

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CP(IB)-97/MB/2021

Under Section 7 of the IBC, 2016

In the matter of

Bank of Baroda

...Financial Creditor

v/s.

Kesar Multimodal Logistics Ltd.

...Corporate Debtor

Order Pronounced on: 17.02.2022

Coram:

Mr. Rajesh Sharma

Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Shyam Kapadia a/w Mr. Shiju P.V., Ms. Nishitha Nambiar, Mr. Arjun Sathees i/b Indialaw LLP, Advocate.

For the Respondent: Mr. Rishabh Shah a/w Ms. Saakshi Saboo, Mr. Apurva Sanglikar i/b Raval-Shah & Co., Advocate.

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Bank of Baroda**, (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against

Kesar Multimodal Logistics Ltd. (“the Corporate Debtor”), [CIN: U74120MH2011PLC222597].

2. The Corporate Debtor is a company incorporated on 30.09.2011 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Oriental House, 7, Jamshedji Tata Road, Churchgate, Mumbai – 400 020. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Case:

3. The Corporate Debtor approached the Petitioner and requested to grant various financial facilities from time to time. The Petitioner had executed Common Loan Agreement dated 11.10.2011 and Concession Agreement dated 24.10.2011 with the Corporate Debtor. Thereafter, the petitioner sanctioned Term Loan on 17.04.2012. The Petitioner executed Lenders Agent Agreement dated 11.10.2012, Deed of Hypothecation Agreement dated 11.10.2012, Inter Creditor Agreement dated 11.10.2012, Escrow Agreement dated 11.10.2012 and Substitution Agreement dated 11.10.2012 with the Corporate Debtor.
4. The petitioner further executed Amended No.1 Common Loan Agreement on 03.03.2017 and review of Term Loan dated 07.07.2016 and Master Joint Lenders Agreement dated 03.03.2017.
5. Corporate Guarantee was also executed by Kesar Terminal & Infra Limited dated 11.10.2012 and Bank Guarantee dated 19.10.2012 and 18.02.2016 in favour of the Petitioner.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-97/MB/2021

6. The Corporate Debtor has issued Renewal Letters dated 06.10.2017 and 09.02.2018. They further issued Letter of Acknowledgement of Debt by Borrower/Guarantor dated 13.06.2018 to the Petitioner.
7. The Petitioner has enclosed the Order of this Tribunal in CP(IB)-3288/MB/2018 dated 02.12.2019, wherein the Tribunal has granted liberty to enforce the Debt Agreement as per Law.
8. The Petitioner has claimed an outstanding debt of Rs.88,10,11,929.62 as on 31.10.2020. The date of default as claimed is 31.08.2017. The date of NPA is 20.11.2017. The list of loan facility granted to the Corporate Debtor is as follows:

Dena Bank Account No.	Corresponding Bank of Baroda Account	Facility	Principal outstanding (in Crs)	Interest	Total Outstanding
98957023904	25850600000410	Term Loan-I	2,60,69,173.53	1,59,65,798.37	4,20,34,971.90
98957023905	25850600000411	Term Loan-II	12,66,70,994.34	10,36,28,808.62	23,02,99,800.96
98957023910	25850600000412	Term Loan-III	1,58,63,328.46	88,28,852.26	2,46,92,180.72
98957023911	25850600000413	Term Loan-IV	3,28,59,652.01	2,53,73,963.88	5,82,33,615.89
98957023931	25850600000414	Term Loan-V	5,51,11,584.18	4,45,42,702.03	9,96,54,286.21
98957023932	25850600000415	Term Loan-VI	3,20,87,100.75	2,62,50,270.75	5,83,37,371.50
98957023935	25850600000416	Term Loan-VII	2,39,99,999.60	1,94,05,121.25	4,34,05,120.41
98957023936	25850600000417	Term Loan-VIII	1,79,99,999.16	1,09,02,308.01	2,89,02,307.61
98957023937	25850600000418	Term Loan-IX	73,99,999.90	22,24,037.65	96,24,037.55
98957023938	25850600000419	Term Loan-X	2,55,99,998.32	2,12,96,114.35	4,68,96,112.67
98957023952	25850600000420	Term Loan-XI	3,79,99,999.16	3,07,12,643.17	6,87,12,642.33
98957023953	25850600000421	Term Loan-XII	4,77,99,999.47	3,97,65,294.42	8,75,65,293.89
		BG LIMIT	750,00,000.00		750,00,000.00
		LB Charges	76,54,188.00		76,54,188.00
		TOTAL	53,21,16,016.88	34,88,95,912.74	88,10,11,929.62

