

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

CP (IB) No.1251/MB-V/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

Indian Overseas Bank

...Financial Creditor/Applicant

V/s

Dilshad Trading Co. Private Limited

[CIN: U51900MH1982PTC027434]

...Corporate Debtor/Respondent

Order Dated: 04.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Siddha Pamecha, Advocate.

For the Respondent(s) : Ms. Akanksha Agrawal, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. An application bearing C.P. (IB) No. 1251/MB-V/2022 was filed by **Indian Overseas Bank**, (hereinafter referred to as **the Financial Creditor/Applicant**), under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter as "**Code**"), seeking initiation of Corporate Insolvency Resolution Process (hereinafter as "**CIRP**") against **Dilshad Trading Co. Private Limited**, (hereinafter referred to as "**Corporate Debtor**") claiming total unpaid debt of

Rs.163,21,29,637.83 (Rupees one hundred sixty-three crore twenty-one lakh twenty-nine thousand six hundred thirty-seven and eighty-three paise only), as on 31.08.2018.

2. The Financial Creditor is a Bank, a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

3. **FACTS OF THE CASE:**

3.1 The above captioned Application is filed, claiming total outstanding amount of Rs.163,21,29,637.83 (Rupees one hundred sixty-three crore twenty-one lakh twenty-nine thousand six hundred thirty-seven and eighty-three paise only) as on 31.08.2018.

3.2 The above outstanding Financial Debt came to be due and payable, pursuant to a default in payment by the Corporate Debtor, on 31.08.2018, as mentioned in Part-IV of the Petition.

4. **SUBMISSIONS OF THE FINANCIAL CREDITOR:**

4.1 The Financial Creditor had sanctioned and granted Corporate Debtor, Credit Facilities since the year 2005. The said facilities were renewed/reviewed/enhanced from time to time, in the year 2006, 2007, 2010, 2015 and lastly in the year 2016.

4.2 This includes Ad-hoc facilities sanctioned to the Corporate Debtor. A set of documents have been executed each time by the Corporate Debtor to secure the loan reviewed/renewed/enhanced. The Corporate Debtor failed to repay their outstanding as per the agreed terms and conditions. Following are the details of the loan facilities sanctioned:

In the year 2005:

- 4.2.1 At the request of the Corporate Debtor, the Financial Creditor vide their Sanctioned Letter dated 14.03.2002 sanctioned and granted to the Corporate Debtor the following facilities:

Nature of Facility	Limits Sanctioned in Crore
Import LC (DP/DA terms 180 days)	50.00
Sub-Limit: Cash Credit against stocks/books debts Or Secured packing credit against LC/firm order up to 180 days Or FDDBNP/FDUBD under LC/NLC up to maximum of 180 days.	5.00

- 4.3 The Corporate Debtor and its Guarantor has executed following documents/deeds in favour of the Financial Creditor to secure the loan sanctioned to the Corporate Debtor:

4.3.1 Demand Promissory Note Dated 14.03.2005 executed by the Corporate Debtor for an amount of Rs.50,00,00,000/-;

4.3.2 Take Delivery Letter to D.P.N. dated 14.03.2005 executed by the Corporate Debtor for an amount of Rs.50,00,00,000/-;

4.3.3 Letter of Hypothecation (for securing Machineries/Vehicles/Goods/Books-Debts) dated 14.03.2005 executed by the Corporate Debtor for an amount of Rs.50,00,00,000/-;

