

In the National Company Law Tribunal
Mumbai Bench.

CP No.1138/I&BC/NCLT/MB/MAH/2017

Under Section 7 of Insolvency & Bankruptcy Code 2016

In the matter of

State Bank of India : Petitioner

V/s

Dunar Foods Limited & Others : Respondent

Date of Hearing : 19.12.2017
Order delivered on: 22.12.2017

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner : 1. Mr. Sumant Batra, Advocate
2. Mr. Vinit J Mehta, Advocate

For the Respondent(s): : 1. Mr. Manoj K. Singh,
2. Mr. Vijay K. Singh,
3. Mr. Vineet Arora,
4. Pushkarj Deshpande, Advocates.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This Petition on Form No.1 was filed on 27.06.2017 by the "Financial Creditor" viz. State Bank of India by invoking the jurisdiction under section 7 of the Insolvency & Bankruptcy Code, 2016 for the defaulted financial Debt of ₹758,73,62,546/- outstanding against the Corporate Debtor M/s. Dunar Foods Limited, Andheri (East), Mumbai.

1.1 On receiving the Petition, the Respondent (Corporate Debtor) has raised certain objection by filing a reply on 17.07.2017. The Debtor is represented by Learned Counsel Mr. Manoj K. Singh and Ors who has implored certain preliminary objections about the completeness of the Petition and pleaded that the Petition being defective deserves rejection. Point-wise objections in short are as under :-

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- a. An objection has been raised that as per the array of Parties number of Respondents are impleaded in the Petition. The objection of the Learned Counsel is that the Insolvency Code prescribes initiation of Proceedings against a Corporate Debtor, alleged to be in default for non-payment of outstanding Debt, hence the Petition should be filed against the alleged defaulter only. In the present Petition the Petitioner has impleaded as many as 12 persons which are in the nature of Directors, Guarantors, etc. Since the Petitioner is not sure about the Debtor against whom the Debt is to be recovered, therefore, the Petition is defective to be dismissed as prescribed under the Insolvency Code.
- b. Another objection is that the Application was not filed through a competent person. It is informed that one Shri S.K. Garg has filed the Petition who, according to the argument, is not an authorised person to present the Application under section 7 of The Code. The objection is that a Deputy General Manager has authorised Mr. S.K. Garg to file this Application, however, the said Deputy General Manager himself is not a competent person to grant authority to Mr. S.K. Garg to file the captioned Petition. His name is missing in the impugned authorisation letter. Learned Counsel has further elaborated, as also pointed out in the written reply, that the Petitioner had annexed Gazette Notification dated 27.03.1987 and 18.08.2011 to substantiate the Authority given by the Bank to different categories of Officers to do certain acts on behalf of the Bank. However, argument is that the said Gazette Notification only relate to grant of Authority to different categories of Bank Officers to perform certain acts on behalf of the Bank. But in respect of a particular Petition a specific Authorisation, may be through a Resolution, should have been annexed with the Petition so as to complete the requirement of the lawful Authorisation for submission of a Petition under The Code. In support of this argument reliance was placed on a decision of respected NCLT,

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Calcutta Bench pronounced in the case of **ICICI Bank Vs. Palogix Infrastructure Private Limited (CP No.37 of 2017) Order dated 12.04.2017**. Learned Counsel has pleaded that in the absence of proper Authorisation, the respected NCLT, Calcutta Bench has rejected the Petition.

- c. The next objection is that the Applicant had quoted the outstanding Debt of ₹758,73,62,546/- which do not match with the amount as per the Statement of Accounts furnished. The objection is that the Statements of the Debtor in the Books of Accounts of the Bank or in other words, the Statement of Bank Account of the Debtor Company, verified by affixing seal of the Bank, have not matched with the figure of Debt alleged to be outstanding against the Debtor Company. Learned Counsel has drawn our attention on Para-7 of the Affidavit in Reply/Objection of the Respondent to demonstrate that the details furnished of the several accounts of the Company as per the Petition is calculated and the aggregate amount is only ₹108,27,00,000/- as per the following accounts:-

STATE BANK OF INDIA		
S.No.	ACCOUNT NO.	
1	33507761750	12,990,240.00
2	32784822839	59,500,000.00
3	10279744584	260,091,680.00
4	10279745044	279,892,800.00
5	10279745204	4,999,680.00
6	31153615512	535,680.00
7	30855396879	17,989,920.00
8	65010761607	2,456,850.00
9	65010761426	194,761,200.00
10	65010761641	223,350,000.00
11	65159852032	27,131,950.00
12	65276601447	Statement not provided
	TOTAL	1,08,27,00,000.00

