



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 24/KB/2024**

***A Petition 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.***

**IN THE MATTER OF:**

**Stressed Assets Stabilization Fund**

**... Financial Creditor/ Petitioner.**

***Versus***

**M/s Shree Hanuman Sugar & Industries Limited**

**... Corporate Debtor/ Respondent.**

**Date of Pronouncement: September 27, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**For the Financial Creditor: Mr. Shaunak Mitra, Adv.  
Mr. Snehasish Chakraborty, Adv.**

**For Corporate Debtor: Mr. Saurodip Banerjee, Adv.  
Mr. Sweta Mohanty, Adv.**

**ORDER**

***Per Bidisha Banerjee, Member (Judicial):***

- 1.** The Court congregated through hybrid mode.
- 2.** Heard Mr. Shaunak Mitra, Adv. leading Mr. Snehasish Chakraborty, Adv., Learned Counsels appearing on behalf of the Financial Creditor and Mr. Saurodip Banerjee, Adv. leading Mr. Sweta Mohanty, Adv., Learned Counsels appearing on behalf of the Corporate Debtor.

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**3.** The present petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, for brevity “I&B Code” by Stressed Assets Stabilization Fund (SASF), hereinafter referred to as “Petitioner/ Financial Creditor” against M/s Shree Hanuman Sugar & Industries Limited, hereinafter referred to as “Respondent”/ “Corporate Debtor” seeking to a direction to initiate the Corporate Insolvency Resolution Process, for brevity “CIRP” in respect of the Corporate Debtor.

**4.** The total amount claimed to be in default is of Rs. 2673,79,87,763/- as on 31.03.2023, inclusive of interest calculated up to 01.11.2023 together with further interest at the contractual rate from 02.11.2023 with monthly rests till realization.

***Factual Matrix:***

**5.** Initially, IDBI had sanctioned various Rupee Term Loans from 1998 to 1999 to the Principal Borrower upon request of the Principal Borrower and the Corporate Debtor herein. Later, on 30.09.2004, the IDBI unconditionally and irrevocably sold, assigned, transferred, and released to Stressed Assets Stabilization Fund (SASF), the loans/ facilities sanctioned by the IDBI to the Principal Borrower along with the security, with an intent that the SASF shall be full and absolute legal owner and the only person to receive the amounts due and payable to the IDBI by the Principal Borrower.

**6.** The Corporate Debtor herein is the Corporate Guarantor of Eastern Sugar & Industries Limited (Principal Borrower) who was admitted into CIRP on 11.02.2022, pursuant to a petition filed by the Financial Creditor herein under Section 7 of the I&B Code being C.P. (IB) No. 1632/KB/2018. This Adjudicating Authority on 04.10.2023, approved

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the Resolution Plan submitted by Kundan Care Products Limited (“Successful Resolution Applicant”) in I.A. (IB) No. 1550/KB/2022. The Petitioner herein claims that under the Resolution Plan, the Financial Creditor has received a sum of Rs. 4,91,85,869/-. After adjusting the said dues, with the outstanding amount, an aggregated amount of Rs. 3098,09,41,771/- is still due and payable to the financial creditor by the corporate debtor.

**7.** That, the Corporate Guarantor has executed two Deeds of Guarantee on 29.09.1999 and 01.11.1999. The corporate guarantor has secured the dues of Rupee Term Loan of Rs. 500 Lakh by executing the guarantee dated 29.09.1999, annexed at page 197 of the petition. Further, the corporate guarantor has secured the dues of the Bridge Loan of Rs. 700 Lakh by executing the guarantee dated 01.11.199, annexed at page 235 to the petition.

**8.** That, the principal borrower was declared as Non-Performing Assets (NPA) on 01.07.2001. The Invocation of guarantee has been made on 14.12.2016, which is annexed at page 912-919 to this petition and the date of default is claimed as on 30.12.2016, when the corporate guarantor has failed to pay the dues despite issuance of invocation of guarantee.