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- 4.3.4 Guarantee for Cash Credit, etc. dated 14.03.2005, executed by Mrs. Nita Vinod Jatia, Mr. Vinod Kumar Jatia and Mr. Amit Agarwal;
- 4.3.5 Supplemental Memorandum of Deposit of Title Deeds dated 14.03.2005 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.5,00,00,000/- ;
- 4.3.6 Memorandum of Entry dated 09.03.2004 registered in the records of the Bank for creation of the Mortgage;
- 4.3.7 Demand Promissory Note dated 21.03.2005 executed by the Corporate Debtor for an amount of Rs.2,50,00,000/-;
- 4.3.8 Take Delivery Letter to D.P.N. dated 21.03.2005 executed by the Corporate Debtor for an amount of Rs.2,50,00,000/-;
- 4.3.9 Hypothecation of Book Debts dated 21.03.2005 executed by the Corporate Debtor for an amount of Rs.2,50,00,000/-;
- 4.3.10 Advances against Goods awaiting Shipment (Packing Credit) dated 21.03.2005 executed by the Corporate Debtor for an amount of Rs.2,50,00,000/-.
- 4.4 Thereafter, the Financial Creditor at the request of the Corporate Debtor sanctioned to the Corporate Debtor Ad-hoc limit of Rs.15,00,00,000/- on 12.05.2005 and a further Ad-hoc limit of Rs.10,00,00,000/-, for which the Corporate Debtor and its

Guarantor executed the following documents to secure the said facilities:

- 4.4.1 Demand Promissory Note dated 12.05.2005 executed by the Corporate Debtor for an amount of Rs.15,00,00,000/- ;
- 4.4.2 Take Delivery Letter to D.P.N. dated 12.05.2005 executed by the Corporate Debtor for an amount of Rs.15,00,00,000/-;
- 4.4.3 Guarantee Agreement dated 12.05.2005 executed by Mrs. Nita Vinod Jatia for an amount of Rs.65,00,00,000/-;
- 4.4.4 Guarantee Agreement dated 12.05.2005 executed by M/s Makalu Trading Pvt. Ltd. for an amount of Rs.65,00,00,000/-;
- 4.4.5 Guarantee Agreement dated 12.05.2005 executed by M/s Shrilekha Trading Pvt. Ltd. for an amount of Rs.65,00,00,000/-;
- 4.4.6 Guarantee Agreement dated 12.05.2005 executed by M/s Parishram Properties Pvt. Ltd. for an amount of Rs.65,00,00,000/-;
- 4.4.7 Supplemental Deed of Hypothecation/Pledge dated 12.05.2005 executed by the Corporate Debtor for an amount of Rs.65,00,00,000/-, along with Consent cum Authorisation letter dated 12.05.2005 for disclosure of information to CIBIL in case of any default committed in repayment;

4.4.8 Hypothecation of Book Debts dated 12.05.2005 executed by the Corporate Debtor for an amount of Rs.15,00,00,000/-;

4.4.9 Supplemental Memorandum of Deposit of Title Deeds dated 12.05.2005 executed by the Corporate Debtor, Mrs. Nita Vinod Jatia and Mr. Vinod Kuma Jatia and M/s Shrilekha Trading Pvt. Ltd., through its Director Mr. Vinod Kumar Jatia with regard to the creation of mortgage of properties.

In the Year 2006

4.5 At the request of the Corporate Debtor, the Financial Creditor renewed/reviewed/ enhanced the facilities sanctioned to the Corporate Debtor vide their Sanction Letter dated 21.06.2006 as under:

Nature of Facility	Limits Sanctioned in Crore
Letter of credit (I/F) on DP/DA (180 days basis) (enhanced from Rs.50,00,00,000/-)	75.00
Sub-Limit: Cash Credit against stocks/books debts (renewed) Or Secured packing credit against LC/firm order up to 180 days Or FDDBNP/FDUBD under LC/NLC up to maximum of 180 days.	5.00

4.6 To secure the renewed/reviewed/ enhanced limits, the Corporate Debtor and its Guarantors have executed the following Documents/Deed:

4.6.1 Resolution dated 25.06.2006 passed in the meeting of the Board of Directors of M/s Parishram Properties Pvt. Ltd. with regard to the two separate Agreements entered into between the said Company and M/s Makalu Trading Pvt. Ltd.;

4.6.2 Demand Promissory Note dated 30.06.2006 executed by the Corporate Debtor for an amount of Rs.10,00,00,000/-;

4.6.3 Guarantee Agreement dated 30.06.2006 executed by Mrs. Nita Vinod Jatia, Mr. Vinod Kumar Jatia and Mr. Anil Agarwal for an amount of Rs.75,00,00,000/-;

