

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

C.P (IB) No.369/KB/2020

In the matter of

An application under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :

DBS Bank Limited, having its registered office at Marina Boulevard, Marina Bay Financial Centre Tower-3, Singapore-018982 and Express Towers, 16th Floor, Nariman Point, Mumbai- 400021 and Local Branch Office at 4A, Nandlal Basu Sarani, Kolkata- 700071.

... Financial Creditor

Versus

In the matter of:

Hindustan National Glass & Industries Limited, CIN L26109WB1946PLC013294, a Company incorporated under the provisions of Companies Act, 1956 having its Registered office at 2 Red Cross Place Kolkata, West Bengal-700001.

...Corporate Debtor

And

Date of hearing : 08/10/2021

Order Pronounced on : 21 /10/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Vikram Wadehra, . Adv. } For the Financial Creditor
2. Mr. Vidushi Chokhani, Adv.

1. Mr. Jishnu Saha, Sr. Adv. } For the Corporate Debtor
2. Mr. Kuldip Mallik, Adv.
3. Ms. Labanyasree Sinha, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition has been filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **DBS Bank Limited.**, a corporate entity, having its registered office at having its registered office at Marnia Boulevard, Marina Bay Financial Centre Tower-3, Singapore-018982 and Express Towers, 16th Floor, Nariman Point, Mumbai- 400021 and Local Branch Office at 4A, Nandlal Basu Sarani, Kolkata- 700071 through its authorised representative Mr. Pankaj Maroo, duly authorised power of attorney holder of the applicant and also the Vice President of DBS Bank Limited through its **Board Resolution/Power of Attorney dated 09/01/2020** (hereinafter referred to as the Financial Creditor) seeking initiation of corporate insolvency resolution process in respect of the **Hindustan National Glass & Industries Limited, CIN L26109WB1946PLC013294**, another corporate entity, having its Registered office at 2 Red Cross Place Kolkata, West Bengal-700001 (hereinafter referred as the Corporate Debtor).
3. It is submitted in the application that the Corporate Debtor has an authorised share capital of Rs.511, 50, 00,000 and paid-up share capital of Rs.17,91,07,130 (Rupees Seventeen Crore Ninety-One Lakh Seven

Thousand One Hundred Thirty Only). It is further submitted that the financials of financial year 2019 of the Corporate Debtor mentioned the following details about the Corporate Debtor:-

- (i) Assets: INR 3,178.75 crore
- (ii) Income: INR 2403.52 crore
- (iii) Amount of Debt: INR 2609.79 crore
- (iv) Category of Corporate persons: manufacturing Company.

4.It is submitted in the Part IV of the application as particulars of Financial Debt that Total amount of debt granted and disbursed was:-

ECB 1: USD 20 Million and

ECB 2: USD 40 Million.

It is stated that the amount claimed to be in default is **Rs.48,450,708.97** on account of principal and **Rs.6,091, 897.34** towards interest totalling up to **Rs.54,542,606.31** and the date of default is stated to be 31st December, 2019.

It is submitted in Part IV of the application that total amount of Financial Debt

5.It is further submitted in the Part V of the application:

(Particulars of Financial Debt (Documents, Records and Evidence of Default)

1.	Particulars of Securities, if any, the date of its creation, its estimated value as per the creditor	A. Mortgage and First Pari Passu Charge on: a. 50 bighas out of land comprised in Khasra No. 92/5 Khewat Khatauni in Village Gumaniwala, Uttaranchal. b. 1 Acre comprising of land in Khasra No. 230 Khewat Khatauni in village Gumaniwala, Uttaranchal . c. 0.81 acre comprising of land in Khasra No. 230 Khewat Khatauni in village Gumaniwala, Uttaranchal .
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		<p>d. All that comprised in contiguous plots of land at village: Tapovan.</p> <p>e. Immovable properties in Pondicherry as described in Part B of Indenture of Mortgage .</p> <p>f. Immovable properties situated in Mouza: Mahesh: PS Serampore, District-Hoogly, in West Bengal.</p> <p>g. Immoveable Properties situated at Mouza and village Parnala, or Bahadurgarh, Thesil: Jhajjar, P.S.Bahadurgarh, Rohtak, Haryana.</p> <p>h. Immoveable properties situated in Neemrana, Rajasthan .</p> <p>i. Immoveable properties situated in Sinnar, Maharashtra,</p> <p>j. Immoveable properties situated in Nayadupet, Maharashtra,</p> <p>k. All that the contiguous plots of land at villages Thondamanatham and village Thuripet in Villanur Commune in Pondichery</p> <p>l. Parcel of land amounting to 36.29 acres at Mouza Mahesh, PS Serampore, Rishra, Hooghly, West Bengal,</p> <p>m. 50.7 acres of land at Bahadurgarh in Haryana</p> <p>n. 49,951.91 sq metres at Neemranga, Rajasthan</p> <p>B. Second Pari Pasu charge on hypothecated goods, finished goods, semi-finished good, stocks of raw materials, work in process located at various factories/warehouses/ godowns of the Borrower and first pari passu hypothecation and floating charge over all</p>
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		present and future moveable properties of the borrowers including its moveable plant and machinery, furniture and fittings, equipments, computer hardware, computer software, machinery spares and accessories
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4. It is further submitted that the financial creditor has placed on record the following documents:-
- i. A copy of Facility Offer Letter dated 17th August, 2011 is annexed as Annexure-A
 - ii. A copy of Facility Offer Letter dated 21st March 2012 is annexed as Annexure-B.
 - iii. Facility amendment letter dated 8th June 2015 is annexed as Annexure -C
 - iv. Facility amendment letter dated 9th June 2015 is annexed as Annexure-D.
 - v. Facility Agreement dated September 28, 2011 is annexed as Annexure- E.
 - vi. Facility Agreement dated 7th May 2012 is annexed as Annexure-F.
 - vii. Deed of Hypothecation dated 3rd October 2012 is annexed as Annexure-G.
 - viii. Memorandum of Entry dated 9th July 2014 is annexed as Annexure - H.
 - ix. Amendment and Restatement Agreement dated 13th October, 2015 along with Borrowers' Certificate is annexed as Annexure-I.
 - x. Personal Guarantee by Mr. Sanjay Somany dated 11th August, 2015 is annexed as Annexure-J.
 - xi. Personal Guarantee dated 13th October, 2015 by Mr. Mukul Somany is annexed as Annexure-K.
 - xii. A Copy of the Memorandum of understanding for settlement dated 27th August 2018 is annexed as Annexure-L.
 - xiii. Sanction Letter for compromise dated 27th August 2018 is