***Arguments advanced by the Learned Counsel for the Petitioner:***

**9.** Mr. Shaunak Mitra, learned counsel appearing for the Petitioner took us to the Deed of Guarantee dated 29.09.1999, wherein at Clause 18 (pages 205-206 of the petition), it provides that the guarantee shall be a continuing one and the same shall remain in full force and effect till such time the borrower repays in the full the Loan together with all the interests, liquidated damages, costs, charges and all other monies that

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may from time to time become due and payable and remain unpaid to the lenders under the Loan Agreement.

**10.** Mr. Mitra, further would place various documents to substantiate the acknowledgment of debt by the Principal Borrower as under:

- a.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended March 31, 2003, annexed at pages 282-307 to the petition.
- b.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended March 31, 2004, annexed at pages 308-317 to the petition.
- c.** Letter dated 19.04.2005 confirming the outstanding balance, annexed at pages 318-319.
- d.** OTS letter dated 13.03.2007, annexed at pages 320-321 to the petition.
- e.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2009, annexed at pages 322-363 to the petition.
- f.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2011, annexed at pages 364-406 to the petition.
- g.** OTS letter dated 27.10.2012, annexed at pages 407-409 to the petition.
- h.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2013, annexed at pages 410-448 to the petition.
- i.** Balance Sheet of Hanuman Sugar & Industries Ltd. for the year ended June 30, 2009, June 30, 2011, and June 30, 2013, annexed at pages 449-567 to the petition.

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- j.** OTS letter dated 28.01.2013, annexed at page 568 to the petition.
- k.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2015, annexed at pages 569-599 to the petition.
- l.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2017, annexed at pages 600-658 to the petition.
- m.** Balance Sheet of Eastern Sugar & Industries Limited for the year ended June 30, 2019, annexed at pages 659-791 to the petition.

**11.** It is submitted the unequivocal acknowledgments in the said documents have already been adjudicated this Adjudicating Authority in the Order dated 11.02.2022, which would be evident at para 66 of the Order dated 11.02.2022.

**12.** Further, it is submitted that notice of invocation of guarantee was issued on 14.12.2016, annexed at page 912-919 to the petition. It is argued that the deed of guarantee stipulates that the limitation shall commence to run from the demand of payment made in writing shall have been made. In the present case, the demand has been made on 14.12.2016, and thus, the limitation shall start to run from 2016.

**13.** It is contended that after 2019, the principal borrower has acknowledged its debt in the balance sheet for the year ended March 31, 2021, annexed at pages 792-911 to the petition (relevant portion is at page 898 of the Company Petition).

**14.** Further, the Corporate Guarantor Shree hanuman Sugar Ltd. in balance sheets for the year ended March 31, 2022, and March 31, 2023,

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has acknowledged the default committed in repayment of the dues payable to the financial creditor. Relevant portions are at page 989 and 1060 of the petition.

**15.** Thus, Mr. Mitra argued that the present company petition is complete in all respect and the debt claimed to be in default is in excess of the threshold limit as prescribed under Section 4 of the I&B Code, 2016, and within the limitation period.

***Per contra, the submission made by the Learned Counsel for the Corporate Debtor:***

**16.** Mr. Saurodip Banerjee, learned counsel appearing on behalf of the Corporate Debtor would submit that the principal borrower had availed the financial facilities from the IDBI in the years 1998 and 1999. The corporate debtor herein has acted as a guarantor for the repayment of the loan facilities availed by the principal borrower to the tune of Rs. 500 Lakh under the agreement dated 29.09.1999 and further, to the tune of Rs. 700 Lakh under the agreement of guarantee dated 01.11.1999. The loan account of the principal borrower was declared as a NPA on 01.07.2004. Thus, the instant company petition is barred by limitation.

**17.** Further, it is contended that the principal borrower was admitted into CIRP on 11.02.2022 and the financial creditor herein has filed its claim before the RP of the principal borrower which was partially admitted. Thus, the financial creditor for the purpose of recovery the rest amount cannot use the mechanism under I&B Code which is in gross violation of the Code.