4.6.4 Letter of Hypothecation dated 30.06.2006 executed by the Corporate Debtor for an amount of Rs.75,00,00,000/-;

4.6.5 Supplemental Deed of Hypothecation/Pledge dated 30.06.2006 executed by the Corporate Debtor for an amount of Rs.75,00,00,000/-

4.6.6 Supplemental Memorandum of Deposit of Title Deeds dated 30.06.2006 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.75,00,00,000/-;

4.6.7 Declaration dated 30.06.2006 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia with regard to the properties mortgaged;

4.6.8 Irrevocable Power of Attorney dated 30.06.2006 executed in favour of the Financial Creditor by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia nominating the Financial Creditor as their constituted Attorney to do the acts, deeds, matters.

4.7 At the request of the Corporate Debtor, the Financial Creditor enhanced the facilities sanctioned to the Corporate Debtor in the year 2006 from Rs.75,00,00,000/- to Rs.90,00,00,000/-, for which the Corporate Debtor and its Guarantors have executed the following documents:

4.7.1 Resolution dated 24.07.2006 passed in the meeting of Board of Directors of the Corporate Debtor with regard to the enhancement of the facility, authorizing the Directors of the Corporate Debtor to execute necessary documents including creation of charge on the assets of the Corporate Debtor, to extend Personal Guarantees of the Directors, Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia to continue Mortgage of the Immovable Properties;

4.7.2 Demand Promissory Note dated 26.07.2006 executed by the Corporate Debtor for an amount of Rs.15,00,00,000/-;

4.7.3 Letter of Hypothecation dated 26.07.2006 executed by the Corporate Debtor for an amount of Rs.90,00,00,000/-;

4.7.4 Supplemental Deed of Hypothecation/Pledge dated 26.07.2006 executed by the Corporate Debtor for an amount of Rs.90,00,00,000/- along with Letter of Consent dated 26.07.2006 for disclosure of information to CIBIL in case of any default committed in repayment;

4.7.5 Letter of Consent for disclosure of information to CIBIL dated 26.07.2006 executed by the Corporate Debtor;

In the Year 2007:

4.8 At the request of the Corporate Debtor, the Financial Creditor sanctioned Ad-hoc Facility of Rs.20,00,00,000/- to the Corporate Debtor vide their Sanction Letter 27.04.2007, for which the Corporate Debtor and its Guarantor have executed the following documents:

4.8.1 Resolution passed in the meeting of the Board of Directors of the Corporate Debtor dated 21.05.2007;

4.8.2 Supplemental Memorandum of Deposit of Title Deeds dated 22.05.2007 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.110,00,00,000/-;

- 4.8.3 Declaration dated 22.05.2007 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.110,00,00,000/-;
- 4.8.4 Declaration dated 22.05.2007 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia in respect of the properties mortgaged;
- 4.8.5 Irrevocable Power of Attorney dated 22.05.2007 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia in favour of the Financial Creditor nominating the Financial Creditor as their Constituted Attorney to do certain acts, deeds, matters and things among others in respect of the mortgaged properties;
- 4.8.6 Demand Promissory Note dated 25.06.2007 executed by Corporate Debtor for an amount of Rs.20,00,00,000/-;
- 4.8.7 Take Delivery letter to D.P.N. dated 25.06.2007 executed by the Corporate Debtor for an amount of Rs.20,00,00,000/-;
- 4.8.8 Letter of Hypothecation dated 25.06.2007 executed by the Corporate Debtor for an amount of Rs.110,00,00,000/- ;
- 4.8.9 Supplemental Deed of Hypothecation/ Pledge dated 25.06.2007 executed by Corporate Debtor for an amount of Rs.110,00,00,000/-.
- 4.9 At the request of Corporate Debtor, the Financial Creditor renewed/reviewed/enhanced the facilities sanctioned to the