annexed as Annexure-M.

5. In addition to the above mentioned documents, the Financial Creditor has further attached the following documents along with this application in order to prove the existence of financial debt, the amount and date of default, which are as under:
- i. Statement of Account from 1st January, 2016 to 31st December, 2019, of Hindustan National Glass & Industries Limited, Reference number-000TLFN112930004 is annexed as Annexure-N.
 - ii. Statement of Account from 1st January, 2016 to 31st December, 2019, of Hindustan National Glass & Industries Limited, Reference number-000TLEN12185002 is annexed as Annexure-O.
 - iii. Copy of Memorandum of Association and Article of Association of Corporate Debtor is annexed as Annexure-P.
 - iv. Copy of Certificate of Registration for Modification of charge is annexed as Annexure-Q.
 - v. Table of days of default from 28th March,2018 and amount payable is annexed as Annexure-R.
6. The Financial Creditor has proposed the name of Mr. Girish Sriram Juneja, IRP in Part-III Form-A being Reg. No. IBBI/IPA-001/IP-P00999/2017-18/11646 and by way of written communication, the aforesaid Mr. Girish Sriram Juneja, has filed Form-2 addressing his written communication dated 13th December, 2019 has addressed the NCLT, Mumbai Bench, agreed to accept appointment as the IRP if an order admitting the present application is passed and has certified that there are no disciplinary proceeding pending against him and he is eligible to be appointed as IRP.
7. The Financial Creditor has placed on record letter 17th August 2011 (Annexure-A) whereby the Financial Creditor had agreed to sanction the requested facility to the Corporate Debtor Hindustan National Glass &
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Industries Limited on the specific terms and conditions and compliance mentioned therein. It is specifically mentioned therein that the facility amount was Bilateral Foreign currency loan to the US dollar 40 Million by DBS Bank Ltd., Singapore through DBS Bank Ltd. Kolkata Branch (Arranger) for the purpose of part financing capital expenditure of the Borrower/ Corporate Debtor herein, in compliance with RBIs External Commercial Borrowing guidelines. (ECB guidelines). It is further submitted that the security offered by the Corporate Debtor was pari passu first charge on Fixed Assets (Moveable Immovable Assets) of the borrower both present and future. With an asset cover of 1.25x and the creation of charge to be completed within 6 months from drawdown date and the facility was provided with a period of 7 years from drawdown date and the availability period mentioned therein 180 days from the Facility Agreement and it was further specifically mentioned therein that any portion of the facility that remains un-drawn at the expiry of the availability period would be deemed cancelled and become unavailable for drawing. It was further mentioned in the said letter that the Facility shall be drawn in a minimum amount of US Dollar 5 million or in any multiple of US dollar 1 million in excess thereof and the applicable LIBOR plus 2.45% p.a. It was made clear that all interest payments shall be made in arrears at the end of each interest period (Interest Payment Date) and calculated on the basis of the actual number of days elapsed in a year of 360 days and all interest payments shall be made in arrears at the end of each interest and calculated on the basis of actual number of days elapsed in a year of 360 days. With regard to the repayment, it was mentioned that door to door maturity of 7 years, with a moratorium of 4 years and 10% to be repaid on the 48th months followed by equal half yearly repayment thereafter starting from 54th, 60th, 72nd, 78th & 84th month respectively. The aforesaid agreement mentions various other terms and conditions in detail.

8. Similarly, the Financial Creditor has placed on the record letter dated 21st Mach, 2012 written to the Corporate Debtor whereby referring to

their discussions they informed the Corporate Debtor that “DBS Bank Ltd., Kolkata Branch is agreeable to sanction the requested facility to you.” This will be made available on the specific terms and compliance with the covenants mentioned below.

Facilities may be drawn down on the satisfactory completion of the documents detailed below:-

Borrower : Hindusthan National Glass & Industries Limited
(the “Borrower”)

Type of Facility & Facility Amount : Bilateral Foreign Currency Loan up
to US Dollar 20 Million (Facility)

Lender : DBS Bank Ltd., Singapore (DBS)

Arranger :DBS Bank Ltd. Kolkata Branch (DBS
Kolkata/Arranger

Purpose : For part financing capital expenditure of the
Borrower in compliance with RBIs External
Commercial Borrowing guidelines.

Security : Pari Passu First charge on Entire Present and
future Fixed Assets (Moveable and Immovable
Assets) with an asset cover of 1.25x.

Pari Passu 2nd charge on Current Assets.

