Ref No IOVRVF/2024/tender Dated – 22.07.2024

To
All the Members of IOVRVF!!

Subject:- Quotation invited for appointment of Land & Building - Registered Valuers in the matter of Himalayan Mineral Waters Private Limited

Hon'ble National Company Law Tribunal ("NCLT"), Allahabad Bench vide order dated 03.06.2024 has initiated Corporate Insolvency Resolution Process in the matter of Himalayan Mineral Waters Private Limited ("Corporate Debtor") and Mr Bhoopesh Gupta has been appointed as "Interim Resolution Professional".

Pursuant to Regulation, 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations,2016 (CIRP Regulations 2016), IRP / RP is required to appoint two Valuer(s) for each Class of Assets for ascertaining the fair market value and liquidation value of the Corporate Debtor as per CIRP Regulation, 35.

Further, as per Regulation, 27 of CIRP Regulations 2016, following persons shall not be appointed as Registered Valuer: -

- Relative of the Resolution Professional (RP), namely, **Mr. Bhoopesh Gupta**
- Related Party of the Corporate Debtor, namely, **Himalayan Mineral Waters Private Limited.**
- An Auditor of the Corporate Debtor at any time during the five years preceding the insolvency commencement date.
- A Partner or Director of the Insolvency Professional Entity (IPE) of which the Resolution Professional is a Partner, namely, **AVM Resolution Professionals LLP**.

Details of the Property of Himalayan Mineral Waters Private Limited (Corporate Debtor) at present is as under:

Sl No.	Particulars	Survey No.	Area (Hectare)	Address	Remarks
01.	Land	721	0-61-71	Village: Magnad, Jambusar District : Bharuch Gujrat	
02.	Land	824p1	08-55-93		
03.	Land	836	01-05-22		
04.	Land	837	03-23-75		

**Number of Properties may vary due to availability of further information about the property/ies.

Accordingly, persons / entities aspiring to be appointed as Valuer for the aforesaid CD shall be required to submit a Declaration stating that he/she is eligible to be appointed as Valuer under Regulation, 27 of CIRP Regulation, 2016.

You are requested to submit your Quotation **property wise** (inclusive of all out-of-pocket expenses) plus applicable taxes along with your profile to:-

Bhoopesh Gupta
Interim Resolution Professional
Himalayan Mineral Waters Private Limited
IBBI Registration No.: IBBI/IPA-001/IP-P-01468/2018 -2019/12271
AFA Valid up to: 14.12.2024

Regd. Address with IBBI:
645A/533B Janki Vihar Colony Sector I,
Prabhat Chauraha, Jankipuram,
Lucknow, Uttar Pradesh ,226031
Contact No. (M) 9450457403, 9559430778

Copy of the CIRP commencement order dated 03.06.2024 is attached herewith.

Thanks & Regards

SD/-
IOV RVF Team

#ValuationMatters

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IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.37/ALD/2022

(An application under Section 7 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016).

IN THE MATTER OF:

JAMMU AND KASHMIR BANK

Registered Office/Corporate Office:

M.A. Road, Srinagar, Jammu & Kashmir-190001

Branch Office at:

8 Local Shopping Complex, H-Pocket,

Sarita Vihar, New Delhi-110076.

.....Applicant/ Financial Creditor

Versus

HIMALAYAN MINERAL WATERS PRIVATE LIMITED

C-1/1, Industrial- Area, Selaqui,

Dehradun, Uttarakhand-248001.

