IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,

COURT III

I.A. 742/2022
And
C.P.(IB)-221/(MB)/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

Interlocutory Application Filed by,
ZEE ENTERTAINMENT ENTERPRISES LIMITED

……**Applicant/Orig. Corporate Debtor**

In the matter of

INDUSIND BANK LTD.
Having registered office at: 2401 Gen Thimmayya Road Contonment, Pune, Maharashtra, 411001

……**Petitioner/Financial Creditor**

Vs

ZEE ENTERTAINMENT ENTERPRISES LIMITED
Having registered office at: 18th Floor, A wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai, Maharashtra, 400013.

…….. **Corporate Debtor**

Reserved for order on: **04.01.2023**
Order pronounced on: **22.02.2023**

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

For the Applicant: Mr. Ravi Kadam, Sr. Advocate
For the Respondent: Mr. Zal T Andhyarujina, Sr. Advocate

Per: Shri. H.V. Subba Rao, Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,
COURT III

I.A. 742/2022
And
C.P.(IB)-221/(MB)/2022

Common Order

1. The above Company Petition is filed by **INDUSIND BANK LIMITED** hereinafter called as Financial Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **ZEE ENTERTAINMENT ENTERPRISES LIMITED** called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of total Financial Debt of Rs. 92,74,25,742.00/-.

2. The Corporate Guarantor i.e. ZEEL vide order dated 01.03.2022 is directed to file reply by serving an advance copy on other side. Thereafter, the Corporate Guarantor did not choose to file any reply and filed separate application bearing I.A. 1378/2022 challenging the maintainability of the present Company Petition virtually raising all the available legal pleas in opposing the above Company Petition which is dismissed on merits by this Tribunal simultaneously today. Since the Respondent is not filing reply, a conditional order directing the Respondent to file reply within two weeks failing which their right to file reply stands forfeited was passed on 11.07.2022. Despite the above conditional order, the Corporate Guarantor did not choose to file any reply and on the other hand refused to file reply contending that they need not file reply till their maintainability application is decided. On the other hand, the Respondent filed another I.A. 742/2022 praying this Tribunal to delete the following order dated 01.03.2022.

"Mr. Navroz Seervai, Senior Advocate undertakes to file Vakalatnama and reply on behalf of the Corporate Debtor. Corporate Debtor is directed to file reply by serving an advance copy on the other side. "

3. In view of the dismissal of I.A. 1378/2022 on merits, the above I.A. 742/2022 is also liable to be dismissed also on the ground that the remedy of the Respondent if at all aggrieved against the order dated 01.03.2022 is by way of an appeal and not through filing the above I.A. 742/2022. Hence, I.A. 742/2022 is also rejected.

4. In view of dismissal of the maintainability application bearing I.A. 1378/2022 and I.A. 742/2022 on merits, this Bench is left with no option except to admit the above Company Petition.

5. Accordingly, the Company Petition is admitted by passing the following order:

ORDER

a. The above Company Petition No. (IB) 221(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against ZEE ENTERTAINMENT ENTERPRISES LIMITED.

b. This Bench hereby appoints Mr. Sanjeev Kumar Jalan (sanjeevjalan@yahoo.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01901/2020-2021/13053 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP

shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, this Petition is admitted.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)

//Shubham//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,

COURT III

I.A. 1378/2022

IN

C.P.(IB)-221/(MB)/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

Filed by,

ZEE ENTERTAINMENT ENTERPRISES LIMITED

……**Applicant/Orig. Corporate Debtor**

Vs.

Indusind Bank Limited

……**Respondent/Orig. Financial Creditor**

In the matter of

INDUSIND BANK LTD.

……**Financial Creditor**

Vs

ZEE ENTERTAINMENT ENTERPRISES LIMITED

…….. **Corporate Debtor**

Reserved for order on: **04.01.2023**

Order pronounced on: **22.02.2023**

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

For the Applicant: Mr. Zal T Andhyarujina, Sr. Advocate

For the Respondent: Mr. Ravi Kadam, Sr. Advocate

Per: Shri. H.V. Subba Rao, Member (Judicial)

1. The above Interlocutory Application is filed by Zee Entertainment Enterprises Limited praying the following reliefs:

    a. That this Hon'ble Tribunal be pleased to dismiss/reject the captioned Company Petition filed by the Financial Creditor by virtue of the statutory and jurisdictional bar under Section 10A of the Code.

    b. That pending the hearing and final disposal of this Application all further and other proceedings in the present petition be stayed:

    c. For ad-interim reliefs in terms of prayer (b) above;

    d. For the costs of the present application; and

    e. For such further and other order(s) as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the instant case.