Corporate Debtor vide their Sanction Letter dated 19.10.2007 as under:

Nature of Facility	Limits Sanctioned in Crore
Letter of credit (I/F) on DP/DA (180 days basis) (enhanced from Rs.90,00,00,000/-)	150.00
Sub-Limit: (enhanced from Rs.50,00,00,000/-) Cash Credit against stocks/books debts (renewed) Or Secured packing credit against LC/firm order up to 180 days Or FDDBNP/FDUBD under LC/NLC up to maximum of 180 days.	10.00

4.10 To secure the renewed /reviewed/enhanced limits, the Corporate Debtor have executed the following documents:

- 4.10.1 Demand Promissory Note dated 29.11.2007 executed by the Corporate Debtor for an amount of Rs.40,00,00,000/- (for enhancement from Rs.110,00,00,000/- to Rs.150,00,00,000/-);
- 4.10.2 Take Delivery letter to DPN dated 29.11.2007 executed by the Corporate Debtor for an amount of Rs.40,00,00,000.-;
- 4.10.3 Letter of Hypothecation (for securing Machineries/Vehicles/Goods/Book-Debts) dated 29.11.2007 executed by the Corporate Debtor for an amount of Rs.150,00,00,000/-;

- 4.10.4 Supplemental Deed of Hypothecation dated 29.11.2007 executed by the Corporate Debtor for an amount of Rs.150,00,00,000/-;
- 4.10.5 Declaration by the Corporate Debtor and its Directors who are Guarantors dated 29.11.2007 executed by the Corporate Debtor (Borrower) and Mrs. Nita Vinod Jatia and M/s Makalu Trading Pvt. Ltd. (as Guarantors);
- 4.10.6 Supplemental Memorandum of Deposit of Title Deeds dated 29.11.2007 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.150,00,00,000/-;
- 4.10.7 Declaration dated 29.11.2007 in support of mortgaged properties executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia;
- 4.10.8 Irrevocable Power of Attorney in respect of mortgaged properties dated 29.11.2007 executed Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia.

In the Year 2010:

- 4.11 At the request of the Corporate Debtor, the Financial Creditor renewed/reviewed/enhanced the facilities sanctioned to the Corporate Debtor vide their Sanction Letter dated 13.09.2010 as under:

Nature of Facility	Limits Sanctioned in Crore
Letter of credit (I/F) on DP/DA (180 days)	200.00

basis) for purchase/import of raw materials (enhanced from Rs.150,00,00,000/-)	
Forward sales contract limit to hedge the foreign currency exposure (enhanced from Rs.150,00,00,000/-)	200.00

4.12 To secure the renewed /reviewed/enhanced limits, the Corporate Debtor have executed the following documents:

- 4.12.1 Demand Promissory Note dated 21.10.2010 executed by the Corporate Debtor for an amount of Rs.50,00,00,000/- ;
- 4.12.2 Take Delivery letter to DPN dated 21.10.2010 executed by the Corporate Debtor for an amount of Rs.50,00,00,000.-;
- 4.12.3 Guarantee Agreement dated 21.10.2010 executed by Mrs. Nita Vinod Jatia, Mr. Prateek Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.200,00,00,000/-;
- 4.12.4 Letter of Consent for disclosure of Information to CIBIL dated 21.10.2010 executed by the Corporate Debtor;
- 4.12.5 Letter of Consent for disclosure of Information to CIBIL dated 21.10.2010 executed by Mrs. Nita Vinod Jatia, Mr. Prateek Vinod Jatia and Mr. Vinod Kumar Jatia;
- 4.12.6 Letter of Hypothecation (for securing Machineries/Vehicles/Goods/Book-Debts) dated 21.10.2010 executed by the Corporate Debtor for an amount of Rs.200,00,00,000/-;