- c.1.) The Petition alleged to be filed in a callous and hectic manner due to incorrect working of computation of the correct Debt amount. The Petitioner has submitted its own calculation on a plain sheet without having

due verification. Such calculation sheet is not prescribed as per the **Banker's Books Evidence Act 1891**. It is alleged that the figures in Part V, Column 7 of the Petition are false and fabricated. The calculations on plain paper being not as per Banker's Books Evidence, hence not an "evidence" to be relied upon for the purpose of initiation of proceedings. He has pleaded that this defect is not a curable defect, as a result, the Petition being defective thus deserves to be rejected.

d. The Bank had already filed Petition before DRT, Chandigarh (OA No. 114/2016) pending for Adjudication, hence this Petition is nothing but repetitive litigation, therefore deserves to be rejected. He has further elaborated that the Bank had already exercised the rights under section 13(4) of SARFAESI Act, hence no legal right is prescribed to file a parallel Application under section 7 of the Insolvency Code. The present Petition is a mala fide Petition because the Petitioner appears to be not interested in Resolution process as prescribed under SARFAESI Act. The parallel proceeding now initiated is nothing but a **forum shopping** by the Petitioner. If the Petition is admitted, the appointment of Insolvency Professional may thwart the steps already taken under the SARFAESI Act, which may overlap the proceedings. The Petition is, therefore, liable to be rejected and also not maintainable under law.

2. The Bank (Petitioner) had taken a curative step by annexing another Form No.1 along with an Affidavit of Shri S.K. Garg, Assistant General Manager, State Bank of India, posted at Stressed Assets Management Branch at LHO, Sector 17, Chandigarh. Along with this Affidavit and Form No.1, the Petitioner has annexed a letter of Authorisation dated 22.06.2017 signed by one Shri K.B. Sharma, Deputy General Manager, State Bank of India, SAM Branch, Chandigarh in favour of Shri S.K. Garg, Assistant General Manager. Further, a sheet of calculation of outstanding amount due as on 15.06.2017 is also annexed wherein the total due as on 15.06.2017 under several accounts was computed at **₹734,76,52,336/-**.

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To substantiate the said amount, several statements of Bank Accounts are annexed and pleaded that those statements being duly certified hence satisfied the condition of the "evidence" prescribed under Banker's Books Evidence Act. The synopsis annexed with the Affidavit has stated the background of the several loans sanctioned and also placed on record the description of the Properties mortgaged to secure the Debt in question.

2.1 Our attention has been drawn on the notings made in the Order Sheet dated 16.08.2017 that the Respondent had raised certain objections about the impugned Petition submitted under section 7 on the ground of alleged defects. So as to satisfy the objections pertaining to the alleged defects have also been removed and an Affidavit in Reply, as permitted through the said notings by this Bench, along with the corrected Form No.1, is furnished for the judicial consideration. Learned counsel appearing on that occasion has also pleaded that merely because of these technical defects, the Petition should not be rejected because the provisions of section 7 has given a liberty to the Petitioner to remove the defects so that the Petition be entertained for initiation of Insolvency Proceedings.

3. From the side of the Corporate Debtor the revised or rectified Form No.1 is vehemently objected. Learned Counsel Mr. Manoj kumar Singh, appearing on behalf of the Debtor Company, has strongly reiterated the objections already raised and further pleaded that the Petition is a frivolous attempt with oblique motive to harass the Company especially when the proceedings before the DRT authorities are in advance stage and likely to be decided shortly. He has drawn our attention on the Authorisation letter, which according to him, is fabricated by the Bank to cover up the default. The annexed letter of Authorisation is back-dated and signed by one Shri K.B. Sharma, whose name was not appearing in the previous Authorisation letter which was also dated 22.06.2017. According to him it is not expected from State Bank of India to fabricate a document. According to him the Bank has tried to remove the defect by furnishing a

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fabricated document therefore the bona fide of the Petitioner is full of doubt, as a consequence, the Petition to be discarded.

