

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P.(IB) 39/GB/2019

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing**
through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

Name of the Company: Punjab National Bank
V/s
Sonapur Harbal Center Pvt. Ltd & Anrs.

Section of the Companies Act: Under Section 7 & Rule 4 of IBC 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. Rimly Haloi	Advocate	Petitioner	Present in Video
2.	MR. Bikash Sharma	Advocate	Respondents	Conference

ORDER

Date of Order: 26.08.2021

Matter is taken up for hearing through video conferencing. Heard the learned Counsels appearing on behalf of the Petitioner and the Respondents.

2. Counsel for the Petitioner Mr. S Dutta is not well and was represented by his Junior Counsel Ms. Rimly Haloi. She prayed for some time.

3.The matter under IBC is going on for the last 2 years and it needs to be disposed of on merit without further loss of time.

4. The counsel of the Respondent has submitted that it has paid full amount to the FC as claimed by them before the Hon'ble High Court, Guwahati. The amount paid by them is Rs. 21.81 crores (Rs. Twenty-One Crores and Eighty-One Lakhs Only). Further, the CD has submitted a letter to FC for waiver of any further amount beyond the claim amount made before Hon'ble High Court, Guwahati. On the other hand, the FC has filed an affidavit confirming that it has received Rs. 21.81 crores (Rs. Twenty-One Crores and Eighty-One Lakhs Only) but balance and the deferred

interest up to 31.07.2021 is Rs. 1.55 crores (Rs. One Crores and Fifty-Five Lakhs Only) is still outstanding.

5. Since the amount claimed by the FC before the Hon'ble High Court, Guwahati has been reportedly paid, the Respondent CD is directed to file the copy of the application filed by the FC before the Hon'ble High Court relating to the amount to be paid to the FC within 3 days from today for disposal of the matter.

6. Considering the prayer made by the Junior Counsel for adjournment, the matter is adjourned for a short period.

7. List the matter on 02.09.2021.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority

Sd/-
(H. V. Subba Rao)
Member(Judicial) &
Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P.(IB) 04/GB/2019

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing**
through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

Name of the Company: Bank of India
V/s
AKJ Fincap Ltd.

Section of the Companies Act: Under Section 7 & Rule 4 of IBC 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. Rimly Haloi	Advocate	Petitioner	Present in Video Conference
2.	MR. Bikash Sharma	Advocate	Respondents	

ORDER

Date of Order: 26.08.2021

Matter is taken up for hearing through video conferencing. Heard the learned Counsels appearing on behalf of the Petitioner and the Respondents.

2. Counsel appearing for the Petitioner Mr. S Dutta is not well and was represented by his Junior Counsel Ms. Rimly Haloi. She has prayed for adjournment of the matter for 3 weeks' time due to the ill health of the Learned Counsel for the petitioner

3. Considering the prayer made, the matter is adjourned.

4. **List the matter on 20.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority

Sd/-
(H. V. Subba Rao)
Member(Judicial) &
Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P.(IB)/13/2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing**
through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

Name of the Company: Kishan Kumar Daga
V/s
Siang Tea and Industries Private Ltd.

Section of the Companies Act: Under Section 9 of IBC 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. Arun Kumar	CMA	Petitioner	Present in Video Conference
2.	MR. Biswajit Choudhary	Advocate	Respondents	

ORDER

Date of Order: 26.08.2021

Matter is taken up for hearing through video conferencing. Heard the learned Counsels appearing on behalf of the Petitioner and the Respondents.

2. Counsel appearing for the Petitioner has submitted that the Petitioner is not responding promptly to the notice of the petition filed. Counsel appearing for the Respondent has prayed for two weeks' time to enable him to find out the resolution of the issue.

3. Considering the prayer, 14 days' time is granted.

4. No further adjournment is possible as the Application is filed under Section 9 of the IBC, 2016.

5. **List the matter on 16.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical) &

Sd/-
(H. V. Subba Rao)
Member(Judicial) &

Adjudicating Authority

Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
Guwahati**

C.P.No.30/130/213/241/242/144/GB/2018

Coram:

**Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

C.P.No.30/130/213/241/242/144/GB/2018

Name of the Company: Shehla Rahman

V/s

M/s. Shamshun Tea & Industries Pvt. Ltd.

Section of the Companies Act: Under Section 130, 213, 241, 242, 244 (1) read
with Section 59 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. R. K. AGARWAL	Advocate	Petitioner	Present in
2.	MR. K. GOSWAMI	Advocate	Respondents-1 & 5	Video
3.	MS. R. R. KHAN	Advocate	Respondents-17 & 18	Conference

ORDER

Date of Order: 26.08.2021

The matter is taken up for hearing through Video Conferencing.

2. In view of order passed in I.A. 62 of 2018, this matter is adjourned.

3. **List the matter on 21.09.2021**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)**

Sd/-

**(H. V. Subba Rao)
Member(Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
Guwahati**

**IA No. 61 of 2018
In**

C.P.No.30/130/213/241/242/144/GB/2018

Coram:

**Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

C.P.No.30/130/213/241/242/144/GB/2018

Name of the Company: Shehla Rahman

V/s

M/s. Shamshun Tea & Industries Pvt. Ltd.

Section of the Companies Act: Under Section 130, 213, 241, 242, 244 (1) read
with Section 59 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. R. K. AGARWAL	Advocate	Petitioner	Present in
2.	MR. K. GOSWAMI	Advocate	Respondents-1 & 5	Video
3.	MS. R. R. KHAN	Advocate	Respondents-17 & 18	Conference

ORDER

Date of Order: 26.08.2021

The matter is taken up for hearing through Video Conferencing.

2. In view of order passed in I.A. 62 of 2018, this matter is adjourned.

3. **List the matter on 21.09.2021**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

Sd/-
(H. V. Subba Rao)
Member(Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
Guwahati**

**IA No. 62 of 2018
in
C.P.No.30/130/213/241/242/144/GB/2018**

Coram:

**Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

C.P.No.30/130/213/241/242/144/GB/2018

Name of the Company: Shehla Rahman

V/s

M/s. Shamshun Tea & Industries Pvt. Ltd.

Section of the Companies Act: Under Section 130, 213, 241, 242, 244 (1) read
with Section 59 of Companies Act, 2013

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. R. K. AGARWAL	Advocate	Petitioner	Present in
2.	MR. K. GOSWAMI	Advocate	Respondents-1 & 5	Video
3.	MS. R. R. KHAN	Advocate	Respondents-17 & 18	Conference

ORDER

Date of Order: 26.08.2021

The matter is taken up for hearing through Video Conferencing. Heard the learned Counsels present at length.

2. It is decided to dispose of the I.A 62 of 2018 before moving forward to take up the main petition as this I.A. is filed with regard to the maintainability of the petition.

3. Both the sides along with Respondent no. 17 & 18 are given liberty to file their written submissions, if any in 4 to 5 pages relating to this petition only within 10 days from today.

4. **Matter is reserved for order.**

**Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)**

**Sd/-
(H. V. Subba Rao)
Member(Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

Cont. Appln. No.03 of 2018
With
IA No.51 of 2019
IA No.52 of 2019
IA No.53 of 2019
IA No.54 of 2019
Cont. Appln. No.05 of 2021
IN
C.P.No.89 of 2011
(CP disposed of on 27.05.2011)

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

Cont. Appln. No.03 of 2018

Name of the Company: 3A Capital Pvt. Ltd.

V/s

Prag Bosimi Synthetics Ltd. & Ors.

Section of the Companies Act: Under Section 425 of Companies Act, 2013

IA No.51 of 2019

IA No.52 of 2019

IA No.53 of 2019

IA No.54 of 2019

Name of the Company:

Mrinal Kanti Das [**Respondent No.5 in Contempt
Application No.03 of 2018**]

Hemanga Kirhore Sharma [**Respondent No.7 in
Contempt Application No.03 of 2018**]

Hemanga Kirhore Sharma [**Respondent No.7 in
Contempt Application No.03 of 2018**]

Deepali Rajneesh Pathak [**Respondent No.8 in
Contempt Application No.03 of 2018**]

V/s

3A Capital Services Ltd.

Section: Under Rule 7 of Contempt of Courts (Gauhati High Court) Rules, 1977

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION
1.	MR. R. PANDEY	Advocate	Petitioner
2.	MR. KAUSTAV MAHANTA	Advocate	Petitioner

SIGNATURE

Present in
Video

3. MR. PRADEEP SANCHETI	Sr. Advocate R-1	Prag Bosimi	Conference
4. MR. R. J. DAS	Advocate	& its directors	
5. MR. SAGAR GHOGRE	Advocate		
5. MS. M. DOSHI	Advocate SCB		
6. MR. MUKESH SHARMA	Advocate ICICI		

Cont. Appln. No.05 of 2021

Name of the Company: Prag Bosimi Synthetics Ltd. & Ors.

V/s

3A Capital Pvt. Ltd.

Section of the Companies Act: Under Rule 11 of NCLT Rules, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION
1.	MR. R. J. DAS	Advocate	Petitioners Present in Video Conference
2.	MR. R. PANDEY	Advocate	Respondent

ORDER

Date of Order: 26.08.2021

Matter is taken up through video conferencing. Counsel for the Petitioner and Respondent appeared.

2. **Heard both the sides at length.** The learned Counsel of the Respondents has submitted that they have filed a new petition Comp. Appl. 05/2021 and requested for hearing of this petition. The learned Counsel of the Respondent in this application (**Cont. Appln. No.05 of 2021**) has submitted that they have just received the copy of the petition and prayed for some time to file its reply.

4. The Respondent is given time to file its written submissions by 2nd of September, 2021 and the copy of the same to be shared with the Petitioner.

5. Standard Chartered Bank and ICICI Bank are relived as they are not required to attend further proceedings of this matter.

6. **List the matter along with all connected matters on 06.09.2021.**

Sd/-

(Prasanta Kumar Mohanty)

Sd/-

(H. V. Subba Rao)

**Member (Technical)
(Judicial)**

Member

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.A. (CAA) No. 09/GB/2021

IN THE MATTER OF:

VRINDAVAN PROJECTS PRIVATE LIMITED,
...Transferee Company & Resulting Company
AND
INFRACARE SYSTEMS PRIVATE LIMITED,Transferor Company No. 1
AND
KHORDIA BUILDERS PRIVATE LIMITED,Transferor Company No. 2
AND
VARDHAMAN TRADING COMPANY PRIVATE Limited,
....Transferor Company No. 3
AND
GREENVIEW TEA COMPANY PRIVATE LIMITED,
....Demerged Company

Section: Section 230-232 of Companies Act, 2013.

S.NO.	NAME(CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. R.K. AGARWALA	Advocate	Petitioner	Through
2.			Respondent	Video Conference

Order delivered on 26.08.2021

CORAM: HON'BLE SHRI H. V SUBBA RAO, MEMBER (J)
HON'BLE SHRI PRASANTA KUMAR MOHANTY, MEMBER (T)
Hearing through Video Conference

ORDER

[Per se: SHRI H. V SUBBA RAO, MEMBER (J)]

The case is fixed for pronouncement of Order. The Order pronounced in open court vide separate sheets enclosed.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

Sd/-
(H.V. Subba Rao)
Member (Judicial)

IN THE MATTER OF:

VRINDAVAN PROJECTS PRIVATE LIMITED,

A Company incorporated under the provisions
Of the Companies Act, 1956 (CIN
U01132AS19999PTC005914) and having
Registered Office at 201 Royal Arcade, Dr. B.
Baruah Road, Ulubari, Guwahati, Kamrup Assam-
781007

...Transferee Company & Resulting Company

AND

INFRACARE SYSTEMS PRIVATE LIMITED,

A Company incorporated under the provisions
Of the Companies Act, 1956 (CIN
U45203AS2010PTC009625) and having
Registered Office at S-16 Ground Floor Makum
Road near Shivdham Temple Tinsukia, Assam-
786125.

... Transferor Company No. 1

AND

KHORDIA BUILDERS PRIVATE LIMITED,

A Company incorporated under the provisions
Of the Companies Act, 1956 (CIN
U45201AS2008PTC008849) and having
Registered Office at Paschim Boragaon,
Ward No. 13 Jalukhbari, N.H. 37, PS-
Gorchuk,Guwahati, Kamrup Assam-
781035

... Transferor Company No. 2

AND

VARDHAMAN TRADING COMPANY PRIVATE LIMITED,

A Company incorporated under the provisions
Of the Companies Act, 1956 (CIN
U51109AS1999PTC005809) and having
Registered Office at Paschim Boragaon,

Ward No. 13 Jalukhbari, N.H. 37, PS-
Gorchuk, Guwahati, Kamrup Assam- 781035

... **Transferor Company No. 3**

AND

GREENVIEW TEA COMPANY PRIVATE LIMITED,

A Company incorporated under the provisions
Of the Companies Act, 1956 (CIN
U15491WB1959PTC024113) and having
Registered Office at M. K. Point, Room No-
403, 4th Floor 27, Bentinck Street, Kolkata-
700001 in the State of West Bengal

... **Demerged Company**

Order delivered on 26.08.2021

CORAM: HON'BLE SHRI H. V. SUBBA RAO, MEMBER (J)

HON'BLE SHRI PRASANTA KUMAR MOHANTY, MEMBER (T)

Hearing through Video Conference

ORDER

[Per se: SHRI H. V. SUBBA RAO, MEMBER (J)]

1. The present joint application is filed under **Sections 230 to 232 of the Companies Act, 2013**, seeking the following reliefs:

- a. For admission of the Application filed by the applicants before the Hon'ble Tribunal for being heard.
- b. That appropriate orders and/ directions be passed by the Hon'ble Bench for dispensing with the meeting of Shareholders of the **VRINDAVAN PROJECTS**, Transferee Company Cum Resulting Company/**INFRACARE SYSTEMS**- Transferor Company No. 1/; **KHORDIA BUILDERS**- Transferor Company No. 2; **VARDHAMAN TRADING**- Transferor Company No. 3 and **GREENVIEW TEA**- Demerged Company as all

shareholders have given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).

- c. That appropriate orders and directions be passed by the Hon'ble Bench declaring that there is no requirement for holding of separate meetings of Secured creditors of the **VRINDAVAN PROJECTS** (Transferee Company Cum Resulting Company) as there are **NIL** Secured Creditors.
- d. That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the meetings of Unsecured Creditors of **VRINDAVAN PROJECTS** (Transferee Company Cum Resulting Company) as 2 (Two) Unsecured Creditors have been paid off and 2 (Two) Unsecured Creditors representing 100% of remaining unsecured creditors of the **VRINDAVAN PROJECTS**(Transferee Company Cum Resulting Company) have given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).
- e. That appropriate orders and/ directions be passed by the Hon'ble bench declaring that there is no requirement for holding of separate meeting of Secured creditors of the **INFRACARE SYSTEMS PRIVATE LIMITED**/Transferor Company No. 1, **KHORDIA BUILDERS PRIVATE LIMITED**/Transferor Company No. 2 and **VARDHAMAN TRADING COMPANY PRIVATE LIMITED**/ Transferor Company No. 3 as there are **NIL** Secured Creditors.
- f. That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the meeting of Unsecured Creditors of **INFRACARE SYSTEMS PRIVATE LIMITED**/Transferor Company No. 1 as all the Unsecured Creditor has given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).
- g. That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the meeting of Unsecured Creditors of **KHORDIA BUILDERS PRIVATE LIMITED**/Transferor Company No. 2 as all the

Unsecured Creditor has given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).

- h. That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the meeting of Unsecured Creditors of **VARDHAMAN TRADING COMPANY PRIVATE LIMITED**/Transferor Company No. 3 as all the Unsecured Creditor has given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).
- i. That appropriate orders and/ directions be passed by the Hon'ble bench for dispensing with the meeting of secured Creditors of **GREENVIEW TEA COMPANY PRIVATE LIMITED**/ Demerged Company as all the secured Creditors have given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).
- j. That appropriate orders and/directions be passed by the Hon'ble Bench for dispensing with the meeting of Unsecured Creditors of **GREENVIEW TEA COMPANY PRIVATE LIMITED**/ Demerged Company as 4 (Four) Unsecured Creditors have been paid off/discharged and 13 Unsecured Creditors representing 96.96% of the remaining unsecured creditors have given their written consent by way of affidavit adopting the Scheme of Arrangement without any modification(s).
- k. That appropriate orders and/directions be passed by the Hon'ble bench for serving notice upon:
 - a. Regional Director, North Eastern Region, Ministry of Corporate Affairs, Guwahati.
 - b. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata.
 - c. The Registrar of Companies, Guwahati.
 - d. Registrar of Companies, Kolkata.
 - e. The Official Liquidator, Guwahati.
 - f. The Official Liquidator, Kolkata.

- g. The Income Tax Authorities, having jurisdiction over the affairs of the Company.
- h. The Competition Commission of India.

2. The benefits/reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia as follows:

"FOR THE PURPOSE OF AMALGAMATION

- a) As part of an overall scheme of arrangement, the managements of the TRANSFEROR COMPANIES and TRANSFEREE COMPANY have concurred on a plan whereby all the TRANSFEROR COMPANIES will be amalgamated with the TRANSFEREE COMPANY. The TRANSFEROR COMPANIES are involved in the business of construction on contractual basis inter-alia it has made deployment of surplus funds in other investible instruments. The TRANSFEREE Company is incorporated with object of real estate activities and is currently engaged in leasing of equipment's used in construction and infrastructure business. While pursuing the same, it has also made deployment of surplus funds in other investible instruments. Thus, the Business carried on by the TRANSFEREE COMPANY and TRANSFEREE COMPANIES can be combined and carried forward.
- b) The arrangement will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;
- c) The arrangement will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- d) The arrangement will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;

- e) The said Scheme of Arrangement will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the Transferee Company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital, securing and conducting trade on favorable terms and other benefits;
- f) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and, in the growth, and development of these businesses;
- g) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- h) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;
- i) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.
- j) The management of the TRANSFEROR COMPANIES is also of the view that the Scheme of Arrangement by which it is being amalgamated with the TRANSFEREE COMPANY will be beneficial for their shareholders.

FOR THE PURPOSE OF DEMERGER

- a) The Demerger of INVESTMENT DIVISION of the DEMERGED COMPANY and transfer and vesting of the same in the RESULTING COMPANY will strengthen the RESULTING COMPANY and allow the Resulting Company to provide depth and focus along with adoption of

strategies necessary for its growth and expansion by utilizing the liquid and marketable assets of the Demerged Undertaking.

- b) Post demerger the management of the DEMERGED COMPANY can lend greater focus to the operations of remaining business mainly consisting of Tea Manufacturing and Trading Activities as the company expects better opportunities in the market.
- c) By demerger of Demerged Undertaking into the Resulting Company, the financial resources will be conveniently merged and pooled with the resources of the Resulting Company, leading to utilization of resources towards expansion and growth of the business of the Resulting Company.
- d) Post this restructuring both DEMERGED COMPANY and RESULTING COMPANY are expected to be better poised for meeting future growth opportunities, gain the advantage of cost savings and improvement of their earning potential.
- e) The management of the DEMERGED COMPANY is of the opinion that the Scheme of Arrangement will provide greater capacity and better utilization of its resources. The Scheme of Arrangement will also enable it to consolidate its business by restructuring and reorganizing its business activities and capital structure.”

3. A copy of the Composite Scheme of Amalgamation, for which this joint application is filled for sanctioning, is annexed with the application marked as **Letter-“K”** and the terms and conditions of the Scheme are set out in the Composite Scheme of Amalgamation, a copy of which is annexed as mentioned herein above.

