IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) No.04/ALD/2019

In the matter of:
(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:
Bank of Baroda

…….Financial Creditor

Versus

Hind Agro Industries Ltd. *……Corporate Debtor*

Coram:

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

Appearances (through video conference):

For Financial Creditor : Sh. Kumar Anurag, Adv.
Sh. Abindra Maheshwari, Adv.
Sh. Zain A. Khan, Adv.

For Corporate Debtor : Dr. Shamsuddin, Adv.
Sh. M.S. Husain, Adv.
Sh. Anup Kumar Pandey, Adv.

Order reserved on: 10.02.2023

Order pronounced on: 03.03.2023

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ORDER

1. This Application has been filed by the Applicant, Bank of Baroda (previously known as Dena Bank) under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as **I&B Code, 2016**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in **Form 1** containing all the information as required in Part I, II, III, IV and V of the Form, against the Respondent, M/s Hind Agro Industries Ltd. Bank of Baroda, which is a Public Sector Bank constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, is **Financial Creditor**. The Respondents, M/s Hind Agro Industries Ltd. is **Corporate Debtor**. This application has been filed by the Financial Creditor for initiating corporate insolvency resolution plan (hereinafter referred as **CIRP)** against a corporate debtor providing details of default occurred due to non-payment of a financial debt amounting to Rs. 189,18,32,289/- as computed in Part IV of the Application in Form 1, later revised to Rs.131,35,68,143/- as per revised computation shown in the Rejoinder filed by the Applicant.

2. The facts leading to filing of this application as discussed in the Form 1 are as below:

2.1 On 19.01.1998, the Financial Creditor on request of the Corporate Debtor advanced an amount of Rs.10.02 lacs to the Corporate Debtor. The Corporate Debtor was availing various credit facilities from the Applicant i.e Dena Bank (now, Bank of Baroda), Punjab National Bank (hereinafter referred as **PNB**) and Indian Bank under Multi Banking Arrangement, which was later converted into a consortium agreement. The Corporate Debtor executed a Common Working Capital Consortium Agreement and a Joint Deed of Hypothecation on

27.04.2005.A mortgage was also created by depositing title deeds of a group company, M/s Al Mashriq Exports Pvt. Ltd. on 30.04.2005.The said title deeds belonged to a plot bearing No. B-18 & 19, Vatika Firms, Village Karanki, Tehsil, Distt. Gurgoan.Two deeds of guarantee were also executed by the Directors of the Corporate Debtor, Mr. Sirajuddin Qureshi and Kiran Qureshi.

2.2 Thereafter, a new Working Capital Consortium Agreement and a Joint Deed of Hypothecation was executed dated 15th October, 2007 in accordance with the resolution passed by the Board of the Corporate Debtor on 12.10.2007. The total limit was enhanced to Rs.110.50 crores. In furtherance of this new agreement, two deeds of guarantee were executed by Mr. Sirajuddin Qureshi and Ms. Kiran Qureshi. It's another group concern, M/s Al Mashriq Exports Pvt. Ltd also created a mortgage by depositing title deeds on 16.10.2007. This exercise was again repeated when the existing limits of the consortium agreement were enhanced to Rs.165.80 crores on 13th February, 2009. This limit was further enhanced to Rs.200 crores on 11th August, 2011 along with the said documents as mentioned above. A second charge was also created by way of mortgage by the Corporate Debtor over a property situated at Village Chherat-Sudhial, Tehsil Koil, Central Dairy Farm Complex, Anup Shahar Road, Aligarh.

2.3 The Board of Corporate Debtor passed a resolution for enhancing the limits of the credit facility on 20th April, 2012. On the same day, the Corporate Debtor executed two Term Loan Agreements, an agreement of hypothecation of movable assets forming part of fixed assets at Chennai and another agreement for hypothecation of current assets. The Corporate Debtor also executed a deed of hypothecation to secure the LC, letter to purchase/discount checks, supplementary

agreement, general counter indemnity, a letter of general indemnity and a Packing Credit Agreement. Directors of Corporate Debtor, Mr. Sirajuddin Qureshi and Ms. Kiran Qureshi also executed separate deeds of guarantee. The other standalone enhancement/facilities, except one term loan of Rs.10 Crores, was availed by PNB.

2.4 On 13thMarch, 2013, the Corporate Debtor had also approached Central Bank of India (hereinafter referred as **CBoI**) for granting various facilities and passed a resolution in this regard. An agreement for working capital/overdraft against book debt, agreement for hypothecation for movable assets forming part of fixed assets and book debts, demand promissory note for Rs.32.75 crores were also executed. An undertaking by the Corporate Debtor to create securities in favour of CBoI, was also executed on 15thMarch, 2013 by the Corporate Debtor. Separate deeds of guarantee were also executed by M/s Hind Agro Industries limited, its group companies, M/s Al Mashriq Exporters Pvt. Ltd and M/s Integrated Livestock Village Farm Pvt. Ltd. Two deeds of guarantee were also executed dated 16thMarch, 2013 by Mr. Sirajuddin Qureshi and Ms. Kiran Qureshi, Directors of the Corporate Debtor.

2.5 As default/ dishonour of various bills purchased/discounted by the consortium of banks started occurring, restructuring of the bills outstanding under the Export Bill Discounting / Purchase Facility along with due date development in ILC limits has been done on request of the Corporate Debtor by way of converting the overdue amount into Working Capital Term Loan (WCTL) and also guarantying moratorium for the period of interest in WCTL for one year and converting the said amount into Funded Interest Term Loan(FTIL). In addition to the above, the consortium of banks also granted

fresh Foreign Bill Negotiation / Purchase /Discount Facility to the extent of Rs. 50 Crores to the Corporate Debtor.

2.6 Subsequently, Consortium of Banks have again on request of Corporate Debtor restructured the Foreign Bill Negotiations/Purchase/Discount Facility into WCTL and for converting the one year interest in WCTL into FITL vide Working Capital Loan Agreement dated 18.09.2015 along with a Joint Deed of Hypothecation dated 18.09.2015. After this restructuring, along with the enhancement in the sanctioned limit of loan, the limit of the Financial Creditor herein has increased to Rs. 94.46 crore.

