



NEIL INDUSTRIES LIMITED

CIN : L51109WB1983PLC036091

Date: December 11, 2023

To,

Corporate Relationship Department,
Bombay Stock Exchange
Phiroze, JeeJeebhoy Tower
Dalal Street
Mumbai 400 001.

Scrip Code: 539016 (NEIL), ISIN: INE396C01010

Subject: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015

Dear Sir,

Kindly refer to our Letter date 24.07.2023, whereby we had made Disclosure under Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015 ("LODR") and had mentioned therein that Hon'ble National Company Law Appellate Tribunal, New Delhi ("Hon'ble NCLAT") by Order dated 14 July, 2023 in Company Appeal No. Company Appeal (AT) (Insolvency) No 1225 of 2022 Titled as Neil Industries Limited**Appellant** Vs Jawan Mining And Construction ...**Respondent** was pleased to allow the Appeal filed by the Appellant i.e. our Company. The Hon'ble NCLAT, New Delhi was further pleased to remand the matter back to the Adjudicating Authority to consider the Application filed by our Company under Section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC") and had restrained M/s Jawan Mining And Construction, Respondent/ Corporate Debtor from selling its Assets until then.

The National Company Law Tribunal, Jaipur Bench ("Adjudicating Authority") by Order dated 08.12.2023 in CP No. (IB)- 64/7/JPR/2019 has been pleased to admit the said Application filed by our Company under Section 7 of IBC, 2016 and approved the commencement of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The Adjudicating Authority has appointed Mr. Satyandra Prasad Khurania as Interim Resolution Professional and has directed him to take all steps as are required under the Statutes inter-alia in terms of Section 15, 17, 18, 19, 20 and 21 of the Code.

The Outcome of the said Order and its impact on our Company cannot be anticipated at this stage as its depends on completion of CIRP in terms of provisions of IBC, 2016.

R/o : 88 B, (Ground Floor), Lake View Road, Kolkata-700029, Ph.: 033-40088545
Corp. Off.: 14/113, Civil Lines, 402-403, Kan Chambers, Kanpur-208001, M.: 8953338815
E-mail : neilindustrieslimited@gmail.com, neilil@rediffmail.com · Web : www.neil.co.in



NEIL INDUSTRIES LIMITED

CIN : L51109WB1983PLC036091

The above Disclosure has also been uploaded on the website of our Company (neil.co.in) and also on the website of BSE Limited (www.bseindia.com).

Kindly take the above information on your record.

Thanking you

For **Neil Industries Limited**

STUTI SHUKLA Digitally signed by STUTI SHUKLA
Date: 2023.12.11 13:44:47 +05'30'

Stuti Shukla

(Company Secretary & Compliance Officer)

Encl: Order dated 08.12.2023 passed by National Company Law Tribunal, Jaipur Bench.

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)-64/7/JPR/2019

(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:

NEIL INDUSTRIES LIMITED
CIN: L51109WB1983PLC036091
Registered Office: 88B, Ground
Floor, Lake View Road, Kolkata-
700029 (West Bengal)
Corporate Office: 402-403, Kan
Chambers, 14/113, Civil Lines,
Kanpur-208001 (Uttar Pradesh)

...Financial Creditor

VERSUS

JAWAN MINING AND CONSTRUCTION EQUIPMENTS PVT. LTD.
CIN: U29249RJ2007PTC025129
Registered Office: Katewa Sadan
Road No. 3, Jhunjhunu-
333001(Rajasthan)

...Corporate Debtor

FOR THE PETITIONER (S)	:	Amol Vyas, Adv. Danish Akhtar, Adv.
FOR THE RESPONDENT (S)	:	Shashank Kasliwal, Adv. Diwakar Kasliwal, Adv.

Order Pronounced On: 08.12.2023

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ORDER**Per: Shri Rajeev Mehrotra, Technical Member**

1. This Application is filed by *M/s Neil Industries Limited* ('Applicant'/ 'Financial Creditor'), claiming to be a Financial Creditor, through its Managing Director *Mr. Arvind Kumar Mittal*, who is duly authorised *vide* Board Resolution dated 07.02.2019 to file this Application against *M/s Jawan Mining and Construction Equipments Private Limited* ('Respondent'/ 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC'/'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP'), pursuant to default committed by the Respondent in repayment of the loan amount to the Applicant.
2. The Applicant/Financial Creditor is a Public Limited Company incorporated under the Companies Act, 1956 on 25.03.1983 duly registered with the Registrar of Companies, Kolkata, bearing CIN: L51109WB1983PLC036091 and is registered with the Reserve Bank of India as Non-Banking Finance Company. The registered office of the Company is situated at 88B (Ground Floor), Lake View Road, Kolkata, West Bengal – 700029.
3. The Corporate Debtor is a Private Limited Company, incorporated under the Companies Act, 1956 on 08.10.2007 and duly registered with the

