

to as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor namely, M/s. Megha Granules Pvt. Ltd. for the default committed by the Corporate Debtor in making repayment of various credit facilities availed from the Bank. The Applicant (FC), Punjab National Bank is a Bank, incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Nanda Kirshore Sathy, Chief Manager, Zonal Sastra Centre, 1st Floor, Zonal Office, H. B. Road, Panbazar, Guwahati 781 001, Assam.

2. The Respondent Corporate Debtor (CD) Company, namely Megha Granules Pvt. Ltd. was incorporated on 05.05.2005 with CIN: U26942ML20007PTC008253.

3. The Nominal / Authorised Share Capital of the Respondent (CD) Company is Rs.13,40,00,000 (Rupees Thirteen Crores Forty Lacs only) and the paid-up Share Capital is Rs.12,99,99,488 (Rupees Twelve Crores Ninety Nine Lacs Ninety Nine thousand Four hundred Eighty Eight only). The Registered Office of the CD Company is situated at H. R. Path, Zoo Road, Bye Lane No.6, Tinali, Guwahati 781006, Assam.

4. It is submitted by the Applicant /FC that initially a Petition under Section 7 of IB Code, 2016 had been filed for and on behalf of the FC United Bank of India but subsequently on amalgamation of the said FC (United Bank of India) with the Punjab National Bank, the erstwhile FC had been replaced/substituted by the Punjab National Bank. However, the Punjab National Bank, the present FC was also one of the lenders/creditors to the CD under consortium arrangement along with the erstwhile United Bank of India. Therefore, it necessitated for amendment of Section 7 Petition by incorporating/substituting the erstwhile United Bank of India with Punjab National Bank and also clubbing/amalgamating the debts of the United Bank of India as well as Punjab National Bank. Accordingly, an amended Section 7 petition was filed on behalf of the FC (Punjab National Bank) by after carrying out all necessary amendments including change of the amount of debts as mentioned above on amalgamation/merger. Again, the Hon'ble Tribunal was pleased to allow the correction of the debt pertaining to the Punjab National Bank arising out of typographical error and accordingly, on 03.03.2021, the FC filed an Additional Affidavit cum amendment to the extent of the correct quantification of the Debt of the FC (Punjab National Bank)

as a whole and specifically in connection with the uncharged interest calculation pertaining to the cash credit amount only and the same also forms part of the record of the case. The petition under Section 7, documents/annexures (filed by the erstwhile United Bank of India) and the Additional Affidavit along with corrected uncharged interest calculation sheet had been properly served through Dasti Service and the said service report was duly filed with this Hon'ble Tribunal on 16.03.2021. The said report was duly filed by both E-filing as well as by submitting hard copies thereof.

5. Regarding **Debt pertaining to United Bank of India prior to amalgamation/merger with Punjab National Bank**, it is stated that one M/s. Megha Granules Pvt. Ltd. (being the Corporate Debtor) had approached individual banks for financial assistance under a consortium and accordingly **a consortium of 4 nos. of banks (State Bank of India, Central Bank of India and Punjab National Bank) including the Financial Creditor (United Bank of India)** agreed in principle to grant / sanction total consortium loan amount of Rs.117.98 Crores (Rupees One hundred Seventeen Crores Ninety Eight lakhs) only with the State Bank of India initially being the lead bank [(SBI – TL of Rs.45.00 Crores, BG of Rs.1.00 Crore, **CEL** of Rs.1.98 Crores) + CBI – TL of Rs.40.00 Crores and PNB- TL of Rs.10.00 Crores] + United Bank of India – Rs.20.00 Crores. Individual Sanction Letters were issued by the said consortium banks and the Financial Creditor Bank (UBI) vide Sanction Letter dated 24.06.2011 and Modified Sanction Letter dated 27.09.2011 had initially sanctioned a Term Loan of Rs.20.00 Crores out of the total consortium sanction of Rs.117.98 Crores.

6. Thereafter, vide Sanction Letter dated 04.12.2012 accorded sanction of enhancement of total loan limit from Rs.20.00 Crores [Term Loan – Rs.20.00 Crores (with a sub-limit of Rs.10.00 Crores as LOC), Cash Credit – Rs.5.00 Crores, LC – Rs.3.00 Crores & BG – Rs.2.00 Crores] to Rs.30.00 Crores (Rupees Thirty Crores only) out of the total consortium sanction of Rs.55.00 Crores as Working Capital Limits.