2.7 Despite repeated numerous restructuring done by the consortium of Banks with respect to credit facilities provided in bills negotiated/purchased/discounted, the Corporate Debtor continued to default in making the payment of the same and said bills became overdue. It is averred in the application as regards the continued default of the Corporate Debtor that it also failed to honour/repay the monthly installments towards WCTL and FITL. It also defaulted in making payments towards monthly interest accrued. Such continued default made the accounts of the Corporate Debtor with consortium of banks irregular and overdue.

2.8 In view of the above defaults, the accounts of the Corporate Debtor with the lender banks including the Financial Creditors herein were classified as NPA, by CBoI on 29thMarch, 2016, by PNB on 31stMarch, 2016, **by the Applicant (Dena Bank and now, Bank of Baroda) on 4th April, 2016** and by Indian Bank on 02.05.2016.

2.9 A loan recall notice upon the Corporate Debtor was issued by PNB on 04thMarch, 2016. CBoI issued a demand notice under Section

13(2) of SARFAESI Act on 06.04.2016. Applicant issued similar notice on 24.05.2016. Other banks also followed suit and issued respective notices.

2.10 In pursuance of classification of the accounts of the Corporate Debtor as NPA and considering that the Corporate Debtor had failed to pay the entire outstanding amount and further no repayment was being made by the Corporate Debtor, the Applicant herein issued loan recall notices under Section 13(2) of SARFAESI dated 29.04.2016, 24.05.2016,25.05.2016 and 06.04.2016. The Applicant also invoked the guarantees vide its letters dated 04.03.2016 and 13.04.2016. In pursuance of the above, the consortium of banks also preferred an Original Application (hereinafter referred as **OA**) against the Corporate Debtor and its Directors/Guarantors before the Hon'ble Debt Recovery Tribunal, New Delhi (hereinafter referred as **DRT**)

2.11 It is also stated in the Application that the Corporate Debtor, vide its letter dated 12.05.2017 had also offered a One Time Settlement (hereinafter referred as **OTS**) to the consortium banks, thereby acknowledging that as on the date of NPA, the outstanding was Rs.262.60Crores in which the amount belonging to the Financial Creditor in this case is mentioned at Rs. 74.71 crores. The said OTS proposal was received by the Applicant herein on 15.05.2017 and it was sanctioned on 27.09.2017. However, the Corporate Debtor failed to fulfill the terms of the OTS and also on gathering further information on the basis of the Forensic Audit Report that PNB got prepared, as informed by the Financial Creditor in the Rejoinder, the OTS was cancelled vide letter dated 20.02.2018 sent by the Financial Creditor to the Corporate Debtor.

2.12 In view of the facts and circumstances mentioned hereinabove, it is contended by the Financial Creditor that the Corporate Debtor has defaulted on repayment of the financial debt owed to the Applicant herein and hence, in its view as emphasized in the Application, CIRP of the Corporate Debtor in terms of Section 7(5)(a) of the IBC is pleaded to be started.

3 Countering the above details and disputing the claim of the Financial Creditor as discussed in the Application concluding that the Corporate Debtor defaulted on repayment of the Financial Debt, a detailed reply has been filed by the Corporate Debtor submitting as below,

3.1 The Respondent Corporate Debtor has alleged that the attempt to initiate IRP proceedings is malicious as the Applicant Financial Creditor has concealed a very material fact about a pre-existing litigation already going on by way of an Original Application bearing no. 387 of 2017- PNB &Ors. Versus Hind Agro Industries &Ors filed before Debts Recovery Tribunal- II, Delhi wherein the Consortium Banks have claimed an amount of Rs.333,79,17,151/- against which the Respondents filed counter-claim worth Rs.630.09 crores. It is claimed by the Corporate Debtor before the DRT that instead of making payment to lender banks, it has to recover money from them amounting to Rs. 296.3 crores (excess of its claim over the claim of the lending banks) as compensation due to losses suffered by it in business because of restrictions imposed by the banks by not providing finances when required. This matter is still pending before the DRT.

3.2 It is contended that there has been no acknowledgement of outstanding amount of Rs.262.60 crores before consortium banks in

the OTS proposal submitted before them as stated in the Application. It is further clarified that the consortium banks have settled for OTS amount of Rs.120 crores and hence, it is emphasized that averment made in this regard in the application is not correct.

3.3 The amount of Financial Debt computed at Rs.189,18,32,289.06 allegedly claimed to be in default in part IV of the Application is stated to be absolutely imaginary amount contending that the Applicant has made absolutely false entries in its books. The amount shown is claimed to be illegally and obnoxiously calculated. Apart from disputing the default amount of financial debt shown in the Application, the Corporate Debtor further contended that the OTS is still binding on all the parties as the same has not been cancelled or revoked and hence, the default amount claimed in the application is absolutely wrong and the same is denied.

3.4 Respondent tried to explain about its failure in complying with the OTS due to a fire breaking out at its Aligarh plant but it indicated about its intention to honour the OTS proposal and hence, have offered for the same before the DRT.The Respondent informed that it has to receive compensation from Corporation of Chennai to the tune of Rs. 93 crores with interest pursuant to the directions passed by the Hon'ble Supreme Court in favour of the applicant against Corporation of Chennai vide order dated 26 April 2017 in Civil Appeal no. 5610-11 of 2017 and 5612 of 2017 and this amount is offered to be paid in full to lender banks after receiving the same . It has also to receive insurance claim against damage due to fire in its Aligarh plant and the same has also been offered to be paid to lender banks after receipt.

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3.5 It is also pointed out that the Consortium Banks have also initiated proceedings under Section 14 of SARFAESI Act, 2002 before the District Magistrate, Aligarh wherein an adverse order was passed against Respondents including the Corporate Debtor herein and they have filed a petition with respect to this order, before the DRT- II, Delhi.

3.6 The illegal restraint imposed by Applicant on the Respondent's exports has also caused major losses to the Respondent and for which Respondent may initiate appropriate legal proceedings on the Applicant for the same.

