

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
MUMBAI, COURT-III
ORDER SHEET OF THE HEARING ON 22nd MARCH, 2024, 10:30 A.M.**

**I.A. 2889/2022 (60(5))
C.P.(IB)-769(MB)/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Ms. Madhu Sinha**

Name of the Company	Phulchand Export Private Limited Vs. India Bulls Asset Reconstruction Private Limited. IN THE MATTER OF Indiabulls Asset Reconstruction Company Limited V/s. Phulchand Exports Private Ltd.
Under Section	U/s 7 of (IBC)

For Petitioner (s) : Mr. Mr. Nausher Kohli, Adv.

For Respondent (s) : Mr. Mr. Umang Mehta, Adv.

ORDER

Mr. Nausher Kohli counsel appearing for the applicant along with Mr. Umang Mehta counsel appearing for the Respondent/Corporate Debtor are present. Before pronouncing the order this Bench specifically posed a question to both the counsel appearing for the parties to inform whether they have any objection for pronouncement of the order without insisting for fresh hearing for which the counsel appearing for the applicant reported no objection. However, the counsel appearing for the Corporate Debtor raised an objection contending that they have filed an interlocutory application in IA 5177 of 2023 before Bench No. III, Mumbai requesting for de-novo hearing in view of certain subsequent events and developments that have taken place

in the matter. Since the order was dictated and got typed by the Members of the Bench who reserved the matter for orders, this Bench being the Bench that reserved the matter for orders, is left with no option except to pronounce the order.

Accordingly, the order is pronounced in the open Court in the presence of the counsel vide separate order. In the result, the above CP is admitted ordering CIRP against the Corporate Debtor by appointing Ms. Savita Agarwal as IRP.

The order is pronounced in accordance with the office orders issued by the Principal Bench, New Delhi through its Registrar.

Sd/-
Ms. Madhu Sinha
Member (Technical)

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

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. III**

CP No. 769/(IB)-MB-CIII/2022

AND

I.A. 2889 OF 2022

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

India Bulls Asset Reconstruction Company Limited

India Bulls Finance Center, Tower 1, 9th Floor,
Senapati Bapat Marg, Elphinstone Road, Mumbai
- 400013

... Petitioner/Financial Creditor

V/s

Phulchand Exports Private Limited

2nd Floor, West Wing, Electric Mansion, Appsaheb
Marathe Marg, Worli, Mumbai - 400025.

... Respondent/Corporate Debtor

AND

I.A. 2889 OF 2022

Phulchand Exports Private Limited

2nd Floor, West Wing, Electric Mansion, Appsaheb
Marathe Marg, Worli, Mumbai - 400025.

... Applicant

Order Dated: 22.03.2024

Coram:

Hon'ble Mr. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (Physically):

For the Petitioner : Mr. Nausher Kohli a/w T. N. Tripathi

For the Corporate Debtor : Mr. Simil Purohit a/w Mr. Viraj Parikh, Mr.
Mohammed V., Ms. Aarushi Yadav i/b adv. Rubina Khan, Fortis India
Law

ORDER

Per: Madhu Sinha, Member (Technical)

1. This Company Petition is filed by **India Bulls Asset Reconstruction Company Limited** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Phulchand Exports Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default on 09.05.2019 to the extent of Rs. Total Outstanding Rs.: 75,59,70,392 having Principal Outstanding of Rs. 50,08,07,644, Normal Interest: Rs. 17,28,17,631/- and Penal Interest – Rs. 8,23,45,118/-. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**IBC**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
 - a. A copy of Loan Agreement dated 31.08.2014, 25.03.2015, 31.08.2016, 10.07.2018, 29.09.2018.
 - b. A copy of Sanction Letter dated 31.08.2014, 24.03.2015, 31.08.2016, 09.07.2018, 27.09.2018.
 - c. A copy of Mortgage Agreement (Deposit and Redeposit of Title Deeds for creating mortgage on immovable property) dated 31.08.2014, 25.03.2015, 31.08.2016, 10.07.2018 and 29.09.2018.
 - d. A copy of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891.
 - e. A copy of Demand Notice u/s 13(2) dated 09.05.2019, 17.04.2019 and 15.05.2019.