7. The FC thereafter vide Sanction letter dated 29.12.2014 sanctioned the restructuring cum renewal of the loan accounts to a total Overall Limit – Rs.19.29 Crores by way of reduction in overall credit facilities.

Therefore, the credit facilities sanctioned by the Consortium Lenders to the tune of Rs.65.40 Crores (Rupees Sixty Five Crores Forty lakhs only) as Working Capital Facilities including Bank Guarantees.

8. Total Consortium Credit Facilities after reduction and restructuring by the consortium lenders and availed by the Corporate Debtor stood at Rs.95.28 Crores (Rupees Ninety Five Crores and Twenty Eight Lakhs only) and out of which share of the FC stood at Rs.12.10 Crores as Term Loan and Rs.5.83 Crores as Working Capital Facilities including BG and also LC (one time) of Rs.1.36 Crores (Total Exposure of the FC to the CD stood at Rs.19.29 Crores.

9. The United Bank of India as one of the FC (prior to amalgamation/merger with PNB) had sought to lodge this application under the Code of 2016 with respect to its share of finance that it sanctioned and disbursed aggregating to Rs.19.29 Crores.

10. The CD through its Directors and the Consortium Banks had signed and executed all necessary security cum loan and Consortium Documents/Agreements including Inter-se and Trust Agreements inter alia – Joint Deed of Hypothecation dated 27.07.2012, Joint Deed of Hypothecation dated 22.05.2013 and Joint Deeds of Hypothecation (Term Loan and Working Capital) both dated 10.08.2015, Undertakings dated 27.07.2012, 27.07.2012 and 22.05.2013, Joint and Several Deeds of Personal Guarantee dated 27.07.2012, 22.05.2013 and 27.04.2015, Consortium Guarantee Agreements dated 27.07.2012, 22.05.2013 and 27.04.2015 by Corporate Guarantors, Consortium Term Loan Agreement dated 27.07.2012, Working Capital Consortium Agreement dated 22.05.2012, Master Restructuring Agreement dated 27.04.2015, Trust and Retention Account Agreement dated 10.08.2015, Facility Agreement (Joint Lender Forum Term Loan) dated 10.08.2015 and Working Capital Lenders Forum Agreement dated 10.08.2015, Inter-se Agreements dated 27.07.2012, 10.08.2015 and 10.08.2015 and with respect to the entire consortium loans sanctioned / enhanced / restructured by the Consortium Lenders including the FC from time to time, as security for repayment of the consortium loan and also agreed to the terms and conditions of the said consortium agreements.

11. The CD has also created equitable mortgage leasehold right period (60 years) over a plot of land measuring 1.07,063 square metres (80 bighas) situated within the

Industrial Growth Centre at Chayagaon, Assam, belonging to the Assam Industrial Infrastructure Development Corporation (AIIDC), which had leased the said land to the Corporate Debtor by deposit of lease deed and other documents with the SBI and subsequently with CBI as lead bank, Memorandum of Deposit confirms the EM creation and deposit. The consortium banks which includes the Financial Creditor, enjoys pari pasu charge over the same.

12. It is further stated that similarly the Corporate Guarantor TIMES FERRO ALLOYS LTD. had also created equitable mortgage over 21 plots of land measuring in total 8.716 Hectares of open land (diverted for industrial use), situated at village - Botejhari (Waraseoni), District Balaghat, Madhya Pradesh 481331, by deposit of Title Deed on 02.12.2012. Memorandum of Deposit confirms the EM creation and deposit. The consortium banks which includes the Financial Creditor, enjoys pari pasu charge over the same as security for repayment of Consortium Loan.

13. The FC (erstwhile UBI) had also sanctioned a Bank Guarantee Limit of Rs.98,82,000.00 on the basis of an application dated 12.06.2017 and accordingly issued a Performance Bank Guarantee (being BG No.0002171LPER005 for Rs.98,82,000.00 dated 16.06.2017. A Counter Guarantee dated 12.06.2017 was signed and executed by the CD. Further, the FC (erstwhile UBI) had also issued extended Bank Guarantee (BH) up to 23.08.2018 and thereafter on further extension till 23.02.2019. However, the said Bank Guarantee stood invoked vide Invocation Letter dated 17.01.2019 issued by the Beneficiary and therefore the said BG amount was released to the beneficiary by the FC immediately on invocation by debiting from the BG account (BG A/c No.0002250549752) of the CD.

