

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

C.P. NO. (IB) 565 (PB) OF 2021

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

IN THE MATTER OF:

M/s. Endless Services Pvt Ltd

...FINANCIAL CREDITOR/APPLICANT

VERSUS

M/s. SLR Techinfra Pvt Ltd

...CORPORATE DEBTOR/RESPONDENT

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 16.04.2024

PRESENT:

For the Applicant : Mr. Pankaj Agarwal,
Mr. Shashawat Srivastava, Advs

For the Respondent : Mr. Vijay Singh,
Mr. Ashwini Singh, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The instant company application is filed by M/s. Endless Services Pvt. Ltd. ('Applicant'/ 'Financial Creditor'), a company incorporated under the provisions of the erstwhile Companies Act, 1956 and having CIN: U74999DL2011PTC228863 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. SLR Techinfra Pvt. Ltd. (hereinafter referred as 'Respondent' / 'Corporate Debtor') on the ground that the Corporate Debtor committed a default in payment of Rs. 2,66,25,917/- (Rupees Two Crore Sixty-Six Lakhs Twenty Five Thousand Nine Hundred Seventeen Only) along with an interest at 2.25% per month. calculated till 15.08.2021.
2. The Corporate Debtor is a Private limited Company registered under the Companies Act, 1956, bearing CIN -U70102DL2001PTC111691 having its registered office at 308, Tower-V4, Plot No. 14 Community Centre, Karkardooma East Delhi- 110092.
3. **The averments made by the Applicant in the application and argued by the Ld. Counsel for the applicant are summarized hereunder: -**
 - a. The Financial Creditor is engaged in the business of investment, properties, and consulting to various customers including small and

medium enterprises registered under the Companies Act, having its registered office at 90 Flat No. F- 2, First Floor, New Rajdhani Enclave, Delhi-I I 0092.

- b. It is submitted by the Applicant, that upon the request of the Corporate Debtor, the Financial Creditor sanctioned a loan amounting to Rs. 42,00,000/- (Rupees Forty Two Lakhs Only) at an agreed interest rate of 2.25% per month on monthly rest and it was agreed between the parties that the said interest shall be paid by the Corporate Debtor every month, while the principal shall be repaid on or before the Sixty months.
- c. That the both Financial Creditor and the Corporate Debtor entered into a Loan Agreement cum Memorandum of Understanding dated 14.09.2014 for loan amounting to Rs. 42,00,000/- (Rupees Forty Two Lakhs Only) wherein the Corporate debtor as a security deposited the original title documents of the Property to the Financial Creditor situated at Office number 6, Ground Floor, Parmesh Business Center II, Plot No. 23, Karkardooma Community Center, Delhi-110092 measuring 125.57 sq ft super area or 96.16 sq ft covered area and Office Number 7, Ground Floor, Parmesh Business Center II, Plot No. 23, Karkardooma Community Center, Delhi-110092 measuring 169.89 sq ft super area or 129.07 sq ft.
- d. Accordingly, as per the terms of the loan agreement the Financial Creditor had advanced loan to the Corporate Debtor in various tranches total amounting to Rs. 42,00,000/-.

- (i) Amount(s) of Rs. 20,00,000/- (Rupees Twenty Lakh Only) dated 13.09.2014;
 - (ii) Amount of Rs. 4,00,000/-(Rupees Four Lakh Only) dated 16.09.2014,
 - (iii) Amount of Rs. 18,00,000/- (Rupees Eighteen Lakh Only) dated 16.09.2014
- e. It is submitted by the Applicant that the Corporate Debtor has issued several post-dated cheques to the Financial Creditor all drawn on Nainital Bank Ltd, towards the payment of interest and repayment of the Loan of Rs 42,00,000 (Rupees Forty Two Lakhs only).
- f. It is stated by that as matter of goodwill and good-relationship, the Applicant had well in advance informed the Corporate Debtor pertaining to presentation of the said cheque vide mail on 25-04-2019 so as the Corporate Debtor can maintain the sufficient funds in its bank account. But, the said cheques got dishonored due to Insufficient funds dated 30.04.2019 which had been issued by the Corporate. Accordingly, the Applicant intimated to the Corporate Debtor regarding the dishonor of the cheques vide letter dated 14.05.2019. No reply, nor any amount was received by the applicant.
- g. It has been submitted by the Applicant that the Corporate Debtor has defaulted in the payment of the loan in terms of clauses 3, 6, and 8 of the Loan Agreement Cum Memorandum of Understanding.

