

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301 – C.P.(IB)/269(AHM)2023
With
ITEM No.302 – IA/487(AHM)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Honest Derivatives Pvt Ltd

.....Respondent

Order delivered on: 03/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

**CP(IB)/269/AHM/2023
Along with
IA No. 487 of 2024**

In the matter of:

CP(IB)/269/AHM/2023

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

STATE BANK OF INDIA

Corporate Office:
State Bank Bhavan,
Madam Cama Road,
Nariman Point,
Mumbai – 400 201.

Also at
State Bank of India
Sarg Commercial – III,
(61341), Mumbai,
112/115, Floor – 1, Plot – 212,
West Wing, Tulsiani Chambers,
Free Press Journal Marg,
Nariman Point,
Mumbai – 400021.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

M/s. Honest Derivatives Pvt. Ltd.

CIN: U93000GJ2007PTC051271

Registered Office at:
E-43, 2nd Floor, Sumel Business Park,
Nr. New Cloth Market,

Outside Raipur Gate,
Ahmedabad, Gujarat-380002.

...RESPONDENT/CORPORATE DEBTOR

Along with

IA No. 487 of 2024 in CP(IB) No. 269 of 2023

*[An application filed under Section 60 (5) of IBC, 2016 r.w. Rule 11
of the NCLT Rules, 2016]*

In the matter between:

M/s. Honest Derivatives Pvt. Ltd.

CIN: U93000GJ2007PTC051271

Registered Office at:

E-43, 2nd Floor, Sumel Business Park,

Nr. New Cloth Market,

Outside Raipur Gate,

Ahmedabad, Gujarat-380002.

....Applicant/Original Respondent

VERSUS

STATE BANK OF INDIA

Sarg Commercial – III,

(61341), Mumbai,

112/115, Floor – 1, Plot – 212,

West Wing, Tulsiani Chambers,

Free Press Journal Marg,

Nariman Point,

Mumbai – 400021.

....Respondent/Original Applicant

Order Pronounced On: 03.07.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Rashesh Sanjanwala, Sr. Advocate
: a/w. Ms. M.A. Gogia, Advocate
For the Respondent : Mr. Saurabh Soparkar, Sr. Advocate a/w.
: Mr. Ravi Pahwa, Advocate
: Ld. Advocate on record.

COMMON ORDER
(PER: BENCH)

C.P. (IB) No. 269 of 2023

1. The Present Application is filed on 06.11.2023 by State Bank of India (hereinafter referred to as “**Financial Creditor**”) against M/s. Honest Derivatives Pvt. Ltd. (hereinafter referred to as “**Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “**IB (AAA) Rules, 2016**”) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.117,79,57,469.15ps.** including interest.

- 2.** On perusal of Part-I of the Form-1 reveals the Financial Creditor is a body corporate constituted under State Bank of India act, 1955 having its registered office at State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai – 400 201. The application is affirmed by one Mr. Anindya Debnath who is stated to be authorized under General Regulation No. 76 & 77 of the SBI General Regulation, 1955.
- 3.** On perusal of Part-II of the Form-1 reveals that the Corporate Debtor is Honest Derivatives Pvt. Ltd. registered under the Companies Act, 1956 having CIN No. U93000GJ2007PTC051271. The Corporate Debtor was incorporated on 05.07.2007. The registered office of the Corporate Debtor is situated at E-43, 2nd Floor, Sumel Business Park, Nr. New Cloth Market, Outside Raipur Gate, Ahmedabad, Gujarat-380002.
- 4.** Part-III of the Form-1 reveals that the Financial Creditor has named Mr. Harshad Deshpande, having Registration No. IBBI/IPA-001/IP-P0016/2017-18/10335 under section 13 (1)(c) of the Code to act as Interim Resolution

Professional (**IRP**). He has filed his written communication annexed with the Application as annexure – II as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. Part-IV of the Form-1 reveals that the Financial Creditor granted Financial assistance to the Corporate Debtor for Rs.56,21,32,262.83/- under the following facilities:-