14. It is pertinent to mention herein that the CD had utilised an amount of USD 1,20,000.00 (INR-8900766.00 as on the date of **lock** i.e. 16.11.2018) and the said amount of Rs.89,00,766.00 out of the total sanction of LC limit of Rs1.36 Crores stood utilized and debited in the LC account (A/c No.0002250549691) of the CD. Necessary Board Resolutions by the CD and Corporate Guarantors dated 20.09.2011, 18.03.2015 and 01.02.2016, 15.09.2011, 15.09.2011, 15.09.2011, 15.09.2011, 27.03.2015, 27.03.2015, 27.03.2015, 27.03.2015, 01.02.2016, 01.02.2016, 01.02.2016, 01.02.2016 and 01.02.2016 respectively had been passed from time to

time endorsing and confirming the sanction of the Consortium loan facilities in connection thereof and also of the share of the Financial Creditor (erstwhile UBI).

15. **The CD has also registered the charge over the secured properties (hypothecated and mortgaged properties) with the Registrar of Companies and relevant documents have been filed therein.**

16. **It is further submitted that so far limitation aspect is concerned, the CD had also signed and executed Letter of Acknowledgment of Debt cum Balance Confirmation dated 31.07.2017 in favour of the financial creditor, thereby confirming that all the security documents executed by it in favour of the consortium banks including the FC (erstwhile UBI). Balance Sheets of the CD are also enclosed and therefore, this application has been filed well within the prescribed period of Limitation.**

17. **It is submitted that the Corporate Debtor has failed to maintain the loan accounts – Term Loan, Cash Credit, WCTL-1, WCTL-2, FITL-1, FITL-2, FITL-3, FITL-4, INV LC and INV BG maintained by the Financial Creditor as it failed to pay the instalments and the over dues as per terms and conditions of sanction. The loan accounts were classified as NPA on 31.03.2018. Loan Recall Notice cum Guarantee Invocation dated 26.04.2019 and Demand Notice dated 01.06.2018 under Section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor, Corporate Guarantors and the personal Guarantors were accordingly issued. But, in spite of recalling the total outstanding in the loan accounts from the Corporate Debtor, no payment had been received by the Financial Creditor towards liquidation / resolution of the total outstanding dues. Therefore, the Financial Creditor had preferred this application for resolution of an outstanding debt of Rs.23,57,23,005.33 as on 31.01.2020 in the Term Loan, Cash Credit, WCTL-1, WCTL-2, FITL-1, FITL-2, FITL-3, FITL-4, INV LC and INV BG Accounts.**

18. **It is further submitted that the aforesaid statements and documents appended with the petition clearly establish that there is sufficient cause of action for preferring this petition for resolution of the total claim of the FC**

(erstwhile UBI) as against the CD. The debt has been established by the FC (erstwhile UBI) beyond any reasonable doubt and default against the CD stands proven by the default statements, CIBIL and CRILIC Report dated 07.02.2020 and also the Statements of Accounts attached with the application.

19. It is further stated that with regard to the debt pertaining to Punjab National Bank (prior to amalgamation/merger of United Bank of India and as one of the Lender under the Consortium Arrangement) the Financial Creditor had been one of the Consortium Lenders and had sanctioned Term Loan limit of Rs.20.00 Crores vide Sanction Letters dated 26.02.2011 and 01.03.2011 and the same was subsequently modified to Rs.10.00 Crores vide Modification / Revalidation Letter dated 20.10.2011 to the Corporate Debtor out of the Total Consortium Finance of Rs.117.98 Crores. Thereafter, the Financial Creditor vide Sanction Letter dated 28.09.2012 had sanctioned Working Capital Facility of Rs.4.80 Crores [WC- Rs.2.60 Crores + ILC- Rs.1.00 Crore + BG- Rs.1.00 Crore] out of the total Working Capital requirement of Rs.54.80 Crores under consortium arrangement, with its share being 10.07%, 4.76% and 16.67% respectively. Subsequently, vide Letters dated 12.12.2013 and 21.03.2015 some amendments in terms and conditions in the account of the Corporate Debtor was affected by the Financial Creditor (PNB) without affecting the overall consortium arrangement. Again vide Sanction Letter dated 30.01.2016, the Cash Credit was renewed and enhanced from the existing limit of Rs.2.71 Crores to Rs.4.27 Crores. Similarly, the existing Term Loan stood restructured and rescheduled at Rs.3.46 Crores. The Financial Creditor (PNB) also converted the unrecovered portion of Cash Credit Facility of short fall of DP that is Rs.2.80 Crores limit – sanctioned/approved/restructured limit of Rs.2.71 Crores. The unpaid interest of Rs.0.78 Crore (Rs.0.76 Crore of TL and Rs.0.02 Crore of WCTL-CC) was converted to funded interest Term Loan. Again an amount of Rs.0.09 Crore being the repayment of FITL had been converted into Working Capital Term Loan. Under the scheme sanctioned, a Bank Guarantee of Rs.0.47 Crore was also sanctioned with LC limit of Rs.0.65 Crore.

