

FREE OF COST COPY

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.243/BB/2018

U/s 7 of IBC, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016 &

I.A. No.438 of 2019

U/s 60(5) of IBC, 2016 and

Section 424(2) Of Companies Act, 2013

R/w Rule 11 of NCLT Rules, 2016

In the matter of:

M/s. Pridhvi Asset Reconstruction and
Securitisation Company Limited
Registered address at
D. No. 1-55, 4th Floor, Wing – I,
Raja Praasadamu, Masjid Banda Road,
Kondapur, Hyderabad – 500 084.

- Petitioner/Financial Creditor

Versus

M/s. Sagar Power (Neerukatte) Pvt. Ltd.
2nd floor, Venkatadri Complex,
83, Richmond Road,
Bangalore – 560 025.

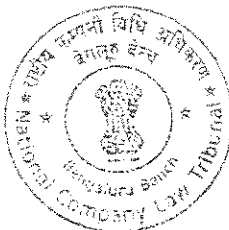
- Respondent/Corporate Debtor

Date of Order: 27th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. Sharan A. Kukreja, Advocate
Mr. Siddharth Tiwary, Advocate
Ms. Sindhu Rao, Advocate
Ms. Tanvi Kishore, Advocate
M/s. Cyril Amarchand Mangaldas

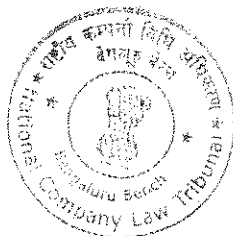


For the Respondent : Mr. Dhyan Chinnappa, Learned Senior Counsel
Mr. S Vivekananda, Advocate
Mr. Kumar Anurag Sinha, Advocate
Mr. Hari Babu Thota, PCS
Mr. Dushyanth Kumar, PCS

Per: Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

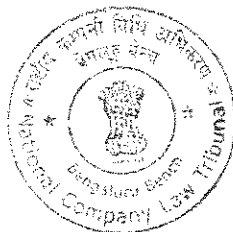
ORDER

- 1) The Company Petition bearing No. C.P. (IB) 243/BB/2018 is filed by M/s.Pridhvi Asset Reconstruction and Securitization Company Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Sagar Power (Neerukatte) Private Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed a default of Rs.169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore, Eighty Two Lakh, Sixty Eight Thousand, Three Hundred and Sixty One) in respect of the PNB Facilities and OBC Facilities as on July 31, 2018.
- 2) Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
 - a) M/s. Pridhvi Asset Reconstruction and Securitization Company Limited (Petitioner/Financial Creditor) a company incorporated under the Companies Act, 1956 and registered as a securitization and asset reconstruction company pursuant to Section 3 of the Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), acting in its capacity as a trustee (the

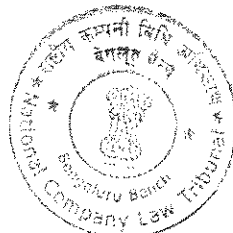


"Trustee") on behalf of the PARAS- SPPLOBC-053 TRUST ("PARAS Trust 1"), a trust declared under the Trust Deed dated March 08, 2016 and the PARAS-SPPL-049 TRUST ("PARAS Trust 2"), a trust declared under the Trust Deed dated November 7, 2015 (the "Lenders" or the "PARAS Trust"). Date of incorporation of the Trustee is March 27, 2007. The Corporate Identification Number of the Trustee is U67120TG2007PLC053327. The registered office of the Trustee is D. No. 1-55, 4th Floor, Wing – I, Raja Praasadamu, Masjid Banda Road, Kondapur, Hyderabad – 500 084 India.

- b) M/s. Sagar Power (Neerukatte) Private Limited (Respondent/ Corporate Debtor) is a Company incorporated on February 5, 2003 bearing CIN No.U40101KA2003PTC031550 and having its registered office at 2nd floor, Venkatadri Complex, 83, Richmond Road, Bangalore – 560025, India. It's Authorised Share Capital is Rs. 30,00,00,000/- (Rupees Thirty Crores only) and Paid-up Capital of the Company is Rs. 29,57,81,500 (Rupees Twenty Nine Crores fifty Seven Lakhs Eighty One Thousand Five Hundred only).
- c) An aggregated amount of Rs.71,02,00,000/- (Rupees Seventy One Crore, Two Lakh, only) from a consortium of lenders, namely Punjab National bank ("PNB") and Oriental Bank of Commerce ("OBC") has been sanctioned under the respective loan agreements.
- d) The trustee has acquired financial assets, being in the nature of term credit facilities granted to the Corporate Debtor by PNB and OBC on the terms and conditions set out under the following documents:



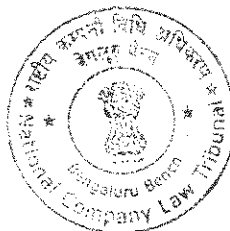
- i. Loan agreement dated December 14, 2006 entered into between PNB, OBC and the Corporate Debtor ("**Loan Agreement 1**"), whereby an amount of Rs. 54,00,00,000 (Rupees Fifty Four Crore only) was sanctioned to the Corporate Debtor ("**Facility 1**") read with: (a) the sanction letter issued by OBC dated October 13, 2006 (sanctioning an amount of Rs. 19,00,00,000 (Rupees Nineteen Crore only) ("**OBC Sanction Letter 1**") and (b) the sanction letter issued by PNB dated November 13, 2006 (sanctioning an amount of Rs. 35,00,00,000 (Rupees Thirty Five Core only) ("**PNB Sanction Letter 1**"). Copies of the aforesaid documents have been collectively annexed herewith at **Exhibit - 3**.
- ii. Loan agreement dated May 07, 2008 entered into between PNB, OBC and the Corporate Debtor ("**Loan Agreement 2**"), whereby an amount of Rs. 7,02,00,000 (Rupees Seven Crore, Two Lakh only) was sanctioned to the Corporate Debtor ("**Facility 2**") read with: (a) the sanction letter issued by OBC dated April 30, 2008 (sanctioning an amount of Rs. 2,47,00,000 Rupees Two Crore, Forty Seven Lakh only) ("**OBC Sanction Letter2**"); and (b) the sanction letter issued by PNB dated April 28, 2008 (sanctioning an amount of Rs. 4,55,00,000 Rupees Four Crore, Fifty Five Lakh only) ("**PNB Sanction Letter 2**"). Copies of the aforesaid documents have been collectively annexed herewith at **Exhibit -4**.
- iii. Loan agreement dated January 10, 2009 entered into between PNB, OBC, UCO Bank ("**UCO**") and the



Corporate Debtor ("**Loan Agreement 3**"), whereby an amount of Rs. 13,84,00,000 (Rupees Thirteen Crore, Eight Four Lakh only) was sanctioned to the Corporate Debtor ("**Facility 3**"). read with: (a) the sanction letter issued by OBC dated December 30, 2008 (sanctioning an amount of Rs. 2,24,00,000 (Rupees Two Crore, twenty Four Lakh only) ("**OBC Sanction Letter3**"); (b) the sanction letter issued by PNB dated November 28, 2008 read with sanction letter dated December 5, 2008 (sanctioning an amount of Rs. 4,60,00,000 (Rupees Four Crore, Sixty Lakh only) ("**PNB Sanction Letter 3**"). Copies of the aforesaid documents have been collectively annexed herewith as Exhibit - 5.

- iv. Loan agreement dated November 18, 2010 entered into between PNB, OBC, UCO and the Corporate Debtor ("**Loan Agreement 4**"), whereby an amount of Rs. 3,56,46,000 (Rupees Three Crore, Fifty Six Lakh, Forty Six Thousand only) was sanctioned to the Corporate Debtor ("**Facility 4**") read with: (a) the sanction letter issued by OBC dated December 30, 2009 (sanctioning an amount of Rs. 56,00,000 (Rupees Fifty-Six Lakh only) ("**OBC Sanction Letter 4**"); (b) the sanction letter issued by PNB dated December 9, 2009 (sanctioning an amount of Rs. 2,60, 00, 00 (Rupees Two Crore, Sixty Lakh only) ("**PNB Sanction Letter 4** "). Copies of the aforesaid documents have been collectively annexed herewith as Exhibit-6.

Facility 1, Facility 2, Facility 3, and Facility 4 are hereinafter referred to as the "**Facilities**".



Loan Agreement 1, Loan Agreement2, Loan Agreement 3, and Loan Agreement 4 are hereinafter collectively known as the "**Loan Agreements**".

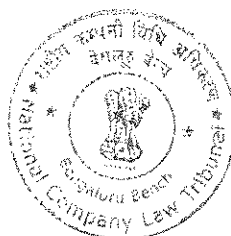
e) Under the Loan Agreements, PNB's exposure to the Corporate Debtor was as follows:

- (i) The sanctioned amount under Loan Agreement 1 read with PNB Sanction Letter 1 is Rs. 35,00,00,000 (Rupees thirty Five Crore only), was initially disbursed on December 20, 2006 ("**PNB Facility 2**").
- (ii) The sanctioned amount under Loan Agreement 2 read with PNB Sanction Letter 2 is Rs. 4,55,00,000 (Rupees Four Crore, Fifty Five Lakh only, was initially disbursed on May 09, 2008 ("**PNB Facility 2**")
- (iii) The sanctioned amount under Loan Agreement 3 read with PNB Sanction Letter 3 is Rs. 4,60,00,000 (Rupees Four Crore, Sixty Lakh only), was initially disbursed on December 31, 2008 ("**PNB Facility3**").
- (iv) The sanctioned amount under Loan Agreement 4 read with PNB Sanction Letter 4 is Rs. 2,60,00,000 (Rupees Two Crores, Sixty Lakh only), was initially disbursed on December 29, 2009 ("**PNB Facility** ").

PNB Facility 1, PNB Facility 2, PNB Facility 3, PNB Facility 4 are hereinafter referred to as the "PNB Facilities".

f) Under the Loan Agreements, OBC's exposure to the Corporate Debtor was as follows:

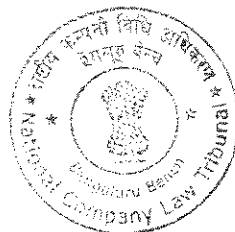
- (i) The sanctioned amount under Loan Agreement 1 read with OBC Sanction Letter 1 is Rs. 19,00,00,000 (Rupees Nineteen Crore only), was initially disbursed on December 20, 2006 ("**OBC Facility 1**").



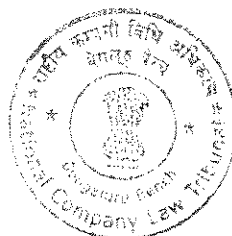
- (ii) The sanctioned amount under Loan Agreement 2 read with OBC Sanction Letter 2 is Rs. 2,47,00,000 (rupees Two Crore, Forty Seven Lakh only), was initially disbursed on May 09, 2008 ("**OBC Facility 2**").
- (iii) The sanctioned amount under Loan Agreement 3 read with OBC Sanction Letter 3 is Rs. 2,24,00,000 (Rupees Two Crore, Twenty Four Lakh only), was initially disbursed on December 31, 2008 ("**OBC Facility 3**").
- (iv) The sanctioned amount under Loan Agreement 4 read with OBC Sanction letter 4 is Rs. 56,00,000 (rupees Fifty Six Lakh only), was initially disbursed on March 30, 2010 ("**OBC Facility 4**").

OBC Facility 1, OBC Facility 2, OBC Facility 3, OBC Facility 4 are hereinafter referred to as the "**OBC Facilities**".

- g) Pursuant to the assignment agreements dated November 20, 2015 (the "**PNB Assignment Agreement**"), and March 11, 2016 (the "**OBC Assignment Agreement**"), the Trustee acting in its capacity as a trustee on behalf of the PARAS Trusts acquired all rights, title and interest in relation to the PNB Facilities and the OBC Facilities (including, without limitation, the security interest available to PNB and OBC in respect of the PNB Facilities and the OBC Facilities), pursuant to which the Trustee became a financial creditor of the Corporate Debtor in respect of, inter alia, the PNB Facilities and the OBC Facilities.
- h) In Respect of the Facilities, the loans were accelerated by way of a notice issued under Section 13(2) of the SARFAESI Act dated September 26, 2011 issued by PNB (on behalf of PNB and OBC) to the Corporate Debtor.
- i) In respect of the PNB Facilities:

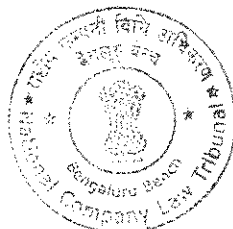


- (i) The principal outstanding amount under PNB Facility 1 as on September 30, 2015, which is the effective date of the assignment of the PNB Facilities ("**Effective Date of the PNB Assignment**") is Rs. 51, 43,00,000 (Rupees Fifty One Crore, Forty Three Lakh only). The defaulted amount under PNB facility 1 as on July 31, 2018 is Rs. 71,19,99,543 (Rupees Seven One Crore, Nineteen Lakh, Ninety Nine Thousand Five Hundred and forty Three only), which includes without limitation, principal amount, interest, applicable costs. The initial date of default by the Corporate Debtor with respect to PNB Facility 1 is January 1, 2010.
- (ii) The principal outstanding amount under PNB Facility 2 as on the Effective date of the PNB Assignment is Rs. 10,20,00,000 (Rupees Ten Crore, Twenty Lakh only). The defaulted amount under PNB Facility 2 as on July 31, 2018 is Rs. 15,73,28,310 (rupees Fifteen Crores, Seventy Three Lakh, Twenty Eight Thousand, Three Hundred and ten rupees only), which includes without limitation, principal amount, interest; applicable costs. The initial date of default by the Corporate Debtor with respect to PNB Facility 2 is January 1, 2010.
- (iii) The principal outstanding amount under PNB Facility 3 as on the Effective Date of the PNB Assignment is Rs. 10, 52, 00,000 (rupees Ten Crore, Fifty Two Lakh only). The defaulted amount under PNB Facility 3 as on July 31, 2018 is Rs. 16,45,04,667 (Rupees Sixteen Crore, Forty Five Lakh, Four Thousand, Six Hundred and Sixty Seven), which includes without limitation, principal



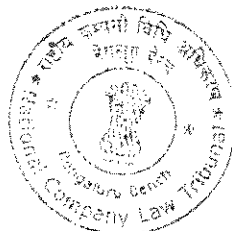
amount, interest, applicable costs. The initial date of default by the Corporate Debtor with respect to PNB Facility 3 is January 1, 2010.

