

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
IB-661(PB)/2021**

Item No. 114

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

DBS Bank India Limited (DBIL)
Capital Point Baba Kharak Singh Marg
Connaught Place, New Delhi-110001

.... Petitioner/Financial Creditor

Vs.

M/s. Vayam Technologies Limited
Thapar House, 124, Janpath, New Delhi-110001

.... Corporate Debtor

Order delivered on: 25.03.2022

Coram:

**JUSTICE RAMALINGAM SUDHAKAR,
HON'BLE PRESIDENT
SHRI AVINASH K. SHRIVASTAVA,
HON'BLE MEMBER (TECHNICAL)**

Appearance

For the FC: ... Mr. Dhruv Malik, Ms. Palak Nenwani Adv.
For the CD: ...



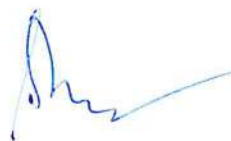
ORDER

PER: ORAL ORDER: RAMALINGAM SUDHAKAR, PRESIDENT

1. This is an application, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Resolution Process (CIRP), against the Respondent/Corporate Debtor namely, M/s. Vayam Technologies Limited (Corporate Debtor).

2. The Petitioner/Financial Creditor namely, DBS Bank India limited (DBIL) (Financial Creditor), is a bank, incorporated on 17.03.2018. The entire business of DBS Bank Limited, has been transferred in DBS Bank India limited (DBIL) vide RBI's Order dated 04.02.2019. In the present case, the Corporate Debtor is a company, incorporated on 01.08.2000, having Company Identification Number U74900DL2000PLC107066 and is situated at Thapar House, 124 Janpath, New Delhi-110001.

3. The Corporate Debtor had availed working capital credit facilities to the tune of Rs. 25 crores sanctioned on 01.08.2011 and renewed thereafter on 13.09.2012 and 22.11.2013 by the Financial Creditor under the Canara Bank Consortium, the other banks besides the Financial Creditor bank being Canara Bank (Lead Bank), Applicant Bank and other member banks namely,



Axis Bank, IDBI Bank Ltd., Standard Chartered Bank and Dena Bank.

4. The Financial Creditor has been awarded Rs. 23,29,19,212.46/- (Rupees Twenty-Three Crore Twenty-Nine Lakhs Nineteen Thousand Two Hundred Twelve and Paisa Forty-Six Only) along-with interest @18% p.a. Vide Recovery Certificate No. 347/2019, on 24.07.2019, with effect from O.A. i.e., 08.10.2015 till realisation

5. The Board of Directors of the Corporate Debtor vide Resolution dated 20.07.2011, passed a resolution for availing credit facility from the Financial Creditor. The Financial Creditor agreed to sanction Working Capital Credit Facility of Rs. 25 crores by offer letter dated 01.08.2011. The sanction of working capital credit facility was granted on 05.08.2011 and on the same day an agreement for Commercial Letter of credit was signed and Executed by the Corporate Debtor. The demand promissory note of Rs. 25 crore was issued on the same day i.e., 05.08.2011 with the interest component and the Corporate Debtor also executed Deed of Hypothecation in favour of the Financial Creditor in respect of the loan of Rs. 25 crores, hypothecating by way of First Pari Pasu charge over existing office/computer equipment, furniture etc., to secure the working capital credit facility.

6. On 05.08.2011, the Corporate Debtor executed Letter of Continuity as security credit for the discharge of the said facility.



Further, few other documents were executed on the same day which is not in dispute.

7. A supplemental working capital consortium agreement dated 14.03.2012, was executed, whereby working capital limit upto an aggregate limit of Rs. 90 crores (fund based) and Rs.190 crores (non-fund based), totalling to Rs. 280 crore was granted to the Corporate Debtor by the Canara Bank Consortium. Further, a Supplemental Joint Deed of Hypothecation dated 14.03.2012, was entered, whereby the Corporate Debtor agreed to principal amount and other amounts on demand. The loan as stated above continued to operate by various subsequent deeds executed between the parties.