4. The Applicant Companies submit that for the purpose of better, efficient and economical management, control and running of the business of the undertakings concerned and for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present composite Scheme of Arrangement is proposed.

5. The Applicant Companies submit that the Board of Directors of each of the Applicant Companies are of the opinion that the proposed Composite Scheme of Arrangement would benefit their shareholders, creditors, employees and the general public.

6. It is stated that the Board of Directors of the Transferee Company cum Resulting Company, Transferor Company NO. 2, Transferor Company NO. 3, Demerger Company and Transferor Company NO. 1 in their respective Board meetings held on 06.10.2020 and 05.10.2020 respectively have passed resolution approving the Composite Scheme of Arrangement whereby the **TRANSFEROR COMPANIES will amalgamate with VRINDAVAN PROJECTS/TRANSFEREE COMPANY**, Demerger of the **INVESTMENT DIVISION of Greenview Tea/Demergered Company** and transfer and vesting of the same in **VRINDAVAN PROJECTS/RESULTING COMPANY**. A copy of the resolution passed by the Board of Directors of the Transferee Company and the Transferor Companies, approving the Scheme of Amalgamation is also annexed with the application marked as **Letter- "L"**.

7. It is stated that the assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors or any of the Applicant Companies in any manner. Further, there will be no reduction of capital of the Transferee Company upon coming in to effect the Scheme as per Section 66 of the Companies Act, 2013, except cancellation of shares of Transferee Company due to inter/cross holding of shares resulting from this Scheme of Arrangement.

8. It is also stated that the present Scheme of Arrangement does not contain or provide for Corporate Debt Restructuring and the TRANSFEREE CUM RESULTING COMPANY, TRANSFEROR COMPANIES and DEMERGED COMPANY have never issued nor agreed to issue any debenture.

9. The present Scheme does not provide for any compromise with the creditors of the Company and the applicant companies have made due provisions for payment of all

liabilities as and when the same fall due. In this regard, all the Applicant Companies crave leave to refer to the accounts book and records of the Applicant Companies at the time of hearing, if necessary.

10. It is stated that there are no investigation or proceedings pending under section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221,224 and 225 of the Companies Act, 2013 against the Applicant Companies.

11. It is stated that the report determining the number of and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of TRANSFEROR COMPANIES by the TRANSFEREE CUM RESULTING COMPANY and to the shareholders of DEMERGED COMPANY by the TRANSFEREE CUM RESULTING COMPANY for implementation of the terms of the Scheme has been prepared by the **IBBI Registered Valuer, Shri Anil Kumar Gupta** and such recommendations has been accepted by the Board of Directors of the respective Companies. A copy of the Valuation Report is annexed to this Application and marked as **Letter- "M"**.

12. It is stated that the total numbers of Equity Shareholders in the **VRINDAVAN PROJECTS/ TRANSFEREE COMPANY CUM RESULTING COMPANY** are 11 as on 30th August, 2020. All the shareholders of the VRINDAVAN PROJECTS/ TRANSFEREE COMPANY CUM RESULTING COMPANY have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement. A copy of list of shareholders duly certified by the Statutory auditors and affidavit by all the equity shareholders of the VRINDAVAN PROJECTS/TRANSFEREE COMPANY CUM RESULTING COMPANY is annexed hereto and marked as **Letter- "N1"**.

13. It is stated that the total numbers of Equity Shareholders in the **INFRACARE SYSTEMS/TRANSFEROR COMPANY NO. 1** are 6 as on 30th August, 2020. All the shareholders of the INFRACARE SYSTEMS/TRANSFEROR COMPANY NO. **1** have given their consent by way of affidavit to the proposed Composite Scheme of Arrangement. A copy of list of shareholders duly certified by the statutory auditors and affidavit by all

the equity shareholders of the INFRACARE SYSTEMS/TRANSFEROR COMPANY NO. 1 is annexed hereto and marked as **Letter- "N2"**.

14. It is stated that the total numbers of Equity Shareholders in the **KHORDIA BUILDERS/TRANSFEROR COMPANY NO. 2** are 11 as on 30th August, 2020. All the shareholders of KHORDIA BUILDERS/TRANSFEROR COMPANY NO. 2 have given their consent by way of affidavit to the proposed Composite Scheme of Arrangement. A copy of list of shareholders duly certified by the statutory auditors and affidavit by all the equity shareholders of the KHORDIA BUILDERS/TRANSFEROR COMPANY NO. 2 is annexed hereto and marked **Letter- "N3"**.

15. It is stated that the total numbers of Equity Shareholders in the **VARDHAMAN TRADING/TRANSFEROR COMPANY NO. 3** are 7 as on 30th August, 2020. All the shareholders of VARDHAMAN TRADING/TRANSFEROR COMPANY NO. 3 have given their consent by way of affidavit to the proposed Composite Scheme of Arrangement. A copy of list of shareholders duly certified by the statutory auditors and affidavit by all the equity shareholders of the VARDHAMAN TRADING/TRANSFEROR COMPANY NO. 3 is annexed hereto and marked as **Letter- "N4"**.

16. It is stated that the total numbers of Equity Shareholders in the **GREENVIEW TEA/DEMERGED COMPANY** are 17 as on 30th August, 2020. All the equity shareholders of the GREENVIEW TEA/DEMERGED COMPANY have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement. A copy of list of Equity shareholders duly certified by the statutory auditors and affidavit by all the equity shareholders of the GREENVIEW TEA/DEMERGED COMPANY are annexed hereto and marked as **Letter- "N5"**.

17. It is further stated that the total numbers of Preference Shareholders in the **GREENVIEW TEA/DEMERGED COMPANY** are 13 as on 30th August, 2020. All the Preference shareholders of the GREENVIEW TEA/DEMERGED COMPANY have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement. A Copy of list of Preference Shareholders duly certified by the statutory

auditors and affidavit by all the preference shareholders of the GREENVIEW TEA/DEMERGED COMPANY are annexed hereto and marked as **Letter- "N6"**.

18. It is stated that the **VRINDAVAN PROJECTS/TRANSFEREE COMPANY CUM RESULTING COMPANY** has NIL secured Creditor as on 30th August, 2020.

Further the VRINDAVAN PROJECTS/TRANSFEREE COMPANY CUM RESULTING COMPANY have 4 (Four) unsecured Creditors amounting to Rs. 3,33,050.00 (Rupees Three Lakhs Thirty-Three Thousand Fifty Only) as on 30th August, 2020. Out of 4 (Four) unsecured Creditors 2 (Two) unsecured Creditors amounting to Rs. 2,96,550.00 (Rupees Two Lakhs Ninety-Six Thousand Five Hundred Fifty Only) have been paid off/discharged till 17.11.2020. That Remaining 2 (Two) Unsecured Creditors amounting to Rs. 36,500.00 (Rupees Thirty-Six Thousand Five Hundred Only) representing 100% of the remaining unsecured creditors have given their consent by way of affidavit of consent to the Proposed Composite Scheme of Arrangement. A certificate from the statutory auditor of the VRINDAVAN PROJECTS/TRANSFEREE COMPANY CUM RESULTING COMPANY certifying the NIL secured creditors and list of unsecured Creditors as on 30th August, 2020 together with the affidavit of consent by the unsecured creditors, together with a statement showing computation of percentage of consent and a certificate from the statutory auditor of the VRINDAVAN PROJECTS/TRANSFEREE COMPANY CUM RESULTING COMPANY regarding payment is annexed hereto and marked as **Letter- "O1"**.

19. It is stated that the **INFRACARE SYSTEMS/TRANSFEROR COMPANY No.1** has NIL Secured Creditor as on 30th August, 2020.

Further, the INFRACARE SYSTEMS/TRANSFEROR COMPANY No. 1 has 1 (One) Unsecured Creditor amounting Rs. 20,000.00 (Rupees Twenty Thousand Only) as on 30th August, 2020. The said unsecured Creditors has given his consent to the proposed Composite Scheme of Arrangement without modifications by way of affidavit. A certificate from the statutory auditor of the INFRACARE SYSTEMS/TRANSFEROR COMPANY No. 1 certifying the NIL secured creditor and list

of Unsecured Creditors as on 30th August, 2020 together with the affidavit of consent by the unsecured creditor is annexed hereto and marked as **Letter- "O2"**.

20. It is stated that **KHORDIA BUILDERS/TRANSFEROR COMPANY No. 2** has NIL Secured Creditor as on 30th August, 2020.

Further, KHORDIA BUILDERS/ TRANSFEROR COMPANY No. 2 has 1 (One) Unsecured Creditor amounting Rs. 20,000.00(Rupees Twenty Thousand Only) as on 30th August, 2020. The said unsecured creditor has given his affidavit of consent to the proposed Composite Scheme of Arrangement. A certificate from the statutory auditor of the KHORDIA BUILDERS/TRANSFEROR COMPANY No. 2 certifying the NIL secured and list of unsecured Creditor as on 30th August, 2020 is annexed hereto and marked as **Letter- "O3"**.

21. It is stated that **VARDHAMAN TRADING/TRANSFEROR COMPANY No. 3** has NIL Secured Creditors as on 30th August, 2020.

Further, VARDHAMAN TRADING/TRANSFEROR COMPANY No. 3 has 1 (One) Unsecured Creditor amounting Rs. 20,000.00 (Rupees Twenty Thousand Only) as on 30th August, 2020. The said unsecured Creditor has given his affidavit of consent to the proposed Composite Scheme of Arrangement. A certificate from the statutory auditor of the VARDHAMAN TRADING/TRANSFEROR COMPANY No. 3 certifying the NIL secured and list of unsecured Creditor as on 30th August, 2020 together with the affidavit of consent by the unsecured creditor is annexed hereto and marked as **Letter- "O4"**.

22. It is stated that the **GREENVIEW TEA/DEMERGED COMPANY** have 2 (Two) Secured Creditors amounting Rs. 2,35,56,065.98 (Rupees Two Crores Thirty-Five Lakhs Fifty-Six Thousand Sixty-Five and Ninety-Eight Paisa Only) as on 30th August, 2020. All the Secured Creditors of the GREENVIEW TEA/DEMERGED COMPANY have given their written consent by way of affidavit to the proposed Composite Scheme of Arrangement.

Further, the GREENVIEW TEA/DEMERGED COMPANY have 19 (Nineteen) Unsecured Creditors amounting to Rs. 4,98,26,091.97 (Rupees Four Crores Ninety-Eight

Lakhs Twenty-Six Thousand Ninety-One and Ninety-Seven Paisa Only) as on 30th August, 2020. Out of the 19 Unsecured Creditors, 4 (Four) Unsecured Creditors amounting to Rs. 96,13,034.55 (Rupees Ninety-Six Lakh Thirteen Thousand Thirty-Four and Fifty-Five Paisa Only) have been paid off/discharged as on till 17-11-2020.

Further out of remaining 15 (Fifteen) Unsecured Creditors, 13 (Thirteen) unsecured creditors amounting to Rs. 4,01,97,410.87 (Rupees Four Crores One Lakh Ninety-Seven Thousand Four Hundred Ten and Eighty-Seven Paisa Only) representing 96.96% of the remaining Unsecured creditors have given their consent by way of affidavit of consent to the Proposed Composite Scheme of Arrangement. A certificate from the statutory auditor certifying the list of Secured creditors and list of Unsecured creditors as on 30th August, 2020 along with affidavit of consent of secured and unsecured creditors and statement showing the computation of percentage of consent and certificate from the statutory auditor of the GREENVIEW TEA/DEMERGED COMPANY regarding payment to the unsecured creditors is collectively next to auditor's certificate is annexed hereto and marked as **Letter- "05"**.

23. It is stated that Sri Ramawatar Bhartia, Sri Abhinash Bhartia and Sri Pawan Kumar Bhartia are the present Directors of the **VRINDAVAN PROJECTS/Transferee Company cum Resulting Company**, the Applicant No. 1 above named; Sri Arun Radheshyam Agarwal and Smt. Dimple Arun Agarwal are the present Directors of the **INFRACARE SYSTEMS PRIVATE LIMITED/Transferor Company No. 1**, the Applicant Company No. 2 above named; Sri Shivruchi Pathak and Sri Prabhakar Chourasia are the present Directors of the **KHORDIA BUILDRES/Transferor Company No. 2**, the Applicant Company No. 3 above named; Sri Bhagwan Sharma and Sri Pankaj Tiwary are the present Directors of **VARDHAMAN TRADING COMPANY PRIVATE LIMITED/Transferor Company No. 3**, the Applicant Company No. 4 above named; and Sri Ramawatar Bhartia, Sri Abhinash Bhartia and Sri Pawan Kumar Bhartia are the present Directors of the **GREENVIEW TEA COMPANY PRIVATE LIMITED/Demerged Company**, the Applicant Company No. 5 above

named; save as aforesaid, none of the Directors of the said respective companies have any material interest in the proposed Composite Scheme of Arrangement except as Shareholders in General, the extent of which will appear from the Register of Director's Shareholding maintained by the respective applicant companies.

24. The Applicant Companies have further submitted that the Accounting Treating proposed in terms of clause 14 of Part V of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Certificates issued by the statutory Auditors is annexed hereto and marked as **Letter- "P"**.

25. The Applicant Companies have also affirmed affidavits as required in terms of Section 230(2) of the Companies Act, 2013.

26. It is further submitted that the Applicant Companies are assessed to Income Tax under the following PAN:

NAME OF THE APPLICANT COMPANIES	PAN
Vrindavan Projects Private Limited	AABCV8675L
Infracare Systems Private Limited	AACCI2097N
Khordia Builders Private Limited	AADCK5482G
Vardhaman Trading Company Private Limited	AABCV6493N
Greenview Tea Company Private Limited	AACCG9209N

Copies of PAN cards are assessed to Income Tax is annexed hereto and marked as **Letter- "Q"**.

27. The Applicant Companies further submit that no prejudice would be caused to any one, if an order is made and/or directions are given as prayed for hereinabove and hence, appropriate orders/ directions be passed by this Tribunal for serving notice upon:

1. Regional Director, North Eastern Region, Ministry of Corporate Affairs, Guwahati
2. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata
3. The Registrar of Companies, Guwahati
4. The Registrar of Companies, Kolkata
5. The Official Liquidator, Guwahati
6. The Official Liquidator, Kolkata
7. The Income Tax Authorities, having jurisdiction over the affairs of the Company.
8. The Competition Commission of India

28. Having heard the learned advocate, Mr. R.K. Agarwal for the Applicant Companies and by considering the consent affidavits filed on behalf of the shareholders and secured creditors as well as by the majority in debts value of unsecured creditors of the Applicants Companies to approve The Company Scheme and by waiving their right to participate in such meeting, **the meeting of the Shareholders, Secured and Unsecured Creditors of the Applicant Companies are hereby dispensed with.**

29. Therefore, in our view, the present Company Application deserves to be allowed. Accordingly, it is allowed in terms of the prayer clause and subject to following directions:

- i. The Applicant Companies to issue a notice, in Form No. CAA.3 along with disclosures mentioned under Rule 6, as per the provisions of Section 23 (5) read with Rule 8 of the Companies Act, to
 - a. Regional Director, North Eastern Region, Guwahati,

- b. Regional Director, Eastern Region, Kolkata
- c. The Registrar of Companies, Guwahati
- d. The Registrar of Companies, Kolkata
- e. The Official Liquidator, Guwahati
- f. The Official Liquidator, Kolkata
- g. Income Tax Authority concerned and

by informing that their representations, if any, to be made within a period of 30 days from the date of receipt of such notice, failing which it would be presumed that they have no objections to make on the proposed Company Scheme/ proposal. Such notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the above authorities as required by sub-rule (2) of the Rule 8 of the Companies (CAA) Rules, 2016. **The aforesaid authorities who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it would be deemed that they have no representations to make on the proposed arrangement/proposals/demerger.**

30. The Applicant Companies shall also serve notice upon other sectoral regulators as may be applicable to the Applicant Companies pursuant to the section 230(5) of the Companies Act, 2013 and as per the rule 8 of the Companies (Compromises Arrangement & Amalgamation) Rules, 2016. If no response is received by the Tribunal from such regulators within 30 days of receipt of the notice it will be presumed that such regulators have no objection to the propose scheme.

31. As per the judgment of the Hon'ble Supreme Court of India, all the Applicant Companies here are directed to file Affidavits that they are not illegible under section 29 A of IBC 2016 within 15 days from today.

32. The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this Order.

32. With the aforesaid directions/observations, the present Company Application, **being first motion petition** stands allowed (in terms of its prayer clause) and disposed of.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)

/ravina/Deka/26.08.2021/

Sd/-

(H.V. Subba Rao)
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. (IB)No.10/GB/2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2021**

Name of the Company: State Bank of India
V/s
Nayak Infrastructure Pvt. Ltd. and others

Section of the Companies Act: Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating) Authority) Rules, 2016.

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.		Advocate	Petitioner	Present in Video Conference
2.		Advocate	Respondents	

ORDER

Date of Order: 26.08.2021

The Parties are represented through their respective Counsel(s).

Today, the present matter is kept for pronouncement of order.

The present matter i.e. **CP (IB) No.10/2021** is admitted.

The detailed order is recorded vide separate sheet.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
/Deka-26.08.2021/

Sd/-
(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
GUWAHATI BENCH
GUWAHATI**

C.P. (IB). No. 10/2021

In the matter of:

STATE BANK OF INDIA,

**A body corporate, duly constituted under
The State Bank of India Act, 1955 having
Its Central office at Madam Cama Road,
Mumbai- 400021 and Branch Office at
Stressed Assets Management Branch, 11
& 13 Shakespeare Sarani, 8th Floor,
Nightingale Hospital, Kolkata- 700071.**

..... Petitioner

Versus

NAYAK INFRASTRUCTURE PRIVATE LIMITED

**A Company incorporated under the
Provisions of Companies Act having it's
Registered Office at Swarupananda Road,
Lumding, District: Nagoan, Assam- 782447.**

..... Respondent

Order delivered on 26/08/2021

**Coram: Hon'ble Mr. H. V Subba Rao, Member (J)
And
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

ORDER

[Per Se: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. The Present I.B Petition is filed by the Financial Creditor i.e. State Bank of India under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to

as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in short) in respect of the Corporate Debtor namely, Nayak Infrastructure Private Limited for the default committed by the Corporate Debtor in making repayment of various credit facilities availed from the Bank. The Applicant (FC), State Bank of India, a body corporate duly constituted under the State Bank of India Act, 1955. The application has been filed by the duly authorized officer, Sri Sankumani Deka, Chief Manager SME-Khanapara Branch having address at Parlay Residency, Tripura Road, Guwahati PIN-781022.

2. The Respondent Corporate Debtor (CD) Company, namely Nayak Infrastructure Private Limited was incorporated on 19.12.2007 with CIN: U74210AS2007PTC008539.

3. The nominal share capital of the Respondent (CD) Company is Rs.20,00,00,000.00 (Rupees Twenty Crores only) and Paid up share capital of Rs.16,36,00,000.00 (Rupees Sixteen Crores Thirty Six Lakhs only). The Registered Office of the Corporate Debtor Company is situated at: Swarupananda Road, Lumding, Dist. Nagoan, Assam-782447.