20. Therefore, the credit facilities sanctioned by the Consortium Lenders to the tune of Rs.65.40 Crores (Rupees Sixty Five Crores Forty Lacs only) as Consortium Term Loan and Rs.29.88 Crores (Rupees Twenty Nine Crores and Eighty Eight lacs only) as Working Capital Facilities including Bank Guarantees.

21. It is further stated that the Corporate Debtor had utilized an amount of USD 1,20,000.00 (INR- 8900766.00 as on the date of lock i.e. 16.11.2018) and the said amount of RS.89,00,766.00 out of the total sanction of LC limit of Rs.1.36 Crores stood utilized and debited in the LC Account NO.0002250549691 of the Corporate Debtor.

22. It is also stated that necessary Board Resolutions by the Corporate Debtor and the Corporate Guarantors dated 20.09.2011, 18.03.2015 and 01.02.2016, 15.09.2011, 15.09.2011, 15.09.2011, 27.03.2015, 27.03.2015, 27.03.2015, 27.03.2015, 27.03.2015, 01.02.2016, 01.02.2016, 01.02.2016, 01.02.2016 and 01.02.2016 respectively had been passed from time to time endorsing and confirming the sanction of the Consortium loan facilities in connection thereof and also of the share of the Financial Creditor.

23. It is stated that the Corporate Debtor had also registered the charge over the secured properties (hypothecated and mortgaged properties) with the Registrar of Companies and relevant documents have been filed therein.

24. It is further stated that the Corporate Debtor had also signed an executed Letter of Acknowledgement of Debt cum Balance Confirmation dated 31.07.2017 in favour of the Financial Creditor, thereby confirming that all the security documents executed by it in favour of the consortium banks including the financial creditor. Balance Sheets of the Corporate Debtor are also enclosed and therefore, this application has been filed well within the prescribed period of limitation.

25. Thus, total Consortium Credit facilities after enhancement, reschedulement and restructuring by the consortium lenders and availed by the Corporate Debtor stood at Rs.95.28 Crores (Rupees Ninety Five Crores and Twenty Eight lacs only) and out of which the share of the Financial Creditor stood at Rs.3.64 crores (outstanding Rs.2.73 Crores as on 31.03.2018) as Term Loan and Rs.5.39 Crores as Working Capital Facilities including BG and also LC (one time) of Rs.1.12 Crores [Total exposure of the Financial Creditor to the Corporate Debtor stood at Rs.8.28 Crores).

26. The Punjab National Bank as one of the Financial Creditors had sought to add its claim in this application under the Code of 2016 with respect to its share of finance that it had sanctioned and disbursed – aggregating to Rs.15.50 Crores.

27. The Corporate Debtor through its Directors and the Consortium Banks had signed and executed all necessary security cum Loan and Consortium Documents/Agreements including Inter-se and Trust Agreements inter alia – Joint Deed of Hypothecation dated 27.07.2012, Joint Deed of Hypothecation dated 22.05.2013 and Joint Deeds of Hypothecation (Term Loan and Working Capital) both dated 10.08.2015, Undertakings dated 27.07.2012, 27.07.2012 and 22.05.2013, Joint and Several Deeds of Personal Guarantee dated 27.07.2012, 22.05.2013 and 27.04.2015, Consortium Guarantee Agreements dated 27.07.2012, 22.05.2013 and 27.04.2015 by Corporate Guarantors, Consortium Term Loan Agreement dated 27.07.2012, Working Capital Consortium Agreement dated 22.05.2013, Master Restructuring Agreement 27.04.2015, Trust and Retention Account Agreement dated 10.08.2015, Facility Agreement (Joint Lender Forum Term Loan) dated 10.08.2015 and Working Capital Lenders Forum Agreement dated 10.08.2015, Inter-se Agreements dated 27.07.2012, 10.08.2015 and 10.08.2015 and with respect to the entire consortium loans sanctioned/enhanced/ restructures by the Consortium Lenders including the Financial Creditor from time to time, as security for repayment of the consortium loan and also agreed to the terms and conditions of the said consortium agreements.