2. **The brief facts behind filing the above application are as follows:**

    1. The Corporate Debtor has filed this application seeking dismissal/rejection of the captioned Company Petition at the threshold *inter alia* on the following grounds:-

        a. First, this Hon'ble Tribunal inherently lacks the jurisdiction to entertain the captioned Company Petition, as the alleged default forming the basis of the captioned Company Petition [i.e. the email dated 12th September 2019] is in respect of an amount less than the statutorily prescribed threshold under

Section 4 of the Code for filing of a petition. Consequently, this Hon'ble Tribunal lacks subject matter jurisdiction;

b. Independently, in the second place, the alleged default forming the basis of the captioned Company Petition, took place during a period which bars/precludes the filing of petitions *inter alia* under Section 7 of the Code. Statutorily, such defaults cannot be entertained by this Hon'ble Tribunal due to the express bar under Section 10A of the Code;

c. Thirdly, the very institution of the captioned Company Petition is barred under Section 4 and Section 10A of the Code.

2. The Financial Creditor had credit facilities of over Rs.400 Crore in favour of Siti networks Limited ["**Siti**"], out of which a Term Loan of Rs.150,00,00,000/- constituted Facility II ["**Facility**"]. Under the terms of some of which, Siti appears to have agreed to maintain a separate debt service reserve account ["**DSRA**"] for a specific and limited amount i.e. an amount equivalent to one quarter's interest and ensuing quarter's principal ["**DSRA Amount**"]. In order to secure the obligation of Siti to maintain the instalment amount in the DSRA, a limited and restricted DSRA Guarantee Agreement dated 29th August, 2018 was executed between the Applicant and the Financial Creditor

whereby the Applicant agreed to maintain the DSRA Amount, in the event Siti failed to do so ["**DSRA Guarantee Agreement**"].

3. The captioned Company Petition was filed purportedly on the basis of the alleged defaults of the Corporate Debtor to make payment under the DSRA Guarantee Agreement. The date of default mentioned by the Financial Creditor in the captioned Company Petition is 15th September 2019 and purportedly arises from the email/letter dated 12th September, 2019 issued by the Financial Creditor to Siti and marked to the Corporate Debtor whereby the Financial Creditor *inter alia* called upon Siti to replenish a purported DSRA shortfall of Rs. 67 Lakhs failing which the Corporate Debtor was notified to replenish the same.

4. However, subsequent to the demand upon Siti, the Corporate Debtor was not notified by the Financial Creditor of any failure on the part of Siti to maintain/replenish the DSRA Account so as to require any action on the part of the Corporate Debtor till 02nd March 2020. Moreover, the same was undisputedly limited to an amount of Rs. 67 Lakhs as is evident from the said email itself. Similar emails were received by the Corporate Debtor on 4th March 2020 and 5th March 2020. Assuming whilst denying that the Emails dated 12th September 2019, 04th March 2020 or 05th March 2020 constituted demands, they were at the highest demands for the DSRA shortfall of Rs. 67 lakhs and Rs. 68 lakhs

respectively and being claims under the statutory default threshold of Rs. 1 Crore are expressly barred under Section 4 of the Code.

5. By separate emails/letters, the Financial Creditor also notified the Corporate Debtor that in the event an 'event of default' is declared by the Financial Creditor, the amount payable under the DSRA Guarantee Agreement would stand accelerated. However, no such notification of a purported 'event of default' or acceleration of the DSRA Amount was given by the Financial Creditor to the Corporate Debtor at least until 01st September 2020, if not on 01st October 2020.

6. The Financial Creditor's own case, as manifested in the correspondences with the Corporate Debtor and its pleadings filed in the proceedings before the Hon'ble Delhi High Court as more particularly narrated in the present Application, has been that the Corporate Debtor's default in respect of the enhanced amount, i.e. amount claimed to be in default in the captioned Company Petition, occurred only on the Corporate Debtor's failure to make payment under the letter dated 01" September 2020 issued by the Financial Creditor. It is also admitted by the Financial Creditor that the invocation of the DSRA Guarantee Agreement for such amount did not take place until 01st October 2020.