8. The list of dates leading to the debt and default is as follows:

DATE	EVENT
20.07.2011	<i>Corporate Debtor passed necessary resolution at the meeting of its Board of Directors for availing credit facility from the Financial Creditor vide resolution dated 20.07.2011.</i>
01.08.2011	<i>Financial Creditor agreed to sanction the Working Capital Credit Facility of Rs. 25 crores vide offer the offer letter.</i>
05.08.2011	<i>The Financial Creditor sanctioned the Working Capital Credit Facility of Rs. 25 crores and entered into a Working Capital Agreement with the Corporate Debtor.</i>
05.08.2011	<i>Agreement for Commercial Letter of Credit was duly signed and executed by the Corporate Debtor.</i>
05.08.2011	<i>Demand Promissory Note of 25 crores with interest thereon at rate mutually agreed with monthly rates and/or rates which may from time to time be prescribed by the Bank for value received was duly signed and executed by the Corporate Debtor.</i>

05.08.2011	<i>The Corporate Debtor Company executed the Deed of Hypothecation in favour of the Financial Creditor of Rs. 25 crores, hypothecating by way of First Pari-passu charge over existing office/computer equipment, furniture & fixtures and electrical installation of Corporate Debtor to secure said Working Capital Credit Facility.</i>
05.08.2011	<i>The Corporate Debtor executed Letter of Continuity as a security credit for the ultimate amount outstanding or sum remaining unpaid on the said facility.</i>
05.08.2011	<i>Deed of Guarantee was executed by the directors of the Corporate Debtor to secure the due repayment of the Credit Facility of Rs. 25 crores with interest.</i>
05.08.2011	<i>The Corporate Debtor executed a Counter Indemnity.</i>
05.08.2011	<i>The Corporate Debtor executed a Letter of Set off and Lien.</i>
12.03.2012	<i>Corporate Debtor passed necessary resolution in the meeting of its board of directors for availing various credit facilities under the consortium arrangement with the Financial Creditor and other member banks of the Canara Bank Consortium, by way of Working Capital Limits.</i>
14.03.2012	<i>Supplemental Working Capital Consortium Agreement dated 14.03.2012 was executed whereby Working Capital Limit upto an aggregate limit of INR 90 Crore (Fund Based) and INR 190 Crores (Non Fund Based) totalling to INR 280 Crores was granted to the Corporate Debtor by the CB Consortium.</i>
14.03.2012	<i>Supplemental Joint Deed of Hypothecation was entered whereby the Corporate Debtor agreed to pay the principal amount and other charges on demand as mentioned in the consortium agreement.</i>
14.03.2012	<i>The member Banks of the CB consortium for their operational convenience entered into an Inter se Agreement to define the right inter se the said Banks.</i>
14.03.2012	<i>Three separate Agreement of Guarantee dated 14.03.2012 were executed by the Corporate Debtor.</i>
14.03.2012	<i>Deed of Corporate Guarantee was executed.</i>

13.09.2012	<i>the Financial Creditor vide its renewal/ sanction letter bearing no. CDT/ADMIN/539/2012 renewed the existing Working Capital Facilities and extended it up to 31.07.2013.</i>
14.05.2013	<i>Corporate Debtor passed necessary resolution in the meeting of its board of directors for availing various credit facilities under the consortium arrangement with the Financial Creditor and other member banks of the Canara Bank Consortium, by way of Working Capital Limits.</i>
17.05.2013	<i>Upon review of the existing Working Capital Facility the Financial Creditor vide its renewal/ sanction letter bearing no. CDT/ADMIN/539/2012 dated 13.09.2012 renewed the existing Working Capital Facilities and extended it up to 31.07.2013.</i>
17.05.2013	<i>Additional Facility being provided by the CB Consortium the Corporate debtor in terms of the Supplementary Working Capital Agreement, the directors of the Corporate Debtor by their respective confirmatory letter of guarantee all dated 17.05.2013 agreed, confirmed and undertook that the Guarantee dated 11.10.2010 as amended from time to time on 14.03.2012 vide a Confirmatory Letters of Guarantee</i>
17.05.2013	<i>Supplemental Joint Deed of Hypothecation was signed and executed.</i>
17.05.2013	<i>Member Banks of the CB consortium for their operational convenience entered into an Inter Se Agreement dated 17.05.2013 to define the right inter se the said Banks.</i>
17.05.2013	<i>To secure the Financial Creditor the Corporate Debtor made Letters/Memorandum of Entry (Evidencing extension of Equitable mortgage) in respect of property situated at E-7/ 10, IInd Floor, Vasant Vihar, New Delhi, Ground Floor, Plot No. 6, Street No. E/4, Vasant Vihar, New Delhi and SCS Plot No. 81, situated at Sector 14, Gurgaon, Haryana and further Corporate Debtor extended the Equitable Mortgage in respect of the property situated at D-319, Sector 63, Noida vide letter dated 20.03.2012 evidencing the</i>