9. The list of documents attached/annexed to the petition are as follows:

1.	Copy of Concession Agreement dated 24.10.2011	Exhibit-Q
2.	Copy of Lenders Agent Agreement dated 11.10.2012	Exhibit-R
3.	Copy of Inter Creditor Agreement dated 11.10.2012	Exhibit-S
4.	Copy of Escrow Agreement dated 11.10.2012	Exhibit-T
5.	Copy of Corporate Guarantee executed by Kesar Terminal & Infra Ltd. dated 11.10.2011	Exhibit-U
6.	Copy of Substitution Agreement dated 11.10.2012	Exhibit-V
7.	Copies of Bank Guarantee dated 19.10.2012 & 18.02.2016	Exhibit-W
8.	Copies of Renewal Letters dated 06.10.2017 and 09.02.2018	Exhibit-X
9.	Copy of Letter of Acknowledgement of Debt by Borrower/Guarantor dated 13.06.2018	Exhibit-Y

10. The Petitioner has enclosed details of loan and interest charged therein and the amounts outstanding as per the table below:

BOB TL	Edb TL	PRINCIPAL	INTEREST	TOTAL CLAIM AS ON 31.10.2020
25850600000410	098957023904	2,60,69,173.53	1,59,65,798.37	4,20,34,971.90
25850600000411	098957023905	12,66,70,994.34	10,36,28,806.62	23,02,99,800.96
25850600000412	098957023910	1,58,63,328.46	88,28,852.26	2,46,92,180.72
25850600000413	098957023911	3,28,59,652.01	2,53,73,963.88	5,82,33,615.89
25850600000414	098957023931	5,51,11,584.18	4,45,42,702.03	9,96,54,286.21
25850600000415	098957023932	3,20,87,100.75	2,62,50,270.75	5,83,37,371.50
25850600000416	098957023935	2,39,99,999.16	1,94,05,121.25	4,34,05,120.41
25850600000417	098957023936	1,79,99,999.60	1,09,02,308.01	2,89,02,307.61
25850600000418	098957023937	73,99,999.90	22,24,037.65	96,24,037.55
25850600000419	098957023938	2,55,99,998.32	2,12,96,114.35	4,68,96,112.67
25850600000420	098957023952	3,79,99,999.16	3,07,12,643.17	6,87,12,642.33
25850600000421	098957023953	4,77,99,999.47	3,97,65,294.42	8,75,65,293.89
	BANK GTY	7,50,00,000.00		7,50,00,000.00
	LB CHARGES	76,54,188.00		76,54,188.00
	TOTAL	53,21,16,016.88	34,88,95,912.74	88,10,11,929.62

11. Statement of Accounts showing the outstanding amount due is annexed with the Petition. The letter of acknowledgement issued by the Corporate Debtor and Corporate Guarantor dated 13.06.2018 is annexed below:

14/06/18

**LETTER OF ACKNOWLEDGEMENT OF DEBT BY BORROWER
AND/OR GUARANTOR**

ACKNOWLEDGEMENT OF DEBT

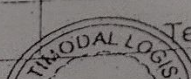
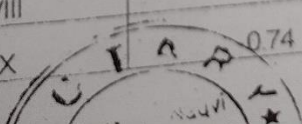
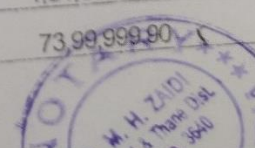
To
The Branch Manager
DENA BANK
Corporate Business Branch-II
Mumbai.