Brief Facts

3. The Petition reveals that the Financial Creditor is a Securitisation and Reconstruction Company registered under Section 3 of the SARFAESI Act, 2002. The Financial Creditor is assignee of Indiabull Housing Finance Limited (hereinafter referred to as "**IHFL**") who has assigned the debts due and payable by the Corporate Debtor with Securities and Guarantee obligations to the Financial Creditor under a registered Assignment Agreement dated 30.09.2019.
4. The IHFL has sanctioned five loans facilities to the Corporate Debtor under five separate Loan Agreements. The particulars of loans sanctioned are as under:

Sanction Letter	Loan Agreement	A/c No.	Date of disbursement	Amount disbursed (Rs.)	Date of Default
31/08/14	31/08/2014	HLAPLOW00200566	31/08/14	80,40,00,000	09/05/14
24/03/15	25/03/2015	HLAPLOW00220950	26/03/15	10,12,95,000	17/04/19
31/08/16	31/08/17	HLAPLOW00290576	28/02/17	8,40,96,328	17/04/19
27/09/18	29/09/18	HLAPAND00454709	10/07/19	3,39,31,571	15/05/19
27/09/18	29/09/18	HLAPAND00478378	29/09/18	8,82,000	17/04/19

5. It is submitted that the Corporate Debtor availed aforesaid loans but failed and neglected to pay the instalments along with the interest. In view of aforesaid defaults, the loan accounts of the Corporate Debtor were classified as Non-Performing Asset (**NPA**) on 09.05.2019. IHFL issued separate demand notice **U/s 13(2) of SARFAESI Act** in respect of each loan as under:

Date of Demand Notice	A/c No.	Amount (Rs.)
09/05/15	HLAPLOW00200566	69,62,44,526

17/04/19	HLAPLOW00220950	922,34,080
17/04/19	HLAPLOW00290576	8,37,91,387
15/05/19	HLAPAND00454709	373,54,498
17/04/19	HLAPAND00478378	999,36,143

6. Thereafter, the Corporate Debtor despite service of demand notices, failed to pay the outstanding dues to the Financial Creditor. Pursuant to above, the Financial Creditor took symbolic possession of the secured assets of the Corporate Debtor on 22.08.2019.

7. Further, the Financial Creditor conducted as five auctions of secured assets of the Corporate Debtor under the provisions of SARFAESI Act, 2002. However, due to the lack of responses, the reserve price of the assets was gradually reduced to Rs.75 crores vide sale notice dated 15.04.2020 as under:

Date of Notice	Date of Auction	Reserve Price (Rs.)	Outcome of sale notice
27.08.2019 (First Sale Notice)	09.10.2019	121 cr.	Auction Failed
05.12.2019 (Second Sale Notice)	30.12.2019	110 cr.	Auction Failed

10.01.2020 (Third Sale Notice)	31.01.2020	110cr.	Auction Failed
17.02.2020 (Fourth Sale Notice)	13.03.2020	82cr.	Auction Failed
13.03.2020 (Fifth Sale Notice)	31.03.2020	82c.	Auction Failed
15.04.2020 (Sixth Sale Notice)	Thirty days after receipt of sale notice	75 cr.	Sale Successful for 77cr.

8. It is submitted that the sale of secured assets was concluded vide registered sale certificate dated 09.09.2020 for Rs.77 crores. However, the Corporate Debtor is still in default of Rs.75,59,70,392/- to the Financial Creditor.
9. It is further submitted that the Corporate Debtor in the Directors Report dated 31.08.2022 and Balance Sheet for a period from 01.04.2019 to 31.03.2020 as well as from 01.04.2020 to 31.03.2021 has admitted the loan to the extent of Rs. 86.38 crores of IHFL. Therefore, the Petition is liable to be admitted.
10. In view of the admission of liability and indeed the "default" committed by the Corporate Debtor in discharge of debts, despite services demand notices, the above Petition is liable to be admitted.

