



**NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**CP(IB)-24(PB)/2018
IA-2656/2021
IA-1770/2022**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

STATE BANK OF INDIA

State Bank Bhawan,
14th Floor, Madame Cama Road,
Nariman Point, Mumbai-400 021

Also at:

SBI, Stressed Assets Management Branch-II
SBI House, II & III Floor,
18/4, Arya Samaj Road, Karol bagh,
New Delhi-110005

....Petitioner/Applicant

Versus

SHAKTI BHOG FOODS LIMITED

110-1103, Pearls Business Park,
Pitampura, New Delhi-110034

.....Respondent

In the matter of IA-1770/2022

Phonix ARC Private Limited

Acting in its capacity as Trustee of Phonix Trust FY17-6
5th floor, Dani Corporate Park, 158 CST Road, Kalina,
Santacruz (East) Mumbai-400098

Order Pronounced on: 22.09.2022

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Coram:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (T)**

PRESENT

For the Petitioner : Mr. Ankur Mittal, Ms. Meera murali,
Ms. Aishwarya Pandey, Advocates
For OL : Mr. Amish Tondon, Adv.
**For the Ex-management
of CD** : Mr. Siddhartha Jain, Mr. Parvesh
Khyalia
For Phonix ARC : Mr. Amit Singh Chadha, Sr, Adv with
Mr. Nirmal Goenka Adv

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (T)

1. The main Application (**CP(IB)/24/2018**) has been filed on **December 29, 2017** on account of default in the loan accounts of the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), by the Petitioner/Applicant, State Bank of India for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the

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Corporate Debtor (**M/s Shakti Bhog Foods Limited**) for default of **Rs. 2045,34,90,165.90** (Rupees Two Thousand Forty-Five Crores Thirty Four Lakh Ninety thousand One Hundred Sixty Five Only) as on **27.12.2017**. **Out of which the Corporate Loan is Rs. 280,43,16,126.44** (Rupees Two hundred Eighty crore Forty three lakh, Sixteen Thousand One hundred Twenty Six and forty four paise Only) and **Rs. 1764,91,74,039.46** (**Rupees One Thousand Seven hundred sixty Four crore Ninety one lakh seventy four thousand and thirty nine and forty six paise**) is the amount towards working capital credit facilities. Working computation of the outstanding amount is annexed as **Annexure A/3**.

2. The Applicant is a Public Sector Bank established under State Bank of India, Act, 1955. State bank of Indore got merged with State Bank of India in the year 2010. The State Bank of Hyderabad, State Bank of Patiala, State Bank of Mysore, State Bank of Bikaner and Jaipur and State Bank of Travancore were associated banks of State Bank of India and with effect from **01.04.2017** the aforesaid associated bank got merged with State Bank of India. Therefore, all the rights and liabilities of the aforesaid banks got vested with the State Bank of India.
3. The application (**IA-2656/2021**) dated **23.06.2021** is filed by the **State Bank of India** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) R/w Rule 11 of the National Company Law Tribunal Rules, 2016, who is the Petitioner in the CP (IB)-24(PB)/2018 (main petition) inter-alia seeking revival and

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expeditious disposal of the main petition filed against M/s. Shakti Bhog Foods Limited (Corporate Debtor).

4. The application (**IA-1770/2022**) dated **13.04.2022** is filed by **M/s. Phonix ARC Pvt Ltd** a company incorporated under the Companies Act, 1956 and registered as an Asset Reconstruction Company pursuant to Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 seeking to take on record the following additional facts and documents:

- a. In the year 2014, at the request of Shakti Bhog Foods Ltd, for grant and sanction of financial facilities to the tune of Rs. 70,00,00,000/- (Rupees Seventy Crores Only) for its business activities, South India Bank (Assignor Bank of Phoenix ARC), sanctioned and disbursed various credit facilities to Shakti Bhog vide sanction letter dated 07.07.2014/18.07.2014.
- b. To secure the financial facilities Shakti Bhog Foods Limited executed various documents in favour of Applicant/ Phoenix ARC. Shakti Bhog Foods Limited also executed Agreement to mortgage for takeover loans, with respect to the mortgaged properties being all the piece and parcel of land admeasuring 37027 sq. meters forming part of khasra no. 1810 (old khasra no. 1475/1 min, 1475/2 and 1475/3), khasra no. 1808 (old khasra no. 1475/3 min and 141, khasra no. 1807 (old khasra no. 1476, 1482/1 min, 1482/2). khasra no. 1806 (old khasra no. 1482/1 and 1482/2) and building pertaining to biscuit plant situated at Mauza Salempur Mehdood 11. Salempur Mehdood