7. In the meanwhile, Section 10A which was introduced to the Code with effect from 5th June 2020, barring absolutely and forever, the filing of applications under sections, 7,9, and 10 of the Code, for defaults committed on or after 25th March 2020 up to 24th March 2021 ["**Covid Period**"]
8. All letters/notices issued by the Financial Creditor on the Corporate Debtor subsequent to the email dated 05th March 2020, including the letters dated 01st September 2020 and 01st October 2020 issued by the Financial Creditor on the Corporate Debtor thus evidently fell within the Covid Period. Therefore, clearly, any purported default arising from such letters/notices being within the Covid Period, is hit by the bar under Section 10A of the Code and would not give rise to any right to the Corporate Debtor to file for insolvency resolution against this Corporate Debtor.
9. In the circumstances, the Applicant has filed the captioned Application praying that this Hon'ble Tribunal be pleased to dismiss/reject the captioned Company Petition at the threshold.

3. Respondent filed detailed reply of opposing the above application. The important and relevant Paras of the reply of the Corporate Debtor are mentioned here under:

6.3. It is the case of the Corporate Debtor that the default occurred after 25 March 2020 and more particularly not before 21 April

2020 and that therefore, the date of default being within the statutory bar provided under Section 10A of the IBC, CIRP cannot be initiated against the Applicant.

6.4. As is evident from the afore stated facts, documents on record and details as mentioned under Part IV of Form 1 filed by the Financial Creditor under Section 7 of the IBC, the relevant dates for ascertaining the date of default in the present case are as follows:

a) 15 September 2019: In terms of the Financial Creditor's letter dated 12 September 2019 calling upon Siti and the Corporate Debtor to make payment of shortfall in the DSRA account amounting to INR 0.67 Cr within three days (i.e., on or before 15 September 2019). Since neither Siti nor the Corporate Debtor replenished the DSRA within 3 days, 15 September 2019 came to be the date on which Siti first defaulted on its obligation under the DSRA Agreement. The Corporate Debtor did not respond to the email dated 12 September 2019.

b) 2 March 2020: Letter by the Financial Creditor to Siti and the Corporate Debtor informing of various defaults under the loans availed by Siti, including payment defaults and failure to maintain DSRA amount. The

Corporate Debtor did not respond to the email dated 2 March 2020.

c) 5 March 2020: This email clearly specifies that as on 5 March 2020, the interest overdue is INR 1.99 Cr and principal outstanding is INR 83.08 Cr. The Corporate Debtor was also specifically put to notice that in the event of Siti failing to make payment of overdue amounts, the Corporate Debtor is notified to replenish the DSRA "which includes the enhanced amount of Principal o/s and interest dues ***with immediate effect"***. The Corporate Debtor did not respond to the letter dated 5 March 2020 or replenish the shortfall in the DSRA.

6.5 It is evident from the record that all correspondence addressed by the Financial Creditor to the Corporate Debtor subsequent to the email dated 5 March 2020 are reminders/follow-ups (21 April 2020 and 16 June 2020) or recall/acceleration notices (1 September 2020 and 1 October 2020) which do not in any manner alter the original date of default committed by the Corporate Debtor. The Corporate Debtor is attempting to falsely suggest that the default itself first occurred on 21 April

2020 which is *ex facie* incorrect and contrary to the clear record placed before this Hon'ble Tribunal.

6.6 The present IA is nothing but an attempt by the Corporate Debtor to misuse the temporary protection granted by the legislature by introduction of Section 10A of the IBC, which at best had the effect of protecting defaulting borrowers by baring initiation of CIRP applications against such borrowers for a limited duration of one year from 25 March 2020 till 25 March 2021.

6.7 Strictly without prejudice to the aforesaid submissions, even assuming without admitting and for the sake of argument that the default in the present instance is said to have occurred during the period between 25 March 2020 till 25 March 2021, it is respectfully submitted that the intention of the proviso to Section 10A cannot in any manner be that no application for initiation of CIRP can ever be filed against such borrower even post 25 March 2021. In other words, the legislative intent behind introducing Section 10A and its proviso was only to provide protection to borrowers for a period not exceeding 1 year from 25 March 2020 on account of hardships faced during the COVID 19 pandemic. The

intention could not have been that lenders will be restrained from exercising their legal right of initiating CIRP against a borrower post 25 March 2021 when there continues to be outstanding amount payable, and merely because the loan was accelerated/ recalled during the period of suspension under Section 10A of the IBC.