4. The total amount of default is Rs 88,99,06,621.07 (Rupees Eighty Eight Crores Ninety Nine lakhs Six Thousand Six Hundred Twenty One and Seven paise only) as on 30.11.2020 and BG (Performance guarantee) outstanding (Live) Rs.10,08,56,147.00 (Rupees Ten Crores Eight lakhs Fifty Six Thousand One Hundred Forty Seven only).

Sl. no	B.G Bond Nos.	Date	Amount (Rs.)
1	0994518BG0000147	29.01.2018	1,51,90,820.00
2	0994518BG0000218	22.10.2018	1,04,69,279.00
3	0994518BG0000219	22.10.2018	1,81,61,500.00
4	0994518BG0000015	14.03.2019	2,04,64,568.00
5	0994518BG0000017	28.03.2019	1,26,55,267.00
6	0994518BG0000029	30.05.2019	71,60,000.00
7	0994518BG0000048	23.08.2019	1,67,54,713.00
	TOTAL VALUE		10,08,56,147.00

The aforesaid accounts were classified as Non-Performing Assets on 28.01.2020 and are continuing as NPA till date.

5. The loan facilities which included Cash Credit & Working Capital and Term Loan sanctioned by the Financial Creditor in favour of the Corporate Debtor was secured by way of the following properties Primary Security

- 1) Raw/construction materials, consumables, stores, book debts and other current assets of the Company both present and future created out of bank finance by the Corporate Debtor (under pari-passu charge)
- 2) Tata Hitachi Hydraulic Excavator (Machine No.1/THEDCOLOC00000132 & 2/THEDCOLOK00000113), Wet Concrete Spraying Equipment (SPM 4210 welkret), Mahindra Torro 25 Trippier with 9S Gear Box, Bogie Suspension, 16CUM BSIII ABS, Speed Limiter (Chassis No.1. MA1QDAHRCF6148462, 2. MA1QHDAHRCF6L48534, 3. MA1QHDAHRCF6L48538, 4. MA1QHDAHRCF6L48541, 5. MA1QHDAHRCF6L48574, Engine No.1. BAFZL14568, 2. BAFZL14646, 3. BAFZL14575, 4. BAFZL14665 and 5. BAFZL14733), Sandvikdt 820 1490*250*280 CM 29500 Kg Tunneling Drill Jumbo with Accessories (Machine No. 84314300), Chain Mounted Excavator Tata Hitachi, Model-2*220LCM-GI fitted (Vehicle No. THEDCOLOA00000148)

Collateral Security

- 1) Four Plots of Land measuring in total 36 Decimals (subsequently transferred in the name of the Corporate debtor vide Rectification Deed No. 10861601284 dated 25.08.2016).
- 2) All the piece and parcel of land comprising and Area of 0.050 Decimals, Kism- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/293, Plot No. 850/1706 along with 600 sq. ft. asbestos roof godown house with normal flooring without E.I & P.H. Works under Sale Deed No. 10861301185 dated 22.04.2013

- 3) All the piece and parcel of land comprising and Area of 0.060 Decimals, Kism- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/493, Plot No. 850/1352 under Sale Deed No. 10861301183 dated 22.04.13
- 4) All the piece and parcel of land comprising and Area of 0.150 Decimals, Kism- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/675, Plot No. 850/1701 under Sale Deed No. 10861301183 dated 22.04.13
- 5) All the piece and parcel of land comprising and Area of 0.150 Decimals, Kism- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/493, Plot No. 850/2077 under Sale Deed No. 10861301183 dated 22.04.13
- 6) A plot of land measuring 1 katha 2 leches (2.94 Ares) along with a RCC building standing therein covered by Dag No. 976 (New) of KP Patta No. 811 (New), Sahar Guwahati Part 2 under Mouza Guwahati in the District of Kamrup Assam under Registered Sale Deed no. 8435 of 2010 dated 16.12.2010
- 7) A plot of land measuring 0.105 Decimal bearing Unit No. 20, Khatta No. 321 corresponding to mutation Khatta No. 1133/3242 plot No. 196/2276, Kism- Dharabari, Mouza- Bhubaneshwar Shar, Jagmara with a RCC building standing there over under Registered Sale Deed no. 1113180457 dated 23.05.2018.
- 8) The front portion of the fourth floor numbered as Unit 4 "A" with super built up area of 2000 sq. ft. situated in the R.C.C. building known as "HEMSEM COMPLEX" covered by Holding No. 9 in ward no. 28 of Guwahati Municipal Corporation standing on the plot of land measuring 1 kathas 14 lechas out of total land of 9.10 Are covered by Dag no. 958 of K.P Patta No. 437 of Sahar Guwahati, part-II, Mouza Guwahati with the privileges of egress and ingress to and from floor having common facilities of passage and staircase and other

facilities as contained in Registered Deed of Sale No. 3721 of 2006 dated 21.04.2006.

The unit 4 "A" is bounded on:

North: Hotel Ambarish
South: Land of Mr. Deb
East: Md. Shah Road
West: Land of Mr. J. Poddar

The back portion of the third floor numbered as Unit 3 "B" with super built up area of 1050 sq. ft. together with one car parking space on the basement area of the R.C.C. building known as "HEMSEN COMPLEX" covered by Holding No. (in ward no. 28 of Guwahati Municipal Corporation standing on the plot of land measuring 1 Kathas 14 Lechas out of total land of 9.10 Are covered by Dag no. 958 of K.P Patta No. 437 of Sahar Guwahati, Part II, Mouza Guwahati with the privileges of egress and ingress to and from the floor having common facilities of passage and staircase and other facilities as contained in this Deed of Sale No. 4295 dated 05.05.2006.

The Unit 3 "B" is bounded on:

North: Hotel Ambarish
South: Land of Mr. Deb
East: Md. Shah Road
West: Land of Mr. J. Poddar

9) A HIG Duplex measuring 2400 sq. ft. allotted under HIG self-financing scheme at MaitriVihar phase 1 Orissa State housing board allotment no. HIGD-14, plot No. L-1022/94, Mouza- Chandrasekharpur, Bhubaneswar, District- Khurda, Sub Registry Office, Khandagiri under Sale Deed no. 2886 of 2006 dated 18.04.2006 and is bounded by

North: Road
South: D-28
East: D-48
West: D-50

10)A flat measuring 1080 sq.ft in the Third Floor of the building namely 'Harihar House bearing Flat no 3C with proportion share of land measuring 0.4 Are standing over a plot of land measuring 2 kathas 15 lechas of Dag Nos. 746, 752,753, 754,755,756 (old), New Dag No. 754, KP Patta No. 643 of Village Sahar Ulubari, under Mouza Ulubari, District Kamrup, Assam, under registered sale no. of 3138 of 2011 dated 18.04.2011 and is bounded by'

North: Putuli Choudhury

South: Flat No. 3B

East: 16 fit road

West: Flat No. 3C

A flat measuring 1120 sq. ft. in the Third Floor of the building namely 'Harihar House bearing Flat no 3D with proportion share of land measuring 0.4 Are standing over a plot of land measuring 2 kathas 15 lechas of Dag Nos. 746, 752,753, 754,755,756 (old), New Dag No. 754, KP Patta No. 643 of Village Sahar Ulubari, under Mouza Ulubari, District Kamrup, Assam, under registered sale no. of 3139 of 2011 dated 18.04.2011 and is bounded by:

North: Putuli Choudhury

South: Flat No. 3A

East: Flat No. 3C

West: Road

11)A plot of land measuring 2 Kathas 10 Lechas covered by Dag No. 169 of Patta No. 86 of revenue Village- Lumding Mouza- District, P.S and Sub-register Office Nagoan, within the Jurisdiction of Nagoan Revenue Circle, under Registered Sale Deed No. 504 of 2009 dated 05.04.2013 and is bounded by:-

North: Ratan Sarkar

South: Bhajan Singh

East: Government Road

West: Shyamsundar Das

12)A plot of land measuring 1 Bigha 16 Kathas covered by 2nd R.S Patta No. 42, Dag No. 87, comprising East- West measuring 315'ft 6" Inch. In the Northern Side & 322'ft. in the Southern Side, and North-South measuring 82'ft. 6" inch.

In the Eastern Side and 80'ft in the Western Side, District Cachar, Police Station and Pargona- Barakpur, Mouza- Tarapur Part-VIII, Sub-Registry office- Silchar Sadar, Silchar, Cachar, Assam, under Registered Sale Deed No. 1532 dated 03.06.2013 which is bounded by:-

North: Land of Himangshu Kumar Nath
South: Land of Sisur Nath & others
East: Land of Assam Industrial Development Corporation
West: P.W.D Road

13) A plot of land measuring 100 Acres and or 05 Gandas, Khatian No. 0180, Dag No. Sabek 8870 (P), Hal 33783/34974, Mouza/Tahsil Badharghat, Sheet No. 6, Revenue Circle Dukli, P.S Amtali, West Tripura District, Tripura under Registered Sale Deed No. I-9254 of 2012 dated 17.12.2012 and bounded by:-

North: Government Land
South: ChittaRanjan Das
East: Land of Co-operatives
West: Akul Chandra Paul and others

All that a Flat No. "F" an area measuring 1176 sq. ft in the First Floor consisting of 04 (Four) Bed Rooms, 01 (One) Kitchen, 3(Three) bathroom Cum Latrine and 1 Drawing cum Dining Hall and 01 (one) Small Store Room within the compound of "Green Enclave" situated in revenue Village Sahar Guwahati, Second part, measuring 02 Kathas, covered by Dag No. 956 of K.P patta No. 435 and GMC Ward No. 28, under Mouza Guwahati situated at Paltan bazar, Guwahati-8 in the district of Kamrup (Metro) Assam under Registered Sale Deed No. 11388 of 2009 dated 24.09.2009 and is bounded by:-

North: Shri J Das and Gouriya Nath
South: Md. Shah Road
East: M/S C.R Construction and Hotel Starline
West: Sri H. Talukdar

14) A plot of land measuring 1800 sq. ft. of Plot No. VIM-02, Drawing No. C-580/89 at Chandrasekharpur, Phase VI, Mouza/PS- Chandrasekharpur, SRO-

Khandagiri, Bhubaneshwar, District- Khurda, Orissa under Registered lease cum Sale Deed No. 11131107805 dated 23.06.2011

North: Road
South: VIM-01
East: VIM-04
West: Road

6. It is submitted that the Financial Creditor as Applicant had also filed an Original Application bearing O.A No. 318/2020 before the Debts Recovery Tribunal at Guwahati against the Corporate Debtor, personal guarantor as Defendant for recovery of Rs.88,94,83,341.85 (Rupees Eighty Eight Crore Ninety Four Lakh Eighty Three Thousand Three Hundred Forty One and Eighty five paisa)only and the said application is pending for disposal.

7. In order to support the claim, the financial Creditor has submitted the Statement of Accounts and Certified Entries in a Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891), which proves the claim of the Financial Creditor against the Corporate Debtor.

8. The Financial Creditor, in support of its contentions has annexed the details of Financial Debt, records and evidences of default including copies of all sanction letters, statement of accounts showing the amount claimed to be in default and its calculation from and as on 28.01.2020 and are continuing as NPA till date.

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

1. Sanction letter dated 19.09.2007 (page 18) Annexure I-1.
2. Supplemental agreement of loan for increase in overall limit dated 20.09.2007 executed by the Corporate Debtor and Personal Guarantor (pages 19- 26) Annexure I-2.

3. Supplemental agreement for Hypothecation of Goods and assets for increase in the overall limit dated 20.09.2007 executed by the Corporate Debtor and Personal Guarantor (pages 27-31) Annexure I-3.
4. Supplemental deed of guarantee for increase in overall limit dated 20.09.2007 executed by the Personal Guarantor (pages 32-38) Annexure I-4.
5. Letter regarding grant of individual limit within the overall limit dated 20.09.2007 executed by the Corporate Debtor (pages 39-41) Annexure I-5.
6. Form of agreement where only one or some of the persons furnishing the security is/are a holder/holders of the account on which advance is granted dated 20.09.2007 (pages 42-45) Annexure I-6.
7. Agreement of the Corporate Debtor and M/s Ananta Charan Nayak, a partnership bearing No 343 dated 28.01.2008 (pages 46-53) Annexure I-7.
8. Agreement of loan for overall limit dated 31.12.2007 executed by the Corporate Debtor wherein the limits of Rs.16,00,00,000/- was disbursed and sanctioned under the two heads : cash credit: Rs.6,00,00,000/- and Bank Guarantee Rs 10,00,00,000/- (pages 54-80) Annexure I-8.
9. Agreement of hypothecation of goods dated 31.12.2007 executed by the Corporate Debtor (pages 81-101) Annexure I-9.
10. Deed of guarantee for overall limit dated 31.12.2007 executed by the Personal Guarantors (pages 102-116) Annexure I-10.
11. Letter regarding grant of individual limit within the overall limit dated 31.12.2007 (pages 117-120) Annexure I-11.
12. Supplemental Agreement of loan for increase in overall limit dated 06.02.2009 executed by the Corporate Debtor wherein the existing limit of Rs.16,00,00,000.00 was enhanced to Rs.31,44,00,000.00 under three heads: Cash Credit Rs.8,00,00,000.00; Term loan Rs.1,44,00,000.00; Bank Guarantee Rs.22,00,00,000.00 (pages 121-129) Annexure I-12.

13. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 06.02.2009 executed by the Corporate Debtor (pages 130-135) Annexure I-13.
14. Supplemental Deed of guarantee for increase in overall limit dated 06.02.2009 executed by the Personal Guarantors (pages 136-142) Annexure I-14.
15. Letter regarding grant of individual limit within the overall limit dated 06.02.2009 (pages 143-145) Annexure I-15.
16. Form of agreement where only one or some of the persons furnishing the security is/are a holder/holders of the account on which advance is granted dated 06.02.2009 (pages 146-150) Annexure I-16.
17. Supplemental Agreement of loan for increase in overall limit dated 20.07.2009 executed by the Corporate Debtor wherein the existing limit of Rs.31,44,00,000.00 was enhanced to Rs.34,64,00,000.00 under the following heads: Cash Credit Rs.8,00,00,000.00; Term loan Rs.1,44,00,000.00 ; Term loan 2 Rs.3,20,00,000.00; Bank Guarantee: Rs.22,00,00,000.00 (Pages 151-159) Annexure I-17.
18. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 20.07.2009 executed by the Corporate Debtor (pages 160-165) Annexure I-18.
19. Supplemental Deed of guarantee for increase in overall limit dated 20.07.2009 executed by the Personal Guarantor (pages 166-172) Annexure I-19.
20. Letter regarding grant of individual limit within the overall limit dated 20.07.2009 (pages 173-175) Annexure I-20.
21. Sanction letter dated 29.09.2010 (pages 176-186) Annexure I-21.
22. Board Resolution of corporate debtor dated 29.09.2010 (pages 187-188) Annexure I-22.
23. Supplemental Agreement of loan for increase in overall limit dated 29.09.2010 executed by the Corporate debtor wherein the existing limit of

- Rs.34,64,00,000.00 was enhanced to Rs.41,50,00,000.00 (pages 189-196) Annexure I-23.
24. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 29.09.2010 executed by the Corporate Debtor (pages 197-201) Annexure I-24.
 25. Supplemental Deed of guarantee for increase in overall limit dated 29.09.2010 executed by the Personal Guarantors (pages 202-206) Annexure I-25.
 26. Board resolution of corporate debtor dated 08.12.2010 (pages 207-208) Annexure I-26.
 27. Supplemental Agreement of loan for increase in overall limit dated 08.12.2010 executed by the Corporate Debtor wherein the existing limit of Rs.41,50,00,000.00 was enhanced to Rs.95,00,00,000.00 (pages 209-216) Annexure I-27.
 28. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 08.12.2010 executed by the Corporate Debtor (pages 217-221) Annexure I-28.
 29. Supplemental deed of guarantee for increase in overall limit dated 08.12.2010 (pages 222-228) Annexure I-29.
 30. Letter regarding grant of individual limit within the overall limit dated 08.12.2010 (pages 229-231) Annexure I-30.
 31. Sanction letter dated 07.06.2011 (pages 232-238) Annexure I-31.
 32. Board resolution of Corporate debtor dated 07.06.2011 (pages 239-241) Annexure I-32.
 33. Supplemental Agreement of loan for increase in overall limit dated 07.06.2011 executed by the Corporate Debtor wherein the existing limit of Rs.41,50,00,000.00 was enhanced to Rs.99,45,00,000.00 (pages 242-245) Annexure I-33.

34. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 07.06.2011 executed by the Corporate Debtor (pages 246-254) Annexure I-34.
35. Supplemental Deed of Guarantee for increase in overall limit dated 07.06.2011 executed by the Personal Guarantors (pages 255-264) Annexure I-35.
36. Letter regarding grant of individual limit within the overall limit dated 07.06.2011 (pages 265-267) Annexure I-36.
37. Board resolution of Corporate debtor along with Revival letter reviving the earlier documents dated 13.07.2012 (pages 268-270) Annexure I-37.
38. Letter regarding grant of individual limit within the overall limit dated 13.07.2012 (pages 271-273) Annexure I-38.
39. Letter regarding grant of individual limit within the overall limit dated 25.03.2014 (pages 274-276) Annexure I-39.
40. Board resolution dated 27.03.2014 of corporate debtor along with Revival letter reviving the earlier documents dated 25.03.2014 (pages 277-279) Annexure I-40.
41. Arrangement letter dated 19.01.2016 executed by the Corporate debtor and the personal guarantors for the limit of Rs.97,50,00,000.00 (pages 280-303) Annexure I-41.
42. Board resolution of Corporate debtor dated 22.01.2016 (pages 304-305) Annexure I-42.
43. Letter regarding grant of individual limit within the overall limit dated 04.02.2016 (pages 306-309) Annexure I-43.
44. Supplemental agreement of loan for increase in overall limit dated 17.02.2016 executed by the Corporate Debtor (pages 310-332) Annexure I-44.
45. Supplemental agreement of Hypothecation of goods and assets for increase in overall limit dated 17.02.2016 executed by the Corporate Debtor (pages 333-342) Annexure I-45.

46. Supplemental deed of guarantee for increase in overall limit dated 17.02.2016 executed by the personal guarantor (pages 343-349) Annexure I-46.
47. Omnibus counter guarantee dated 17.02.2016 executed by the corporate debtor (pages 350-353) Annexure I-47.
48. Board resolution of Corporate debtor dated 19.12.2016 (pages 354-355) Annexure I-48.
49. Letter dated 20.12.2016 by the corporate debtor to the Financial Creditor (Consortium Leader) seeking sanction of credit facilities (pages 356) Annexure I-49.
50. Sanction letter dated 02.03.2017 executed by the Corporate Debtor and Personal Guarantors (pages 357-378) Annexure I-50.
51. Board resolution of corporate debtor dated 18.03.2017 (pages 379-380) Annexure I-51.
52. Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab National Bank as the Members Bank) dated 20.03.2017 for the limit of Rs.1,19,50,00,000.00 (pages 381-414) Annexure I-52.
53. Letter of Authority to lead bank (pages 415-416) Annexure I-53.
54. Joint deed of hypothecation dated 20.03.2017 executed by the Corporate Debtor (pages 417-435) Annexure I-54.
55. Inter-se Agreement executed between members of the Consortium dated 20.03.2017 (pages 436-446) Annexure I-55.
56. Deed of Joint and Several personal Guarantee dated 20.03.2017 executed by the personal guarantors (pages 447-456) Annexure I-56.
57. Board resolution dated 06.06.2017 of Corporate Debtor (pages 457-458) Annexure I-57.
58. Arrangement letter dated 06.06.2017 executed by the Corporate Debtor and the personal guarantors Debtor wherein the existing limit of Rs.97,50,00,000.00 (of

the Financial creditor) was enhanced to Rs.1,20,25,00,000.00 (pages 459-481) Annexure I-58.

