

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH -I**

**CP (IB) 919/MB/C-I/2020**

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.

**Prudent ARC Ltd. (Prudent Trust-44/20)**

611, Sixth Floor, D Mall, Plot No. A-1, Netaji Subhash  
Palace, Pitampura, New Delhi (West), Delhi - 110034

...Financial Creditor/Petitioner

Versus

**Blackstone Multi Trading Ltd.**

**[CIN: U51420MH2008PLC184679]**

303, Plot No. 59, Abhay Steel House, 59 E, Baroda Street,  
Carnac Bunder Masjid East, Mumbai – 400009.

...Corporate Debtor/Respondent

**Order Delivered on 24.01.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

***Appearances:***

For the Financial Creditor : Mr. Kunal Kanungo, Counsel a/w  
Adv. Tanushree Sogani and Adv.  
Atishay Jain

For the Corporate Debtor : Mr. Prateek Seksaria, Counsel a/w  
Adv. Rohit Agarwal, Adv. Vighnesh  
Kamat, Adv. Vaibhav Shukla, i/b  
VALS Legal, Advocates

**ORDER**

*Per Coram*

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Mr. Amarjit Kochar, the Authorised Representative, on behalf of **Prudent ARC Ltd. (Prudent Trust-44/20) (“the Financial Creditor”)**, seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against, **Blackstone Multi Trading Ltd (“the Corporate Debtor”)**.
2. The Corporate Debtor was incorporated on 15.07.2008 under the Companies Act, 1956. The registered office of the Corporate Debtor is situated at 303, Plot No. 59, Abhay Steel House, 59 E, Baroda Street, Carnac Bunder Masjid East, Mumbai – 400009. Therefore, this Bench has jurisdiction to deal with this petition.
3. As per form Part 4 of Form 1 of the Petition, the principal amount of debt is Rs.59,95,07,213/- (Rupees Fifty Nine Crore Ninety Five Lakh Seven Thousand Two Hundred and Thirteen) and interest @ 11.50% is Rs.2,77,63,477/- (Rupees Two Crore Seventy Seven Lakh Sixty Three Thousand Four Hundred and Seventy Seven Only).

**Submissions made by the Financial Creditor by the way of Petition:**

4. The Financial Creditor submits that the debt owed by the Corporate Debtor arises from a Bill Discounting Facility backed by letter of credit ("**Facility**") provided by the Financial Creditor to it. This Facility was initially provided to the Corporate Debtor by way of a sanction letter dated 21.11.2017 (Exhibit E), at which time it was limited to Rs.50 Crores. This Facility was enhanced by way of a sanction letter dated 11.01.2018 to Rs.100 Crores (Exhibit F) and was subsequently renewed by way of a sanction letter dated 01.03.2019 (Exhibit G).
  
5. In terms of the Facility, the Financial Creditor agreed to discount certain receivables of the Corporate Debtor. These receivables were on the basis of goods supplied to and invoices raised upon one Jwala Resources Energy Private Limited ("Purchaser") by the Corporate Debtor. It was represented that the Purchaser had supplied irrevocable Letters of Credit ("LOC") favoring the Corporate Debtor and on the basis of those Letters of Credit the invoices (bills) were discounted and amount of Rs.54,75,25,444/- was disbursed to the Corporate Debtor (Rs. 19,67,99,558/- on 31.05.2019, Rs. 17,81,17,121/- on 04.06.2019, and Rs. 17,26,08,765/- on 06.06.2019). The maturity of each of the bills of exchange was 180 days (the dates of maturity were 26.11.2019,

30.11.2019, and 01.12.2019 - pages 44, 39, and 34 respectively). The three bills of exchange based upon which the Debt has arisen have been annexed to the petition as **Exhibit-H Colly**.

6. The Debt is a financial debt in accordance with section 5 (8) (e) of the IBC, which is as below:

*5. Definitions.-In this Part, unless the context otherwise requires,-*

*(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-*

...