Sr. No.	Account No.	Facility	Limit (In Rs.) (In Crores)	Principle Outstanding as on date of NPA (In Rs.)
1.	30628506657	Cash Credit	50.00	505,439,212.83
2.	32569685365	SBLC	5.00	49,968,050.00
3.	35277189615	TL	0.62	6,725,000.00
	Total			562,132,262.83

6. The Financial Creditor has stated that running account of the Corporate Debtor was maintained at the time of enjoyment with consecutive credit and debits and no single date of disbursement can be specified and hence, the dates of sanction / letter of arraignment may be treated as date of disbursement i.e. 16.05.2008 / 08.09.2008. The limits were renewed on various dates which are as under:-

- i. 01.12.2009
- ii. 08.01.2011
- iii. 01.12.2011

- iv. 05.05.2013
- v. 10.11.2014
- vi. 28.01.2015
- vii. 08.01.2016
- viii. 25.01.2017
- ix. 02.04.2019

7. The date of default is stated to be 31.05.2019 and the date of NPA is 28.08.2019. The total amount of default claimed in the application is Rs.117,79,57,469.15ps. as on 20.06.2023. The working computation is placed at Annexure-II. The certificate under Section 2A(b) of the Banker's Book Evidence Act, 1891 is placed at page No. 603 and the certificate under the Information Technology Act, 2000 is placed at page No. 600.

8. The Financial Creditor has relied upon the following documents:

- a. Sanction Letter for 26.25 Crores dated 16.05.2008*
- b. Form C-1 : Agreement of Loan for Overall Limit for Crores dated 08.09.2008 26.25*
- c. Form C-2 : Agreement for Hypothecation of Goods and Assets for 26.25 Crores dated 08.09.2008*
- d. Form C-4: Deed of Guarantee for Overall Limit for 26.25 Crores dated 08.09.2008*
- e. Form C-4: Deed of Guarantee for Overall Limit for 26.25 Crores dated 08.09.2008*
- f. Form C-5: Letter Regarding the Grant of Individual Limits within the Overall Limit for 26.25 Crores dated 08.09.2008*
- g. Memorandum for recording the Creation of Mortgage for 26.25 Crores dated 08.09.2008*
- h. Account Statement evidencing disbursement of 26.25 Crores to the Corporate Debtor(s)*
- i. Sanction Letter for 25.45 Crores dated 01.12.2009*

- j. *Sanction Letter for 37.85 Crores dated 08.01.2011*
- k. *Reg. Extension of Memorandum relating to Deposit of Title Deed for Creation of Charge No. 04304 for 37.85 Crores dated 11.01.2011 registered on 18.03.2011*
- l. *Sanction Letter for 88.60 Crores dated 01.12.2011*
- m. *Extension of Memorandum relating to Deposit of Title Deed for Creation of Charge No. 17006 for 88.60 Crores dated 23.12.2011*
- n. *Sanction Letter for 84.80 Crores dated 05.05.2013*
- o. *Sanction Letter for 97.04 Crores dated 10.11.2014*
- p. *Extension of Memorandum relating to Deposit of Title Deed for Creation of Charge No. 9358 for 97.04 Crores dated 27.11.2014*
- q. *Letter Confirming Deposit Title Deed dated 27.11.2014 of*
- r. *Sanction Letter for 117.04 Crores dated 28.01.2015*
- s. *Form C-1A Supplemental Agreement of Loan for Overall Limit for 117.04 Crores dated 28.01.2015*
- t. *Form C-2 : Supplemental Agreement of Hypothecation of Goods and Assets for Increase in Overall Limit for 117.04 Crores dated 28.01.2015*
- u. *Form C-4A: Supplemental Deed of Guarantee for increase in Overall Limit for 117.04 Crores dated 28.01.2015*
- v. *Form C-4A: Supplemental Deed of Guarantee for increase in Overall Limit for 117.04 Crores dated 28.01.2015*
- w. *Form C-5: Letter Regarding the Grant of Individual Limits within the Overall Limit for 117.04 Crores dated 29.01.2015*
- x. *Sanction Letter for 86.89 Crores dated 08.01.2016*
- y. *Sanction Letter for 78.85 Crores dated 25.01.2017*
- z. *Sanction Letter for 59.31 Crores dated 02.04.2019*
- aa. *Revival Letter for 117.04 Crores dated 29.04.2020*
- bb. *Balance Confirmation dated 30.04.2020*
- cc. *Copy of the security and mortgage documents, Copy of statement of accounts and the certificates issued under Banker's Book Evidence Act, 1891 for both the facilities together are annexed herewith at ANNEXURE - 'T'.*