Registrar of Companies, Jaipur bearing CIN: U29249RJ2007PTC025129. The registered office of the Company is at Katewa Sadan Road No. 3, Jhunjhunu, Rajasthan – 333001. The Authorised Share Capital of the Corporate Debtor is Rs. 1,80,00,000/- (One Crore Eighty Lakhs Only) and the Paid-up Share Capital is Rs. 1,75,50,000/- (One Crore Seventy-Five Lakhs Fifty Thousand Only).

4. This Adjudicating Authority *vide* Order dated 24.06.2022 had returned this Petition numbered as *CP No. IB 64/7/JPR/2019* preferred by the Financial Creditor under Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor. The Financial Creditor challenged the order dated 24.06.2022 before the Hon'ble NCLAT.
5. The Hon'ble NCLAT *vide* Judgment and Final Order dated 14.07.2023 ('NCLAT Order') held and passed the following directions:

'9. We are of the considered view that, prima facie, the corpus of facts and documents are sufficiently adequate to consider a Section 7 application. We do not find any cogent basis for the Adjudicating Authority to have returned the application of the Financial Creditor. The appeal is allowed. The impugned order is, therefore, set aside.'

6. In light of Hon'ble NCLAT order, this Adjudicating Authority is adjudicating the present Application filed under Section 7 of the Code seeking initiation of CIRP of the Corporate Debtor on merits as below.

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7. The details of the transactions leading to the filing of this application averred by the Applicant vide Diary No. 431/2019 dated 12.03.2019 are as follows:

7.1 It is submitted by the Applicant/ Financial Creditor that the Corporate Debtor availed financial assistance of Rs. 5,95,00,000/- (Rupees Five Crores Ninety-Five Lakhs Only) for the purpose of Working Capital enhancement, as per the terms and conditions set out under the sanction letters. The details of the said loan are as follows:

<i>Particulars</i>	<i>Loan 1</i>	<i>Loan 2</i>	<i>Loan 3</i>
<i>Amount (in Rs.)</i>	<i>25,00,000</i>	<i>4,70,00,000</i>	<i>1,00,00,000</i>
<i>Sanction Letter</i>	<i>20.05.2015</i>	<i>22.05.2017</i>	<i>15.02.2018</i>
<i>Rate of Interest</i>	<i>10% p. a.</i>	<i>12% p. a.</i>	<i>10% p. a.</i>
<i>Period of Loan</i>	<i>36 months</i>	<i>36 months</i>	<i>36 months</i>
<i>Repayment</i>	<i>On-demand</i>	<i>On-demand</i>	<i>On-demand</i>

7.2 It is stated that the Corporate Debtor did not maintain financial discipline in repayment of the loan amount. Therefore, on account of continuous defaults committed by the Corporate Debtor, the Applicant issued a Demand Notice dated 07.01.2019, calling upon the Corporate Debtor to repay the outstanding amount of Rs. 6,44,80,166/- (Rupees Six Crores Forty-Four Lakhs Eighty Thousand One Hundred and Sixty-Six Only) due as of 31.12.2018, but the Corporate Debtor received no response. The Applicant stated that the Corporate Debtor has wilfully submitted its

Confirmation of Accounts admitting the outstanding loan amount due to the Applicant and has annexed the same for the Financial Year 2017-18. Thereafter, on 18.02.2019, the Applicant deposited the cheque bearing no. 0099171 with the bank, which the Corporate Debtor issued at the time of loan disbursement as security. However, the cheque returned with the remark '*Funds Insufficient*', attracting Section 138 of the Negotiable Instruments Act, 1881.