.....Respondent/Corporate Debtor

Order pronounced on 03rd June, 2024

Coram:

Mr. Praveen Gupta.	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Rahul Chaudhary, Adv.	: For the Financial Creditor
Ms. Kiran Bala Agarwal, Adv.	: For the Corporate Debtor

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ORDER

1. This Application has been filed on 20.01.2022 by the Financial Creditor named Jammu and Kashmir Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as I&B Code, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form against the Corporate Debtor i.e. Himalayan Mineral Waters Private Limited (hereinafter Corporate Debtor) for a total financial debt of Rs. 50,04,38,456 (Rupees Fifty Crore Four Lacs Thirty-Eight Thousand Four Hundred Fifty-Six Only) being the Corporate Guarantor for the credit facilities availed by the Leel Electricals (hereinafter "Borrower") to the Financial Creditor. The date of Default mentioned in the Part-IV of the credit facilities are as under:-

S. No.	Nature of Facility	Limit Sanctioned	Debt fell Due (Development Date
1.	Working Capital (Fund based)	28.00	31.01.2019
2.	LC/BG (Non Fund-based)	9.00 crores	31.01.2019

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2. The Financial Creditor is a Banking Company formed under the provisions of Jammu & Kashmir Companies Act, 1956 and is governed as per the Banking Regulation Act, 1946. The registered office of the Financial Creditor is located at M.A Road, Srinagar, J&K- 190001 and branch office is located at 8 Local Shopping Complex, H-Pocket, Sarita Vihar, New Delhi- 110076.

3. The Corporate Debtor i.e. Himalayan Mineral Waters Limited is a Company incorporated under the Companies Act, 1956 (now Companies Act, 2013), having its registered office at C-1/1, Industrial Area, Selaqui, Dehradun, Uttarakhand 248001. The Corporate Debtor is engaged in the business of manufacturing of beverages.

4. It is stated in Part-IV of the application that the Operational Creditor namely, MKM Technologies Private Limited of the Borrower filed an application bearing no. C.P.(IB) No. 189/ALD/2019 under Section 9 of the I&B Code, 2016 for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Borrower before this tribunal. The said application was admitted by this tribunal vide order dated 04.03.2020 and vide order dated 06.12.2021 liquidation

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proceedings was initiated against the Borrower. Copy of the order dated 06.12.2021 passed by this tribunal has been annexed as **Annexure- P3** with the Application.

5. It is stated that the Borrower approached the Financial Creditor for the purpose of availing financial facilities in the year 2015. The Financial Creditor sanctioned the Working Capital Facilities of Rs. 35.00 Crores (fund based) and Rs 15.00 Crores (Non Fund based) constituting the total sum of Rs. 50.00 crores out of the total working capital requirements of Rs. 1800 Crores (Rupees Eighteen Hundred Crores Only) under consortium arrangement led by State Bank of Bikaner & Jaipur (now State Bank of India for the purposes of meeting its working capital requirements).

S. No.	Nature of Facility	Limit Sanctioned	Limit Availed	Purpose
1.	Cash Credit (Fund based)	35.00 crores	28.00 crores	To meet the Working Capital Requirement of the Borrower.
2.	ILC/FLC/BG (Non- Crores Fund based)	15.00 crores	-	
Total		**INR 50 Crores**		

6. The aforesaid mentioned credit facilities were sanctioned vide a Sanction letter bearing reference no. JKB/CHQ/A&AP/15-225 dated 11.12.2015 along with Working Capital

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Consortium Agreement dated 15.03.2016. A copy of the Sanction Letter dated 11.12.2015 and a Working Capital Consortium Agreement dated 15.03.2016 are annexed as **Annexure-P4 (Colly)** with the Application.

7. The Corporate Debtor being in the position of the Corporate Guarantor of the Borrower provided surety to the credit facilities availed by the Borrower from the Financial Creditor by executing unconditional, continuing and irrevocable Deed of Corporate Guarantee dated 15.03.2016. The Corporate Debtor as a Corporate Guarantor, has unconditionally, irrevocably and absolutely undertaken that *in the event of any default on the part of the Borrower i.e. Borrower in payment/ repayment of its obligations, or in the event of any default on the part of the Borrower to comply with or perform any of the terms and conditions and covenants contained in the aforesaid sanction letters and Loan Agreements and/or Security Documents, the you shall upon demand, forthwith pay to the us without demur all the amounts payable by the Borrower under the said Agreement and/or the Security Documents.* A copy of the Deed of Corporate Guarantee dated

15.03.2016 has been annexed as **Annexure - P5** with the Application.