3.1 On the question of Admissibility, he has referred a decision of Hon'ble Supreme Court pronounced in the case of **M/s. Surendra Trading Company Vs. M/s. Juggilal Kamalapat Jute Mills Company Limited and Others in Civil Appeal No. 8400 of 2017, Order dated 19.09.2017**. The question before the Hon'ble Court was that "Whether the time limit prescribed in Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code 2016) for admitting or rejecting a Petition or initiation of insolvency resolution process is **mandatory**?". According to Mr. Singh, Learned Advocate, although it was held that it was **not mandatory but directory** and that when such an Application comes up for admission before the Adjudicating Authority, it would be for the Adjudicating Authority to decide as to whether sufficient cause is shown in not removing the defects beyond the period of 7 days and once the AA is satisfied it would entertain the Application on merits. By placing reliance on the ratio laid down, it is pleaded that the Petitioner had not given any reasonable excuse for not removing the defect within the time prescribed. The Bank is not serious about the correctness of the figures as also the contents of the Petition. The laxity on the part of the Petitioner is very much visible from the Petition itself.

3.2 Learned Advocate Mr. Singh has quoted the provisions of Banker's Books Evidence Act to demonstrate that the Bank (financial creditor) has not taken care in furnishing the accurate figure of outstanding Debt. In the first Petition the amount as per Annexure A-8 and as per Part IV (Column 2) the figure of outstanding Debt was 758,73,62,546/- but as per the alleged revised Form No.1, Part IV (Column 2), the amount of Debt in default mentioned as ₹734,76,52,336/. This mismatch itself is a good reason for rejection of Petition. Further, he has pleaded that the said Annexure is not a statement as prescribed under Banker's Books Evidence Act. To buttress this argument, he has drawn our attention on Part-V of Form No.1 wherein "Particulars of Financial Debt" are listed and as per

Column 7, it is prescribed that the copies of the entries in the Statement of Account in the Books of the Bank must be in accordance with the Banker's Books Evidence Act, 1891. The said **calculation sheet is not an "evidence"** as per the said Act. Therefore, the Petition being based upon a calculation sheet and not based upon an admissible evidence hence deserves rejection, Ld. Counsel has concluded.

- 3.3. Referring the proceedings in progress under SARFAESI Act Mr. Singh has pleaded that in a situation when a 'Prayer' had been made by the Debtor Company for one-time Settlement, hence this Tribunal is not precluded to consider the said offer instead of directing to initiate Insolvency Proceedings. For this legal proposition reliance is placed on the decision of the Hon'ble Supreme Court pronounced in the case of **Sardar Associates and Ors. Vs. Punjab and Sind Bank and Ors. (Civil Appeal Nos. 4970-4971 of 2009) Order dated 31.07.2009 [AIR 2010 SC 218]**. He has also referred a reporting of the Economic Times that the Reserve Bank of India is also of the opinion that before filing Petition under Insolvency Code a Bank as a financial creditor can prefer restructuring of the loans. This approach will enable Banks to evaluate the viability of a Corporate Borrower and its ability to service loans instead of referring the Borrower to NCLT. The Counsel has, therefore, suggested that the Borrower be granted time to get the issue resolved instead of initiation of Insolvency Proceedings. According to him, the Company is running a business by giving employment to number of workers who may get adversely affected if the Insolvency Professional takes over the Management. In the interest of the survival of the Company and to protect the rights of all the stakeholders, it is justifiable to defer the Insolvency Proceedings. The cooperative behaviour of the Company be demonstrated by the attempts taken to square up the outstanding Debt by furnishing proposing of "Settlement" before the DRT Officials, intensely entreated .

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4. From the side of the Petitioner Bank, Learned Counsel Mr. Sumant Batra appeared on the last hearing. In his Rejoinder arguments, he has responded that the revised Petition on Form No.1 is very much admissible for due Adjudication because it is affirmed through an Affidavit by the Deponent that it is not a fresh Petition but a "Fresh Set of Petitions". According to him this Petition is a continuance or supplement of the previous Petition. It is not required to file a fresh Petition if defects are to be removed. He has further pleaded that the Insolvency Code has used Two terminologies, One is "**defect**" and another is "**complete**". The present position is that the alleged defects as pointed out by the Respondent are not of serious nature hence the Petitioner had thought it proper to remove the same and therefore the corrected Petition along with Annexures is a 'set of documents' through which the Petition is now "**complete**" thus deserves "**admission**".
- 4.1 In respect of the question of "Authorisation" reliance is placed on the decision of Hon'ble NCLAT, New Delhi pronounced in the case of **Palogix Infrastructure Pvt. Ltd. Vs. ICICI Bank (Company Appeal (AT) (Insol.) No. 30 of 2017 Order dated 20th September 2017)** wherein a view was expressed that if a Senior Manager of a Bank is authorised to 'grant' loan then it is logical that he is also authorised to proceed for 'recovery' of the loan. The Hon'ble Appellate Tribunal has held that if a plea is taken by the authorised Officer that he was authorised to sanction loan and had done so, the Application under Section 7 cannot be rejected on the ground that no separate specific authorisation letter has been issued by the Financial Creditor in favour of such officer designate. It is pleaded that the name of the person who has authorised Mr. Garg to file the Petition is very much on record and a hyper-technical objection that the previous letter was not containing the name of the Officer who has given the Authority but it had appeared in the subsequent letter, both identically dated, has no substantial force and deserves to be rejected.