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- 4.12.7 Supplemental Deed of Hypothecation dated 21.10.2010 executed by the Corporate Debtor for an amount of Rs.200,00,00,000/-;
- 4.12.8 Hypothecation of Book-Debts dated 21.10.2010 executed by the Corporate Debtor for an amount of Rs.200,00,00,000/-;
- 4.12.9 Supplemental Memorandum of Deposit of Title Deeds dated 21.10.2010 executed by Mrs. Nita Vinod Jatia and Mr. Vinod Kumar Jatia for an amount of Rs.200,00,00,000/-;
- 4.12.10 Confirmation Letter (Supplemental Narration) dated 21.10.2010 executed by Mrs. Nita Vinod Jatia;
- 4.12.11 Confirmation Letter (Supplemental Narration) dated 21.10.2010 executed by Mrs. Nita Vinod Jatia Mr. Vinod Kumar Jatia;
- 4.12.12 Declaration in support of the mortgaged properties dated 02.12.2010 executed by Mrs. Nita Vinod Jatia Mr. Vinod Kumar Jatia;
- 4.12.13 Affidavit in support of mortgaged properties dated 01.12.2010 executed by Mrs. Nita Vinod Jatia Mr. Vinod Kumar Jatia; and
- 4.12.14 Irrevocable Power of Attorney in respect of mortgaged properties dated 02.12.2010 executed by Mrs. Nita Vinod Jatia Mr. Vinod Kumar Jatia.

In the Year 2015:

- 4.13 At the request of the Corporate Debtor, the Financial Creditor renewed/reviewed/enhanced the facilities sanctioned to the Corporate Debtor vide their Sanction Letter dated 23.03.2015 as under; for which (M/s Makalu Trading Pvt. Ltd.) have executed Guarantee Deed dated 09.11.2015 for an amount of Rs.200,00,00,000/-.

Nature of Facility	Limits Sanctioned in Crore
Letter of credit (I/F) on DP/DA (180 days basis) for purchase/import of raw materials (renewal)	200.00
Forward sales contract limit to hedge the foreign currency exposure (renewal)	200.00

- 4.14 In respect of the above-mentioned loan facilities extended by the Financial Creditor to Corporate Debtor, the Corporate Debtor and its Guarantors have executed Acknowledgement of Debts and Security Letters in favour of the Financial Creditor whereby there is an acknowledgement of the amounts due and payable to the Financial Creditor.
- 4.15 **Additionally, the Corporate Debtor and its Guarantors have also executed Revival Letters dated 26.07.2006, 26.07.2006, 25.05.2009, 21.10.2010, 29.08.2013 and 12.08.2016 in respect of the above-mentioned loan facilities for the purpose of Section 18 of the Indian Limitation Act.**
- 4.16 **Thereafter, the Loan Account of the Corporate Debtor came to be classified as NPA in the books of Financial Creditor on 31.08.2018 and accordingly, the Financial Creditor issued a legal notice dated 11.01.2019 to the Corporate Debtor and its**

Guarantors calling upon the Corporate Debtor to pay the outstanding financial debt of Rs.162,75,78,359/- as on 29.11.2018, within 10 days, from the date of receipt of the said legal notice.

4.17 **Subsequently, pursuant to negotiation between the Financial Creditor and the Corporate Debtor, the Financial Creditor approved an OTS Settlement on 30.12.2019 in favour of the Corporate Debtor, pursuant to which the total amount payable by the Corporate Debtor stood at Rs.120,00,00,000/- and as per the terms and conditions of the OTS the Corporate Debtor was to pay a balance amount of Rs.39,50,00,000/- being approved.**

5. The Financial Creditor has filed the Balance Sheet of the Corporate Debtor for the Financial Year 2016-17 annexed at **Exhibit “B”** of the Petition. The Financial Creditor has also filed the Bank Statement of the Corporate Debtor for a period of 31.08.2018 to 27.03.2019 annexed at **Exhibit “CCCC”** of the Petition.

