

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 759/KB/2017

In the matter of:

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

-And-

In the matter of:

STATE BANK OF INDIA, Stressed Assets Management Branch, Nagaland House, 8th Floor, 11 and 13, Shakespeare Sarani, Kolkata 700071, having its Registered Office at Samridhi Bhavan, Block B, 1, Strand Road, Kolkata 700001.

... Financial Creditor/Applicant

-Versus-

In the matter of:

M/S. VISA INTERNATIONAL LIMITED, 8/10, Alipore Road, Kolkata 700027, West Bengal.

... Corporate Debtor/Respondent

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical).**

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Counsel on Record:

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|---------------------------|------------------------------|
| 1. Mr. Jishnu Chowdhury |] |
| 2. Mr. Uttiyo Mallick |] For the Financial Creditor |
| 3. Mr. Dwaipayan Ghosh |] |
| For India Law LLP | |
| 1. Mrs. Manju Bhuteria |] |
| 2. Ms. Nikita Jhunjunwala |] For the Corporate Debtor |

Order pronounced on: 07/08/ 2019.

ORDER

Per Shri Jinan K.R., Member (J).

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy Code (in short, I&B Code) 2016 read with Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, has been filed by State Bank of India (hereinafter called the Financial Creditor) through Sri Gurupada Chakravorty, Assistant General Manager/Authorized Representative, against **M/s. Visa International Limited**, having its Registered Office at 8/10, Alipore Road, Kolkata 700027 (hereinafter called the Corporate Debtor) as against the alleged default committed by the Corporate Debtor as a Guarantor for an amount of Rs. 982,82,01,341.70 (Rupees Nine Hundred Eighty Two Crore Eighty Two Lakh One Thousand Three Hundred Forty One and Paise Seventy Only) as on 13.12.2007.

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2. A brief averment for the consideration of the application is the following:-
3. The Financial Creditor/State Bank of India has granted loan and various credit facilities to Visa Steel Limited wherein the Corporate Debtor herein stood as a Corporate Guarantor. Facilities were granted and subsequently renewed from time to time. So, the Financial Creditor has restructured the debt in the year 2012. However, the Corporate Debtor as a Corporate Guarantor failed to repay the principal amount along with interest to the Financial Creditor. Since the Corporate Debtor has not been paying the default amount to the Financial Creditor, this application has been filed by the Financial Creditor for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor under section 7 of the Insolvency and Bankruptcy Code, 2016.
4. To substantiate the above said contentions, numerable documents were produced on the side of the Financial Creditor. The following are the documents which would be relevant for the consideration of this application:-
 - a) Letter of Authorization in favour of Gurupada Chakravorty, Assistant General Manager of the Applicant;
 - b) Written Communication from the proposed Interim Resolution Professional;

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- c) Working of computation of the amount/Ledger of the Applicant (Colly)
- d) Copies of Certificate of Registration of charge issued by Registrar of Companies (ROC) along with relevant forms for creation of charge before the ROC (Colly);
- e) Sanction letter dated 18th August, 2006 for renewal of Working Capital Credit Facilities of Visa Steel Limited
- f) Sanction letter dated 4th April, 2008 for renewal of Credit Facilities of Visa Steel Limited;
- g) Sanction letter dated 4th April, 2008 for Sanction of Short Term Loan and Adhoc LC limit of Visa Steel Limited;
- h) Sanction letter dated 26th June, 2008 for Sanction of Adhoc LC limit of Visa Steel Limited;
- i) Sanction letter dated 31st August, 2009 for Sanction of Corporate Loan of Visa Steel Limited;
- j) Sanction letter dated 9th November, 2011 for renewal of Working Capital Facilities of Visa Steel Limited;
- k) Sanction letter for Debt Restructuring under Corporate Debt Restructuring Scheme issued to Visa Steel Limited dated 21st November, 2012;
- l) Master Restructuring Agreement between Visa Steel Limited as the “Borrower” and the Banks as the “Lenders” and State Bank of India as the “Monitoring Institution” dated 19th December, 2012.