3.7 Due to facing difficulties in running business because of restrictions put by banks for pursuing recover of their debts, it is stated in the reply that one interlocutory application was filed by the Respondent bearing no. 1816 of 2018 to clear the liability of the banks wherein they sought a relief that no coercive action be taken in the plant/farmhouses of Aligarh and Gurgaon by the respective DMs and they may also be allowed to export their meat products and the ban on Respondent's exports imposed by applicants be dispensed. The said application was allowed by DRT on 07.12.2018 and Rs.50 lakhs was asked to be paid by the Respondent. This order dated 07.12.2018 of DRT has been forcefully cited to show that the Respondent is making all the efforts to pay the debt as ordered by the DRT taking into consideration that the Respondent has to receive Rs. 93 crore from Chennai Corporations as per the order of the Hon'ble Supreme Court and also certain insurance claims are also pending to be received. In this regard, it is stated in the reply that as a matter of fact, the Respondents are able to pay their debts pursuant to the OTS and more specifically after the order passed by the Debts

Recovery Tribunal-Il vide dated 07.12.2018. It is also stated that this petition/application to start the present proceedings u/s 7 of I&B Act, 2016, was filed on 01.12.2018 i.e. before passing of the order dated 07.12.2018 by the Debts Recovery Tribunal-ll hence, in view of the Corporate Debtor, this petition even otherwise, turns infructuous.

3.8 It is forcefully submitted that the Applicant has initiated parallel proceedings after having initiated proceedings by way of OA No. 387 of 2017,proceedings under Section 14 of Securitization Act and ultimately, the present one under the I & B Code, 2016. This action of the Applicant as per the Respondent establishes that the proceeding initiated u/s 7 is on extraneous considerations. As regards starting of parallel proceedings at DRT and at NCLT, it is contended that incidentally, the Hon'ble High court at Allahabad has barred parallel proceedings in the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT) in a case between the State Bank of India (SBI) and an individual guarantor for Kanpur-based LML that had defaulted on Rs 73 crore in loans.

3.9 Maintainability of this Application is challenged on the ground that this Tribunal has no jurisdiction to adjudicate the present application in view of the fact that Respondents do not carry any business activities in Uttar Pradesh save for the slaughter house in Aligarh.

3.10 In the reply, it is also contended that no legal cause of action can be initiated by the Applicant against the Respondents, as they have not committed any act of insolvency against the Applicant. The Applicant, undoubtedly, is a part of the Consortium of Banks and has received its due share when OTS was complied with.

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3.11 No prior notice for initiating present proceedings or treating the Respondents as insolvent has ever been issued thereby the Applicant has violated the principle of natural justice.

3.12 It was also stated that the Applicant has failed to prove insolvency of Respondent and have relied upon their annual returns to showcase the same. It is also alleged that the default amount stated to be against the Respondent is imaginary and obnoxious. The Respondent also alleges that neither due process for declaring NPA was followed nor had the due date with respect to WCTL and FITL elapsed as the time limit was till December, 2022 and petition was filed in the starting of December only (01.12.2022).Since the interest rates were not revised, the amount claimed is exorbitant.

3.13 Giving the details of various ventures of ongoing business in para 19 of its reply, it is contended by the Corporate Debtor that Respondent is potential entrepreneur for exporting their products abroad and exported large quantity of meat abroad and are still able to obtain orders from various countries for the purpose of export. Details of certain projects being started by the Corporate Debtor are also given in reply and plea is taken that there is no default on the part of the respondents and all efforts are being made to pay the debt.

3.14 Finally in the reply, the Respondent submitted that at the outset, each and every fact set out by the Applicant deserves to be prima face proved in case the Respondents deny the same. Then, the Corporate Debtor submitted putting up its position as regards the facts stated by the Applicant in the application saying that be that as it may, it is specifically denied that by way of inter-se agreement, the Respondents extended 2ndcharge by way of mortgage over its

property situated at Village Chherat, Sudhial, Aligarh. There has been no acknowledgement before consortium banks acknowledging outstanding amount of Rs. 262.60crores in any manner whatsoever. Be that as it may, the consortium banks have settled OTS amount for an amount of Rs. 120 crores. It is also wrong and denied that the Respondent has consistently defaulted in making repayment of loan to the Applicant, and all efforts were made to repay loans as per the terms of OTS and as of date deposited total amount of Rs.10.50 crores and even after filing of this Petition/Application, Rs. 50 Lakhs stands deposited inclusive of the above mentioned amount. Therefore, prayer is made in the reply to dismiss the present application of the Applicant.

4. The Financial Creditor by filing a Rejoinder countered the above reply submitted by the Corporate Debtor and put forth further arguments to disprove the contention raised by the Corporate Debtor and strengthening its claim of Financial Debt as being in default. It is discussed as below,

4.1 The Applicant denied all averments made by the Respondent in its reply but has agreed that there was an error in calculating the default amount which is recalculated at Rs.131,35,68,143 as on 20.11.2018 in the Rejoinder. The respondent has also attached Annexure A1 in the rejoinder giving the revised calculation of the said amount.

4.2 In the Rejoinder, the Applicant has placed on record the certified true copy of proof of disbursements of loan and also took a plea that this amount of debt as being Financial Debt has been duly admitted by the Corporate Debtor by showing the amount of debt in their audited balance sheet for the financial year ending 31.03.2015 (the same has been annexed as Annexure A-2 in the Rejoinder) and also while

making proposal for OTS and entering into an agreement for OTS. The Applicant in Rejoinder has again pointed out that the Respondent has defaulted in repaying this loan amount considering the terms and conditions of the agreements and also the OTS hence, financial debt and default in payment of the financial debt is duly established in the instant case, the twin conditions that are held to be satisfied before admitting any application for CIRP u/s 7 of I&B Code, 2016 as pronounced by the Hon'ble Supreme Court in the case of ***M/s Innovative industries Ltd. Vs. ICICI Bank &Anr. (Civil Appeal Nos. 8337-8338 of 2017)*** and the same has been relied upon by the Applicant whiling making submission in Rejoinder.

4.3 The claim of the Respondent that litigation is already going on before other forums and thus, parallel proceedings cannot be sustained is contended to be unfounded. In support of its counter to such argument of the Respondent, the Applicant cited the decision of National Company Law Appellate Tribunal in case of ***Unigreen Global Private Limited Vs. Punjab National Bank, Company Appeal (AT) (Insolvency) No. 81 of 2017*** in which it is held that if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of RDDB Act, 1993 before a Debt Recovery Tribunal or appeal is pending before the Debt Recovery Appellate Tribunal, it cannot be a ground to reject an application under Section 10, if the application is complete. As under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default, the decision in respect of Section 10 will apply in case of matter relating to section 7 also. Therefore, this plea taken by the Respondent about barring of parallel proceeding has

been forcefully rebutted. In this regard, it is also submitted that Section 238 of I&B Code, 2016 also categorically states that the provisions of the I&B Code, 2016 shall override the provision of any other law in case of inconsistency with that law, including DRT Act or SARFAESI Act, 2002.