- h. Aggrieved by the ignorance exhibited by the Corporate Debtor, the Financial Creditor realized that the Respondents had no intention to clear the dues and therefore to reimburse the loan availed, the Applicant issued a demand notice dated 19.08.2021 for the default of dues.
- i. It has been submitted by the Applicant/ Financial Creditor that there has been a default of total sum of Rs. 2,66,25,917/- (Rupees Two Crore Sixty-Six Lakhs Twenty Five Thousand Nine Hundred Seventeen Only) along with an interest at 2.25% per month. calculated till 15.08.2021. The Calculation on the Interest levied on the loan amount as annexed by the Applicant has been reproduced below:

SLR Techinfra Pvt Ltd
Computation sheet till August,2021

S.No.	Date	Particulars	Dr	Cr	Balance
1	15-09-2014	Payment	42,00,000		42,00,000
2	15-10-2014	Interest	94,500		42,94,500
3	15-11-2014	Interest	96,626		43,91,126
4	15-12-2014	Interest	98,800		44,89,927
5	15-01-2015	Interest	1,01,023		45,90,950
6	15-02-2015	Interest	1,03,296		46,94,246
7	15-03-2015	Interest	1,05,621		47,99,867
8	15-04-2015	Interest	1,07,997		49,07,864
9	15-05-2015	Interest	1,10,427		50,18,291
10	15-06-2015	Interest	1,12,912		51,31,202
11	15-07-2015	Interest	1,15,452		52,46,654
12	15-08-2015	Interest	1,18,050		53,64,704
13	15-09-2015	Interest	1,20,706		54,85,410
14	15-10-2015	Interest	1,23,422		56,08,832
15	15-11-2015	Interest	1,26,199		57,35,030
16	15-12-2015	Interest	1,29,038		58,64,069
17	15-01-2016	Interest	1,31,942		59,96,010
18	14-02-2016	Interest	1,34,910		61,30,920
19	15-03-2016	Interest	1,37,946		62,68,866
20	15-04-2016	Interest	1,41,049		64,09,916
21	15-05-2016	Interest	1,44,223		65,54,139
22	15-06-2016	Interest	1,47,468		67,01,607
23	15-07-2016	Interest	1,50,786		68,52,393
24	15-08-2016	Interest	1,54,179		70,06,572
25	15-09-2016	Interest	1,57,648		71,64,220
26	15-10-2016	Interest	1,61,195		73,25,415
27	15-11-2016	Interest	1,64,822		74,90,236
28	15-12-2016	Interest	1,68,530		76,58,767
29	15-01-2017	Interest	1,72,322		78,31,089
30	15-02-2017	Interest	1,76,200		80,07,288
31	15-03-2017	Interest	1,80,164		81,87,452