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- m) Working Capital Consortium Agreement between Visa Steel Limited as the “Borrower” and The Banks as the “Lenders” dated 19th December, 2012;
- n) Security Trustee Agreement among Visa Steel Limited as the “Borrower” and other Banks mentioned in Schedule 1 as the “Lenders” and State Bank of India as the “Monitoring Institution” dated 19th December, 2012;
- o) Additional Term Loan Agreement between Visa Steel Limited as the “Borrower” and The Banks (State Bank and 16 Ors.) as the “Lenders” dated 19th December, 2012;
- p) Agreement for Pledge of shares dated 15th June, 2013 executed between Visa International Limited and State Bank of India & 17 Ors;
- q) Deed of Guarantee dated 3rd June, 2014 for ADHOC Working Capital credit facilities of Visa Steel Limited executed between Visa International Limited as the “Guarantor” and State Bank of India as the “Bank”;
- r) Guarantee Agreement dated 28th March, 2015 by Visa International Limited as the “Guarantor” in favour of Lenders (State Bank of India & 18 Ors.)
- s) Demand Notice dated 13th December, 2017;
- t) CRILC Report;
- u) Statement of Accounts of Financial Creditor along with I.T. Certificate as per the Banker Books of Evidence;

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- v) Letter of Undertaking dated 23rd March, 2013 issued to State Bank of India by Visa International Limited;
- w) Letter dated 15th June, 2013 issued by Visa International Limited in to State Bank of India for pledge of certain dematerialized shares;
- x) Balance confirmation in the Loan Account as on 31st March, 2017 by Visa Steel Limited dated 5th July, 2017.

5. The Respondent Visa International Limited/Corporate Debtor entered appearance and filed objection in the form of an affidavit contending in brief thus:-

“The application is not maintainable. The letter of authority produced not proving the Authority of the Signatory to initiate Insolvency Resolution Process is an invalid document and thereby the authority has not been lawfully vested in him and for the said reason the application is liable to be rejected, the registered address of the Financial Creditor as mentioned in the application is incorrect, Mr. Ashok Kumar Gulla cannot be appointed as the Interim Resolution Professional as he has been an employee of the Financial Creditor for over 30 years and has retired as Deputy General Manager and the same is not accordance with law”.

6. The Financial Creditor and other Lenders had agreed to grant additional Financial Assistance/credit facilities to Visa Steel Limited

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(the Principal Borrower) for the efficient debt restructuring under the CDR LoA dated 27 September, 2012 and the CDR LoA dated 31st December 2014 considering which the Corporate Debtor had agreed to give its corporate guarantee on or about 28 March, 2015. However, the Principal Borrower did not receive the benefit of additional financial assistance/credit facilities which was contractually a pre-condition and consideration for which the Corporate Debtor gave the Guarantee. The non-disbursement of additional amount of sanctioned loans by Lenders for Plant operations/functioning of the Units and adjustment of sanctioned facilities carried out by Lenders merely through book entries which had the effect of funds ostensibly made available to the Principal Borrower actually being routed back to the Lenders only to benefit the Banks which was far from the intended plan. The whole exercise by the Lenders was to not only declassify the non-performing loan account to regular loan but also at the same time charge interest at higher amount resulting in ballooning of interest liability to unsustainable levels without even considering the consequences thereof on the working and operations of the Principal Borrower. This ultimately led to failure of the purported debt restructuring exercise which, as it now appears, was a mere device to defer the borrower's account from becoming a non-performing asset without any care to actually restructure the borrower company. At the time of obtaining the guarantee of the

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Corporate Debtor it was not disclosed that most of the funds ostensibly being made available to the Borrower would actually flow back to the Financial Creditors with not much left for rejuvenation of the Borrower Company.

7. The Guarantee dated 28th March, 2015 which was given by the Corporate Debtor to the Financial Creditor and other Lenders passed on the basis of the approved business re-organization whereby the Special Steel Business of Principal Borrower was to be transferred into its subsidiary VISA Special Steel Limited. However. The Scheme for transfer of the Principal Borrower's Special Steel business into VSSL is still pending before the Hon'ble High Court of Orissa and the Borrower has not been re-organized as yet which was the basic condition for issuing the Corporate Guarantee. In view of the above, the purported invocation of Guarantee is bad and the said Application is premature.

8. The Financial Creditor has claimed the account of the Borrower to have become a Non Performing Asset (NPA) on 11th July, 2012 on the basis that debt restructuring of the Borrower has failed. The Corporate Guarantee being given on 28th March, 2015, the Guarantee cannot be invoked or made liable for a debt which is claimed to have become a non-performing asset in 11th July, 2012.