28. It is further submitted that the statements and documents appended with the application clearly establish that there is sufficient cause of action for preferring this petition for resolution of the total claim of the Financial Creditor against the Corporate Debtor and the debt has been established by the Financial Creditor beyond any reasonable doubt and default against the Corporate Debtor stands proven by the defaulted statement, CIBIL and CRILIC Report dated 07.02.2020 and also the Statement of Accounts attached with the application.

29. The Corporate Debtor had also created equitable mortgage of leasehold right period (60 years) over a [plot of land measuring 1.07,063 square metres (80 bighas) situated within the Industrial Growth Centre at Chayagaon, Assam, belonging to the

Assam Industrial Infrastructure Development Corporation (AIIDC), which had leased the said land to the Corporate Debtor by deposit of lease deed and other documents with the SBI and subsequently with CBI as lead bank, Memorandum of Deposit confirms the EM creation and deposit. The consortium banks which includes the Financial Creditor, enjoys pari pasu charge over the same.

30. It is further stated that similarly the Corporate Guarantor TIMES FERRO ALLOYS LTD. had also created equitable mortgage over 21 plots of land measuring in total 8.716 Hectares of open land (diverted for industrial use), situated at village - Botejhari (Waraseoni), District Balaghat, Madhya Pradesh 481331, by deposit of Title Deed on 02.12.2012. Memorandum of Deposit confirms the EM creation and deposit. The consortium banks which includes the Financial Creditor, enjoys par pasu charge over the same as security for repayment of Consortium Loan.

31. It is stated that the Financial Creditor had also sanctioned Bank Guarantee Limit of Rs.0.47 Crores on the basis of an application and accordingly issued a Performance Bank Guarantee (being BGNO.0189ILG001719 dated 13.03.2019 for Rs.31.20,640.00. However, the said Bank Guarantee stood invoked vide Invocation Letter dated 12.03.2020 issued by the Beneficiary and therefore, the said BG amount was released to the beneficiary by the Financial Creditor immediately on invocation by debiting from the Cash Credit Account (CC A/C No. 0189008700009059) of the Corporate Debtor. The Financial Creditor had intimated the Corporate Borrower vide its letter dated 13.03.2020 about the said invocation.

32. It is also stated that necessary Board Resolutions by the Corporate Debtor and the Corporate Guarantors dated 20.09.2011, 18.03.2015 and 01.02.2016, 15.09.2011, 15.09.2011, 15.09.2011, 27.03.2015, 27.03.2015, 27.03.2015, 27.03.2015, 27.03.2015, 01.02.2016, 01.02.2016, 01.02.2016, 01.02.2016 and 01.02.2016 respectively had been passed from time to time endorsing and confirming the sanction of the Consortium loan facilities in connection thereof and also of the share of the Financial Creditor.

33. It is stated that the Corporate Debtor had also registered the charge over the secured properties (hypothecated and mortgaged properties) with the Registrar of Companies and relevant documents have been filed therein.

34. **It is further stated that the Corporate Debtor had also signed and executed Balance and Security Confirmation Letters dated 01.04.2017, 01.04.2017, 01.04.2017 and 25.02.2018 in favour of the Financial Creditor, thereby confirming the outstanding balance in the TL, CC, FITL Accounts. Balance sheets of the Corporate Debtor have already been enclosed with the application and, therefore, this application has been filed well within the prescribed period of Limitation. Further, vide Proposal for Settlement dated 25.11.2019, the Corporate Debtor had accepted the liability towards the Consortium Lenders including the Financial Creditor (PNB) and also that the loan Accounts stood classified as NPA and that agreed for settlement of all the NPA Accounts.**

35. It is stated that the Corporate Debtor failed to maintain the loan accounts – Term Loan, Cash Credit and FITL maintained by the Financial Creditor as it failed to pay the instalments and the over dues as per the terms and conditions. The loan accounts were classified as NPA on 06.04.2019. Demand cum Irregularity Letters / Notices dated 17.11.2018, 12.12.2018, 01.01.2019, 18.01.2019, 05.02.2019, 03.03.2019, 22.03.2019, 30.04.2019 and 20.09.2019 by the Financial Creditor to the Corporate Debtor, Corporate Guarantors and the Personal Guarantors were accordingly issued. But in spite of recalling the total outstanding in the Loan accounts from the Corporate Debtor, no payment had been received by the Financial Creditor towards liquidation / resolution of the total outstanding dues. Therefore, the Financial Creditor had preferred this application for resolution of an outstanding debt of Rs.19,02,76,850.92 as on 12.11.2020 in the Term Loan, Cash Credit and FITL Accounts. The aforementioned statements and documents are append with the application clearly establish that there are sufficient cause of action for preferring this application for resolution of the total claim of the Financial Creditor as against the Corporate Debtor. The debt has been established by the Financial Creditor beyond any reasonable doubt and default against the Corporate Debtor stands proven by the defaulted statements, CIBIL and CRILIC Report dated 15.12.2020 and also the Statement of Accounts.