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

7. The present case is one of bill discounting, i.e., discounting of receivables. It is further submitted that the Facility extended by the Financial Creditor to the Corporate Debtor was "with recourse". Copies of the Facility documents including the documents relating to renewal of the Facility are annexed as Exhibit F to the Petition.

## **LIABILITY OF CORPORATE DEBTOR**

8. A perusal of the Facility Documents makes it clear that the Facility was "with recourse" meaning that the Corporate Debtor remained liable to the Financial Creditor notwithstanding the Lettes of Credit ("LCs").
9. The Financial Creditor has drawn our attention to Sections 7 and 8 of the Negotiable Instruments Act, 1881, which have not been reproduced here for the sake of brevity.
10. The Financial Creditor has relied on the above Sections and further submitted that, it is clear that the Corporate Debtor is the "Drawer" and Jwala Energy Resources Private Limited is the "Drawee" which intended to discharge its obligation through the LCs. After Jwala Energy Resources Private Limited signed the bill of exchange, it became the "acceptor" (alongwith PMC Bank which had provided security for such acceptance through its LCs). Further, the Financial Creditor is the "holder" as it is ultimately entitled to recover the amount due under the bill of exchange.
11. The liability of the "Drawer", i.e., the Corporate Debtor towards the "Holder", i.e., the Financial Creditor, is as set out in sections 30 and 32 of the Negotiable Instruments Act, 1881.

**30. Liability of drawer.**- *The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer at hereinafter provided.*

**32. Liability of maker of note and acceptor of bill.**- *In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof of maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.*

*In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.*

12. Section 92 of the Negotiable Instruments Act, 1881, sets out when a bill of exchange may be considered to have been dishonoured:

**92. Dishonour by non-payment** - *A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.*

13. In the present case, the Financial Creditor wrote several times to Punjab and Maharashtra Co-operative Bank (“**PMC Bank**”) which had issued irrevocable LCs to secure the payment to be made by the Drawee/Acceptor to ensure that payment has been made. The PMC Bank had replied from time to time expressing inability to make payment (pages 51-53 of the petition). Thus, there has been a "dishonour by non-payment" of the bill of exchange. The replies received from PMC Bank dated 11.11.2019, 11.11.2019 and 18.12.2019 are annexed as Exhibit I Colly to the Petition.
14. The Financial Creditor sent a notice of dishonour to the Corporate Debtor on 26.11.2019, i.e., the due date/maturity date of the first bill of exchange. A copy of the notice dated 26.11.2019 is annexed as Exhibit J Colly to the Petition.
15. The Financial Creditor has relied upon the judgment delivered by the Hon'ble Supreme Court of India in the case of *Innoventive Industries Ltd. v. ICICI Bank*, reported at (2018) 1 SCC 407 are relevant:

*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-.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.*

*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.*

*61. Dr Singhvi, however, argued that the notification under the Maharashtra Act only kept in temporary abeyance the debt which*



*would become due the moment the notification under the said Act ceases to have effect.*

*We are afraid that we cannot accede to this contention. The notification under the Maharashtra Act continues for one year at a time and can go up to 15 years. Given the fact that the time-frame within which the company is either to be put back on its feet or is to go into liquidation is only 6 months, it is obvious that the period of one year or more of suspension of liability would completely unsettle the scheme of the Code and the object with which it was enacted, namely, to bring defaulter companies back to the commercial fold or otherwise face liquidation. If the moratorium imposed by the Maharashtra Act were to continue from one year up to 15 years, the whole scheme and object of the Code would be set at naught undeterred by this, Dr Singhvi, however, argued that since the suspension of the debt took place from July 2015 onwards, the appellant had a vested right which could not be interfered with by the Code. It is precisely for this reason that the non obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code. For all these reasons, we are of the view that the Tribunal was correct in appreciating that there would be repugnancy between the provisions of*

*the two enactments. The judgment of the Appellate Tribunal is not correct on this score because repugnancy does exist in fact.*