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Village, Pargana Roorkee Tehsil. District Haridwar, Uttarakhand, owned by Shakti Bhog Foods Limited, in favour of the Assignor Bank.

- c. However, after availing the above-mentioned credit facilities, Shakti Bhog Foods Ltd, and guarantors failed and neglected to repay the outstanding dues of Assignor Bank and account of Shakti Bhog Foods Ltd slipped into the category of Non-Performing Asset on 30.06.2015.
- d. On 30.12.2016, Assignor Bank/South Indian Bank, vide Assignment Agreement dated 30.12.2016, assigned the NPA in respect of financial facilities availed by Shakti Bhog Foods Ltd, to Phoenix ARC together with all the right, title and interest in the underlying security interests created in its favour therein and all the right, title and interest of the Assignor Bank to initiate and continue legal proceedings, inter-alia, against the borrowers.
- e. Since Shakti Bhog Foods Ltd failed and neglected to repay the outstanding dues, Phoenix ARC issued Recall Notice, dated 10.10.2017, thereby, calling upon Shakti Bhog Foods Ltd, to pay the outstanding dues along with contractual rate of interest and other charges from 01.10.2017.

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- f. On 11.12.2017, Phoenix ARC filed an application under Section 19 of the Recovery of Debts to Banks and Financial Institutions Act, 1993 (being OA No. 62 of 2018, titled “*Phoenix ARC vs Shakti Bhog Foods Ltd and Ors.*”), before the Learned DRT, Delhi, *inter-alia*, for recovery of its outstanding dues to the tune of Rs. 82,96,75,730 (Rupees Eighty-Two Crores Ninety-Six Lacs Seventy Thousand Seven Hundred and Thirty Only), payable, *inter-alia*, by Shakti Bhog along with pendente-lite and future interest at contractual rate of interest from 01.10.2017, till the date of full realisation and other cost and expenses. (The same is pending adjudication.)
- g. Meanwhile, the Hon’ble High Court of Delhi, vide order dated 18.01.2018, in Company Petition, being Co. Pet. No. 987/2015, titled as “*CFSIT, INC vs. Shakti Bhog Foods Limited*”, passed an order for winding up of Shakti Bhog Foods Limited.
- h. During the pendency of the winding-up petition, State Bank of India filed an application under 7 of the IB Code, 2016 before this Hon’ble Tribunal for initiation of CIRP against Shakti Bhog Foods Ltd. This Hon’ble Tribunal vide order dated 08.02.2018, was pleased to dismiss the said application.
- i. Since the property of Shakti Bhog Foods Ltd i.e. land and building including the hypothecated plant/machinery was exclusively charged to Phoenix ARC as a security for recovery of the outstanding dues. Phoenix ARC, as per rights available to it, intimated the Hon'ble Delhi High Court of its intentions to proceed against the said properties, including the above-mentioned hypothecated plant / machinery etc to proceed under the SARFAESI Act. 2002. Vide order dated 29.05.2018 (in Co.

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Pet. No. 987 of 2015), the Hon'ble Delhi High Court while recognizing the right of Phoenix ARC to proceed under the SARFAESI Act, 2002, allowed Phoenix ARC to proceed against the said properties in accordance with provisions of law.