7.3 Consequently, this Application has been filed by the Applicant. As claimed by the Applicant, the Corporate Debtor is liable to pay an amount of Rs. 6,44,80,166/- (Rupees Six Crores Forty-Four Lakhs Eighty Thousand One Hundred and Sixty-Six Only) as on the date of filing of this Application, as an outstanding amount along with interest, as reflected in Part IV of Form- 1, which is reiterated below:

Part IV

S. No.	Particulars of Financial Debt	
1.	Total amount of debt granted Date(s) of Disbursement	<u>Amount of Debt Granted:</u> Principal Amount Rs. 5,95,00,000/- (Rupees Five Crore Ninety-Five Lakh Only) Amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) Date: 26.05.2015 Amount of Rs. 4,70,00,000/- (Rupees Four Crore Seventy Lakh Only) Date: 26.05.2017 to 03.11.2017

		Amount of Rs. 1,00,00,000/- (Rupees One Crore Only) Date: 28.03.2018 (Copy of Bank statements reflecting disbursement of Loan is annexed and marked as Annexure-12)
2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed:</u> Rs. 6,44,80,166/- (Six Crore Forty-Four Lakhs Eighty Thousand One Hundred and Sixty-Six Only). <u>Bifurcation of Amount Claimed:</u> <u>Principal Amount Due:</u> Rs.5,95,00,000/- (Rupees Five Crore Ninety-Five Lakhs Only) <u>Amount due towards interest:</u> Rs.49,80,166/- (Rupees Forty-Nine Lakhs Eighty Thousand One Hundred and Sixty-Six only) (Copy of the Detailed Working of the amount in Default is annexed and marked as Annexure-17)
3.	Date From which debt fell due	Date from Which Debt Fell Due: 30.06.2017

8. The Corporate Debtor has filed a reply on *vide* Diary No. 1067/2019 dated 10.06.2019 and has stated the following:

8.1 Out of the total principal amount of Rs. 5,95,00,000/- (Rupees Five Crore Ninety-Five Lakh Only) disbursed through different loan transactions, the second loan of Rs. 4,70,00,000/- (Rupees Four Crore Seventy Lakh) sanctioned on 22.05.2017 and the third loan of Rs. 1,00,00,000/- (Rupees One Crore Only) approved on 15.02.2018 had not become due and payable by the Corporate

Debtor on the date of filing of this Application (12.03.2019) as the condition in the sanction letters stated the period of the loan to be 36 months. Even if 36 months period has passed, the loan amount does not automatically become repayable until and unless demand is made, as the loan amount shall become due only on demand.

8.2 The Applicant served a demand notice dated 07.01.2019, requesting payment of Rs. 6,44,80,166/- (Rupees Six Crore Forty-Four Lakh Eighty Thousand One Hundred Sixty-Six Only), which contains all three loan amounts, made *vide* three separate sanction letters. Since the loans disbursed in 2017 and 2018 are not due before 2020 and 2021, respectively, the said demand notice does not specify the total amount and components thereof repayable by the Corporate Debtor, qua the sanction letter dated 20.05.2015. Therefore, no demand has been raised validly.

8.3 One director of the Corporate Debtor, Mr. Himanshu Sharma, was hand in glove with the Applicant/ Financial Creditor. He would bring funds into the Corporate Debtor Company through different entities in exchange for 50% shares of the Corporate Debtor and also introduced the Applicant/ Financial Creditor to the Corporate Debtor for infusion of funds. However, Mr. Himanshu Sharma started routing funds being received from the Applicant for making repayments to different entities from which he had himself brought

in the funds. During this period, in January-February, 2018, Corporate Debtor handed over a cheque bearing no. 099171 to Mr. Vimal Sharma (father of Mr. Himanshu Sharma) for making some payments. But, Mr. Vimal Sharma gave the cheque to the Applicant in February 2019 purportedly to reclaim its entire principal amount along with interest, but the cheque got dishonoured. Consequently, a complaint to S.H.O. Police Station, Jhotwara, Jaipur, was made on 22.02.2019 against Mr. Himanshu Sharma and Mr. Vimal Sharma. Copy of FIR dated 09.05.2019 has been annexed in the sur-rejoinder as Annexure SR1.

8.4 The Applicant in the Application stated that the aforesaid cheque was issued as a security for the loan, but it is apparent from the fact that a loan of Rs. 4,70,00,000/- (Rupees Four Crore Seventy Lakh Only) was given in 2017, whereas the cheque itself is from a chequebook used in 2018 and the cheque was presented in February 2019. This shows that Mr. Vimal Sharma misused the cheque in collusion with the Applicant to recall the loan amounts which had not become due.