- (iv) The principal outstanding amount under PNB Facility 4 as on the Effective Date of the PNB Assignment is Rs. 7,03,00,000 (rupees Seven Crore, Three Lakh Only). The defaulted amount under PNB Facility 4 as on July 31, 2018 is Rs. 11,94,49,820 (Rupees Eleven Crore, Ninety Four Lakh, Forty Nine Thousand, Eight Hundred and Twenty only), which includes without limitation, principal amount, interest, applicable costs. The initial date of default by the Corporate Debtor with respect to PNB Facility 4 is January 1, 2010.
- j) In respect of the OBC Facilities, the principal outstanding amount under OBC Facilities as on February 28, 2015, which is the effective date of the assignment of the OBC Facilities ("Effective Date of the OBC Assignment") is Rs. 40,17,69,639 (Rupees Forty Crore, Seventeen Lakh, Sixty Nine Thousand, Six Hundred and thirty Nine only). The total defaulted amount under OBC Facilities as on July 31, 2018 is Rs. 54,49,86,021 (Rupees Fifty Four Crore, Forty Nine Lakh, Eighty Six Thousand and Twenty One only), which includes without limitation, principal amount, interest; applicable costs. The initial date of default by the Corporate Debtor with respect to OBC Facilities is January 1, 2010.
- k) The Corporate Debtor was unable to service the debt under the Loan Agreements and the account was declared a non-performing asset on March 31, 2010. Since the Corporate Debtor Further failed to comply with the accepted terms of the



sanction letters and defaulted in payment obligations, PARAS issued as following default notices:

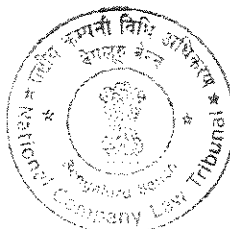
- (i) Default notice dated September 25, 2017 bearing reference number 300/2017/653, recalling an amount of Rs. 151,67,22,706 (Rupees One Hundred Fifty One Crore, Sixty Seven Lakh, Twenty Two Thousand, Seven Hundred and Six only), outstanding as on August 31, 2017.
 - (ii) Default notice dated June 04, 2018 bearing reference number 300/2018/444, recalling an amount of Rs. 164,43,83,776 (rupees One Hundred and Sixty Four Crore, Forty Three Lakh Eighty Three Thousand, Seven Hundred Seventy Six), outstanding as on April 30, 2018.
- l) The total outstanding amount in respect of the PNB Facilities and OBC Facilities as on July 31, 2018 is Rs. 169,82,68,361 (Rupees One Hundred and Sixty Nine Crore, Eighty Two Lakh, Sixty Eight Thousand, Three Hundred and Sixty One).
- m) As per the Trustee (acting in its capacity as a trustee on behalf of the PARAS Trusts), the estimated value of the securities (except the personal guarantees and movable properties), as per a valuation report prepared by K. Ameenaiyah on December 26, 2017, is valued at Rs. 65,84,89,000 (Rupees Sixty Five Crore, Eighty Four Lakh, Eighty Nine Thousand only).
- 3) The Respondent has filed Statement of Objections dated 14.12.2019, inter alia, contending as follows:
- a) The Corporate Debtor submits that it is a Solvent Company and has about 300 employees working in different capacities with the Company. The Corporate Debtor is carrying on its business and



trying to generate revenue from the power project so commissioned. The Claim of Rs. 169 Crores is not lawful and does not possess legal sanctity. The Corporate Debtor is engaged in the business of growing of flowers and other agricultural products with operations spread across Ethiopia, Kenya and India.

- b) It is humbly submitted that the Corporate Debtor had taken loans from the Consortium of Punjab National Bank and Oriental Bank of Commerce for the purpose of infusion of funds in the power project so set up by the Corporate Debtor. There were multiple loan agreements by virtue of which loans were sanctioned by the said consortium of Banks. The following is the statement of the loans taken from the Consortium of Banks:

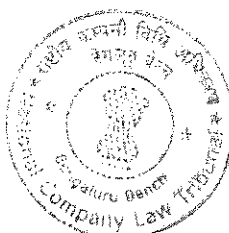
S. No.	Particulars	Amount
1.	<p>Loan availed from the consortium of Banks i.e. from Punjab National Bank and Oriental Bank of Commerce :</p> <p>From PNB</p> <p>TL-1 : 18.11.2006 – Rs. 35 Crores</p> <p>TL-1 : 26.04.2008 – Rs. 4.55 Crores</p> <p>TL-1 : 05.12.2008 – Rs. 4.6 Crores</p> <p>TL-1 : 22.12.2009 – Rs. 2.6 Crores</p> <p>Total Rs. 46.75 Crores</p> <p>From OBC</p> <p>TL-1 : 13.10.2006 – Rs. 19 Crores</p> <p>TL-1 : 30.04.2008 – Rs. 2.47 Crores</p> <p>TL-1 : 30.12.2008 – Rs. 2.24 Crores</p> <p>TL-1 : 30.12.2009 – Rs. 0.56 Crores</p> <p>Total Rs. 24.27 Crores</p>	Rs. 71.02 Crores



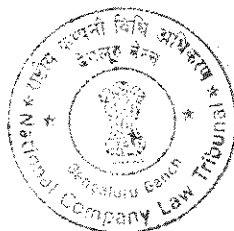
- c) It is further submitted that there was an interest adjustments made by the Banks of Rs. 14.95 Crores out of the Total loans received from the Banks. The net loan received is Rs. 63.53 Crores from the aforesaid Banks.
- d) It is further submitted that the said loans which became Non-Performing Assets due to the Natural calamity that caused immense property loss and life loss, were assigned by virtue of an Assignment Deeds to the Financial Creditor without prior consent of the Corporate Debtor. The Assignment was unilateral and the Corporate Debtor was not intimated before bringing into effect, the said assignment. The following are the details of the Assignment :

S. No.	Particulars	Amount
1.	Loan availed from the consortium of Banks i.e. from Punjab National Bank and Oriental Bank of Commerce	From PNB : 46.75 Crores From OBC : 24.27 Crores TOTAL : 71.02 Crores
2.	Total Debt Assigned to PARAS by PNB and OBC	Towards PNB : 30 Crores Towards OBC : 11 Crores TOTAL : 41 Crores
3.	Payments made to PARAS towards repayment of the debt by the company	Rs. 18,68,29,698 (Approx. 19 Crores)
4.	Balance to be paid	Rs. 23 Crores Approximately

- e) It is further submitted that the Applicant/Financial Creditor had made a settlement proposal to the Punjab National Bank. A proposal



- to pay a sum of Rs.25,00,00,000/- (Rupees Twenty Five Crores Only) as against the Balance amount of Rs. 23,00,00,000 (Rupees Twenty Three Crores only).
- f) It is further submitted that the Corporate Debtor had faced lot of issues while carrying on the business activities due to the natural calamity and the acts of the Punjab National Bank. Despite the trials and tribulations, the Corporate Debtor and its Promoter Director have put up immense efforts for the purpose of repayment of the amount which is due to the Financial Creditor. The Financial Creditor had augmented the claim to about 169 Crores which is not a lawful claim. There is a huge misrepresentation of the material fact in relation to the said claim made by the Financial Creditor. The claim so made herein is not legitimate in nature and shall not hold good in the eyes of law.
- g) It is further submitted that the total repayment made to the Applicant/Financial Creditor till date is Rs. 18,68,29,698 (Rupees Eighteen Crores Sixty Eight Lakhs Twenty Nine Thousand Six Hundred and Ninety Eight only). The Financial Creditor had withdrawn various amounts from the ESCROW Account bearing account number 50200021935880 held with the HDFC Bank, K.H. Road Branch, Bangalore, and the same are not disclosed before this Hon'ble Tribunal. The revenue generated from the power project are credited into the said ESCROW account and the said amounts were withdrawn by the Applicant/Financial Creditor.
- h) It is further submitted that the natural calamity as mentioned aforesaid had created circumstances that the Corporate Debtor couldn't commence the project and Insurance could not be claimed at that juncture due to failure to renew the said policy by Punjab National Bank (PNB). The PNB as per Security Agent Agreement

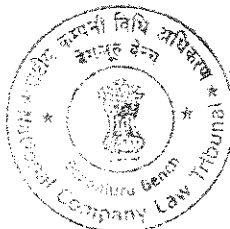


dated 10th January, 2009 has not acted in accordance with the covenants made between the Company and PNB. This had an immense negative effect on the finances of the Company.

- i) It is further submitted that the PNB officers concerned for this act of negligence have resigned with immediate effect after this act of negligence from their office and have desisted from carrying on their duties. They have omitted to take the responsibility and their omission had caused huge problems to the Corporate Debtor.
- j) It is further submitted that the Applicant was not kept aloof of the fact that that the Corporate Debtor had faced difficulties due to the attitude of its Lead Banker that is Punjab National Bank. The Applicant was well acquainted with the fact that the Corporate Debtor had to face an exorbitant interest burden on the loans obtained from the banks.
- k) It is further submitted that the Corporate Debtor also faced immense problems due to non-renewal of the insurance policy of the hydel plant, by the Lead Bank and the Punjab National Bank also had not released the insurance claims on time which led to troublesome functioning of the plan.
- l) It is further submitted that the business had to go through a rough patch due to non-cooperation of the Punjab National Bank. The Corporate Debtor was reduced to such a situation that it had filed a case before the National Consumer Redressal Forum, under the ground of deficiency of service. The Corporate Debtor was given liberty to approach a Civil Court for appropriate remedy. The Applicant also had put up a grievance before the Secretary, Department of Administrative Reforms & Public Grievances & Pensions, Government of India, New Delhi.

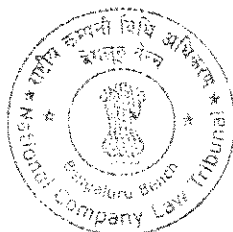


- m) It is further submitted that it was always clearly put forth before the Applicant that the Company was not operating with its full plant capacity and it is facing an onerous situation. The Applicant had never paid heed to such requests and is further trying to impose additional burden on the Corporate Debtor. The Applicant is trying to use the provisions of the Insolvency and Bankruptcy Code, 2016 in order to extract huge sums of money from the Corporate Debtor.
- n) It is further submitted that the Applicant had always been inconsiderate for the requests made by the Corporate Debtor. The Applicant is trying to put up huge burden on the Corporate Debtor. The Applicant aims to harass the Corporate Debtor and is trying to make a mis-representation before this Hon'ble Tribunal that the Corporate Debtor is not making any payments to the Applicant. The Applicant has been receiving in regular intervals periodical payments from the Corporate Debtor. The question of default does not arise in any manner whatsoever.
- o) It is further submitted that the Corporate Debtor had not desisted from making any payment till date. As per the definition of Section 3(12), it has to be inferred that only when payment is not made, a default shall occur. When the actions of the Corporate Debtor suggest that it had no intention to commit a default, the allegations of the Applicant that the Corporate Debtor had committed a default do not hold good.
- p) It is further submitted that the Applicant Financial Creditor had initiated legal proceedings before the Debt Recovery Tribunal and at the same time had initiated proceedings before this Tribunal during the pendency of such proceedings before the Debt Recovery Tribunal. The Corporate Debtor is being harassed by the Applicant/ Financial Creditor by such multiplicity of proceedings. The



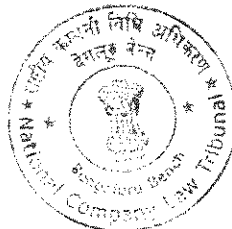
Corporate Debtor is adversely affected by the acts of the Applicant/ Financial Creditor.