36. In view of the above statements and submissions, the total outstanding debt by merging the outstanding debt of the erstwhile United Bank of India and the Punjab National Bank (present Financial Creditor) comes to

United Bank of India	=	Rs.23,57,23,005.33 (PART-A)
<u>Punjab National Bank</u>	=	<u>Rs. 9,02,76,850.92 (PART-B)</u>
Total Debt (A+B)	=	Rs.32,59,99,856.25

(Rupees Thirty Two crores Fifty Nine lacs Ninety Nine thousand Eight hundred Fifty Six and paise Twenty Five only) and the FC having proved the loans, debts and defaults of the CD along with the issues pertaining to Limitation and Jurisdiction through more than sufficient documents annexed with the petition / amended petition / additional affidavit cum amendment and taking into consideration of the facts and records of the case, it is respectfully prayed by the Petitioner that this Hon'ble Tribunal may be pleased to admit the petition and pass such other order / orders as to this Hon'ble Tribunal may deem fit and proper.

37. Further, it is submitted that the FC do not admit the statements, allegation and submissions made in the written submission filed by the CD which are not consistent with the records with the case and it is further submitted that the debt has been established and proven beyond any reasonable doubt and the same had backed by irrefutable documentary evidence. Further, the vary admission and insistence on the part of the CD itself goes on to prove the existence of debt. So far the technicality raised in the written submission the same is not at all maintainable in a proceeding under Section 7 of the IB Code, 2016.

38. It is submitted that the Financial Creditor as Applicant had also filed an Original Application bearing O.A. No.491/2019 before the Debts Recovery Tribunal at Guwahati against the Corporate Debtor, Corporate Guarantors and Personal Guarantors as Defendants for recovery of Rs.22,95,65,980.75 (Rupees Twenty Two Crores Ninety Five lacs Sixty Five thousand Nine hundred Eighty and paise Seventy Five) only and the said application is pending for disposal.

39. Further, the State Bank of India (one of the consortium Bank) had also filed an Original Application bearing O.A. No.238/2018 before the Debts Recovery Tribunal II

Kolkata against the Corporate Debtor, Corporate Guarantor and Personal Guarantors for recovery of Rs.24,98,53,501.40 (Rupees Twenty Four Crores Ninety Eight lacs Fifty Three thousand Five hundred One and paise Forty) only and the said application is also pending disposal.

40. In order to support the claim, the Financial Creditor has submitted the Statement of Accounts and Certified Entries in a Bankers Book in accordance with the Bankers Book Evidence Act, 1891 (18 of 2019) vide **Annexures I-AAAAO, I-AAAAO.01, I-AAAAO.02, I-AAAAO.03, I-AAAAO.04, I-AAAAO.05, I-AAAAO.06 and I-AAAAO.01** respectively, which proves the claim of the Financial Creditor against the Corporate Debtor.

41. **The Financial Creditor, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all sanction letters, statement of accounts, workings showing the amount claimed to be in default and its calculation from and as on 31.03.2018 and 06.04.2019[NPA dates] along with CRILC Report dated 15.12.2019 and CIBIL Report marked as Annexures I-AAAAF, I-AAAAG and Annexures I-AAAAA.28 and I-AAAAA.29 respectively.**

42. The Financial Creditor, to substantiate its claim has also enclosed the following documents:-

1. Copies of Board Approvals (pages 31 - 33)
2. Statement of Accounts (pages 46 – 244)
3. Letter dated 27.06.2016 (page 378)
4. Copies of sanction letters (pages 546 - 583)
5. Joint and Several Deed dt. 27.7.12(pages 688 – 697)
6. Deeds of Guarantee 27.07.2012 (pages 698 -708)
7. Letters of Undertaking (pages 748 – 749)
8. EM dated 22.12.2009 (pages 765 – 781)
9. Memorandum of Deposit (pages 782 – 783)
10. EM dated 22.12.2009 (pages 784 – 815)
11. Master Restructuring Agreement (pages 1033 – 1050 dtd.27.4.2015)