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- 4.2 As far as the correct amount of the Debt in question is concerned, the argument of the Learned Counsel is that the Bank as a Petitioner wanted to be very specific, therefore, re-calculated the amount of Interest as on 15.06.2017 and correctly claimed as a Debt in default in Part-IV of Form No.1. Mr. Batra has explained that as far as the Debt sanctioned and the Loans granted of the Principal amount in question is not in dispute and merely because of change of alterations in days the amount of interest gets altered, no adverse inference is warranted. This calculation of interest can always be ascertained and also quantified by the IRP at the appropriate time. But merely because of this reason the Petition is not a 'defective' Petition.
- 4.3 Pertaining to the question of proceedings pending before DRT, Learned Representative has pleaded that those stood abated after the repeal of the SARFAESI Act, hence this Petition is within the jurisdiction of NCLT under the Insolvency Code.
5. **FINDINGS :-** Heard both the sides at length after granting opportunities of Hearing on last few dates. The legality of the objections of the Respondent Company has been carefully examined. Prima facie our view is that the objections raised can be said to be a hyper-technical questions and merely because of such nature of objections a good ascertainable Debt cannot become a bad non-ascertainable Debt. On each point our view is summarised as under :-
- 5.1 Vide Notings made in the Order Sheets, written time to time, during the course of hearing it transpires that a defect notice was communicated during the course of hearing as incorporated in the Order Sheet and time was granted to submit the complete details so as to remove the defects, prima facie appeared to be curable defects, by rectifying the Petition. So as to examine the language of the provisions incorporated in this Code we have perused Section 7 as well as Section 9 of The Code. Under Sub-section (5) of Section 7 in Clause(b) it is prescribed that where the Adjudicating Authority is satisfied that the Application under **Sub-section (2) of Section 7 is incomplete** by Order can reject the Application,

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provided the Adjudicating Authority shall, before rejecting the Application, give a Notice to the Applicant **to rectify the defect**. We have duly followed this procedure and consequently in compliance the Petitioner has submitted a rectified Form No.1 along with an Affidavit. The Statute/Code do not prescribe the furnishing of a 'fresh' Form No.1 i.e. a fresh Petition. The language of the applied provisions is plain and simple that a Notice be communicated to the Applicant to rectify the defect in his Application. The mode of Rectification is not prescribed hence the revised Form No.1, as a supplement, is a proper substituted Application for due adjudication under The Code. At this juncture it is worth to recollect that Mr. Singh appearing from the Side of the Respondent has raised a question that whether the First Petition or the Second Petition, which out of the two, shall be taken into account for Adjudication? . In our humble opinion, the answer is very simple that as per the settled principle if a Petition is amended then naturally the First Petition stood merged with the amended Petition and the amended Petition is the Petition to be taken into account for due Adjudication. A 'fresh' Petition contains Statutory payment of Fees. A logical conclusion can be drawn that on removal of defect there is no requirement of again payment of submission Fees hence the rectified Petition is not required to be termed as a "Fresh Petition" under the Code but in simple words it can be termed as a "Rectified Petition". **In fine, under the present set of facts it is nothing but a 'substituted' Form No. 1 which is a 'supplement, of the Form No. 1 already on record.** As a consequence, hereinbelow we proceed to decide the question of admission of the Insolvency Claim on the basis of the Rectified Petition.