9. List of other documents relied upon by the Financial Creditor at page No. 14 para – 8 which are as under:

- a. *Copy of Recall Notice dated 07.07.2021 is annexed at ANNEXURE - 'A/29'*
- b. *Copy of Legal Notice dated 31.07.2021 is annexed at ANNEXURE 'A/30'*
- c. *Copy of Demand Notice dated 01.03.2023; Objection dated 27.04.2023; Reply dated 09.05.2023 to Objection by the Corporate Debtors is annexed at ANNEXURE - 'A/31 COLLY'.*

- d. Copy of O.A. (Diary) No. 942 of 2021 / OA No. 91 of 2022 filed by State Bank of India before Debt Recovery Tribunal-I Ahmedabad is annexed at Annexure 'A/32.'
- e. Copy of Order dated 13.10.2022 in Civil Appeal No. 393 of 2018 passed by the HON'BLE SUPREME COURT & Copy of Order dated 29.11.2022 in IA No. 764 of 2022 in CP (IB) No. 393 of 2018 passed by the HON'BLE NCLT is annexed at ANNEXURE-'A/33 COLLY..
- f. Copy of Order dated 19.05.2023 passed by the HON'BLE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH in the matter of Income Tax Officer-Ward 22(1) V/S The Registrar of Companies & Ors. is annexed at ANNEXURE - 'A/34'.
- g. Copy of screen shot of status / information available on online portal for Company Petition No. 286 of 2020 is annexed at ANNEXURE - 'A/35'.
- h. Copy of Annual Financial Statements of the Corporate Debtor(s) for the financial years 2014-2015 is annexed at ANNEXURE - 'A/36'.

10. It is stated that the Corporate Debtor approached the Financial Creditor in the year 2008 for its finance requirements and the Financial Creditor initially sanctioned financial assistances of Rs.26.25 Crores vide sanction letter dated 16.05.2008 with the terms and conditions stated therein. The said financial assistance was renewed/enhanced from time to time i.e. on 01.12.2009, 08.01.2011, 01.12.2011, 05.05.2013, 10.11.2014, 08.01.2016, 25.01.2017 and 02.04.2019.

11. Thereafter, on request of the Corporate Debtor adhoc cash credit limit of Rs. 20 Crores for a period of three months was granted on 20.11.2014. The financial assistances was modified on 28.01.2015. The Corporate Debtor executed

revival letter for Rs. 117.04 Crores on 29.04.2020 and balance confirmation dated 30.04.2020, which are annexed at Annexure – A/27 & A/28 respectively.

12. After availing, the credit facilities the Corporate Debtor could not maintained the financial discipline and failed to adhere to make payments to the Financial Creditor and committed date of default on 31.05.2019. The Financial Creditor declared the account of the Corporate Debtor as NPA on 28.08.2019. A recall notice dated 07.07.2021 and 21.10.2021 was issued by the Financial Creditor to the Corporate Debtor. The legal notice dated 31.07.2021 was sent by the Panel Advocate of the Financial Creditor. The Financial Creditor has placed the same as Annexure – A/29 and A/30 respectively.

13. Demand notice under Section 13 (2) of SARFAESI Act was issued by the Financial Creditor on 01.03.2023 and objections were raised by the Corporate Debtor vide letter dated 27.04.2023 which were replied by the Financial Creditor vide letter dated 09.05.2023. The same are attached at Annexure – A/31.