12. Joint Lender Forum Authority (pages 1094 – 1095)
13. Trust and Retention Account Agreement dated 10.08.2015 (pages 1131 – 1158)
14. Working Capital Lenders Forum Agreement dated 10.08.2015(pages 1192 – 1246)
15. BG Invocation letter dated 17.01.2019 (pages 1294)
16. Letter of acknowledgement of debt cum balance confirmation dated 31.07.2017 (page- 1314)
17. CRILIC Report dated 07.02.2020 (page – 1325)
18. CIBIL Report (pages 1326 – 1396)
19. Loan Recall Notice cum Guarantee Invocation dated 26.04.2019, SARFAESI Notice dated 01.06.2018 and letter dated 14.12.2018 (pages 1399- 1403, 1404 – 1407 and 1408 – 1410)
20. Balance sheets for the year 2015 – 2016 (pages 1411 – 1439)
21. Valuation Reports dated 22.06.2018 and 18.07.2018 (pages 1440 – 1463 and 1464 – 1473).
22. Consent of the Proposed Interim Resolution Professional and declaration regarding eligibility for appointment as IRP (pages 1474, 1475 – 1476)
23. Copy of demand draft dated 19.02.2020 for Rs.25,000.00 (page – 1477)

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24. Copies of all documents (of Punjab National Bank) referred to in this application (pages 1565 – 2133)
25. Statement of Accounts along with Interest Calculation and Loan Default Statements (Term Loan only) (pages 1566 – 1931)
26. Sanction letter dated 26.02.2011 and 01.03.2011 issued by the FC9PNB) to the CD (pages 1932 – 1939 and 1940 – 1949)
27. Modified /Revalidated Sanction letter dated 20.10.2011 issued by FC (PNB) to the CD (pages 1951 – 1959)
28. Sanction letter dated 28.09.2012 issued by FC (PNB) to the CD under Consortium Arrangement (pages 1960 - 1967)
29. Sanction letter dated 07.03.2015 issued by FC (PNB) to the CD by way of restructure (pages 1980)
30. Amended Terms & Conditions of sanction dated 21.03.2015 issued by the FC (PNB) to the CD (pages 1981 – 1991)

31. Application for renewal cum enhancement of CC Limit dated 16.12.2015 by the CD (pages 1992 – 1994)
 32. Sanction letter dated 30.01.2016 issued by the FC (PNB) to the CD (pages 1995 – 2005)
 33. Application for restructuring of dues / renewal of existing limit dated 21.03.2018 by the CD (pages 2006 – 2010)
 34. Sanction letter dated 31.03.2018 issued by FC (PNB) to the CD (pages 2011 – 2021)
 35. Bank Guarantee Invocation letter dated 12.03.2020 (pages 2039-2040)
 36. Balance and Security Confirmation letters for all the loan accounts (pages 2041 – 2044)
 37. Copies of Entries in Bankers Book for Term Loan, Cash Credit and FITL (pages 2045 – 2047)
 38. CRILIC Report dated 15.12.2020 (pages 2048 – 2055)
 39. CIBIL Report (pages 2056 – 2122)
 40. Demand / Loan Irregularity Letters and Demand Notice dated 20.09.2019 under SARFAESI Act by the Financial Creditor and Proposal for Settlement dated 25.01.2019 by the CD (pages 2123 – 2133 and 2134 – 2135)
43. On 22.02.2021, when the case was taken up, Mr. S. Agarwal, Director of the Respondent/CD Company was present and he was directed to file reply if any, within Ten (10) days of receipt of the amended petition from the FC. However, no reply has been received by the Registry from the CD till 05.04.2021.
44. The matter was finally heard. The counsels of the Petitioner and the Respondents were present on different dates and put forth their submissions before this Bench on all the above aspects.
45. The Petitioner Bank has suggested the name of Insolvency Professional Mr. Sandep Khaitan, 2nd Floor, Sanmati Plaza, G. S. Road, ABC, Guwahati-5, E-mail ID: khaitansandeep@gmail.com, Ph- 8011048037, having IP Registration No. IPA-001/IP-P00532/17-18/10957 to be appointed, if this petition is allowed and the proposed IRP has also given his affirmation/consent in writing, which is annexed with the petition.