Creation of charge to be completed within 6
months from first/initial drawn down date

Tenor : 7 years from drawn down date

Final Maturity : 7 years from drawn down date

Availability Period : 90 days from the Facility Agreement (Agreement
date) date.

Any portion of the facility that remains un-drawn
at the expiry of the Availability period shall be
deemed cancelled and becomes unavailable for
drawing

Drawn down : The Facility shall be drawn in a minimum amount
of USD 5 million or in any multiple of USD 1
million in excess thereof.

Interest Rate : The applicable LIBOR plus 2.45% p.a.

All the interest payments shall be made in arrears at the end of each Interest Period (Interest Payment Date) and calculated on the basis of the actual number of days elapsed in a year of 360 days.

All interest payments shall be made in arrears at the end of each Interest Period (Interest Payment Date) and calculated on the basis of the actual number of days elapsed in a year of 360 days.

9. Similarly, vide letter dated 8th June, 2015 the Financial Creditor wrote to the Corporate Debtor as under:-

Ref. : CDT/ADMIN/431/2015
: 8th June 2015

Hindustan National Glass & Industries Ltd.

2, Red Cross Place
Kolkata- 700001

Kind Attn: Mr. Mukul Somany, Vice Chairman & MD

Dear Sir,

Re: Amendment in ECB Loan Facility of USD 40 Million

BORROWER: ***Hindustan National Glass & Industries Ltd.***

LENDER: *DBS Bank Ltd., Singapore (“DBS”)*

ARRANGER: DBS Bank Ltd., Kolkata Branch (DBS Kolkata/
Arranger)

FACILITY Bilateral Loan Facility of USD 40,000,000(Facility)

Further to our offer letter CDT/ADMIN/396/2011 dated 17th August 2011 for sanctioning ECB Loan Facility duly accepted by the company, we are pleased to offer the following amendment in existing terms and conditions:

Clause being Amended	Existing Clause/ Condition	Amended /Proposed Clause/Condition
Tenor of ECB Loan Facility	7 years	10 years
Security	1. 1 st pari passu charge on all	1. 1 st pari passu charge

	<i>fixed assets</i> 2. 2 nd pari passu charge on all current assets			on all fixed assets 2. 2 nd pari passu charge on all current assets 3. Pledge of promoters shares (51.0% stake) 4. Personal Guarantee of Mr. Mukul Somany and Mr. Sanjay Somay		
Pricing	3 Month L+ 245 bps p.a.			3 Month L+ 270 bps p.a. (effective 1 December 2014 i.e. the cut-off date)		
Repayment	Year	Date	Amount (USD Million)	Year	Date	Amount (USD Million)
	2015-16	Oct'15	4.00	2017-18	Jun.'17	0.8
	2016-17	Apr'15	6.00	2017-18	Dec.17	0.8
	2016-17	Oct'16	6.00	2018-19	Jun.18	0.8
	2017-18	Apr'17	6.00	2018-19	Dec.18	0.8
	2017-18	Oct'17	6.00	2019-20	Jun.19	4.00
	2018-19	Apr'18	6.00	2019-20	Dec.19	4.00
	2018-19	Oct'18	6.00	2020-21	Jun.20	9.00
	Total		40.00	2020-21	Dec.20	9.00
				2021-22	Jun.21	10.8
			Total		40.00	

Other Conditions

The restructuring/re-schedulment of the Facility is subject to compulsory hedging of the entire amount, upfront, After the hedge, the INR equivalent of the Facility must be captured in the security documentation.

Costs and Expenses

: All costs and expenses including but not limited to the legal fees of external and local counsel, publicity, and other costs incurred in connection with the amendment in the Facility will be for the account of the Borrower.

Documentation

: The amendment of the Facility will be subject to the execution of mutually satisfactory documentation with standard provisions for transactions of this type.

Kindly note that the said banking facilities are being extended/ amended (except the changes above) on the same terms and conditions as set out in our CDT/ADMIN/396/2011 dated 17th August 2011 and as governed under facility agreement dated 28th September, 2011 and as amended from time to time.

Kindly accept and save the changes specified above and sign a duplicate copy of this letter in token of your confirmation and acceptance of the above contents.

We look forward to a continuing long and mutually beneficial relationship with your company.

Should you require any clarification, please do not hesitate to contact Mr. Atul Choudhury (Mobile # + 91 8017333136 or at e-mail -atulchoudhury @dbs.com).

Yours faithfully

Authorised Signatory

I/We confirm and accept the above amendment in the terms, conditions and contents mentioned above and the STANDARD TERMS AND CONDITIONS APPLICABLE TO BANKING FACILITIES and confirm that the documents and the information submitted/ to be submitted and the documents that are executed/ to be executed by me/us in your favour to secure the banking facilities are/ shall be true, accurate, complete and correct.

For Hindusthan National Glass & Industries Limited

Vice- Chairman & Managing Director

Name :

Designation:

Date:

(to be signed by Authorised Signatory of the Borrower with affixing Borrower's stamp and date)

Vide another letter dated 9th June 2015, the Financial Creditor informed the Corporate Debtor as under:-

Ref. : CDT/ADMIN/431/2015
: 9th June 2015

Hindustan National Glass & Industries Ltd.