	<i>deposit of the title deed, the charge was duly registered with the ROC, Delhi and Haryana.</i>
<i>17.05.2013</i>	<i>Pledge of 25 lakh equity shares in reference to Pledge Agreement dated 11.10.2010 were executed in favour of the Canara Bank Consortium.</i>
<i>22.05.2013</i>	<i>Certificate of Registration of Charge/Mortgage dated 22.05.2013 along-with FORM 8 whereby charge on the said property was registered.</i>
<i>22.11.2013</i>	<i>Corporate Debtor again approached the Financial Creditor for the renewal of the Working Capital Facility. The Financial Creditor vide its renewal letter bearing No. CDT/ADMIN/655/2013 dated 22.11.2013 renewed the existing Working Capital Facilities up to an aggregate limit of Rs. 22 Crores till September 2014.</i>
<i>23.07.2014</i>	<i>Demand Promissory Note dated 23.07.2014 for Rs. 22 Crores with interest thereon at the rate mutually agreed with the monthly rates and/or rate which may from time to time be prescribed by the Bank for value received.</i>
<i>23.07.2014</i>	<i>Letter of continuity was executed by the Corporate Debtor.</i>
<i>20.06.2015</i>	<i>A Loan Recall Notice dated 20.06.2015 was issued by Financial Creditor invoking the repayment of the total facilities advanced to the Corporate Debtor.</i>
<i>26.05.2015</i>	<i>Liability towards Financial Creditor is also admitted by the Corporate Debtor in clear and unequivocal terms of Revival Letter dated 26.05.2015 with Canara Bank Consortium.</i>
<i>01.08.2015</i>	<i>Corporate Debtor belatedly replied to the Loan Recall Notice.</i>
<i>2015</i>	<i>The Financial Creditor was constrained to file an O.A. in DRT seeking recovery of the loan amount.</i>
<i>18.07.2016</i>	<i>Parties entered to settlement of O.A. NO. 466/2015.</i>
<i>23.10.2017</i>	<i>The Corporate Debtor failed to abide by the terms of the settlement and the Financial Creditor was constrained to issue a default notice.</i>



2017	<i>The Financial Creditor was constrained to file an MA when the Corporate Debtor receded from the terms of settlement.</i>
24.07.2019	<i>The Ld. DRT in Recovery Certificate No. 347/2019 awarded Rs. 23,29,19,212.46/- (Rupees Twenty-Three Crore Twenty Nine Lakhs Nineteen Thousand Two Hundred Twelve and Paisa Forty Six Only) along-with interest @18% p.a. with effect from O.A. i.e., 08.10.2015 till realisation in favour of Financial Creditor. However, the Corporate Debtor has failed to make the payments.</i>
	<i>Hence the present Petition</i>

9. In the above backdrop, the present petition has been filed. The Part-II contains the particulars of the Corporate Debtor at (Pg 12), and the Part-IV contains the details of the financial debt at (Pg14), and the Part-V contains the particulars of the documents, records, and evidence of default at (Pg. 15 -25) of this Petition.

Part II

PARTICULARS OF THE CORPORATE DEBTOR		
1	<i>NAME OF THE CORPORATE DEBTOR</i>	<i>M/s. Vayam Technologies Limited (borrower)</i>
2	<i>IDENTIFICATION NUMBER OF CORPRATE DEBTOR</i>	<i>U74900DL2000PLC107066</i>
3	<i>DATE OF INCORPORATION OF CORPROATE DEBTOR</i>	<i>01.08.2000</i>
4	<i>NOMINAL SHARE CAPTIAL AND THE PAID UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF</i>	<i>Authorized Capital is Rs. 51,02,00,000/- (Rupees Fifty One Crore and Two Lakhs Only) Paid up Capital is Rs. 50,65,75,570/- (Rupees Fifty Crores Sixty Five Lakhs Seventy Five Thousand Five Hundred and Seventy only)</i>



	ASSOCIATION (AS APPLICABLE)	This is as per the records on the website of Ministry of Corporate Affairs. Copy of the master date of the Corporate Debtor obtained from the website of Ministry of Corporate Affairs is annexed here and marked as ANNEXURE 3.
5	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR	Having its registered office at Thapar House, 124 Janpath, New Delhi - 110001

Part-IV

PARTICULARS OF FINANCIAL DEBT					
1	TOTAL AMOUNT OF DEBT GRANTED	The Corporate Debtor was granted debt of Rs. 25,00,00,000/- (Rupees Twenty Five crores) vide offer letter 01.08.2011 and the working capital credit facility was renewed from time to time on 13.09.2012 and 22.11.2013			
	DATE(S) OF DISBURSEMENT	The dates of Disbursement of the amount to the Corporate Debtor by the Financial Creditor as follows -			
		Date	Facility Number	Disbursement Amount	
		01.08.2011	CDT/ADMIN/334/2011 (working capital credit facility)	25,00,00,000	
	13.09.2012	CDT/ADMIN/539/2012 (Supplemental working capital credit facility)	Fund Based Limit 7 Crore	Non-Fund Based Limit 15 Crore	Total Limit 22 Crore
	22.11.2013	CDT/ADMIN/655/2013 (Renewal of working capital credit facilities)	22 Crores		