Dear Sir,

A/c Kesar Multimodal Logistics Limited

- I/We refer to the credit facility/ies granted to me/us and the charge by way of Hypothecation/Pledge of Goods/Mortgage on my/our Current Assets and/or on movable plant & machineries and/or on my/our immovable property/ies as mentioned in the document/s executed by me/us in your favour to secure all sums due and payable in respect of the said credit facility/ies.
- I/We do hereby confirm that all the security document/s executed by me/us and the security/ies created by me/us in favour of you in respect of the said credit facility/ies are subsisting, valid and effective and are fully enforceable against me/us and that I/we am/are liable to you in accordance with the terms thereof.
- I/We also do hereby admit, confirm and acknowledge my/our liability and accept my/our indebtedness to you that at the foot of my/our relative borrowal account/s, the following amount/s which includes interest up to July 2017 is/are due and payable by me/us to you together with further interest, interest-tax, as applicable, costs, charges and expenses and other moneys in terms of the security document/s. My/Our liability shall remain in full force with all relative securities, agreements and obligations as mentioned therein.

Sr. No	Nature of Credit Facility/ies	Sanctioned amount (Rs. in crores)	Amount Outstanding Rs. (as of 02-06-2018)
1	Term Loan-I	4.20	3,78,19,388.46 ✓
2	Term Loan-II	13.72	12,66,70,994.34 ✓
3	Term Loan-III	1.96	1,58,63,328.46 ✓
4	Term Loan-IV	4.06	3,28,59,652.01 ✓
5	Term Loan-V	5.82	5,51,11,584.18 ✓
6	Term Loan-VI	3.25	3,20,87,100.75 ✓
7	Term Loan-VII	2.40	2,39,99,999.16 ✓
8	Term Loan-VIII	1.82	1,81,99,999.60 ✓
9	Term Loan-IX	0.74	73,99,999.90 ✓

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-97/MB/2021

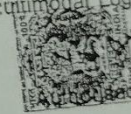
Sr. No	Nature of Credit Facility/ies	Sanctioned amount (Rs. in crores)	Amount Outstanding Rs. (as of 02-06-2018)
10	Term Loan-X	2.56	2,55,99,998.32 <
11	Term Loan-XI	3.80	3,79,99,999.16 <
12	Term Loan-XII	4.78	4,77,99,999.47 <
13	Bank Guarantee [Financial/Performance]	9.00	7,50,00,000.00 <

4. This acknowledgement of debt is given by me/us for the purposes of Section 18 of the Limitation Act, 1963 and in order to preclude any question being raised on limitation regarding my/our liability to your Bank for the payment of the said outstanding amounts in respect of the present as well as my/our future indebtedness and liabilities in respect of the said credit facility/ies together with interest, interest-tax, if any, costs, charges, expenses and other moneys in terms of all relative security document/s, security/securities and obligations as mentioned therein.

Dated at Mumbai this the 13th day of June 2018.

Yours faithfully,

For Kesar Multimodal Logistics Ltd.



Signatory

(Signature/s of the Borrower/s)

We Kesar Terminals and Infrastructure Limited the guarantor/s, concur in the foregoing confirmation and acknowledge and declare that the Letter of Guarantee dated 11-10-2012 signed by me/us is in full force and effect and that I/we am/are and will remain liable to you thereunder in accordance with the terms thereof.

Dated at Mumbai this the 13th day of June 2018

Yours faithfully,

Terminals & Infrastructure Limit.

Authorised Signat.