*2, Red Cross Place
Kolkata- 700001*

Kind Attn: Mr. Mukul Somany, Vice Chairman & MD

Dear Sir,

Re: Amendment in ECB Loan Facility of USD 20 Million

BORROWER: ***Hindustan National Glass & Industries Ltd.***

LENDER: *DBS Bank Ltd., Singapore ("DBS")*

ARRANGER: *DBS Bank Ltd., Kolkata Branch (DBS Kolkata/
Arranger)*

FACILITY *Bilateral Loan Facility of USD 20,000,000(Facility)*

Further to our offer letter CDT/ADMIN/155/2012 dated 21st March 2012 for sanctioning ECB Loan Facility duly accepted by the company, we are pleased to offer the following amendment in existing terms and conditions:

Clause being Amended	Existing Clause/ Condition	Amended /Proposed Clause/Condition
Tenor of ECB Loan Facility	7 years	10 years
Security	<ol style="list-style-type: none">1. 1st pari passu charge on all fixed assets2. 2nd pari passu charge on all current assets	<ol style="list-style-type: none">1. 1st pari passu charge on all fixed assets2. 2nd pari passu charge on all current assets3. Pledge of promoters shares (51.0% stake)4. Personal Guarantee of Mr. Mukul Somany and Mr. Sanjay Somay

Costs and Expenses : All costs and expenses including but not limited to the legal fees of external and local counsel, publicity, and other costs incurred in connection with the amendment in the Facility will be for the account of the Borrower.

Documentation : The amendment of the Facility will be subject to the execution of mutually satisfactory documentation with standard provisions for transactions of this type.

Kindly note that the said banking facilities are being extended/ amended (except the changes above) on the same terms and conditions as set out in our CDT/ADMIN/155/2012 dated 21st March 2012 and as governed under facility agreement dated 7th May 2012 and as amended from time to time.

For Hindusthan National Glass & Industries Limited

Vice Chairman & Managing Director

Kindly accept and save the changes specified above and sign a duplicate copy of this letter in token of your confirmation and acceptance of the above contents.

We look forward to a continuing long and mutually beneficial relationship with your company.

Should you require any clarification, please do not hesitate to contact Mr. Atul Choudhury (Mobile # + 91 8017333136 or at e-mail -atulchoudhury @dbs.com).

Yours faithfully

Authorised Signatory

*I/We confirm and accept the above amendment in the terms, conditions and contents mentioned above and the STANDARD TERMS AND CONDITIONS APPLICABLE TO BANKING FACILITIES and confirm that the documents and the information submitted/ to be submitted and the documents that are executed/ to be executed by me/us in your favour to secure the banking facilities are/ shall be true, accurate, complete and correct.
For Hindusthan National Glass & Industries Limited*

Vice- Chairman & Managing Director

Name :

Designation:

Date: 27/7/15

(to be signed by Authorised Signatory of the Borrower with affixing Borrower's stamp and date)

10. The Financial Creditor has placed on record agreement September 28,2011 between
- (1) HINDUSTHAN NATIONAL GLASS & INDUSTRIES LIMITED as borrower (the Borrower)
 - (2) DBS BANK LTD, KOLKATA BRANCH as arranger (the Arranger)
 - (3) THE FINANCIAL INSTITUTIONS listed in Schedule 1 (The Original Lenders) as lenders (the Original Lenders);
 - (4) DBS BANK LTD, SINGAPRE as agent of the Finance Parties (other than itself) (the Agent); and
 - (5)DBS BANK LTD, KOLKATA BRANCH as security trustee for and on behalf of the Finance Parties (the Security Trustee), Inter alia, containing inter alia, all the definitions, terms and conditions as regards and cancellation.
11. The Financial Creditor has further placed on record agreement dated 7th May, 2012 which contains all the terms and conditions in details between:
- (i) HINDUSTHAN NATIONAL GLASS & INDUSTRIES LIMITED as borrower (the Borrower)
 - (ii) DBS BANK LTD, KOLKATA BRANCH as arranger (the Arranger)

- (iii) THE FINANCIAL INSTITUTIONS listed in Schedule 1 (The Original Lenders) as lenders (the Original Lenders);
 - (iv) DBS BANK LTD, SINGAPRE as agent of the Finance Parties (other than itself) (the Agent); and
 - (v) DBS BANK LTD, KOLKATA BRANCH as security trustee for and on behalf of the Finance Parties (the Security Trustee),
12. In the reply affidavit, the Corporate Debtor filed through Bimal Kumar Garodia, the President and the Chief Officer of the Corporate Debtor has submitted that the application is not maintainable and that no date of default has been mentioned by the Financial Creditor in column 6 Part IV of Form-A. It is submitted that the Financial Creditor has itself chosen and adopted an alternative mode of resolution in respect of the Corporate Debtor, and is continuing to measures for the restructuring of its accounts, and on the other hand seeking initiation of CIRP against the Corporate Debtor. It is stated that the Financial Creditor cannot be allowed to approbate and reprobate at the same time. It is submitted that a Techno- Economic Viability Study Agency for Specialized Monitoring was engaged in expiring and adopting alternative method of restructuring the accounts of the Corporate Debtor. It is submitted that the consortium has proceeded to recommence cutback deduction from the month of October,2020 and will receive the proceeds thereof from December, 2020 onwards and therefore, the Financial Creditor is now estopped from proceeding with the present application and that the same is liable to be dismissed.
13. It is further submitted by the Corporate Debtor that the legislative intent behind the enactment of the Code is not to force corporate persons into liquidation to reorganize and resolve the corporate persons. It is submitted that the Financial Creditor is already pursuing an alternative mode and manner of resolution of the Corporate Debtor. The instant purported application is nothing but an abuse of the process of law.