2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>That total amount of default is Rs. 48,31,28,726.42/- (Rupees Forty Eight Crores Thirty One Lakhs Twenty Eight Thousand Seven Hundred and Twenty Six and Paise Forty Two Only) till 22.09.2021</p> <p>Vide Recovery Certificate No. 347/2019, on 24.07.2019, the Financial Creditor has been awarded Rs. 23,29,19,212.46/- (Rupees Twenty-Three Crore Twenty Nine Lakhs Nineteen Thousand Two Hundred Twelve and Paise Forty Six Only) along-with interest @18% p.a. with effect from O.A. i.e., 08.10.2015 till realisation.</p> <p>Copy of the Recovery Certificate No. 347/2019 in MA NO. 135/2017 in O.A. NO. 466/2015 dated 24.07.2019 is annexed herewith as <u>ANNEXURE 5.</u></p> <p>Computation of amount and days of default in tabular form is annexed herewith as <u>ANNEXURE 6.</u></p>
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Part-V

PARTICULARS OF FINANCIAL DEBT (DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT)

1.	<p>PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR.</p> <p>A.) <u>Immovable Properties:</u></p> <p>a) E-7/10, IInd Floor, Vasant Vihar, New Delhi (MOE Dated 17.05.2013)</p>
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b) Ground Floor, Plot No. 6, Street No. E/4, Vasant Vihar, New Delhi
(MOE Dated 17.05.2013)

c) SCS Plot No. 81, situated at Sector 14, Gurgaon, Haryana (MOE
Dated 17.05.2013)

Copy(s) of Letters/Memorandum of Entry (Evidencing extension of
Equitable mortgage) all dated 17.05.2013 in respect of property
situated at E-7/10, IInd Floor, Vasant Vihar, New Delhi, Ground
Floor, Plot No. 6, Street No. E/4, Vasant Vihar, New Delhi and SCS
Plot No. 81, situated at Sector 14, Gurgaon, Haryana are annexed
herewith and marked as **ANNEXURE 7 (Colly)**.

d) The Corporate Debtor extended the Equitable Mortgage in respect of
the property situated at D-319, Sector 63, Noida vide letter dated
20.03.2012 evidencing the deposit of the title deed, the charge was
duly registered with the ROC, Delhi and Haryana on 07.04.2012.
(MOE Dated 17.05.2013)

Copy of Letters/Memorandum of Entry (Evidencing extension of
Equitable mortgage) dated 17.05.2013 in respect of the property
situated at D-319, Sector 63, Noida is annexed herewith and
marked as **ANNEXURE 8**.

B) Movable Properties:

e) Pledge of 25 lacs equity shares of the Corporate Debtor. Copy of the
letter dated 17.05.2013 whereby 25 lakh equity shares in reference
to Pledge Agreement dated 11.10.2010 executed in favour of the
Canara Bank Consortium is annexed herewith and marked as
ANNEXURE 9.

f) 10% of the amount of the dividend payable, if any to be invested in
FD with Lead Bank and held as collateral security by way of pledge
- security provided by the Managing Director of the Corporate Debtor
Mr. Ashok Tiwari - The document is deposited with the lead bank

g) Undated cheques from the Managing Director of the Corporate
Debtor Mr. Ashok Tiwari for entire exposure of Rs. 400 crores -- The
document available with the lead Bank



- h) Agreement for Commercial Letter of Credit was duly signed and executed by the Corporate Debtor in favour of the Financial Creditor. Copy of Agreement for Commercial Letter of Credit dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 10**.
- i) Demand Promissory Note of 25 crores with interest thereon at rate mutually agreed with monthly rates and/or rates which may from time to time be prescribed by the Bank for value received. Copy of the promissory note dated 05.08.2011 with interest is annexed herewith and marked as **ANNEXURE 11**.
- j) The Corporate Debtor Company executed the Deed of Hypothecation in favour of the Financial Creditor of Rs. 25 crores, hypothecating by way of First Pari-passu charge over existing office/computer equipment, furniture & fixtures and electrical installation of Corporate Debtor to secure said Working Capital Credit Facility. Copy of Deed of Hypothecation dated 05.08.2011 and FORM 8 for registration of Charge is annexed herewith and marked as **ANNEXURE 12**.
- k) The Corporate Debtor executed Letter of Continuity in favour of the Financial Creditor as a security credit for the ultimate amount outstanding or sum remaining unpaid on the said facility. Copy of the Letter of Continuity dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 13**.
- l) A Deed of Guarantee was executed by the directors of the Corporate Debtor in favour of the Financial Creditor to secure the due repayment of the Credit Facility of Rs. 25 crores with interest. Copy of the deed of Guarantee dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 14**.
- m) The Corporate Debtor executed a Counter Indemnity in favour of the Financial Creditor. Copy of the Counter Indemnity dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 15**.
- n) The Corporate Debtor executed a Letter of Set off and Lien on 05.08.2011. Copy of letter of set off and lien dated 05.08.2011 is