- j.** Thereafter, State Bank of India filed an appeal bearing Comp Appeal (AT) (Ins.) No. 83 of 2018, titled as "State Bank of India vs Shakti Bhog Foods Limited before the Hon'ble National Company Law Appellate Tribunal. Delhi against the order dated 08.02.2018 (passed by this Hon'ble Tribunal dismissing the application under section 7 of IB Code, filed by State Bank of India). The Hon'ble NCLAT, Delhi vide order dated 12.03.2018, was pleased to dismiss the said appeal.
- k.** In December, 2018, Phoenix ARC filed an Application under Section 14 of the SARFAESI Act, 2002, before the Learned District Magistrate, Haridwar for taking the physical possession of the secured asset situated at Haridwar. Learned District Magistrate vide its order dated 24.12.2018, was pleased to allow the said Application. Subsequently, Phoenix ARC took possession of the secured asset including the hypothecated plant / machinery which was exclusively charged to Phoenix ARC.
- 1.** In 2018, State Bank of India, had also filed an application (bearing CA No. 1444 of 2018) before the Hon'ble Delhi High Court (in Comp Pet No. 987 of 2015, titled as "CSFIT vs Shakti Bhog Foods Ltd") for transfer of the winding up petition (pending before the Hon'ble High Court of Delhi) to this Hon'ble Tribunal.

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However, Hon'ble High Court of Delhi, vide detailed order dated 30.09.2019, was pleased to dismiss the said application.

- m.** Thereafter, State Bank of India challenged both the abovementioned orders (passed by Hon'ble NCLAT and Hon'ble High Court of Delhi) before the Hon'ble Supreme Court. Hon'ble Supreme Court vide order dated 12.01.2021 was pleased to allow both the appeals.
 - n.** Applicant/ Phoenix ARC while duly exercising its rights under the SARFAESI. Act 2002, published a sale notice dated 28.01.2022, for e-auction: of Land & Building and the Plant Machineries pertaining to biscuit plant situated at Mauza Salempur Mehdood-II. District Haridwar.
 - o.** Applicant Phoenix ARC successfully has sold the movable assets (as mentioned in the sale notice dated 28.01.2022) in the public e-auction conducted on 23.02.2022, under the provisions of SARFAESI. Act 2002. Thereafter, sale certificate dated 09.03.2022 has also been issued. Copy of the sale certificate dated 09.03.2022 is annexed as ANNEXURE A-9.
- 5. IA-2656/2021** has been filed in light of the Order of the Hon'ble Supreme Court dated 12.01.2021 passed in SLP(C)No.682-683/2020 and Civil Appeal no. 4536 of 2018 which set asides the Order dated 12.03.2018 of the Hon'ble National Company Law Appellate Tribunal passed in Comp. App.(AT) (Ins) no.83/2018.

Submissions of the Petitioner bank:

- 6.** In the year, 2006, Corporate Debtor approached Financial Creditor and its consortium of bank to avail credit facilities. Amongst the

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consortium of Banks, State Bank of Indore, State Bank of Hyderabad, State Bank of Mysore had sanctioned Working Capital Credit Facilities to the Corporate Debtor on the following dates as mentioned under:

Sr. No.	Date	Bank	Amount in Crore (in Rs.)
1.	14.03.2006	State bank of Indore	30
2.	28.03.2006	State bank of Hyderabad	20
3.	25.04.2006	State Bank of Mysore	20

7. The Board of Directors of the Corporate Debtor passed a resolution dated 05.05.2006 to avail Working Capital Credit facilities from the Consortium of banks to execute the necessary securities.
8. The Working Capital Consortium Agreement dated 09.05.2006 was executed between Corporate Debtor and the Consortium of banks for availing Working Capital Credit Facilities for a sum of Rs.70 Crore. The following documents were executed by the Corporate Debtor in favour of the Consortium of banks:

Sr. No.	Document date-09.05.2006
1.	Joint Deed of Hypothecation
2.	Deed of Guarantee executed by Mr. K K Kumar, Mr. Siddhartha Kumar, Smt. Sunanda, M/s. Dash Exports Pvt Ltd and M/s. Pearl Agro Foods
3.	Undertaking submitted by the Corporate Debtor for not paying any commission or brokerage to the Guarantors
4.	Undertaking by the Corporate Debtor for not creating any further charge on their assets and immovable properties

9. The Corporate Debtor mortgaged its immovable properties and charge was created in favour of the Petitioner bank on

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10.07.2006, 26.08.2011, 08.11.2012 and 28.01.2014 respectively.