14. It is submitted that the Financial Creditor is one of the lenders of a consortium comprising 12 Bankers/Lenders, who lent and advanced money and granted loan facility to the Corporate Debtor under diverse loan Agreements executed from time to time and upon execution of other banking documents and instruments in usual course of business. It is submitted that the State Bank of India is the leading bank to all other members of the Consortium, including the Financial Creditor. **It is submitted that Corporate Debtor continued to be in distress both commercially and financially for last few years and could not service its debt obligation towards its lenders, as a result of which gradually its loan accounts with all the lenders became irregular and were hence declared and/or categorized as “Non-Performing Asset” (NPA). The Corporate Debtor, however with bona fide intention negotiated with the said lenders for settlement of their outstanding dues and to regularize its loan accounts from time to time. Discussions and negotiations took place in this regard between the Corporate Debtor and the said, lenders in order to formulate an effective resolution plan to pay off the outstanding dues phase-wise, the said settlement plans were in accordance with the schemes promulgated by Reserve Bank of India, from time to time. It is further submitted that the RBI in exercise of its statutory powers, had issued a plan for Resolution of Stressed Assets-Revised Framework Circular on 12/02/2018 and it provided that all lenders must put in place Board- approved policies for resolution of stressed assets under this framework, including the timelines for resolution. As soon as there is a default in the borrower entity’s account with any lender, all tenders -singly or jointly shall initiate steps to cure the default. The resolution plan may involve any actions/ plans/ reorganization including, but not limited to, regularization of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities/investors, change in ownership, or restructuring.**
15. It is submitted that immediately after issue of the said RBI circular, the
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Corporate Debtor held several meetings and negotiations with the said lenders from March, 2018 to August 2018 to formulate a definite plan to implement resolution plan in respect of the said RBI circular and pursuant thereto a MoU dated 27th August, 2018 was signed by the Financial Creditor and all other lenders except LIC, “whereby the borrower shall pay Cash Component of Rs. 1710.00 crores (Rupees One Thousand Seven Hundred Ten Crores only) towards settlement of dues comprising Term Loan principal outstandings, Fund based working capital outstanding, Letters of Credit development and interest accrued upto 28.02.2018. The Borrower shall pay to the Secured Creditors/deposit monies with SBI the lead Bank so as to meet the contingencies arising out of Non-Fund based facilities granted to the Borrower by the Secured Creditors, aggregating Rs.222.08 crores (Rupees two Hundred Twenty Two Crores Eight lacs only) or the actual amount outstanding, whichever is lower. The Borrower shall issue/ cause to be issued/transferred 90 lakh equity shares (Face Value Rs. 2/- per share) of HNGIL in favour of Secured Creditors. Allocation of Equity shares to be based on the total fund-based exposure. Any Non-Fund based outstanding at the end of 3 months (90 days) period to be repaid or covered by 100% cash margin.

16. It is further submitted that on November 13, 2018 a meeting was held amongst the Corporate Debtor, all the said lenders and the said “Lotus”. The Financial Creditor being the Lead Bank was in supervision of the said meeting. In course of the said meeting, it was informed to the said lenders that the said Lotus would not be in a position to invest funds until all lenders approved the Resolution plan in writing. Upon receipt of such approvals, the said Lotus can apply for obtaining statutory approvals from all statutory and other authorities inter alia including the Competition Commission of India and Securities and Exchange Board of India to give effect to its investment in the Corporate Debtor. No copy of the Minutes of the Meeting dated November 13,2018 has been handed over to the Corporate Debtor till date.

17. It is further submitted that a majority of the lenders already issued their letters of approval as mentioned hereinabove, in consonance with the terms of MOU dated August 27, 2018. However, the LIC issued its letter dated November 5, 2018, thereby confirming and approving the said Resolution Plan, only on November 13, 2018, in course of the meeting narrated hereinabove.
18. It is submitted that in such circumstances, SBI, in its capacity as Lead Bank of the Consortium, purported to issue an email dated November 23, 2018 to the Corporate Debtor, purporting to state that if the Corporate Debtor failed to meet its payment obligations as contained in the MOU and the Compromise and Settlement Agreement, within the deadlines stipulated therein, the Consortium would be within its rights to appropriate the amounts already deposited by the Corporate Debtor under such Resolution Plan.
19. It is submitted that despite the above, the BOB by its letter dated November 26, 2018 confirmed and approved the said Resolution Plan. It is stated that the Corporate Debtor bona fide entered into the agreement dated 27th August, 2018 with the belief and understanding that all the lender banks would sign and execute the said agreement on the said date. However, as LIC and BOB ultimately signed and executed the said agreement on November 13 and November 26, 2018 respectively, the Resolution Plan could not be implemented by the Corporate Debtor within the stipulated time period. It is an admitted fact that it is due to the delayed performance of obligations by the said lenders, specifically LIC and BOB, that the Resolution Plan could not be implemented. The Corporate Debtor at no time had any control over the lenders and was never in a position to compel them to perform their obligations.
20. It is further submitted that despite repeated requests and reminders made by the Corporate Debtor from time to time in this regard, the lenders failed to issue necessary letter extending and/or enlarging the

period for implementation of the Resolution Plan till February 22, 2019, despite making repeated promises and assurances to the Corporate Debtor. However, the Corporate Debtor solely on the basis of undertaking and promise made to it by the lenders to enlarge the said period for implementation of the Resolution Plan in the meeting held on December 6, 2018 entered into and executed the said CCPS Agreement with the said Lotus. The said Lotus also proceeded on the basis of such understanding and accepted the same. Immediately after execution of the said CCPS Agreement, the said Lotus duly applied before the Competition of India for obtaining its necessary permission and/or approval to become a strategic investor in the Corporate Debtor.