59. Supplemental agreement of loan for increase in overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 482-486) Annexure I-59.
60. Supplemental agreement of Hypothecation of goods and assets for increase in overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 487-492) Annexure I-60.
61. Supplemental deed of guarantee for increase in overall limit dated 06.06.2017 executed by the personal guarantor (pages 493-496) Annexure I-61.
62. Letter regarding the grant of individual limit within the overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 497-499) Annexure I-62.
63. Omnibus counter guarantee dated 06.06.2017 executed by the corporate debtor (pages 500-502) Annexure I-63.
64. Board resolution dated 13.11.2017 of Corporate Debtor (pages 503-505) Annexure I-64.
65. Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab national bank as the Members Bank) dated 13.11.2017 for the limit of Rs.1,49,50,00,000.00 (pages 506-547) Annexure I-65.
66. Letter of authority to lead bank (pages 548-549) Annexure I-66.
67. Joint deed of hypothecation dated 13.11.2017 executed by the Corporate Debtor (pages 550-574) Annexure I-67.
68. Inter-se Agreement executed between members of the Consortium dated 13.11.2017 (pages 575-590) Annexure I-68.
69. Deed of Joint and Several personal Guarantee dated 13.11.2017 executed by the personal guarantors (pages 591-604) Annexure I-69.
70. Omnibus counter Guarantee dated 13.11.2017 executed by the personal guarantors (pages 605-607) Annexure I-70.

71. Sanction letter dated 30.06.2018 executed by the Corporate debtors and Personal Guarantors (pages 608-626) Annexure I-71.
72. Board resolution dated 03.01.2019 of corporate debtor (pages 627-629) Annexure I-72.
73. Modified Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab National Bank as the Members Bank) dated 05.01.2019 for the limit of Rs.1,64,50,00,000.00 (pages 630-670) Annexure I-73.
74. Letter of authority to lead bank dated 05.01.2019 (pages 671-672) Annexure I-74.
75. Modified Joint deed of hypothecation dated 05.01.2019 executed by the Corporate Debtor (pages 673-689) Annexure I-75.
76. Inter-se Agreement executed between members of the Consortium dated 05.01.2019 (pages 690-702) Annexure I-76.
77. Deed of Joint and Several personal Guarantee dated 05.01.2019 executed by the personal guarantor (pages 703-712) Annexure I-77.
78. Omnibus counter Guarantee dated 05.01.2019 executed by the personal guarantors (pages 713-714) Annexure I-78.
79. **Revival letter dated 05.01.2019 executed by the corporate debtor (pages 715-716) Annexure I-79.**
80. **Balance Confirmation executed by the Corporate Debtor dated 01.04.2019 (pages 717-719) Annexure I-80.**
81. Stock statement of the Corporate Debtor as on 31.12.2019 (pages 720-737) Annexure I-81.
82. Valuation of the Primary Movable property Rs.5,33,54,000.00 (pages 738-753) Annexure I-82.

83. Equitable mortgage by deposit of title deed being Sale Deed No. 10861301185 dated 22.04.2013 (pages 754-765) Annexure I-83.
84. Equitable mortgage by deposit of title deed being Sale Deed No. 10861301183 dated 22.04.2013 (pages 766-779) Annexure I-84.
85. Valuation of the aforesaid property (being Sale deed No. 10861301185 dated 22.04.2013 and Sale Deed No. 10861301183 dated 22.04.13) Rs.12,60,00,000.00 (pages 780-799) Annexure I-85.
86. Letter of Confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 800-801) Annexure I-86.
87. Equitable mortgage by deposit of title deed being deed no 8435 (pages 802-810) Annexure I-87.
88. Valuation of the aforesaid property (being Sale deed No. 8435) Rs.2,39,70,000.00 (pages 811-819) Annexure I-88.
89. Letter of confirmation of mortgage by deposit of title deeds executed by corporate debtor (pages 820-822) Annexure I-89.
90. Equitable mortgage by deposit of title deed being Sale deed no. 1113180457 (pages 823-834) Annexure I-90.
91. Valuation of the aforesaid property (being Sale Deed No. 1113180457) Rs.3,54,59,098.00 (pages 835-845) Annexure I-91.
92. Letter of Confirmation of mortgage by deposit of title deeds executed by Corporate Debtor (pages 846-849) Annexure I-92.
93. Equitable mortgage by deposit of title deed being Sale Deed no. 3721 (pages 850-862) Annexure I-93.
94. Valuation of the aforesaid property (being Sale Deed No. 3721) Rs.74,03,000.00 (Pages 863-870) Annexure I-94.
95. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 871-872) Annexure I-95.

96. Equitable mortgage by deposit of title deed being Sale Deed no.4295 (pages 873-886) Annexure I-96.
97. Valuation of the aforesaid property (being Sale Deed No. 4295) Rs.59,79,000.00 (pages 887-894) Annexure I-97.
98. Letter of Confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 895-896) Annexure I-98.
99. Equitable mortgage by deposit of title Deed being Sale Deed no. 2886 (pages 897-903) Annexure I-99.
100. Valuation of the aforesaid property (being Sale Deed No. 2886) Rs.2,30,57,000.00 (pages 904-908) Annexure I-100.
101. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 909-910) Annexure I-101.
102. Equitable mortgage by deposit of title deed being Sale Deed no. 3138 (pages 911-920) Annexure I-102.
103. Valuation of the aforesaid property (being Sale Deed No. 3138) Rs.43,14,000.00 (pages 921-928) Annexure I-103.
104. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 929-930) Annexure I-104.
105. Equitable mortgage by deposit of title deed being Sale Deed no. 3139 (Pages 931-939) Annexure I-105.
106. Valuation of the aforesaid property (being Sale Deed No. 3139) Rs.44,74,000.00 (pages 940-946) Annexure I-106.
107. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 947-948) Annexure I-107.
108. Equitable mortgage by deposit of title Deed being Sale Deed no. 504 (pages 949-962) Annexure I-108.

109. Valuation of the aforesaid property (being sale deed No. 3138) Rs.2,72,57,000.00 (pages 963-974) Annexure I-109.
110. Letter of confirmation of mortgage by deposit of title Deed executed by Sri Ananta Charan Nayak (pages 975-976) Annexure I-110.
111. Equitable mortgage by deposit of title deed being Sale deed no. 1552 (pages 977-987) Annexure I-111.
112. Valuation of the aforesaid property (being Sale Deed No. 1552) Rs.2,16,75,000.00 (pages 988-993) Annexure I-112.
113. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 994-995) Annexure I-113.
114. Equitable mortgage by deposit of title deed being sale Deed no. 11388 (pages 996-1002) Annexure I-114.
115. Valuation of the aforesaid property (being Sale Deed No. 11388) Rs.55,97,000.00 (pages 1003-1010) Annexure I-115.
116. Letter of confirmation of mortgage by deposit of title deeds executed by Smti. Renu Nayak (pages 1011-1012) Annexure I-116.
117. Letter of confirmation of mortgage by deposit of title deeds executed by Smti. Renu Nayak (sale deed No 19254) (pages 1013-1015) Annexure I-117.
118. Valuation of the aforesaid property (being sale deed No. 19254) Rs.1, 83,75,000.00 (pages 1016-1025) Annexure I-118.
119. Equitable mortgage by deposit of title deed being Sale Deed no. 11131107805 (pages 1026-1039) Annexure I-119.
120. Valuation of the aforesaid property (being Sale Deed No 11131107805) Rs.3,21,56,000.00 (pages 1040-1046) Annexure I-120.
121. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Basudev Nayak (pages 1047-1049) Annexure I-121.
122. **Demand Letter Dated 30.01.2020 (pages 1050-1051) Annexure I-122.**

123. Interest Calculation Sheet (pages 1052-1060) Annexure I-123.
124. **CERTIFICATE OF BANKERS BOOK OF EVIDENCE ACT, 1891 AND I.T ACT, 2000 (pages 1061) Annexure I-124.**
125. **ROC SEARCH REPORT OF THE CORPORATE DEBTOR (pages 1062-1103) Annexure I-125.**
126. MEMORANDUM AND ARTICLE OF ASSOCIATION OF THE CORPORATE DEBTOR (pages 1104-1130) Annexure I-126.
127. **PARI PASSU CHARGE CEDING LETTER (pages 1131-1132) Annexure I-127.**
128. **CIBIL INFORMATION REPORT DATED 24.09.2020 (pages 1133-1157) Annexure I-128.**
129. Order dated 01.02.2020 passed in OA No. 318/2020 is pending before the Honorable Debt Recovery Tribunal, Guwahati (pages 1158) Annexure I-129.
130. GENERAL AFFIDAVIT VERIFYING PETITION (pages 1159-1161) Annexure I-130.
131. STATEMENT OF ACCOUNTS (paged separately) (pages 1166-1781) Annexure I-131.
132. CONSENT OF THE PROPOSAL INTERIM RESOLUTION PROFESSIONAL IN FORM-2 AND DECLARATION REGARDING ELIGIBILITY BOTH DATED 08.10.2018 (pages 1162-1163) Annexure II.

10. The Petitioner Bank has suggested the name of Insolvency Professional Mr. Vishal Ghisulal Jain, Office No. 502, G Square Business Park, Opp. Sanpada Railway Station, Sector 30-A, Vashi, Navi Mumbai-400703 having IP Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 to be appointed, if this petition is allowed and the proposed IRP has also given his affirmation/consent in writing, which is annexed with the petition.

11. In response to application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, a reply was filed by the Corporate Debtors Nos.

1 to 5 undersigned by Mr. Ananta Charan Nayak, Managing Director of Nayak Infrastructure Pvt. Ltd dated 15th July, 2021. It is submitted that -

- a. That the application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor, the State Bank of India is not maintainable in the present form as there is default in the face of the record which needs to be interfered by this Hon'ble Tribunal and moreover, the application is not as per the provisions of Rule 4 of the Insolvency and Bankruptcy Code.
- b. That, there is no bar under Section 7 of the Insolvency and Bankruptcy Code, 2016 for filing two simultaneous applications against the Principal Borrower as well as the Corporate Guarantors. However, once for the same set of claim application under Section 7 by the Financial Creditor is admitted against one Corporate Debtor, i.e. Principal Borrower or Corporate Guarantor, second application by the same Financial Creditor for the same set of claim and default cannot be admitted against the other Corporate Debtor, i.e. Principal Borrower or Corporate Guarantor. Though there is no provision to file joint application under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the financial Creditor against two or more Corporate Debtor on the ground of joint liability (Principal Borrower and on Corporate Guarantor), or Principal Borrower or two Corporate Guarantors or one Corporate Guarantor and other Corporate Guarantor till it is shown that the Corporate Debtors combinedly are joint venture company. This fact was analyzed by the Hon'ble NCLAT in the case of **Dr. Vishnu Kumar Agarwal Vs. M/S Piramal Enterprises Ltd.** and the Court held that the same amount cannot be claimed and section 7 cannot be applied simultaneously. Joint Application of CIRP can be filed against two or more companies only if the companies are in joint venture. In the present case in hand, the Application under Section 7 was filed against both Principal Borrower as well as Corporate (personal) Guarantors. Therefore,

this application is not tenable in the eye of law and liable to be dismissed. Under Section 60 (2) and 60(3) of the Code allows filing of simultaneous applications against the Borrower as well as Guarantor but in the Code nowhere it is stated that joint application can be filled under Section 7 of the Code. Moreover, the said application was arising out of the very same transaction and very same common loan agreement. In the present case the Deed of Guarantee dated 05.01.2019 was signed by all the Personal Guarantors of Corporate Debtors.

- c. That although the NCLAT in Piramal Enterprises has established that there is no bar in filing simultaneous applications for CIRP against the principal Borrower and the Guarantor, yet the IBC is silent on the furthering procedure if CIRP has been initiated against both Principal Borrower as well as Corporate Debtor. Neither the IBC specifies any provision for management of such disputes nor any precedent of judgments happen to tackle the same.
- d. That this instant application under Section 7 is not maintainable other various grounds. These are-
 - i. In the present case in hand, the Financial Creditor has failed to prove the basic requirement that the amount advanced is a financial debt as provided under the Code in Section 5(8). The entire foundation of an application under Section 7 of the Code is based on the premise that there is a default in relation to a financial debt. Here, in the present case the date of default is not mentioned. Further, the Financial Creditor has failed to prove the basic requirement that the amount advanced is a financial debt as provided under the Code.
 - ii. The present application is barred under Article 137 of the Limitation Act as the default has occurred over 3 years prior to the date of filing this application. Notwithstanding anything contained in Section

7, 9 and 10 of the Code, no application for initiation of Corporate Insolvency Resolution Process of a corporate debtor shall be filed for any default arising on or after 25.03.2020 but here it is not mentioned in the application when the said default occurred.

- iii. The present application is not filed by the authorized person. Under the Code only the authorized person can file an application under Section 7 of the Code. The authorized person is distinct from the power of attorney holder and it has been held that the provisions of Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder. In view of the same, it has been held that a 'power of attorney holder' is not competent to file an application in behalf of a 'Financial Creditor'.
- e. That as the instant application which was filed under section 7 of the Code has devoid of merit and not sustainable in the eye of law, therefore, this Hon'ble Tribunal has every right not to admit the same and reject the application on the ground of default committed by the Financial Creditor.
- f. That this reply was filed by the Corporate Debtors after 15 days from the order dated 22.06.2021 passed by this Hon'ble Tribunal. The delay was occurred due to the fact that the principal signatory Sri Ananta Kumar Nayak was out of station and the Assam Government has ordered for restriction of inter district movement till now. Further, the Corporate Debtors prays that the delay of filing reply may be condoned for ends of justice.
- g. That this reply is filed bonafide and for ends of justice.

In the premises, it is Most Respectfully prayed that Your Lordship may kindly allow the reply filed by the Corporate Debtor and after considering the facts and circumstances of the case Your Lordship may reject the application filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 by the

Financial Creditor, the State Bank of India and/or pass any such order/orders as Your Lordship may deem fit and proper.

12. The petitioner has filed an affidavit by Mr. Tushar Ravi, Chief Manager of State Bank of India, Khanapara Branch, dated 4th August, 2021 wherein the petitioner has submitted that:-

- a. A copy of the reply filed by the corporate debtor has been served upon him and he has gone through the same and understood the contents thereof. He is well acquainted with the facts of the case and competent to swear this affidavit.
- b. That the present reply is devoid of any merit and does not disclose any defence and the said affidavit in reply is based on manufactured, concocted and engineering facts prepared for instant litigation. The said counter affidavit is bogus, vague, non-speaking, frivolous and no cognizance should be taken and the corporate debtor has suppressed many facts which are germane to the purpose of the instant case. The application filed by the financial creditor is wholly maintainable and the claim of the applicant is admissible in nature, and the disputes raised are an afterthought to vitiate the claim of the financial creditor.
- c. That a bare reading of the provisions of Regulations 76 and 77 of the State Bank of India General Regulations, 1955 read with Gazette Notification dated 27.03.1987 clearly shows that the Managing Directors, the Deputy Managing Directors, the Chief General Managers and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorize in this behalf by notification in the Gazette of India, are empowered to sign plaints, written statements, petitions and applications, sworn affidavits and as such the Application being filed by the Chief Manager is admissible and should be allowed.

- d. That, save and except, what are matters of records and what has been specifically admitted by the answering Financial Creditor in the following paragraphs, all other statements and averments made in the Reply filed by the Corporate Debtor are to be deemed to have been denied by the Financial Creditor in seriatim.
- e. That the statements made in paragraph 1 and 5 of the reply to the extent that the application is not maintainable is not true and correct and the same is hereby denied. In this connection it is stated that the said application is maintainable in both law and facts and the same have considerable merits to be allowed. That the Financial Creditor have filed the present application according to the Forms/Rules prescribed in the Code, 2016, the NCLT, Rules and such other rules and regulations framed under. That the said application is complete and have considerable merits to be allowed. Further, it is pertinent to mention herein that the reply filed by the Corporate Debtor is not in accordance with the National Company Law Tribunal Rules, 2016. Apart from this the Corporate Debtors have also not accompanied their reply along with the Affidavits verifying petition in terms of the National Company Law Tribunal Rules, 2016.

It is further stated and submitted that due to inadvertence the names of the personal guarantors were inserted as defendants No. 2 to 7, however an affidavit is filed to delete the names of defendant's no. 2 to 7 from the instant application.

- f. That the statement made in paragraph 4(i) of the reply are not true and correct and the same are hereby denied. In this connection it is submitted that bare reading of the Section 5(8)(a) and 5(8)(b) of the Code states that, financial debts includes: -
 - i. Money borrowed against the payment of interest;

- ii. Any amount raised by acceptance under any **acceptance credit facility** or its dematerialized equivalents;

Thus, the contention of the Respondent no. 1-5 claiming that the amount advanced is not a financial debt is at all not tenable.

- iii. That the statements made in paragraph 4(ii) of the reply are not true and correct and the same are hereby denied. **In this connection it is submitted that the default occurred on 28.01.2020 i.e. that date of NPA and as such the same is under the period of limitation.**

- iv. That the statements made in paragraph 4(iii) of the reply are not true and correct and the same are hereby denied. In this connection it is submitted that a Chief Manager is duly authorized to sign and sworn the affidavit as per Regulations 76 and 77 of the State Bank of India, General Regulations, 1955 and the Gazette Notification dated 27.03.1987. For reference of the Court the Regulations 76 and 77 of the State Bank of India, General Regulations, 1955 and reproduced herein below:-

76. Accounts receipts and documents of State Bank by whom to be signed- (1) *The managing directors, the deputy managing directors, the chief general managers and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorize in this behalf by notification in the Gazette of India, to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorizing, are hereby severally empowered, for and on behalf of the State Bank, to sign all documents, instruments, accounts, receipts, letter and advices connected with the current or authorized business of the State Bank and, in particular and without prejudice to the generality of the foregoing powers, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of or held by or on behalf of the State Bank or, in the absence of any agreement to the contrary, standing in the name of or held by or behalf of any person, firm, company or corporation for or on*

behalf of which person, firm, company or corporation the State Bank has been constituted as attorneys, to draw, accept and endorses bills of exchange and cheques, to issue, confirm and transfer letters of credit and to sign guarantees and indemnities.

(2) Without prejudice to the provisions of sub-regulation (1) all powers of attorney and other authorizations issued by the Imperial Bank in favour of any officer or other employee who becomes an officer or other employee of the State Bank by virtue of Section 7 of the Act shall continue to be in full force and effect as if instead of the Imperial Bank, the State Bank had been a party to such powers of attorney or authorizations, and, accordingly, any such officer or other employee may exercise on behalf of the State Bank such powers as he was exercising before the appointed day on behalf of the Imperial Bank.

(3) The provisions of this regulation shall not deemed in any way to affect the provisions of the Imperial Bank of India Act, 1920, not the authority which any person has under that Act in relation to the Imperial Bank, and any such person if so authorized under this regulation and by, or under, the Imperial Bank of India Act, 1920, may act on behalf of the State Bank as well as the Imperial Bank to the extent so authorized.