- 5.2 We are not going to be confused by the objection that the Petitioner has made number of other persons as "Defaulter" of the impugned Debt. The reason is that the Bank has furnished Form No.1 which is the prescribed Application under the Code and as per the title the Application is from the side of the State Bank of India in the matter of Dunar Foods Limited (Corporate Debtor). As per Part-I of

Form No.1, name of 'Financial Creditor' is State Bank of India. As per Part-II, name of the 'Corporate Debtor' is 'Dunar Foods Limited'. As per the facts, Along with this main Application submitted on the format prescribed, the Petitioner has annexed a Synopsis and in that synopsis narrated "Memo of Parties", which contains as many as 11 more names. But those were admittedly not titled as "Corporate Debtor", but titled as "Directors/Guarantors". Due to this bare fact the impugned allegation can be held as not sustainable rather not based upon a sound reasoning, hence hereby overruled.

5.3 We find no substance in raising the objection pertaining to granting of Authorisation to Mr. S.K. Garg, Assistant General Manager by Mr. K.B. Sharma, Deputy General Manager, State Bank of India, SAM Branch, Chandigarh. The arguments of the Petitioner's Counsel refuting the allegation are convincing, specially when a view has already been taken by the respect higher forum in the case of Palogix Infrastructure Private Limited Vs. ICICI Bank (*supra*). In our opinion the issue as raised from the side of the Respondent now stood settled by the said decision of the Hon'ble NCLAT. The objection was nothing but to create a perplexity, that too was not strong enough, to discard the letter of Authorisation so as to throw the Petition in question at the threshold without considering the merits.

5.4 The question of quantification of correct amount of debt-in-default, it is true that it is expected to be accurate. Nevertheless, in the present case the situation was that number of Loans have been granted time to time under several facilities and the principal amounts in question happened to be a high figure, hence the possibility is that the total amount in default could vary due to the **fluctuating interest factor**. As per Form No.1, Part IV, there are two columns. In Column No.1, the amount to be mentioned is the "**Amount of Debt**". Whereas in Column No.2 the figure to be quoted is "**Amount claimed to be in default**". Therefore, these two columns are meant for "Principal Amount" and "Principal amount with Interest". The Petitioner had filled up the column (Clo.1 Part-IV) by

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quoting Rs. 602,23,54,630/- in column No. 1 as amount of debt which was the Principal amount, and in column no. 2 (Part-IV) quoted Rs 758,73,62,546/- i.e. amount in default which was principal plus interest. It may not be out of place to add that "**Amount of Interest**" is one of the example of "**Time Value of Money**" which gets altered after laps of time and subject to the circumstances of the case and also subject to the nature of Financial Debt. In our considered opinion in a situation when the Debt in question is not in "dispute" to the extent that admittedly the Loan Facility was availed by the Corporate Debtor, the Debt by itself or the Principal amount of Loan must not be held as if in "dispute". The calculation of interest keeps on changing by the passage of time, rather every after 24 hours, hence the calculation of interest be left to be decided by the Insolvency Professional at the time of finalisation of the Resolution Plan or settlement of the claim. Even if today a figure of interest is quantified, as pleaded or expected by the Respondent Debtor, the same ought not to be a final figure and definitely subject to change in the days to come on the occasion of settlement of claim. In respect of this objection we are convinced by the counter-argument and also convinced that the several accounts under which the Loan facility was granted have duly been certified by putting Seal of the Bank hence definitely a reliable evidence even under Banker's Books Evidence. It is a settled principle that if technicalities are pitted against natural justice, the natural justice prevails.

5.5 After the repeal of the SARFAESI Act, the Legislature has prescribed to approach NCLT by filing a fresh Petition in respect of the claim of outstanding Debt. This Petitioner has also exercised the said Statutory right by filing a fresh Petition for requisite adjudication under The Code. We find no substance in this objection and the counter-argument are accepted. As a result, this technical question has no substance as per the amended provisions.

6. In fine, the preliminary objections are hereby dismissed. Hence as a consequence, the Petition deserves "Admission". Nevertheless, before pronouncing our final decision on admission, it is required to discuss the merits