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9. The Financial Creditor has filed Section 7 application for initiating Insolvency Resolution Process as against the Borrower also and also as against VISA Infrastructure Limited and the corporate guarantor M/s. Ghotaringa Minerals Limited. The Financial Creditor cannot proceed simultaneously against the Corporate Debtor in respect of the same claim which is also the subject matter of the 3 (Three) other proceedings as the same would be against the purpose and object of the Insolvency and Bankruptcy Code, 2016. No liability or default has crystallized against the Borrower and as such the Financial Creditor cannot proceed against the Corporate Debtor herein. The application filed by the Financial Creditor is not at all maintainable and is liable to be dismissed.
10. The Financial Creditor has filed rejoinder contending in brief is the following:-

Affidavit-in-opposition (Reply) is an after thought with an intention to delay and frustrate the legitimate claim of the Applicant. Gurupada Chakraborty is duly authorised by Applicant to sign on behalf of the Applicant. Letter of Authorisation has been issued u/s 27 of SBI Act r.w. Regulation 77 of SBI General Regulations, 1955 r.w. Gazette notification dated 27.03.1987 issued by SBI Central Office. The said contention is also supported by SBI v. Bhushan Energy Ltd. (CP (IB) No. 530 (PB)/2017). IRP has been nominated as per Rules of the Code, 2016 and upon following due procedure of law. It is denied that the IRP had been an employee of the Applicant. The Borrower was referred to the

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CDR forum for its CDR. CDR Empowered group (CDREG) on 25.09.2012 approved the restructuring package in terms of which the existing financial assistance was to be restructured along with other financial assistance as per LoA dt. 27.09.2012 issued by CDR Cell. Lenders have restructured the existing financial assistance and granted additional financial assistance as per the conditions set out in CDR Package and Master Restructuring Agreement dt. 19.12.2012 (**Annexure M** to application).

The Corporate Debtor guaranteed the repayment by executing guarantee agreement dt. 19.12.2012. It is denied that the Deed of Guarantee was contractually on a pre-condition, it is misconceived and an attempt to mislead the Tribunal. The transfer of Special Steel (SS) business of Financial Creditor was never transferred into its subsidiary Visa Special Steel Limited (VSSL), non happening of such an event does not absolve the Corporate Debtor from its liability.

Clause 12 & 27 of Guarantee Agreement dt. 28.03.2015 it is categorically mentioned that any of the Consortium Bank or the Consortium can proceed against the Corporate Debtor for recovery. The application is not premature since this is an application only for recovery of the financial debt owed in even of default as per the Deed of Guarantee dt. 19.12.2012 and 28.03.2015. The existence of debt and default are 2 factors to be considered for admission of application. There is admittedly a debt and the default can be established by various documents. As also held in Innovative Industries Ltd. Vs. ICICI Bank, 2017 SCC Online NCLAT 70. The Corporate Debtor vide its undertaking dt. 23.03.2013 (**Annexure-WWW** to the Application) after the execution of Deed of Guarantee dt. 19.12.2012 has agreed and undertook to replay the

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obligations of VSL and have provided irrevocable undertaking. The application filed is liable to be admitted.

11. The Corporate Debtor has filed Supplementary Affidavit containing in brief is the following:-

Guarantee was obtained on representation that the Financial Creditor shall grant additional Financial Assistance/Credit Facilities to the Principal Borrower towards CDR vide Letters of Approval (LoA) dated 27.09.2012 and 31.12.2014 (**Annexure-A**). Deed of Guarantee has been obtained through misrepresentation since the additional credit facilities were not granted and the business re-organisation was not effectuated as represented by the lenders. Therefore, the Guarantee Deed is void, invalid and unenforceable under the law.

In guise of CDR, most of the advances purportedly show to have made were in fact mere book entries and funds ostensibly released in the Bank account towards its working capital were adjusted against interest without even considering the consequences thereof on the working operations of the Principal Borrower. The purported CDR was a financial jugglery to postpone the classification of then existing loan as NPA. The Principal Borrower did not receive any additional financial assistance from so called CDR which was a pre-condition of the Guarantee. Applicant vide letter dated 04.04.2016 informed Principal borrower that he account has become NPA w.e.f. 11.07.2012.