77. *Plaints, etc., by whom to be signed.*- *Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the chairman or by any officer or employee empowered by or under regulations 76 to sign documents for and on behalf of the State Bank.*

ORDER

13. Heard both the sides at length and perused the records/documents filed. Considering the materials made available by the Applicant Bank, arguments of both parties, this Adjudicating Authority is satisfied that,

- a) The Corporate Debtor availed the loan/ credit facilities from the Financial Creditor;**
- b) Existence of debt is above Rupees One Lac;**

- c) Debt is due, payable and defaulted;**
- d) Default occurred on 28.01.2020;**
- e) Application has been filed within the limitation period, as the date of default is 28.01.2020, when the Application under Section 7 of the IBC has been filed by the FC i.e. State Bank of India on 18.03.2021;**
- f) Copy of the Application/Amended Application filed before this Bench has been sent to the Corporate Debtor and the application filed by the Applicant Bank under Section 7 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor;**

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 26/08/2021.

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

- I. (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
- (b) Transferring, encumbering, alienating or disposal of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein.
- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

- (d) The recovery of any property by an owner or lessor where such property is occupied shall not be terminated or suspended or interrupted during the moratorium period.
- II. Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- III. The provisions of sub-section (I) shall not apply to-
- (a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (b) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

15. This Adjudicating Authority hereby appoints, as proposed by the FC, Mr. Vishal Ghisulal Jain, Office No. 502, G Square Business Park, Opp. Sanpada railway Station, Sector 30-A, Vashi, Navi Mumbai-400703 having IP Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

16. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost

dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligations imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. It is also observed that the Applicant Bank has claimed an aggregate amount of Rs.88, 99, 06,621.07 (Rupees Eighty-eight Crore Ninety-nine lakhs Six Thousand Six Hundred Twenty One and Seven Paise) and BG (Performance guarantee) outstanding (Live) Rs.10, 08, 56,147.00 (Rupees Ten Crore Eight Lakh Fifty-Six Thousand One Hundred and Forty-Seven only).

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

19. The Registry is hereby directed to communicate the authenticated copy of this order to the Applicant/ Financial Creditor, Corporate Debtor Company,

the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/ registered post and e-mail, if available.

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

21. Thus, the present IB Petition filed under Section 7 of the IBC stands admitted today i.e. 26/08/2021 with the above observations and directions.

Sd/-

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

Sd/-

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

/Tanmay/Deka-26.08.2021//

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P (IB) No. 04/GB/2021

Coram: Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL)

Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY
LAW TRIBUNAL, GUWAHATI BENCH ON 26.08.2021**

Name of the Company: M/S. Navya Agro Products Private Limited Corporate Debtor
&
Punjab National Bank (PNB) Financial Creditor

Section: Section 10 of Insolvency and Bankruptcy Code, 2016

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------------------------	--------------------	-----------------------	------------------

1.
2.

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

Sd/-
[PRASANTA KUMAR MOHANTY]
MEMBER (TECHNICAL)
& Adjudicating Authority

Sd/-
[H.V. SUBBA RAO]
MEMBER (JUDICIAL)
& Adjudicating Authority

Dated this 26th day of August, 2021

ORDER

[Per se: Prasanta Kumar Mohanty, Member (T)]

1. This application has been filed by the Corporate Debtor/Applicant, namely M/s. Navya Agro Products Private Ltd., under Section 10 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "Code of 2016") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against itself for the default committed in making payment of the loan availed from the Respondent Bank.

2. It is submitted that the company i.e. Navya Agro Products Private Limited (CIN U01111AS2015PTC012154) is registered as Small Manufacturing Enterprise under UDYAM scheme of Central Government incorporated on 8th of July, 2015.

3. The Nominal/Authorized Share Capital of the Corporate Debtor (CD) Company is Rs.2,00,000,00.00 (Rupees Two Crores Only) and the paid-up Share Capital is Rs.2,00,000,00.00 (Rupees Two Crores Only). The Registered office is situated at House No. 3/1, Rajdeep Complex FA Road, Kumarpara, Guwahati, Kamrup Assam 781009.

4. It is further submitted that the petitioner borrowed Term loan of Rs.2,20,000,00.00 (Rupees Two Crores Twenty Lakhs Only) and Cash Credit limit of Rs.3,00,000,00.00 (Rupees Three Crores Only) from the Punjab National Bank (PNB) situated at LIC Building, S.S. Road, Fancy Bazar, Guwahati- 781001, during 2018 and present outstanding amount in Term loan account and cash credit account are Rs.2,40,42,794.40 (Rupees Two Crores Forty Lakhs Forty-Two Thousand Seven Hundred Ninety-Four and Forty Paise) and Rs.3,45,98,302.73 (Rupees Three Crores Forty-Five Lakhs Ninety-Eight Thousand Three Hundred Two and Seventy-Three Paise) respectively. The total outstanding together is **Rs.5,86,41,097.13 (Rupees Five Crores Eighty-Six Lakhs Forty-One **Thousand Ninety-Seven and Thirteen Paise**) as per petitioner's books of accounts. The CD has stated that it could pay principal, interest and other charges regularly for some time and thereafter defaulted.**

5. The following documents have been annexed by the Corporate Applicant in support of its claim:

Sl. No.	Particulars	Page No
1	Form No. 6- Section 10 Application	9-12
2	Form No. 2- Consent to act as IRP	13-14
3	Power of Attorney, Memorandum of appearance	15-18(a)
4	Copy of Special Resolution passed by Shareholders	19-20
5	Copy of Board resolution passed by CD	21
6	Certificate of Incorporation, MSME UDAYAM Certificate	22-23
7	List of Shareholders of CD	24
8	PNB Sanction Letter dated 19.02.2018	25-36
9	PNB Statement of CC account from 01.11.2019 to 31.10.2020 and from 01.11.2020 to 21.12.2020	37-41
10	PNB Term Loan overdue position enquiry dated 28.05.2020	42-43
11	PNB Term Loan statement from 01/01/2019 to 31.12.2019 and 01.01.2020 to 31.12.2020	44-47
12	Copy of books of account of CD evidencing default in Term loan taken from PNB	48-49
13	List of Operational and Financial Creditors of CD, Copy of books of account of CD evidencing dues of Financial Creditor and Operational Creditors (Trade Payables)	50-63
14	MCA Index of Charges of CD, Charge Registration Document	64-65
15	Audited Financial Statement of CD for Financial Year 2018-19	66-86
16	Audited Financial Statement of CD for Financial Year 2019-20	87-107
17	Provisional Financial Statement of CD for current Financial Year as on 29.12.2020	108-116
18	Valuation report of Land with structures of CD charged to PNB	117-121
19	SARFAESI Notice Sec 13 (2), Possession Notice, Auction Advertisement	122-135
20	Particulars of Debts owed by or to the Corporate Debtor to or by persons connected with it	136
21	Master Data of CD downloaded from MCA Portal	137
22	Certificate confirming the eligibility of the proposed insolvency	Included in

	professional for appointment as Resolution Professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016	Form No. 6
--	--	------------

6. It is further submitted that the petitioner primarily sold its products to RSH Agro Products Ltd. RSH Agro's production got significantly declined due to various factors which ultimately resulted in hampering the business of the petitioner.

7. It is also stated that due to downturn in demand for pet bottles in the market and difficulty in getting new customers, the petitioner suffered heavy losses. Owing to financial stress in the business, the petitioner company defaulted in payment of interest and/ installments to the Bank from 31.12.2019 in Term loan account and from 31.01.2020 in Cash Credit account and the default is continuing.

8. It is stated that despite repeated requests made by the company to the bank to give time for paying off their over dues, Bank did not heed their request and went ahead to issue a Notice under Section 13 (2) of SARFAESI Act, 2002 on 01.06.2020 and also issued Possession Notice on 14.10.2020.

9. It is also stated that the term loan was borrowed from Punjab National Bank (PNB) on 06.03.2018 and the date of default was 31.12.2019. Another Cash Credit Loan was borrowed by the Company from PNB dated 31.03.2018 and the same stands defaulted on 31.01.2020. The Bank declared NPA on 23.05.2020.

10. It is further stated that PNB went ahead issuing Sale Notice dated 25.11.2020 in daily newspaper THE TIMES OF INDIA to auction the petitioner's mortgaged property. The petitioner knocked the doors of Hon'ble High Court, Guwahati and filed Writ Petition No. WP(C)/5617/2020 seeking relief against unjustified action of PNB. The Hon'ble High Court issued orders on 21.12.2020 putting on hold the auction of the petitioner's property till 08.01.2021, the next returnable date.

11. It is further stated in the application that the PNB's credit facilities are secured by

i. Equitable mortgage of Land, owned by the petitioner, measuring 01 Bigha covered by Dag No-88 of K P Patta-01 of Revenue village- Ambher under Mouza- Sonapur, Revenue circle- Sonapur, under SRO Kamrup (Metro), situated at village Ambher, 12th mile Jorabat, PO & Dist. Kamrup, Assam, with Godown building and Factory shed building constructed there on.

ii. Hypothecation of Plant & Machinery fixed in the above mentioned factory Land & Building Rs. 1,56,000,00.00 (Rupees One Crores and Fifty-Six Lakhs Only), Plant & machinery Rs. 2,50,000,00.00 (Rupees Two Crores and Fifty Lakhs only), together valued at Rs. 4,06,000,00.00 (Rupees Four Crores and Six Lakhs Only) as per Valuation report dated 26.10.2020.

iii. Hypothecation of Inventory & Book Debts:

Inventory Rs.15,000,00.00 (Rupees Fifteen Lakhs Only), Book-Debts Rs.5,82,000,00.00 (Rupees Five Crores Eighty-Two Lakhs Only) as of 29.12.2020

i. Assignment of LIC policies: Reportedly encashed by PNB

Sl. no	Policy Holder	Policy Number	Sum Assured	Surrender Value
1.	Mrs. Anupriya Harlalka	485676825	Rs. 30,00,000.00	Rs. 13,31,243.00
2.	Mrs. Nisha Harlalka	485677812	Rs. 12,00,000.00	Rs. 9,21,301.00

ii. Personal Guarantee of Nanda Rangsa Marak (Director), Frankline Rangsa Marak (Director), Vivek Agarwal (Director) & Kamal Kumar Harlalka (Promoter).

Sl.no.	Name of the Guarantor	Address of the Guarantor	Whether related to CD or Corporate Applicant
1	NANDA RANGSA MARAK	House No. 3/1, Rajdeep Complex FA Road, Kumarpara Guwahati	Director of CD
2	FRANKLINE RANGSA MARAK	20, Ambher, Near St. Jude School, Amerigog N.C Amerigog, Kamrup Metro, Assam-781023	Director of CD and Corporate applicant
3	VIVEK AGARWAL	Shreyana Enclave, Flat 4A, GMCH Road, Guwahati-781005	Director CD
4	KAMAL KUMAR HARLALKA	3 rd Floor, Shree Sadan, B R Phookan Road, Kumarpara, Guwahati, Kamrup (Metropolitan), Assam-781009	Shareholder in CD

12. The Corporate Applicant has also filed copy of audited financial statement for the financial year 2018-19 **(Page no. 66-86 of the application)**, copy of audited financial statement for the financial year 2019-20 **(Page no. 87-107 of the application)** and Provisional financial statement for current Financial Year as on 29.12.2020 **(Page no. 108-116 of the application)**.

13. As per section 10(3) (c) of the I & B Code, in order to maintain an application of this nature ,the corporate applicant has to produce a special resolution passed by the shareholders of the corporate applicant company approving the filing of application of this nature. A copy of the said resolution dated 14.12.2020 is found **at Page no. 19 of the application**. It reveals that in the annual general meeting convened on 14.12.2020, the corporate applicant company has passed the following resolutions:

"RESOLVED THAT the consent of the Shareholders of the Company present and attended and is hereby agreed and accorded to the Board of Directors of the Company to file the petition before Hon'ble National Company Law Tribunal, Guwahati Bench, Assam State in the company petition titled as NAVYA AGRO PRODUCTS PRIVATE LIMITED.

RESOLVED FURTHER THAT the Board of Directors of the company be and is hereby authorized to file and/or to defend the company petition titled as NAVYA AGRO PRODUCTS PRIVATE LIMITED under the applicable law before the competent court, Tribunal, Authorities or Forums including any Appellate Tribunal for and on behalf of the Company as and when required to give effect to the above resolution

RESOLVED FURTHER THAT the Board of Directors of the company, be and is hereby authorized to engage any Advocate/Solicitors/Consultants and to submit Vakalatnama, Power of Attorney, statements, documents, evidence, declarations etc. before the appropriate Authorities/ Court and/ or the Police Authorities for and on behalf of the Company as and when required and to enter into any compromise, settlement of case as they may consider appropriate in the interest of the company."

The above said resolutions show that the corporate applicant has been authorized to file an application of this nature and the signatory Mr. Frankline Rangsa Marak, Director of the corporate applicant company has been authorized to move the application by putting his signature.

14. The applicant has proposed insolvency professional **Shri Vakati Balasubramanyam Reddy** having his **registration No. IBBI/IPA-001/IP-P00662/2017-2018/11131** and **e-mail id Vbsreddy7@gmail.com**. To show that there is no disciplinary proceeding pending against the proposed resolution professional, the corporate applicant has produced FORM 2 (under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) and Written Communication by Proposed Interim Resolution Professional.

FORM-2 certifies that there are no disciplinary proceedings pending against the proposed resolution professional which is found at **Page no. 13 and 14 of the application.**

15. A reply dated 14th Day of July, 2021 for and on behalf of the Respondent Punjab National Bank to the Petition has been filed by Shri Swapan Kumar Mandal, aged about 59 years, S/O Lt. Haran Chandra Mandal working in the capacity of Assistant General manager, Punjab National Bank, Zonal SASTRA Centre, Guwahati under Section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) Read with Rule 7 of the 'THE APPLICATION TO ADJUDICATING AUTHORITY RULES, 2016' (The Rules) states as follows:

- a. That he has gone through the aforesaid petition and all documents. He is aware of the facts and circumstance of the case and he has also been authorized by Power of Attorney bearing no. 50 dated 17.01.2005 issued by United Bank of India subsequently amalgamated with PNB. He has also been authorized by a letter of authority dated 12.07.2021 issued by the competent higher authority of the respondent bank. As such he is fully competent to swear this affidavit for and on behalf of the Respondent Bank. In addition, he is ready and willing to furnish any other document showing his authority to act for and on behalf of the Respondent Bank, if the same is directed by this Hon'ble Tribunal.

Copy of power of attorney dated 17.01.2005 is annexed as **ANNEXURE 1** and copy of letter of authority dated 12.07.2021 is annexed as **ANNEXURE 2**.

- b. That the entire contents of the application filed by the petitioner may be treated to be denied by the respondent bank unless any part thereof is specifically admitted herein after. That the application filed under Section 10 by the petitioner is an attempt to escape its outstanding liabilities which are due and payable to the Respondent Bank, by using the mechanism of the IBC in order to obtain an order of moratorium in respect of the various recovery proceedings which have been instituted by the Respondent Bank.
- c. **That it is submitted that though there is an admitted default committed by the petitioner in the repayment of its dues, mere**

commission of such default is not sufficient to trigger the provisions of the IBC. The objective of the IBC is resolution and reorganization of the stressed debtors but in the case of the petitioner, it is the humble submission of the bank that the business model and financial structure of the petitioner is of such nature that no feasible resolution is possible in the present case. The petition under section 10 of the IBC is thus nothing but a device to gain time to drag the recovery proceedings by pretending to pursue the relief of resolution in this Hon'ble Tribunal.

16. That the authorized person of the petitioner namely Sri Kamal Kumar Harlalka, is a share-holder having 15 percentage share in the petitioner company and he is also a personal guarantor in respect of the facilities granted to the petitioner company. The said person is also a Director in M/s. RSH Agro Products Pvt. Ltd. which according to the petitioners is an unpaid creditor of the petitioner company and has alleged unpaid dues/claims to the extent of Rs.6.30 crores. Evidently, the said Sri Kamal Kumar Harlalka being the key person in both the petitioner company and M/s RSH Agro Products Pvt. Ltd, such claims of unpaid dues by the operational creditor is only a device to ensure the dominant participation of the existing promoters/Directors in any future Committee of Creditors (COC) which may be constituted after the admission of this instant application. The Respondent Bank is filling the relevant details from the website www.mca.gov.in.

Copy of the relevant details from the website is annexed as **ANNEXURE 3**.

17. That the petitioner's **cash credit account bearing no. 0189008700009615 and Term Loan account no. 018900IB00390959 were classified as NPA in accordance with RBI guidelines on 31.03.2020**. The loan accounts were classified as NPA on 31.03.2020 due to financial reasons (non-payment of interest, instalments due and non-submission of stock statements) which were IT based system automated. There was no manual intervention in NPA classification of the loan accounts. However,

immediately thereafter, in accordance with the RBI's Covid-19 Regulatory Package dated 27.03.2020 the loan accounts were again system reclassified to their prudential category as was during the end of February, 2020. In view of the RBI circular no. DOR.NO.BP.BC.71/21.04.048/2019-20 dated 23.05.2020 regarding Covid-19 regulatory Package, **the loan account of the petitioner was classified as NPA on 23.05.2020** after reconciliation of the stressed accounts which were initially classified as performing asset through IT based system automation on account of the RBI circular dated 27.03.2020. The loan accounts of the petitioner company were again classified as NPA as per RBI's IRAC norms vide circular no. DBR.NO.BP.BC.2/21.04.048/2015-16 dated 01.07.2015. However, this classification as NPA was done due to over-due in submission of stock statement by the petitioner company. The bank was constrained to send demand notice dated 01.06.2020 under section 13(2) of the SARFAESI Act, 2002 to the petitioner for payment of the secured debt. As no reply was received from the petitioner to the demand notice, the bank has taken symbolic possession of the secured assets by issuance of possession notice dated 14.10.2020. It is strongly denied that any representation U/S 13 (3A) of the SARFAESI Act was refused by the bank.

18. That the petitioner had filed W.P. (C) No. 5617/2020 in the Hon'ble Gauhati High Court challenging, inter-alia, the SARFAESI proceedings initiated by the bank, as well as the declaration of the account as NPA by the bank. The Hon'ble High Court passed an interim order dated 21.12.2020 by which the bank was directed not to put the properties of the petitioner to sale. However, by the final judgment and order dated 16.03.2021, the High Court dismissed the said writ petition with liberty to the petitioner to approach the Debts Recovery Tribunal, Guwahati for redressal of its grievances.

Copy of judgment and order dated 16.03.2021 in W.P. (C) No. 5617/2020 is annexed as **ANNEXURE 4**.

19. That however the petitioner chose not to approach the DRT, Guwahati as directed by the Hon'ble High Court. The SARFAESI notice issued by the respondent bank has thus attained finality. Meanwhile, the bank has also filed O.A. No. 74/2021 in the DRT, Guwahati under section 19 of the Recovery of Debts Due to Bank and Financial Institution Act, 1993. **The Bank has claimed an amount of Rs.6,09,86,598.31** (Rupees Six Crores Nine Lakhs Eighty-Six Thousand Five Hundred Ninety-Eight and Thirty-One Paise) as on 31.05.2021 against the petitioner and others, including Sri Kamal Kumar Harlalka. The said O.A No. 74/2021 was listed before the Ld. Presiding Officer of the DRT, Guwahati on 16.06.2021 and the DRT has been pleased to issue summons to the defendants therein as well as orders to disclose the particulars of their properties and other assets. The next date fixed before the DRT is on 16.08.2021.