8. For the purpose of enhancement of credit facility, Borrower approached the Financial Creditor in the year 2017. The Financial Creditor enhanced the working capital limits/facilities from Rs. 35.00 Crores (fund based) and Rs 15.00 Crores (Non Fund based) totaling Rs. 50.00 Crores to Rs. 70.00 Crores (Rupees Seventy Crores Only) including Fund based/Non-Fund Based out of the total working capital requirements under the Consortium arrangement led by State Bank of Bikaner & Jaipur and the same was enhanced vide Sanction letter dated 13.02.2017. The said credit facility was enhanced by executing Supplementary Working Capital Consortium Agreement dated 01.05.2017. However, after execution of the Security documents, Borrower vide letter dated 02.05.2017, surrendered the enhanced working capital facility to the Financial Creditor. Copy of the Sanction Letter dated 13.02.2017, Supplementary Working Capital and Surrender Letter dated 02.05.2017 has been annexed as **Annexure-P6** with the application. The Corporate Debtor as a Corporate Guarantor of the Borrower stood as surety and

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executed unconditional, continuing and irrevocable Deed of Corporate Guarantee dated 01.05.2017 in favor of the Financial Creditor. A copy the Deed of Corporate Guarantee dated 01.05.2017 has been annexed as **Annexure – P7** with the Application.

9. It is further stated that the Borrower sold its Consumer Durable Business to Havells India Limited for a sum of Rs. 1550 Crores on debt free cash free basis in the year 2017. After this, Borrower requested the Financial Creditor to reduce the working capital limit. In pursuance to such request, the Financial Creditor reduced the working capital limits to Rs. 37 Crore on Pro-rata basis. Thereafter, at the request of the Borrower and in consideration of letter dated 11.01.2018, the Financial Creditor renewed the existing working capital facilities to a sum of Rs. 37 crores (Rupees Thirty-Seven Crores Only) in favour of the Borrower under the consortium of Banks led by State Bank of India ("SBI") vide a Sanction letter bearing reference no. JKB/CHQ/A&AP/34822/2018-75 dated 09.04.2018. Copy of the Sanction letter dated 09.04.2018 has been annexed as

Annexure- 8 with the Application. The said credit facility was availed by the Borrower is mentioned as under:

S. No.	Nature of Facility	Limit Sanctioned (Amount in crores, in Rs.)
1.	Working Capital (Fund based)	28.00
2.	LC/BG (Non Fund-based)	9.00
TOTAL		**37.00**

10. After availing the aforesaid Credit Facilities, the accounts of the Borrower became irregular. However, in spite of repeated requests and demands, the Borrower has failed to regularize its Credit Facility and failed to make payment of the outstanding amounts under the said Credit Facility. Furthermore, the Financial Creditor approached the Borrower with a request to regularize the above said limits under the aforesaid Credit Facility and have thus, committed breach of terms and conditions of the various documents executed.

11. The Financial Creditor alleged that the Borrower has failed to make repayment of the outstanding amounts under the aforesaid Credit Facilities, thereby committing a breach of terms and conditions in respect of various documents executed. Even the Corporate Debtor being the Corporate

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Guarantor of the Borrower failed to make the repayment of the outstanding liability under the Agreement/Contract of Guarantee on account of the default committed by the Borrower and failed to comply to the terms and conditions of the Deed of Corporate Guarantee executed by it in favour of the Financial Creditor.

12. After receiving no payment from the Borrowers, the Financial Creditor declared the Credit Facilities account of the Borrowers to be NPA as on 31.01.2019 as per the Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances issued by RBI.