16. The Hon'ble Calcutta High Court vide Order dated 18.08.2020 in the matter of *Univalue Projects Pvt. Ltd. versus The Union of India & Ors.* has also observed that

*"b) I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record of default from the IU OR any other document as specified which showcases the existence of a financial debt. Such other documents may belong to any of the four classes of documents stated in sub-regulation 2(b) of Regulation 8 of the CIRP, 2016 or as the Supreme Court has observed in Swiss Ribbons (P) Ltd. (supra), all the eight classes of documents stated in Part-V to Form-1 appended with the AA Rules, 2016.*

*c) Based on sub-paragraph (b) above, it may therefore be inferred that Section 215 of the IBC, 2016 is not mandatory in nature."*

17. In view of the above, it is submitted that the Petition was filed on 01.05.2020 and order dated 12.05.2020 will have no application. Even otherwise, the law is clear that submission of such record is directory and not mandatory.

18. For the above reasons, the Financial Creditor submits that the present petition ought to be admitted.

**Submissions filed by the Corporate Debtor by the way of Affidavit in Reply:**

19. The Corporate Debtor submits that this Petition deserves to be dismissed on the following grounds:
- a) Application is incomplete and not filed as per the prescribed procedure in law;
  - b) That the Application is proceeded on incorrect facts;
  - c) There is no legally recoverable debt, due and payable by the Corporate Debtor, for which Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") can be maintained;
  - d) Amount claimed in the Petition is not correct and not even in accordance with the documents on which the Applicants seek to rely upon;
  - e) That the transaction is not based on the documents or agreement which are produced on record before this Tribunal;
  - f) That the transaction which is subject matter is fully secured and without recourse to the Corporate Debtor;
20. This Application deserves to be rejected in view of below mentioned submissions –

21. **No Valid Authorization**: This Application is also not filed on the basis of valid authorization and therefore deserves to be dismissed. It is authorization, which permits the officer to file Petition, however no authorization in favour of Managing Director to action or to delegate the power to any officer is produced on record. In these circumstances, Application is defective and liable to be dismissed.
22. **Record of Default**: Record of Default recorded with the Information Utility is not produced and without the record of default being placed on record this Petition cannot be accepted by the Registrar and hence deserves to be dismissed. In fact, it is falsely recorded that it is not Applicable. A copy of the order dated 12th May 2020 passed by the National Company Law Tribunal, New Delhi is annexed and marked as Exhibit- "1".
23. **Books of Accounts, IT Certificate and Bankers Books Evidence Act Certificate not produced:**
- a) One of the essential requirements for the purpose of maintaining Application under Section 7 of the Code is to produce the books of Accounts. This production of books of Account is with the IT Certificate and Bankers Books Evidence Act certificate. In the Application, it is

stated that Copies of entries in the Books of Accounts and Bankers Books Evidence Act certificate is not applicable or available.

- b) This Book of Account is contemporaneous record of the fact that amount was sanctioned and disbursed. This further record, that the moneys were paid and interest, if any, claimed in the Petition is debited from time to time. The Bankers though are not allowed to debit the interest after the accounts become NPA, however they maintain separate suspense account wherein the interest is debited on regular basis.
- c) In the present case, no account is produced which would show that the interest was debited on regular basis and bank maintains this borrowers accounts in its books on regular basis. As there is no such account there is no IT Certificate or Bankers Books Evidence Act certificate. One ledger is produced to show that amount was disbursed but no interest entry was debited in that ledger also. Therefore, Applicant has not produced Books of Accounts. On this ground, itself the Application deserves to be dismissed.
- d) The Bank, which claims to have sanctioned and disbursed financial facility has stated that they have no accounts qua the transaction and neither have maintained any books. There is no liability as against this Respondent as per Bankers Books and therefore they have not maintained any ledger. It is the case of Respondent that even as per the

books of Applicant liability is only qua the Punjab and Maharashtra Co-operative Bank ("PMC Bank), the credit opening bank.