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of the case. For that reason, we have asked the Learned Counsel of the respective sides to address us on the merits of the case. Instead of further prolonging the Insolvency Process we deem it proper to pass a **single Order** on the issue of "Maintainability" as well as decision on "Merits" of the case. However, the Learned Counsel of the Respondent Debtor has pressed and demanded to pass two separate Orders – one on the question of Maintainability and if this question is in affirmative, a separate Order on the Merits of the Case. We are not in agreement with this proposition because if the question of Maintainability goes in favour of the Petitioner then naturally immediately thereafter we have to Adjudicate the Merits of the case and for that there is no requirement of Law to pass a separate Order. Rather, from one of the Notings on the Order Sheets (dated 06.10.2017) it is explicit that the Bench has expressed in clear terms that on hearing the arguments on the preliminary question of Admission, thereafter the Merits shall also be decided and for that reason the Corporate Debtor was directed to come with the latest Balance Sheet of the Company. The Learned Counsel of the Corporate Debtor has then expressed that his demand of two separate Orders be recorded in the Judgment. Without elaborating on the Merits he had made himself clear that if deemed fit the Bench being empowered can consider and decide on the basis of the evidence on record. After having open discussion in the Court we have decided to proceed with the Merits of the case since time is the essence in the Insolvency Code.

7. **The merits of the case** are as under:-

M/s. Dunar Foods Limited is a Public Limited Company having its Registered Office at "Dunar Foods Limited", Meadows, 811, Sahar Plaza, Andheri Kurla Road, Andheri (East), Mumbai-400059. The Company is in the business of Rice Shelling and Export of Rice. The Plants and Machinery are located at Karnal (Haryana) and Tarn Taran (Amritsar). The Corporate Debtor through its directors had approached the Applicant Bank i.e. State Bank of India & erstwhile State Bank of

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Patiala (Now State Bank of India after merger) to obtain various credit facilities/loans.

7.1 The Corporate Debtor through its directors has also approached the Erstwhile State Bank of Patiala (Now SBI after Merger) & other Banks i.e. Canara Bank, Bank of Baroda, IDBI Bank & Corporation Bank to obtain various credit facilities for running the business of manufacturing rice & exporting.

7.2 Credit facilities sanctioned by State Bank of India are:-

A. C.C. (Hypothecation)	Rs. 143	Cr
B. C.C. (Ware house)	Rs. 50.00	Cr
C. EPC	Rs. 168.00	Cr
D. Term loans	Rs. 75.44	Cr
E. FC/CEL Limit	Rs. 12.81	Cr
F. Standby Limit	Rs. 10.00	Cr

Total	Rs. 459.25	Cr

Credit facilities sanctioned by Erstwhile State Bank of Patiala (Now State Bank of India):-

A. CC-Hypothecation	Rs. 75.50	Cr
B. EPC Limit	Rs. 88.50	Cr
C. CC (Pledge of WHR) limit	Rs. 50	Cr
D. CC (Special)	Rs. 10	Cr
E. TL-1	Rs. 3.02	Cr
F. TL-II	Rs. 4.07	Cr
G. CEL	Rs. 2.56	Cr

Total	Rs. 233.65	Cr

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7.3 The Canara Bank, Bank of Baroda & IDBI Bank had also granted the credit facilities to the corporate debtor. They are also having *pari passu* charge on the secured assets along with the Financial Creditor (applicant bank).

7.4 The above stated credit facilities were sanctioned and disbursed from the year 2006 to 2014 to the Corporate Debtor. The Bank-wise bifurcation is as under:-

<i>Sr.no</i>	<i>Bank</i>	<i>Amount (Crores)</i>
1	State Bank of India	Rs. 459.25 Cr.
2	State Bank of Patiala (now SBI)	Rs. 233.65 Cr.
3	Bank of Baroda	Rs. 78.67 Cr.
4	Canara Bank	Rs. 40 Cr.
5	IDBI Bank	Rs. 36 Cr.
6	Corporation Bank	Rs. 25 Cr.

7.5 In order to secure the repayment of the above mentioned credit facilities the following persons / firms, companies stood as guarantors for the Corporate Debtor:-

Guarantors are:-

- xii) Sh. Surinder Gupta
- xiii) Smt. Kanta Gupta
- xiv) Sh. Ranjeev Aggarwal
- xv) Smt. Sudesh Rani
- xvi) Smt. Sheetal Gupta
- xvii) Late Smt. Pista Devi
- xviii) M/s. Dullions Foods
- xix) M/s. Dullisons Cereals

Corporate Guarantors are :-

- i) M/s. Madhav Arcade Exports Pvt. Ltd.
- ii) M/s. Saksham Overseas Pvt. Ltd.
- iii) M/s. DN Foodgrains Exports Pvt. Ltd.