13. Thereafter, the Notice was issued under Section 13(2) of Securitization Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (SARFAESI) on 12.03.2019. Copy of Notice under Section 13(2) of SARFAESI dated 12.03.2019 has been annexed as **Annexure - P9** with the Application.

14. The Borrower offered an One-Time Settlement ("OTS") to the Financial Creditor vide letter dated 03.12.2019 of Rs. 12.85 Crores as OTS amount in full and final settlement against the entire outstanding amount of debt due to the Financial

Creditor. However, the proposal of the Borrower was rejected by the Financial Creditor vide Letter dated 24.01.2020. A copy of the OTS letter dated 03.12.2019 along with rejection letter dated 24.01.2020 have been annexed as **Annexure-10** with the Application.

15. A Loan Recall Notice was issued on 06.02.2020 by the Financial Creditor, demanding that the Borrower and Corporate Debtor repay the due amount debt outstanding under the credit facilities after the failure to repay the outstanding dues. Since the Borrower did not settle the remaining outstanding dues, the Financial Creditor sent a Guarantee Invocation Notice on 12.02.2020 to all the Guarantors including the Guarantor in this application, requesting payment of the outstanding liability. Copy of the Loan Recall Notice dated 06.02.2020 has been annexed as **Annexure – P11** with the Application. Copy of the Guarantee Invocation Notice dated 12.02.2020 has been annexed as **Annexure-12** with the Application.

16. Furthermore, the Borrower failed to repay its remaining outstanding dues after another Guarantee Invocation Notice dated 01.01.2022 was sent to the Corporate Guarantor by the

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Financial Creditor. Copy of the Guarantee Invocation Notice dated 01.01.2022 is annexed herewith and marked as **Annexure - P13.**

17. The Financial Creditor properly maintained the accounts of the or Borrower and the statement of account which shows a debit balance (Outstanding Balance) as on 31.12.2021 as follows:

S. No.	**Credit Facilities**	**Outstanding As on 31.12.2021**
1.	Cash Credit (Fund Based) (04260201000000029)	50,04,38,456.47
2.	ILC/FLC/BG (Non-Fund based)	-
TOTAL		**Rs. 50,04,38,456.47**

18. During the hearing of the case relating to this application, this tribunal vide order dated 07.11.2022 closed the right to file reply in the matter by the Corporate Debtor after its repeated failures to file reply even after giving repeated opportunities. The relevant extract of the order dated 07.11.2022 is stated below: -

"....

The respondent side has not filed a reply. Last time, it is posted for the last opportunity, and despite of ultimatum

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given for filing reply, the same has not been filed till date. Ld. Counsel appearing for the respondent seeks further time extension. Since time is already given as a last chance, hence, no time extension is given. The right to file reply of the respondent is closed....."

19. After this, Corporate Debtor filed an application I.A No. 25 of 2023 under Rule 11 of NCLT Rules, 2016 for recalling of order dated 07.11.2022 as passed by this tribunal. This tribunal vide order dated 09.10.2023 allowed the I.A. No. 25 of 2023 subject to payment of cost of Rs. 25,000 to be deposited in the 'Prime Minister Relief Fund'. The relevant extract of the order dated 09.10.2023 is reproduced below:-

".....

6. *We have heard the Ld. Counsel representing the parties. We find that the present application has been filed for recalling/ modification of the order dated 7th November, 2022 whereby right to file reply of the respondent/Corporate Debtor was closed. The grounds stated in the application have been that due to the change of address, they did not have adequate information and therefore the reply could not be filed.*

As regards to the objection of the non-applicant/respondent concerning not filing the present application under Rule 49 of the NCLT Rules, we note that the present application has been under Rule 11 of the NCLT Rules 2016 and this being not an ex-parte hearing, the rule 49 of the NCLT Rules, 2016 would not be attracted.