- q) It is further submitted that the Applicant/Financial Creditor intends to use the provisions of the legislation i.e. the Insolvency and Bankruptcy Code, 2016 only for the purpose of realization of the amount which is due to the Applicant/Financial Creditor which is against the intent of the statute mentioned above. The main objective of the Code is to streamline the insolvency process but not debt recovery. This denotes that the Applicant/Financial Creditor had not come with clean hands before this Hon'ble Tribunal. Their objective is not in conformity with the intention of the legislature in making the said Insolvency Code. It is further submitted that the acts of the Applicant/Financial Creditor only shall result in multiplicity of suits/disputes between both the parties. Filing of the Application only make it difficult for the Tribunal as there are already number of matters/cases pending with respect to Section 7 or Section 9 of the Insolvency and Bankruptcy Code, 2018.
- 4) The Applicant/Petitioner has filed the rejoinder dated 29.01.2019, inter alia, stating as follows:
- a) The Statement of Objections are not supported with any affidavit from the representative of the Corporate Debtor and nowhere has a document been shown to substantiate that the Statement of Objections is signed by the authorized representative of the Respondent/Corporate Debtor.
- b) The Respondent/Corporate Debtor has deliberately distorted and misstated facts with the *mala fide* intent in order to mislead this Hon'ble Tribunal. The Respondent/Corporate Debtor has admitted that it had received amounts under the loan facilities extended to it



by the consortium of banks. It is abundantly clear from the Statement of Objections and the Application that there is an outstanding debt of Rs. 169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakh Sixty Eight Thousand Three Hundred and Sixty One only) as on July 31, 2018 and that the Respondent/Corporate Debtor has defaulted in the payment of such amount.

- c) The averments made in the Statement of Objections are baseless and the documents produced along with it show that the Respondent/Corporate Debtor has a spurious and frivolous defence which cannot be considered under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code"). The true facts of the matter and the details of the defaulted amount in respect of the loan facilities extended to the Respondent have been set out in the Application and the Petitioner/Applicant craves leave to refer to the facts and figures set out therein and prays that they be read as a part and parcel of the present Rejoinder, for the sake of brevity.
- d) The Petitioner/Applicant herein is a financial creditor under Section 5(7) of the Code, to whom the debt has been legally assigned or transferred to. The Respondent/Corporate Debtor has failed to make out any ground to oppose the Application filed by the Petitioner/Applicant under Section 7 of the Code. Under the provisions of the Code, "default" is defined in Section 3(12) in very wide terms as "non-payment of debt when whole or any part or installment of the mount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be". It is submitted that "debt" is defined in Section 3(11) of the Code to mean a liability of obligation in respect of a claim, and Section 3(6) of

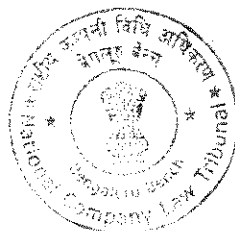


the Code defines "claim" to mean a right to payment even if it is disputed.

- e) It is further pertinent to note the decision of the Hon'ble Supreme Court of India in the case of **M/s Innoventive Industries Limited v. ICICI Bank & Another, (2018) 1 SCC 407**, wherein it has been categorically held that *"....in 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 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."* Also, the Hon'ble National Company Law Appellate Tribunal in case of **H.N. Nagaraj v. Edelweiss Asset Reconstruction Company Ltd., (2018) 148 SCL 447**, has held that *"What is the reason for default of payment cannot be a ground to reject the application under Section 7, as the Adjudicating Authority is only supposed to see whether the application is complete or not and whether there is any 'debt' or 'default'".*
- f) It is submitted that the objections raised by the Respondent/ Corporate Debtor are liable to be rejected outright as the scope of enquiry before this Hon'ble Tribunal is limited to the ascertainment of debt due and default. The Respondent/Corporate Debtor has not denied the existence of the debt which was due as on date of filing the Application and continues to be due. Hence, all averments and allegations made in the Statement of Objections cannot be considered as a valid defence under law.

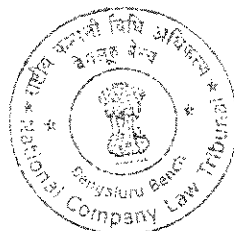


- g) It is clear from the records/documents produced by the Petitioner/Applicant and the admissions of the Respondent/Corporate Debtor in the Statement of Objections that the debt is due and default has occurred. In view of the above decisions, the present Application is liable to be admitted and the Corporate Insolvency Resolution Process is to be initiated against the Respondent/Corporate Debtor in accordance with the provisions of the Code.
- h) The Respondent/Corporate Debtor has failed to substantiate that it is a solvent company. Moreover, the averments that it has employed around 300 employees working in different capacities is absolutely false. The fact is that the Respondent/Corporate Debtor does not carry out day to day operations and is functioning only during the monsoon season with around 20 employees. The Respondent/Corporate Debtor is put to strict proof of the averments made in the paragraph under reference. It is submitted that as on July 31, 2018, a debt of Rs.169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakh Sixty Eight Thousand Three Hundred and Sixty One only) was due and payable to the Petitioner/Applicant. The Respondent/Corporate Debtor has nowhere substantiate that the claim of Rs. 169 Crores is not lawful. Such claims are clearly false and the Respondent/Corporate Debtor is put to strict proof of thereof.
- i) The Respondent/Corporate Debtor has admitted that under multiple loan agreements executed by it, loan facilities were extended to it by a consortium of Punjab National Bank and Oriental bank of Commerce and that such facilities were availed by it. Moreover, it is pertinent to note that the Respondent/Corporate Debtor has admitted the amount that was taken by it under the loan facilities and thus disbursed to it. There is no dispute in relation to the



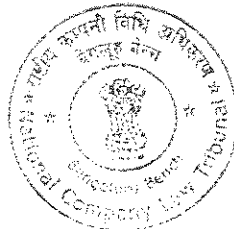
disbursement of amounts under the loan facilities and the Respondent/Corporate Debtor having received the amount.

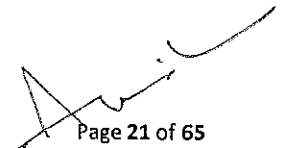
- j) The statements produced showing interest adjustments and net loan received are self-serving internal records of the Respondent/Corporate Debtor and therefore denied. It is pertinent to note that the amount of debt due, which is relevant to the present Application, pertains to the facilities extended by Punjab National Bank and Oriental bank of Commerce only. With the malicious intent of misleading this Hon'ble Tribunal, the Respondent/Corporate Debtor has stated the aggregate amounts pertaining to the total amount received from the consortium of banks, including UCO Bank, which does not form part of the amounts due to the Petitioner/ Applicant.
- k) The definition of 'financial creditor' under the Code includes a person to whom a financial debt has been legally assigned or transferred to. The Petitioner/Applicant was legally assigned the loan facilities under the PNB Assignment Agreement and the OCB Assignment Agreement. Under term of the Loan Agreements entered into between the Respondent/Corporate Debtor and the consortium of banks, the lending banks were free to assign all or any part of the loan, without the consent or approval of the Respondent/Corporate Debtor. However, in good faith, the Petitioner/Applicant had kept the Respondent/Corporate Debtor informed about the assignment of loan to it vide letters dated 19.03.2016 and 11.12.2015. The said letters have been produced as a part of Exhibit "21" at Page 738 and Page 740 of the Application. It is further submitted that the Respondent/Corporate Debtor has deliberately misstated facts and has provided incorrect details of the amount of debt assigned to the Petitioner/Applicant, with the malicious intention of misleading this Hon'ble Tribunal. The table extracted I the paragraph under



reference is erroneous and does not consider the interest that was due at the time of assignment of debt. It is denied that Rs.18,68,29,698/- (Rupees Eighteen Crores Sixty Eight Lakhs Twenty Nine thousand Six Hundred and Ninety Eight only) was paid to the Petitioner/Applicant. Moreover, it is submitted that the reason of alleged loss caused to the Respondent/Corporate Debtor is wholly irrelevant to the adjudication of the present proceedings and does not affect the debt owed to the Petitioner/Applicant under the assigned loan facilities. Nevertheless, it is submitted that the reasons for non-payment of debt are frivolous, untenable and have nothing to do with the Petitioner/Applicant.

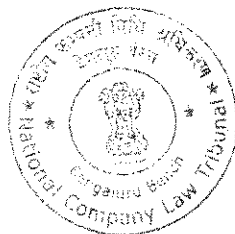
- 1) It is submitted that the proposal letter referred to does not concern the Petitioner/Applicant and was addressed to Punjab National Bank. It is relevant to note that the said letter was sent on December 13, 2018, much after filing of the present Application. The said letter is clearly a self-serving document, which was sent to Punjab National bank in spite of the Respondent/Corporate Debtor being well aware that the loan had been assigned to the Petitioner/Applicant. The Respondent/Corporate Debtor has averred that it has proposed to settle its purported debt of Rs.23,00,00,000/- (Rupees Twenty Three Crores only) for a sum of Rs.25,00,00,000/- (Rupees Twenty Five Crores only), thereby suggesting that it is ready to pay a considerably higher amount than what is allegedly owed by it. The absurdity of this proposal is indicative of malice on part of the Respondent/Corporate Debtor and further proves that the said document was an afterthought, sent only for the purpose of creating a record with a mala fide intent. This mala fide intent can further be seen from the fact that the alleged proposal letter was addressed to Punjab National Bank who had already assigned the debt to the




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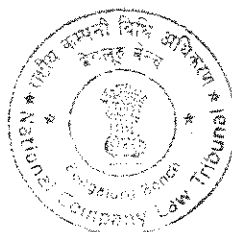
Petitioner/Applicant and the Respondent/Corporate Debtor had clear knowledge of such assignment. The Petitioner/Financial Creditor had absolutely no knowledge of the letter dated December 13, 2018 issued by the Respondent/Corporate Debtor to Punjab National Bank.

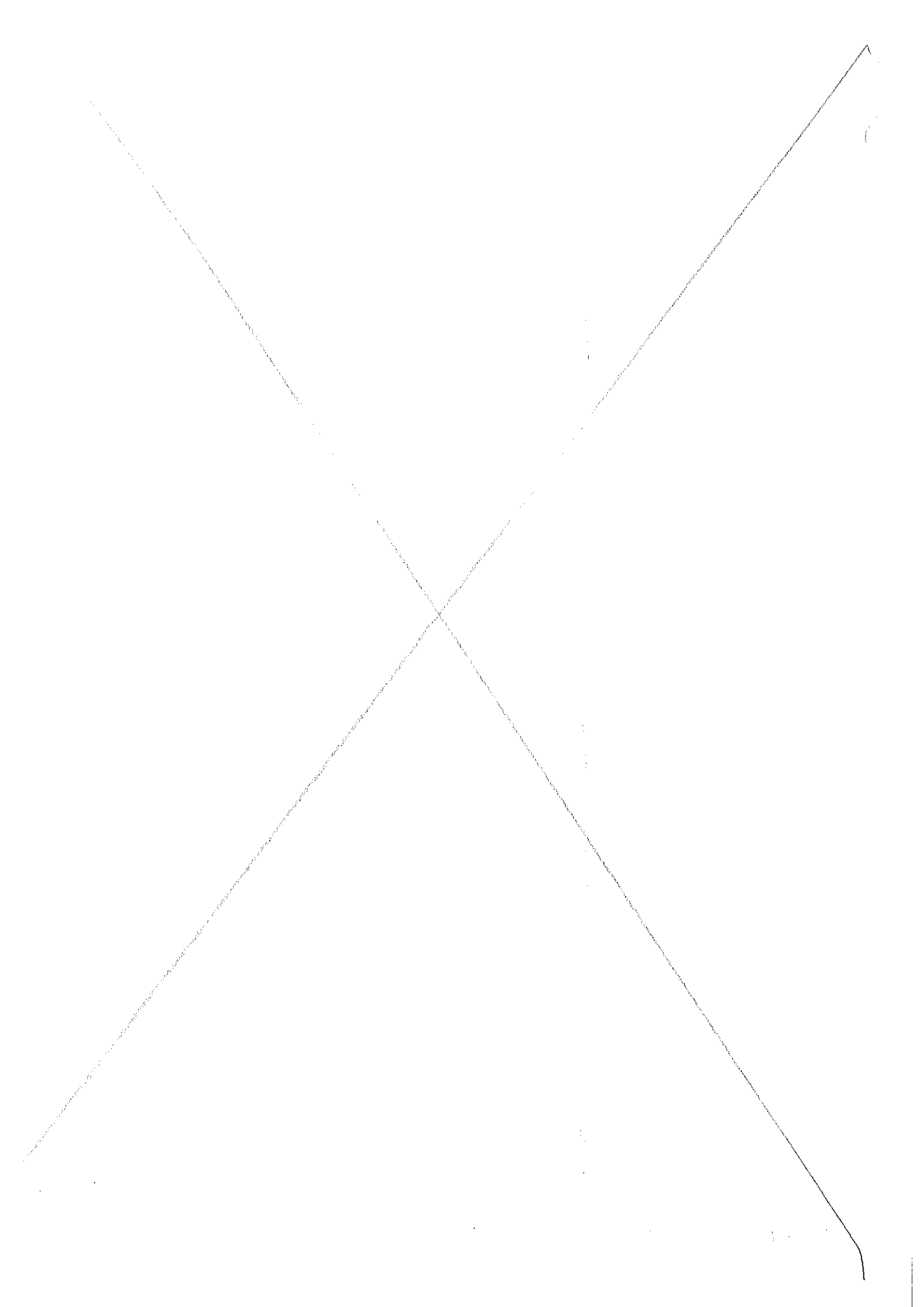
- m) It is reiterated that the alleged natural calamity that caused alleged losses to the Respondent/Corporate Debtor is wholly irrelevant to the adjudication of the present proceedings and the Respondent/Corporate Debtor has failed to substantiate how Punjab National bank was responsible for such alleged losses. In any case, given the limited scope of enquiry that this Hon'ble Tribunal is required to venture into under Section 7 of the Code, it is submitted that all averments made by the Respondent/Corporate Debtor in respect of issues allegedly faced by it while carrying on its business activities are irrelevant to the present Application. It is humbly submitted and reiterated that there has been no unilateral, unjustified or unlawful augmentation of the claim amount and that the Application filed by the Petitioner/Applicant, and the documents produced therewith, make it abundantly clear that the said claim is valid and legal. In fact, the quantum of the claim has been discussed with and intimated to the Respondent/Corporate Debtor in various communications and correspondences which were exchanged before filing of the present Application, and this has been accepted and acknowledged by the Respondent/Corporate Debtor. In disputing the quantum of the debt owed to the Petitioner/Applicant, the Respondent/Corporate Debtor has not once denied the existence of a debt owed to the Petitioner/Applicant.
- n) The statements of accounts produced by the Petitioner/Financial Creditor along with its Application clearly reflect/consider the



amounts received from the escrow account. Hence, there is no question of any concealment/non-disclosure of any amounts that have been received.