**24. Inconsistent claim /False claim:**

- a) At the outset, there is no document or contract which would evidence that the Applicant is entitled to charge interest. Assuming that the Sanction Letter placed on record is the sanction letter in respect of this transaction, in that event also there is apparent inconsistency in the claim made, averment made in the Petition and sanction letter.
- b) In fact, false statement in respect of claim as well as interest is made in the Application. Interest in the application is charged at 11.50% per day for the number of days it is outstanding. Whereas, in the sanction letter it is mentioned that rate of interest will be market driven as such there is no such clause of charging interest at the rate specified in the Application. Therefore, the claim is inflated and not in accordance with the contract. In fact, contract (alleged sanction letter of 01 March 2019) speaks of some other interest at the rate of 3% p.a. on the overdue payments.
- c) Amount claimed in the Petition has to be in accordance with the actual books of accounts and should be corroborated with the document/contracts between the Parties. Though no adjudication is

contemplated under Section 7 Application, but that would not mean that party can be permitted to file Application on the basis of incorrect amount and then contend that no adjudication is contemplated.

- d) In view of the same, the Petition is defective and of a claim which is otherwise not correct or in accordance with alleged transaction document on which the Applicant places reliance on.

**25. Incorrect Transaction Document Produced on record:**

- a) In order to seek order of admission of the Application, Applicant is required to place on record the document which would evidence the debt and default. The Banker is required to place on record the documents in relation to Sanction, Loan Agreement, Demand Notice and Statement of Accounts. This Applicant fails to produce the documents.
- b) The Applicant has placed reliance on sanction letter and agreements which relates to "bill discounting facility". Whereas the present transaction is not of discounting the bills but of negotiation of bills under irrevocable letter of credits established by a schedule bank with restrictions to the Applicant for negotiation. Applicant has therefore placed reliance on different facility documents which has no relation with the present transaction.

- c) Facts stated herein in the present Affidavit, clearly demonstrate that the transaction as being stated by the Applicant herein is completely different to the executed documents, which the Applicant itself is relying upon in their Application/ Petition.
- d) The true and correct facts, for consideration of this Tribunal and deciding present Application is placed below:
- i. The Respondent herein has placed reliance on three sanction letters  
1) 21st November 2017, 2) 11th January 2018 and 3) 1st March 2019.  
These sanction letters relate to bill discounting facility (pertaining to respondent as seller of goods) backed by Letter of Credit (to be given by buyer of such goods).
  - ii. As far as first two sanction letters are concerned, there were certain documents which were executed between the parties i.e. Applicant and Respondent. However, the term of the letter dated 11th January 2018 came to an end in January 2019, accordingly the agreement in furtherance to the same also came to an end.
  - iii. Thereafter, sanction letter dated 01st March 2019 was issued for the same facility and that sanction letter in its 2nd condition contemplated execution of the documents. However, it will not be out of place to mention that no such documents were executed



pursuant to the letter dated 01st March 2019 and hence, the same are not placed on record by the Applicant.

- iv. Therefore, the letters of sanction and documents prior to 01st March 2019 has no relevance as they have expired and have come to an end. As far as letter of 01st March 2019, is concerned there is sanction but there is no document which relates to this sanction. Hence it is not backed by any contract.
- v. In view of thereof, entire Application based on earlier sanction or earlier documents has no relevance and bearing on the facts of present case.
- vi. It is submitted that even the letter of 1st March 2019, has no relevance to the present case. This letter is in respect of Bill Discounting Facility backed by Letter of Credit. However, the transaction being contested by the Petitioner as their monetary claim is of negotiation of the letter of credit.
- vii. The present transaction is of negotiation. In this case bare perusal of the document annexed at Pgs. 35, 40 and 45 clearly demonstrate that it is case of negotiation. The LC is negotiated and PMC Bank has confirmed to make payment. Further at Sr. No. 78 of each LC it is set out that it is case of negotiation and not of discounting.