Reply of the Respondent

11. The Ld. counsel for the Corporate Debtor submitted that the Present Petition **is not maintainable** and **deserves to be dismissed**. As per the Board Resolution dated 14.02.2022, Mr. Rupesh Jadhav is not authorised to file the present Petition and his authority was restricted to initiate proceedings under the SARFAESI Act, 2002.
12. The Corporate Debtor further submitted that the assignee under the Assignment Deed is not the Petitioner but a Trust. Therefore, the Petitioner has no locus to file the present Petition. Since, as per the Deed of Assignment, the debt is assign to Indiabulls ARC - X Trust and not to the Petitioner herein
13. The Corporate Debtor submitted that the Petitioner has non – complied with Rule 4(3) of IBBI of Application to Adjudicating Authority Rules, 2016 for service of copy of Petition to the IBBI. The Corporate Debtor submitted that on 24.09.2020, Rule 4(3) of the IBBI (Application to Adjudicating Authority Rules), 2016 were amended and a mandatory requirement of prior service to IBBI before filing any petition was introduced. Pursuant to the notification of these rules, the IBBI has created an entire portal for service of petition to the IBBI prior to filing Petition under Section 7 of the code.
14. The Corporate Debtor further submitted that the shares in Financial Creditors were transferred by IHFL to Indiabulls Ventures Limited (now known as Dhani Services Limited) (“**IVL**”). Therefore, the IHFL and IVL belongs to the same group.
 - a) as the Applicant, IHFL and IVL have common registered office
 - b) The applicant and IVL have a common chairman, Mr. Sameer Gehlaut, a promoter of Indiabulls group.
 - c) The promoter shareholders of IHFL and IVL are the same.

And the debt under the Petition was assigned by IHFL to the Petitioner vide Assignment Agreement dated 30.09.2019. Further, the Corporate debtor challenge assignment agreement dated 30.09.2019 relying on RBI Circular dated 14.10.2022 which bars the ARCs acquiring NPAs from sponsors on a bilateral basis including NPA from any entity in the group to which the ARC belongs.

Findings

15. We have heard the Ld. Counsels and perused the records from their able assistance.

16. The four points emerge for consideration is:

- (i) Whether the pendency of proceedings under SARFAESI ACT, DRT and before PBPT, prohibits the Respondent/financial Creditor for initiation of Proceedings under IBC, 2016?
- (ii) Whether the debt and default is proved in respect of Corporate Debtor?
- (iii) Whether the application is barred by limitation?
- (iv) Whether the assignment of debt agreement can be challenged on the RBI Circular dated 14.10.2022,

17. With respect to the first contention of the Corporate debtor that the Present Petition **is not maintainable** and **deserves to be dismissed**. As per the Board Resolution dated 14.02.2022, Mr. Rupesh Jadhav is not authorised to file the present Petition and his authority was restricted to initiate proceedings under the SARFAESI Act, 2002. In response to the above contention raised by the Corporate Debtor, The Financial Creditor

submitted that Mr. Rupesh Jadhav is entitled to initiate all legal proceedings on behalf of the Financial Creditor. The Financial Creditor has authorised Mr. Rupesh Jadhav to file Application under the Insolvency and Bankruptcy Code 2016 vide another Board Resolutions dated 14.02.2022 (much prior to filing of Petition), and defect, if any stands rectified. The true copy of Board Resolutions dated 14.02.2022 is enclosed as Annexure -3 to the Company Petition.

18. Further, this bench is of the considered view that the IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under

Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the contention of the Respondent does not survive.