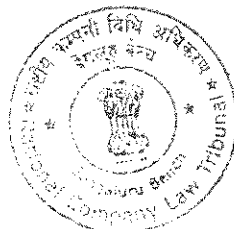
- o) It is reiterated that the issues relating to allege operational difficulties faced by the Respondent/Corporate Debtor, including the matter of the alleged non-renewal of insurance policy by Punjab National Bank, has no bearing on the adjudication of the present matter. The reason for default cannot be considered in the limited scope of enquiry under Section 7 of the Code. The Petitioner/Applicant is only concerned with the debt due to it under the assigned loan facilities and the default in repayment of the said debt by the Respondent/Corporate Debtor. The Petitioner/Applicant is not privy to the Security Agent Agreement and any alleged breach under the said agreement is a separate dispute, wholly unconnected to the present proceedings. In any case, the alleged loss occurred in August 2008 and the Security Agency Agreement is dated January 10, 2009, much subsequent to the date of loss.
- p) The Respondent/Corporate Debtor has taken frivolous and unsubstantiated contentions in regard to the alleged acts of negligence by the officers of Punjab National Bank.
- q) The Respondent/Corporate Debtor has asserted that it had kept the Petitioner/Applicant informed about its financial difficulties in relation to the insurance claim. However, the document produced by the Respondent/Corporate Debtor in this regard is clearly addressed to officers of Punjab National bank and not to the Petitioner/Applicant. As the Petitioner/Applicant's involvement with the said bank was limited to assignment of the loan facilities extended to the Respondent/Corporate Debtor, it cannot reasonably be assumed that the Petitioner/Applicant knew any details of this seemingly





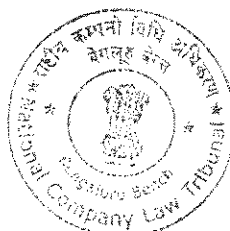
unrelated matter concerning the Respondent/Corporate Debtor and Punjab National Bank. Further, the interest burden of the loans taken by the Respondent/Corporate Debtor is of no relevance in the present matter. The fact remains that the Respondent/Corporate Debtor had agreed to avail the loan facilities extended under certain terms and conditions, as envisaged in the loan agreements produced along with the Application, and that there was a clear default on its part in repaying the debt under terms mutually agreed upon by the Respondent/Corporate Debtor and the consortium of banks.

- r) It is submitted that the case filed by the Respondent/Corporate Debtor before the National Consumer Disputes Redressal Forum (NCDRC) and the correspondences purportedly sent to the consortium of banks and government offices in this respect are evidently in relation to a dispute wholly unconnected with the Petitioner/Applicant, the debt due and the relief sought in the present Application. It is pertinent to note that the case before the NCDRC was dismissed as not maintainable. Even after the said dismissal, no attempt was made by the Respondent/Corporate Debtor to initiate legal action before the appropriate forum within the period of limitation, which can only be attributed to the lack of substance in the Respondent/Corporate Debtor's claim against the consortium of banks. The letter grievance made to the Prime Minister's Office is farcical, untenable and clearly not before the appropriate forum. It must also be noted that the letter to Secretary, Department of Reforms & Public Grievances & Pensions, produced as Annexure – H2 along with the Statement of Objections, was sent only after the present Application was filed by the Petitioner/Applicant before this Hon'ble Tribunal and more importantly, after 8 years of availing the loan. The said document is clearly an



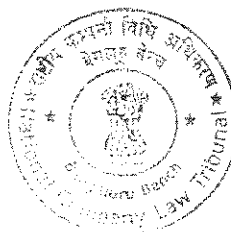
afterthought and is indicative of the Respondent/Corporate Debtor's feeble attempt to substantiate its hollow defence with self-serving documents. It is also pertinent to note the contrary stand of the Respondent/Corporate Debtor where on one hand a proposal was allegedly given by the Respondent/Corporate Debtor for a sum of Rs. 25 Crores on December, 13, 2018 to Punjab National Bank and on the other hand, a complaint is also lodged with the grievance cell on December 4, 2018 against Punjab National bank. This clearly shows that the Respondent/Corporate Debtor has absolutely no valid grounds to defend its non-payment of debt and the default that continues to exist.

- s) It is pertinent to note that attempts were made to restructure the debt on the request of the Respondent/Corporate Debtor and two sanction letters bearing Nos.303/2017/43 and No. 303/2017/44 both dated January 23, 2017, produced as a part of Exhibit "21" along with the Application at Page 753 and Page 758, were issued. The Respondent/Corporate Debtor did not accept the terms and conditions of the sanction letter and failed to execute the necessary documentation. The Petitioner had reminded the Corporate Debtor vide letters dated 14.03.2017 and April 3, 2017 to execute necessary documentation, however, vide letter dated April 10, 2017 had sought certain modifications to the terms of the sanction letters. The Petitioner/Financial Creditor vide letter dated April 25, 2017 communicated to the Respondent/Corporate Debtor that no modifications in the terms and conditions of sanctions was possible. Thereafter, the Petitioner/Financial Creditor issued letter bearing No.303/2017/653 dated September 25, 2017 withdrawing previously granted sanction letters. Therefore, the restricting of debt was withdrawn by the Petitioner Financial Creditor solely due to the



non-compliance of the terms and conditions of sanction letters by Respondent/Corporate Debtor. However, the Respondent/Corporate Debtor failed to execute the requisite documentation. Instead, it responded to the Petitioner/Applicant's reminders for payment of loan amounts with a request to again restructure the debt and further revise the payment schedule. It is submitted that the Petitioner/Applicant was in no way bound or obligated to accept. Hence, vide its letter dated January 1, 2018, produced as a part of Exhibit "21" along with the Application at Page 799, the Petitioner/Applicant informed the Respondent/Corporate Debtor that its request for further restructuring of the debt cannot be accepted.

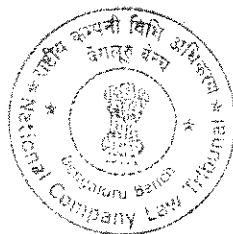
- t) It is denied that the Petitioner/Applicant aims to harass the Respondent/Corporate Debtor and is trying to misrepresent before this Hon'ble tribunal. On the contrary, the facts set out above and the documents produced with the Application clearly show that the Petitioner/Applicant tried its best to accommodate the Respondent/Corporate Debtor in spite of its failure to adhere to the payment schedule agreed. The Respondent/Corporate Debtor has requested that the debt be restructured at its whims and fancies, while repeatedly filing to make payments under the sanctioned payment schedule. It is further denied that the Petitioner/Applicant has been receiving periodical payments from the Respondent/Corporate Debtor and that there is no default on its part and the Respondent/Corporate Debtor is put to strict proof of thereof.
- u) The Respondent/Corporate Debtor has gravely misinterpreted the provisions of Section 3(12) of the Code. The said provision includes non-payment of part of such a debt or an instalment amount. The averments made in the paragraph under reference are fallacious and



it is futile to suggest that there was no intention to commit a default or to dispute the mount that was owed to the Petitioner/Applicant, when such default has already taken place.

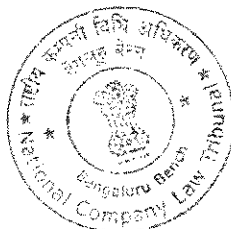
v) It is submitted that the proceedings before the Debt Recovery Tribunal were initiated by Punjab National Bank and Oriental bank of Commerce before the debt was assigned to the Petitioner/Applicant herein and the Applicant has thereafter been substituted in the said proceedings. The Petitioner/Applicant is well within its rights to approach this Hon'ble tribunal since a financial debt to the tune of Rs.169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eight Two Lakh Sixty Eight Thousand Three Hundred and Sixty One only) was due. It is trite law that there is no bar to approach this Hon'ble tribunal under the Insolvency and bankruptcy Code even if there is a petitioner pending before the Debts Recovery Tribunal. It is denied that there has been a multiplicity of proceedings and the objection raised by the Respondent/Corporate Debtor on number of matters pending with the Tribunal is baseless and untenable.

w) It is denied that the Petitioner/Applicant has initiated the Present proceedings with unclean hands. The present Application has been filed seeking initiation of Corporate Insolvency Resolution Process in view of there being a clear debt and default that has occurred in respect of the loan facilities extended to the Respondent/Corporate Debtor by the consortium of banks and subsequently assigned to the Petitioner/Applicant. The Statement of Objections failed to provide any valid ground for refusing the admission of the present Application and the Respondent/Corporate Debtor's attempt to protract the present proceedings are reflective of its malicious intent to defeat the rights of the Petitioner/Applicant.



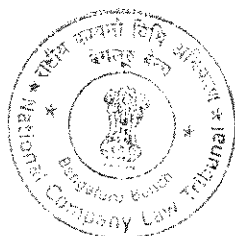
5) The Respondent has filed additional written submissions dated 14.08.2019, inter alia, contending as follows:

- a. The Corporate Debtor is a Solvent Company and has about 300 employees working in different capacities with the Company. The Corporate Debtor despite various struggles had been making hectic efforts to carry on the business activities on a going concern basis.
- b. The Corporate Debtor also had to face difficulties in carrying out its business due to the governmental policies that imposed certain restrictions on power producing companies, apart from the natural disaster that occurred earlier, which had wreaked havoc on the power generation of the Corporate Debtor.
- c. The circular of the RBI dated 12th February, 2018, as to the stressed assets and initiation of insolvency proceedings in relation to such stressed assets (bearing number RBI/2017-18/131), had been declared ultra vires. The Apex Court approved of the fact that the genuine difficulties of the power companies have not been taken into consideration and they have been brought before the NCLT for initiation of resolution process. Without having regard to the fact the projects are stressed out and the assets pertaining to them have been declared as NPAs, the Companies have been dragged to the NCLT. The Corporate Debtor also had faced the same situations and circumstances, whereby the Corporate Debtor had been put to difficulties as the RBI had ignored the sectoral aspects and had only considered the technical aspects.
- d. The Applicant/Financial Creditor is supposedly relying on the RBI circular, as mentioned aforesaid with respect to the stressed assets in order to file this Application for initiation of CIRP. By virtue of the Circular, even one day defaults have been considered for resolution process. This had hugely affected the power companies throughout



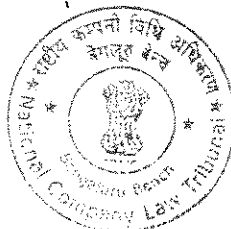
the country. It is further submitted that the circular is no longer applicable and is redundant due to the quash judgement given by the Hon'ble Supreme Court on the said circular.