annexed herewith as is annexed herewith and marked as **ANNEXURE 16.**

- o) As per the Supplemental Joint Deed of Hypothecation the Corporate Debtor agreed to pay the principal amount and other charges on demand as mentioned in the consortium agreement. The deed provided that the hypothecated assets shall be secured by way of first charge in favour of the Banks jointly and to each of them severally for the due payment and discharge on demand of the said facilities. Copy of the Supplemental Joint Deed of Hypothecation dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 17.**
- p) That three separate Agreement of Guarantee dated 14.03.2012 were executed by the Corporate Debtor in favour of the CB Consortium whereby the directors of the Corporate Debtor individually stood as guarantors for the due payment of the loan amount/credit facility under the Joint Facility Documents to secure the due payment of the Working Capital Facility upto 280 crores. Copy of the Agreement of Guarantee dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 18.**
- q) A Deed of Corporate Guarantee was executed in favour of the CB Consortium inter alia the Financial Creditor by M/s Abhisar Impex Pvt. Ltd. (Corporate Guarantor) for the Corporate Debtor. Copy of the Corporate Guarantee dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 19.**
- r) In view of the Additional Facility being provided by the CB Consortium the Corporate debtor in terms of the Supplementary Working Capital Agreement, the directors of the Corporate Debtor by their respective confirmatory letter of guarantee all dated 17.05.2013 agreed, confirmed and undertook that the Guarantee dated 11.10.2010 as amended from time to time on 14.03.2012 executed by them in favour of the CB Consortium for the facility extended to the Corporate Debtor, the Guarantee extends to the



*Additional Facility and the same shall continue to subsist and remain valid and binding on them. Copy of Confirmatory Letter of Guarantee dated 17.05.2013 are annexed herewith and marked as **ANNEXURE 20.***

- s) *M/s Abhisar Impex Pvt. Ltd. (Corporate Guarantor) for the Corporate Debtor by Confirmatory Letters of Guarantee agreed, confirmed and undertook that the that the Guarantee dated 11.10.2010 as amended from time to time on 14.03.2012 executed by it in favour of the CB Consortium for the facility extended to the Corporate Debtor, the Guarantee extends to the Additional Facility and the same shall continue to subsist and remain valid and binding on it. Copy of Confirmatory Letter of Guarantee dated 17.05.2013 are annexed herewith and marked as **ANNEXURE 21.***
- t) *A Supplemental Joint Deed of Hypothecation dated 17.05.2013 was signed and executed by the Defendant No. 1 in favour of the CB Consortium comprising of the Financial Creditor. The credit facilities in terms of the Consortium Agreement and the Joint Deed of Hypothecation was to be secured by a pari-passu First Charge by way of Hypothecation of the current assets of the Corporate Debtor being stocks, book debts and all other current assts of the company, both present and future and office/ computer equipment, furniture & fixtures, electrical installations and other movable fixed assts (excluding vehicles, building, internally generated software and Capital WIP) standing in the name of the Corporate Debtor wherever they may situate Copy of the Supplemental Joint Deed of Hypothecation dated 17.05.2013 is annexed herewith and marked as **ANNEXURE 22.***
- u) *Demand Promissory Note dated 23.07.2014 for Rs. 22 Crores with interest thereon at the rate mutually agreed with the monthly rates and/or rate which may from time to time be prescribed by the Bank for value received. Copy of the Demand Promissory Note Dated 23.07.2014 is annexed herewith and marked as **ANNEXURE 23.***



v) Letter of continuity dated 23.07.2014 was executed by the Corporate Debtor in favour of the Financial Creditor. Copy of the Letter of Continuity dated 23.07.2014 is annexed herewith and marked as **ANNEXURE 24.**

II) ATTACH A COPY OF CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY

i. Copy of FORM 8 for registration of Charge on Deed of Hypothecation dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 25.**

ii. Copy of FORM 8 for registration of Charge on Deed of Hypothecation dated 17.05.2013 is annexed herewith and marked as **ANNEXURE 26.**