21. It is further submitted that the Corporate Debtor had further negotiated with the two other Investors namely Goldman Sachs (India) Finance Private Limited and SSG Capital Management (Singapore) Pvt.Ltd. who had also agreed to finance the Corporate Debtor to clear off the necessary dues under the said Resolution Plan. In terms of the negotiation with the said two Investors, the exposure of the Corporate Debtor towards them would amount to about Rs.1000 crores. The Corporate Debtor thereafter held its Board meeting on February 20, 2019 in which the Corporate Debtor had approved the infusion of funds through the said Goldman Sachs (India) Finance Private Limited an SSG Capital Management (Singapore) Pte Ltd. along with other consequential formalities.
22. It is further submitted that the Corporate Debtor at all material time had acted bona fide and due diligence. It is submitted that the Corporate Debtor was ready willing and prepared to proceed by performing its obligation to implement said resolution plan with the legitimate expectation of the lenders.
23. It is further submitted that the Corporate Debtor had instituted Civil Suit being C.S. No. 52/2019 before the Hon'ble High at Calcutta seeking

the following reliefs:-

- (a) Decree for declaration that the Resolution Plan to pay off the debts of the plaintiff as extended from time to time pursuant to an in terms of and/or in continuation of the said MOU dated August 27, 2018 and the Compromise & Settlement Agreement dated September 25, 2018 are lawful, valid and still is in effect and binding upon the plaintiff and the defendant Nos. 1 to 12.
- (b) Declaration that the Minutes of the meeting dated February 26, 2019 and the recordings thereunder and/or terms and conditions thereof and/or portion thereof which are contrary to the said Resolution Plan as extended from time to time pursuant to and in terms of and/ or in continuation of the said MOU and Compromise & Settlement Agreement are unconscionable, illegal, wrongful, void and not binding upon the plaintiff and the defendant Nos. 1 to 12 and is of no effect or further effect;
- (c) Decree that the Minutes of the meeting dated February 26, 2019 and the recordings thereunder and/or the terms and conditions thereof which are contrary to the said Resolution Plan as extended from time to time pursuant to an in terms of an in continuation of the said MOU and Compromise & Settlement Agreement be delivered up and cancelled.
- (d) Mandatory injunction directing the defendant lenders and/or each of them to adhere to the Resolution Plan as extended from time to time in terms of the MOU and the said Compromise & Settlement Agreement and to suitably extend the same for such reasonable period after the proforma defendant receives necessary approval from the Competition Commission of India to infuse funds in the plaintiffs.
- (e) Perpetual injunction restraining the defendant lenders and/or each of them and /or their men, agents, servants and assigns from acting in breach or in derogation or in subversion of the said MOU dated August 27,2018 and the Compromise & Settlement Agreement dated September 25, 2018 and/or to take any step or coercive steps or further steps in breach and/or in derogation of the said MOU and the Compromise & Settlement Agreement in any manner whatsoever.
- (f) Perpetual injunction restraining the defendant lenders and/or each of them and/ or their men, agents, servants and/or assigns from giving any effect or further effect to the Minutes of the meeting dated February 26, 2019 and the recordings thereunder and/or the terms and conditions thereof and/or part or portion thereof which are contrary to the Resolution Plan as extended from time to time in terms of and/or in furtherance of and/ or in continuation of the said MOU and Compromise & Settlement Agreement in any manner whatsoever.
- (g) Receiver,
- (h) Injunction,
- (i) Costs,
- (j) Attachment,

(k) Such other relief or reliefs.

24. It is submitted that the Hon'ble Calcutta High Court passed the following order March 18,2019, which are as under: - **

“ The Court: Affidavit of service filed in Court today be kept with the record.

Admittedly monies are due from the petitioner company to the consortium of banks led by the State Bank of India.

Mr. Mitra, Learned Senior Counsel points out that already approximately Rs.500 crores have been paid by the petitioner to the respondents. From time to time meetings have been held between the petitioner and the respondents. Time to make repayment of the loans have been extended. In so far as State Bank is concerned, the time for repayment stands extended till 31st March,2019. It is submitted that the petitioner has been able to arrange a foreign investor who has agreed to invest a sum of approximately Rs.1400 Crores.

Learned Counsel for the respondent no.1 submits that the total outstanding is in the region of Rs.2800 crores. This is disputed by Learned Senior Counsel for the petitioner.

It is further stated that the State Bank of India has already filed an application before the National Company Law Tribunal (NCLT) against the petitioner. It is submitted that in view of section 231 of the Insolvency and Bankruptcy Code, 2016, the Civil Court has no jurisdiction to entertain any matter which falls within the domain of the NCLT.

I have considered the submissions made on behalf of the parties. I am not inclined to pass any interim order at this stage. Let affidavits be exchanged. Let affidavit-in-opposition be filed within two weeks from date. Reply thereto, if any, may be filed within two weeks thereafter.

It is not in dispute that about 7600 people are in the employment of the petitioner company. It is also well known that the petitioner is a very old company having seven plants all over India. It appears from the pleadings that the petitioner has all good intentions of paying back the dues of the respondents. All it asks for is a little time.

While I am of the view that I cannot pass a mandate on the respondents to grant such time to the petitioner, I am of the view that the respondents being public authorities shall take a reasonable stand and, if possible, allow the petitioner reasonable time to liquidate their dues. It will not enure to anybody's benefit if the petitioner company is wound up.