8. *In view of the averments made in the application and the submissions made by the Ld. Counsel representing the parties and in view of the judgment*

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of Hon'ble NCLAT ***Ireo Private Limited (Supra),*** *we are inclined to allow the present application for recalling of the order dated 7th November, 2022 to the extent of closer of the right of the applicant for filing reply in the present matter.*

9. *We therefore allowed the present application by imposing a cost of Rs.25,000/- which is to be deposited in the 'Prime Minister National Relief Fund'. Subject to deposition of the cost as stated above, the reply attached alongwith the present application is taken on record.*

10. *The Ld. Counsel representing Petitioner/Financial Creditor seeks and is granted 10 days time to file rejoinder.*

11. *Let the needful be done within the aforesaid period with advance copy to be supplied to the Ld. Counsel representing the Corporate Debtor.*

12. *IA No. 25/2023 stands disposed of in the aforesaid terms.*

....."

REPLY ON BEHALF OF THE RESPONDENT

20. Consequent to our order dated 09.10.2023, the Corporate Debtor has filed its reply in response to the present application wherein it is averred that Working Capital Consortium Agreement and Deed of Guarantee was executed with 12 banks forming a consortium of banks. No Individual bank has any right to call the outstanding amount of the credit facility taken by the Corporate Debtor. As per clause 23 of the Deed of Guarantee, guarantee given is independent

and distinct from any other security held by the bank. Therefore, consortium bank will form opinion and act collectively.

21. From the interpretation of Deed of Guarantee and Agreement, it can be stated that intention of the consortium bank is not to act unilaterally but collectively. Unilaterally, Financial Creditor cannot declare the event of default and initiate process for loan repayment when it was granted by the consortium of banks. Therefore, application filed by the Financial Creditor is not maintainable.

22. Corporate Debtor further contends that even if the respondent's guarantee were to be enforced unilaterally, the application is not maintainable against the respondent because, there is a variation in the agreement between the banks and the principal borrower since the working capital was reduced to Rs. 37 crores in 2018 at the Borrower's request and was later renewed. Such act was done without seeking consent of the Corporate Debtor. Therefore, the respondent is discharged from liability and the guarantee could not be enforced against it.

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23. The Principal Borrower is already under going liquidation vide order dated 06.12.2021 passed by this tribunal and the Financial Creditor has already filed its claim for a sum of Rs. 391,752, 423 which has also been admitted, therefore for the same set of claim, the same Applicant cannot file section 7 Application for an admitted claim. Copy of the claim of financial creditors as admitted by RP of LEEL Electricals as available in public domain, has been annexed as **Annexure No. 3** with the Reply.

24. Corporate Debtor further contends that the Applicant Bank/Financial Creditor, has acknowledged in its sanction letters that there were other guarantors for the same credit facility in addition to the Respondent nonetheless, they have only decided to pursue legal action against the Respondent, which is not permitted by law.

25. Corporate Debtor further contends that the present application filed by the Financial Creditor lacks authority because the authority attached to it is from 2010, and it cannot be relied upon because the authority was granted by a board resolution issued by the company registered under the Jammu and Kashmir Companies Act, 1977. However,

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based on publicly available information, the applicant bank is now registered under the Companies Act, 2013, as they are filing their annual returns and other documents under the said Act. Since the company previously registered under the Jammu and Kashmir Companies Act, 1977 has ceased to exist, all of the authority or power of attorney granted by them likewise cease to exist, so the current application filed by the applicant bank lacks authorization. Therefore, it is not maintainable. Copy of the relevant pages of annual return of the Applicant Bank has been annexed as **Annexure No. 4** with the Reply.

REJOINDER ON BEHALF OF THE FINANCIAL CREDITOR

26. The Financial Creditor has filed rejoinder in response to the reply of the Corporate Debtor wherein it is contended that the documents submitted on record clearly establish that the Principal Borrower has failed to repay the credit facilities availed which is in the nature of continuous default. The Borrower/Corporate Debtor has been unable to meet repayment obligations despite various efforts by the Financial Creditor. Consequently, the Credit Facility Accounts of the Corporate Debtor have become and remained irregular, with

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the Borrower/Corporate Debtor having defaulted under multiple security documents executed over time.