- 14.** The Financial Creditor has filed an original application being OA No.91/2021 before Hon'ble Debt Recovery Tribunal – I, Ahmedabad. The same are attached at Annexure – A/32.
- 15.** It is stated that the Tribunal vide order dated 28.05.2020 admitted the Corporate Debtor to CIRP. The said order was impugned before Hon'ble NCLAT vide Company Appeal (AT) No. 546 of 2020 which came to be dismissed vide order dated 27.05.2021. The said dismissal was impugned before Hon'ble Supreme Court in Civil Appeal No. 2199/2021 which was allowed vide order dated 13.10.2022. The Financial Creditor states that the period from 28.05.2020 to 13.10.2022 should be excluded for the purpose of limitation.
- 16.** The Financial Creditor further seeks extension of limitation for the period of 15.03.2020 to 28.02.2022 based upon Sua Moto order of Hon'ble Supreme Court.
- 17.** The record of default with information utility was filed and date of default is stated to be 31.05.2019.

- 18.** The Financial Creditor seeks admission of the Corporate Debtor in the present matter.

Reply

- 19.** Reply to the above petition was filed vide inward diary No. 2466 dated 28.03.2024 affirmed by one Mr. Rajratan Babulal Agrawal, Director of the Corporate Debtor. The main objections raised in the reply of the Corporate Debtor are as under:

- (i) No amount is due or payable by the Corporate Debtor to the Financial Creditor. On the contrary, the Financial Creditor is liable to pay a sum of Rs. 120 Crores along with other amounts to the Corporate Debtor, for the losses and damages suffered by the Corporate Debtor on account of the irresponsible and malafide conduct of the Financial Creditor. However, it is seen that the Corporate Debtor has not placed any judgment/order from any of the Forum or Court of Law whereby this amount is crystalized.
- (ii) The Petition is barred by limitation, since the date of default is claimed to be 31.05.2019.

- (iii) Financial Creditor is deliberately concealing the various accounts of the Corporate Debtor as there are material irregularities in the same for which has filed IA separately being IA No. 487 of 2024.
- (iv) The Financial Creditor is guilty of *suppressio veri and suggestio falsi* and has not approached this tribunal with clean hands as the Corporate Debtor has faced losses due to thefts owing to the malafide acts of the Financial Creditor during the time the Corporate Debtor was in CIRP. Financial Creditor is claiming legal costs of Rs. 79 lacs which cannot be form part of the debt. It is stated that during the period 28.05.2020 (admission) by this tribunal in C.P. (IB) No. 393 of 2018 till 13.10.2022 the Corporate Debtor was in control of the IRP. Thereafter, the possession of the factory was handed over to the promoters of the Corporate Debtor. However, relevant records, statements, e-mails were never handed over to the Corporate Debtor. During the earlier CIRP the lead lender i.e. FINANCIAL CREDITOR was managing the CIRP, there were various thefts and burglaries of

goods, machineries, parts, equipment, etc. and for such acts the Corporate Debtor has suffered a loss of Rs. 120 Crores. The Corporate Debtor submits that record of default furnished by the Financial Creditor being NeSL form –D cannot be relied upon. The e-mail ID given in the NeSL form and which is also reflected in the on the MCA portal was the used by the IRP earlier and the custody of the same was never given to the Corporate Debtor. Corporate Debtor thereafter, relies upon decision of Hon'ble NCLAT in the matter of Dheeraj Wadhwan vs. Yes Bank Ltd.

- (v) Corporate Debtor states that the acknowledgement cannot be relied upon since they were prepared by the Financial Creditor during Covid-19 pandemic and taken under the garb of “audit” purposes. Further, to this it is stated that the acknowledgement were given on the basis of accounts as per the record of the bank and which were found to be defective. Corporate Debtor further states that large amount of money are receivable by the Corporate Debtor towards GST

refund, electricity duty refund and local body tax refund.

- (vi) Corporate Debtor has not given credit of fix deposit of Rs. 1 Crore which is lying with the Financial Creditor. It is stated that Rs. 107 Crore is receivable from operational debtor by Corporate Debtor. Some of them directly making payments to the Financial Creditor and the Corporate Debtor is not aware, if any, payments has been received.
- (vii) Corporate Debtor relies upon decision of Hon'ble Supreme Court in the matter of Vidharba Industries Limited reported in (2022) 8 Supreme Court Cases 352 wherein, it was held that initiation of CIRP is discretionary and not mandatory upon this tribunal. The Corporate Debtor seeks dismissal of the present application.