19. It has further been observed by this bench that the Respondent in I.A. 2889 OF 2022 has prayed for :-

- a. *Dismissal of the present Petition as not being maintainable;*
- b. *In the alternative to the prayer clause (a) this Hon'ble Tribunal be pleased to defer the hearing of the Captioned Company Petition till the final disposal of the Securitization Application No. 116 of 2019 filed before the Hon'ble Debt Recovery;*

While dealing with the contention of the Respondent to *defer the hearing of the Captioned Company Petition till the final disposal of the Securitization Application No. 116 of 2019 filed before the Hon'ble Debt Recovery*. This bench rely on the judgment of Hon'ble Madras High Court in the case of *M/s Anandram Developers Pvt. Ltd. & Anr. V. The National Company Law Tribunal & Anr.* (W.P Nos. 29084 and 29085 of 2017 and W.M.P. Nos. 31321 to 31323 of 2017) decided on 17.11.2017 in this case Hon'ble Madras High Court in identical facts held as under:-
"48. *Further contention of the petitioners that the action of the 2nd respondent in approaching the NCLT, would amount to forum shopping, also cannot be countenanced, for the reason, I&B code, 2016, has been enacted, consolidating various enactments, such as, Sick Industrial Companies (Special Provisions) Act, 1985; the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993; the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Companies Act, 2003; Insolvency and Bankruptcy law and other laws.* 49. *As per Section 238 of the Insolvency and Bankruptcy*

Code, 2016, provisions of the Code shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force or any instrument, has effect, by virtue of such power. As per sub-Section (4) of Section 60 of the Code, the National Company Law Tribunal is vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part II of the Code, for the purpose of sub-section (2) of Section 60 of the Code and therefore, it is for the NCLT to consider, all the materials, and pass appropriate orders. 50. Code enables a financial creditor to make an application, under Section 7 of the Code, if the Adjudicating Authority is satisfied that default has not occurred or the application is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. Contention of the Learned Counsel that applications are mechanically admitted, cannot be accepted. Contention that approach of the 2nd respondent to NCLT, amounts to forum shopping is not tenable, as the Code enables filing of an application, notwithstanding the pendency of any proceedings, under the SARFAESI Act, 2002. When the code has not been stayed, the process envisaged in the code, has to be continued, and cannot be restrained.”

Therefore, in terms of the above judgement the financial creditor to make an application, under Section 7 of the Code, if the Adjudicating Authority is satisfied that default has not occurred or the application is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. As the Code enables filing of an application, notwithstanding the pendency of any proceedings, under the SARFAESI Act, 2002.

20. This Tribunal relied on the case of Harkirat S. Bedi V. Oriental Bank of Commerce [2019] 108 taxmann.com 110 (NCL-AT) held as under:-

“From the aforesaid finding, it is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s 7 of the I&B Code is maintainable. Mere pendency of the case before the DRT for adjudicating of such disputed amount cannot be a ground to reject the application u/s 7 of the I&B Code, if the Adjudicating Authority is satisfied that there is a ‘debt’ and ‘default’ and the application is complete. On the other hand, in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed during the period of moratorium.”

The Tribunal in the **case of Comp. App. (AT) (Ins) No. 1021/2019 (Karan Goel Vs. M/s Pashupati Jewellers & Ors.)** decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending, cannot be ground to reject the application under Section 7 of the I&B Code.

21. The second contention raised by the Respondent that the assignee under the Assignment Deed is not the Petitioner but a Trust. Therefore, the Petitioner has no locus to file the present Petition. Since, as per the Deed of Assignment, the debt is assign to Indiabulls ARC - X Trust and not to the Petitioner herein. In response to the above contention, the Financial Creditor submitted that by a Notification No. 1091(E) dated 27.02.2019 issued by the Ministry of Corporate Affairs, it is clarified that Section 7 Petition can be filed by a Trustee on behalf of a Financial Creditor. In the present case Indiabull Asset Reconstruction Company Limited acting in its capacity as trustee of Indiabulls ARC - X Trust and is therefore entitled to file and maintain

the above Petition. A copy of Notification dated 27.02.2019 is annexed as 'Annexure – 4' to the company Petition.