8.5 Statement for the period from 01.04.2017 to 31.03.2018 was wrongly accepted by Mr. Himanshu Sharma, as the manner of confirmation of accounts does not match how the Corporate Debtor Company maintains its accounts. The Corporate Debtor deducts

TDS on interest paid in March every year. However, the statement of Applicant shows quarterly TDS amounts being payable by the Corporate Debtor, which Mr. Himanshu Sharma has wrongly accepted.

- 8.6 Interest on the loan of Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) and Rs. 1,00,00,000/- (Rupees One Crore Only) has been calculated at 12%, whereas as per the sanction letters dated 20.05.2015 and 15.02.2018, interest was calculated at 10%. Moreover, the entire amount of Rs. 4,70,00,000/- (Rupees Four Crore Seventy Lakh Only) has been shown to be paid on 22.05.2017 and accordingly, interest seems to have been charged. However, the loan amount has been released in tranches, spread over the entire year of 2017.
- 8.7 The Hon'ble Supreme Court, in the matter of *Swiss Ribbons Pvt. Ltd. and Anr. vs. Union of India and others* Writ Petition (Civil) No. 99 of 2018, held that one of the basic principles which differentiate financial and operational creditors is that the financial creditors have a proper repayment schedule. An application under Section 7 of IBC, 2016 can only be made when a default in repayment has occurred, but in the instant case, the Corporate Debtor has been paying interest on time and there has been no

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default by the Corporate Debtor, so to term, the Applicant as Financial Creditor would be bad in law.

9. The Applicant has filed a rejoinder *vide* Diary No. 1456/2019 dated 05.08.2019 stating that:

9.1 Mr. Yash Katewa, Director of the Corporate Debtor, is not authorised to file a reply to the Application as the reply filed by him on the premise of Board Resolution could not be relied on because, in the said resolution, Mr. Yash Katewa has authorised himself as the Authorised Signatory. Therefore, the reply filed on invalid Board Resolution should not be taken on record.

9.2 As per the sanction letters, the tenure of financial assistance was 36 months, but the same was subject to payment of interest on time and maintaining financial discipline as per sanction letters. If the same was not followed, the Applicant could invoke the third condition, i.e., ' repayable on demand' and recall the entire facility for which the condition of payable on demand was stipulated.

9.3 With respect to the demand notice dated 07.01.2019, consolidation of loan amounts is the sole discretion of the lender in case the borrower defaults in repayment of financial assistance and fails to adhere to financial discipline.

9.4 In providing unsecured loans as against security in hand, the Financial Creditor keeps undated cheques for the purpose of

security and the same upon modification of terms and conditions be replaced from time to time. So, it is immaterial from which chequebook the cheques are being issued; if this is the case, the Corporate Debtor/ Corporate Debtor would need to provide the complete details of the entire cheque books used during the year.

10. The Corporate Debtor has filed a surrejoinder *vide* Diary No. 1703/2019 dated 29.08.2019 and stated as follows:

10.1 Mr. Yash Singh Katewa has filed a reply to this Application only upon having been so directed by the Board of Directors and no member of the Corporate Debtor Company has objected to him defending the Company.

10.2 In the rejoinder, the Applicant has stated that the loan amount disbursed in 2017 and 2018 carried a tenure of 36 months; however, as there is a condition of repayment on demand, the aforementioned condition of 36 months is rendered meaningless. Thus, the Applicant has virtually stated that the said loan advancements carried no concept of disbursement of an amount for consideration for the time value of money. The Hon'ble National Company Law Appellate Tribunal in *Sanjay Kewalramani versus Sunil Parmanand Kewalramani & Ors* Company Appeal (AT) (Insolvency) No. 57 of 2018 laid down a critical distinction between a 'debt' and a 'Financial Debt'. In

accordance with Section 5(8) of the Insolvency and Bankruptcy Code, 2016, the essential requirement of a 'Financial Debt' is that it should have been disbursed against the consideration for the time value of money.

11. The Corporate Debtor has filed written submissions vide Diary no. 2939/2019 dated 13.12.2019 stating that:

11.1 The Applicant is a non-banking financial company; thus, their loan is a financial debt. It further stated that the Applicant had not followed RBI Guidelines for declaring Corporate Debtor as NPA and not given any notice that they are declaring Corporate Debtor as NPA.

11.2 Repayment of the amount granted *vide* sanction letter dated 20.05.2015 was never demanded by the Applicant. As the Applicant *vide* notice dated 07.01.2019 made a cumulative demand of Rs. 6,44,80,166/- (Rupees Six Crore Forty-Four Lakh Eighty Thousand One Hundred Sixty-Six Only) which included all the three loan amounts.