6. The particulars of the claim of the Financial Creditor is as under:

Name of the Facility	Loan/A/c No.	NPA Date	Final O/s. As on the date of demand notice i.e. 28.08.2018	Balance outstanding as per statement of bank account as on 30.11.2021	Principal O/s. as on 30.11.2021	Total Interest Charged (Rs.) (Penal)	Final O/s. As on 30.11.2021 (Rs.)
LC	03010200007071	31.08.2018	Rs.18,26,80,2351/-	Rs.1,63,21,9637.83	Rs.72,47,61,238	Rs.81,710,442	Rs.1632129637.83
Grand			Rs.18,26,80,2351/-	Rs.1,63,21,9637.8	Rs.72,47,61,23	Rs.81,710,44	Rs.1632129637.83

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7. **Since this amount was unpaid, the present Petition was filed under Section 7 of Code, with a plea that it should be admitted.**

REPLY OF THE CORPORATE DEBTOR:

8. The Corporate Debtor has filed its Affidavit-in-Reply dated 09.03.2023 and submits as under:

8.1 The Code came into existence in the year 2017 and the Power of Attorney is dated 02.07.2007 which raise a question on the validity of the said Power of Attorney. Hence, the question of Power of Attorney with Authority to represent under the Act dated 2007 is not valid. On the basis of the same the present Petition is filed without any Authorisation.

8.2 The Credit Facilities were granted to the Corporate Debtor. Mrs. Nita Vinod Jatia, Mr. Prateek Vinod Jatia, Mr. Vinod Kumar Jain and M/s Makalu Trading Pvt. Ltd. are the Guarantors of the Corporate Debtor and are falsely impleaded as parties to the present Petition. Hence, on this ground alone the present Petition ought to be rejected.

8.3 From year 2017 onwards, there was a huge meltdown in the business of steel industry which resulted into between enormous default in making payments by the several debtors to the Corporate Debtor. Prior to the downfall in the steel industry, the Corporate Debtor never defaulted in making the payments to the Financial Creditor. There was large scale default in repayment of

“Letter of Credit” obligations by the Debtors of the Corporate Debtor due to which the Corporate Debtor was unable to clear its outstanding dues to the Financial Creditor who on 31.08.2018 declared the account of the Corporate Debtor as NPA.

8.4 The Financial Creditor appointed a Forensic Audit and the Corporate Debtor co-operated fully with the said auditor and all queries raised were resolved and answered.

8.5 After becoming aware that the account of the Corporate Debtor was declared as NPA, the Corporate Debtor vide its letter dated 03.12.2019 filed its OTS for an amount of Rs.120,00,00,000/-. The Financial Creditor vide its letter dated 30.12.2019 approved the OTS for an amount of Rs.120,00,00,000/- submitted by the Corporate Debtor on 03.12.2019. Further, in the said letter, it was stated that the amount of OTS should be paid by 31.08.2020 in three tranches as follows:

- a. Rs.12,00,00,000/- to be paid upfront on or before 31.12.2019;
- b. Rs.68,50,00,000/- should be paid on or before 31.03.2020; and
- c. The Balance Rs.39,50,00,000/- should be paid on or before 31.08.2020.

8.6 The Corporate Debtor on 31.12.2019 itself replied to the Financial Creditor vide its letter dated 31.12.2019 and confirmed the arrangements as suggested by the Financial Creditor. It is pertinent to note that the Financial Creditor entered into OTS only after completion of the Forensic Audit. The Corporate

Debtor has complied with the OTS terms and made the payment of Rs.12,00,00,000/- and Rs.68,50,00,000/- respectively. However, remaining amount of Rs.39,50,00,000/- was to be paid on or before 31.08.2020. The substantial claim of the Financial Creditor has already been paid by the Corporate Debtor under the aforesaid OTS scheme.