4.4 With respect to the claim of the Applicant that the Hon'ble Tribunal has no jurisdiction to entertain the suit, the Applicant has produced the copy of Certificate of commencement of Business along with copy of Memorandum and Article of Association and a copy of Master Data of Corporate Debtor which shows that the registered office of the Corporate Debtor is at Central Dairy Farm Complex, Anup Shahar Road, Aligarh, Uttar Pradesh- 202122 which falls under the jurisdiction of the Tribunal. In terms of Section 60(1), the CIRP or Liquidation of Corporate Debtor is to be filed before the National Company Tribunal having territorial jurisdiction over the place of registered office of Corporate Debtor which in the instant case falls within the jurisdiction of this Tribunal. Hence, this claim of the respondent is also countered forcefully.

5. We have heard the Ld. Counsels representing the Financial Creditor and the Corporate Debtor and also perused the material available in the records. As enumerated in the foregoing paras of this order and considered the facts of the case in the light of the provisions of Section 7 of the IBC and other connected provisions of this Code along with the judicial pronouncements made so far in this regard. We have also perused the details furnish by the Financial Creditor/Applicant in Part I, II, III, IV and V of application as prescribed in Form 1 of Rule 4, sub-rule 1 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 looking into the fulfillment of conditions as prescribed in the provisions of Section 7 of the IBC and relevant regulations

of the IBBI and other relevant connected provisions of IBC to decide about the admission of the present application under Section 7(5) for starting of CIRP of the Respondent/Corporate Debtor.

6. Firstly, we have examined the filing of this application being within limitation period or not. As per the Limitation Act, 1963, filing of an application under Section 7 of I&B Code, 2016 is to be within three years from the date of default. We find from the record and also as stated in Part IV of the Application in Form 1 that the date of default is 29.04.2016 when the Financial Creditor took a decision for complete recovery of the outstanding debt amount existing with the Corporate Debtor by issuing of loan recall notice. Subsequent to issuing of the above loan recall notice and initiating action under SARFAESI Act,2002 and filing of OA in DRT, an OTS proposal was made by the Corporate Debtor on 12.05.2017 in which the Applicant/Financial Creditor was also included alongwith other banks of consortium. In this OTS arrangement, an amount of Rs. 74.71 crore has been acknowledged to be outstanding to the Applicant. Finally, this OTS was sanctioned on 27.09.2017. However, this OTS arrangement has failed due to non-fulfillment of the terms and conditions of the OTS and a letter dated 20.02.2018 has been issued by the Applicant/Financial Creditor informing the Corporate Debtor about the failure of the OTS and thereafter, application has been filed by the Financial Creditor under Section 7 of the I&B Code on 01.12.2018. Considering these facts, it is clear that the application is filed well within the time limit of three years from the date of default as stated in Part IV being 29.04.2016.

7 As regards the Financial Debt for which default is claimed to have occurred by the Financial Creditor, it is declared in Serial No.1 of Part IV of the Application in Form 1 that a total amount of debt granted was Rs.95.54 crores and the first date of disbursement was on 19.01.1998 for an amount of Rs.10.02 lakhs. Apart from the debt granted by the Applicant/Financial Creditor to the

Corporate Debtor, the said Corporate Debtor has also availed various credit facilities from other banks also, namely PNB, Indian Bank and CBoI under multiple banking arrangement from time to time. The said multiple banking arrangement was converted into consortium arrangement and accordingly, the Corporate Debtor executed a common working capital consortium agreement on 27.04.2005. Subsequently, working capital consortium arrangement was kept on being revised and the last agreement and a joint deed of hypothecation was executed on 18.09.2015 and an inter-se agreement was also executed. In view thereof, the limits sanctioned by the consortium were fixed as under before the banks in consortium classified the respective loan accounts as NPA.

Bank	Sanctioned Limit
Punjab National Bank	Rs. 155.75 Crore
Dena Bank (Now Bank of Baroda being the Applicant/Financial Creditor)	Rs. 94.46 Crore
Indian Bank	Rs. 62.31 Crore
Central Bank of India	Rs. 25.5 Crore
	Rs. 338.02 Crore

8. Various disbursements have been made by the Applicant/Corporate Debtor as well as other banks of the consortium as per the sanctioned limits revised from time to time as discussed above. Proof of disbursement of the amount providing loan facility by the Financial Creditor to the Corporate Debtor has been annexed as Annexure-4 at Serial No.1 of Part IV of Application in Form 1, mostly providing working capital, packing credit disbursements and discounting of bill facility. These

documents annexed in Annexure-4 supports the financial debt provided by the Financial Creditor which is more than Rs. 1 lakh, the financial limit prescribed at the time when this application was filed under Section 7. From the year 2016 onwards, the Corporate Debtor started failing in honoring/repaying the monthly installments towards working capital term loan and other credit facilities such as packing credit disbursement, bill discounting etc. The Corporate Debtor even defaulted in making payments towards monthly interest. Due to failure of the Corporate Debtor in repaying the various loans taken by it from the banks in consortium, these banks started classifying the accounts of the Corporate Debtor as non-performing assets (NPA). CBoI classified the account of Corporate Debtor as NPA on 29.03.2016, then PNB classified the account of Corporate Debtor as NPA on 31.03.2016. Thereafter, on 04.04.2016, the Applicant/Financial Creditor classified the account of the Corporate Debtor as NPA and in the end Indian Bank has also classified the account of the Corporate Debtor as NPA on 02.05.2016. These banks have also issued loan recall notices to the Respondent/Corporate Debtor. The Applicant/Financial Creditor has issued a loan recall notice upon the Respondent/Corporate Debtor on 29.04.2016. As the Respondent/Corporate Debtor had failed to pay the entire outstanding amount of loan amount with the Applicant/Financial Creditor, it has also issued a notice dated 24.05.2016 under Section 13(2) of SARFAESI Act, 2002. The consortium of banks led by the PNB also preferred an OA against the Corporate Debtor, its Directors/Guarantors before the DRT, New Delhi in which consortium banks have claimed a sum of Rs. 333.79 crores, which at present is pending for adjudication before the DRT.