Copy of the plaint of O.A. No.74/2021 along with copy of summons is annexed as **ANNEXURE 5**.

20. That the issue of the default and its quantum being presently pending adjudication before the Ld. DRT Guwahati, and the petitioner having admitted in the present petition under reply that it is willing to settle its debts by sale of the assets, no fruitful resolution or reorganization is possible in the case of the petitioner company. The petitioner has willfully defaulted on the repayment of its dues, and it is not a mere business failure but appears likely to be a case of diversion and improper use of the facilities granted by the Respondent Bank. The IBC is not to be permitted to be used by the promoters/directors as an escape route to avoid the consequences of their actions which have created the situation so as to lead to degradation of the accounts and slippage into NPA category.

21. That in view of the above, the Respondent Bank has strong reasons to object to the application under section filed by the petitioner, and prays that the same may be dismissed and the recovery proceedings may not be allowed to be delayed and frustrated due to the pendency of the same before this Hon'ble Tribunal.

22. It is submitted that as the Company incurred heavy losses, the promoters borrowed money from private sources at higher rate of interest. There are operational creditors and other creditors. All are putting a lot of pressure on the directors for recovery. The petitioner wants to sell the company along with factory/office, plant & machinery, business contracts, Goodwill etc. as a going concern to fetch more value and wants to settle all the stakeholders- PNB and other creditors, Employees and Workers.

23. The Petitioner in his application prays that the Honorable Tribunal may graciously be pleased to admit the petition in the interest of Natural Justice and the firm may be allowed to settle all the stakeholders-PNB and other creditors, Employees and workers as per IBC 2016.

ORDER

24. Heard the counsels for both the sides at length. The learned Counsel for the Respondent/Financial Creditor has reiterated the same what has been filed in its reply to the Application filed by the CD under Sec 10 of IBC. He has also confirmed that the account of the CD has been declared as NPA by the FC. On the other hand, the learned Counsel appearing for the Applicant has prayed for admission of the Application. Both the sides have submitted that they do not want further arguments on the matter.

25. By placing reliance on the judicial precedents of Hon'ble Supreme Court in the matter of *M/s Innovate Industries Ltd. vs. ICICI Bank & Anr.* as well as Hon'ble NCLAT in the matter of *Unigreen Global Pvt. Ltd. vs. Punjab National Bank & Ors., Co. Appeal (AT) (Insolvency) No. 81 of 2017*, we find that the contentions/objections of the Financial Creditor-Objector (Punjab National Bank) have no merits as the legal position in this respect has already been settled by the Hon'ble Supreme Court as well as Hon'ble NCLAT. Therefore, pendency of SARFAESI proceedings or proceedings before the DRT cannot be a valid ground not to initiate Corporate Insolvency Resolution Process under section 10 of the Code in respect of the

Corporate Applicant/Corporate Debtor, if such application is found complete in all respects. The provisions of section 238 of the IBC have been given overriding effect to the provisions and proceedings under any other law. Hence, such contentions of the Financial Creditor – Objector are not legally tenable.

26. The aforesaid discussion satisfactorily explains that the requirement to be meted out under section 10 of the Insolvency & Bankruptcy Code has been complied with by the applicant herein. The applicant has also succeeded in establishing the debt due to the FC has not been repaid and thereby defaulted in repayment of the amount found due to the FC. In view of the above said discussions, this Hon'ble Tribunal is satisfied that the application filed under section 10 of the Insolvency & Bankruptcy Code is complete and that the corporate applicant has committed default in repayment of the loan amount sanctioned by the FC. The FC admitted the default. In view of the fact that the application is complete, the present application filed under section 10 of the I & B Code is liable to be allowed upon the following orders:

- a) The Corporate Debtor availed the loan/credit facilities from the Financial Creditor;**
- b) The Applicant CD has also furnished the following:**
 - i. The information relating to its books of account and such other documents,**
 - ii. The information relating to the resolution professional proposed to be appointed as an interim resolution Professional; and**
 - iii. The special resolution passed by shareholders of the Corporate Debtor approving filing of the application.**
- c) Existence of debt is above Rupees One Lac;**
- d) Debt is due, payable and defaulted;**
- e) Default occurred on 31.12.2019;**

- f) Application has been filed within the limitation period, as the existence of the debt due, payable and defaulted on 31.12.2019 when the Application under Section 10 of the IBC has been filed by one of the Directors Mr. Frankline R Marak of the Company on 11.01.2021;**
- g) Further, the Corporate Debtor has acknowledged the debts/liabilities and the charge has been created with the ROC for Rs. 5,20,00,000.00 (Rupees Five Crores Twenty Lakhs only) on 23.02.2018;**
- h) Copy of the Application filed before this Bench has been sent to the Financial Creditor and the application filed by the Corporate Debtor under Section 10 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against itself;**

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 26.08.2021.

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

- I. (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any 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 foreclosure, recover or enforce any security interest created by the Corporate Debtor in respect of its property

including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- II. Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- III. The provisions of sub-section (I) shall not apply to-
 - (a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

28. This Adjudicating Authority hereby appoints, as proposed by the FC, Mr. Vakati Balasubramanyam Reddy, E 505 Galaxy Apartments, Kurla (E), Mumbai 400070, E-mail ID: Vbsreddy7@gmail.com, having IP Registration no. IBBI/IPA-001/IP-P00662/2017-2018/1113 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

29. The IRP is hereby advised to adhere to the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his

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

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

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

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

33. Thus, the present IB Petition filed under Section 10 of the IBC stands admitted today i.e. 26.08.2021 with the above observations and directions.

Sd/-

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

/Tanmoy/Deka-26.08.2021/

Sd/-

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**I.A No. 36 of 2021
In
CP (IB)/7/2021**

In the matter of:

Indian Bank (Erstwhile Allahabad Bank)

. . . Financial Creditor

Versus

Cleanopolis Energy Systems India Private Limited

. . . Corporate Debtor

AND IN THE MATTER OF:

Prokash Datta Suspended Managing Director

. . . Applicant

Order delivered on 26th August, 2021

Coram: Hon'ble Shri H. V Subba Rao, Member (J)

Hon'ble Shri Prasanta Kumar Mohanty, Member (T)

Hearing through Video Conference

ORDER

[Per se: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. This application has been filed under Section 340 Read with 195 (1)(b) of Code of Criminal Procedure, 1973 Read with Sections 193, 199, 200, 463 and 471 of IPC, 1860 Read with Rule 11 of NCLT Rules, 2016 for directions against the Financial Creditor and its Authorized Signatory SH Aditya Kumar Behera.

2. **It is submitted by the petitioner that this Hon'ble Tribunal *vide* order dated 7.4.2021 passed in CP (IB)/7/2021 admitted the Application filed by the Financial Creditor under Section 7 of the IBC, 2016 , commenced CIRP Process of the Corporate Debtor and appointed Mr. Amit Pareek as the IRP.**

Certified true copy of order dated 7.4.2021 passed by this Hon'ble Tribunal in CP (IB)/7/2021 is annexed herewith and marked as **ANNEXURE A1**.

3. It is submitted that the instant application is filed on behalf of Sh. Prokash Datta, suspended Managing Director of the Corporate Debtor because the Financial Creditor which is a public sector Bank has submitted forged and fabricated documents in the application filed under Section 7 of IBC, 2016 being CP (IB)/7/2021 and misled this Hon'ble Tribunal into passing the said order dated 7.4.2021.

4. It is stated that in the application filed by the Financial Creditor under Section 7 of IBC, wherein the Financial Creditor has stated that it had given Financial Debt of Rs.7,43,15,000.00 to the Corporate Debtor in the following manner:

Term Loan	Account No.	Sanctioned Amount	Alleged Outstanding Amount
Term Loan- I	50149791057	4,74,00,000.00	6,71,78,312.00
Term Loan- II	50201046842	1,26,00,000.00	1,77,60,738.00
Term Loan- III	50261528496	68,15,000.00	88,47,255.00
Cash Credit Loan	50201081399	75,00,000.00	2,50,46,033.00

True Copy of the Application dated 5.2.2021 along with annexures filed by the Financial Creditor under Section 7 of IBC is annexed herewith and marked as **ANNEXURE A2**.

5. It is also submitted that the following documents forming part of Section 7 Application filed by the Financial Creditor are forged, fabricated and false documents:

Sr No.	Annexure No. in the Section 7 Application Filed by the Financial Creditor	Pg. Nos. in the Section 7 Application filed by the Financial Creditor	Particulars
a)	Annexure-9	113-122	Term Loan- III Agreement dated 27.01.2015 for an amount of Rs.68,15,000.00
b)	Annexure- 16	129	Limit Pronote dated 27.01.2015 for an amount of Rs.7,43,15,000.00
c)	Annexure-17	130	Limit Pronote dated 27.01.2015 for an amount of Rs.68,15,000.00
d)	Annexure-39	227	Acknowledgement of debt of Rs.7,03,43,860.00 dated 27.01.2015
e)	Annexure-40	228	Acknowledgement of debt of Rs.8,79,61,172.00 dated 28.06.2017
f)	Annexure-41	229	Acknowledgement of debt of Rs.963.54 Lacs dated 19.07.2019

6. It is stated that in respect of the aforementioned Term Loan-III, the Financial Creditor has filed and relied upon Term Loan III Agreement dated 27.01.2015 (Term Loan III Agreement). It is submitted that the Term Loan III Agreement filed by the Financial Creditor is a fabricated and false document. The signature of Applicant on the said Agreement is forged and fabricated by the Financial Creditor and its officers by digitally copying and translating the signature of the Applicant from Term Loan- I Agreement dated 25.03.2013 and affixing it on the Term Loan III Agreement. The Applicant had never signed on the Term Loan III Agreement.

7. Advancing the afore-mentioned facts, the Applicant has prayed that this Hon'ble Tribunal may be graciously pleased to:

- (a) to initiate preliminary enquiry under Section 340 of Code of Criminal Procedure against the Financial Creditor and Sh. Aditya Kumar Behera

authorized signatory of the Financial Creditor for commission of offence under Sections 193, 199, 200, 463 and 471 of the IPC, 1860 in relation to proceedings before this Hon'ble Tribunal in CP (IB)/7/2021;

- (b) direct a competent officer or Registry of this Hon'ble Tribunal to make a complaint in writing and send such complaint in writing to the Magistrate of First-Class having jurisdiction and issues such other appropriate directions as may be deemed appropriate by this Hon'ble Tribunal;
- (c) record a finding to the effect that offences under Sections 193, 199, 200, 463 and 471 of the India Penal Code, 1860 appear to have been committed by the Financial Creditor and Sh. Aditya Kumar Behera authorized signatory of the Financial Creditor;
- (d) direct Sh. Aditya Kumar Behera, authorized signatory of the Financial Creditor to produce the originals of documents marked as [Annexure 9], [Annexure 16], [Annexure 17], [Annexure 39], [Annexure 40] and [Annexure 41] in CP (IB)/7/2021 filed before this Hon'ble Tribunal and pass an order for sending the same for forensic examination by handwriting/signature expert;
- (e) Pass any such further order or orders and/ or direction or directions as this Hon'ble Tribunal may deem fit and necessary under the circumstances of the case.

ORDER

8. Heard the Counsel appearing for the Petitioner. The Petitioner has submitted that this Tribunal, *vide* order dated 7.4.2021 passed in CP (IB)/7/2021, admitted the Application filed by the Financial Creditor in respect of this CD i.e. M/s Cleanopolis Energy System India Pvt. Ltd. under Section 7 of the IBC, 2016, commenced CIRP Process of the Corporate Debtor and appointed Mr. Amit Pareek as the IRP. Certified true copy of

order dated 7.4.2021 passed by this Hon'ble Tribunal in CP (IB)/7/2021 has been annexed herewith by the Petitioner and marked as ANNEXURE A1.

9. The Counsel further submits that the CD had availed Cash Credit Limit and Three Term Loans with a total limit of Rs.7,43,15,000.00 (Rupees Seven Crore Forty Three Lakhs Fifteen Thousand only) but there is a dispute only in one Term Loan No. Term Loan III documents with the Sanctioned amount of Rs.68,15,000.00 (Rupees Sixty Eight Lakhs Fifteen Thousand only) out of the total loan sanction of Rs.7,43,15,000.00 (Rupees Seven Crores Forty Three lakhs Fifteen Thousand only).

On the other hand, the F.C had claimed Rs.11,88,32,383.00 (Rupees Eleven Crores Eighty Eight Lakhs Thirty Two Thousand Three Hundred and Eighty Three only) in its application filed under the Section 7 of IBC in CP (IB)/7/2021 which includes Cash Credit Limit and three term loans. The said application has been admitted by this Bench on 07/04/2021, CIRP commenced, IRP appointed. CD is under Moratorium from 07/04/2021.

10. It is observed that earlier a Petition was filed by the Suspended Directors under Section 241 and 242 of the Companies Act, 2013 in the year 2019 vide CP No. 15/241-242/GB/2019; Special Officer was appointed by this Bench for managing the Company at the requests of the Petitioner-Suspended Director. The Special Officer was relieved from his duties, when the application filed by the FC was admitted and IRP appointed. The Special Officer, thereafter, has handed over all the documents of the CD to the IRP.

11. The CD had also filed another IA No. 22 of 2021 in CP (IB) No. 07 of 2021 stating that the application filed by the FC under Section 7 of IBC was not maintainable. The said IA was disposed of as infructuous by this Bench.

12. Now this IA is filed for the disputed loan amount of Term III only and the Petitioner has not disputed about the limit of Cash Credit and other two terms loans sanctioned by the F.C and availed by it amounting to

Rs.6,75,00,000.00 (Rupees Six Crores Seventy Five Lakhs only) excluding the Term Loan No. III.

13. Heard the Counsel at length ,We are of the considered view that there is no need to entertain the prayer made here by the Suspended Management/Director , when the Petition filed by the FC for Rs7,43,15,000.00 under Sec7 of IBC has been admitted and CD is under Moratorium. IRP has been appointed by this Bench and he is performing his duties as per the provisions specified under Sections 17, 18, 20 & 21 of IBC, 2016. The IRP/RP is duty bound to examine the documents minutely before admitting any claims submitted by the Creditors including the claim of the Applicant.

14. However, the Petitioner- Suspended Director is at liberty to take up the issues/disputes ,if any, relating to the Term with the RP/CoC in accordance with the Provisions of IBC.

15. Hence the prayer made in this IA is rejected and this IA is disposed of with the above observations.

Sd/-

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

Sd/-

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

/Tanmay/Deka-26.08.2021//

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
GUWAHATI BENCH
GUWAHATI**

C.P. (IB). No. 10/2021

In the matter of:

STATE BANK OF INDIA,

**A body corporate, duly constituted under
The State Bank of India Act, 1955 having
Its Central office at Madam Cama Road,
Mumbai- 400021 and Branch Office at
Stressed Assets Management Branch, 11
& 13 Shakespeare Sarani, 8th Floor,
Nightingale Hospital, Kolkata- 700071.**

..... Petitioner

Versus

NAYAK INFRASTRUCTURE PRIVATE LIMITED

**A Company incorporated under the
Provisions of Companies Act having it's
Registered Office at Swarupananda Road,
Lumding, District: Nagoan, Assam- 782447.**

..... Respondent

Order delivered on 26/08/2021

**Coram: Hon'ble Mr. H. V Subba Rao, Member (J)
And
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

ORDER

[Per Se: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. The Present I.B Petition is filed by the Financial Creditor i.e. State Bank of India under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to

as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in short) in respect of the Corporate Debtor namely, Nayak Infrastructure Private Limited for the default committed by the Corporate Debtor in making repayment of various credit facilities availed from the Bank. The Applicant (FC), State Bank of India, a body corporate duly constituted under the State Bank of India Act, 1955. The application has been filed by the duly authorized officer, Sri Sankumani Deka, Chief Manager SME-Khanapara Branch having address at Parlay Residency, Tripura Road, Guwahati PIN-781022.

2. The Respondent Corporate Debtor (CD) Company, namely Nayak Infrastructure Private Limited was incorporated on 19.12.2007 with CIN: U74210AS2007PTC008539.

3. The nominal share capital of the Respondent (CD) Company is Rs.20,00,00,000.00 (Rupees Twenty Crores only) and Paid up share capital of Rs.16,36,00,000.00 (Rupees Sixteen Crores Thirty Six Lakhs only). The Registered Office of the Corporate Debtor Company is situated at: Swarupananda Road, Lumding, Dist. Nagoan, Assam-782447.

4. The total amount of default is Rs 88,99,06,621.07 (Rupees Eighty Eight Crores Ninety Nine lakhs Six Thousand Six Hundred Twenty One and Seven paise only) as on 30.11.2020 and BG (Performance guarantee) outstanding (Live) Rs.10,08,56,147.00 (Rupees Ten Crores Eight lakhs Fifty Six Thousand One Hundred Forty Seven only).

Sl. no	B.G Bond Nos.	Date	Amount (Rs.)
1	0994518BG0000147	29.01.2018	1,51,90,820.00
2	0994518BG0000218	22.10.2018	1,04,69,279.00
3	0994518BG0000219	22.10.2018	1,81,61,500.00
4	0994518BG0000015	14.03.2019	2,04,64,568.00
5	0994518BG0000017	28.03.2019	1,26,55,267.00
6	0994518BG0000029	30.05.2019	71,60,000.00
7	0994518BG0000048	23.08.2019	1,67,54,713.00
	TOTAL VALUE		10,08,56,147.00

The aforesaid accounts were classified as Non-Performing Assets on 28.01.2020 and are continuing as NPA till date.