7. **THE TOTAL AMOUNT IN DEFAULT IS ABOVE THE MINIMUM DEFAULT AMOUNT AS PRESCRIBED BY SECTION 4 OF THE IBC.**

7.1. It is the case of the Applicant/ Corporate Debtor that if the date of default is 15 September 2019, the amount due as on that date was INR 67 lakhs which is less than the amount prescribed under Section 4 of the IBC and therefore this Hon'ble Tribunal lacks the jurisdiction to proceed with the Company Petition. It is respectfully submitted that the contention and interpretation of the Corporate Debtor and understanding of the Corporate Debtor is flawed and not maintainable.

7.2. Section 4 of the IBC prescribes the minimum amount of default required for filing an application under Section 7 and reads as follows:

"4. Application of this Part-

(1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more one crore rupees.

Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A."

7.3. By notification dated 24 March 2020, the Central Government increased the minimum default amount under section 4 of the IBC from INR 1 lakh to INR 1 Cr. This relief measure was taken by the Central Government as part of measures to ease the risk and burden of insolvency proceedings on borrowers during the Covid-19 pandemic.

7.4. It is a settled position of law that the minimum default amount is required to be ascertained by the total amount in default as on the "date of initiation" of the application under Section 7 of the IBC. In other words, the requirement is that the "amount claimed to be in default" as on the "date of filing" of the application under Section 7 of the IBC must be at least the minimum default amount prescribed under Section 4 of the IBC.

7.6. It is submitted that there is no violation of Section 4 of the IBC whatsoever. It is evident that the present Application is nothing but an attempt by the Corporate Debtor to divert the issue away from its evident default and deliberate refusal to honour its financial debt obligations to the Financial Creditor.

7.7 Strictly without prejudice to the foregoing, in any event it is an admitted position that even as on 5 March 2020 the Corporate Debtor was in default of an amount of INR 1.99 crores towards interest along with shortfall of Rs. 0.68 crores in DSRA and the same is not contested by the Borrower or the Orig. Corporate Debtor.

8.6 With respect to the contents of paragraph 6.2 of the Interlocutory Application, it is stated that pursuant to the events of default committed by Siti and in terms of

the email dated 5 March 2020 addressed by the Financial Creditor to the Corporate Debtor, the liability under the DSRA Guarantee was enhanced to the entire outstanding amount under Term Loan 2. Further, the Hon'ble Delhi High Court vide its order dated 21 December 2020 in IA No. 10556/2020 in CS(COMM) 500 of 2020, has conclusively held that the obligation of the Corporate Debtor under the DSRA Guarantee would be the entire outstanding amounts under Term Loan 2.

OBSERVATIONS AND FINDINGS

1. Heard the submissions of Mr. Zal T Andhyarujina, the learned Senior counsel appearing for the Zee Entertainment Enterprises Limited who is the Applicant in the above application and Mr. Ravi Kadam, the learned Senior counsel appearing for the Respondent/Financial Creditor Indusind Bank Ltd.
2. After hearing the submissions of both the sides and upon perusing the documents relied by both sides, this Bench frame the following issues for consideration.
   i. Whether the liability of Zee Entertainment Enterprises Limited is limited only to the extent of DSRA amount defined in the DSRA Agreement dated 24.08.2018 executed by the principal borrower M/s Siti Networks Limited in

favour of Indusind Bank Ltd. or for the entire liability of the principal borrower under Term Loan II?

ii. Whether the Company Petition is hit by Section 10A of the Code?