**18.** Further, it is submitted that this Adjudicating Authority on 04.10.2023, approved the resolution plan of the principal borrower, and it is the settled principle of law that once a resolution plan is approved by

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the Adjudicating Authority, all the claims stand extinguished by the operation of law. Thus, no claim can be preferred against the corporate debtor herein as the purported claim is intrinsically linked with the claim against the principal borrower.

**19.** It is contended that the corporate guarantees dated 29.09.1999 and 01.11.1999 are not unconditional guarantees and the obligations of the corporate debtor to pay the amount in terms of the said guarantees arise only in the event a debt has crystallised, and a consequent default has occurred concurrently. It is submitted that no default can be construed to have occurred in view of the captioned claim barred by the laws of limitation and Res Judicata amongst others.

**20.** The Respondent denied that the balance sheets of the principal borrower or that of the corporate debtor herein for the years 2022 and 2023 tantamount to any valid acknowledgement under Section 18 of the Limitation Act.

**21.** We have duly considered the rival contentions of both parties.

***Analysis and Findings:***

**22.** Issue concerning the limitation, we note that the Loan facilities were sanctioned and granted in the years 1998 and 1999, and both the deed of guarantees were executed in the year 1999. The loan account of the principal borrower was declared as NPA on 01.07.2001. We further note that the guarantee has been invoked on 14.12.2016 and the date of default is claimed as on 30.12.2016, when the corporate guarantor has failed to pay the dues in spite of the invocation.

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23. We would note that the learned counsel has supplied various documents, such as balance sheets, OTS letters etc. since 2003, which substantiate that the debt payable to the financial creditor and the default on part of the debtor are acknowledged by the debtor from 2001-2019. Further, we find that while admitting the principal borrower into CIRP, this Adjudicating Authority in its order dated 11.02.2022 in C.P (IB) No.1632/KB/2018, noted that:

*“66. We have heard Ld. Counsel for the parties at great length. The Financial Creditor has taken us through various documents including the petition, supplementary affidavit and their respective annexures, and has sufficiently proved the disbursement of the loan, the outstanding financial debt, and the default. **It has been proved that the loan has been acknowledged in consecutive years from 2002 to 2019 and that the petition has been filed within limitation, and is not time barred as was argued by the Ld. Counsel for the Corporate Debtor.**”*

24. It is settled principle of law that acknowledgment made by the principal borrower shall be tantamount to acknowledgment made by the corporate guarantor and shall extend the period of limitation under Section 18 of the Limitation Act, 1963. In ***Laxmi Pat Surana v. Union Bank of India***, reported in **(2021) 8 SCC 481: 2021 SCC OnLine SC 267 at page 504:**

*“44. In the present case, NCLT as well as NCLAT have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor-corporate debtor after declaration of NPA from time to time and lastly on 8-12-2018. **The fact that acknowledgment within the***

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**limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee** and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary.”

**(Emphasis Added)**

25. Further, in ***Pooja Ramesh Singh v. SBI***, in **Company Appeal (AT) (Insolvency) No.329 of 2023**, the Hon’ble NCLAT observed that:

“24. **The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression ‘due’ occurring in Section 3(11) uses two additional expressions i.e “payable” and “is not paid by the debtor or corporate debtor”.** The expression ‘is not paid by the debtor’ has to be given some meaning. **As laid down by the Hon’ble Supreme Court in “Syndicate Bank vs. Channaveerappa Beleri & Ors.” (supra), a guarantor’s liability depends on terms of his contract.** There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor’s liability has to be read from the Deed of Guarantee.”