27. Furthermore, the documents on record clearly show that the Borrower has not repaid the credit/loan facilities availed under the Consortium Agreement, leading to ongoing default and an inability to repay. The Corporate Debtor is liable to pay total outstanding liability of Rs. 53,59,43,864.24. The details of which are given below:-

S. No.	**Credit Facility**	**Outstanding as on 31.10.2023**
1.	Working capital (Fund Based)	53,59,43,864.24
2.	LC/BG (Non-Fund Based)	-
TOTAL		**53,59,43,864.24**

28. It is contended by the Financial Creditor that every Financial Creditor has a right to proceed individually under section 7 of the I&B Code, 2016. It can proceed individually or jointly on behalf of other Financial Creditor. It is stated that in the Deed of Corporate Guarantee dated 01.05.2017, the Corporate Debtor has categorically agreed that the rights and powers conferred on the lenders can be exercised against the Corporate Debtor jointly and/or severally at the discretion of

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the said Banks. The relevant clause of the Deed of Corporate Guarantee dated 01.05.2017 is reproduced below:-

"25. The Guarantor agrees and declare that the rights and powers conferred on the Said Banks by these presents may be exercised against them jointly and/ or severally at the discretion of the Said Banks."

29. Despite providing numerous opportunities, Corporate Debtor failed in repayment of outstanding liability. Therefore, there is Financial debt and default on the part of the Corporate Debtor in repayment of outstanding credit facility.

30. In this regard, Financial Creditor has placed reliance on the judgement passed by the Hon'ble NACLT in the matter of ***Amitabh Kumar Jha vs. Bank of India & Anr. [Company Appeal (AT)(INS) No. 1392 of 2019]***, wherein the following decision was held: -

"6. Per contra, it is submitted on behalf of the Financial Creditor'- Bank of India' that the T&B Code' empowers a single Financial Creditor' to initiate 'Corporate Insolvency Resolution Process', for which consent of other Financial Creditors' is not required. It is submitted that since the factum of debt and default has not been disputed, the independent right of Bank of India' as individual lender to enforce its rights and seek triggering of "Corporate Insolvency Resolution Process' is not affected by the terms of CLA.

"9. *It would be a travesty of justice to raise a plea.....an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation...."*

"10. *The contractual rights, unless recognized by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.*

"12. *In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the Financial Creditor'- Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed..."*

31. Financial Creditor further contends that CIRP can be initiated against the Corporate Guarantor even if Principal Borrower is undergoing liquidation. The liability of Surety or Guarantor arises out of an independent contract. It does not absolve the Guarantor otherwise. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding. The amended Section 60(2) reads as follows:

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"...

(2) Without prejudice to Sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal."

32. As per Section 128 of the Indian Contract Act, 1872, the liability of the Surety and Guarantor is coextensive with that of the principal debtor/borrower. If Borrower is undergoing liquidation, it would not the liability of the Guarantor as a Corporate Debtor.

33. Financial Creditor further contends that the Deed of Corporate Guarantee(s) executed by the Corporate Debtor are independent contract and the Financial Creditor is well within its rights to enforce the Deed of Corporate Guarantee(s) executed by the Corporate Debtor and the present contention raised by the Corporate Debtor has no legs to stand and should be dismissed without any consideration. The Hon'ble NCLAT in the matter ***"Karan Goel vs. M/s. Pashupati Jwellers & Anr - Company Appeal (AT) (Insolvency) No. 1021 of 2019'*** while referring to the

Innovative Industries judgment passed by the Hon'ble Supreme Court of India has clearly held that:

> *"It is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application..... Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application under Section 7 of the IB Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the IB Code."*

34. The Coordinating Bench National COMPANY Law Tribunal, BENCH, CHANDIGARH" in Punjab National Bank vs Power Himalayas in CP (IB) No. 76/Chd/HP/2017 has held that.