32	15-04-2017	Interest	1,84,218	83,71,670
33	15-05-2017	Interest	1,88,363	85,60,033
34	15-06-2017	Interest	1,92,601	87,52,633
35	15-07-2017	Interest	1,96,934	89,49,568
36	15-08-2017	Interest	2,01,365	91,50,933
37	15-09-2017	Interest	2,05,896	93,56,829
38	15-10-2017	Interest	2,10,529	95,67,358
39	15-11-2017	Interest	2,15,266	97,82,623
40	15-12-2017	Interest	2,20,109	1,00,02,732
41	15-01-2018	Interest	2,25,061	1,02,27,794
42	15-02-2018	Interest	2,30,125	1,04,57,919
43	15-03-2018	Interest	2,35,303	1,06,93,222
44	15-04-2018	Interest	2,40,597	1,09,33,820
45	15-05-2018	Interest	2,46,011	1,11,79,831
46	15-06-2018	Interest	2,51,546	1,14,31,377
47	15-07-2018	Interest	2,57,206	1,16,88,583
48	15-08-2018	Interest	2,62,993	1,19,51,576
49	15-09-2018	Interest	2,68,910	1,22,20,486
50	15-10-2018	Interest	2,74,961	1,24,95,447
51	15-11-2018	Interest	2,81,148	1,27,76,595
52	15-12-2018	Interest	2,87,473	1,30,64,068
53	15-01-2019	Interest	2,93,942	1,33,58,010
54	15-02-2019	Interest	3,00,555	1,36,58,565
55	15-03-2019	Interest	3,07,318	1,39,65,883
56	15-04-2019	Interest	3,14,232	1,42,80,115
57	15-05-2019	Interest	3,21,303	1,46,01,418
58	15-06-2019	Interest	3,28,532	1,49,29,950
59	15-07-2019	Interest	3,35,924	1,52,65,873
60	15-08-2019	Interest	3,43,482	1,56,09,356
61	15-09-2019	Interest	3,51,211	1,59,60,566
62	15-10-2019	Interest	3,59,113	1,63,19,679
62	15-11-2019	Interest	3,67,193	1,66,86,872
64	15-12-2019	Interest	3,75,455	1,70,62,326
65	15-01-2020	Interest	3,83,902	1,74,46,229
66	15-02-2020	Interest	3,92,540	1,78,38,769
67	15-03-2020	Interest	4,01,372	1,82,40,141
68	15-04-2020	Interest	4,10,403	1,86,50,544

69	15-05-2020	Interest	4,19,637	1,90,70,181
70	15-06-2020	Interest	4,29,079	1,94,99,261
71	15-07-2020	Interest	4,38,733	1,99,37,994
72	15-08-2020	Interest	4,48,605	2,03,86,599
73	15-09-2020	Interest	4,58,698	2,08,45,297
74	15-10-2020	Interest	4,69,019	2,13,14,316
75	15-11-2020	Interest	4,79,572	2,17,93,889
76	15-12-2020	Interest	4,90,362	2,22,84,251
77	15-01-2021	Interest	5,01,396	2,27,85,647
78	15-02-2021	Interest	5,12,677	2,32,98,324
79	15-03-2021	Interest	5,24,212	2,38,22,536
80	15-04-2021	Interest	5,36,007	2,43,58,543
81	15-05-2021	Interest	5,48,067	2,49,06,610
82	15-06-2021	Interest	5,60,399	2,54,67,009
83	15-07-2021	Interest	5,73,008	2,60,40,017
84	15-08-2021	Interest	5,85,900	2,66,25,917

4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a. Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. It has been Submitted that the Corporate Debtor is a solvent Company having good financial prospects.
- b. It has been submitted that the Financial Creditor had sanctioned a loan of Rupees 42 lakhs to the Corporate Debtor in September, 2014 in terms of Loan Agreement dated 14th September, 2014 executed between the Financial Creditor and the Corporate Debtor. In terms of the said Loan Agreement dated 14th September, 2014, the Corporate Debtor on the goodwill of Financial Creditor provided Office No. 6 & 7, Ground Floor, Parmesh Business Center II, Plot No. 23, Karkardoom Community Center, Delhi as security. The original sale deed of the said property is still in the possession of the Financial Creditor and denying to return.
- c. The Corporate Debtor has made regular payment to the Financial Creditor for the aforesaid loan and Rs. 2,34,00,000 (Rupees Two Crore Thirty Four Lakh only) was paid by the Corporate Debtor on the basis of mutual understanding between the parties by 23 November, 2015 and thereafter no demand was raised by the Financial Creditor pertaining to the said loan amount and if any, the same is barred by the law of limitation as the present application has been filed by the Applicant beyond the period of limitation.
- d. The Corporate Debtor submitted that it had honored the terms of the loan agreement in making re-payment of the loan amount, and also made payments as and when the Corporate Debtor had surplus funds available to make payment. The said fact had led to novation of contract between the parties, and the Financial

Creditor now cannot turn around to rely on the same contracts that stood substituted.