The respondents are interested in getting back their money. A statement has been made on behalf of the petitioner that the entire dues of the respondents will be liquidated by the end of April, 2019. Hence, I would accept that the respondents would take a responsible

stand in the matter.

List the matter four weeks hence under the heading 'Adjourned Motion'.

Leave is granted to the learned advocate representing the respondent no.9 to file the Vakalatnama in the department after the description of the respondent no.9 in the cause title of the petition is corrected which shall be done in course of the day".

25. It is further submitted that the in the Lender's meeting held on June 4, 2019 and June 7, 2019 SBI as Lead Banker of the JLF asked the Corporate Debtor to deposit a sum of Rs.100 crores to show its bona fide. The said two investors namely the said SSG Capital and the said Goldman also agreed to submit all the relevant documents and papers to fructify the settlement.
26. It is further submitted that by an email communication dated October 27, 2019, the Corporate Debtor immediately replied to the said communication dated October 25, 2019 requesting the Lead Bank not to appropriate the said sum of Rs.100 Crores already paid by it on account of settlement and further informed that the Corporate Debtor had carried out all its obligations as were required to be done in terms of the requisitions made by the lenders.
27. It is submitted that the purported email dated October 25, 2019 was issued by the Lead Bank on behalf of all lenders in derogation of the promises and/or assurances made by them including the Financial Creditor. The Corporate Debtor had already deposited a substantial sum of Rs.100 crores and thereby altered its position on the basis of the promises made by the Financial Creditor. The Corporate Debtor is now also liable before the said two investors. The Financial Creditor and the other said consortium lenders are therefore estopped from contending anything to the contrary. The said communication dated October 25, 2019 is therefore wholly illegal, wrongful and was issued in colourable and arbitrary exercise of power by the Financial Creditor taking advantage of its superior bargaining power and this the same is also contrary to the principles of equity.

28. **It is submitted that the business of the Corporate Debtor, already suffering, was strained to breaking point due to lack of ready manpower and financial resources. The lockdown negatively impacted demand for the products manufactured by the Corporate Debtor, leading to massive stockpiling of finished products at its plants in the absence of regular buyers. Bugged down by huge supplies left abandoned, the Corporate Debtor could not profitably engage in further manufacturing activity. In any event, manpower availability was at an abominable low, and raw materials could not be procured due to severe disruptions in supply transport chains and closure of procurement sources. As will appear from the month wise comparative summary of production and sales of the Corporate Debtor for the Financial Year 2020-21 vis-à-vis Financial Year 2019-20, the business of the Corporate Debtor has taken a steep nosedive.**
29. It is further submitted that on account of reduction in demand in the main segment of the Corporate Debtor i.e. Liquor and Beer which constitutes around 75% to 80% of total sales business of the Corporate Debtor has been impacted to a great extent.
30. It is submitted that the Corporate Debtor has made payment of Rs.488.73 crores towards fund-based settlement and has achieved reduction of non-fund based outstanding by Rs.219.55 crores. Therefore, since the execution of the Memorandum of Understanding dated August 27, 2018, the Corporate Debtor had paid off a total sum of Rs.708.28 crores till date. Out of the said sum, the Financial Creditor has received its pro-rata share of a sum of Rs. 70.33 crores.
31. It is submitted that the instant application is in breach of the understanding between the parties that the debt resolution will be through joint lenders meeting, especially the express assurance and understanding not to take any coercive action against the Corporate Debtor contained in the Minutes of Meeting dated November 17, 2020. It

is submitted that the Corporate Debtor at all material times has acted in a bona fide manner and has taken all possible steps for resolution of the debts.

REJOINDER:

32. The Financial Creditor in its rejoinder submitted that the Corporate Debtor has acknowledged and admitted its liability towards the Financial Creditor and submissions of the Corporate Debtor are liable to be rejected because they are based on false, frivolous and mischievous grounds. It is submitted that the application is complete in all respects. It is further submitted that even though the date of default has not been mentioned inadvertently at Column No. 6 of Part-IV of Form-A, but the defects can always be rectified within 7 days of receipt of such notice from the Adjudicating Authority. It submitted that the date of default of payment of interest is 2nd October 2017 and the date of classifying the debt as a Non-Performing Asset is 31st December 2017, as per the Information Utility Record i.e. National E-Governance Services Limited. It is submitted that on the request of the Corporate Debtor, the consortium including the applicant had agreed to consider the request of the Corporate Debtor in line with the circular issued by the Reserve Bank of India on 12th February 2018 and the MOU had been entered into on 27th August 2018 whereby the applicant/ Financial Creditor along with other lenders had the right to cancel the compromise and Settlement Agreement and take actions permissible under the law if the Corporate Debtor would commit default or breach of the terms and conditions thereof. It is submitted that the parties entered into another Compromise Settlement Agreement dated 25th September 2018 but the Corporate Debtor failed to adhere to the repayment timelines accorded in line with MOU dated 27th August 2018 as well as the Compromise and Settlement Agreement 25th September, 2018. Accordingly, a Joint Lenders' Committee Meeting was held on 25th September, 2018, upon requests and representations made by the Corporate Debtor and again it

was agreed to extend a period of 90 days till 22nd February 2019 for implementation of the repayment schedule.