10. Time and again, Corporate Debtor approached the consortium of Banks to enhance/increase the credit limit of the Corporate Debtor. In turn, various sanction letters were issued by various banks forming Consortium of Banks.
11. It is stated in the Application under Section 7 that Corporate debtor is declared NPA on **31.03.2015**. The consortium of banks issued notice to the Corporate Debtor calling upon to pay and recalling the entire outstanding amount towards Working Capital Credit, the details are as follows:

Sr. No.	Bank	Date
1.	State Bank of Patiala	21.09.2016
2.	State Bank of Bikaner and Jaipur	28.09.2016
3.	State Bank of Mysore	13.10.2016
4.	State Bank of Hyderabad	01.11.2016
5.	State Bank of Patiala	02.11.2016
6.	State Bank of India	15.11.2016
7.	State Bank of Travancore	01.12.2016 and 15.11.2017

12. It is stated that in the year 2015, a Company Petition no. 987/2015 was filed by one CFSIT, Inc against the Corporate Debtor before the Hon'ble High Court of Delhi under Section 433(e) of the Companies Act, 1956, seeking initiation of winding up proceedings.
13. In the meanwhile the IBC, 2016 came to be enacted by the Parliament and subsequently on account of default in the loan accounts of the Corporate Debtor an application was filed on **29 Dec, 2017** under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy

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(Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), by the petitioner State Bank of India for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor for default of Rs. 20,45,34,90,165.90 (Rupees Two Thousand Forty-Five Crores Thirty Four Lakh Ninety thousand One Hundred Sixty Five Only) wherein vide Order dated 09.01.2018 notice as issued to the Corporate Debtor.

14. The Hon'ble High Court of Delhi vide Order dated **18.01.2018** admitted **the Company Petition no. 987/2015** (winding up Petition) thereby appointing the Official Liquidator and inter-alia directed to take possession of assets of the Corporate Debtor. In the light of the said Order of the Hon'ble High Court of Delhi, this Adjudicating Authority dismissed the Section 7 application vide Order dated 08.02.2018 on the ground of the Order dated 18.01.2018 of the Hon'ble High Court of Delhi without going in to the merits.
15. The petitioner bank filed an appeal **(AT)(Insolvency) No. 83/2018** before the Hon'ble National Company law Appellate Tribunal (NCLAT) against the Order dated **08.02.2018** of this Adjudicating Authority however, the appeal came to be dismissed vide Order dated **12.03.2018**. Being aggrieved by the Order of the Hon'ble NCLAT, the petitioner bank filed a **Civil Appeal No. 4536 of 2018** before the Hon'ble Supreme Court.

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16. In the meantime, the petitioner bank also filed two applications in the Winding up Petition before the Hon'ble High Court of Delhi being CA No. 718/2018 for intervention and CA no.1444/2018 seeking transfer of winding up Petition before this Tribunal, however the Hon'ble High Court of Delhi vide Order dated 30.09.2019 dismissed these applications on the ground that the Official Liquidator has already been appointed and that there is no reason for transferring the proceedings to this Tribunal. This Order of the Hon'ble High Court of Delhi was challenged before the Hon'ble Supreme Court by way of an **SLP (C) No.682-683/2020** and **Civil Appeal No. 4536 of 2018**. Both these appeals were allowed by the Hon'ble Supreme Court vide Order dated 12.01.2021, which reads as under:

*"CA Nos. 81-82/2021 @ SLP© Nos. 682-683/2020
leave granted.*

*Pursuant to our order dated 08.12.2020 a Status Report has
been furnished to this Court on 31.12.2019.*

*The Report makes it clear that only possession of one office has
been taken by the liquidator. All other units are in physical
possession with other parties. Obviously, nothing irreversible
has taken place. As a result, we set aside the order of the
learned Single Judge and allow the appeals in terms of our
judgment in Action Ispat & Power Pvt. Ltd. vs. Shyam Metalics
and Energy Ltd. 2020 SCC Online SC 1025, more particularly,
at paras 31 & 32." The appeals are allowed in the aforesaid
terms.*

Civil Appeal No. 4536 of 2018:

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In view of the above, this appeal also stands allowed. Pending applications, if any, stand disposed of”

Paras 31 and 32 of Hon’ble Supreme Court Judgment referred to above are extracted below:

31. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done

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which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code.