5. Rejoinder on behalf of the Applicant/ Financial Creditor

- i. The Applicant/ Financial Creditor has stated in the that the present application is not time barred by limitation as the cheques issued by the Respondent/ Corporate Debtor got dishonored on 30.04.2019 and therefore the date of default is 30.04.2019 and the present application filed before Hon'ble Tribunal well within the limitation period.
- ii. The Applicant/ Financial Creditor has stated that the repayment as against of Rs. 42,00,000/- has never been made by the Respondent/ Corporate Debtor and the repayment by the respondent has been made against different dues. The amount that has been re-paid against dues by Corporate Debtor to the Applicant/ Financial Creditor has been reproduced below –

a) For the Amount of Rs. 30,00,000/-

Date	Amount Sanctioned	Amount received
01-08-2014	30,00,000	
12-12-2014		30,00,000

b) For the Amount of Rs. 42,00,000/- (Principal Amount in the Present Application)

Date	Amount Sanctioned	Amount received
13.09.2014	20,00,000	
16.09.2014	4,00,000	
16.09.2014	18,00,000	

No Repayment received in respect to the Loan of Rs. 42,00,000/-.

c) For the Amount of Rs. 50,00,000/-

Date	Amount Sanctioned	Amount received
13.05.2014	24,00,000	
14.05.2015	26,00,000	
16.11.2015		24,00,000
16.11.2015		9,00,000
16.11.2015		7,00,000
23.11.2015		4,00,000
23.11.2015		6,00,000
Total	50,00,000	50,00,000

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d) For the amount of Rs. 2,04,00,000/-

Date	Amount Sanctioned	Amount received
04.12.2014	15,00,000	
04.12.2014	35,00,000	
09.12.2014	50,00,000	
11.12.2014	50,00,000	
13.12.2014	50,00,000	
31.03.2015	4,00,000	
		20,00,000
		25,00,000
		23,00,000
		34,00,000
		34,00,000
		34,00,000
		34,00,000
		34,00,000
Total	2,04,00,000	2,04,00,000

- iii. The Financial Creditor has annexed the copy of the Audited balance sheet of the Corporate Debtor for the year ending 31.03.2020, filed before the ROC wherein the statutory filings mentions the loans advanced by the Financial Creditor to the Corporate Debtor.
- iv. It has been submitted by the Applicant, that the Corporate Debtor had acknowledged the debt and sought an extension of time period by 3 months for repayment of loan and issued fresh cheques in favour of Financial Creditor. vide letter dated 15.05.2019.
- v. Further, vide letter dated 06.11.2019 Corporate Debtor sought further extension of time till 15.05.2020 and issued the certain postdated cheques in favour of Financial Creditor.

6. The applicant had placed reliance on the following documents to prove the existence of Financial Debt and Default thereto –

- i. Loan Agreement cum Memorandum of Understanding dated 14.09.2014 executed between the Financial Creditor and the Corporate Debtor
- ii. A copy of the Bank Statements depicting the Payment of the disbursement of the Loan Amount to the Corporate Debtor by the Financial Creditor.
- iii. A copy of NeSL Certificate.
- iv. The Ledger Account Extract of the Corporate Debtor as maintained by the Financial Creditor.
- v. Copy of the Demand Letter along with Speed Post Receipt.
- vi. Copy of the Audited balance sheet of the Corporate Debtor for the year ending 31.03.2020.
- vii. Communication letter in respect of discharge of outstanding loan liability from Corporate Debtor to Financial Creditor dated 15.05.2023 and 06.11.2019.