9. During the course of continuing of default in repayment of debts by the Corporate Debtor, it offered for OTS vide its letter dated 12.05.2017

to all the member banks of consortium including the Applicant/Financial Creditor. In this letter, while giving offer for OTS proposal, the Corporate Debtor has acknowledged total outstanding amount of working capital term loan of Rs. 262.26 crores pertaining to the four banks in consortium which have become NPA. The details of these outstanding NPA loans as mentioned in letter dated 12.05.2017 of the Corporate Debtor are as under:

Sl No.	**Name of Bank**	**Amount (Rs.)**
1.	Punjab National Bank	122.94 crores
2.	Dena Bank (now Bank of Baroda, the Applicant/Corporate Debtor)	74.71 crores
3.	Indian Bank	49 crores
4.	Central Bank of India	15.94 crores
	Total	262.26 crores

10. Looking to the above details of outstanding loans as mentioned in letter dated 12.05.2017 of the Corporate Debtor, we find that it has acknowledged the debt of Rs. 74.71 crore to be outstanding to the Applicant/Corporate Debtor as on 12.05.2017. This letter of the Applicant/Corporate Debtor is annexed as Annexure-30 as mentioned in Part IV of the Application. As against the above outstanding loans, the offer was made for a full and final OTS of Rs. 120 crores to cover all the consortium banks including the Applicant/Financial Creditor as admitted by the Corporate Debtor in its reply to the Application. After considering

the above proposal of the Corporate Debtor, OTS has been sanctioned on 27.09.2017. As regards to this OTS, the Financial Creditor has stated in the Rejoinder that as per the terms of the OTS, the Corporate Debtor was under obligation to deposit 5% of the OTS amount i.e. Rs. 1.81 crores with the Applicant/Financial Creditor immediately for conveying sanction of OTS, however, the Corporate Debtor failed to deposit the said amount hence, vide letter dated 20.02.2018,the Corporate Debtor was intimated that in view of the aforesaid breach of terms of the OTS, the OTS had failed, it has also been stated by the Applicant/Financial Creditor that a forensic audit was conducted by the lead bank i.e. Punjab National Bank on 05.10.2017 and in the Forensic Audit Report, it has been informed that the Corporate Debtor herein had indulged into fraud with the lender banks. Accordingly, the AGM of the Applicant/Financial Creditor vide letter dated 20.02.2018 recommended the Zonal Manager for cancellation of settlement/OTS with the Corporate Debtor.

The relevant portion of both the letters i.e. the letter dated 20.02.2018 written by the Assistant General Manager to the Zonal Manager of Dena Bank and another letter dated 20.02.2018 written by the Assistant General Manager of Dena Bank to M/S Hind Agro Industries Limited i.e. the Corporate Debtor are reproduced as under:-

(I) <u>letter dated 20.02.2018 written by the Assistant General Manager to the Zonal Manager of Dena Bank</u>

" With reference to the above, we would like to inform you that HO RMD Department has given the above approval vide Ref. No.HO/RMD/216/2017 dated 27.09.2017 for the said account, but till date we have not conveyed the sanction of HO RMD as this sanction was conditional (OTS should be conveyed on receipt of 5% of the offer amount i.e. 181.08 lacs from the borrower) and till date we have received only Rs. 164.42 lacs.

We would like to inform you that after sanction of this approval dated 27.09.2017 by HO RMD, we have received a copy of Forensic Audit Report of M/s Hind Agro Industries Ltd. Conducted through forensic audit by lead bank PNB as 05.10.2017. In this report, there are many serious observations made by the audit and at many places in the report, the auditor has clearly mentioned that M/s Hind Agro Industries Ltd. has done fraud with lenders.

Looking into this background, we recommend for cancellation of the approval of compromise settlement in the account of M/s Hind Agro Industries Ltd.

(II) <u>letter dated 20.02.2018 written by the Assistant General Manager of Dena Bank to M/S Hind Agro Industries Limited</u>

" We would like to inform you that our Head Office had given their approval on 27.09.2017 for compromise settlement in the account of M/s Hind Agro Industries Ltd. @ Rs.3621.60 lacs. The approval of HO was conditional wherein you are required to deposit 5% of OTS money i.e. Rs.181.08 lacs with us immediately for conveying sanction of OTS to you, but you failed to deposit the said amount with us. So the OTS approved by our H.O. is failed."

11. Looking to the above two letters, it is clear that the OTS has already failed and the Corporate Debtor is clearly in default in respect of the debt existing in the name of the Applicant/Financial Creditor in the books of the Respondent/Corporate Debtor of which, the amount of Rs.74.71 crore has been admitted by the Corporate Debtor itself in its OTS proposal letter dated 12.05.2017 as discussed above. Both these letters dated 20.02.2018 are annexed as A3 and A4 in the Rejoinder Affidavit filed by the Applicant/Financial Creditor.

12. As regards the total amount of debt under default, it has been computed by the Financial Creditor after taking into account the outstanding principal amount and interest charged on the said principal amount, computing the total amount at Rs.189,18,32,289/- (One Hundred Eighty Nine Crore Eighteen Lakh Thirty Two Thousand Two Hundred

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Eighty Nine) as on 20.11.2018. The above amount of Rs. 189,18,32,289/- computed as debt in default in Part IV of the Application, the Corporate Debtor has disputed this amount in its reply filed against the application. On objection raised by the Corporate Debtor, the Applicant/Financial Creditor has submitted in the Rejoinder that there was an inadvertent error in calculating the interest and as per the revised calculation, the total outstanding amount payable by the Corporate Debtor to the Applicant comes to Rs. 131,35,68,143/- as on 20.11.2018.This computation has also been provided in Annexure-A1 of the Rejoinder and reproduced below:-

COMPUTATION OF FINANCIAL DEBT IN NPA ACCOUNT: M/S HIND AGRO INDUSTRIES

(Principal outstanding + Contractual interest @ 17% w.e.f. 17.10.2015 + 2% Penal Interest + Legal Charges)