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12. Heard the Ld. Counsel Mr. Jishnu Chowdhury, appearing for and on behalf of the Financial Creditor/State Bank of India and Smt. Manju Bhuteria, Ld. Counsel appearing for and on behalf of M/s. Visa International Limited. Perused the records and citations referred to on the side of the Financial Creditor.

The Financial Creditor has granted a loan and various credit facilities to the tune of Rs. 793,61,00,000.00 (Rupees Seven Hundred Ninety Three Crores Sixty One Lakhs Only) to Visa Steel Ltd, wherein the Corporate Debtor Visa International Limited stood as a Corporate Guarantor. The Financial Creditor contents that the facilities granted to the Principal Borrower was subsequently on various occasions renewed from time to time. The Financial Creditor has restructured the debt in the year 2012. However, the principal borrower as well as the Corporate Debtor as a Corporate Guarantor failed to repay the principal amount along with interest to the Financial Creditor thereby filed this application for initiating the Corporate Resolution Process as against M/s. Visa International Limited, the Corporate Guarantor

13. The Corporate Debtor objected to this application contending that the authorized letter of the applicant is defective and the person concerned has no authority to file the application as such the application filed is not maintainable. The Corporate Debtor further contended that in view of execution of guarantee

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agreement Exhibit GGG dated 28th March, 2015 and Common Loan Agreement dated 28th March, 2015 (Exhibit DDD) the claim of the applicant is premature as there is no default as alleged by the applicant. According to the Id. Counsel for the CD, no liability or default has crystallized against the Borrower and as such the Financial Creditor cannot proceed against the Corporate Debtor herein. The application filed by the Financial Creditor is not at all maintainable and is liable to be dismissed. She also submits that in view of the sanctioning of a Scheme of an Arrangement wherein the principal borrower's Special Steel business being transferred to Visa Special Steel limited (VSSL) vide order dated 8.7.2019 the liability of the principal borrower (Visa Steel Limited) (VSL) and VSSL is divided and therefore the demand for repayment of the entire debt from the Corporate Guarantor cannot be sustainable under the terms and conditions enumerated in the Common Loan Agreement and Guarantee Agreement executed by the Corporate Debtor in the case in hand. One another submission is that the Financial Creditor cannot proceed simultaneously against the Corporate Debtor in respect of the same claim which is also the subject matter of the 3 (Three) other proceedings as the same would be against the purpose and object of the Insolvency and Bankruptcy Code, 2016.

14. Upon hearing the arguments and considering the contentions on both sides, the points that arises for consideration are:-

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- i) Whether there is default in effecting repayment in accordance with the terms in MRA?
- ii) Whether, the Scheme of arrangements sanctioned on 08.07.2019, will divide the liability between VSL and VSSL? If so whether, the guarantee of the CD extends to both VSL and VSSL?
- iii) Reliefs and cost?

15. Before answering the above points, let us see the background of the case under consideration. Visa Steel Limited (VSL) was granted diverse financial assistance by a consortium of banks including the Financial Creditor and the Corporate Debtor is a guarantor. The Corporate Debtor had executed deed of guarantee on 19.12.2012, a Common Loan Agreement dated 28th March, 2015 and Guarantee Agreement dated 28th March, 2015.

16. The principal borrower (VSL) committed default in repayment of the original loan thereby the account of the principal borrower declared as NPA as on 11.07.2012. Having defaulted in repayment of the loan, the Corporate Debt Restructure Cell (CDR) restructured the debt by referring VSL to the CDR Cell and the principal borrower along with Guarantors executed a Master Restructuring Agreement dated 19.12.2012 and the Corporate Debtor has executed Deed of Guarantee on the very same day as the Guarantor in favour of the

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Consortium Bank which included 18 other Banks. The principal borrower having defaulted in repayment, the account the CDR Cell restructured the debt as per the terms and conditions laid down in Master Restructuring Agreement between the principal borrower as the borrower and the Financial Creditor, and other lenders and the Corporate Debtor had executed the Deed of Guarantee on 19.12.2012 itself. However, VSL again failed to effect repayment in accordance with the Master Restructuring Agreement but the lenders including the Financial Creditor herein who is monitoring the Institution of the Consortium Bank provided further opportunity to the Debtors and allowed further reorganization and thereby a Common Loan Agreement dated 28th March, 2015 was executed between the principal borrower and VSSL as One another borrower (Exhibit DDD).