ANALYSIS AND FINDINGS

7. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, rejoinder and written submission presented by Financial Creditor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 7 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

8. On a perusal of the case file, this Adjudicating Authority had observed that during the pendency of the instant application, the Corporate Debtor had approached the Financial Creditor for seeking the settlement of the issues and the withdrawal of the Section 7 application with the promise to repay the entire sum within the requisite time frame. Consequently, the parties had entered into the settlement deed dated 11.02.2023, wherein the Corporate Debtor issued the post-dated cheques for the outstanding loan amount along with the interest thereon in favour of the Financial Creditor.
9. Further, through a joint Interlocutory Application bearing IA No. 1587/ND/2023 filed by parties placing the settlement deed dated 11.02.2023 on record. The relevant terms of the Settlement are placed on record –

2. The Parties hereby agree and undertake to the other Party as under:

i) That the Borrowers hereby undertake, admit and agree to the Financial Creditors as under:

- a) Total dues as on 30th January 2023 has been agreed by all the parties at Rs. 2,51,62,000/- (Rupees Two Crores Fifty One Lakh Sixty Two Thousand Only) in toto (“Settlement Amount”) and shall be paid by the Borrowers to the Financial Creditors and/or its nominee alongwith further interest at the rate of 2.25% from 01-02-2023 till the date of payment in the following manner:

Details of Settlement Amount As on 30-3-2023		
Settled Dues Upto 30-1-23	2,51,62,000	
Payment released by SLR Construction Pvt Ltd to Endless Services Pvt Ltd	10,00,000	RTGS dated 30-1-23, UTR No ICICR42023013000523445.
Payment released by SLR Technifra Pvt Ltd to Endless Services Pvt Ltd	5,00,000	RTGS dated 30-1-23. UTR No: ICICR42023013000527396
Balance Settlement Amount As on 31-1-23.	2,36,62,000	For SLR Construction, Pvt. Ltd.

10. This Adjudicating Authority vide order dated 23.03.2023 had allowed the withdrawal of the Application. The Order dated 23.03.2023 is reproduced here-below

“New IA/1587/ND/2023

Heard the submissions made by the Ld. Counsel for the Financial Creditor. This is an application filed under Rule 8 of IB (Application to Adjudicating Authority) Rules, 2016 for withdrawal of Company Petition No. IB/565/PB/2021.

We have heard the submissions made by the Ld. Counsel for the Financial Creditor as well as the Ld. Counsel for the Corporate Debtor. In the joint application made by both the parties, they have prayed for granting leave of the Tribunal to withdraw the Company Petition No. IB/565/PB/2021. Having regard to the contents of the application as well as prayers made therein, the present application i.e. IA/1587/ND/2023 stands allowed and Section 7 application bearing Company Petition No. IB/565/PB/2021 is dismissed as withdrawn. The case folder and connected papers be consigned to the record room.”

11. Adverting to the facts of the present case, it is an undisputed fact that the post-dated cheques issued by the Corporate Debtor in terms of the settlement dated 11.02.2023, had bounced and dishonored and the settlement arrived between the parties had failed. Resultantly, the Financial Creditor had filed an application for the revival (RA 117 of 2023) of the Section 7 petition under Rule 11 of NCLT Rules, 2016 for seeking reinstatement and revival of IB No.565/PB/2021 to its original number and position for initiation of CIRP against the Corporate Debtor

and the same was allowed vide order dated 17.08.2023 and the instant Company Application filed under Section 7 of the Code, 2016 is restored to its original number. The Order dated 17.08.2023 is reproduced here-below

”Restoration App/117/ND/2023

No one is present on behalf of the Corporate Debtor despite service of e-notice by Court-officer as well as service of notice by the Financial Creditor. Therefore, present application i.e. Restoration App/117/ND/2023 for seeking revival of IB/565/ND/2021 stands allowed and IB/565/PB/2021 stands revived. Let matter be restored on the files of this Adjudicating Authority and notice be served once again upon the Corporate Debtor for his appearance as well as for opposing the Section 7 application.”