11.3 Factually there was never any loan arrangement between the parties. One Mr. Himanshu Sharma was to infuse funds in the Corporate Debtor Company in exchange for equity shares and a threshold limit was orally agreed upon between the parties. However, Mr. Himanshu Sharma failed to meet the criteria.

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Subsequently, upon his request, his obligation to meet the threshold was replaced by the Applicant and the Applicant also was unable to meet the said threshold and accordingly, no shares came to be issued to the Applicant by the Corporate Debtor.

11.4 The Hon'ble NCLAT in the matter of Nikhil Mehta & Sons V/s AMR Infrastructure Ltd. Company Appeal (AT) (Insolvency) No. 07 of 2017, held that only when debt is disbursed against the consideration for the time value of money, can such debt be treated as financial debt under the meaning prescribed under Insolvency and Bankruptcy Code, 2016. The Applicant in the present scenario states that it has the right to demand the monies advanced as and when it deems it fit; the said averment would only go on to establish that the said monies cannot be treated as "financial debt".

12. The Financial Creditor has filed written arguments vide Diary No. 15/2020 dated 06.01.2020 stating the following:

12.1 The Corporate Debtor/ Corporate Debtor has made a total payment of Rs. 43,68,204/- (Rupees Forty-Three Lakh Sixty-Eight Thousand Two Hundred Four Only) and the last payment received by the Applicant was for Rs. 27,00,617/- (Rupees Twenty Lakh Six Hundred Seventeen Only) on 27.03.2018. Thereafter, the Corporate Debtor did not make any further payments.

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12.2 The Corporate Debtor was under a legal obligation to pay the interest quarterly as per the RBI guidelines and was also required to deduct TDS under Section 194A of the Income Tax Act, 1961. The Corporate Debtor has deducted TDS quarterly. However, it has failed to pay interest as per the sanction letters and therefore defaulted on its obligations.

12.3 As per the Master Direction - Non-Banking Financial Company – Non-Systemically Important Non- Deposit taking Company (Reserve Bank) Directions, 2016 (RBI guidelines) issued for NBFCs having an asset below Rs. 500 Crores, the interest on loans is payable either monthly or quarterly. Page no. 16 para 12(v)(h) of the guidelines defines a Non-Performing Asset as follows:

“(h) in respect of loans, advances and other credit facilities (including bills purchased and discounted), the balance outstanding under the credit facilities (including accrued interest) made available to the same borrower/ beneficiary when any of the above credit facilities becomes non-performing asset.”

Since the Corporate Debtor has defaulted in making payment of one loan amount, the said loan facility and all his other credit facilities will become NPA.

12.4 The Applicant has relied on the following case laws:

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- *L&T Infrastructure Finance Company Limited vs. Gwalior Bypass Project Ltd. & Ors.* Company Appeal (AT) (Insolvency) Nos. 676 and 677 of 2019.
- *Innoventive Industries Ltd. vs. ICICI Ltd.* (2018) 1 SCC 407.
- *Nishit B Patel vs. Good Value Financial Services Pvt. Ltd.* Company Appeal (AT) (Insolvency) No. 198 of 2020.

13. The Corporate Debtor has filed one more set of written submissions vide Diary No. 2773/2023 dated 23.11.2023 and stated that the Applicant/Financial Creditor preferred an appeal against the order of this Adjudicating Authority dated 24.07.2022 before Hon'ble NCLAT. The Corporate Debtor has stated that the Hon'ble NCLAT has not commented on the merits of the case and the matter has been remanded back without any directions of the *de novo* hearing.
14. This Adjudicating Authority perused all the relevant papers and found them in order. The Registered Office of Corporate Debtor is situated in Jhunjhunu and therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. The matter is within the limitation period as enunciated under the Law of Limitation.
15. This Adjudicating Authority *vide* Order dated 24.06.2022 ('Impugned Order') had returned Company Petition No. IB 64/7/JPR/2019 preferred by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC/ Code') seeking initiation of Corporate

Insolvency Resolution Process ('CIRP') against M/s Jawan Mining and Construction Equipments Private Limited ('Corporate Debtor'). The Financial Creditor challenged the Impugned Order before the Hon'ble NCLAT.

16. Before we delve into the matter at hand, it is important to refer to the following definitions:

*"3(11) **debt** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"*

*"3(12) **default** means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;"*

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

*"5(8) **financial debt** means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes –*

(a) money borrowed.....