- 8.7 From the month of March 2020, the Government of India has declared the nationwide lockdown owing to Covid-19 pandemic. Hence, due to which, the Corporate Debtor failed to make last instalment of Rs.39,50,00,000/- on or before 31.08.2020. Vide letter dated 24.08.2020, the Corporate Debtor requested the Financial Creditor for extension of OTS for a period of 6 months i.e. until 28.02.2021 for payment of balance amount of Rs.39,50,00,000/-.
- 8.8 During the Covid-19 period, an amount of Rs.11,36,970/- was credited in Corporate Debtor's account as Income Tax Refund on 27.05.2020 and Rs.25,00,000/- was deposited by Corporate Debtor on 31.12.2020 in the current account of the Financial Creditor towards balance OTS amounting to Rs.39,50,00,000/-.
- 8.9 The Corporate Debtor decided to sell the Bungalow at Panvel which was given as an underlying collateral security and payback the balance amount of Rs.39,50,00,00,000/-. However, due to sharp drop in the value of the underlying collateral security viz. Bungalow on agricultural land in Panvel, the Corporate Debtor was not in a position to garner funds to make the balance repayment and as per the sanctioned OTS.

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- 8.10 Further, the Prospective buyer agreed to pay a sum of Rs.26,00,00,000/- for Panvel property, 10% advance and rest within 30 days on acceptance of the offer. The same was intimated to the Financial Creditor vide email dated 06.02.2021 and letter dated 08.02.2021, and the Corporate Debtor is also willing to repay the balance Rs.13,00,00,000/-.
- 8.11 However, the Financial Creditor vide their letter dated 26.02.2021 deliberately refused to consider the above mentioned proposal for sale of Panvel property completely ignoring market sentiments due to the Covid-19 pandemic and the market conditions as a whole which were in despair and the insecurity of the times ahead were only increasing and instead stated to release the Panvel property on receipt of entire OTS amount along with interest until 06.03.2021.
- 8.12 Thereafter, the Corporate Debtor once again vide their letter dated 03.03.2021 requested the Financial Creditor to accept the offer sale of Panvel property and that the Corporate Debtor will also clear the balance amount of Rs.13,00,00,000/-. **The Financial Creditor vide their letter dated 09.03.2021 addressed to the Corporate Debtor stating that they have cancelled the OTS sanctioned to the Corporate Debtor.**
- 8.13 **Thereafter, the Corporate Debtor issued a fresh OTS proposal letter dated 12.04.2021, specifying the fresh valuation of Panvel property by approved Government valuers and accordingly giving an OTS proposal of Rs.20,00,00,000/- to be paid before 30.09.2021 as the previous offer by prospective buyer lapsed due to non-acceptance by the Bank.**

8.14 The Financial Creditor has also filed Original Application No. 250 of 2021 against the Corporate Debtor in DRT-1 Mumbai allegedly for recovery of the amounts and for enforcement of securities created in its favour. The Corporate Debtor in the said Original Application filed their Written Statement dated 10.03.2021 denying and disputing the correctness, veracity and genuineness of the various documents relied upon by the Financial Creditor in the said Original Application in DRT.

8.15 Thereafter the Corporate Debtor vide its letter dated 13.09.2022 once again issued a fresh OTS proposal for entire outstanding amount of Rs.39,50,00,000/- payable within 90 days from the date of acceptance of OTS. The conditions of OTS were

- i. To release the Panvel property upon payment of Rs.39,50,00,000/- to the bank;
- ii. The property's original documents with removal of bank lien be handed over to the Corporate Debtor;
- iii. No coercive action to be taken by the bank against the Corporate Debtor or its Guarantors during the OTS period;
- iv. All SARFAESI action to be kept in abeyance until completion of OTS period;
- v. No Dues Certificate" to be issued on full & final payment of Rs.39,50,00,000/-;
- vi. Release of all guarantors including release of Personal Guarantees given the said Company account;

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- vii. Removal of the names of directors, promoters, guarantors from the list of wilful defaulters;
 - viii. Complaints filed with any Government Investigative Agencies shall be withdrawn; &
 - ix. All complaints filed by the Bank in any court Criminal & Civil to be withdrawn.

8.16 The OTS proposal of Rs.39,50,00,000/-, submitted by the Corporate Debtor was rejected by the Financial Creditor once again stating that the above-mentioned conditions as non-viable as the offer was substantially low.

FINDINGS:

9. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the records.