33. It is stated that even after granting the extended period, the Corporate Debtor failed to make payment in accordance with the repayment schedule. It is further submitted by the Financial Creditor that in spite of repeated extensions and opportunities afforded to the Corporate Debtor, the Corporate Debtor has failed to make the payment as agreed between the parties. This process of granting time continued till 21st July 2020, when the Lenders informed the Corporate Debtor that the OTS sanctioned previously had expired and the same is being treated by the Lenders as a failed OTS. It was informed by the Lenders that the original debt amount of the Corporate Debtor has since stood reinstated and the Lenders thus decided to pursue proceedings before the NCLT, which was also informed to the Corporate Debtor as is manifest from the minutes of the Joint Lenders Committee. It is submitted that all the allegations stated in the reply affidavit are denied and disputed by the Financial Creditor. It is stated that only because the Lenders had initiated a business viability study does not mean that the members of the consortium have waived off their right to initiate proceeding for CIRP. It is stated that the settlement has been termed as failed due to the inability on the part of the Corporate Debtor to make payment of the OTS by adhering to the Timelines in spite of having been granted multiple extensions. The MOU clearly stated that in the event of default the settlement will cease to exist and the debt will be restored to the pre-settlement level and the amount paid in course of the settlement will be forfeited and adjusted against the outstanding dues. Therefore, the applicant is well within its right to proceed against the Corporate Debtor in accordance with law for recovery of the outstanding sums. It is denied in the rejoinder that any coercive steps are being taken by the lenders, or the Financial Creditor is acting in violation or derogation of its own promise not to take any coercive actions against the Corporate Debtor. It is denied by the Financial Creditor that the implementation of the

repayment plan could not take place within the stipulated time due to delay in performance of obligations by the Lenders as alleged. The Applicant had performed its obligation required under the terms but the Corporate Debtor has been unable to perform its obligation under such extended time period as well. It is submitted that the Corporate Debtor had agreed to repay the settlement amount of Rs.1710 Crore but it could only make payment of sum of Rs.290 crore and defaulted in payment of the remainder amount despite having been granted two extensions. It is stated in the rejoinder by the Financial Creditor that a Civil Suit bearing CS No. 52/2019 filed by the Corporate Debtor seeking further extension of time till 30th April 2019 i.e. 3rd extension was declined by the Hon'ble Calcutta High Court and the Learned Bench was of the view that it was completely the Lenders prerogative to give extension in making payment of the settlement amount. It is stated that the Corporate Debtor had kept deposited a sum of Rs.100 crore in a no lien account maintained by the SBI to show its bona fides that the Corporate Debtor will complete the entire process expeditiously. However, the settlement failed and the said sum of Rs.100 crore was appropriated against the outstanding unpaid dues of the consortium members. It is submitted that the Corporate Debtor has no defence at all in the present case and has not been able to adhere to the terms of settlement in spite of repeated extensions and therefore this application may kindly be admitted.

34. We have gone through the application, reply affidavit, rejoinder and sur-joinder, along with all the documents accompanying them, filed by the parties and have also heard the Ld. Counsel for the parties.

35. It is stated that there have been discussions on settlement plan between the Corporate Debtors and the Financial Creditors and minutes of the meetings have also been placed on record. It is noticed that the Ld. Counsel for the SBI and Ld. Counsel for the DBS Bank Limited have given their consent for grant of time to the Corporate Debtor repeatedly

in the past. This Adjudicating Authority is not satisfied with the way repeated requests for extension of time by the Corporate Debtor on the same ground of ongoing discussions with the financial institutions without any substantive progress being evidenced or noticed on the ground, before this Adjudicating Authority. Surprisingly, the financial institutions have also not cared to raise any objection for such repeated requests of time of extension and they do not seem to be very keen on pursuing the matter for reasons best known to them. It smacks of some sort of collusion between the parties, which is nothing but wasting the time of this Adjudicating Authority.

36. During the course of hearing, the Ld. Counsel for the Financial Creditor proposed to give further time to the Corporate Debtor without any written instructions from the financial creditor, which was against the pleadings placed on record by the Financial Creditor. In these circumstances, the Ld. Counsel for the Financial Creditor was asked to withdraw the application because as per the provisions of section 7 and other relevant provisions and, on going through the pleadings of both the parties, no further time could be granted and the petition deserves to be admitted. It is strange that on the one hand, the Financial Creditor filed application for initiation of CIRP against the Corporate Debtor and placed on record their rejoinder and other relevant documents for admission of the application but during the course of oral arguments they tend to support the Corporate Debtor, which is nothing but providing undeserving leverage to the Corporate Debtor by the Financial Creditor by their own Counsel, particularly when in the rejoinder it has been specifically and unambiguously submitted that the corporate debtor has not been able to adhere to the terms of the settlement deed in spite of repeated opportunities granted by the financial creditor. We do not wish to support such a tendency amongst the Bar members, a counsel when engaged by a particular Financial Creditor should stick to its pleadings. In the present matter, the pleadings specifically and loudly speak for admission of the application because the OTS proposal has

failed due to the non-adherence of the terms and conditions fixed between the parties by way of Settlement Agreement. There cannot be any other plea by the Ld. Counsel for the Financial Creditor in such circumstances. However, the Ld. Counsel for the Financial Creditor had indicated that on or before reopening i.e. 20/10/2021, he will seek instructions either to withdraw the application, or else will accept whatever orders are passed by in the present application by this Adjudicating Authority.

37. Since no instructions or application has been filed for withdrawal of the present application, in view of the pleadings of the parties and documents placed on record, this is a fit case for admission and initiation of CIRP against the Corporate Debtor and therefore we pass the following orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **DBS Bank Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Girish Sriram Juneja**, having Registration No. IBBI/IPA-001/IP-P00999/2017-18/11646, by appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs.5,00,000/- (Rupees Five lakh only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 23/12/2021 for the filing of the progress report.

xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on, this 21ST day of October, 2021

Pj