(Signature/s of all the Guarantor/s)

Reply by the Corporate Debtor:

12. The Corporate Debtor raised preliminary issue of limitation, forum shopping and maintainability of the petition and further claims whether the petition is filed beyond the period of three years of limitation and hence it is barred by limitation. The date of default as shown in the petition is 31.08.2017. However, the Petition has filed on 18.11.2020 which is beyond three years.
13. The Corporate Debtor contended that the Petitioner had already initiated action before DRT, Jabalpur vide OA-1738/2019. First, the Petitioner cannot file before this Tribunal as there are disputes pending in respect of the claim of the bank and the same is not in default.
14. The Corporate Debtor further pointed out that the CP-3288/2018 was dismissed by this Tribunal on 02.12.2019. Therefore, the Petitioner cannot approach this Tribunal once again for the same fact. The petition is hit by *Resjudicata*.
15. The Mandi Board vide RFP invited interested parties to bid for concession of Composite Hub for 33 years. An SPV was formed to implement, construct and operate a Composite Logistic Hub at Pawarkheda, Hoshangabad District, on a Public Private Partnership (PPP) basis, on 88.30 acres of land pursuant to the Concession Agreement signed with the Mandi Board, with the obligation, inter alia, for development of infrastructure for agricultural marketing and warehousing in the state of Madhya Pradesh and facilitate the farmers to store and market their produce to enable them to fetch fair prices, as per the recommendation of

the National Agriculture Commission on a DBFOT mode. Eventually Concession Agreement was executed on 24.10.2011. In order to raise funds for the construction and development of Logistic Hub, the Corporate Debtor approached Bank and availed a credit facility of Rs.108.11 (term loan of 99.11 crores and non-fund of Rs. 9.00 crores).

16. However, due to reasons beyond their control, like change in technical specifications by Indian Railways, non-availability of coal for land levelling due to ban of Supreme of Court of India on soil evacuation, non-availability of railway staff, due to fire at Itarsi station and derailment at Halda station, the construction of Logistic Hub could not be completed as per plan whereas rail operation commenced on 19.04.2016. There were increase in scope of work and hence the Corporate Debtor sought enhancement of loan amount to Rs.45.34 crores, out of which, Rs.22.46cr were sanctioned by Dena Bank. Allahabad bank did not sanction their share of Rs.11.44 crores. Resultantly, the Corporate Debtor were constrained to rely internally generated cash / promoters' contribution to advance the construction and development of composite Logistic Hub. However, Allahabad Bank did not sanction its share of Rs. 11.44 crores and consecutively, the Corporate Debtor could not avail loan of Rs. 33.00 crores from Bank of Baroda. Then the Corporate Debtor had to use internally generated cash / promoters' contribution, which otherwise would have been used to pay the repayments of loan.
17. The Corporate Debtor further pointed out that due to losses and unavailability of expected business and backlog of interest, they

approached the petitioner bank for restructuring vide letter dated 03.08.2017 and 12.10.2017. The Joint Lenders meeting on 20.11.2017 the KLF desired to restructure its financial and invoke statistic restructuring scheme SDR scheme.

18. In view of the SDR scheme, the Board of Directors passed a resolution dated 13.02.2018 to issue equity as per the terms and conditions of SDR scheme. However, subject to approval of SDR plan, RBI on 12.02.2018 vide Circular No.: R-2017-18/131DBR.No.BP.BC.101/21.04.048/2017-18. The RBI withdrew all the scheme plan qua inter alia the SDR schemes which were aimed at the resolution of Stressed Asset of economy and discontinued Joint Lenders Forum.
19. Further the Bank of Baroda communicated to the Corporate Debtor its inability to continue the SDR plan and declared the account to be NPA vide letter 28.3.2018 retrospectively w.e.f. 20.11.2017.
20. The withdrawal of RBI circular dated 12.02.2018 were challenged in the High Court of MP and Jabalpur Bench vide Writ Petition No. 12620 of 2018. The said Petition was dismissed on 02.06.2018. A special Leave Petition was filed before the Hon'ble Supreme Court on 22.10.2018 challenging the applicability of RBI Circular. The Hon'ble Supreme Court disposed the Special Leave Petition and declared the RBI circular ultra virus.
21. On 02.04.2019 the Corporate Debtor in the consortium meeting with the consortium banks held on 08.04.2019 requested to declare the Corporate Debtor account as standard account and implement SDR plan.