- e. The Apex Court opined in **Dharani Sugars and Chemicals Limited v. Union of India** that the RBI had to maintain status quo and this would create a bar on initiation of CIRP. The Applicant/Financial Creditor cannot be subjected to insolvency proceeding keeping in view the judgement so given by the Hon'ble Supreme Court.
- f. The Corporate Debtor had been facing trial and tribulations due to the recent floods that had occurred in Karnataka, especially northern part of the State, the power project being located in the flood affected area, had been put to great peril. The Corporate Debtor is being hit by series of natural calamities in the recent past and its business had been adversely affected. Conditions have been worsened due to heavy flooding of river waters i.e. Netravati River. The Power house had submerged in the flood waters. All the power equipments and machineries control panels and diesel generator sets are under flood water. The power generation is stalled currently and the Corporate Debtor is in dilapidating situations.
- g. The essential services such as Electricity, water, telecommunication services as elucidated in Regulation 32 of the CIRP Regulations do not come under the purview of the Code. The bankruptcy law Reforms Committee also had recommended that the Essential Services shall not be interrupted by virtue of Insolvency proceedings. Further, Section 14(2) of the Code provides 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."* The Corporate Debtor will be at risk and interests will be adversely affected if this Application is admitted, as



the Corporate Debtor is a power producer, as such electricity is an essential service.

- h. Owing to the Order passed by the Hon'ble Supreme Court in **Dharani Sugars and Chemicals Limited v. Union of India** with respect to the insolvency proceedings of the power companies, the Application made by the Applicant/Financial Creditor does not stand in the eyes of law. The Corporate Debtor would again like to submit herein that the Applicant/Financial Creditor intends to use the provisions of the legislation i.e. the Insolvency and Bankruptcy Code, 2016 only for the purpose of realisation of the amount which is due to the Applicant/Financial Creditor which is against the intent of the statute mentioned above. The main objective of the Code is to streamline the insolvency process but not debt recovery. This denotes that the Applicant/Financial Creditor had not come with clean hands before this Hon'ble Tribunal. Their objective is not in conformity with the intention of the legislature in making the said Insolvency Code, It is further submitted that the acts of the Applicant/Financial Creditor only shall result in multiplicity of suits/disputes between both the parties. Filing of the Application only makes it difficult for the Tribunal as there are already a number of matters/cases pending with respect to Section 7 or Section 9 of the Insolvency and Bankruptcy Code, 2016.
- i. The Corporate Debtor submits that it is a Solvent Company and has about 300 employees working in different capacities with the Company. The Corporate Debtor is carrying on its business and trying to generate revenue from the power project so commissioned. The Claim of Rs.169 Crores is not lawful and does not possess legal sanctity. The Corporate Debtor is engaged in the business of growing



of flowers and other agricultural products with operations spread across Ethiopia, Kenya and India.

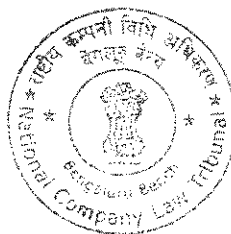
6) The Applicant/Petitioner has filed Summary of Written Submissions dated 30.08.2019, inter alia, stating as follows:

- a) The debts due to the Applicant/Petitioner were legally assigned by Punjab National Bank and Oriental bank of Commerce and under Section 5(7) of the Code, the definition of 'financial creditor' includes a person to whom such debt has been legally assigned or transferred to.
- b) The brief facts of the matter that have led to the filing of the Application for consideration of this Hon'ble Tribunal are as follows:
 - i. Under a loan agreement dated December 14, 2006 ("**Loan Agreement 1**"), the Respondent/Corporate Debtor was granted a loan facility of Rs. 54,00,00,000/- (Rupees Fifty Four Crores only) by a consortium of banks consisting of Punjab National Bank and Oriental Bank of Commerce.
 - ii. Under a loan agreement dated May 7, 2008 ("**Loan Agreement 2**"), the Respondent/Corporate Debtor was granted an additional loan facility of Rs.7,02,00,000/- (Rupees Seven Crores Two Lakhs only) by a consortium of banks consisting of Punjab National Bank and Oriental Bank of Commerce.
 - iii. Under a loan agreement dated January 10, 2009 ("**Loan Agreement 3**"), the Respondent/Corporate Debtor was granted another additional loan facility of Rs.13,84,00,000/- (Rupees Thirteen Crores Eighty Four Lakhs only) by a consortium of banks consisting of Punjab National Bank, Oriental Bank of Commerce and UCO Bank.



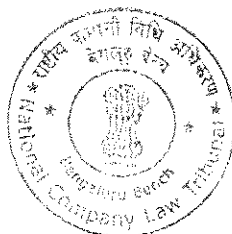
- iv. Under a loan agreement dated November 18, 2010 ("**Loan Agreement4**"), the Respondent/Corporate Debtor was granted a further additional loan facility of Rs. 3,56,46,000/- (Rupees Three Crores Fifty Six Lakhs Forty Six Thousand only) by a consortium of banks consisting of Punjab National Bank, Oriental Bank of Commerce and UCO Bank.
- Loan Agreement 1, Loan Agreement 2, Loan Agreement 3, and Loan Agreement 4 are hereinafter collectively referred to as "Loan Agreements".
- c) The principal amount of debt owed to Punjab National Bank and Oriental Bank of Commerce under the Loan Agreements was Rs.71,02,00,000/- (Rupees Seventy One Crores Two Lakhs only), excluding the amount of interest owed thereon.
- d) These amounts were duly disbursed to the Respondent/Corporate Debtor by both, Punjab National Bank and Oriental Bank of Commerce. The details of the amounts disbursed by Punjab National Bank are provided below.

S. No.	Initial Date of Disbursement	Amount Disbursed
1.	December 20, 2006	Rs. 35,00,00,000/- (Rupees Thirty Five Crores only)
2.	May 9, 2008	Rs. 4,55,00,000/- (Rupees Four Crores Fifty Five Lakhs only)
3.	December 31, 2008	Rs. 4,60,00,000/- (Rupees Four Crores Sixty Lakhs only)
4.	December 29, 2009	Rs. 2,60,00,000/- (Rupees Two Crores Sixty Lakhs only)

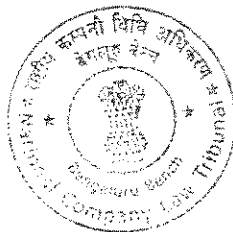


S.NO.	Initial Date of Disbursement	Amount Disbursed
1.	December 20, 2006	Rs. 19,00,00,000/- (Rupees Nineteen Crores only)
2.	May 9, 2008	Rs. 2,47,00,000/- (Rupees Two Crores Forty Seven Lakhs only)
3.	December 31, 2008	Rs. 2,24,00,000/- (Rupees Two Crores Twenty Four Lakhs only)
4.	March 30, 2010	Rs. 56,00,000/- (Rupees Fifty Six Lakhs only)

- e) It is submitted that the Applicant/Petitioner has produced the entries made in the banker's book maintained by Punjab National Bank and Oriental Bank of Commerce along with the certificate/s under the Banker's Book of Evidence Act, 1891.
- f) The Respondent/Corporate Debtor was unable to service the debt under the Loan Agreements and its account was classified as a 'Non-Performing Asset'. Thereafter, the Applicant/Petitioner was assigned all rights, title and interest in relation to the loan facilities granted by Punjab National Bank vide an assignment agreement dated November 20, 2015 ("**PNB Assignment Agreement**"). Further, the Applicant/Petitioner was assigned all rights, title and interest in relation to the loan facilities granted by Oriental Bank of Commerce vide an assignment agreement dated March 11, 2016 ("**OBC Assignment Agreement**").

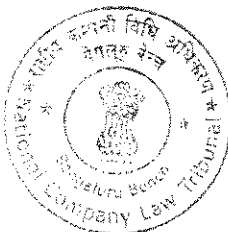


- g) It is abundantly clear from the Application and after going through the frivolous objections that have been taken in the Statement of Objections filed by the Corporate Debtor/Respondent that an outstanding debt of Rs.169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakh Sixty Eight Thousand Three Hundred and Sixty One only) as on July 31, 2018 was due and payable to the Application/Financial Creditor. From the statement of objections filed by the Respondent/Corporate Debtor, there is clear admission that the Corporate Debtor/Respondent has admittedly defaulted in the payment of the outstanding debt.
- h) It is submitted that the scope of inquiry in respect of an application made under Section 7 of the IBC is limited to the existence of a 'debt' and its subsequent 'default'. Any dispute regarding the quantum of debt and any alleged reasons for the default ought not to be considered by this Hon'ble Tribunal at the time of admission of an application under Section 7 of the IBC.
- i) Under the provisions of the IBC itself, "default" has been defined in Section 3(12) in very wide terms as "non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be". It is submitted that "debt" is defined in Section 3(11) of the IBC to mean a liability of obligation in respect of a claim, and Section 3(6) of the IBC defines "claim" to mean a right to payment even if it is disputed.
- j) It is pertinent to note the judgement of the Hon'ble Supreme Court of India in **M/s Innoventive Industries Limited v. ICICI Bank & Another, (2018) 1 SCC 407**, wherein it has been held that "*.... In 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 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".

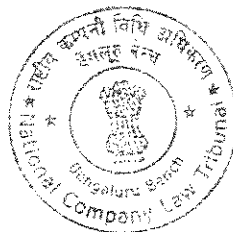
- k) Further, the Hon'ble National Company Law Appellate Tribunal in **H.N Nagaraj v. Edelweiss Asset Reconstruction Company Ltd., (2018) 148 SCL 447**, has held that "*what is the reason for default of payment cannot be a ground to reject the application under Section 7, as the Adjudicating Authority is only supposed to see whether the Application is complete or not and whether there is any 'debt' or 'default'.*"
- l) The Respondent/Corporate Debtor, in its Statement of Objections, has contended that there were several reasons for its default in repayments of the debt owed to the Applicant/Petitioner. It is submitted that the reason of such default is wholly irrelevant to the adjudication of the present proceedings and does not affect the existence of the debt owed to the Petitioner/Applicant under the assigned loan facilities. Nevertheless, it is submitted that the reasons for non-payment of debt as asserted by the Respondent/Corporate Debtor are frivolous, untenable and are wholly unconnected with the Applicant/Petitioner.
- m) Moreover, the Respondent/Corporate Debtor has not denied the existence of the debt which was due as on date of filing the Application and which continues to be due till date. It is clear from the records/documents produced by the Applicant/Petitioner and the admissions of the Respondent/Corporate Debtor in the



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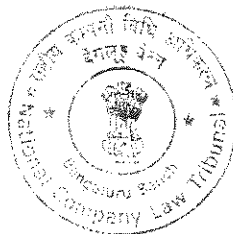
Statement of Objections that the debt is due and that default has occurred. The Respondent/Corporate Debtor has failed to make out any ground to oppose the Application filed by the Petitioner/Applicant under Section 7 of the IBC.

- n) The Respondent/Corporate Debtor has admitted that under multiple loan agreements executed by it, loan facilities were extended to it by a consortium of banks which included Punjab National Bank and Oriental Bank of Commerce, and that such facilities were availed by it. It is also pertinent to note that the Respondent/Corporate Debtor has admitted the amount that was taken by it under the loan facilities and thus disbursed to it. There is no dispute in relation to the disbursement of amounts under the Loan Agreements and the Respondent/Corporate Debtor having received such amounts.
- o) It is submitted that the Applicant/Petitioner herein is a 'financial creditor' under Section 5(7) of the IBC, to whom the debt has been legally assigned or transferred to. The definition of 'financial creditor' under the IBC includes a person to whom a financial debt has been legally assigned or transferred to.
- p) The Petitioner/Applicant was legally assigned the loan facilities under the PNB Assignment Agreement and the OBC Assignment Agreement. Moreover, under Clause 10 of the Loan Agreements entered into between the Respondent/Corporate Debtor and the consortium of banks, the lending banks were free to assign all or any part of the loan, without the consent or approval of the Respondent/Corporate Debtor. However, in good faith, the Applicant/Petitioner had informed the Respondent/Corporate Debtor about the PNB Assignment Agreement vide letter dated December 11, 2015], within three weeks after the PNB Assignment Agreement was executed. Similarly, the Respondent/Corporate



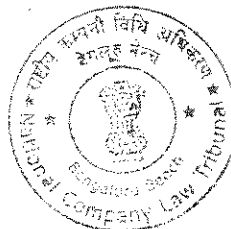
debtor was informed about the OBC Assignment Agreement vide Applicant/Petitioner's letter dated March 19, 2016, a mere 8 (eight) days after the OBC Assignment Agreement was executed

- q) While it is clear from the Statement of Objections of the Corporate Debtor/Respondent that there is existence of debt and default, the Corporate Debtor/Respondent has, with the sole intent of misleading this Hon'ble tribunal and in order to draw attention away from the limited scope of inquiry under Section 7 of the IBC, deliberately misstated facts in relation to the amount of debt assigned to the Petitioner/Applicant. The Respondent/Corporate Debtor, in its calculation of the debt owed to the Applicant/Petitioner, has failed to consider the interest component that was due at the time of assignment of debt. In doing so, the Respondent/Corporate Debtor has wrongly contended that an amount of Rs.23,00,00,000/- (Rupees Twenty Three Crores only) was allegedly due to the Applicant/Petitioner.
- r) In fact, the Corporate Debtor/Respondent attempted to settle the outstanding dues with the Applicant/Petitioner on various dates and had issued proposals which were above the sum of Rs.23,00,00,000/- (Rupees Twenty Three Crores only). Therefore, if the Respondent/Corporate Debtor's statement is to be taken as true, the Corporate Debtor had attempted to settle at a sum which was much higher than the total outstanding debt. This clearly establishes that the averments that only Rs.23,00,00,000/- (Rupees Twenty Three Crores only) were due to be paid is absolutely false. It must be noted that contrary to what has been asserted by the Respondent/Corporate Debtor, the amount owed to the Applicant/Petitioner as on June 27, 2019 was Rs. 190,60,44,802/- (Rupees One Hundred Ninety Crores Sixty Lakhs Forty Four Thousand Eight



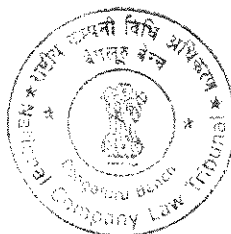
Hundred Two only), and that this amount includes the interest on the principal amount of debt.