> *"Para 33. There is absolutely no scope of any contest from the corporate debtor. It is not the case that back the Bank has not granted any chance to the corporate debtor to repay the amount sanctioned way in the year 2007 and it was renewed on various occasions and rather additional facilities were being granted. The loan has been declared as NPA in the year 2015 and 2 years have passed since then.*
>
> *Para 34 The petitioner-financial creditor has complied with all the requirements of sub-section (3) of Section 7 of the code which is reproduced as under:- "(3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any*

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other information as may be specified by the Board." Para 36 Sub-section (4) of Section 7 of the Code requires the adjudicating authority to ascertain the existence of a default from the records of information utility or on the basis of other evidences. There is no dispute about the fulfilment of the aforesaid requirement by the financial creditor. Apart from the statement of accounts maintained by the Bank, the CIBIL report (Annexure-80) has also been obtained by the Bank with regard to the default. 16 CP (IB) No.75/Chd/HP/2017 37.

Para 37 In view of the aforesaid discussion, the default having occurred and the application being complete, the instant application deserves to be admitted."

35. Financial Creditor further contends that it is incorporated under the Jammu and Kashmir Companies Act, 1957, and this fact is clearly stated in the Petition filed under Section 7 of the IBC, 2016. Hence, the Respondent's argument that the Financial Creditor no longer exists under the Jammu and Kashmir Companies Act, 1957 because it files returns under the Companies Act, 2013, and that the power of attorney executed in 2010 is invalid, is not tenable in this case.

FINDINGS AND ANALYSIS

36. We have heard the Ld. Counsel of both the parties and perused the materials submitted on record.

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37. With regard to the admission of application filed under Section 7 by the Applicant/Financial Creditor for initiating CIRP, the Respondent/Corporate Debtor has at very outset challenged the maintainability of the said application by raising the contention that financial creditor cannot individually proceed against the Corporate Debtor. The application under section 7 has to be filed jointly by all the consortium banks. Further, Corporate Debtor has also raised the contention that since Applicant bank has already filed its claim of Rs. 391,752,423 in the liquidation proceedings initiated against the principal borrower. It cannot file section 7 application for repayment of the same debt against the Guarantor.

38. Ld. Counsel representing the Financial Creditor argued that Applicant is entitled to proceed individually under section 7 of the I&B Code without obtaining the consent of the other banks and the same has been held by the Hon'ble NCLAT in ***Amitabh Kumar Jha (Supra)***. Further, Clause 2.5 of the Deed of the Corporate Guarantee executed by the Corporate debtor on 01.05.2017 states the same that such right can be

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exercised by the said bank *jointly and/or severally at the discretion of the said bank.*

39. The Hon'ble NCLAT in para 12 of its above judgement in the case of ***Amitabh Kumar Jha (Supra)*** has clearly held that financial creditor is allowed to enforce its right against the Corporate Debtor. Similarly the Appellate Tribunal, New Delhi in the matter of ***Mohan Kumar Garg Vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr. (2023) ibclaw.in 547 NCLAT has*** held that law is well settled that proceeding under Section 7 can be initiated against both the Principal Borrower and Corporate Guarantor and there is no inhibition in proceeding against the Corporate Guarantor, although proceeding against Principal Borrower under Section 7 was admitted.

40. In the present case, it is an admitted fact that due to non-repayment of the loan amount availed under the Working Capital Consortium Agreement and failure to execute the Deed of Corporate Guarantee, CIRP has been initiated against the principal Borrower which has now reached the stage of liquidation proceedings. Further, the applicant has already filed its claim before the liquidator of principal

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Borrower. Therefore, the aforesaid contention of the Corporate Debtor is not tenable in view of the said legal position. Furthermore, the Principal Borrower vide letter dated 03.12.2019 tried to executed One Time Settlement (OTS) offer with the Financial Creditor by offering sum of Rs. 12.85 crores is in itself admission of default in respect of financial debt by the Principal Corporate Debtor towards the Financial Creditor.