17. Upon executing the Common Loan Agreement vide Exhibit DDD all the existing disbursement came under ambit of the Common Loan Agreement. As per the Common Loan Agreement, restructuring was done in respect of Working Capital Term Loan (WCTL) and Funded Interest Term Loan (FITL). According to the Ld. Counsel appearing for the Financial Creditor the Restructuring facility would essentially be a result of interest capitalization. The Corporate Debtor in consideration of the Common Loan Agreement also executed a Deed of Guarantee on the very same day i.e. on 28th March, 2015 as Exhibit

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GGG. As per Exhibit GGG, the Corporate Debtor guaranteed the obligation of both VSL & VSSL. The above said are fairly admitted facts.

Point No (I).

The very case of the FC is that the Debtors defaulted in effecting the repayment in accordance with the Master Restructuring Agreement. The Accounts again become NPA and because of the default in payment as per clause 15.2 of Common Loan Agreement, the lenders has got a right of revocation and the revocation comes into operation upon default of any of the terms stipulated in the agreement and thereby the Financial Creditor had issued a recall notice dated 7th September, 2018. A copy of recall notice has been produced by the Ld. Counsel appearing for the applicant along with the argument note. Relying upon the recalling letter has been objected on the side of the Corporate Debtor. However, a copy has been given to the Ld. Counsel appearing for the Corporate Debtor at the time of submission of copy of argument note to the Bench and to the counsel for the CD. Even if the recalling letter not relied upon it has come out in evidence that the accounts become irregular and ultimately it has been classified as NPA on 11.7.2012 and lastly on 19.03.2016. So there is enough proof of default as alleged by the FC.

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Point No. (ii).

According to the Ld. Counsel for the applicant, the principal borrower of the Corporate Debtor guarantor failed and neglected to pay overdue amount as per the terms and conditions of Master Restructuring Agreement and Common Loan Agreement and thereby the overdue amounts/installments in the loan account admittedly availed by the principal borrowers have ultimately been classified as NPA on 19.03.2016 with effect from 11.07.12 on account of CDR failure.

18. A reference to the terms and conditions stipulated in the above said Deed of Guarantee and Common Loan Agreement and MRA, we are of the considered opinion that the borrowers defaulted in repayment. The CD has no case that any amount or installment liable to be paid by the principal borrower as per the loan admittedly availed by the principal borrower has been paid. The classification of the account as NPA as on 11.07.2012 is not under challenge. It is because of the said classification of account as NPA reorganization and further reorganizations were took place by executing the Common Loan Agreement.
19. According to the Ld. Counsel for the Corporate Debtor the filing of this application is contrary to the terms and condition of the Common Loan Agreement. The Ld. Counsel for the Corporate Debtor referring to clauses 'F', 'G', 'J', 'K', and 'L' in the Deed of Guarantee Executed on 28.03.2015 attempted to stress that the guarantee given by the

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Corporate Guarantor is a conditional guarantee and until and unless the condition is fulfilled the demand for repayment is premature. In order to stress the said argument she mainly relied upon the Annexure 'B', an order passed by the Cuttack Bench in the matter of Visa Steel and Visa Special Steel Limited filed under section 230-232 for sanctioning an arrangement wherein the Hon'ble Tribunal sanctioned a Scheme of Arrangement whereby and where-under the entire Special Steel undertaking of the transferor company together with all assets and liabilities relating thereto as a going concern are proposed to be transferred to and vested in the transferee company with the appointed date being 1st April, 2013 on the terms and conditions fully stated in the Scheme of Arrangement. This order was pronounced on 8th July, 2019 by the Hon'ble NCLT, Cuttack Bench long after filing of this application.

20. According to the Ld. Counsel for the Corporate Debtor, upon passing the Scheme of Arrangement the Bank-wise exposure of principal borrower, VSL has to be bifurcated. According to her such bifurcation has been provided under the Common Loan Agreement and Guarantee Agreement dated 28.03.2015 and thereby the principal borrower as VSL has no liability to repay the entire amount as demanded and therefore there is no default as alleged by the applicant.