- s) It is submitted that the Respondent/Corporate Debtor vide its letter dated January 23, 2019, proposed to settle the total outstanding debt by payment of a sum of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only) ("OTS Proposal"). The Applicant/Petitioner in its letter dated January 31, 2019, clearly set out the reasons for rejecting the OTS Proposal of the Respondent/Corporate Debtor and categorically pointed out the discrepancy in the calculation of the total amount of debt owed to it. The Corporate Debtor/Respondent has also made other false and misleading statements in its letter dated January 23, 2019. A second attempt was made by the Corporate Debtor/Respondent vide its letter dated June 24, 2019 to settle the outstanding dues with the Applicant/Petitioner. Under the said letter, the Respondent/Corporate Debtor once again failed to take into consideration the interest owed to the Applicant/Petitioner. The Applicant/Petitioner once again rejected the settlement proposal of the Respondent/Corporate Debtor vide a letter dated July 8, 2019.
- t) This Hon'ble Tribunal has also provided the parties with an opportunity to settle the matter outside court, and the matter has been adjourned on February 25, 2019, March 28, 2019 April 24, 2019, May 9, 2019 and June 19, 2019.
- u) In its Statement of Objections, the Respondent/Corporate Debtor has alleged that it faced trouble in the functioning of its plant due to the non-renewal of insurance policy by Punjab National Bank under a security agent agreement dated January 10, 2009 ("Security Agent Agreement"). It is submitted that the Security Agent Agreement has nothing to do with the debt in question and is irrelevant. It is



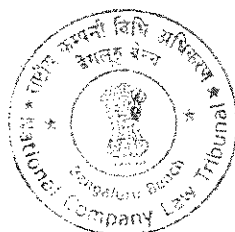
reiterated that the reason for default cannot be considered in the limited scope of inquiry under Section 7 of the IBC. Moreover, the Applicant/Petitioner is not privy to the Security Agent Agreement and any alleged breach under the said agreement by Punjab National Bank is a separate dispute, wholly unconnected to the present proceedings. Nevertheless, it must be noted that the alleged loss occurred in August 2008 and the Security Agent Agreement is dated January 10, 2009, much later to the date of loss.

- v) The Respondent/Corporate Debtor has also incorrectly averred in its Statement of Objections that the Applicant/Petitioner has filed the Application during the pendency of legal proceedings initiated by it before the Debt Recovery Tribunal. In this regard, it is pertinent to clarify that the proceedings before the Debt Recovery Tribunal were initiated by Punjab National bank and Oriental Bank of Commerce before the debt was assigned to the Applicant/Petitioner and the Applicant/Petitioner has, thereafter, been substituted in the said proceedings. Regardless, the Applicant/Petitioner is well within its rights to approach this Hon'ble tribunal under the provisions of the IBC, since a financial debt to the tune of Rs.169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakh sixty Eight Thousand Three Hundred and Sixty one only) was due to it at the time of filing the Application and the Respondent/Corporate Debtor continues to be in default thereof. It is trite law that there is no bar to approach this Hon'ble Tribunal under the IBC even if there is a petition pending before the Debts Recovery Tribunal.
- w) In support of the above, the Applicant/Petitioner places reliance upon the judgement of the Hon'ble National Company Law Tribunal, Principal Bench dated October 12, 2018 in *Bank of India v. Basic India Limited*, in CP No. (IB) 397(PB)/2018, wherein an objection had



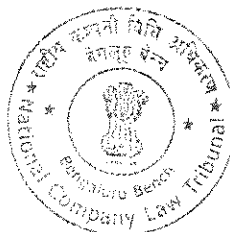
been raised in an application under Section 7 of the IBC in the face of another action initiated under the SARFAESI Act. It was held that *"It is well settled that pendency of proceedings and initiation of action under SARFAESI Act cannot be an impediment or bar to initiate the Corporate Insolvency resolution Process under Section 7 of the Code"*.

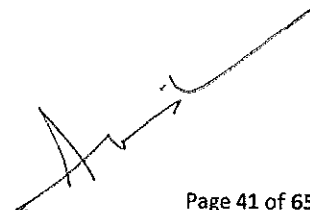
- x) During the course of proceedings in the present matter, the Respondent/Corporate Debtor raised an objection that the power of attorney executed in favour of Mr. KV Rama Krishna Prasad, on the strength of which the Application has been filed was executed prior to the enactment of the IBC, and that in view of the same, Mr. KV Rama Krishan Prasad lacked proper authorization to file the Application.
- y) It is submitted that in raising such technical and frivolous objections, the Respondent/Corporate Debtor has deliberately failed to inform this Hon'ble Tribunal that the Applicant/Petitioner had failed a board resolution authorizing Mr. KV Rama Krishan Prasad to file the Application in compliance with the office objections raised. Therefore, in light of this compliance, the objection raised by the Applicant/Petitioner does not hold good and has evidently been made with the malicious intention of protracting the present proceedings and delaying the initiation of the CIRP of the Respondent/Corporate Debtor. This not only defeats the rights of the Applicant/Petitioner as a financial creditor but also adversely affects all stakeholders in the Respondent Company.
- z) In addition to the clear admission of debt due to the Applicant/Petitioner in various communications and correspondence exchanged between the parties, it is pertinent to note that the debt has been acknowledged by the Respondent/Corporate Debtor in its financial statement for the financial year 2016-17 as well, which was



after execution of the OBC Assignment Agreement and PNB Assignment Agreement.

- aa) Further, in Additional Written Submissions filed by the Corporate Debtor/Respondent, it has raised various contentions with respect to inapplicability of the Code to the Corporate Debtor/Respondent, suggesting that the Applicant/Petitioner cannot file the Application seeking initiation of corporate insolvency resolution process of the Corporate Debtor/Respondent
- bb) It has been falsely stated by the Corporate Debtor/Respondent that the decision of the Applicant/Petitioner to file the present Application was taken pursuant to the circular of the Reserve Bank of India dated February 12, 2018 on Resolution of Stressed Assets – Revised Framework ("**RBI Circular**"). It is submitted that the RBI Circular, at the very outset, does not apply to the Applicant/Petitioner as it specifically provides that the 'lenders' are to mean all scheduled commercial banks (excluding Regional Rural Banks) and all India Financial Institutions, unless specified otherwise. Therefore, the Applicant/Petitioner, which is an Asset Reconstruction Company, is not included in the meaning of 'lenders' to which the guidelines under the RBI Circular apply.
- cc) In *arguendo* and without prejudice to the above, even if the Applicant/Petitioner was to be considered a 'lender' for the purposes of the RBI Circular, the pecuniary limit provided for the purpose of initiation of corporate insolvency resolution process is Rs. 2000 crores. The debt due as on the date of filing the present application is Rs. 169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakhs Sixty Eight Thousand Three Hundred and Sixty One only).





dd) It is pertinent to note that initiation of proceedings for corporate insolvency resolution process under the IBC is only provided in Section D of the RBI Circular i.e. at Paragraphs 8 to 13. The relevant paragraphs in this regard are extracted below:

"D. Timeline for Large Accounts to be referred under IBC

8. In respect of accounts with aggregate exposure of the lenders at INR 20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timeline:

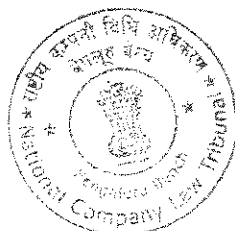
(i) If in default as on the reference date, then 180 days from the reference date.

(ii) If in default after the reference date, then 180 days from the date of first such default.

9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code 2016 (IBC) within 15 days from the expiry of the said timeline.

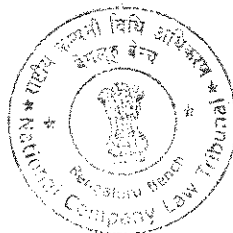
12. For the other accounts with aggregate exposure of the lenders below INR 20 billion and, at or above INR 1 billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default."

ee) From the above, it is abundantly clear that in relation to initiation of corporate insolvency resolution proceedings under the IBC, the RBI circular is applicable only against those corporate debtors having aggregate debt exposure of Rs. 2000 Crores and above. The RBI



Circular further clarifies that for accounts below Rs. 2000 Crores and, at or above Rs. 100 Crores, the Reserve Bank of India would announce reference dates over a period of two years. However, these reference dates were never announced by the Reserve bank of India and the said RBI Circular was struck down by the Hon'ble Supreme Court in its judgment dated April 2, 2019 in *Dharani Sugars and Chemicals Limited vs. Union of India & Ors.* Reported in (2019) 5 SCC 480 ("**Supreme Court Judgement**"). As such, the RBI Circular is of no consequence in the present proceedings.

- ff) It is further submitted that the right of a financial creditor to take recourse to Section 7 of the IBC exists independently of the RBI Circular. Where proceedings seeking initiation of corporate insolvency resolution process have been filed by a financial creditor, independently of the RBI Circular through exercise of such right, such proceedings can be considered by this Hon'ble Tribunal in accordance with the provisions of the IBC. Under the Supreme Court Judgement, the proceedings initiated 'only' because of the operation of the RBI Circular, cannot be proceeded with as being non est in law. Therefore, there is no bar or impediment in the continuation of the present proceedings, where the Application was filed by the Applicant/Petitioner by exercising its independent right as a financial creditor under Section 7 of the IBC.
- gg) It is further submitted that the Supreme Court Judgment does not pertain to initiation of corporate insolvency resolution process of power companies in general, and it is abundantly clear that in making such baseless and unsubstantiated statements, the Corporate Debtor/Respondent has attempted to mislead this Hon'ble Tribunal.



- hh) The Corporate Debtor/Respondent, in the Additional Written Submissions filed by it, has also stated that being a 'power producer', it provides an 'essential service' under Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) regulations, 2016 ("CIRP Regulations"). It has further been incorrectly stated by the Corporate Debtor/Respondent that such essential services as elucidated under Regulation 32 of the CIRP Regulations 'do not come under the purview of the Code'. However, it is pertinent to note that Regulation 32 of the CIRP Regulations is to be read with the provisions of Section 14(2) of the IBC, which requires the continuation of supply of such essential goods and services to the corporate debtor during the moratorium period. Therefore, the bar on termination or suspension or interruption of supply of essential services under Section 14(2) of the IBC is only in respect of such services supplied to the Corporate Debtor during the moratorium period, and cannot be held to mean a bar on the corporate insolvency resolution process of a corporate debtor allegedly supplying an 'essential service'. Such submissions of the Corporate Debtor/Respondent in the additional written arguments are baseless, *mala fide* in nature and lack application of mind.
- ii) It has also been alleged by the Corporate Debtor/Respondent in its Additional Written Submissions that the present Application has been filed by the Applicant/Petitioner for the purpose of debt recovery. This is nothing but a moonshine defence since the corporate Debtor is no longer in a position to run its operations and the management of the Corporate Debtor clearly does not have a plan to pay off their outstanding liabilities. The fact that the entire project is not functioning because of the incompetence of the



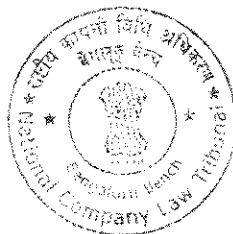
management can be seen from the photographs annexed to the additional written arguments. The above clearly shows that the Corporate Debtor/Respondent is not a solvent company.

- jj) The Hon'ble Supreme Court in *Swiss Ribbons Pvt. Limited and Anr. Vs. Union of India & Ors* reported in AIR 2019 SC 739 has clearly laid down in paragraph 12 that:

"It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timeline within which the resolution process is to take place again protects the corporate debtor's during the resolution process. The timeline within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skill, resuscitate the corporate debtor to achieve all these ends."

Therefore, the present application deserves to be admitted.

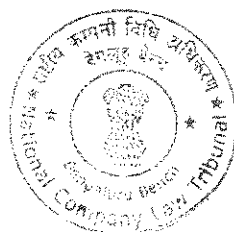
- kk) In light of the above, it is abundantly clear that there exist a debt that the Respondent/Corporate Debtor owes to the



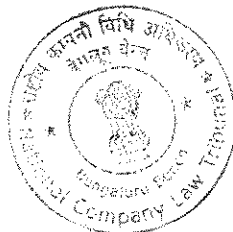
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Applicant/Petitioner towards the loan facilities extended to it by the consortium of banks and subsequently assigned to the Petitioner/Applicant. Further, it is not in dispute that there has occurred a default in respect of the said debt. The Respondent/Corporate Debtor has failed to provide any valid ground for opposing the admission of the present Application and its attempt to protract the present proceedings are reflective of its malicious intent to defeat the rights of the Petitioner/Applicant. Therefore, in view of the precedents laid down by the NCLAT and the Supreme Court of India in relation the limited scope of inquiry towards the existence of 'debt' and 'default', the present Application ought to be admitted.

