herein below:

"D. Timelines for Large Accounts to be Referred under IBC

8. In respect of accounts with aggregate exposure of the lenders at 20 billion and above, on or after. March 1, 2018 (reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:

i) If in default as on the reference date, then 180 days from the reference date.

ii) if in default after the reference date, then 180 days from the date of first such default.

9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code 2016 (IBC) within 15 days from the expiry of the said timeline."

44. Considering all the above submissions made by both parties, we find that the insolvency proceeding initiated by the Applicant/Financial Creditor is independent of the RBI circular dated 12.02.2018. Moreover, in the petition, the petitioner has no way relied upon the RBI circular of 2018. Since, the petition has not been actuated on this circular of 2018, the contention of the corporate debtor seems far-fetched.

(III) APPLICABILITY OF THE DECISION OF THE HON'BLE SUPREME COURT IN DHARANI SUGARS & CHEMICALS LTD. V. UNION OF INDIA (TRANSFERRED CASES (CIVIL) NO. 66 AND 1399 OF 2018) DATED 02.04.2019 IN THE PRESENT PETITION.

45. The last submission made by the Ld. Counsel representing the Corporate Debtor is that the instant Application filed under section 7 should be dismissed in the light of Dharni Sugar ***(Supra)*** since this Judgment specifically dealt with the RBI's

Circular dated 12.02.2018, which was struck down by the Hon'ble Apex Court.

46. The Ld. Counsel representing the Financial Creditor, on the other hand, argued that since the insolvency proceedings were never initiated under the said circular, therefore, there shall be no applicability of the said judgment on the present proceedings. The relevant excerpt of the judgment has been reproduced hereunder:

"*...For these reasons also, the impugned circular will have to be declared ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non est.*"

47. Thus, the Ld. Counsel for Applicant vehemently stated that the insolvency proceeding was initiated by the Financial Creditor even before the reference date mentioned in the circular and the debts of the Corporate Debtor did not meet the threshold for the said circular to be operational, thus the Dharni Sugars Judgement shall have no impact on the present proceedings.

This judgment clearly establishes its applicability on the cases wherein Section 7 of the IBC was invoked due to the impugned circular dated 12.02.2018.

48. Considering all the above submissions made by both the parties, we find that the Dharani Sugars Judgement is not applicable on the present insolvency proceeding initiated by the Applicant/Financial Creditor since the proceeding is independent of the RBI circular dated 12.02.2018.

49. Further, it is also important to note here that the Financial Creditor has a statutory right being a creditor under the I&B Code, 2016 to initiate insolvency proceedings against the Corporate Debtor on account of non-repayment of debt issued under the Loan Agreement. The only requirement for admission of an application under Section 7 of the I&B Code, 2016 is the existence of debt and default.

50. In the present case, the existence of a debt and default has been clearly established. The debt is also more than the threshold limit. Hence, there cannot be any other option but to admit the present Petition u/s 7.

51. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the

default, which is more than the threshold limit of one lakh at the relevant time and even more than Rs.1 crore, the limit which is applicable at present. The application is also filed within the limitation period and complete in all respects and an interim resolution professional is also proposed as per section 7(3)(b). **Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.**

52. The Financial Creditor has filed a miscellaneous application wherein it has proposed the name of a new IRP in Part III of the Application. The Financial Creditor has proposed the name of Mr. Anurag Goel as Interim Resolution Professional. His Registration Number is IBBI/IPA-001/IP-P00876/2017-2018/11460, R/o 10/349, First Floor, Sundar Vihar, Paschim Vihar, New Delhi, 110087, Email: agoel@caanurag.com. He has duly given the consent in Form No.2 dated 08.03.2021 annexed as **Annexure 1 with the miscellaneous application**. The Law Research Associate of this Tribunal, Ms. Aditi Kharbanda, has checked the credentials of Mr. Anurag Goel, and found that there are no disciplinary proceedings pending against the proposed Interim 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 26 October 2024. After considering these details, we appoint Mr. Anurag Goel having registration No. IBBI/IPA-001/IP-P00876/2017-2018/11460, as Interim Resolution Professional (IRP).

53. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respects and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 28, the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor i.e. Simbhaoli Sugars Ltd. and accordingly, moratorium is declared in terms of Section 14 of the Code.

54. 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 IBC, 2016.

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55. 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. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

56. 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.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process 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."

57. We direct the Financial Creditor to deposit a sum of Rs.2,00,000/- 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.

58. 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.

59. List the matter on 14.08.2024 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 11th July, 2024