9.1 It is observed that that the Financial Creditor had sanctioned and granted the Corporate Debtor, Credit Facilities since the year 2005. The said Facilities were renewed/reviewed/enhanced from time to time in the year 2006, 2007, 2010, 2015 and lastly in the year 2016. This includes Ad-hoc facilities sanctioned to the Corporate Debtor. A set of documents have been executed each time by the Corporate Debtor to secure the loan reviewed/renewed/enhanced. The Corporate Debtor has also executed the Revival Letters dated 26.07.2006, 26.07.2006, 25.05.2009, 21.10.2010, 29.08.2013 and 12.08.2016 for the purpose of Section 18 of Limitation Act. The Corporate Debtor

failed to repay their outstanding as per the agreed terms and conditions.

9.2 As the Corporate Debtor failed to make the payment of dues, the Financial Creditor issued a Legal Notice dated 11.01.2019 for claiming of total outstanding of Rs.162,75,78,359/- payable within 10 days from the receipt of the said Notice. The account of the Corporate Debtor was declared NPA on 31.08.2018. Thereafter, the Corporate Debtor submitted an OTS Letter dated 03.12.2019 to the Financial Creditor for settlement of outstanding dues payable to the Financial Creditor. The said OTS was accepted by the Financial Creditor vide its letter dated 30.12.2019. The following repayment terms were agreed between the parties under the OTS dated 30.12.2019:

- i. Rs.12,00,00,000/- to be paid upfront on or before 31.12.2019;
- ii. Rs.68,50,00,000/- to be paid upfront on or before 31.03.2020; and
- iii. Rs.39,50,00,000/- to be paid on or before 31.08.2020 which was further extended to 31.12.2020 vide letter dated 21.11.2020 issued by Financial Creditor.

9.3 **It is pertinent to note that, as per the above-mentioned terms of OTS, the Corporate Debtor has made payment of Rs.80,50,00,000/- to the Financial Creditor. However, Rs.39,50,00,000/- has been defaulted by the Corporate Debtor. Hence, the Financial Creditor Bank cancelled its OTS and demanded payment of Rs.163,21,29,637.83.**

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- 9.4 **Thereafter, on 12.04.2021, a second offer for One-Time Settlement was proposed by the Corporate Debtor for an amount Rs.20,00,00,000/- payable within 6 months. The same was rejected by the Financial Creditor on the ground that the amount in the second OTS being too low.**
- 9.5 From the above discussion, this Bench is of the opinion that the Financial Creditor Bank has rejected the second offer dated 12.04.2021 issued by the Corporate Debtor. Once the OTS is rejected by the Bank, the same does not have any effect. Further, there is no dispute relating to debt and default in the matter. Moreover, the Corporate Debtor itself admitted in its reply that the Corporate Debtor is ready and willing to pay the remaining amount due under the OTS.
- 9.6 Ongoing through the submissions made by the Learned Counsel for the Financial Creditor and the Corporate Debtor and on perusing the documents produced on record, it is evident that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of loan and its liability to repay on several occasions. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted under Section 7 of the Code.
- 9.7 Considering the above facts, we come to conclusion that the nature of Debt is a **“Financial Debt”** as defined under Section 5 (8) of the Code. It has also been established that there has been a **“Default”** as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of

“**Debt**” and “**Default**” for admission of a Petition under Section 7 of the code, have been met in this case.

10. The Financial Creditor has proposed the name of Mr. Surya Pratap Gupta registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.
11. Further, we have also perused the Form-2, written consent of the proposed Interim Resolution Professional submitted along with this Petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
12. Therefore, the Petition under Section 7 of the Code is admitted in the following terms:

ORDER

- a. The Application bearing C.P. (IB) No. 1003/MB-V/2022 filed by **JHP Finvest Private Limited**, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Surya-Landmark Developers Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against Evenness **Business Excellence Services Private Limited**.
- b. This Bench hereby appoints **Mr. Surya Pratap Gupta**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-

P01060/2017-2018/11753 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)