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21. We are not at all convinced by the argument advanced on the side of the Corporate Debtor as to the sanctioning of the Scheme of Arrangement subsequent to the date of failure of the terms and conditions stipulated in the Common Loan Agreement. Even if the liability of the principal borrower viz., M/s. Visa Steel Limited and Visa Special Steel Limited was divided upon by the sanctioning of the Scheme, the liability of the VSL, the principal borrower as evidenced from the Loan Agreement executed, still remain and the CD being a guarantor of the entire debt liable to be paid by VSL and VSSL the CD is liable as there is evidence of default in repayment. Therefore being proved existence of a default as defined u/s 3(12) of the Insolvency & Bankruptcy Code the objections of the CD that there is no default by the CD is devoid of any merit.
22. The Ld. Counsel for the applicant has mainly relied upon clause 15.2 of the Common Loan Agreement for convincing us that Common Loan Agreement is not conditional as alleged by the Ld. Counsel for the CD, and that failure of the terms in it by the borrowers, make the guarantor liable for the entire amount liable to be paid by the borrower. It is good to read clause 15.2:-

“Right of Revocation

Notwithstanding anything contained in any of the Restructuring Documents, upon the occurrence of any of the following events, in addition to all rights and remedies of the Lenders in the Restructuring Documents, the Lenders may revoke all or any part of the restructuring

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of the Existing Loans effectuated pursuant to MRA, this Agreement and the other Restructuring Documents.

- a) Any failure by the Borrower or any other Person to make payment of any amount, on the due date thereof, to the Lenders under the Restructuring Documents:-*
- b) The infusion of funds by way of equity is not made within the time specified for the same;*
- c) The Security Interests required to be created in favour of the Lenders pursuant to this Agreement are not created within the time specified by the Lenders;*
- d) Non-performance by the relevant Borrower of any of its material obligations pursuant to the Transaction Documents (other than any events of default (whatsoever called));*
- e) Any event of default (however called) under this Agreement;*
- f) Breach of any material representations and warranties of the relevant Borrower and any other Person (other than the Borrower) under the Restructuring Documents.*
- g) Occurrence of a Material Adverse Effect, provided that, if it is, in the sole opinion of the Lenders/Lender Monitoring Committee, capable of being remedied within thirty (30) days, then a cure period of thirty (30) days from the date on which such event or circumstance occurs or comes into existence shall be given to the Borrower to remedy or cause the remedy of such event or circumstance;
Provided that the determination by the Lenders or the Lender Monitoring Committee as to whether an obligation or a representation and warranty is 'material' shall be binding on the Borrower".*

23. He also relied upon Exhibit RRR, a demand notice dated 13th December, 2017 issued to the principal borrower as well as Visa Special Steel Limited. According to him it evidence that before the date of passing an order of Scheme of Arrangement by the Hon'ble NCLT, Cuttack Bench the Financial Creditor has demanded repayment of the entire dues of Rs. 977,61,86,875.84 (Rupees Nine Hundred

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Seventy Seven Crore Sixty One Lakh Eighty Six Thousand Eight Hundred Seventy Five and Paise Eighty Four Only) demanding them to repay the loan amount without failure warning them that in case they fail, the bank will initiate CIR process as against the Debtors. It evidenced that a copy has been served upon the Visa Steel Limited, the Corporate Debtor herein the case in hand.

24. So, being satisfied that whenever the Borrower has committed default of the terms and conditions stipulated in the Common Loan Agreement the clause 15.2 enable the Lenders to revoke and recall the loan and thereby it cannot be held that the terms and conditions in the Common Loan Agreement would prevail over the terms and conditions stipulated in the Scheme of Arrangement relied upon by the Ld. Counsel appearing for the Corporate Debtor at the time of argument. A reference to clause 15.3 of the Common Loan Agreement also enables us to hold that the Financial Creditor has the right to proceed under all the earlier documents and under the Common Loan Agreement. That being so, the sanction of a Scheme on 8th July, 2019 has no relevance with regard to the demand for repayment of the loan. A demand notice dated 13.12.2017 was also issued to the borrowers and to the CD.

25. The Ld. Counsel for the CD at this juncture submits that issuing demand notice pending sanctioning of a Scheme wherein majority of the Lenders Bank given affidavit of consent for sanctioning the Scheme

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is against the terms and conditions of the Common Loan Agreement and therefore, has no legal force at all. In view of extending the guarantee of the CD to both VSL and VSSL, the guarantor would be liable for the entire debt in default and since the Common Loan Agreement was revoked much earlier before the sanctioning of the scheme, we do not find any force in the said argument.