Whether this stage is reached would depend upon the facts and circumstances of each case.

32. In the facts of the present case, the concurrent finding of the Company Judge and the Division Bench is that despite the fact that the liquidator has taken possession and control of the registered office of the appellant company and its factory premises, records and books, no irreversible steps towards winding up of the appellant company have otherwise taken place. This being so, the Company Court has correctly exercised the discretion vested in it by the 5 proviso to section 434(1)(c). Resultantly, civil appeal arising out of SLP (Civil) No. 26415 of 2019 stands dismissed.

17. That by virtue of the Order of the Hon'ble Supreme Court the winding up Petition would now be transferred to this Tribunal to be dealt with in accordance with the provisions of the IBC, 2016.

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Reply of the Corporate Debtor

- 18.** It is stated that there is no debt due to be paid by the Corporate Debtor either in fact or law as the account of the Corporate Debtor has allegedly become a Non-Performing Asset on account of the wrongdoing of the Petitioner bank by excessively debiting interest from the account of Corporate Debtor. The Petitioner bank being the lead bank after having agreed to a Corrective Action Plan (CAP) failed to disburse the entire amount which was sanctioned thereby leaving the Corporate Debtor in lurch which adversely affected its ability to continue its manufacturing facilities and service the various financial facilities extended by the consortium of banks.
- 19.** It is stated that the Corporate Debtor has been operating the bank accounts with the Petitioner bank regularly and there has never been an overdue however, due to excessive debiting of interest amount from the bank account against the RBI guidelines, Petitioner bank started showing certain irregularities which is disputed by the Corporate Debtor against which adjudication is pending before the Ld. Debt Recovery Tribunal (DRT).
- 20.** It is averred that the Petitioner bank along with other consortium of banks must be held liable for their negligent and callous approach towards the Corporate Debtor and for their failure to take measures under the CAP. Further, it is stated that the Petitioner bank is under an obligation to refund/expunge all such

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excessive interest, penal charges and other interests which is debited from the bank account of the Corporate Debtor.

- 21.** It is submitted that the Corporate Debtor has achieved the following total sales turnover from 2011 to 2016:

Year	Amount in Crores (Rs.)
2011-12	4068.30
2012-13	5256.52
2013-14	5922.2015
2014-15	5881.66
2015-16	3909.97

- 22.** It is stated that the Corrective Action Plan was submitted vide letter dated 14.01.2015 and was duly accepted by the Petitioner bank and other members of Consortium of bank. JLF meeting was held on 19.01.2015 wherein the Petitioner bank accepted to sanction and disburse adequate financial/credit limit amounting to Rs 500 crore in the form of corporate loan in favour of the Corporate Debtor. Subsequently, minutes were communicated on 25.01.2015 of the JLF meeting which was held on 19.01.2015. The Corporate Debtor brought in an amount of Rs. 150 crore and the Petitioner bank issued sanction letter dated 14.07.2015. The Consortium of banks issued letter of sanction as under:

Sr. No.	Bank	Letter date
1.	State Bank of Mysore	27.10.2015

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2.	State Bank of Bikaner and Jaipur	13.05.2015
3.	Lakshmi Vilas Bank	07.10.2015
4.	Oriental Bank of Commerce	03.07.2015
5.	State Bank of Hyderabad	07.07.2015
6.	State Bank of Travancore	13.07.2015
7.	State Bank of Patiala	25.05.2015

23. Further, the Petitioner Bank, State Bank of Mysore, State Bank of Patiala, State Bank of Bikaner and Jaipur, State bank of Hyderabad, Oriental Bank of Commerce, Corporation Bank, Lakshmi Vilas Bank and State Bank of Travancore sanctioned their proportionate ratio of **Rs. 377 crores** out of which only **Rs. 347.48 crores** was disbursed and the remaining amount though sanctioned was not disbursed. The other consortium banks i.e. **ICICI Bank, SCB (Standard Chartered Bank), BOB, PNB, Allahabad Bank & IOB (Indian Overseas Bank)** did not even sanction their proportionate share of CAP.