- viii. In case where document such as letter of credit is negotiated, there is no liability on the Respondent. The Applicant herein proceeded for negotiation transaction and not discounted. The LC as well as the message which is placed on record clearly demonstrate the same.
- ix. The Respondent approached the Applicant with irrevocable Letter of Credit opened by PMC Bank restricted for negotiations by the Applicant. This LC was accepted and negotiated by the Applicant. Applicant after deducting its charges, remitted the money to the Respondent. As the negotiating Bank it is then the obligation of the Applicant to collect the money from credit opening bank who has irrevocably confirmed/ accepted for payment. It would also be pertinent to mention here that Letter of Credits issued by PMC Bank Limited were directly received by the Applicant through Structured Financial Messaging System ("SMFS"), which is usual mode of sending messages from one bank to another, mode as per the terms of letter of credit.
- x. PMC Bank Limited, the credit opening bank, confirmed by virtue of Trade Finance Messages through SFMS Advice of Payment/Acceptance/Negotiations to the Applicant as annexed at pages 35, 40 and 47 of the Petition and only after receipt of said advice by the Applicant, the letter of credit was negotiated. As per the

guidelines laid down by Reserve Bank of India, the credit/payment burden of these transaction will be on PMC Bank and not on the Respondent, while making accounts of Applicant Bank.

- xi. Applicant received its interest and charges in advance and the balance payment was remitted to the Respondent herein. Therefore, the Applicant received its interest for the time period of Letter of Credit and all benefits and thereafter gave the balance money to the Respondent herein.
- xii. The Reserve Bank of India on account of irregularities being found in the functioning of PMC Bank imposed certain restrictions in the month of September 2016. As per the said restrictions the bank is restrained from honoring the Letter of Credit provided unless the customer funds the account.
- xiii. The PMC Bank by its from time to time informed about these restrictions. This restriction is imposed by Reserve Bank of Indian which is regulating body for not just PMC Bank but also the Applicant Bank. It is not the case that the LC's have been found to be fraudulent or defective and have been dishonored. These LC's are not honored by the credit opening bank on account of restriction imposed by RBI on credit opening bank. The Applicant has continued to pursue PMC Bank.

- xiv. The LC's secure the full amount, these LC's are of a schedule bank as per the requirement of the Applicant. These LC's are pending to be honored on account of restriction imposed by RBI. It cannot be construed as default on the part of the Respondent herein.
- xv. Respondent submits that it has supplied the goods and parted with the valuable property to the buyer has against the said Letter of Credit. The Letter of Credit negotiated will have to be honored by PMC Bank. They are not honored because of statutory/regulatory restrictions. This statutory/regulatory restriction by no stretch of imagination can be considered as dishonor or breach of the Letter of Credit. Therefore, it will not constitute as default on the part of the present Respondent. In view of above facts, this Application/Petition is not maintainable.
26. The entire Application is based on the alleged default committed by PMC Bank. It is contended that PMC Bank committed default and refused to make payment, therefore the Respondent is liable to make payment. Therefore, it is contended that there is dishonor from PMC Bank. In fact, the letter dated 11th November 2019, in no uncertain Arms records that the payment will be made on receipt of the customer. PNC Bank has not dishonoured the LC's. This is further reiterated in the letter dated 18th December 2019. Inability to release the fund is not on any

ground but because of statutory restriction imposed under the provisions of Banking Regulation Act, 1949 imposed on the Bank. There is no dishonor as contemplated under law. Statutory restriction imposed are binding on all concerned. Further the provisions of Banking Regulation Act, 1949 will override the provision of Negotiable Instrument Act and there is no liability qua the Respondent herein.