Rejoinder

- 20.** Rejoinder was filed by the Financial Creditor vide inward diary No. 2839 on 03.04.2024 duly affirmed by Shri Rakesh Kumar Assistant General Manager of the Financial Creditor. The Financial Creditor has briefly stated as under:

- (i) Affidavit in reply is neither substantive with any material fact nor there is any justification to prove the bonafides of the said defense.
- (ii) The Financial Creditor denies that they are liable to sum of Rs. 120 Crores to the Corporate Debtor alleged loss/damages.
- (iii) As regards limitation Financial Creditor, it is stated that the date of default is 31.05.2019 and under normal circumstances, the limitation period would have expired on 30.05.2022. However, Hon'ble Supreme Court in its Suo Moto order has extended the limitation from 15.03.2020 to 28.02.2022. Furthermore, moratorium was on going between the periods 28.05.2020 till 13.10.2022. The limitation starts running from 31.05.2019 to 15.03.2020 which comes to 9 months and 14 days. The period from 15.03.2020 to 13.10.2022 is excluded because of covid and moratorium. The limitation runs from 13.10.2022 to 05.09.2023 which comes to 10 months and 24 days as such the present petition is filed

within 1 years 10 months and 23 days and hence within limitation.

- (iv) As regards the account statement it is stated by the Financial Creditor that the same were filed on 09.11.2023 and enough opportunity was given to the Corporate Debtor to respond on the account statement. It is stated that there is no suppression of facts and no misrepresentations.
- (v) The allegations of thefts owing to the Financial Creditor is not correct and without any basis or documentary evidence.
- (vi) It is stated that the management, control and access to the office and factory premises of the Corporate Debtor was with the promoters of the Corporate Debtor prior to commencement of CIRP on 28.05.2020 and was handed over back to the management on 13.10.2022. During the intervening period there was stay by the Hon'ble NCLAT and thereafter status quo by the Hon'ble Supreme Court. It is stated that Corporate Debtor has filed various letters address to the Jamner Police Station which are dated

05.06.2020, 23.04.2022/24.04.2022, 12.09.2023 and 14.09.2023 for theft, etc. However, amounts involved are very less in comparison to the thefts alleged by the Corporate Debtor. Further to this, Financial Creditor states that the Corporate Debtor was in control of the IRP and not with the Financial Creditor. On the contrary some of thefts have been reported when the Corporate Debtor was in control of the promoters and hence, it is alleged that the Corporate Debtor is unable to protect the interest of the creditors.

- (vii) It is submitted that documents placed on record along with the company petitions are made from the original documents and the same are admissible in evidence.
- (viii) As regards legal costs of Rs. 79 lacs, it is stated that at this stage, there is no quantification of debt by the Tribunal and it is only to be seen whether the debt and default is more than Rs. 1 Crore.
- (ix) The Financial Creditor relies upon the balance confirmation, audited balance sheet and various proposal for settlement to press that the debt and default is in excess of Rs. 1 Crore.

- (x) It is stated that no information or communication was received from the promoters of the Corporate Debtor in relation to non-handing over of the possession of relevant records, statement, e-mails, etc. or about list of missing papers, machine parts, spare parts, etc in the last 17 months.
- (xi) It is stated that the promoters of the Financial Creditor have submitted compromise proposals which are dated 28.11.2022, 14.08.2023 and 08.09.2023 to resolve the accounts and as such the promoters of the Financial Creditor have accepted the existence of default. Such compromise proposal are annexed as Annexure – B to the rejoinder.
- (xii) It is stated that erstwhile RP has admitted the claim of the Financial Creditor during the earlier CIRP amounting to Rs. 67,47,55,301/-.
- (xiii) The Financial Creditor has thereafter attached the balance sheet of the corporate debtor as on 31.03.2020 as Annexure – E of the rejoinder claiming to be an acknowledgment of the debt by the Corporate Debtor.