The Corporate Debtor along its directors/guarantors has mortgaged the several properties, list on record, in favour of financial creditor/applicant bank by way of

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- depositing the various sale deeds along with all the type of stock, receivable, plant & Machineries.
- 7.6 In consideration of sanction of overall financial Facilities of Rs.790.04 crores, the Corporate Debtor through its Director had executed the working capital consortium agreement to secure a sum of Rs.790.04 crores on 13.8.2013 in favour of Financial Creditor and other Banks.
- 7.7 Respondent No.1, through Respondent No.2 also executed the joint deed of Hypothecation to secure a sum of Rs.790.04 Crores on 13.8.2013.
- 7.8 The Corporate Debtor failed to fulfil their commitment and did not keep their accounts regular. The instalments and the interest in their various loan accounts have not been paid regularly. Therefore, the account has been **classified as "NPA" on 26.8.2014**, and the Financial Creditor/Applicant Bank has issued the recall Notice on 8.12.2014 to the Debtor to pay its dues.
- 7.9 The Financial Creditor/Applicant Bank has also issued the Notice under section 13(2) of SARFAESI Act, 2002 dated 25.02.2016 on behalf of all the Banks (under Consortium Advance) to the Corporate Debtor to repay the entire dues of Rs.795,60,25,675.16 as on 31.01.2016 Plus further interest, penal interest, incidental expenses and all costs, charges and expenses.
- 7.10 The Financial Creditor / Applicant Bank who is the leader of Consortium advance has also issued the Notice under section 13(4) Of SARFAESI Act, 2002 dated 24.05.2016 to the Corporate Debtor to repay the entire dues amount of Rs.822,39,84,550.00 as on 30.04.2016 Plus further interest, penal interest, incidental expenses and all costs, charges and expenses.
- 7.11 The FIR was also lodged against the Corporate Debtor and its Associate Company M/s. P.D. Agro Processors Pvt. Ltd. under section 409, 465, 467, 468, 471, 477-A, 120-B of IPC by the Economic Offence Wing of Mumbai Police in the year 2014. The Home Department of the Maharashtra Government has issued a Notification dated 28.8.2014 for attaching the properties of the Corporate Debtor and its associate Company M/s. P.D. Agro Processors Pvt. Ltd. and letter on the various

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properties were also attached by the MPID Court, Mumbai. The matter is pending before the MPID Court in Mumbai.

8. In general the Financial Debtor usually plead that due to recession in the market the liability of repayment could not be squared up. Although in this case there is no such defence either, but the fact of the matter is that a liability does not get extinguished on the aforesaid ground of Market Recession. There could be a situation of bad finances beyond the control of a debtor, but in the eyes of Law if the Debtor had undertaken a legal responsibility by executing Debt agreement and failed to make the payment then it is worth to mention that there is no escape route for the defaulter in respect of an unqualified liability undertaken by him. In the eyes of law if a financial debt is in existence, duly corroborated by evidences, then whatsoever be the reason the liability cannot get extinguished. It can get extinguished only on repayment. In our humble opinion, on the premise of this fundamental Rule and Basic Principle the Insolvency Proceedings as enshrined under the Code should be initiated.
9. The Petitioner has proposed the name of the **Interim Resolution Professional "Mr. Anil Kohli, # 1011, Kirti Shikhar, District Centre, Janakpuri, New Delhi-110058, Email: insolvency@arck.in, Registration No. IBBI/IPA-01/IP-00112/2017-18/10219"**. The IRP has also given his consent in Form No.2. The IRP is hereby appointed who shall act upon as prescribed under the provisions of section 13 of the Code by making a public announcement immediately hereafter within a period prescribed therein. The IRP so appointed shall also comply with the provisions of section 15 onwards of The Code and collate all the claims submitted by other Creditors by constituting a Committee of Creditors. We hereby direct the IRP to inform the progress of the Resolution Plan along with a compliance report within 30 days on receipt of this Order. However, a liberty is hereby granted to intimate the progress even at an early date, if need be.
10. Once the Petition is held as fit for "admission", hence as a consequence the Moratorium as prescribed under section 14 shall commence henceforth. On enforcement of Moratorium certain prohibitions are applicable, such as institution

of any Suit before a Court of Law, transferring of any Asset of the Debtor, encumbering any rights over the assets of the Debtor. However it is also clarified that the supply of essential goods or services to the Corporate Debtor shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan as prescribed under section 31 of The Code.

11. Accordingly, **this CP 1138/I & BC/NCLT/MAH/2017 stood admitted.**
12. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

Date : 22.12.2017
ug

Sd/-

M.K. SHRAWAT
Member (Judicial)