3. The fulcrum of the defence of the Zee Entertainment Enterprises Limited in the present application as well as in the main Company Petition is two/fold.

i. The liability of Zee Entertainment Enterprises Limited under DSRA Guarantee Agreement dated 29.08.2018 executed by Zee Entertainment Enterprises Limited in favour of Indusind Bank Limited is only to the extent of the default amount prescribed in the DSRA agreement dated 24.08.2018 executed by the principal borrower and not for the entire amount covered under Term Loan-II granted to the principal borrower.

ii. Admittedly, the Indusind Bank Ltd. issued a recall notice on ZEEL on 01.09.2020 and 01.10.2020 recalling the entire facility of M/s Siti Networks Limited under Term Loan-II and the said recall notice being issued during the 10A period of Covid, the above Company Petition is not maintainable as it was hit by Section 10A of the Code.

iii. It is the further contention of ZEEL that the default occurred during the 10A period is a permanent default

forever and no petition under Section 7 can never ever be filed on such default as per the law laid down by the Hon'ble Supreme Court in *Ramesh Kaymal Vs. M/s Siemens Gamesa Renewable Power Pvt. Ltd.*

4. In order to buttress their argument, they have invited the attention of this Tribunal to the following Clauses of the DSRA Agreement dated 24.08.2018 executed by M/s Siti Networks Limited.

B. One of the condition of sanction of the facility by the bank the company shall open a DSRA account with the Bank, and deposit and maintain the DSRA Amount in the DSRA Account, which shall be utilized to discharge the said Dues including any instalment(s) of principal and interest due and payable, (hereinafter collectively referred as the Purpose)

D. Company has agreed to deposit (and keep deposited in accordance with the provisions of this Agreement) an amount equal to the DSRA Amount into the DSRA Account for the said Purpose so as to enable the Bank to utilize the funds lying in the DSRA Account towards the said Purpose in terms of this Agreement.

"Interest DSRA Amount", means the amount to be deposited and maintained by Company into the DSRA Account, which amount, till the Final Settlement Date, shall not be less than

the funds equivalent to one quarter interest payable under the facility for each ensuing quarter.

b. For facility of Rs. 150 Crore, it shall not be less than the finds equivalent to one quarter interest payable under the Facility for each ensuing Quarter and next principal repayment for the ensuing Quarter. DSRA equivalent to next principal repayment for the ensuing quarter to be created 10 calendar days prior to each principal repayment due date.

5. Countering the above argument of Mr. Zal T Andhyarujina, Mr. Ravi Kadam, appearing for the Indusind Bank Ltd. vehemently argued that the DSRA Guarantee Agreement executed by ZEEL clearly reflected to the contrary more particularly Clauses- 2, 6, 7, 9, 11, 20 and 24. He further argued that reading of the said recitals and Clauses makes it abundantly clear that ZEEL has confirmed and agreed that in the event of failure or default of the borrower in repayment of any single instalment amount or other interest, charges, etc. in relation to the Loan Agreement and other documents, the amount shall be adjusted from the DSRA and the borrower shall immediately replenish the balance. According to him ZEEL also confirmed and agreed that in the event of failure of the borrower the lender shall be at liberty to invoke the guarantee and recover the amount due from the Guarantor. He also pointed out that by communications dated 02.03.2020,

05.03.2020 and 01.03.2020 ZEEL was forewarned that in case the default of M/s Siti Networks Limited continues the balance required to be maintained in the DSRA Account shall stand enhanced and thus argued that the default in this case started from 15.09.2019 as rightly mentioned in the Company Petition and the above default still exist as on today and therefore is not hit by Section 10A of the Code and in fact Section 10A does not apply in this case.

6. In order to decide the rival contentions of both the sides it is important to read the following terms and conditions of the DSRA Guarantee Agreement dated 29.08.2018 executed by ZEEL.

Clause 2: One of the conditions for the grant of the Term Loan II including BG sub-limit is that the Borrower shall maintain a Debt Service Reserve account (DSRA) wherein the credit balance at all times till the repayment of the Term Loan II (including BG sub-limit) to the satisfaction of the Bank, shall be equal to one quarter's interest for Term Loan II (to be maintained from the date of disbursement of the loan) and a further amount equal to one quarter principal instalment (to be maintained at least 10 calendar days prior to each principal repayment due date).

Clause 3: The Guarantor has agreed to guarantee that the Borrower shall maintain the credit balance in the DSRA as more fully specified in recital 2 above.

At the request of the Guarantor, the Lender has agreed to make to the Borrower, disbursement(s)/interim disbursement(s) from out of the Term Loan II (including BG sub-limit).