22. Despite the Hon'ble Supreme Court quashing the RBI Circular the banks backed out from the SDR plan. The Corporate Debtor filed Writ Petition 1504 of 2019 before the Hon'ble Bombay High Court on 30.04.2019 inter alia seeking Writ of Mandamus directing the consortium banks to reinstate the SDR plan with regard to the Corporate Debtor to its former position of implementation, as if the RBI circular dated 12.02.2018 had never been passed and set aside all consequential actions of the consortium banks.
23. The RBI issued revised Circular on 07.06.2019 providing a framework of resolution of said asset. Clause 31 of RBI Circular dated 07.06.2019 provides as follows:

“The lenders shall not reverse the provisions maintained as on April 2, 2019 in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recover or resolution following the instructions of this circular. Any RP under consideration as on the date of this circular may be pursued by lenders under this revised framework subject to meeting the requirements/conditions specified in this framework”.

24. The Petitioner vide letter dated 11.06.2019 invited Corporate Debtor to consortium meeting on 14.06.2019. However, the petitioner did not record the request of Corporate Debtor to implement the SDR scheme. Corporate Debtor further vide letter dated 24.06.2019 sought implementation of SDR as follows:
- a. Corporate Debtor did not agree with the contention of the Bank that SDR is not a feasible proposal and reiterated that the RP in the form

of SDR can be implemented in light of the Set-aside RBI Circular and by the saving clause 31 of the Revised RBI Circular.

- b. Discussions about prospective investors and services of M/s. Aurum Equity Partners LLP engaged for the purpose of locating investors.
 - c. Positive developments and substantial improvements in the turnover and profitability.
 - d. Pendency of the Writ Petition for the implementation of the SDR scheme.
 - e. Consideration of the SDR scheme as the RP.
25. The Corporate Debtor further pointed out that the Petitioner prior to filing of the captioned Petition, filed CP-3288 of 2018 and the same was dismissed on the ground that Petition had become non-est in view of judgment of Hon'ble Supreme Court in Dharani Sugars.

Additional reply filed by the Corporate Debtor:

26. The Corporate Debtor filed Writ Petition No.: 1504/2019 before the Hon'ble High Court for urgent ad-interim relief, on the ground that the Financial Creditor ought to have given credit of SDR Scheme in view of judgment of Dharani Sugars. The Hon'ble Bombay High Court on 24.02.2021 had granted liberty to take up all the contentions in Writ Petition No. 1504/2019 along with the Interim Application No. 5349/2021 before this Tribunal. The said Writ Petition was filed inter-alia seeking re-instatement of SDR plan which had been approved and invoked by the Financial Creditor in favour of Corporate Debtor herein.

27. The Corporate Debtor contented that the Petitioner is estopped in law by way of principle of promissory estopped from backing out of the invocation and subsequent approval of SDR scheme. The Corporate Debtor had acted upon such promise/approval and conducted a board meeting on 13.02.2018 wherein various resolutions were passed with respect SDR scheme and its implementation. Therefore, the Petitioner is estopped from backing out in its commitment and approval.

Rejoinder by Petitioner:

28. The Petitioner contended that Date of Disbursement is 31.08.2017 and limitation of three years expires on 30.08.2020 and Petition was filed on 18.01.2020 and that limitation was expanded by Hon'ble Supreme Court due to outbreak of Covid-19 from 15.03.2020 to 14.03.2021.

29. Further, that the principle of *Resjudicata* will act as a bar for initiating legal proceeding only if an earlier matter is decided by a judicial authority on merits by hearing both parties on facts & circumstances. The Petitioner filed CP-4252/2018 on the basis of RBI Circular dated 12.02.2018, however, since the same was quashed by the Hon'ble Supreme Court in Dharani Sugars, the Tribunal dismissed the Petition and granted liberty to take suitable remedial step as per law.