26. One another argument advanced on the side of the Corporate Debtor is that the conditions precedent for debt restructuring has not been fulfilled on the part of the Lenders. According to the Ld. Counsel for the CD the Principal borrower did not receive any additional financial assistance from so called CDR which according to her was a pre-condition of the Guarantee. According to the Ld. Counsel for the FC, there is no condition precedents have stipulated under the terms of common loan agreement. A reading of the terms referred to us on both side what we understood is that there is no condition precedent is to be fulfilled by the FC. On the other hand the terms in it shows that the existing loan took effect immediately, upon execution of the Common Loan agreement. A reference to Schedule IV and clause 3.7 of Common Loan Agreement shows that the particulars of facilities are provided as per the Common Loan Agreement. As per the Schedule IV, the restructuring was done in respect of Working Capital Term Loan and Funded Interest Term Loan. The Restructure facilities had been made by way of interest capitalization. There is no challenge from the

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side of the Corporate Debtor as to the interest capitalization as shown in the Schedule IV of the Common Loan Agreement. Therefore, we do not find any force in the submission that lenders failed in providing additional loan and working capital credit facilities as agreed and there is violation of terms from the part of lenders.

27. One another argument advanced on the side of the CD is that Financial Creditor has filed Section 7 application for initiating Insolvency Resolution Process as against the Borrower also and also as against VISA Infrastructure Limited and the corporate guarantor M/s. Ghotaringa Minerals Limited. According to the Ld. Counsel for the CD, the Financial Creditor cannot proceed simultaneously against the Corporate Debtor in respect of the same claim which is also the subject matter of the 3 (Three) other proceedings as the same would be against the purpose and object of the Insolvency and Bankruptcy Code, 2016. The above said submission of the Ld. Counsel for the CD also is found devoid of any merit.

28. It is the option of the lenders to initiate proceedings as against the borrower or as against guarantor independently or simultaneously. No doubt, the liability of the guarantor is coextensive with that of the principal borrower. That being so, there is no illegality or irregularity in proceeding against both principal borrower and as against guarantor. In **CA 366(PB) 2017 and (IB)-102 (PB) 2017 [ICICI**

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Bank Limited and Ors Vs. CA Ritu Rastogi and Ors, the Hon'ble Principal Bench, new Delhi has considered the very same question of simultaneous proceedings against borrower and creditor under S.7 and has observed that it is maintainable, truly in a different factual situation. So we do not find any force in the above said submission of the Ld. Counsel for the CD.

29. The above said discussions leads to a conclusion that, none of the objections raised on the side of the Corporate Debtor are sustainable under law and being satisfied that the Financial Creditor succeeded in establishing that there is occurrence of default, the only one question arises for consideration is whether the application filed is complete.
30. On perusal of the records, we are also satisfied that the application filed by the Financial Creditor is complete. The applicant also proposes the name of **Mr. Ashok Kumar Gulla**, a Resolution Professional having **Registration No. IBBI/IPA-003/IP-N00024/2017-18/10174**, **E-mail ID ashok.gulla@rbsa.in** for appointing as Interim Resolution Professional. Form No. 2 and written communication also seen filed as Exhibit 'B' along with the application. On perusal of Form No. 2 and written communication, it is understood that no disciplinary proceedings are pending against the Resolution Professional. As held in **Innoventive Industries Ltd. v. ICICI Bank [2017] 139 CLA 335** by the Hon'ble NCLAT, we are satisfied that there is occurrence of default and the application

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filed is complete and hence this application filed under section 7 of the Code is liable to be admitted. Accordingly, this application is admitted upon the following orders:-

ORDERS

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Visa International Limited is hereby admitted.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (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 (54 of 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating

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Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- viii) **Mr. Ashok Kumar Gulla**, a Resolution Professional having **Registration No. IBBI/IPA-003/IP-N00024/2017-18/10174**, **E-mail ID ashok.gulla@rbsa.in** registered with Insolvency Professional Agency of Institute of Cost Accountants of India is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) Registry is hereby directed under section 7(4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

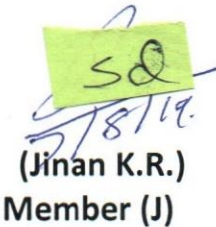
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- xi) List the matter on **16th September, 2019** for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 7th day of August, 2019.

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