Clause 4: The Guarantor hereby confirms, agrees and guarantees that the "Debt Service Reserve Account" opened to be opened by the Borrower with the Lender shall have a credit balance at all times equivalent to one quarters' interest payable for the outstanding Term Loan II including BG sub-limit (to be created upfront from the date of disbursement and in proportion to disbursement amount under of the Term Loan II and to be maintained during the tenor of Term Loan II) and 1 (one) Quarter Principal Instalment for outstanding Term Loan II (to be maintained at least 10 calendar days prior to each principal repayment date). Notwithstanding anything contained in this Clause 4, the aggregate amount guaranteed by the Guarantor under this document shall be limited to the DSRA balances/amounts to be maintained by the Borrower in relation to the aggregate outstanding amounts under said Term Loan II. The Guarantee for Term Loan II shall be as mentioned in the Schedule hereto and as confirmed by the Guarantor, from time to time, in the format given in Schedule hereunder.

Clause 6: The Guarantor hereby confirms and agrees that the Lender shall at its sole discretion be entitled to modify the terms of maintenance of credit balance in DSRA without the specific consent of the Guarantor and all rights to the contrary available to the Guarantor under law are hereby waived by the Guarantor and in case of any subsequent amendment(s) or modification(s) in the terms and conditions regarding the maintaining of DSRA in the sanction letter, the recital 2 shall stands modified to mean the revised understanding/terms specified by the Lender.

Clause 7: The Guarantor hereby confirms and agrees that in the event of the failure or default of "the Borrower" in repayment of any single instalment amount or other interests, charges and monies due in relation to Term Loan II under the loan agreement, sanction letter(s) and other security documents to "the lender", the said due amount shall be adjusted from the DSRA along with such other incidental and other charges as agreed between "the Borrower" and "the Lender" and the Borrower shall immediately replenish the balance in the DSRA so as to conform to the balance requirements as more fully specified in recital 2 above. To the extent that the Borrower shall be unable to maintain the credit balance as required in recital 2, the Guarantor agrees and guarantees to replenish

the DSRA immediately at the request of the Lender so as to ensure that the balance requirements as stated in recital 2 are maintained at all times. It is being understood and agreed by the parties that this guarantee can be invoked any number of times for full or partial amounts, so as to conform to DSRA terms till the entire Term Loan II is repaid full to the satisfaction of the Lender by the Borrower.

Clause 8: The Guarantor hereby confirms and agrees that the Lender shall be at liberty to decide on its own discretion as to the occasion on which the amount lying in the DSRA shall be utilized to make payment of the defaulted instalment, amount or money as aforesaid. The Guarantor further confirms that the Lender without intimating the Borrower or the Guarantor about such default can utilize the amount lying in the DSRA towards its dues.

Clause 9: The Guarantor hereby confirms, agrees and guarantees that in the event of the failure of the Borrower to maintain the DSRA or comply with the terms specified from time to time, the Lender shall be at liberty to invoke this guarantee and recover the amount as become due from the Borrower from the Guarantor along with all ancillary and incidental cost.

Clause 11: The Guarantor hereby confirms, agrees and guarantees that this deed of guarantee shall be continuing in nature, can

be invoked from time to time (without any restriction on the number of times the same can be invoked) and cover every default of the Borrower made in respect to the maintenance of the DSRA with the Lender. Any payment or part payment by the Borrower towards any due or claim of the Lender shall not discharge the Guarantor from its liability. This deed of guarantee shall remain in force till repayment of the entire Term Loan II (including BG sub-limit) to the satisfaction of the Lender. The Guarantor shall be discharged only upon a certificate issued to that effect by the Lender.

Clause 19: The rights of the Lender against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between the Lender and the other Guarantors, if any, or notwithstanding the release of that other or others from liability and notwithstanding that any time hereafter the other Guarantors may cease for any reason whatsoever to be liable to the Lender, the Lender shall be at liberty to require the performance by the Guarantor of its obligations hereunder in relation to Term Loan II to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations.