12. In the next date of hearing dated 21.09.2023, no one appeared on behalf of the Corporate Debtor and the Ld. Counsel for the Financial Creditor sought further two weeks’ time to serve the notice again to the Corporate Debtor.
13. Subsequently, on the next date of hearing, there was no representation on behalf of the Corporate Debtor, despite the Service of Notice. There has been no representation on behalf of Corporate Debtor on hearing dated 20.07.2023, 17.08.2023, 21.09.2023 and 18.10.2023. In adherence to principle of natural justice, various opportunities were granted to the Corporate Debtor and accordingly vide order dated 18.10.2023 the Corporate Debtor was set ex-parte . The Order dated 18.10.2023 is reproduced here-below

“The Ld. Counsel for the Financial Creditor is present and submitted that they served notice upon the Corporate Debtor and filed the service report. No representation was made on behalf of the Corporate Debtor despite repeated calls. Therefore, the Corporate Debtor set ex parte.”

14. Accordingly, the Respondent's persistent non-compliance and failure to engage in the process has resulted to proceed ex-parte vide order dated 18.10.2023. However, the reply filed by the Corporate Debtor in the present matter is available in the records of this Adjudicating Authority, hence in the interest of justice, this Adjudicating Authority had considered the submissions made by the Corporate Debtor in the present case.

15. Now, coming to the merits of the present case, at this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -

5(7) “financial creditor” means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;

The definition of “financial debt” as provided in Section 5(8) of the Code, 2016 is as under:-

5(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; [Explanation. -For the purposes of this sub-clause, - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

16. It is an admitted fact that the Financial Creditor and Corporate Debtor entered into a Loan Agreement cum Memorandum of Understanding

dated 14.09.2014 for Rs. 42,00,000/- at interest rate of 2.25% per month to the corporate debtor for a period of 60 months. The repayment towards the loan, amounting to Rs. 2,66,25,917/- (principal amount of Rs. 42,00,000/-and interest amount of Rs. 2,24,25,917/-) was due and payable on 13.09.2019 and the post-dated cheque issued by the Corporate Debtor was dishonored on 30.04.2019 hence the date of default is 30.04.2019. The present application has been filed dated 17.09.2021 hence, the present application is within the limitation period and as per the computation it is clear that the financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant and there is default by the Corporate Debtor in payment of debt amount.

17. Upon careful examination of the records and bank statements at hand, it is evident that the debt remains outstanding, with no payments having been made by the Respondents towards the principal loan amounting to Rs. 42,00,000 for loan availed via Loan Agreement cum Memorandum of Understanding dated 14.09.2014. Meanwhile, payments have been executed in relation to other loan amount as per submission made in the Reply by the Corporate Debtor. Further, no documentation has been presented on record indicating any novation of the contract between the parties. Therefore, the Corporate Debtor's reliance on the purported substitution of contracts is unfounded.

18. Thus, from the facts which are borne on record, as narrated above, we are of the considered view that the 'financial debt' is not barred by limitation and the submissions of the Corporate Debtor as to the present application being barred by limitation is not sustainable. Hence, in all respects the 'debt' as claimed by the Financial Creditor is well within the period of limitation and the Corporate Debtor has committed 'default' in repayment of the said 'financial debt'.
19. With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.
20. The Hon'ble Supreme Court in the matter of Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407, held as follows :-

“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 sub-section (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. On

the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

21. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the

above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition ***I.B./565(PB)/2021 stands admitted*** and CIRP of ***M/s. SLR Techinfra Pvt Ltd*** shall be initiated. The applicant in Part-III of the application has proposed the name of Mr. Anil Tayal as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P01118/2018-2019/11818. But, on perusal of the records, it is found that the license of the Resolution Professional is suspended.

22. Further, the Applicant has placed on record the consent of Resolution Professional in new Form 2 in RA 117/2023 in IB No. 565/PB/2021 annexed as Annexure J, wherein it has proposed the name of Mr. Amit Agarwal having Registration Number IBBI/IPA-002/IP-N00185/2017-18/10456 and email id amitagcs@gmail.com. Accordingly, Mr. Amit Agarwal is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Securitization 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 IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
26. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Amit Agarwal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

27. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by 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.
28. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person 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 Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
29. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
30. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar

of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

31. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing I.B./565(PB)/2021 stands admitted.

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)