- (xiv) As regards contention of the Corporate Debtor that the e-mail ID on MCA site is that of the IRP. It is stated that during 17 months of the Corporate Debtor was in management of the promoters and it was the duty of the promoters to rectified the MCA record.
- (xv) As regards the claim of subsidy and refund, it is stated that it was the duty of the Corporate Debtor to claim the same from the respective department.
- (xvi) It is stated that all account details of bank accounts and fix deposits are available with promoters since they were availing net banking.
- (xvii) As regards fix deposits of Rs. 1 Crore, it is stated that the same were closed on various dates, the details of which provided on page 31 of the rejoinder.
- (xviii) The Financial Creditor thereafter seeks admission of the present petition.

21. Additional affidavit was filed by the Corporate Debtor. It is the contention of the Corporate Debtor that Crores of rupees have been paid by one Tradco India Pvt. Ltd. and that account No. 30386602526 has several credits and the account statement is not produced. Further to this, the

account No. 30628506657 several amounts were paid and the account statement for the same has not been provided.

IA/487/2024

22. This IA was filed by the Corporate Debtor herein seeking the following prayers.

- a. This Hon'ble Tribunal be pleased to pass an order and direct the Respondent Bank to produce proper and detailed statement of accounts, ledger and computation of alleged dues as also the amounts received by the Respondent Bank within a time bound manner, as per Exhibit hereto;*
- b. This Hon'ble Tribunal be pleased to pass an order directing the Respondent/ Original Petitioner Bank to grant inspection of and provide clear and legible copies of all documents (including those filed by way of pursis) referred to and/or relied upon by the Respondent/ Original Petitioner Bank in the Company Petition No.269 of 2023 within a time bound manner;*
- c. This Hon'ble Tribunal be pleased to dismiss the Company Petition No. 269 of 2023 if the prayer (a) and/or (b) hereinabove is not complied with by the Respondent/ Original Petitioner Bank in a time bound manner;*
- d. This Hon'ble Tribunal be pleased to grant interim and ad-interim reliefs in terms of prayers (a) to (c) above;*
- e. This Hon'ble Tribunal be pleased to grant any other/further Orders which this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*
- f. Costs;*

23. The Corporate Debtor in the IA has given the brief of the earlier CIRP and for the sake of brevity we are not going into the same. Corporate Debtor thereafter, attached the copy of FIR registered with Police Station, Jamner on 24.04.2022.

- 24.** It is stated that the Financial Creditor in the main petition has frozen the bank accounts of the Corporate Debtor post the account becoming NPA and certain payments were received later on and the Corporate Debtor of IA is not aware about such facts.
- 25.** The recording of default with NeSL is not correct as the e-mail ID is not in possession with the same ID.

Reply

- 26.** Reply was filed by the Financial Creditor under diary No. 2829 dated 03.04.2024 and the same is affirmed by Shri Rakesh Kumar, Assistant General Manager which is taken into consideration. The Financial Creditor in the main petition has given answers which are quite similar to the rejoinder given to the reply in the main petition. The Corporate Debtor in the IA has filed additional affidavit on 13.05.2024 vide inward diary No. 4037 which is also affirmed by one Mr. Rakeshkumar, Assistant General Manager of FINANCIAL CREDITOR. The Corporate Debtor in the IA has provided various accounts maintained by the

Financial Creditor and the reply of the Corporate Debtor consists nearly 1638 pages.

- 27.** It is further stated that the Corporate Debtor in the main petition have collected the bank account statement from the various branches of Financial Creditor several times and based on which they have finalised their balance sheet of profit and loss account upto the year on 31.03.2020. The Financial Creditor in the main petition has thereafter relied upon the audited balance sheet of the corporate debtor for 31.03.2020. Financial Creditor in the main petition states that the total dues of the Corporate Debtor are nearly Rs. 117.79 Crores as stated in the application and there is no transaction after the account become NPA.
- 28.** Written submission have been filed by Financial Creditor as well as Corporate Debtor vide inward diary No. 5023 dated 26.06.2024 respectively and the same has been considered by us.