- 7) The Respondent has filed I.A. No.438 of 2019 dated 29.08.2019 under Section 60(5) of the IBC and Section 424(2) of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016, inter alia, stating submitting as follows:
- a. The Applicant in I.A. No. 438 of 2019 (Respondent in the Main Petition) submits that, the present application is filed by the Applicant for requesting the adjudicating authority for seeking directions to direct the respondent to produce books of accounts, ledger, and other related documents pertaining to the payments to be made by the Applicant to the Respondent I.A. No. 438 of 2019 and any for furnishing any other material information as to the claim made by the Respondent.
 - b. The Respondent herein (Applicant in the main Application) had fabricated the claim and had misrepresented the outstanding amount in the Application filed before this Hon'ble Tribunal. The Respondent had not brought forth before this Hon'ble Tribunal the facts as to the recurring payments so made by the Applicant to the Respondent with respect to the debt amount.



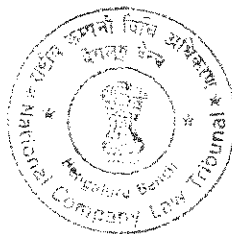
- c. The Respondent had withdrawn various amounts from the ESCROW Account bearing account number 50200021935880 held with the HDFC Bank, K.H. Road Branch, Bangalore, and the same are not disclosed before this Hon'ble Tribunal. The Applicant herein humbly submits that this infers that the Respondent is not bona fide and had been concealing the fact of receipt of such payments. The Applicant further submits before this Hon'ble Tribunal to direct the Respondent to give an affirmation or confirmation as to non-receipt any kind of payments from the Applicant and to call upon the Respondent to produce the Bank Statements, ledger books and other relevant documents in order to establish the fact that they have not withdrawn any kind of amounts from the Applicant.
- d. The Applicant further submits that the Respondent must be put to strict proof of how the proceeds so received from the Applicant are treated in the books of accounts of the Respondent. The Applicant also submits that the Respondent must also be directed to prove the genuineness of the books of accounts of the Respondent. The Applicant further submits that the Respondent must also put forth the revenue records and the tax records thereto as a proof of payment of tax on the interest component so received by them, as it is to be considered as a revenue for the Respondent.
- e. The Applicant further submits that the Respondent in the memo dated 11.07.2019, the Respondent had submitted a letter so addressed to the Applicant, dated 08.07.2019 wherein it was stated by the Respondent that the amount so paid by the Applicant till date is not Rs.18,68,29,698/- (Rupees Eighteen Crores Sixty Eight Lakh Twenty Nine Thousand Six Hundred Ninety Eight Only) but was Rs.17,01,12,916/- (Rupees Seventeen Crores One Lakh Twelve Thousand Nine Hundred Sixteen Only). The Respondent shall be put



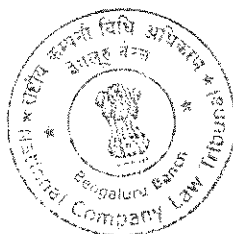
- to strict proof of the same and the Respondent be directed to show a proof as to the amount so claimed to be received from the Applicant.
- f. The Applicant also submits that the Respondent be called upon to give an evidence as to the outstanding amount as claimed by them. The Applicant further submits before this Hon'ble Tribunal to direct the Respondent to give a proper and detailed statement as to how they have arrived at the outstanding amount as the outstanding so claimed in their Application is exorbitant and does not contain any sanctity in its entirety, as the total debt so assigned itself is limited to Rs.41,00,00,000/- (Rupees Forty One Crores Only).
- g. The Applicant also submit that the Respondent must put an affidavit any kind of documents in relation to the withdrawals made from the ESCROW Account, with regard to the receipt of payments from the Applicant and any other relevant documents thereon to be furnished before this Hon'ble Tribunal.
- h. The Applicant submits that this is a fit case for the Hon'ble Tribunal to exercise its powers under Section 424(2) of the Companies Act, 2013, the Tribunal shall have for the purpose of discharging their function under the Companies Act, 2013 or under Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters specified in Section 424(2).

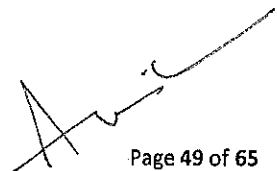
Section 424(2) of the Companies Act, 2013 reads as follows:

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act ["or under the Insolvency and Bankruptcy Code, 2016"], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-

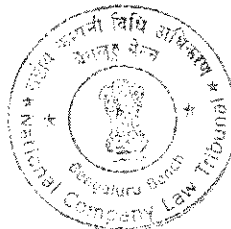


- (a) *Summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) *Requiring the discovery and production of documents;*
 - (c) *Receiving evidence on affidavits;*
 - (d) *Subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;]*
 - (e) *Issuing commissions for the examination of witness or documents;*
 - (f) *Dismissing a representation for default of deciding it ex parte;*
 - (g) *Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
 - (h) *Any other matter which may be prescribed.*
- j. Hence the Applicant hereby request the Adjudicating Authority to direct the Respondent to file his books of accounts, bank statements and any other relevant documents as this Tribunal Deems, fit under Section 424(2) of the Companies Act, 2013. Hence, the Respondent must put on affidavit these documents, if any, which have been furnished by it to any authority and Hon'ble Tribunal may further, permit Applicant to cross examine the Respondent for the facts with regard to the said case.
- k. Therefore, the Applicant herein file application under Section 60(5)(c) r/w Section 424(2) of the Companies Act, 2013 & Rule 11 of the National Company Law Tribunal, 2016 to seek directions from Adjudicating Authority to direct respondent to produce following documents:
- (a) Detailed statement of amounts received from the Respondent along with bank statements

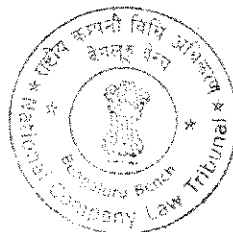



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- (b) Details as to the Withdrawals from the ESCROW Account
- (c) Elaborative statement as to the outstanding amount due from the Applicant.
- (d) Books of Accounts and ledger statements pertaining to the Applicant and the debt outstanding.
- (e) Any other document as this Tribunal deems necessary for its perusal.
- 8) The Petitioner has filed Statement of Objections to the I.A. No. 438 of 2019 dated 13.09.2019, inter alia, stating submitting as follows:
- a) For the sake of clarity and consistency, the parties are referred to herein as per their rank in the application filed by the Petitioner/ Financial Creditor u/s 7 of the IBC ("**Application**").
- b) It is submitted that the Interlocutory Application has been filed by the Respondent/Corporate Debtor with the sole intention of delaying the hearing an initiation of corporate insolvency resolution process of the Respondent/Corporate Debtor. It is further submitted that the present matter has already been substantially delayed due to the actions of the Respondent/Corporate Debtor, which has, on one pretext or the other, sought to draw the attention away from the limited scope of inquiry under Section 7 of the IBC.
- c) It is apparent that Interlocutory Application has been filed for the sole intent to delay the hearing of the Application and the admission of the Application, since the documents sought in the Interlocutory Application were not required by the Respondent at the time of filing the statement of objections, and since the Interlocutory Application has been filed at a stage after the completion of pleadings and at the time when it is pending for hearing on admission.

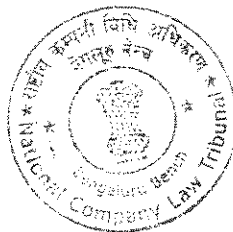


- d) It is submitted that from the Application, clear 'debt' and 'default' has been established. The actions of the Respondent/Corporate Debtor are contrary to the object of the Code itself, which seeks to implement timely resolution of entities in default.
- e) The Respondent/Corporate Debtor has deliberately distorted and misstated facts with the *mala fide* intention of misleading this Hon'ble Tribunal. The Petitioner/Financial Creditor has presented the true facts of the matter before this Hon'ble Tribunal vide the Application, the rejoinder filed by the Petitioner/financial Creditor on January 31, 2019 ("**Rejoinder**") in response to the statement of objections filed by the Respondent/Corporate Debtor on December 14, 2018 ("**Statement of Objections**"), and the written submissions filed by the Petitioner/Financial Creditor on August 30, 2019 ("**Written Submissions**"). The Petitioner/Financial Creditor craves leave to refer to the facts set out herein and prays that they be read as a part and parcel of the present statement of objections, for the sake of brevity.
- f) It is submitted that any dispute regarding the quantum of the 'debt' plays no role in the present proceedings, neither do the reasons for 'default'. Such futile efforts of the Respondent/Corporate Debtor are nothing by a malicious attempt to once again draw attention away from the limited scope of inquiry under Section 7 of the IBC which has been reiterated by the Hon'ble Apex Court time and again. It is submitted that the scope of the inquiry is limited to establishment of 'debt' and 'default' by the Respondent/Corporate Debtor.
- g) It is submitted that the reliefs sought by the Respondent/Corporate Debtor in the Interlocutory Application are unheard of and on the other hand the Apex Court has repeatedly stressed on the limited



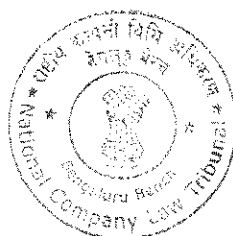
scope of inquiry under Section 7 and the timelines that are to be followed under the Code.

- h) Moreover, it ought to be noted that the quantum of the debt has been discussed and intimated to the Respondent/Corporate Debtor in various communications and correspondences which were exchanged before filing of the present Application, and this has been accepted and acknowledged by the Respondent/Corporate Debtor. The Respondent/Corporate Debtor has also attempted to settle the outstanding debt with proposals that are unreasonable, thereby clearly admitting that there is existence of debt and default. In disputing the quantum of the debt owed to the Petitioner/Financial Creditor, the Respondent/Corporate Debtor has not once denied the existence of a debt owed to the Petitioner/Financial Creditor.
- i) The Respondent/Corporate Debtor has admitted that it had received amounts under the loan facilities extended to it by the consortium of banks. It is abundantly clear from the Statement of Objections and the Application that there is an outstanding debt of Rs. 169,82,68,361/- (Rupees One Hundred and Sixty Nine Crore Eighty Two Lakh Sixty Eight Thousand Three Hundred Sixty One only) as on July 31, 2018 and the Respondent/Corporate Debtor has defaulted in the payment of such amount. In view of such clear existence of 'debt' and 'default', the present Application ought to be admitted and the Interlocutory Application filed by the Respondent/Corporate Debtor ought to be dismissed as frivolous and vexatious.
- j) It is submitted that the Respondent/Corporate Debtor has failed to make out a case in the Interlocutory Application for grant of interlocutory reliefs prayed for therein. The Interlocutory



Application ought to be dismissed and the present matter ought to be proceeded with forthwith, and heard on admission.

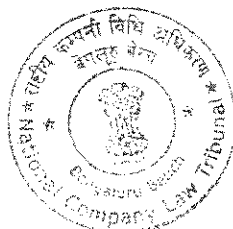
- k) The Respondent/Corporate Debtor is contradicting itself by firstly stating that the Petitioner/Financial Creditor has misrepresented the outstanding amount and then seeking for relief of statement of accounts, ledgers etc. The averments made in the paragraph under reference are false, lack basis and are denied *in toto*.
- l) The Respondent/Corporate Debtor is a party to the escrow account. In fact, the Respondent/Corporate Debtor has submitted the statement of accounts pertaining to the escrow with its statement of objections, which shows he had been able to access such account. It is submitted that the amounts mentioned in the Application are outstanding dues, after taking into consideration the amounts the payments received from the escrow account. The statement of accounts produced by the Petitioner/Financial Creditor along with its Application clearly reflects the amounts withdrawn from the escrow account. The Respondent/Corporate Debtor has made bald allegations regarding non-disclosure of the amounts allegedly paid by it. Therefore, without any substantiation whatsoever, the Respondent/Corporate Debtor has alleged that the Petitioner/Financial Creditor has misrepresented the outstanding amount owed by the Respondent/Corporate Debtor.
- m) The very nature of the relief clearly shows that this Interlocutory Application is a ruse to delay the present proceedings. The Petitioner/Financial Creditor has produced the certificate under the Banker's Book Evidence Act, 1891 for the concerned accounts. It is submitted that the Application u/s 7 of the IBC is complete in all respects and documents such as revenue records, tax records are



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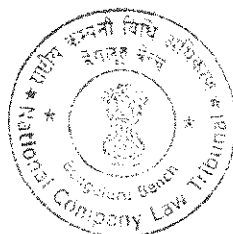
not required to be produced with an application seeking initiation of corporate insolvency resolution process under Section 7 of the IBC.