30. The Petitioner considered the request of the Corporate Debtor to consider the SDR scheme based on the revised Circular in its Joint Lender Forum meeting dated 14.06.2019 and opted to reject the SDR proposal due to lack of adequate cash-flow, no commitment from promoters towards their contribution and failure of the promoters to bring new investors.

FINDINGS:

31. The legal issues arising for consideration is whether any default of non-payment of money under the loan agreement and whether the Petitioner Bank has rejected the SDR scheme even after the revised Circular of RBI dated 07.06.2019.
32. It is undisputed fact that monies were lent, executed Common Loan Agreement dated 11.10.2011, Concession Agreement dated 24.10.2011, Term Loan Agreement 17.04.2012, Lenders Agent Agreement dated 11.10.2012, Deed of Hypothecation dated 11.10.2012, Inter Creditor Agreement dated 11.10.2012, Escrow Agreement dated 11.10.2012 and Substitutional Agreement dated 11.10.2012.
33. The Common Loan Agreement was amended on 03.03.2017 and Master Joint Lender Agreement was executed by the Petitioner with the Corporate Debtor on 03.03.2017. The Corporate Guarantee was also executed by Kesar Terminal & Infra Ltd. The Corporate Debtor further issued Renewal Letter dated 06.10.2017 and 09.02.2018 and have also issued Letter of Acknowledgment of Debt on 13.06.2018. The Petitioner has also enclosed certificate under Bankers' Book of Evidence Act and therefore, claim of amount of Rs.88,10,11,929.62 has sum outstanding towards loan account by the Corporate Debtor as on 31.10.2020.
34. It is relevant to refer to the order of this Tribunal in CP-2388/2018 dated 02.01.2019. The findings of the Tribunal are as follows:

“In the light of the events that took place before filing of the Petition under section 7 of the I&B Code, pending for disposal and considering the reason for demanding invocation of Insolvency Proceedings against the Corporate Debtor by filing Section 7 of I&B Code Petition in the light of the latest Order of the Supreme Court in the case of Dharani Sugars and Chemicals Limited v/s Union of India and others in Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 dated 02.04.2019, this Bench is of the view that undisputedly the impugned Petition under section 7 of I&B Code was filed by the Financial Creditor only because of the issuance of the RBI Circular dated 12.02.2018. The Hon’ble Supreme Court has declared the said Circular ultra vires and the action taken by a Financial Creditor as non-est.

Resultantly, the Petition filed under section 7 of I&B Code (supra) has become non-est, thus dismissed without adjudicating upon the merits of the Debt in question with the liberty to the Financial Creditor to take suitable remedial step, if provided, under any provisions of Law.”

35. The RBI then issued revised Circular dated 07.06.2019. The Petitioner considered the request of Corporate Debtor to consider SDR scheme based on the revised Circular on its JLF meeting dated 14.06.2019, but evidently the Petitioner rejected the SDR proposal due to lack of adequate cash flow, no commitment from the promoters towards this contribution and failure of promoters towards their contribution and failure of the promoters to bring any new investments.
36. The Corporate Debtor filed the reply and additional reply claiming that the petition is barred by limitation and that the petitioner has already filed OA-1738/2019 before DRT, Jabalpur. They also claimed that the Petitioner had earlier filed CP-3288/2018 against the same Corporate Debtor which

was dismissed by this Tribunal on 02.12.2019. Thus, the petition is barred by *Resjudicata*.

37. The Corporate Debtor further pointed out that RBI issued revised Circular on 07.06.2019 providing a framework of resolution of said asset. Clause 31 of RBI Circular dated 07.06.2019 provides as follows:

“The lenders shall not reverse the provisions maintained as on April 2, 2019 in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recover or resolution following the instructions of this circular. Any RP under consideration as on the date of this circular may be pursued by lenders under this revised framework subject to meeting the requirements/conditions specified in this framework”.