- 29.** We have heard the learned Counsels for the Financial Creditor as well as Corporate Debtor and have perused the document as produced before us.
- 30.** It is not in dispute that the Financial Creditor has sanctioned and disbursed the various credit facilities to the Corporate Debtor herein, which were renewed, modified, enhanced from time to time and the last of such enhancement was on 02.04.2019.
- 31.** The Corporate Debtor acknowledged its liability and has issued the balance confirmation on 30.04.2020 and also letter extending the limitation on 29.04.2020.
- 32.** The Financial Creditor has placed the certificate under the Banker's Book Evidence Act and certificate under the Information Technology Act at page No. 600 and 603 respectively which are conclusive proof of the amounts claimed under the present application.
- 33.** The Financial Creditor has placed before us the record of default of information utility has filed NeSL record being Form – D showing a below mentioned details.

Unique Debt Identified No.	Total outstanding amount	Default amount	Date of default
AAACS8577K_0000003062850665	50,54,39,212	50,54,39,212	31.05.2019
AAACS8577K_00000032569685365	4,99,68,050	4,99,68,050	31.05.2019
AAACS8577K_00000035277189615	67,25,000	67,25,000	31.05.2019

34. All the above three records of default are showing status “authenticated”. The Financial Creditor has provided all the account statement to the Corporate Debtor. The contention of the Corporate Debtor that nothing is due and payable is a moonshine defense specially when the Financial Creditor has placed the audited balance sheet of the Corporate Debtor as on 31.03.2020, which was filed by way of rejoinder on 03.04.2024. Independent Auditors report is appended at page No. 210 and at page 211 the statutory auditor has written as under:-

“viii. According to the records of the Company examined by us and the information and explanation given to us, the Company has defaulted in repayment of dues to banks during the year, the company's accounts has been classified as non performing assets (NPA) by the bank. The overdue amount is Rs. 83,83,75,639 (Including interest of Rs. 7,72,23,123). The Company has not taken any loan or borrowing from financial institutions & Government and has not issued debentures during the year.”

35. In view of the above, we are of the view that sufficient material has been placed by the Financial Creditor herein to prove that there is a debt, which is in default for an

amount of exceeding Rs. 1.00 Crore, and the present petition deserves to be admitted accordingly.

- 36.** Similarly, in the matter of ***Innoventive Industries Ltd. Vs. ICICI Bank and Another***, Civil Appeal Nos.8337-38 of 2017, decided on August 31, 2017 is reproduced herein below:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an Instalment amount. For the meaning of “debt,” we have to go to Section 3(11), which in tum tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which denies "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate Insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, on operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim In respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor it need not be a debt

owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub section (1) In such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form is a detailed form in 5 parts, which requires particulars of the applicant In Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional In Part III, particulars or the financial debt in Part IV and documents, records and evidence of default In Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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

the demand notice or copy of the Invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing-i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”

37. In civil appeal No. 7121 of 2022 in the matter of **M. Suresh Kumar Reddy vs. Canara Bank & Ors.** Decided on 11.05.2023, Hon’ble Supreme Court under para- 13 has held as under:

“13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries¹ was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good.”

38. The judgment of Hon’ble Supreme Court in the **Dena Bank which clearly held that: (Now Bank of Baroda) Vs Shivkumar Reddy and Anr.** (2021) SCC Online SC 543, which clearly held that:-

113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a

promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, [“Bengal Silk Mills”] and in Re Pandem Tea Co. Ltd. , the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.”

- 39.** In view of above, the present application is complete in terms of Section 7 (5) of the Code. The Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

40. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

41. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Corporate Debtor- **M/s. Honest Derivatives Pvt. Ltd.** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

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

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

c. any action to foreclose, recover or enforce any

security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted

during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

- (v) As proposed by the Financial Creditor, we appoint **Mr. Harshad Deshpande**, having Registration No. **IBBI/IPA-001/IP-P00166/2017-18/10335 (AFA valid till 21.12.2024)** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-

operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the

value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016

- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal

specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

42. Accordingly, **CP (IB) No. 269 of 2023** stands admitted and **IA No. 487 of 2024** is dismissed accordingly. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

MD