5. The loan facilities which included Cash Credit & Working Capital and Term Loan sanctioned by the Financial Creditor in favour of the Corporate Debtor was secured by way of the following properties Primary Security

- 1) Raw/construction materials, consumables, stores, book debts and other current assets of the Company both present and future created out of bank finance by the Corporate Debtor (under pari-passu charge)
- 2) Tata Hitachi Hydraulic Excavator (Machine No.1/THEDCOLOC00000132 & 2/THEDCOLOK00000113), Wet Concrete Spraying Equipment (SPM 4210 welkret), Mahindra Torro 25 Trippier with 9S Gear Box, Bogie Suspension, 16CUM BSIII ABS, Speed Limiter (Chassis No.1. MA1QDAHRCF6148462, 2. MA1QHDAHRCF6L48534, 3. MA1QHDAHRCF6L48538, 4. MA1QHDAHRCF6L48541, 5. MA1QHDAHRCF6L48574, Engine No.1. BAFZL14568, 2. BAFZL14646, 3. BAFZL14575, 4. BAFZL14665 and 5. BAFZL14733), Sandvikdt 820 1490*250*280 CM 29500 Kg Tunneling Drill Jumbo with Accessories (Machine No. 84314300), Chain Mounted Excavator Tata Hitachi, Model-2*220LCM-GI fitted (Vehicle No. THEDCOLOA00000148)

Collateral Security

- 1) Four Plots of Land measuring in total 36 Decimals (subsequently transferred in the name of the Corporate debtor vide Rectification Deed No. 10861601284 dated 25.08.2016).
- 2) All the piece and parcel of land comprising and Area of 0.050 Decimals, Kism- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/293, Plot No. 850/1706 along with 600 sq. ft. asbestos roof godown house with normal flooring without E.I & P.H. Works under Sale Deed No. 10861301185 dated 22.04.2013

- 3) All the piece and parcel of land comprising and Area of 0.060 Decimals, Kisam- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/493, Plot No. 850/1352 under Sale Deed No. 10861301183 dated 22.04.13
- 4) All the piece and parcel of land comprising and Area of 0.150 Decimals, Kisam- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/675, Plot No. 850/1701 under Sale Deed No. 10861301183 dated 22.04.13
- 5) All the piece and parcel of land comprising and Area of 0.150 Decimals, Kisam- Gharbari land situated in Mouza- Badmal, District/Tehsil- Jharsuguda and P.S- Badmal, Mutation Khata No. 126/493, Plot No. 850/2077 under Sale Deed No. 10861301183 dated 22.04.13
- 6) A plot of land measuring 1 katha 2 leches (2.94 Ares) along with a RCC building standing therein covered by Dag No. 976 (New) of KP Patta No. 811 (New), Sahar Guwahati Part 2 under Mouza Guwahati in the District of Kamrup Assam under Registered Sale Deed no. 8435 of 2010 dated 16.12.2010
- 7) A plot of land measuring 0.105 Decimal bearing Unit No. 20, Khatta No. 321 corresponding to mutation Khatta No. 1133/3242 plot No. 196/2276, Kisam- Dharabari, Mouza- Bhubaneshwar Shar, Jagmara with a RCC building standing there over under Registered Sale Deed no. 1113180457 dated 23.05.2018.
- 8) The front portion of the fourth floor numbered as Unit 4 "A" with super built up area of 2000 sq. ft. situated in the R.C.C. building known as "HEMSEM COMPLEX" covered by Holding No. 9 in ward no. 28 of Guwahati Municipal Corporation standing on the plot of land measuring 1 kathas 14 lechas out of total land of 9.10 Are covered by Dag no. 958 of K.P Patta No. 437 of Sahar Guwahati, part-II, Mouza Guwahati with the privileges of egress and ingress to and from floor having common facilities of passage and staircase and other

facilities as contained in Registered Deed of Sale No. 3721 of 2006 dated 21.04.2006.

The unit 4 "A" is bounded on:

North: Hotel Ambarish
South: Land of Mr. Deb
East: Md. Shah Road
West: Land of Mr. J. Poddar

The back portion of the third floor numbered as Unit 3 "B" with super built up area of 1050 sq. ft. together with one car parking space on the basement area of the R.C.C. building known as "HEMSEN COMPLEX" covered by Holding No. (in ward no. 28 of Guwahati Municipal Corporation standing on the plot of land measuring 1 Kathas 14 Lechas out of total land of 9.10 Are covered by Dag no. 958 of K.P Patta No. 437 of Sahar Guwahati, Part II, Mouza Guwahati with the privileges of egress and ingress to and from the floor having common facilities of passage and staircase and other facilities as contained in this Deed of Sale No. 4295 dated 05.05.2006.

The Unit 3 "B" is bounded on:

North: Hotel Ambarish
South: Land of Mr. Deb
East: Md. Shah Road
West: Land of Mr. J. Poddar

9) A HIG Duplex measuring 2400 sq. ft. allotted under HIG self-financing scheme at MaitriVihar phase 1 Orissa State housing board allotment no. HIGD-14, plot No. L-1022/94, Mouza- Chandrasekharpur, Bhubaneswar, District- Khurda, Sub Registry Office, Khandagiri under Sale Deed no. 2886 of 2006 dated 18.04.2006 and is bounded by

North: Road
South: D-28
East: D-48
West: D-50

10)A flat measuring 1080 sq.ft in the Third Floor of the building namely 'Harihar House bearing Flat no 3C with proportion share of land measuring 0.4 Are standing over a plot of land measuring 2 kathas 15 lechas of Dag Nos. 746, 752,753, 754,755,756 (old), New Dag No. 754, KP Patta No. 643 of Village Sahar Ulubari, under Mouza Ulubari, District Kamrup, Assam, under registered sale no. of 3138 of 2011 dated 18.04.2011 and is bounded by'

North: Putuli Choudhury

South: Flat No. 3B

East: 16 fit road

West: Flat No. 3C

A flat measuring 1120 sq. ft. in the Third Floor of the building namely 'Harihar House bearing Flat no 3D with proportion share of land measuring 0.4 Are standing over a plot of land measuring 2 kathas 15 lechas of Dag Nos. 746, 752,753, 754,755,756 (old), New Dag No. 754, KP Patta No. 643 of Village Sahar Ulubari, under Mouza Ulubari, District Kamrup, Assam, under registered sale no. of 3139 of 2011 dated 18.04.2011 and is bounded by:

North: Putuli Choudhury

South: Flat No. 3A

East: Flat No. 3C

West: Road

11)A plot of land measuring 2 Kathas 10 Lechas covered by Dag No. 169 of Patta No. 86 of revenue Village- Lumding Mouza- District, P.S and Sub-register Office Nagoan, within the Jurisdiction of Nagoan Revenue Circle, under Registered Sale Deed No. 504 of 2009 dated 05.04.2013 and is bounded by:-

North: Ratan Sarkar

South: Bhajan Singh

East: Government Road

West: Shyamsundar Das

12)A plot of land measuring 1 Bigha 16 Kathas covered by 2nd R.S Patta No. 42, Dag No. 87, comprising East- West measuring 315'ft 6" Inch. In the Northern Side & 322'ft. in the Southern Side, and North-South measuring 82'ft. 6" inch.

In the Eastern Side and 80'ft in the Western Side, District Cachar, Police Station and Pargona- Barakpur, Mouza- Tarapur Part-VIII, Sub-Registry office- Silchar Sadar, Silchar, Cachar, Assam, under Registered Sale Deed No. 1532 dated 03.06.2013 which is bounded by:-

North: Land of Himangshu Kumar Nath

South: Land of Sisur Nath & others

East: Land of Assam Industrial Development Corporation

West: P.W.D Road

13) A plot of land measuring 100 Acres and or 05 Gandas, Khatian No. 0180, Dag No. Sabek 8870 (P), Hal 33783/34974, Mouza/Tahsil Badharghat, Sheet No. 6, Revenue Circle Dukli, P.S Amtali, West Tripura District, Tripura under Registered Sale Deed No. I-9254 of 2012 dated 17.12.2012 and bounded by:-

North: Government Land

South: ChittaRanjan Das

East: Land of Co-operatives

West: Akul Chandra Paul and others

All that a Flat No. "F" an area measuring 1176 sq. ft in the First Floor consisting of 04 (Four) Bed Rooms, 01 (One) Kitchen, 3(Three) bathroom Cum Latrine and 1 Drawing cum Dining Hall and 01 (one) Small Store Room within the compound of "Green Enclave" situated in revenue Village Sahar Guwahati, Second part, measuring 02 Kathas, covered by Dag No. 956 of K.P patta No. 435 and GMC Ward No. 28, under Mouza Guwahati situated at Paltan bazar, Guwahati-8 in the district of Kamrup (Metro) Assam under Registered Sale Deed No. 11388 of 2009 dated 24.09.2009 and is bounded by:-

North: Shri J Das and Gouriya Nath

South: Md. Shah Road

East: M/S C.R Construction and Hotel Starline

West: Sri H. Talukdar

14) A plot of land measuring 1800 sq. ft. of Plot No. VIM-02, Drawing No. C-580/89 at Chandrasekharpur, Phase VI, Mouza/PS- Chandrasekharpur, SRO-

Khandagiri, Bhubaneshwar, District- Khurda, Orissa under Registered lease cum Sale Deed No. 11131107805 dated 23.06.2011

North: Road
South: VIM-01
East: VIM-04
West: Road

6. It is submitted that the Financial Creditor as Applicant had also filed an Original Application bearing O.A No. 318/2020 before the Debts Recovery Tribunal at Guwahati against the Corporate Debtor, personal guarantor as Defendant for recovery of Rs.88,94,83,341.85 (Rupees Eighty Eight Crore Ninety Four Lakh Eighty Three Thousand Three Hundred Forty One and Eighty five paisa)only and the said application is pending for disposal.

7. In order to support the claim, the financial Creditor has submitted the Statement of Accounts and Certified Entries in a Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891), which proves the claim of the Financial Creditor against the Corporate Debtor.

8. The Financial Creditor, in support of its contentions has annexed the details of Financial Debt, records and evidences of default including copies of all sanction letters, statement of accounts showing the amount claimed to be in default and its calculation from and as on 28.01.2020 and are continuing as NPA till date.

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

1. Sanction letter dated 19.09.2007 (page 18) Annexure I-1.
2. Supplemental agreement of loan for increase in overall limit dated 20.09.2007 executed by the Corporate Debtor and Personal Guarantor (pages 19- 26) Annexure I-2.

3. Supplemental agreement for Hypothecation of Goods and assets for increase in the overall limit dated 20.09.2007 executed by the Corporate Debtor and Personal Guarantor (pages 27-31) Annexure I-3.
4. Supplemental deed of guarantee for increase in overall limit dated 20.09.2007 executed by the Personal Guarantor (pages 32-38) Annexure I-4.
5. Letter regarding grant of individual limit within the overall limit dated 20.09.2007 executed by the Corporate Debtor (pages 39-41) Annexure I-5.
6. Form of agreement where only one or some of the persons furnishing the security is/are a holder/holders of the account on which advance is granted dated 20.09.2007 (pages 42-45) Annexure I-6.
7. Agreement of the Corporate Debtor and M/s Ananta Charan Nayak, a partnership bearing No 343 dated 28.01.2008 (pages 46-53) Annexure I-7.
8. Agreement of loan for overall limit dated 31.12.2007 executed by the Corporate Debtor wherein the limits of Rs.16,00,00,000/- was disbursed and sanctioned under the two heads : cash credit: Rs.6,00,00,000/- and Bank Guarantee Rs 10,00,00,000/- (pages 54-80) Annexure I-8.
9. Agreement of hypothecation of goods dated 31.12.2007 executed by the Corporate Debtor (pages 81-101) Annexure I-9.
10. Deed of guarantee for overall limit dated 31.12.2007 executed by the Personal Guarantors (pages 102-116) Annexure I-10.
11. Letter regarding grant of individual limit within the overall limit dated 31.12.2007 (pages 117-120) Annexure I-11.
12. Supplemental Agreement of loan for increase in overall limit dated 06.02.2009 executed by the Corporate Debtor wherein the existing limit of Rs.16,00,00,000.00 was enhanced to Rs.31,44,00,000.00 under three heads: Cash Credit Rs.8,00,00,000.00; Term loan Rs.1,44,00,000.00; Bank Guarantee Rs.22,00,00,000.00 (pages 121-129) Annexure I-12.

13. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 06.02.2009 executed by the Corporate Debtor (pages 130-135) Annexure I-13.
14. Supplemental Deed of guarantee for increase in overall limit dated 06.02.2009 executed by the Personal Guarantors (pages 136-142) Annexure I-14.
15. Letter regarding grant of individual limit within the overall limit dated 06.02.2009 (pages 143-145) Annexure I-15.
16. Form of agreement where only one or some of the persons furnishing the security is/are a holder/holders of the account on which advance is granted dated 06.02.2009 (pages 146-150) Annexure I-16.
17. Supplemental Agreement of loan for increase in overall limit dated 20.07.2009 executed by the Corporate Debtor wherein the existing limit of Rs.31,44,00,000.00 was enhanced to Rs.34,64,00,000.00 under the following heads: Cash Credit Rs.8,00,00,000.00; Term loan Rs.1,44,00,000.00 ; Term loan 2 Rs.3,20,00,000.00; Bank Guarantee: Rs.22,00,00,000.00 (Pages 151-159) Annexure I-17.
18. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 20.07.2009 executed by the Corporate Debtor (pages 160-165) Annexure I-18.
19. Supplemental Deed of guarantee for increase in overall limit dated 20.07.2009 executed by the Personal Guarantor (pages 166-172) Annexure I-19.
20. Letter regarding grant of individual limit within the overall limit dated 20.07.2009 (pages 173-175) Annexure I-20.
21. Sanction letter dated 29.09.2010 (pages 176-186) Annexure I-21.
22. Board Resolution of corporate debtor dated 29.09.2010 (pages 187-188) Annexure I-22.
23. Supplemental Agreement of loan for increase in overall limit dated 29.09.2010 executed by the Corporate debtor wherein the existing limit of

- Rs.34,64,00,000.00 was enhanced to Rs.41,50,00,000.00 (pages 189-196) Annexure I-23.
24. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 29.09.2010 executed by the Corporate Debtor (pages 197-201) Annexure I-24.
 25. Supplemental Deed of guarantee for increase in overall limit dated 29.09.2010 executed by the Personal Guarantors (pages 202-206) Annexure I-25.
 26. Board resolution of corporate debtor dated 08.12.2010 (pages 207-208) Annexure I-26.
 27. Supplemental Agreement of loan for increase in overall limit dated 08.12.2010 executed by the Corporate Debtor wherein the existing limit of Rs.41,50,00,000.00 was enhanced to Rs.95,00,00,000.00 (pages 209-216) Annexure I-27.
 28. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 08.12.2010 executed by the Corporate Debtor (pages 217-221) Annexure I-28.
 29. Supplemental deed of guarantee for increase in overall limit dated 08.12.2010 (pages 222-228) Annexure I-29.
 30. Letter regarding grant of individual limit within the overall limit dated 08.12.2010 (pages 229-231) Annexure I-30.
 31. Sanction letter dated 07.06.2011 (pages 232-238) Annexure I-31.
 32. Board resolution of Corporate debtor dated 07.06.2011 (pages 239-241) Annexure I-32.
 33. Supplemental Agreement of loan for increase in overall limit dated 07.06.2011 executed by the Corporate Debtor wherein the existing limit of Rs.41,50,00,000.00 was enhanced to Rs.99,45,00,000.00 (pages 242-245) Annexure I-33.

34. Supplemental Agreement of hypothecation of goods and assets for increase in overall limit dated 07.06.2011 executed by the Corporate Debtor (pages 246-254) Annexure I-34.
35. Supplemental Deed of Guarantee for increase in overall limit dated 07.06.2011 executed by the Personal Guarantors (pages 255-264) Annexure I-35.
36. Letter regarding grant of individual limit within the overall limit dated 07.06.2011 (pages 265-267) Annexure I-36.
37. Board resolution of Corporate debtor along with Revival letter reviving the earlier documents dated 13.07.2012 (pages 268-270) Annexure I-37.
38. Letter regarding grant of individual limit within the overall limit dated 13.07.2012 (pages 271-273) Annexure I-38.
39. Letter regarding grant of individual limit within the overall limit dated 25.03.2014 (pages 274-276) Annexure I-39.
40. Board resolution dated 27.03.2014 of corporate debtor along with Revival letter reviving the earlier documents dated 25.03.2014 (pages 277-279) Annexure I-40.
41. Arrangement letter dated 19.01.2016 executed by the Corporate debtor and the personal guarantors for the limit of Rs.97,50,00,000.00 (pages 280-303) Annexure I-41.
42. Board resolution of Corporate debtor dated 22.01.2016 (pages 304-305) Annexure I-42.
43. Letter regarding grant of individual limit within the overall limit dated 04.02.2016 (pages 306-309) Annexure I-43.
44. Supplemental agreement of loan for increase in overall limit dated 17.02.2016 executed by the Corporate Debtor (pages 310-332) Annexure I-44.
45. Supplemental agreement of Hypothecation of goods and assets for increase in overall limit dated 17.02.2016 executed by the Corporate Debtor (pages 333-342) Annexure I-45.

46. Supplemental deed of guarantee for increase in overall limit dated 17.02.2016 executed by the personal guarantor (pages 343-349) Annexure I-46.
47. Omnibus counter guarantee dated 17.02.2016 executed by the corporate debtor (pages 350-353) Annexure I-47.
48. Board resolution of Corporate debtor dated 19.12.2016 (pages 354-355) Annexure I-48.
49. Letter dated 20.12.2016 by the corporate debtor to the Financial Creditor (Consortium Leader) seeking sanction of credit facilities (pages 356) Annexure I-49.
50. Sanction letter dated 02.03.2017 executed by the Corporate Debtor and Personal Guarantors (pages 357-378) Annexure I-50.
51. Board resolution of corporate debtor dated 18.03.2017 (pages 379-380) Annexure I-51.
52. Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab National Bank as the Members Bank) dated 20.03.2017 for the limit of Rs.1,19,50,00,000.00 (pages 381-414) Annexure I-52.
53. Letter of Authority to lead bank (pages 415-416) Annexure I-53.
54. Joint deed of hypothecation dated 20.03.2017 executed by the Corporate Debtor (pages 417-435) Annexure I-54.
55. Inter-se Agreement executed between members of the Consortium dated 20.03.2017 (pages 436-446) Annexure I-55.
56. Deed of Joint and Several personal Guarantee dated 20.03.2017 executed by the personal guarantors (pages 447-456) Annexure I-56.
57. Board resolution dated 06.06.2017 of Corporate Debtor (pages 457-458) Annexure I-57.
58. Arrangement letter dated 06.06.2017 executed by the Corporate Debtor and the personal guarantors Debtor wherein the existing limit of Rs.97,50,00,000.00 (of

the Financial creditor) was enhanced to Rs.1,20,25,00,000.00 (pages 459-481) Annexure I-58.

59. Supplemental agreement of loan for increase in overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 482-486) Annexure I-59.
60. Supplemental agreement of Hypothecation of goods and assets for increase in overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 487-492) Annexure I-60.
61. Supplemental deed of guarantee for increase in overall limit dated 06.06.2017 executed by the personal guarantor (pages 493-496) Annexure I-61.
62. Letter regarding the grant of individual limit within the overall limit dated 06.06.2017 executed by the Corporate Debtor (pages 497-499) Annexure I-62.
63. Omnibus counter guarantee dated 06.06.2017 executed by the corporate debtor (pages 500-502) Annexure I-63.
64. Board resolution dated 13.11.2017 of Corporate Debtor (pages 503-505) Annexure I-64.
65. Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab national bank as the Members Bank) dated 13.11.2017 for the limit of Rs.1,49,50,00,000.00 (pages 506-547) Annexure I-65.
66. Letter of authority to lead bank (pages 548-549) Annexure I-66.
67. Joint deed of hypothecation dated 13.11.2017 executed by the Corporate Debtor (pages 550-574) Annexure I-67.
68. Inter-se Agreement executed between members of the Consortium dated 13.11.2017 (pages 575-590) Annexure I-68.
69. Deed of Joint and Several personal Guarantee dated 13.11.2017 executed by the personal guarantors (pages 591-604) Annexure I-69.
70. Omnibus counter Guarantee dated 13.11.2017 executed by the personal guarantors (pages 605-607) Annexure I-70.