OBSERVATIONS

46. It is found that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors and guarantors along with the Statement of Accounts with Certificate under the Banker's Book of Evidence Act, 1891 CRILIC Report in support of their IB Petition for initiation of CIRP.
- 46.I The credit facilities were sanctioned and released by the Petitioner Bank along with other consortium lenders and the same were availed by the CD, M/s. Megha Granules Pvt. Ltd. and the Charges have been registered by the CD with the ROC in favour of the Petitioner Bank.
- 46.II The CD has defaulted in making repayment of the credit facilities to the Petitioner Bank due on 31.03.2018 and 06.04.2019. The Total Debt as per the Statement of Accounts and the Affidavit filed on behalf of the Petitioner Bank confirms the defaulted amount of Rs.32,59,99,856.25 (Rupees Thirty Two Crores Fifty Nine Lacs Ninety Nine thousand Eight hundred Fifty Six and paise Twenty Five) only.
- 46.III Further, the CIBIL/CRILIC Reports submitted by the Petitioner Bank confirm the existence of liability to the Financial Creditor and default committed by the Corporate Debtor.
- 46.V The Petitioner Bank has filed the petition within the period of limitation, as the last payment into the account has come on 04.03.2019 and the amended petition has been filed on 30.12.2020.
- 46.VI It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the CIRP because the nature of remedy being sought for under the provisions of the IB Code is "Remedy in Rem" in respect of the CD.
- 46.VII The present IB Petition is filed by the duly authorised official of the Petitioner Bank in a prescribed format under Section 7 of the IB Code annexing copies of loan documents confirming the existence of debt due, payable and defaulted

and proposed a name of a Resolution Professional to act as an Interim Resolution Professional (IRP).

46.VIII: The matter was taken up by this Bench on 08.10.2020, 09.10.2020, 13.11.2020, 08.12.2020, 05.01.2021, 09.02.2021 22.03.2021 and 05.04.2021

ORDER

47. Heard both the sides and perused the records/documents/ filed. Considering the materials made available by the Petitioner Bank, arguments of both parties and the facts mentioned in Para 46 to 46.VII, this Adjudicating Authority is satisfied that,

- a) The Corporate Debtor availed the loan / credit facilities from the Financial Creditor;**
- b) Existence of debt is above Rupees One Lac;**
- c) Debt is due, payable and defaulted;**
- d) Default occurred on 31.03.2018 and 06.04.2019;**
- e) Application has been filed within the limitation period, as the existence of the debt due, payable and defaulted on 31.03.2018 when the Application under Section 7 of the IBC has been filed by the United Bank of India 09.03.2020 and the amended one by Punjab National Bank on 30.12.2020;**
- f) Further, the Corporate Debtor has acknowledged the debts / liabilities on 01.04.2017 and 25.02.2018 and the last one on 6/4/2019**
- g) Copy of the Application /Amended Application filed before this Bench has been sent to the Corporate Debtor and the application filed by the Petitioner Bank under Section 7 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor;**

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 05.05.2021.

48. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely :-

- I. (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.
- (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 Securitisation 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.
- II. 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.
- III. The provisions of sub-section (I) shall not apply to –
 - (a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

49. This Adjudicating Authority hereby appoints, as proposed by the FC , Mr. Sandep Khaitan, 2nd Floor, Sanmati Plaza, G. S. Road, ABC, Guwahati-5, E-mail ID: khaitansandep@gmail.com, Phone- 8011048037, having IP Registration No.IPA-

001/IP-P00532/17-18/10957 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

50. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligations imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

51. It is also observed that the Petitioner Bank has claimed an aggregate amount as under-

United Bank of India	=	Rs.23,57,23,005.33 (PART-A)
<u>Punjab National Bank</u>	=	<u>Rs. 9,02,76,850.92 (PART-B)</u>
Total Debt (A+B)	=	Rs.32,59,99,856.25

(Rupees Thirty Two Crores Fifty Nine Lacs Ninety Nine thousand Eight hundred Fifty Six and paise Twenty Five) only.

52. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR")/ Repo Linked Interest Rate/ Interest rate falling regime and competitive market condition, the Committee of Creditors (COC) may explore, while finalizing the Resolution Plan for the Corporate Debtor, the possibility of loading maximum interest at the Applicant Bank's One Year MCLR or One Year MCLR + 1% without any penal/overdue interest.

53. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor Company, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post / registered post and e-mail, if available.

54. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

55. Thus, the present IB Petition filed under Section 7 of the IBC stands admitted today i.e. 05.05.2021 with the above observations and directions.

Sd/-

**(H. V. Subba Rao)
(Member (Judicial)
& Adjudicating Authority**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

/Deka-05.05.2021/