24. It is stated that the bank account of Corporate Debtor was temporarily deficient; therefore, clause 4.2.4 of the RBI guidelines is not attracted and without considering the fact that the bank account is not an NPA the Petitioner bank issued notice of demand dated 22.11.2016 under Section 13(2) of the SARFAESI Act, 2002 demanding an amount of **Rs. 777,90,80,685.72**. Further, the Petitioner Bank has concealed the fact that it has issued notice under Section 13(4) of the SARFAESI Act, 2002 and that the possession of mortgaged properties has been taken by the Petitioner

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bank without giving due credit of the amount/value of such properties.

- 25.** It is submitted that upon the receipt of notice of demand issued by the Petitioner Bank/Applicant under Section 13(2) of the SARFAESI Act, 2002, Corporate Debtor had raised objections by way of its representation dated 21.01.2017, however, the Petitioner bank rejected the same without following the mandate of Section 13(3A). Also, Petitioner issued another notice dated **22.11.2016** under section 13 of the SARFAESI Act demanding therein an amount of Rs. 141,97,92,731.24. It is submitted that Petitioner bank did not even considered the fact that after the sanction of the Corrective Action Plan it was not implemented in its entirety because of non-sanctioning/non-disbursal of the entire agreed/approved amount. Further, on various dates, communication took place between the Consortium of banks and the Corporate Debtor whereby the banks rejected the objections raised by the Corporate Debtor w.r.t the demand raised by them.
- 26.** It is stated that the Petitioner Bank issued notice dated **18.09.2017** under Section 13(4) of the SARFAESI Act, 2002 and initiated the measures under that section by taking symbolic possession of the mortgaged properties without giving credit of value of the said assets which is higher than the amount claimed. The dates on which the bank account of Corporate Debtor allegedly became NPA as per the Petitioner bank and other associated banks is as follows:

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Sr. No.	Bank	Date of NPA as per SARFAESI notice
1.	State Bank of India	27.02.2016
2.	State Bank of Mysore	31.03.2016
3.	State Bank of Bikaner and Jaipur	29.04.2016
4.	State Bank of Travancore	27.02.2016
5.	State Bank of Hyderabad	22.05.2016
6.	State Bank of Patiala	08.06.2016

27. It is stated that an appeal has been filed under the SARFAESI Act, 2002 by the Corporate Debtor against the Petitioner bank and other 13 consortium banks before the Ld. Debts Recovery Tribunal, New Delhi in view of the fact that the banks have issued notices. The Corporate Debtor has reserved its right to make a counter claim against the losses suffered by the Corporate Debtor on account of the illegal and arbitrary decisions of the Petitioner Bank and other consortium banks to the tune of Rs. 5628.51 Crores.

28. It is stated that the Petitioner bank rather than regularizing the bank account in consonance with the sanctioned CAP without assigning any reason classified or declared the account of the Corporate Debtor as NPA.

FINDINGS:

29. We have heard the submissions and considered the documents placed on file by the Petitioner bank. The first issue is regarding the

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jurisdiction of this Adjudicating Authority under the IBC, 2016 when an official liquidator is appointed for the Corporate Debtor by the Hon'ble Company Court of the High Court of Delhi. In this regard the Petitioner bank has relied on the following judgments:

1. Judgment passed by Hon'ble NCLAT in the matter of ***Unigreen Global Pvt. Ltd. Vs Punjab National Bank & Ors. Company Appeal(AT)(Insolvency) no.81 of 2017***, dated 01.12.2017

2. Judgment passed by the Hon'ble NCLAT in the matter of ***Forech India Pvt Ltd. Vs. Edelweiss Assets Reconstruction Company Ltd. & ors. Company Appeal (AT)(Insolvency) No.202 of 2017***.