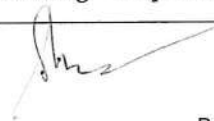
iii. Copy of FORM 8 for registration of Charge on Supplemental Joint Deed of Hypothecation dated 14.03.2012, Supplemental Working Capital Consortium Agreement dated 14.03.2012 and Supplemental Inter-se Agreement dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 27.**

iv. The charge/ modification of charge on Company's current assets by way of first pari passu basis was duly registered in favour of the member banks of the CB consortium inter alia the Financial Creditor, with the office of the registrar of companies, Delhi and Haryana, who also issued a certificated dated 07.04.2012 Copy of the Certificate of Registration of Charge dated 07.04.2012 along-with FORM 8 is annexed herewith and marked as **ANNEXURE 28.**

v. Copy of the Certificate of Registration of Charge/ Mortgage dated 22.05.2013 along-with FORM 8 whereby charge on the property D-319, Sector 63, Noida was registered in favour is annexed herewith and marked as **ANNEXURE 29.**

III) ESTIMATED VALUE OF THE AFOREMENTIONED SECURITY:

<p>As per the Financial Creditor/ Applicant herein the estimated value of the aforementioned securities is as under :</p>	
<p>The valuation of the Immovable assets (including the fixed assets and the current assets)</p>	<p>As per the Investigation Report the value of the are estimated as per records to be in excess of INR 100 Crore (approx.).</p>
2.	<p>PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)</p> <p>In the matter of "DBS Bank India Ltd. Vs. Vayam Technologies Ltd" before the Ld. Debt Recovery Tribunal in O.A. NO. 466/2015 vide consent order dated 18.07.2016 & In the matter of "DBS Bank India Ltd. Vs. Vayam Technologies Ltd" before the Ld. Debt Recovery Tribunal -II in M.A. NO. 135/2017 order dated 15.07.2019 are annexed herewith and marked as ANNEXURE 30 (Colly).</p>
3.	<p>RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)</p> <p>N/A</p>
4.	<p>DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925)</p> <p>N/A</p>
5.	<p>THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE</p> <p>1. That the Corporate Debtor duly passed the necessary resolution at the meeting of its Board of Directors on 20.07.2011 for availing the credit facility from the Corporate Debtor vide resolution dated 20.07.2011. Copy of the Board Resolution dated 20.07.2011 is annexed herewith and marked as ANNEXURE 31.</p> <p>2. That pursuant to the application of the Corporate Debtor the Financial Creditor agreed to sanction the Working Capital Credit</p>



Facility of Rs. 25 crores vide offer letter dated 01.08.2011. Copy of Offer Letter dated 01.08.2011 bearing Ref. No. CDT/ADMIN/334/2011 along with statement of account is annexed herewith and marked as **ANNEXURE 32.**

3. Pursuant to the acceptance of the Offer Letter and the terms and conditions thereof by the Corporate Debtor, the Financial Creditor sanctioned the Working Capital Credit Facility of Rs. 25 crores. Agreement. Copy of Working Capital Facilities Agreement dated 05.08.2011 is annexed herewith and marked as **ANNEXURE 33.**
4. The Corporate Debtor passed necessary resolution in the meeting of its board of directors for availing various credit facilities under the consortium arrangement with the Financial Creditor and other member banks of the Canara Bank Consortium, by way of Working Capital Limits. Copy of the Resolution dated 12.03.2012 passed by the Board of Directors is annexed herewith and marked as **ANNEXURE 34.**
5. A Supplemental Working Capital Consortium Agreement dated 14.03.2012 was executed whereby Working Capital Limit upto an aggregate limit of INR 90 Crore (Fund Based) and INR 190 Crores (Non Fund Based) totalling to INR 280 Crores was granted to the Corporate Debtor by the CB Consortium. Copy of the Supplemental Working Capital Consortium Agreement dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 35.**
6. The member Banks of the CB consortium for their operational convenience entered into an Inter Se Agreement to define the right inter se the said Banks. As per Clause I of the said Agreement the member Banks recognised Canara Bank as the Lead Bank. Inter-se Agreement. Copy of the Inter-se Agreement dated 14.03.2012 is annexed herewith and marked as **ANNEXURE 36.**
7. That upon review of the existing Working Capital Facility the Financial Creditor vide its renewal/sanction letter bearing no. CDT/ADMIN/539/2012 dated 13.09.2012 renewed the existing

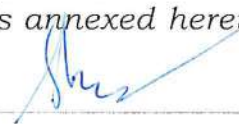
Working Capital Facilities and extended it up to 31.07.2013. Copy of the sanction letter bearing no. CDT/ADMIN/539/2012 dated 13.09.2012 is annexed herewith and marked as **ANNEXURE 37**.