S1. No.	Nature of facility	Credit limit sanctioned	Account No.	Principal Ledger outstanding as on 20.11.2018	Contractual Interest @ 17%	2% Penal Interest	Total Dues payable by Hind Agro to Dena Bank
1	Packing Credit	19.00	0397RPC00002	18,91,99,999.80	133859595.83	15748187.74	338807782.57
2	Foreign Bills purchase	13.50	1125FBA00003 1125FBA00009	Nil	Nil	Nil	Nil
3	Working Capital Term Loan	51.53	112557023760	45,49,43,765.00	341578201.95	40185670.82	836707637.8
4	Funded Interest Term Loan	10.43	112557023759	7,64,38,002.00	54055276.60	6359444.31	136852722.9
5	Forward cover	1.08		Nil	Nil	Nil	Nil
6	There is an overdue Bill a/c-1125ODE00001 of Rs.53.00 Crore. The A/c shows the amount of unpaid overdue Foreign Bills (after crystallization) as OD. On restructuring of a/c, the outstanding amount of this A/c was transferred to WCTL A/c 112557023760 (as mentioned at Sr. No.3 here-in-above) Hence, there is NIL outstanding in the A/c on 20/11/18. (A/c Statement is enclosed)						
7	Legal Charges	(Approx.) DRT FEE-Rs 2.00 lacs+assessment of NCLT Exp-Rs 10.00 lac = Rs12.00 lacs					12,00,000.00
Grand Total Of Dues Payable by Hind Agro Industries to Dena Bank							1313568143

13. There may be a dispute on computation of the amount of debt in default, however, the fact remains that an amount Rs. 74.4 crore payable to

the Applicant/Financial Creditor has been admitted by the Corporate Debtor itself in its OTS proposal letter dated 12.05.2017 hence, **we are satisfied that there is a substantial amount of debt exceeding the prescribed limit existing at the time when this Application has been filed , which is under default to be paid by the Corporate Debtor to the Financial Creditor after the OTS has failed on 20.02.2018, therefore, the essential condition for admission of Application under Section 7 as there being a financial debt and after it has become due, the Corporate Debtor has defaulted on its payment , has been fully satisfied and the Application filed by the Applicant/Corporate Debtor has been found to be complete in all respect**. Hon'ble Supreme Court in the order dated 31.08.2017 in the case of **M/s Innovative Industries Ltd. Vs ICICI Bank &Anr (Civil Appeal No. 8337-8338 of 2017)** has held that if there is a financial debt owed to any Financial Creditor of the Corporate Debtor and the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted if such application is made under Sub-Section (1) in Form 1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 accompanied by documents and records required therein and complete in all respect. The relevant portion of this decision is reproduced as under:

> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records*

required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that 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, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the

pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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."

Considering these facts of the case, provisions of Section 7 of the I&B Code,2016and the decision of the Apex Court in this regard as discussed above, we find this application in Form 1 filed by the Financial Creditor fit for initiating the Corporate Insolvency Resolution Plan (CIRP) against the Corporate Debtor.

14. Now, coming to various objections raised by the Respondent/Corporate Debtor on the instant Application of the Applicant/Financial Creditor, we have considered each objection and did not find any of such objections maintainable. Our decisions in this regard are discussed in subsequent paras as follows.

15. First objection is in respect of challenging the jurisdiction stating that this Tribunal has no jurisdiction to entertain and adjudicate upon the present Petition/Application as neither the Respondent carry on their business within the State of Uttar Pradesh except running of a modern slaughter house in Aligarh, nor orders are received or payments are received or made in Uttar Pradesh. As further contended by it, none of the activities is carried out at Uttar

Pradesh that falls within the requirement of Jurisdiction for entertaining the present Petition/Application and even the Applicant did not provide any financial facility in Uttar Pradesh. This contention of the Corporate Debtor has not been found to be tenable. With regard to the territorial jurisdiction of the NCLT, section 60(1) of the IBC provides that the relevant bench of the NCLT, where the registered office of the corporate person is located, shall have territorial jurisdiction in regard to insolvency resolution and liquidation litigation. It is undisputed fact that the Corporate Debtor being a company is registered with RoC Kanpur and its registered office, when the Application under consideration was filed existed at Central Dairy Farm Complex Anup Shahar Road Aligarh Uttar Pradesh 202112 and presently also, the same address is the registered office of the Corporate Debtor. Therefore, we are satisfied that this Tribunal has jurisdiction to adjudicate upon the present Application.

16. The second objection raised is regarding maintainability of the Petition/Application taking the ground that it is not maintainable for want of legal qualification as in view of the Corporate Debtor, neither the Applicant has prima facie established its standing or any legally sustainable cause of action for maintaining this petition as the Respondents have not committed any act of insolvency as mandated for maintaining this Application. It is further argued in the reply that the Applicant has also failed to prima facie point out act of insolvency, its grounds to file the present petition nor the Applicant has successfully established inability of the Respondents to pay the OTS hence, in view of the Respondent, the Applicant is not entitled to maintain this petition as it has also failed to fulfill the requisite conditions to maintain the same. This objection of the Respondent/Corporate Debtor is also not found valid as for admission of the Petition/Application u/s 7 of the I&B Code, 2016 in the case of a corporate debtor that commits a default of repayment 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 y**et become due in the sense that it is payable at some future date** as held by the Hon'ble Supreme Court in the case of ***Innovative Industries Ltd (Supra).*** We have already considered and discussed in details from foregoing paras 7 to 13 that financial debt from the Applicant/Financial Creditor to Corporate Debtor and its subsequent default is established from the documents attached with the Application. As of till date, this debt is not interdicted by any law and the matter in DRT is still pending for adjudication and there is no bar or stay on recovery of the debt. There is no doubt on this debt having become due as it has already been declared NPA as well as recall notice has been issued. Thereafter, even OTS has failed and a clear default in payment of this Financial Debt has been found. Despite making of all sort of promises by the Corporate Debtor and directions issued by the DRT in its order dated 07.12.2018, entire repayment of the debt that had become due, has not been made till date. Moreover, such condition of establishing the act of insolvency on part of the Corporate Debtor before admitting the application for insolvency resolution plan as contended by the Respondent/Corporate Debtor, has not been found to be a requisite condition as per the provisions of section 7.After adjudicated upon by the Hon'ble Supreme Court in the case of the ***Innovative Industries Ltd. (Supra),*** only twin conditions of there being a debt due for repayment and the said repayment of the debt to be in default to be established for admitting the application u/s 7 for CIRP, leaves no scope for any ambiguity. Therefore, this objection of the Corporate Debtor arguing about the failure of the Financial Creditor to prima facie point out act of insolvency on part of the Corporate Debtor, has not been found to be tenable and hence, is rejected**.**

17. The next objection is on not giving prior notice for initiating present proceedings or treating the Respondents as insolvent. In view of the Respondent/Corporate Debtor, no such notice has ever been issued and thereby the Applicant has violated the principle of natural justice. Such objection raised by the Corporate Debtor is totally frivolous as there is no such requirement of law under the I&B Code, 2016. Though, in case of Operational Creditor, it is provided to issue demand notice u/s 8 before filing of application u/s 9 but there is no such requirement for the Financial Creditor to initiateproceedings under Section 7 of the Code. Therefore, this objection is rejected out rightly.