71. Sanction letter dated 30.06.2018 executed by the Corporate debtors and Personal Guarantors (pages 608-626) Annexure I-71.
72. Board resolution dated 03.01.2019 of corporate debtor (pages 627-629) Annexure I-72.
73. Modified Working Capital Consortium Agreement executed by the Corporate Debtor and the Consortium Leader and Members (Financial Creditor herein as the Lead bank) (Bank of India and Punjab National Bank as the Members Bank) dated 05.01.2019 for the limit of Rs.1,64,50,00,000.00 (pages 630-670) Annexure I-73.
74. Letter of authority to lead bank dated 05.01.2019 (pages 671-672) Annexure I-74.
75. Modified Joint deed of hypothecation dated 05.01.2019 executed by the Corporate Debtor (pages 673-689) Annexure I-75.
76. Inter-se Agreement executed between members of the Consortium dated 05.01.2019 (pages 690-702) Annexure I-76.
77. Deed of Joint and Several personal Guarantee dated 05.01.2019 executed by the personal guarantor (pages 703-712) Annexure I-77.
78. Omnibus counter Guarantee dated 05.01.2019 executed by the personal guarantors (pages 713-714) Annexure I-78.
79. **Revival letter dated 05.01.2019 executed by the corporate debtor (pages 715-716) Annexure I-79.**
80. **Balance Confirmation executed by the Corporate Debtor dated 01.04.2019 (pages 717-719) Annexure I-80.**
81. Stock statement of the Corporate Debtor as on 31.12.2019 (pages 720-737) Annexure I-81.
82. Valuation of the Primary Movable property Rs.5,33,54,000.00 (pages 738-753) Annexure I-82.

83. Equitable mortgage by deposit of title deed being Sale Deed No. 10861301185 dated 22.04.2013 (pages 754-765) Annexure I-83.
84. Equitable mortgage by deposit of title deed being Sale Deed No. 10861301183 dated 22.04.2013 (pages 766-779) Annexure I-84.
85. Valuation of the aforesaid property (being Sale deed No. 10861301185 dated 22.04.2013 and Sale Deed No. 10861301183 dated 22.04.13) Rs.12,60,00,000.00 (pages 780-799) Annexure I-85.
86. Letter of Confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 800-801) Annexure I-86.
87. Equitable mortgage by deposit of title deed being deed no 8435 (pages 802-810) Annexure I-87.
88. Valuation of the aforesaid property (being Sale deed No. 8435) Rs.2,39,70,000.00 (pages 811-819) Annexure I-88.
89. Letter of confirmation of mortgage by deposit of title deeds executed by corporate debtor (pages 820-822) Annexure I-89.
90. Equitable mortgage by deposit of title deed being Sale deed no. 1113180457 (pages 823-834) Annexure I-90.
91. Valuation of the aforesaid property (being Sale Deed No. 1113180457) Rs.3,54,59,098.00 (pages 835-845) Annexure I-91.
92. Letter of Confirmation of mortgage by deposit of title deeds executed by Corporate Debtor (pages 846-849) Annexure I-92.
93. Equitable mortgage by deposit of title deed being Sale Deed no. 3721 (pages 850-862) Annexure I-93.
94. Valuation of the aforesaid property (being Sale Deed No. 3721) Rs.74,03,000.00 (Pages 863-870) Annexure I-94.
95. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 871-872) Annexure I-95.

96. Equitable mortgage by deposit of title deed being Sale Deed no.4295 (pages 873-886) Annexure I-96.
97. Valuation of the aforesaid property (being Sale Deed No. 4295) Rs.59,79,000.00 (pages 887-894) Annexure I-97.
98. Letter of Confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 895-896) Annexure I-98.
99. Equitable mortgage by deposit of title Deed being Sale Deed no. 2886 (pages 897-903) Annexure I-99.
100. Valuation of the aforesaid property (being Sale Deed No. 2886) Rs.2,30,57,000.00 (pages 904-908) Annexure I-100.
101. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 909-910) Annexure I-101.
102. Equitable mortgage by deposit of title deed being Sale Deed no. 3138 (pages 911-920) Annexure I-102.
103. Valuation of the aforesaid property (being Sale Deed No. 3138) Rs.43,14,000.00 (pages 921-928) Annexure I-103.
104. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 929-930) Annexure I-104.
105. Equitable mortgage by deposit of title deed being Sale Deed no. 3139 (Pages 931-939) Annexure I-105.
106. Valuation of the aforesaid property (being Sale Deed No. 3139) Rs.44,74,000.00 (pages 940-946) Annexure I-106.
107. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 947-948) Annexure I-107.
108. Equitable mortgage by deposit of title Deed being Sale Deed no. 504 (pages 949-962) Annexure I-108.

109. Valuation of the aforesaid property (being sale deed No. 3138) Rs.2,72,57,000.00 (pages 963-974) Annexure I-109.
110. Letter of confirmation of mortgage by deposit of title Deed executed by Sri Ananta Charan Nayak (pages 975-976) Annexure I-110.
111. Equitable mortgage by deposit of title deed being Sale deed no. 1552 (pages 977-987) Annexure I-111.
112. Valuation of the aforesaid property (being Sale Deed No. 1552) Rs.2,16,75,000.00 (pages 988-993) Annexure I-112.
113. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Ananta Charan Nayak (pages 994-995) Annexure I-113.
114. Equitable mortgage by deposit of title deed being sale Deed no. 11388 (pages 996-1002) Annexure I-114.
115. Valuation of the aforesaid property (being Sale Deed No. 11388) Rs.55,97,000.00 (pages 1003-1010) Annexure I-115.
116. Letter of confirmation of mortgage by deposit of title deeds executed by Smti. Renu Nayak (pages 1011-1012) Annexure I-116.
117. Letter of confirmation of mortgage by deposit of title deeds executed by Smti. Renu Nayak (sale deed No 19254) (pages 1013-1015) Annexure I-117.
118. Valuation of the aforesaid property (being sale deed No. 19254) Rs.1, 83,75,000.00 (pages 1016-1025) Annexure I-118.
119. Equitable mortgage by deposit of title deed being Sale Deed no. 11131107805 (pages 1026-1039) Annexure I-119.
120. Valuation of the aforesaid property (being Sale Deed No 11131107805) Rs.3,21,56,000.00 (pages 1040-1046) Annexure I-120.
121. Letter of confirmation of mortgage by deposit of title deeds executed by Sri Basudev Nayak (pages 1047-1049) Annexure I-121.
122. **Demand Letter Dated 30.01.2020 (pages 1050-1051) Annexure I-122.**

123. Interest Calculation Sheet (pages 1052-1060) Annexure I-123.
124. **CERTIFICATE OF BANKERS BOOK OF EVIDENCE ACT, 1891 AND I.T ACT, 2000 (pages 1061) Annexure I-124.**
125. **ROC SEARCH REPORT OF THE CORPORATE DEBTOR (pages 1062-1103) Annexure I-125.**
126. MEMORANDUM AND ARTICLE OF ASSOCIATION OF THE CORPORATE DEBTOR (pages 1104-1130) Annexure I-126.
127. **PARI PASSU CHARGE CEDING LETTER (pages 1131-1132) Annexure I-127.**
128. **CIBIL INFORMATION REPORT DATED 24.09.2020 (pages 1133-1157) Annexure I-128.**
129. Order dated 01.02.2020 passed in OA No. 318/2020 is pending before the Honorable Debt Recovery Tribunal, Guwahati (pages 1158) Annexure I-129.
130. GENERAL AFFIDAVIT VERIFYING PETITION (pages 1159-1161) Annexure I-130.
131. STATEMENT OF ACCOUNTS (paged separately) (pages 1166-1781) Annexure I-131.
132. CONSENT OF THE PROPOSAL INTERIM RESOLUTION PROFESSIONAL IN FORM-2 AND DECLARATION REGARDING ELIGIBILITY BOTH DATED 08.10.2018 (pages 1162-1163) Annexure II.

10. The Petitioner Bank has suggested the name of Insolvency Professional Mr. Vishal Ghisulal Jain, Office No. 502, G Square Business Park, Opp. Sanpada Railway Station, Sector 30-A, Vashi, Navi Mumbai-400703 having IP Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 to be appointed, if this petition is allowed and the proposed IRP has also given his affirmation/consent in writing, which is annexed with the petition.

11. In response to application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, a reply was filed by the Corporate Debtors Nos.

1 to 5 undersigned by Mr. Ananta Charan Nayak, Managing Director of Nayak Infrastructure Pvt. Ltd dated 15th July, 2021. It is submitted that -

- a. That the application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor, the State Bank of India is not maintainable in the present form as there is default in the face of the record which needs to be interfered by this Hon'ble Tribunal and moreover, the application is not as per the provisions of Rule 4 of the Insolvency and Bankruptcy Code.
- b. That, there is no bar under Section 7 of the Insolvency and Bankruptcy Code, 2016 for filing two simultaneous applications against the Principal Borrower as well as the Corporate Guarantors. However, once for the same set of claim application under Section 7 by the Financial Creditor is admitted against one Corporate Debtor, i.e. Principal Borrower or Corporate Guarantor, second application by the same Financial Creditor for the same set of claim and default cannot be admitted against the other Corporate Debtor, i.e. Principal Borrower or Corporate Guarantor. Though there is no provision to file joint application under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the financial Creditor against two or more Corporate Debtor on the ground of joint liability (Principal Borrower and on Corporate Guarantor), or Principal Borrower or two Corporate Guarantors or one Corporate Guarantor and other Corporate Guarantor till it is shown that the Corporate Debtors combinedly are joint venture company. This fact was analyzed by the Hon'ble NCLAT in the case of **Dr. Vishnu Kumar Agarwal Vs. M/S Piramal Enterprises Ltd.** and the Court held that the same amount cannot be claimed and section 7 cannot be applied simultaneously. Joint Application of CIRP can be filed against two or more companies only if the companies are in joint venture. In the present case in hand, the Application under Section 7 was filed against both Principal Borrower as well as Corporate (personal) Guarantors. Therefore,

this application is not tenable in the eye of law and liable to be dismissed. Under Section 60 (2) and 60(3) of the Code allows filing of simultaneous applications against the Borrower as well as Guarantor but in the Code nowhere it is stated that joint application can be filled under Section 7 of the Code. Moreover, the said application was arising out of the very same transaction and very same common loan agreement. In the present case the Deed of Guarantee dated 05.01.2019 was signed by all the Personal Guarantors of Corporate Debtors.

- c. That although the NCLAT in Piramal Enterprises has established that there is no bar in filing simultaneous applications for CIRP against the principal Borrower and the Guarantor, yet the IBC is silent on the furthering procedure if CIRP has been initiated against both Principal Borrower as well as Corporate Debtor. Neither the IBC specifies any provision for management of such disputes nor any precedent of judgments happen to tackle the same.
- d. That this instant application under Section 7 is not maintainable other various grounds. These are-
 - i. In the present case in hand, the Financial Creditor has failed to prove the basic requirement that the amount advanced is a financial debt as provided under the Code in Section 5(8). The entire foundation of an application under Section 7 of the Code is based on the premise that there is a default in relation to a financial debt. Here, in the present case the date of default is not mentioned. Further, the Financial Creditor has failed to prove the basic requirement that the amount advanced is a financial debt as provided under the Code.
 - ii. The present application is barred under Article 137 of the Limitation Act as the default has occurred over 3 years prior to the date of filing this application. Notwithstanding anything contained in Section

7, 9 and 10 of the Code, no application for initiation of Corporate Insolvency Resolution Process of a corporate debtor shall be filed for any default arising on or after 25.03.2020 but here it is not mentioned in the application when the said default occurred.

- iii. The present application is not filed by the authorized person. Under the Code only the authorized person can file an application under Section 7 of the Code. The authorized person is distinct from the power of attorney holder and it has been held that the provisions of Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder. In view of the same, it has been held that a 'power of attorney holder' is not competent to file an application in behalf of a 'Financial Creditor'.
- e. That as the instant application which was filed under section 7 of the Code has devoid of merit and not sustainable in the eye of law, therefore, this Hon'ble Tribunal has every right not to admit the same and reject the application on the ground of default committed by the Financial Creditor.
- f. That this reply was filed by the Corporate Debtors after 15 days from the order dated 22.06.2021 passed by this Hon'ble Tribunal. The delay was occurred due to the fact that the principal signatory Sri Ananta Kumar Nayak was out of station and the Assam Government has ordered for restriction of inter district movement till now. Further, the Corporate Debtors prays that the delay of filing reply may be condoned for ends of justice.
- g. That this reply is filed bonafide and for ends of justice.

In the premises, it is Most Respectfully prayed that Your Lordship may kindly allow the reply filed by the Corporate Debtor and after considering the facts and circumstances of the case Your Lordship may reject the application filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 by the

Financial Creditor, the State Bank of India and/or pass any such order/orders as Your Lordship may deem fit and proper.

12. The petitioner has filed an affidavit by Mr. Tushar Ravi, Chief Manager of State Bank of India, Khanapara Branch, dated 4th August, 2021 wherein the petitioner has submitted that:-

- a. A copy of the reply filed by the corporate debtor has been served upon him and he has gone through the same and understood the contents thereof. He is well acquainted with the facts of the case and competent to swear this affidavit.
- b. That the present reply is devoid of any merit and does not disclose any defence and the said affidavit in reply is based on manufactured, concocted and engineering facts prepared for instant litigation. The said counter affidavit is bogus, vague, non-speaking, frivolous and no cognizance should be taken and the corporate debtor has suppressed many facts which are germane to the purpose of the instant case. The application filed by the financial creditor is wholly maintainable and the claim of the applicant is admissible in nature, and the disputes raised are an afterthought to vitiate the claim of the financial creditor.
- c. That a bare reading of the provisions of Regulations 76 and 77 of the State Bank of India General Regulations, 1955 read with Gazette Notification dated 27.03.1987 clearly shows that the Managing Directors, the Deputy Managing Directors, the Chief General Managers and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorize in this behalf by notification in the Gazette of India, are empowered to sign plaints, written statements, petitions and applications, sworn affidavits and as such the Application being filed by the Chief Manager is admissible and should be allowed.

- d. That, save and except, what are matters of records and what has been specifically admitted by the answering Financial Creditor in the following paragraphs, all other statements and averments made in the Reply filed by the Corporate Debtor are to be deemed to have been denied by the Financial Creditor in seriatim.
- e. That the statements made in paragraph 1 and 5 of the reply to the extent that the application is not maintainable is not true and correct and the same is hereby denied. In this connection it is stated that the said application is maintainable in both law and facts and the same have considerable merits to be allowed. That the Financial Creditor have filed the present application according to the Forms/Rules prescribed in the Code, 2016, the NCLT, Rules and such other rules and regulations framed under. That the said application is complete and have considerable merits to be allowed. Further, it is pertinent to mention herein that the reply filed by the Corporate Debtor is not in accordance with the National Company Law Tribunal Rules, 2016. Apart from this the Corporate Debtors have also not accompanied their reply along with the Affidavits verifying petition in terms of the National Company Law Tribunal Rules, 2016.

It is further stated and submitted that due to inadvertence the names of the personal guarantors were inserted as defendants No. 2 to 7, however an affidavit is filed to delete the names of defendant's no. 2 to 7 from the instant application.

- f. That the statement made in paragraph 4(i) of the reply are not true and correct and the same are hereby denied. In this connection it is submitted that bare reading of the Section 5(8)(a) and 5(8)(b) of the Code states that, financial debts includes: -
 - i. Money borrowed against the payment of interest;

- ii. Any amount raised by acceptance under any **acceptance credit facility** or its dematerialized equivalents;

Thus, the contention of the Respondent no. 1-5 claiming that the amount advanced is not a financial debt is at all not tenable.

- iii. That the statements made in paragraph 4(ii) of the reply are not true and correct and the same are hereby denied. **In this connection it is submitted that the default occurred on 28.01.2020 i.e. that date of NPA and as such the same is under the period of limitation.**

- iv. That the statements made in paragraph 4(iii) of the reply are not true and correct and the same are hereby denied. In this connection it is submitted that a Chief Manager is duly authorized to sign and sworn the affidavit as per Regulations 76 and 77 of the State Bank of India, General Regulations, 1955 and the Gazette Notification dated 27.03.1987. For reference of the Court the Regulations 76 and 77 of the State Bank of India, General Regulations, 1955 and reproduced herein below:-

76. Accounts receipts and documents of State Bank by whom to be signed- (1) *The managing directors, the deputy managing directors, the chief general managers and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorize in this behalf by notification in the Gazette of India, to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorizing, are hereby severally empowered, for and on behalf of the State Bank, to sign all documents, instruments, accounts, receipts, letter and advices connected with the current or authorized business of the State Bank and, in particular and without prejudice to the generality of the foregoing powers, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of or held by or on behalf of the State Bank or, in the absence of any agreement to the contrary, standing in the name of or held by or behalf of any person, firm, company or corporation for or on*

behalf of which person, firm, company or corporation the State Bank has been constituted as attorneys, to draw, accept and endorses bills of exchange and cheques, to issue, confirm and transfer letters of credit and to sign guarantees and indemnities.

(2) Without prejudice to the provisions of sub-regulation (1) all powers of attorney and other authorizations issued by the Imperial Bank in favour of any officer or other employee who becomes an officer or other employee of the State Bank by virtue of Section 7 of the Act shall continue to be in full force and effect as if instead of the Imperial Bank, the State Bank had been a party to such powers of attorney or authorizations, and, accordingly, any such officer or other employee may exercise on behalf of the State Bank such powers as he was exercising before the appointed day on behalf of the Imperial Bank.

(3) The provisions of this regulation shall not deemed in any way to affect the provisions of the Imperial Bank of India Act, 1920, not the authority which any person has under that Act in relation to the Imperial Bank, and any such person if so authorized under this regulation and by, or under, the Imperial Bank of India Act, 1920, may act on behalf of the State Bank as well as the Imperial Bank to the extent so authorized.

77. *Plaints, etc., by whom to be signed.*- *Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the chairman or by any officer or employee empowered by or under regulations 76 to sign documents for and on behalf of the State Bank.*

ORDER

13. Heard both the sides at length and perused the records/documents filed. Considering the materials made available by the Applicant Bank, arguments of both parties, this Adjudicating Authority is satisfied that,

- a) The Corporate Debtor availed the loan/ credit facilities from the Financial Creditor;**
- b) Existence of debt is above Rupees One Lac;**

- c) Debt is due, payable and defaulted;**
- d) Default occurred on 28.01.2020;**
- e) Application has been filed within the limitation period, as the date of default is 28.01.2020, when the Application under Section 7 of the IBC has been filed by the FC i.e. State Bank of India on 18.03.2021;**
- f) Copy of the Application/Amended Application filed before this Bench has been sent to the Corporate Debtor and the application filed by the Applicant Bank under Section 7 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor;**

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 26/08/2021.

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

- I. (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
- (b) Transferring, encumbering, alienating or disposal of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein.
- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

(d) The recovery of any property by an owner or lessor where such property is occupied shall not be terminated or suspended or interrupted during the moratorium period.

II. Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (I) shall not apply to-

(a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(b) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

15. This Adjudicating Authority hereby appoints, as proposed by the FC, Mr. Vishal Ghisulal Jain, Office No. 502, G Square Business Park, Opp. Sanpada railway Station, Sector 30-A, Vashi, Navi Mumbai-400703 having IP Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

16. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost

dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligations imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. It is also observed that the Applicant Bank has claimed an aggregate amount of Rs.88, 99, 06,621.07 (Rupees Eighty-eight Crore Ninety-nine lakhs Six Thousand Six Hundred Twenty One and Seven Paise) and BG (Performance guarantee) outstanding (Live) Rs.10, 08, 56,147.00 (Rupees Ten Crore Eight Lakh Fifty-Six Thousand One Hundred and Forty-Seven only).

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

19. The Registry is hereby directed to communicate the authenticated copy of this order to the Applicant/ Financial Creditor, Corporate Debtor Company,

the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/ registered post and e-mail, if available.

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

21. Thus, the present IB Petition filed under Section 7 of the IBC stands admitted today i.e. 26/08/2021 with the above observations and directions.

Sd/-

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

Sd/-

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

/Tanmay/Deka-26.08.2021//