**(Emphasis Added)**

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**26.** Further, on proposition of the acknowledgment in the balance sheet, it is also settled that the statement in the balance sheet acknowledging a debt and liability by the company is sufficient to attract the provisions and extend the limitation under Section 18 of the Limitation Act, 1963. To fortify this view, we would rely on the ratio held in ***Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, reported at (2021) 6 SCC 366***, that:

*“40. In CIT v. Shri Vardhman Overseas Ltd. [CIT v. Shri Vardhman Overseas Ltd., 2011 SCC OnLine Del 5599 : (2012) 343 ITR 408] , the Delhi High Court held : (SCC OnLine Del para 17)*

*“17. In the case before us, as rightly pointed out by the Tribunal, the assessee has not transferred the said amount from the creditors' account to its profit and loss account. The liability was shown in the balance sheet as on 31-3-2002. **The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgment in writing.** It says where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgment was so signed. In an early case, in England, in Jones v. Bellgrove Properties Ltd. [Jones v. Bellgrove Properties Ltd., (1949) 2 KB 700 : (1949) 2 All ER 198 (CA)], **it was held that a statement in a balance sheet of a company presented to a creditor shareholder of the company and duly***

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**signed by the Directors constitutes an acknowledgment of the debt.** In *Mahabir Cold Storage v. CIT* [*Mahabir Cold Storage v. CIT*, 1991 Supp (1) SCC 402] , the Supreme Court held : (*Mahabir Cold Storage case* [*Mahabir Cold Storage v. CIT*, 1991 Supp (1) SCC 402] , SCC p. 409, para 12)

‘12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt.’

In several judgments of this Court, this legal position has been accepted. In *Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma* [*Daya Chand Uttam Prakash Jain v. Santosh Devi Sharma*, 1997 SCC OnLine Del 238 : (1997) 67 DLT 13] , S.N. Kapoor, J. applied the principle in a case where the primary question was whether a suit under Order 37 CPC could be filed on the basis of an acknowledgment. In *Larsen & Toubro Ltd. v. Commercial Electric Works* [*Larsen & Toubro Ltd. v. Commercial Electric Works*, 1997 SCC OnLine Del 144 : (1997) 67 DLT 387] a Single Judge of this Court observed that **it is well settled that a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgment within the meaning of Section 18 of the Limitation Act.** In *Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd.* [*Rishi Pal Gupta v. S.J. Knitting & Finishing Mills (P) Ltd.*, 1998 SCC OnLine Del 360 : (1998) 73 DLT 593] , the same view was taken. The last two decisions were cited by Geeta Mittal, J. in *S.C. Gupta v. Allied Beverages Co. (P) Ltd.* [*S.C. Gupta v. Allied Beverages Co. (P) Ltd.*, 2007 SCC OnLine

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*Del 655 : (2009) 163 DLT 495] and **it was held that the acknowledgment made by a company in its balance sheet has the effect of extending the period of limitation for the purposes of Section 18 of the Limitation Act.** In *Ambica Mills Ltd. v. CIT [Ambica Mills Ltd. v. CIT, 1963 SCC OnLine Guj 26 : (1964) 54 ITR 167]* , **it was further held that a debt shown in a balance sheet of a company amounts to an acknowledgment for the purpose of Section 19 of the Limitation Act and in order to be so, the balance sheet in which such acknowledgment is made need not be addressed to the creditors.** In light of these authorities, it must be held that in the present case, the disclosure by the assessee company in its balance sheet as on 31-3-2002 of the accounts of the sundry creditors' amounts to an acknowledgment of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law.”*

**xxx**

**xxx**

**xxx**

**44.** *In Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies [Zest Systems (P) Ltd. v. Center for Vocational & Entrepreneurship Studies, 2018 SCC OnLine Del 12116] , the Delhi High Court held : (SCC Online Del paras 5-6)*

*“5. In Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd. [Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd., 2013 SCC OnLine Del 2535 : (2013) 202 DLT 735] this Court held as follows:*

**‘7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet**

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**amounts to an acknowledgment of the debt and has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963.**

However, I may refer to only one decision of the learned Single Judge of this Court (Manmohan, J.) in *Bhajan Singh Samra v. Wimpy International Ltd.* [Bhajan Singh Samra v. Wimpy International Ltd., 2011 SCC OnLine Del 4888 : (2011) 185 DLT 428 : (2012) 173 Comp Cas 455] for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the petitioners. This judgment entirely supports the petitioners on this point.’