41. In the light of the aforesaid analysis, there is a clear cut default on part of the Corporate Debtor to pay the outstanding amount and such debt in default has crossed the threshold limit of Rs.1 crore. Therefore, we are inclined to accept that there is a default in terms of the provision of I& B Code, 2016 in respect of the outstanding default amount. Thus, we find that both conditions of Section 7 of I & B Code, 2016 as there being a debt that has been defaulted in payment, which is more than the threshold limit, has been fulfilled, however, after issuance of the recall notice as per the loan agreement, the entire loan amount including the interest amount, amounting to Rs. 50,04,38,456.47 (Rupees Fifty

Crore Four Lakhs Thirty-Eight Thousand Four Hundred Fifty-Six and Paisa Forty-Seven) are in default.

42. The total default amount as stated in Part-IV of the Application is stated as under: -

S. No.	Credit Facilities	Outstanding As on 31.12.2021
1.	Cash Credit (Fund Based) (0426020100000029)	50,04,38,456.47
2.	ILC/FLC/BG (Non-Fund based)	-
TOTAL		**Rs. 50,04,38,456.47**

43. Considering the above, we are of the considered view that there exists financial debt which is payable and there is a default on the part of the respondent. The same is also admitted and acknowledged by the respondent. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the I&B C, 2016. This application is filed within limitation and as such the application deserves to be admitted. We also don't find any merit in the objection of the Respondent objecting to registration of the Financial Creditor under the Jammu and Kashmir Act as under the Companies Act, 2013, all the Companies are included that are registered under the Act or under any previous company law. Hence, the

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authorization issued by the financial Creditor has been considered by us as legally valid.

44. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the "debt" and the "default", which is more than the threshold limit of one crore rupees and hence, the application u/s 7 is found to be fit for initiation of the CIRP against the Corporate Debtor. The Application is also filed on 20.01.2022 which is within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

45. In Part III of Form-I, the Financial Creditor has proposed the name of Mr. Bhoopesh Gupta, as Interim Resolution Professional (hereinafter referred as "IRP"). His Registration Number is No. IBBI/IPA-001/IP-P-01468/2018-2019/12271, and address is 645A/533B JANKI VIHAR COLONY SECTOR I, PRABHAT CHAURAHA JANKIPURAM, Lucknow, Uttar Pradesh ,226031, Email: cabhoopesh@rediffmail.com. He has duly given the consent

in Form No.2 dated annexed at Page 370 with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Bhoopesh Gupta, and found that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 14 December 2024. After considering these details, we appoint Mr. Bhoopesh Gupta, Registration No. IBBI/IPA-001/IP-P-01468/2018-2019/12271, as Interim Resolution Professional (IRP).

46. In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5)(a) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a) of the I & B Code, 2016 against the Corporate Debtor, M/s, **Himalaya Minerals Water Private Ltd**. and accordingly, moratorium is declared in terms of Section 14 of the I&B, Code 2016.

47. The IRP is directed to take steps as mandated under section 13 and 15 of the I&B C,2016 for making public announcement about the commencement of CIRP against the

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Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.

48. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as 'CoC") and shall file a report certifying the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of CoC. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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

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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 the possession of the corporate debtor.

e. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

f. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

49. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

50. The CoC shall appoint a Resolution Professional as per section 22 of the I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within

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the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.

51. We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

52. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

53. List the matter on 09.07.2024 for further proceedings.

Courtesy by Mr Mahesh Sahai 05/06/2024

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CERTIFIED TO BE TRUE COPY OF THE ORIGINAL

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(Ashish Verma)
Member (Technical)
Date 03rd June, 2024

(Praveen Gupta)
Member (Judicial)

05.06.2024

V. K. Asthana
Deputy Registrar
National Company Law Tribunal
Allahabad Bench, Prayagraj (U.P.)