- n) It is submitted that the letter referred to by the Respondent is the response issued by the Petitioner/Financial Creditor to the false and frivolous allegations made in the settlement proposal issued by the Respondent/Corporate Debtor. It is submitted that the Respondent/Corporate Debtor is attempting to raise disputes which cannot be gone into under Section 7 of the IBC. It is submitted that after the letter dated July 8, 2019 referred to in the paragraph under reference was issued to the Respondent/Corporate Debtor, it had ample opportunity to raise any objection to the contents thereof, especially in the written submissions filed by it on August 14, 2019. However, such baseless and unsubstantiated objections regarding the amount allegedly repaid by it have now been raised by the Respondent/Corporate Debtor only with a view to prolong the present proceedings.
- o) It is submitted that the Respondent/Corporate Debtor has filed this Interlocutory Application with the *mala fide* intention of misleading this Hon'ble Tribunal and to draw attention away from the limited scope of inquiry for an application under Section 7 of the IBC. It is further submitted that the assignment agreement executed between the Petitioner/Financial Creditor and Punjab National Bank dated November 20, 2015 ("PNB assignment Agreement") provides in Schedule 1 that the total outstanding amount payable by the Respondent/Corporate Debtor to Punjab National Bank was Rs. 79.18 Crores as on September 30, 2015. Similarly, the assignment agreement executed between the Petitioner/Financial Creditor and Oriental Bank of Commerce dated March 11, 2016 ("OBC Assignment Agreement") provides in Schedule 1 that the total



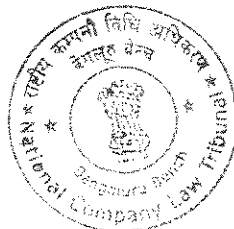
outstanding amount payable to Oriental Bank of Commerce as on February 28, 2016 was Rs. 40.18 crores. Therefore, the allegation of the Respondent/Corporate Debtor that the amount of Rs.41,00,00,000/- (Rupees Forty One Crores only) was assigned to the Petitioner/Financial Creditor is false, incorrect and inconsistent with the terms of the said assignment agreements.

- p) It is submitted that the Respondent/Corporate Debtor has failed to make out a case for reliefs to be granted under Section 424(2) of the Act, which provides for certain powers to be exercised by this Hon'ble Tribunal for the purpose of discharging its functions under the IBC. The reliefs in the Interlocutory Application have been sought for by the Respondent/Corporate Debtor in its effort to dispute the quantum of debt owed by it to the Petitioner/Financial Creditor. The function of this Hon'ble Tribunal in respect of an application filed under Section 7 of the IBC is to look into the question of existence of 'debt' and occurrence of 'default' in repayment thereof, which has been adequately established in the present case. The provisions of Section 424(2) of the Act cannot be invoked at the time of deciding an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 which is at a pre-admission stage. Therefore, no relief can be claimed by the Respondent/Corporate Debtor under Section 424(2) of the Act.
- q) The Respondent/Corporate Debtor has attempted to treat the proceedings like a suit by seeking to produce documents before 'any authority' and is also seeking to cross examine the Petitioner/Financial Creditor. The Respondent/Corporate Debtor has failed to make out a case for the reliefs sought in the present application both under facts and in law. As the limited scope of inquiry under Section 7 of the IBC for initiation of corporate insolvency resolution process



does not call for any analysis of the quantum of the debt owed, the reliefs claimed for by the Respondent/Corporate Debtor do not merit any exercise of the powers granted to this Hon'ble Tribunal under Section 424(2) of the Act nor do the issues raised by the Respondent/Corporate Debtor pose any question of law or fact, arising out of or in relation to its insolvency resolution. As such, the Interlocutory Application frivolously filed by the Respondent/Corporate Debtor is liable to be dismissed.

- r) The Respondent/Corporate Debtor being a debtor of the Petitioner/Financial Creditor cannot claim balance of convenience in its favour. The Respondent/Corporate Debtor has only filed this application to delay the initiation of corporate insolvency resolution. There arises no question of unjust enrichment of the Petitioner/Financial Creditor by initiation of the corporate insolvency resolution process of the Respondent/Corporate Debtor, as the same is in its best interest and that of all the stakeholders therein. Moreover, the reliefs sought by the Respondent are vague, untenable in facts and law and the sole intent of the Interlocutory Application is to prolong the proceedings before this Hon'ble Tribunal.
- 9) Heard the learned Counsels for the Petitioner and the learned Senior Counsel, Counsels and PCS for the Respondent. We have carefully perused all the pleadings made by both the parties, supporting documents and also extant provisions of the Code.
- 10) The learned Counsel for Petitioner while reiterating various averments made in the pleadings raised for the petitioner and relying on judicial precedents, has submitted that the instant Company Petition is filed in accordance with law and the debt and default in question is not in dispute and IRP suggested is qualified professional duly registered



with IBBI. Therefore, it is urged that the Tribunal admit the instant Company Petition by initiating CIRP as prayed for.

- 11) The learned Counsel for Respondent has opposed the maintainability of the Company Petition by inter alia relying on judicial precedents, contending quantum of debt and elaborating the circumstances resulting in the present Company Petition.
- 12) The Company Petition is filed U/s 7 of the I&B Code, 2016, which reads as under:

“7. (1) A Financial Creditor either by itself or jointly with (other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government), may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. For the purposes of this sub-section, a default includes a default in respect of a financial debt owned not only to the applicant financial creditor but to any other financial creditor of the Corporate Debtor.

- (2) The Financial Creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
- (3) The Financial Creditor shall, along with the application furnish-*
 - (a) a record of the default recorded with the information utility or such other record or evidence of default as may be specified.*
 - (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) any other information as may be specified by the Board.*
- (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the*



existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same

(5) *Where the Adjudicating Authority is satisfied that:*

(a) A default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

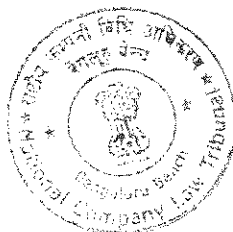
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) *The Corporate Insolvency Resolution Process shall commence from the date of admission of the application under sub-section (5).*

(7) *The Adjudicating Authority shall communicate:*

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor.

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.



- 13) In the instant case, as detailed supra, it is not in dispute that Corporate Debtor was sanctioned certain loan facilities and it has defaulted in making repayment of the loans.
- 14) **Although the Corporate Debtor has submitted along with photographs that the Corporate Debtor was facing severe tribulations in the business due to the recent flood that had occurred in Karnataka and the Power Project being located in the same area and its entire business was adversely affected as a result of the flooding caused by Netravati River. The power house has submerged in the flood waters. All the power equipments and machineries, control panels and diesel generator sets are under flood water. But the I&B Code per se is silent on Force Majeure condition and only concerned with debt and default in the instant case. References of the decisions of Hon'ble Supreme Court and Hon'ble NCLAT are given below and suggest that reason for default of a debt cannot be a ground to reject the application under Section 7 of the Code.**
- 15) The Hon'ble Supreme Court has in case of *Innovative Industries Limited vs. ICICI Bank & Anr*¹, adverted to Section 7, at para 28, which reads as under:

"28. When it comes to 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

¹ Civil Appeal Nos. 8337-8338 OF 2017

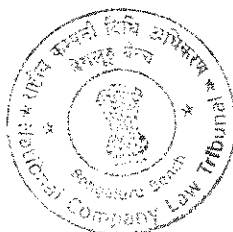


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made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of 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.

- 16) Further, the Hon'ble National Company Law Appellate Tribunal in case of **H.N. Nagaraj v. Edelweiss Asset Reconstruction Company Ltd.**², has held that "What is the reason for default of payment

²(2018) 148 SCL 447



cannot be a ground to reject the application under Section 7, as the Adjudicating Authority is only supposed to see whether the application is complete or not and whether there is any 'debt' or 'default'".

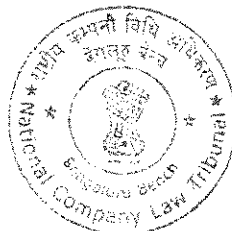
- 17) **The Corporate Debtor is in Essential Services such as generation of electricity, but the Code is silent on providing any relaxation even in such cases. Hence, this could not be considered by this Tribunal for rejecting Section 7 Petition under the Insolvency and Bankruptcy Code, 2016.**
- 18) **The Corporate Debtor has submitted the following proposal dated 24.06.2019 to the Financial Creditor:**

"8. The Company hereby offers to make a payment in following manner, keeping in view the revenue generation of the Company:

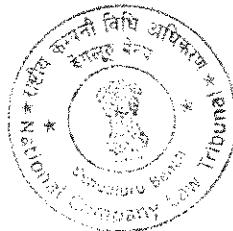
(a) Rs.36,00,00,000/- (Rupees Thirty-Six Crores Only) in full and final settlement of the loan outstanding, within six months from the date of acknowledgement of this proposal and hereby requests you to acknowledge the said proposal made by the Company. (or)

(b) Rs.40,00,00,000/- (Rupees Forty Crores Only) in full and final settlement of the loan outstanding in periodical payments which may be extended for a period of three years from the date of acknowledgement of this proposal and the said payments will be made from the revenue generated annually, by the Company."

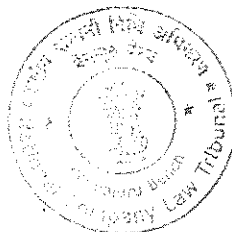
- 19) **However, the Financial Creditor rejected the settlement proposed by the Corporate Debtor vide its communication dated 08.07.2019.**



- 20) On perusing the documents placed on record we are inclined to hold that the Financial Creditor has proved existence of 'debt' as well as 'default' against the Corporate Debtor.
- 21) Since the Corporate Debtor counsel has not come out with an argument stating that no debt is in existence or no default is in existence, we are of the considered view that this case is fit for admission.
- 22) At this stage, we also observe that the Corporate Debtor has filed I.A. No.438 of 2019 dated 29.08.2019 under Section 60(5) of the IBC and Section 424(2) of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016, inter alia seeking detailed statement of amounts received from the Respondent along with bank statements etc. However, given the above it is clear that any dispute regarding the quantum of the 'debt' plays no role in the present proceedings; neither do the reasons for 'default'. **Hence, I.A. No.438 of 2019 in C.P. (IB) No.243/BB/2018 is hereby rejected.**
- 23) This matter came up for hearing before this Tribunal, inter alia, on 10.12.2018, 19.12.2018, 21.01.2019, 31.01.2019, 25.02.2019, 28.03.2019, 24.04.2019, 09.05.2019, 11.07.2019, 22.07.2019, 14.08.2019, 30.08.2019 and 13.09.2019. We were inclined to grant time owing to the request of the parties and on specific occasions requests were made for the purpose of settling the issue.
- 24) We are satisfied that the instant Company Petition filed by M/s.Pridhvi Asset Reconstruction And Securitisation Company Limited, u/s 7 of IBC, 2016 is strictly in accordance with law, with substantial evidence produced in support of debt and default.

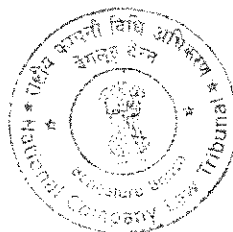


- 25) It is suggested that Shri Pankaj Srivastava, bearing Registration Number IBBI/IPA-001/IP-P00245/2017-2018/10474, be appointed as Interim Resolution Professional (IRP). Shri Pankaj Srivastava has filed Written Communication dated 06.08.2018, under Rule 9 of I&B (AAA) Rules, 2016, by inter alia, declaring that he is a qualified Insolvency Resolution Professional Registered with Indian Institute of Insolvency Professional of ICAI having Registration Number IBBI/IPA-001/IP-P00245/2017-2018/10474 and he is not undergoing any disciplinary proceedings, expressing his willingness to act as such etc. Therefore, it is a fit case to initiate CIRP as prayed for.
- 26) In view of the above facts and circumstances of case, and by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of IBC, 2016, the following orders are passed:
- (1) C.P. (IB) No.243/BB/2018 is hereby admitted by initiating CIRP in respect of M/s. Sagar Power (Neerukatte) Private Limited i.e. the Corporate Debtor;
 - (2) Shri Pankaj Srivastava, bearing Registration No.IBBI/IPA-001/IP-P00245/2017-2018/10474 is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code, 2016 and the Rules framed by the IBBI from time to time;
 - (3) The following moratorium is declared prohibiting all of the following, namely:
 - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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;
 - e) 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 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator as also not applicable to surety.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
 - h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
- (4) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in

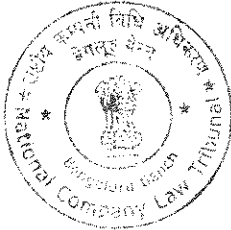


carrying out his functions as such, under the Code and Rules made by IBBI.

- (5) IRP is further directed to strictly adhere to the time schedule as mentioned under the Code. And he is also directed to file progress reports from time to time to the Tribunal.
- (6) Post the case for report of the IRP on 25.10.2019.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

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(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Deputy Registrar
National Company Law Tribunal
Bengaluru Bench