18. The next objection of the Respondent/Corporate Debtor is regarding initiation of parallel proceedings by way of OA No. 387 of 2017 before the DRT, proceedings under Section 14 of Securitization Act and ultimately, the present one under the I & B Code, 2016, which as per the Respondent establishes that the proceeding initiated u/s 7 is on extraneous considerations. As regards starting of parallel proceedings at DRT and at NCLT, it is contended that incidentally, the Hon'ble High court at Allahabad has barred parallel proceedings in the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT) in a case between the State Bank of India (SBI) and an individual guarantor for Kanpur-based LML that had defaulted on Rs 73 crore in loans, as recent as Sep 2017. This objection of the Respondent is also not found valid as the decision cited by the Respondent is not relating to Corporate Insolvency but in respect of individual guarantor who cannot be burdened with dual proceedings to honour the guarantee given by him in respect of the corporate debt. The case in the present application against the Corporate Debtor herein is different. It is regarding the debt directly owed by it to the Financial Creditor and would be governed by the provision of section 7 as we have already considered and decided. The case of personal guarantor is governed by the provision of section 95 of the I&B Code, 2016 which is

different than the provisions of section 7. In this regard , the Applicant has referred to a decision of the Hon'ble NCLAT in the case of ***Unigreen Global Private Limited Vs. Punjab National Bank(supra)***in which it has been held while dealing with corporate insolvency u/s 10 of the I&B Code, 2016, that if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal is pending before the Debt Recovery Appellate Tribunal, it cannot be a ground to reject an application under Section 10, if the application is complete. The relevant part of this decision is reproduced as under:-

> ***"20.*** *Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Subsection (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in "Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as "The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority".*
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> *24. 1st Respondent -financial creditor has referred to pendency of a Civil Suit between 'Mayank Maheshwari v. Anurag Garg' and another suit between 'Sh. Jagar Nath Mehto v. Vedika Overseas Tradex Ltd.'. Pendency of such suits cannot be a ground to deny admission of an application under Section 10, if all the information in terms of Section 10 of the I& B Code and Form 6 has been supplied by a Corporate Applicant/Corporate Debtor and the application is otherwise complete. Non-mentioning of suit(s) pending between the parties cannot termed to be suppression of facts nor can be a ground to reject the application. In fact, once the application under Section 10 is admitted, all such related proceedings, including suits for recovery of moveable or immovable property of the Corporate Debtor and other proceeding cannot proceed further in any Court or Tribunal or Authority in view of order of 'moratorium' as may be declared under Section 13 and prohibition that may be imposed under Section 14 of I & B Code.*

25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a Comp. App. (AT) (Insolvency) No. 81/2017 suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete."

As both Sections 7 and 10 deal with corporate insolvency, fulfillment of two conditions before initiating CIRP are common in both sections i.e. the debt is due and there is a default on payment of debt. Therefore, decision in respect of Section 10 will apply in case of matter relating to section 7 also. Accordingly, the plea taken by the Respondent about barring of parallel proceeding before NCLT in case such matter is also pending before the DRT, has not been found justified.

In another decision by the NCLT Ahmedabad Bench in case of ***SREI Infrastructure Finance Ltd V/s K.S. Oils Ltd (C.P. (IB) NO. 32/7/NCLT/AHM/2017) dated21.07.2017***,similar view has been taken while, holding as under:-

" *The pendency of proceedings before Debt Recovery Tribunal and initiation of action under SARFAESI Act by other secured creditors was no ground to reject application. Provisions of section 7 read with Rule 4 do not contemplated notice to other creditors, secured or unsecured, operational creditor or financial creditor. There is every opportunity for other Creditors of any class to refer their claims before the Interim resolution professional in case of admission of this application. Therefore, in the absence of any provision enjoining upon this authority to issue a notice to other creditors, no notice need to be issued to other creditors. The main object of enacting 'Insolvency Code' is to have corporate insolvency resolution plan in respect of corporate debtors with an intention to revive the operations of the corporate debtor without straightway going to liquidation. In the process of resolution, every creditor has an opportunity and interest of every stakeholder is to be taken into consideration. Therefore, to say that corporate insolvency*

resolution process is not in public interest in all cases is not correct. In the case on hand Corporate Debtor is unable to pay the debts to several creditors including the present financial creditor. Therefore, to keep the corporate debtor away from the resolution process is, not in public interest including the stakeholders. Therefore, the argument of respondent may not suit to the facts of this case".

Facts of above cited case is quite similar to the present case under consideration and hence, the conclusion drawn in the above cited case is very much applicable to the case under consideration. We also hold the similar view that pendency of proceeding before DRT is not a ground for rejection of application of the creditor under I&B Code, 2016. Even with the pending DRT application, creditor can file petition before the NCLT under I&B Code, 2016. In this regard, provision of Section 238 of I&B Code, 2016 will also be applicable, which provides that the provisions of the I&B Code, 2016 shall override the provision of any other law in case of inconsistency with that law, including DRT Act or SARFAESI Act, 2002. Therefore, in our considered opinion, pendency of any proceeding with DRT in respect of the recovery of any Financial Debt, shall not affect the outcome of proceeding under I&B Code, 2016 in respect of the same Debt while taking decision on the application filed u/s 7 of I&B Code, 2016 for initiating CIRP against the concerned Corporate Debtor. Therefore, this objection of the Corporate Debtor is also rejected.