- 8.** That the Corporate Debtor again approached for enhancing the Working Capital Limits under the CB Consortium and on 14.05.2013 the Corporate Debtor passed necessary resolution in the meeting of its board of directors for availing various credit facilities under the consortium arrangement with the Financial Creditor and other member banks of the Canara Bank Consortium, by way of Working Capital Limits. Copy of the Resolution dated 14.05.2013 passed by the Board of Directors is annexed herewith and marked as **ANNEXURE 38**.
- 9.** A Supplemental Working Capital Consortium Agreement dated 17.05.2013 was signed and executed by the Corporate Debtor in favour of the CB Consortium. Copy of the Supplemental Working Capital Consortium Agreement dated 17.05.2013 is annexed herewith and marked as **ANNEXURE 39**.
- 10.** The member Banks of the CB consortium for their operational convenience entered into an Inter Se Agreement dated 17.05.2013 to define the right inter se the said Banks. As per Clause 2 of the said Agreement the member Banks recognised Canara Bank as the Lead Bank. Inter-se Agreement. As per Clause 4 of the agreement the rights and obligations of each of the lender banks under this agreement and the other transaction documents are several. Copy of the Inter se Agreement dated 17.05.2013 is annexed herewith and marked as **ANNEXURE 40**.
- 11.** Thereafter the Corporate Debtor again approached the Financial Creditor for the renewal of the Working Capital Facility. Copy of the renewal/sanction letter bearing No. CDT/ADMIN/655/2013 dated 22.11.2013 is annexed herewith and marked as **ANNEXURE 41**.

12. The Corporate Debtor duly availed the said credit facilities in terms of the Facilities/Security Documents. The Corporate Debtor from time to time sent various request letters for discounting the bills and availing the Letter of credit facility as per the enclosed transaction documents thereto. The Corporate Debtor vide the said request letters acknowledged and confirmed the value of the documents. The Corporate Debtor vide the request letters also authorised the Financial Creditor to recover the interest amount and other charges upfront by debiting its account maintained with the Financial Creditor. The Corporate Debtor further authorised the Financial Creditor to debit its account on the maturity dates of the respective bills for the principal, interest and other charges. The Corporate Debtor also confirmed that the said invoices were genuine and arising out of bonafide commercial trade transactions with parties mentioned therein. Copy(s) of the summary sheet of the transactions conducted by the Corporate Debtor under the Purchase Invoice Discounting Facility and Letter of Credit facility and also the request letters of the Corporate Debtor for purchasing Invoking Discounting along-with the supporting documents viz sales Invoice challan and Goods Receipt etc are annexed herewith and marked as **ANNEXURE 42.**

13. The Financial Creditor approached the DRT to recover the dues from the Corporate Debtor. Copy of the O.A. filed by the Financial Creditor being "DBS Bank India Ltd. Vs. Vayam Technologies Ltd" before the Ld. Debt Recovery Tribunal, O.A. NO. 466/2015 is annexed herewith and marked as **ANNEXURE 43.**

14. The parties entered into a settlement and filed a joint application in lieu of the same. Copy of the I.A. No. 705/16 filed by the Financial Creditor being "DBS Bank India Ltd. Vs. Vayam Technologies Ltd" before the Ld. Debt Recovery Tribunal, in view of the Settlement arrived at between the parties is annexed herewith and marked as **ANNEXURE 44.**



	<p>15. The Corporate Debtor failed to abide by the terms of the settlement and the Financial Creditor was constrained to issue a default notice. Copy of default notice dated 23.10.2017, postal receipts, email dated 24.10.2017 and the reply of the Defendants is annexed herewith and marked as <u>ANNEXURE 45 (Colly)</u>.</p> <p>16. The Financial Creditor thereafter filed an M.A. when the settlement between the parties failed. Copy of the M.A. filed by the Financial Creditor being “DBS Bank India Ltd. Vs. Vayam Technologies Ltd” before the Ld. Debt Recovery Tribunal -II M.A. NO. 135/2017 is annexed herewith and marked as <u>ANNEXURE 46</u>.</p>
6.	<p>A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT INFORMATION COMPANY</p> <p>N/A</p>
7.	<p>COPIES OF ENTRIES IN A BANKER’S BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891)</p> <p>Copies of entries in the Bankers book in accordance with the Bankers Books Evidence Act, 1891 have been annexed and marked as <u>ANNEXURE 47</u>.</p>
8.	<p>LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT</p> <p>1. Since the Corporate Debtor did not pay the overdue amount under the Working Capital Facilities, the Financial Creditor was constrained to issue loan recall notice dated 20.06.2015 invoking the repayment of the total facilities advanced to the Corporate Debtor. A copy of the Recall Notice along-with original postal receipts is annexed herewith and marked as <u>ANNEXURE 48 (Colly)</u>.</p> <p>2. Liability towards Financial Creditor is also admitted by the Corporate Debtor in clear and unequivocal terms of Revival Letter dated 26.05.2015 with Canara Bank Consortium whereby the Corporate Debtor agreed, confirmed, undertook and stated that all</p>