(i)....."

17. A mere plain reading of the provision under section 7 of IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under section 7, the Adjudicating Authority is not

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required to consider the question of the dispute between the parties as long as the 'debt' and 'default' is proved.

18. The basic ingredients to be looked into while passing an order under Section 7 of the code is: (i) there must be a disbursement of loan amount, the same is not paid by the Corporate Debtor i.e., default committed by the Corporate Debtor; (ii) when the debt (whole or any part of instalment) becomes due and payable and; (iii) such dispersal should be made for a consideration of time value of money. Presently, in the case before us, there is disbursement of Rs. 5,95,00,000/- (Rupees Five Crore Ninety-Five Lakh Only) for the purpose of Working Capital enhancement, as per the terms and conditions set out under the sanction letters. Copy of the Sanction Letters dated 20.05.2015, 22.05.2017 and 15.02.2018 are annexed as Annexure-7, 9 and 11 of the Petition.
19. The second essential condition is that the debt (whole or any part or instalment) becomes due and payable. In the present case in hand, the debt became due on demand as mentioned in Sanction Letters attached to the present Petition. The Applicant had made the demand of the sanctioned amount from the Corporate Debtor in the month of January, 2019 wherein in the letter of demand it is mentioned that "*the Company hereby demands the whole amount of Loan as outstanding in the books of the Company along with the interest till the present date within a period of fifteen (15) days from the date of the receipt of this letter*". The

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present letter has been delivered to Corporate Debtor on 15.01.2019 and the debt had become due after 15 days from the date of the delivery of the said notice i.e., 30.09.2019. Therefore, it is evident from the demand letter the debt had become due and payable. Copy of the Demand Notice dated 07.01.2019 demanding outstanding payment is annexed as Annexeure-14 of the Petition.

20. The third essential condition is that the loan disbursal is made for consideration of the time value of money. The Hon'ble Supreme Court of India, in *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021* held that the Time Value of money means that the money which is being given will be more at the time of return. This would be through the interest on the principal amount, in case of absence of interest the debt still qualifies as Financial Debt. In the present matter herein, the alleged debt was repayable along with interest @10% and 12% per annum on different set of loans.
21. The application filed in the prescribed Form No. 1 is complete. The financial debt and further default in the debt payment should be established to initiate proceedings under Section 7 of the IBC. In the present matter, the loan provided by the Financial Creditor does fulfil the requirement of the consideration for time value. In the present matter at hand, the loan has been given for the consideration of the time value of money and the default has been created by the Corporate Debtor. This

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Adjudicating Authority perused all the relevant papers and found them in order.

22. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor. Hence, the present application under Section 7 of the Code is admitted accordingly. Consequently, this Adjudicating Authority approves to commence CIRP against the Corporate Debtor.
23. Under sub-section (3) of Section 7 of the Code, the Financial Creditor proposed the name of *Mr. Satyendra Prasad Khorania* be appointed Interim Resolution Professional ('IRP'), bearing Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 with the email address as *skhorania@live.com*, in the present matter. The office of the IRP is at 402, 4th Floor, Okay Plus DP Metro, Opp. Metro Pillar No. 94, New Sanganer Road, Jaipur, Rajasthan – 302019.
24. The said IRP has filed the written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record. The consent form of IRP is annexed as Annexure – 5 of the Application.

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25. In this matter, the Interim Resolution Professional appointed herein, *Mr. Satyendra Prasad Khorania*, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this Order to IBBI for its records.
26. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.
27. Consequences of commencement of CIRP shall be inter-alia as follows:
- 27.1. The IRP appointed by the Adjudicating Authority, *Mr. Satyendra Prasad Khorania*, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- 27.2. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines

specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.

27.3. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the bank account of IRP within three days from the date of this Order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor.

27.4. In terms of Sections 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers stand suspended, shall extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.


27.5. In terms of Section 7 of the Code, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this Order shall also be communicated to IBBI for its records.

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28. A copy of this Order is to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this Order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.
29. The Registry is directed immediately to send a soft copy of the instant Application along with this Order to the IRP nominated herein on his e-mail ID.
30. Accordingly, *CP No. (IB)- 64/7/JPR/2019* is admitted in the abovementioned circumstances.


DEEP CHANDRA JOSHI
JUDICIAL MEMBER


RAJEEV MEHROTRA
TECHNICAL MEMBER