22. The third contention of the Corporate Debtor is that the Petitioner has non – complied with Rule 4(3) of IBBI of Application to Adjudicating Authority Rules, 2016 for service of copy of Petition to the IBBI. The Corporate Debtor submitted that on 24.09.2020, Rule 4(3) of the IBBI (Application to Adjudicating Authority Rules), 2016 were amended and a mandatory requirement of prior service to IBBI before filing any petition was introduced. Pursuant to the notification of these rules, the IBBI has created an entire portal for service of petition to the IBBI prior to filing Petition under Section 7 of the code. In Response to the above contention the Petitioner submitted that it is a curable defect. The Petitioner has served a copy of Petition in Form 1-A (1-AAA). The proof of service of Petition in 1-A (1-AAA) dated 01.05.2023 is placed on record vide Compilation of Document as Annexure – “2”.
23. The fourth contention of the Corporate Debtor that the shares in Financial Creditors were transferred by IHFL to Indiabulls Ventures Limited (now known as Dhani Services Limited) (“**IVL**”). Therefore, the IHFL and IVL belongs to the same group.
- d) as the Applicant, IHFL and IVL have common registered office
 - e) The applicant and IVL have a common chairman, Mr. Sameer Gehlaut, a promoter of Indiabulls group.
 - f) The promoter shareholders of IHFL and IVL are the same.

And the debt under the Petition was assigned by IHFL to the Petitioner vide Assignment Agreement dated 30.09.2019. Further, the Corporate debtor challenge assignment agreement dated 30.09.2019 relying on RBI Circular dated 14.10.2022 which bars the ARCs acquiring NPAs

from sponsors on a bilateral basis including NPA from any entity in the group to which the ARC belongs.

In response to the contention of the Corporate Debtor, the Petitioner submitted that the objection is not legally tenable for:

(i) assignment cannot be challenged in the Petition under Section 7 as held by the Hon'ble NCLAT in ***Lalan Kumar Singh v. Phoenix ARC Private Limited (2018 SCC OrLine NCLAT 835.***

para-21:

"The assignment cannot be challenged in the petition under Section 7 and that too by a party who had the knowledge of Assignment Deed as back as in the year 2012, as noted above, the DRT, Chandigarh, when it requested and never challenged the same before a court of competent jurisdiction.

(ii) In any way the transaction will not get vitiated on account of any violation of RBI guidelines as held by the Hon'ble Bombay High Court in ***IL. & FS Financial Services Ltd. v. SKIL. Infrastructure Limited [2020 SCC OnLine Bom 4862]*** wherein it is held that breach of the directives of RBI does not render such debt legally unenforceable and does not absolve the defendants of the liability to discharge the debt.

"35. There can be no quarrel with the proposition that the Court should not lend Its assistance to a party who rests his claim on an illegal or unlawful act. In such a case, the policy of law is to allow the loss to fall where it rests, Irrespective of the justice of the claim. The crucial question which, in the instant case, wrenches to the fore is whether the transactions in question are

tainted with such an illegality or unlawfulness which dissuades the court from enforcement of the liability incurred thereunder?

36. Dr. Saraf would urge that the submission sought to be advanced on behalf of the defendants based on the alleged investigation into the affairs IL & FS, does not absolve the defendants of the liability to discharge the debt. It is incontestable that the defendants had availed of the loans in question. Even if the case of the defendants is taken at par, the fact that the loan was advanced in breach of the directives of RBI does not render such debt legally unenforceable. The officers who indulged in such activity may be hauled up and proceeded against. But that cannot be a ground to absolve the defendants from the obligation to discharge an otherwise admitted liability.”