19. The next issue raised forcefully by Ld Counsel of Corporate Debtor is regarding OTS being still in operation and payment of debt being dependent on the recovery of Rs.93 crore from Chennai Corporation as claimed to have been held in an order passed by the DRT on an interlocutory application filed by the Corporate Debtor during pendency of debt recovery suit filed before the DRT by the consortium of the banks led by PNB. On examination, we found that the Corporate Debtor filed one IA No.1816/2018 in SA116/2017 decided by DRT-

II, Delhi vide order dated 7th December, 2018. We have examined this order and also considered the arguments of the Ld. Counsel of the Corporate Debtor raised before us in this regard. The aforesaid IA was filed in DRT-II, Delhi in SA 116/2017. The Securitization Application No. 116/2017 was filed for quashing the actions initiated by the respondent banks under Section 13(2), 13 (4) and Section 14 of SARFAESI Act. The said IA was filed in the aforesaid securitization application by the security applicants i.e. the (Respondent/Corporate Debtor) wherein making a prayer to direct the respondents (Bank) PNB to allow them for exporting of meat products to abroad on 5 % tagging on each export bill with an undertaking that major amount out of the entire amount be received from Chennai Corporation and insurance claim would recently be remitted to the respondents (Bank). The prayer therein was also made for restraining the District Magistrate, Aligarh and Gurugram from taking coercive action. The DRT-II, Delhi, allowed the aforesaid IA No.1816/2018 and the security applicant (respondent corporate debtor herein) was directed to comply with the order dated 8th August, 2018 within 30 days from today, and thereafter, start export of meat on opening an Escrow Account with the respondent Punjab National Bank through which the exports shall be routed and on each consignment, the respondent bank shall be entitled to 5 % tagging.

20. We thus, observe that the prayer in the IA No. 1816/2018 was limited to the extent of seeking directions to the respondents to allow them for exporting of meat products to abroad. It is also relevant to observe that DRT-II, Delhi has passed an interim order dated 8th August, 2018 directing the security applicant (respondent corporate debtor herein) to deposit Rs. 1 crore within one week and Rs. 2 crore in next week and the respondent bank PNB was restrained to take possession of the secured assets till 21stAugust, 2018, on which date neither the security applicant sought extension of interim relief nor the Tribunal (DRT-II,

Delhi) extended the interim relief on its own. With this observation, we are unable to see any force in the contention of the Ld. Counsel representing the Corporate Debtor that since the matter is pending in DRT-II, Delhi by way of the aforesaid Securitization Application and that an order dated 7th December, 2018 was passed in IA No.1816/2018 would have any bearing on the merits of the present application filed by the applicant financial creditor under Section 7 of IBC. The proceedings in DRT thus, have no impact or bearing on the present case.

We also cannot remain oblivious to the facts that vide an order dated 23rd January, 2023, this Tribunal had directed the Corporate Debtor to file an affidavit in the following terms:

> *" The arguments have been advanced by the Ld. Counsels representing the parties.*
>
> ***The Ld. Counsel representing the Corporate Debtor undertakes to file an affidavit to the effect as to what is the amount of debt which is due according to them and the amount which they are going to receive from Chennai Corporation and as to when they are going to receive this amount giving the details of efforts so far made for recovery and keeping in view such efforts after the order of Hon'ble Supreme Court and also give the details of the amount that are going to be disbursed to the financial creditor out of the amount going to be received from Chennai Corporation.***
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> *Let the affidavit be filed within a period of one week and matter be listed for further hearing on 1st February, 2023.*

21. It has been pointed out by the Registry that no such affidavit or response in compliance of the aforesaid order dated 23rd January, 2023 has been filed or received in the Registry from the Corporate Debtor. This would also imply that the amount which is claimed to be receivable from Chennai Corporation and the amount going to be disbursed to the present Financial Creditor will not have any impact upon their right to seek relief under 7 of the Code. In the absence of

the affidavit in compliance of the aforesaid order dated 23rd January, 2023, we rather find force in the contention of the Ld. Counsel for the Financial Creditor that the amount from the Chennai Corporation does not seem to be realizing as it is stated to be pending since 2017 and even if it is, the amount of debt which has already fallen due is not going to be satisfied. Therefore, the amount of debt and the same having become due from the Respondent/Corporate Debtor is validated.

22. After analysing the above facts, we find that the amount of debt infused by the Financial Creditor to the Corporate Debtor alongwith charging of interest for which total amount under default is shown at Rs.1,31,35,68,143/- in Annexure A-1 of the Rejoinder of Applicant, is on the basis of "time value of money" in terms of Section 5(8) of IBC. Based on the documents attached by the Applicant-Financial Creditor in Part V of Form 1, it has been clearly shown to us that the repayment of financial debt is under default and for its recovery, recall notice has already been issued by the Applicant-Financial Creditor. The application filed in Form 1 is also found to be complete in all respect. Therefore, we find this application by the Financial Creditor fit for initiating the Corporate Insolvency Resolution Plan (CIRP) against the Corporate Debtor.

23. As regards the Interim Resolution Professional (IRP), the Applicant/Financial Creditor proposed the name of Mr. Alok Dhir as IRP in Part III of the original application in Form 1. However, vide order dated 23.05.2022, Mr. Paramjeet Singh Bhatia was proposed as the new IRP. Consent of the IRP Mr. Paramjeet Singh Bhatia is annexed in Form 2 by way of an Affidavit. The Law Research Associate, Ms. Aditi Kharbanda, has checked the credentials of said proposed IRP and there is nothing adverse against him. Therefore, we hereby appoint Mr. Paramjeet Singh Bhatia, having Registration No. IBBI/IPA-001/IP-P00961/2017-2018/11582 R/o C-39, Surya Nagar, Ghaziabad, Uttar Pradesh, 201011 Email: bhatiaparam.s@gmail.com as IRP.

-Sd-

-Sd-

The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

24. In the given facts and circumstances, the present application being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lesser, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in

consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be."

25. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

26. We also direct the ex-management and promoters of the Corporate Debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The Interim Resolution Professional is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner.

27. We direct the Financial Creditors to deposit a sum of Rs.2,00,000/- (Rupees Two lakh Only) with the Interim Resolution Professional, to

meet the expense to perform the functions assigned to him in accordance with Regulation 6(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors (CoC) as7accounted for by the Resolution Professional (RP) on the conclusion of CIRP. CoC shall appoint RP at the earliest as per the terms of Section 22 of IBC.

28. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

29. The present petition is allowed and admitted accordingly. List the matter on 17.04.2023 for filing of the progress report/further proceeding.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

03rdMarch, 2023

Priya Agarwal
(Stenographer)