27. In view of the above facts and circumstances it is submitted that -
- a) This is not a case of discounting but of negotiation under letter of credits and also it is not "with reserve" transaction, wherein Applicant can approach the Respondent in the event of dishonor of the Letter of Credits.
  - b) There is no right conferred upon the Applicant to seek recovery from the Respondent. This negotiation undertaken by the Applicant was not with recourse to the Respondent and therefore no debt is due and payable by the Respondent.
  - c) The transaction in the present case, is not backed by any agreement or contract, which would otherwise show that it was with recourse.
  - d) The agreement produced on record are not in respect of present transaction.

- e) Even otherwise, the agreement nowhere provides that the transaction is with recourse.
- f) Indemnity given in a case, is not debt but it is only right to sue for loss or cost. Based on indemnity no proceeding under Section 7 can be filed as it is not debt due and payable.
- g) There is therefore no debt due and payable.

**Findings:**

- 28. We have heard both the parties and perused the records.
- 29. In the instant case, after the amounts have been remitted to the Corporate Debtor under irrevocable Letters of Credit, the same stand recoverable only against the issuer of the Letters of Credit. There can be no scenario in which the amounts stand recoverable from the Corporate Debtor, who is a seller of goods, as the same would lead to an ex-facie unjust scenario where the Corporate Debtor has parted with the goods and will also have to make repayments of the amounts under the Bills of Exchange on behalf of the purchaser of the goods.
- 30. The above position has been fortified by the RBI in its 'Master Circular- Loans and Advances - Statutory and Other Restrictions' dated 1st July, 2015 wherein the RBI has provided as follows;

### "2.3.9 Discounting/Rediscounting of Bills by Banks

Banks may adhere to the following guidelines while purchasing/  
discounting/negotiating/rediscounting of genuine commercial/ trade  
bills:

...

(v) Bills purchased/ discounted/ negotiated under LC (where the payment to the beneficiary is not made 'under reserve') will be treated as an exposure on the LC issuing bank and not on the borrower. All clean negotiations as indicated above will be assigned the risk weight as is normally applicable to inter-bank exposures, for capital adequacy purposes. In the case of negotiations 'under reserve', the exposure should be treated as on the borrower and risk weight assigned accordingly. However, in cases where the bills discounting/ purchasing/ negotiating bank and LC issuing bank are part of the same bank, ie. where LC is issued by the Head Office or branch of the same bank, then the exposure should be taken on the third party/ borrower and not on the LC issuing bank."

It is not the Financial Creditors case that the payment to the Corporate Debtor as beneficiary was made "under reserve." The meaning of the term "under reserve" as explained by the Hon'ble Supreme Court in *United Commercial Bank v. Bank of India, (1981) 2 SCC 766 at page 787* is as under;

*“53. Even if there was a serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs 85,84,456. The fact remains that the payment of Rs 36,52,960 against the first lot of 20 documents made by the appellant to the bank of India was a payment under reserve while that of Rs 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment "under reserve" is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand.”*

31. Hence in absence of any such "under reserve" noting, as per the RBI Master Circular dated 1st July, it is amply clear that the liability to make payment to the creditor under the relevant Letters of Credit is not on the Corporate Debtor who is the borrower under the relevant bill discounting facility.
32. Having perused the documents relied, written submissions and after hearing the parties we find that no amount can be said to be due from the Corporate Debtor under the Letters of Credit facilities and in the aforesaid circumstances the Financial Creditor is not entitled to initiate Application for Corporate Insolvency Resolution process under IBC and the present petition is thus liable to be dismissed.



33. Apart from the above, it is also noted that the Financial Creditor has failed to mention the date of default in Part IV of the Petition. Admission under Section 7 of this Code is based on two factors, i.e. existence of debt and default. In absence of the date of default, it gets difficult to assess the existence of any default on the part of the Corporate Debtor.
34. It is, accordingly, hereby ordered as follows:- The petition bearing **CP(IB) 919/MB/C-I/2020** filed by Prudent ARC Ltd., the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy(Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against Blackstone Multi Trading Ltd., the Corporate Debtor, is liable to be **rejected**.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

24.01.2023  
DSB

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**