3. Judgment passed by Hon'ble Bombay High Court in the matter of ***Jotun India Pvt Ltd & Ors Vs PSL Limited CA-572 of 2017 in Company Petition No.434 of 2015***.

30. In view of the judgments and the Order dated 12.01.2021 of the Hon'ble Supreme Court set out in **para 16 above**, the Winding up Petition is no longer pending and thus the issue does not survive.

31. The Corporate Debtor had made the submission during the course of hearing before the Hon'ble High Court of Delhi which is recorded in the Order dated 18.01.2018, passed in Company Petition-987/2015, the extract is as under:

"3) On being queried. Mr. Sikri, learned senior counsel appearing on behalf of the respondent company, on

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instructions conceded that the respondent company is not able to pay its debts which includes debts due to the Petitioner.”

- 32.** From the plain reading of the above stated submissions of the Corporate Debtor, it is amply clear that the Corporate Debtor is not in a position to pay off the debt and has admitted the same and at this stage it is not tenable to accept the plea that the Corporate Debtor was unable to function due to non-disbursement of full amount by the Petitioner bank alongwith other consortium banks. In any event that is only in the realm of dispute and we are not inclined to countenance such a defense.
- 33.** Petitioner has annexed a copy of the CIBIL (Credit Information Bureau India Limited) report as to the record of default. Alongwith that, various Board Resolutions of the Corporate debtor for the enhancement of credit facilities, copy of the demand notices issued by consortium of banks, Statement of Accounts as on 27.12.2017, certificate as per The Banker's Books Evidence Act, 1891 is also annexed and same has been taken on record. These Records prima facie establish a case of admitted debt and consequent default.
- 34.** There can be no doubt that it is the responsibility of the financial creditor to give all particulars relating to the debt due and the date of default, along with the requisite documents, at the time of filing of an application under Section 7 of the Code. A plain reading of Section 7, r/w Rule 4 of Adjudicating Authority Rules make it evident that the Adjudicating Authority may admit an application

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under Section 7 only if it is satisfied that a default has occurred. It is clear from the perusal of the records and documents annexed by the financial creditor that there exists a debt due to the particular bank and a default on part of the Corporate Debtor in repayment of the debt. The Application is also complete in all respects. Hence, we are inclined to **ADMIT** this Application of initiating CIRP against the Corporate debtor.

35. The Petitioner bank in the main petition had proposed the name of one Mr. Dhinal Shah to be appointed as IRP however, it subsequently filed an application (IA 3448/2022) dated 15.07.2022 for replacement of the proposed IRP by Mr. Ram Ratan Kanoongo. The Financial Creditor has **fulfilled all the requirements of law** including the name of the Interim Resolution Professional (IRP). The Form 2, written communication by **Mr. Ram Ratan Kanoongo** in accordance with Rule 9 of the Adjudicating Authority Rules, is annexed at ANNEXURE-1 (Pg.8) of the application dated 15.07.2022. Accordingly, the application under Section 7 stands **admitted**, and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this Order is passed.

36. Mr. Ram Ratan Kanoongo is appointed as the IRP. The details of the IRP are as follows:

Registration No: IBBI/IA-001/IP-P00070/2017-18/10156

Email Id: rrkanoongo@gmail.com

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Address: Headway Resolution and Insolvency Services Pvt. Ltd (IPE), 31, Dakhsineshwar Building, 8th Floor, 10, Hailey Road, New Delhi-110001.

- 37.** The IRP is directed to file an affidavit stating that there are no disciplinary proceedings pending against him and that he qualifies to practice as insolvency professional. The IRP is directed to take charge of the Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016, within three days from the date the copy of this Order is received and call for submissions of claim in the manner as prescribed.
- 38.** Moratorium is declared under Section 14 of IBC,2016, which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 (a) to (d) of the IBC, 2016.
- 39.** The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.
- 40.** The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

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41. The Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of IBC, 2016.
42. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor with immediate effect.
43. Accordingly, IA-2656/2021 and IA-1770/2022 stand **ALLOWED** and **DISPOSED OFF**.

RAMALINGAM SUDHAKAR
PRESIDENT

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)