24. It is further submitted by the Petitioner that the Circular dated 14.10.2022 is not applicable to the assignment agreement dated 30.09.2019. Since, the same issue was raised in SA No. 116 of 2019 filed by the mortgagor in DRT - 1, Mumbai and the Financial Creditor placed on record a copy of affidavit dated 10.01.2023 filed in SA No. 116 of 2019 and has stated.... “*The Indiabull Housing Finance Limited (IHPL) is not the shareholder or sponsor of Indiabull Asset Reconstruction Company Limited. I say that Dhari Services Limited is the sponsor of Indiabull Asset Reconstruction Company Limited*”. Therefore in considered view of this bench the objection to the assignment agreement is not legally tenable.

25. It is brought to the notice of this bench that the mortgagor, Mr. Prateek Agarwal who is Managing Director of the Corporate Debtor has filed SA. No.116 of 2019 challenging the sale of the secured assets conducted under the provisions of the SARFAESI Act, 2002. However, by order dated 14.05.2020 annexed as Exhibit-1 of the Reply to IA, the Hon'ble DRT did not grant interim relief. The order dated 14.05.2020 was challenged by filing WP (L) No.5858 of 2020 in the Hon'ble High Court, By order dated 29.05.2020 annexed as Exhibit-2, the High Court refused to interfere with the order dated 14.05.2020 passed by DRT, Mumbai. The order of the Hon'ble High Court dated 29.05.2020 was challenged before the Hon'ble Supreme Court. The Order dated 05.10.2020 annexed as Exhibit-3, the Hon'ble Supreme Court dismissed the Special Leave Petition.
26. The Corporate Debtor has challenge the sale conducted by the Financial Creditor under the provision of SARFAEST Act in petition under section 7 of the 1B Code, 2016. In response to the above contention the Petitioner submitted that challenge to the sale is misconceived and non-tenable in law, as ***In JM Financial Asser Reconstruction Private Limited v Asian Hotels (West) Limited /Company Petition No.571/2021***, the ***Hon'ble NCLT Delhi*** has held that the SARFAESI proceeding pending in the DRT will not have any effect in the Section 7 Petition.
27. It is an undisputed fact that there is no dispute as to the ailment of loans by the Corporate Debtor. The Corporate Debtor has admitted the "debt to the extent of Rs.86.38 crores and that the interest is not paid from 2019 in the Director's Statement dated 31.08.2022 and balance sheet for F.Y. 2019-20 and 2020-21. Therefore, upon consideration this bench is of the considered view that the "debt due" as well as "default" within the meaning of the Code are the facts admitted on

record by the Corporate Debtor. Further the Petition was filed on 22.04.2022, therefore, well within the period of limitation.

28. The Corporate Debtor is required to undergo the Corporate Insolvency Resolution Process as mandated by the IB Code, 2016 in view of the admission of "debt" and "default" committed by the Corporate Debtor. It is submitted that the Corporate Debtor has raised "super technical" objections to protract initiation of CIRP process.
29. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-III of the Petition along with his consent letter in Form-2.
30. It is therefore respectfully prayed that the above Petition C.P. No. (IB) 769 OF 2022 filed under section 7 of 1B Code, 2016 be **admitted**. In view of the findings in C.P. No. (IB) 769 OF 2022, I.A. 2889 of 2022 becomes **infructuous and disposed of**.
31. Consequently, the petition is ordered to be admitted in the following terms:

ORDER

- a. The above Company Petition No. 769/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Phulchand Exports Private Limited**.
- b. The IRP proposed by the Financial Creditor, **Savita Agarwal**, having registration No. IBBI/IPA-001/IP-P00101/2017-2018/10201, having address at 16A Shakespeare Sarani, New B.K. Market, 5th Floor, Kolkata - 700071, having email id – Savita_22@hotmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declared moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 769/IBC/MB/2022 is **admitted and** I.A. 2889 of 2022 becomes **infructuous and disposed of**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
Madhu Sinha
Member (Technical)
/Abhay/

Sd/-
Subba Rao
Member (Judicial)