38. Upon perusal of the above Petition, reply, additional reply, rejoinder and documents annexed to the Petition and hearing both parties, this Bench is of the opinion that the facts narrated above clearly demonstrate the debt and the default of non-payment of dues by the Corporate Debtor. The dismissal of the CP does not bar the filing of fresh Company Petition as the petition was not dismissed on merits. The Petitioner in CP-2388/2018 has been granted liberty to take steps to enforce the debt as per Law. Therefore, the plea of *Resjudicata* is untenable. There is a clear debt and default in repaying the said amount by the Corporate Debtor. The series of events as narrated by the Corporate Debtor with regard to the RBI Circular and relevant meetings between the parties to implement the SDR scheme is non-est in Law and statutory rights of the Financial Creditor cannot be waived or taken away by virtue of certain contractual scheme such as SDR scheme, more particularly when the SDR scheme

was rejected implemented by the petitioner herein due to lack of adequate cash flow, no commitment from the promoters towards this contribution and failure of promoters towards their contribution and failure of the promoters to bring any new investments. The petitioner has sought to enforce the debt under a contractual agreement and had disbursed the money to the Corporate debtor. There is clear acknowledgement of liability by the Corporate Debtor herein. In view of the aforesaid facts, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

39. The Financial Creditor has proposed Mr. Sudip Bhattacharya as Interim Resolution Professional (IRP) in the matter.
40. It is, accordingly, hereby ordered as follows: -

This Application bearing **C.P.(IB)-97/MB/2021** filed under Section 7 of I&B Code, 2016, presented by **Bank of Baroda**, Financial Creditor/ Petitioner against **Kesar Multimodal Logistics Limited**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

- VI. That this Bench appoints Mr. Sudip Bhattacharya, a registered insolvency resolution professional having Registration Number IBBI/IPA003/IP-N00080/2017-2018/10703 [address: 903, Queensgate Hiranandani Estate, Thane(West), Mumbai – 400 607, email: resolutionsudip@gmail.com] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
41. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
42. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by designated Registrar is to be submitted today.**

Sd/-

Rajesh Sharma
Member (Technical)

17.02.2022

Sd/-

Suchitra Kanuparthi
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV (Special Bench)

1. CP. (IB)97(MB)2021

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SMT. SUCHITRA KANUPARTHI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **17.02.2022**

NAME OF THE PARTIES: Bank of Baroda
V/s
Kesar Multimodal Logistics Limited

SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The Court is convened through Video Conference.

1. Today the matter is posted for pronouncement, before the order was pronounced, Ms. Nishita Nambiar, Ld. Counsel for the Petitioner brought to our notice that this Bench on 01.02.2022 has pass the following order:

2. The order in the IA is reproduced below:

"I.A.217/2022

Ms. Nishitha Nambiar, Ld. Counsel for the Petitioner present/Applicant present.

Ms. Saakshi Saboo, Ld. Counsel for the Respondent present.

Ld. Counsel for the Petitioner submits that the matter was briefly heard and reserved for order by the Bench on 22.11.2021.

This is an application filed by the applicant u/s 60 (5) of the Code for brining Mr. Prashant Jain, Interim Resolution Professional (IRP) on record.

Ld. Counsel for the Petitioner submits that she has enclosed Form-II, the consent of Mr. Prashant Jain to act as IRP in the matter.

The fresh Form-II is taken on record. Nothing survives in the Application. I.A. 217/2022 stands disposed of".

3. In view of the above order, the consent form-2 of Mr. Prashant Jain to act as IRP in the matter was taken on record. Therefore, this Bench confirms the appointment of Mr. Prashant Jain as IRP in the said matter.
4. However, our order of admission records the appointment of Mr. Sudip Bhattacharya as IRP and the same is now replaced with **Mr. Prashant Jain**, having registration No. **IBBI/IPA-001/IP-P01368/2018-2019/12131** as IRP in the above matter.

Sd/-
RAJESH SHARMA
MEMBER (Technical)

SVR

Sd/-
SUCHITRA KANUPARTHI
MEMBER (Judicial)