Clause 20: *To give effect to this Guarantee, the Lender may act as though the Guarantors were the principal debtors to the Lender.*

Clause 24: *This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lender by the Borrower and shall be valid and binding on the Guarantor and operative until repayment in full of all monies due to the Lender in relation to Term Loan II under the Loan Agreement.*

Clause 25: *This Guarantee shall be irrevocable, and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by the Lender to the Borrower, shall be sufficient notice to or demand on the Guarantor.*

7. It is well recognized principle of law that the Courts and Tribunals while deciding the rights of the parties under any contract or agreement shall decide the same by reading the entire terms and conditions of contract or agreement as a whole and not by reading one or two Clauses in isolation. As rightly contended by Mr. Ravi Kadam, the plain reading of the above Clauses of the DSRA Guarantee Agreement more so Clauses 9 and 20 makes it abundantly clear in unequivocal terms that ZEEL is virtually and legally treated as principal debtor to the lender in so far as

recovery of Term Loan-II is concerned since ZEEL and M/s Siti Networks Ltd. are two different companies of the same group and management. As per Clause-3 of the DSRA Guarantee executed by ZEEL, it is the responsibility of ZEEL to see that the principal borrower shall maintain the balance in DSRA Account at all times. Therefore, this Tribunal has no hesitation to conclude that the liability of ZEEL under Term Loan-II is for the whole amount and not to the limited extent of replenishing the shortfall of DSRA amount as contended by them.

8. The next issue is with regard to the plea of 10A. In order to decide the above plea, it is important to look at the following emails and letter dated 02.03.2022 that were exchanged between the parties which are exhibited hereunder:

9. It is very clear from the above emails dated 12.09.2019 and 05.03.2020 and the letter dated 02.03.2020 that the above emails and the letter were addressed not only to M/s Siti Networks Limited but also to ZEEL. The above emails and the letter dated 02.03.2020 clearly establishes that there is a default committed by M/s Siti Networks Ltd. since September 2019 and the same was brought to the notice of ZEEL. Therefore, the argument of Mr. Zal T Andhyarujina that ZEEL was called upon first time in September and October 2020 is factually incorrect. As stated above, Clause-3 makes it obligatory on the part of ZEEL to see that M/s Siti Networks Ltd. maintains the required defaulted amount under DSRA Agreement. Similarly, the letter dated 02.03.2020 also clearly disclose that an amount of Rs. 1.99 Crores is overdue since 31.12.2019 under Term Loan-II which is an admitted amount even under DSRA Agreement and the above Company Petition needs to be admitted on that score alone even assuming for arguments sake without admitting that ZEEL liability is only limited under DSRA Agreement which is above the threshold limit and the default being pertains to September 2019. Therefore, the argument of Mr. Zal T Andhyarujina that the date of default is September and October 2020 respectively and not September 2019 is factually incorrect and Section 10A has no application in this case. It is settled proposition of law that date

of default would never change unless there are subsequent payments.

10. As rightly contended by Mr. Ravi Kadam, the law does not prescribe any particular format or a detailed notice. The object and purpose of notice in commercial transactions more so in loan transactions is a mere intimation about default so as to afford an opportunity to the borrower or guarantor to repay the same. The law does not contemplate a lengthy notice running into number of pages. The Courts and Tribunals has to merely see whether the occurrence of default is intimated to the borrower/guarantor or not. The Courts and Tribunals shall not dismiss or invalidate the proceedings filed by banks and financial institutions against defaulting borrowers merely on hyper technical pleas of this nature. More so when no serious prejudice is caused to the borrower/guarantor. As rightly contended by Mr. Kadam, the default prescribed in 10-A is only for a temporary period of 1 year from 25.03.2020 to 25.03.2021 due to extraordinary circumstances of Covid-19 and since the default in this case continues even as on today and the above Company Petition being filed on 01.03.2022 much after cessation of Section 10-A is certainly maintainable and liable to be admitted. Thus, viewing from any angle, though the argument of Mr. Zal T Andhyarujina

appears to be very attractive on its face has no legal substance if we examine in depth.

11. For the aforesaid reasons, this Tribunal has no hesitation in holding that the actual default of Term Loan-II had occurred in this case on 15.09.2019 and ZEEL is liable for repayment of entire Term Loan-II and email dated 05.03.2020 shall be treated as notice of invocation of the entire Term Loan-II on ZEEL.

12. Thus, viewing from any angle, there is no merit in the above Interlocutory Application filed by ZEEL and the same is liable to be dismissed.

13. Accordingly, the above Interlocutory Application is dismissed.

Sd/-
MADHU SINHA
MEMBER(TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER(JUDICIAL)

//Shubham//