*the security documents executed by it in favour of the CB Consortium from time to time are subsisting, valid and effective and enforceable against it. Copy of the Revival Letter dated 26.05.2015 with Canara Bank Consortium is annexed herewith and marked as **ANNEXURE 49.***

*3. The Corporate Debtor belatedly replied on 01.08.2015 to the Loan Recall Notice dated 20.06.2015. Copy of the reply dated 01.08.2015 to the Loan Recall Notice is annexed herewith and marked as **ANNEXURE 50.***

10. In the present case, from the above documents, it is viewed as the clear case of debt and default. This Authority vide Order dated 22.02.2022 directed the Petitioner/ Financial Creditor to issue notice, the Dasti of the Order was received by the Petitioner/ Financial Creditor on 04.03.2022, which was served on the Corporate Debtor on 07.03.2022. The Affidavit of service has been filed by the Petitioner/Financial Creditor on 22.03.2022, which is on record, therefore, in the absence of reply filed by the Corporate Debtor, we are unable to adjourn the matter.

11. Today, when the matter was taken Mr. Gunjesh Ranjan, states that he has been engaged recently, but he has not filed his Vakalatnama, and therefore, we are unable to accept any arguments on behalf of the Corporate Debtor. As such notice has gone but there is no proper response. Be that as it may, the only other aspect to consider in this case is whether there is an admitted debt and default.

12. In the present case the Ld. Counsel for the Petitioner further argued on the point of Limitation is that; there is an Order passed by the Debt Recovery Tribunal dated 24.07.2019, and the present petition has been filed on 28.09.2021, and more particularly cited the paragraphs no. 138 to 143 of the latest judgment passed by the Hon'ble Supreme Court in the matter of **Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr.** Civil Appeal No. 1650 of 2020, dated 04.08.2021. The extract of the paragraphs from 138 to 143 is as follows:

“138. A final judgment and order/decrece is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decrece, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decrece and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant Bank would not be barred by limitation at least till 24th May, 2020.

140. While it is true that default in payment of a debt triggers the right to initiate the Corporate Resolution Process, and a Petition under Section 7 or 9 of the IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of

Section 238A of the IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a Petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Section 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In **Gaurav Hargovindbhai Dave (supra)** cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate

Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

13. In view of the above cited Judgement and DRT order dated 24.07.2019 the Petitioner/Financial Creditor has filed this petition well within Limitation and has fulfilled all the requirements of law, including the name of the Resolution Professional Ms. Ritu Rastogi for appointment as the Interim Resolution Professional (IRP). Hence, the Application stands **admitted**. A written communication sent by Ms. Ritu Rastogi in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has also been placed on record. There is a declaration made by her that no disciplinary proceedings are pending against her in the

declaration made by her that no disciplinary proceedings are pending against her in the Insolvency and Bankruptcy Board of India or IIPICAI. In addition, further necessary disclosures have been made by Ms. Ritu Rastogi, as per the requirement of the IBBI Regulations. Accordingly, she satisfies the requirement of Section 7 (3) (b) of the IBC, therefore, we appoint **Ms. Ritu Rastogi** as the IRP of the Corporate Debtor. The details of the IRP are as follows:

Registration No: IBBI/IPA-001/IP-P00204/2017-18/10393

Email Id: ipesspl.riturastogi@gmail.com

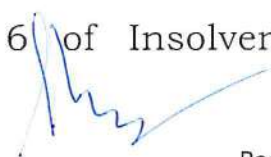
Mobile No.: 9810037450

Address: D-1B, 9A, Janakpuri, NewDelhi-110058.

14. In pursuance of Section 13 (2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this application under Section 7 of the IBC. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. As a consequence of the application being admitted, moratorium as envisaged under the provisions of Section 14(1) shall follow. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the IBC, shall come in force.

16. We direct the Petitioner/ Financial Creditor to deposit a sum of Rs. 2,00,000 (Rupees Two lakhs) with the IRP i.e., Ms. Ritu Rastogi, to meet out the expenses, to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and



Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Petitioner/Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by the IRP and shall be paid back to the applicant.

17. The registry is directed to communicate a copy of the Order to the Applicant, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi, at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

18. The commencement of the Corporate Insolvency Resolution Process is Ordered, which ordinarily shall get completed within 180 days, reckoning from the day this Order is passed.

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— *sd* —

RAMALINGAM SUDHAKAR
PRESIDENT

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— *sd* —

AVINASH K. SHRIVASTAVA
MEMBER (TECHNICAL)