6. In view of the legal position spelt out in judgments noted above, the acknowledgment of the debt in the balance sheet extends the period of limitation. The acknowledgment is as on 31-3-2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed.”

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**48.** On the facts of this case, NCLT, by its judgment dated 19-2-2020, recorded **that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor.** As a result, NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of NCLAT dated 12-3-2020 [V. Padmakumar v. Stressed Assets Stabilisation Fund, 2020 SCC OnLine NCLAT 417], and the impugned judgment of NCLAT dated 22-12-2020 [Bishal Jaiswal v. Asset Reconstruction Co. (India) Ltd. Company Appeal (AT) (Insolvency) No. 385 of 2020,

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*decided on 22-12-2020 (NCLAT)] in paras 46 and 47. This appeal is, therefore, allowed, and the matter is remanded to NCLAT to be decided in accordance with the law laid down in our judgment.”*

**(Emphasis Added)**

**27.** Further, on the issue concerning the extinguishment of claim upon the approval of the resolution plan, it is a settled position of law that approval of the resolution plan does not absolve the liability of the guarantor and once a resolution plan gets final approval by the Adjudicating authority, it does not *ipso facto* discharge the surety of its guarantee. The Hon’ble Apex Court held in **Lalit Kumar Jain v. Union of India** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.

**28.** The Learned Counsel for the Petition took us through the Statement of Account, annexed at pages 1143 – 1214; the CIBIL report dated 24.08.2023, annexed at pages 1235 – 1241; and the NeSL report dated 09.11.2023, annexed at pages 1242 – 1247 to the petition, proving the disbursement of loan as well as indicating the default on part of the Corporate Debtor. It is evident from the NeSL report that the Corporate Debtor herein is a Guarantor of Eastern Sugar & Industries Limited (Principal Borrower) and the total outstanding amount is Rs. 26,22,11,58,938/-.

**29.** We are supported by the views of Hon’ble Apex Court to define “Financial Debt” and to initiate Corporate Insolvency Resolution process as under:

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(a) In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* reported in (2019) 8 SCC 416, it was held that:

*“any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.”*

**(Emphasis added)**

(b) In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited* reported in (2020) 8 SCC 401, it was held that:

*“the essential condition of financial debt is disbursement against the consideration for time value of money.”*

**(Emphasis added)**

(c) In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) it was held that:

*“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”*

**(Emphasis added)**

(d) In *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017, it was held that:

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”*

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**“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”**

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**“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”**

**(Emphasis added)**

**30.** Thus, in terms of the above discussions, we are of the view that the present petition is complete in all respect and not barred by limitation. Further, the amount claimed to be in default is far excess to the threshold limit as prescribed under Section 4 of the I&B Code.

**31.** In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 24/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Stressed Assets Stabilization Fund (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the

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**Corporate Insolvency Resolution Process** in respect of **M/s. Hanuman Sugar & Industries Limited (Corporate Debtor)**.

- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
- 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 asset 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 possession of the Corporate Debtor.*

*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition*

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*that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Mr. Sandeep Khaitan”**, Address: 2<sup>nd</sup> Floor, Sanmati Plaza, G.S. Road, ABC, Guwahati – 781005, Assam, Registration no. IBBI/IPA-001/IP-P00532/2017-2018/10957, Email id. [khaitansandeep@gmail.com](mailto:khaitansandeep@gmail.com), Contact: +91 8011048037, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure “1-D” at pages 38-41 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Sandeep Khaitan”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Sandeep Khaitan”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to

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submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

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- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the

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Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
  - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
  - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 32.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 33.** Post the Company Petition on **14/11/2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 27<sup>th</sup> Day of September 2024.**

Bose, R. K. [LRA]