**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH-1**

**CP (IB) No.645/7/HDB/2018**

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

In the matter of:

**State Bank of India**
Stressed Asset Management Branch
Secunderabad
Door No.6-2-915, 5th Floor
Rear Block, HMWSSB Compound
Khairatabad,
Hyderabad – 500004.



.. **Financial Creditor**

**VERSUS**

**Vibha Agro Tech Limited**
HIG No.501
A&B Subhan Sirisampada
No.6-3-1090/A/1
Rajbhavan Road
Somajiguda
Hyderabad – 500082.



**... Corporate Debtor**

**Date of Order: 5th June 2023**

**Coram:**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**
**HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH,**
**HON'BLE MEMBER (TECHNICAL)**

**Parties/Counsels present:**

For applicant: Shri G.P. Yash Vardhan, Advocate.

For respondent: Shri T. Surya Satish, Advocate.

**PER BENCH**

This Application is filed by **State Bank of India** Stressed Asset Management Branch (hereinafter referred as 'Financial Creditor') under Section 7 of Insolvency and Bankruptcy Code (Hereinafter to be referred as "IBC"), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against M/s Vibha Agro Tech Limited (hereinafter referred as 'Corporate *Debtor'*), alleging that an amount of **Rs.327,03,72,501.81** is in default as on 31.08.2018, and such default had occurred on **30.04.2013**. Statement of Account is at Annexure-2.

**2.** The present proceeding has a chequered history with significant legal and factual aspects. The matter having been dismissed once by this Tribunal is on remand to this Tribunal on its restoration to file of this Tribunal by virtue of order of the Hon'ble Supreme Court for fresh adjudication in accordance with the directions issued by the Hon'ble Supreme Court. For the purpose of adjudication it is essential to understand the chronology as under:

(i) This petition has been dismissed by this Tribunal vide order dated 27.02.2020 on the ground that the petition is barred by limitation.

(ii) Aggrieved by the said order dated 27.02.2020, the Financial Creditor has filed Appeal (AT) (Insolvency) No.636 of 2020 (First Appeal) before the Hon'ble NCLAT, Principal Bench, New Delhi. The Hon'ble NCLAT upheld the order of this Tribunal and dismissed the appeal vide its order dated 05.03.2021.

(iii) The Financial Creditor had carried the said order of the Hon'ble NCLAT before the Hon'ble Supreme Court of India vide Civil Appeal No.2264 of 2021. The Hon'ble Apex Court vide order dated 20.10.2021 (**Annexure A-1**, page 6 of the Affidavit in IA No.87 of 2022) has allowed the appeal and set aside the order dated 05.03.2021 of the Hon'ble NCLAT in the following terms:

> "*We are of the view that subject to the appellant being put to terms, the course adopted by this Court in Asset Reconstruction Company (India) Limited (supra) should be followed. Accordingly, we allow the appeal and set aside the impugned order. The appeal is remanded back and will be restored back to file.*
>
> *We permit the appellant to seek amendment of the application under Section 7 so as to incorporate the case based on acknowledgement as contained in the balance sheets allegedly of the respondent.*
>
> *We leave open all contentions available to the respondent. This benefit will be available to the appellant subject to the appellant paying a sum of Rs.3 lakhs as costs to the respondent within a period of three weeks from today.*
>
> *The appeal is allowed as above.*
>
> *We make it clear that the questions relating to the case set up by the appellant relating to the acknowledgement flowing from MRA dated 26.09.2013 and OTS dated 19.06.2015 shall not be revisited.*"

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

(iv) In compliance of the above directions of the Hon'ble Supreme Court, the Financial Creditor ---

(a) has deposited the amount of Rs.3,00,000/- (Rupees three lacs only) on 05.11.2021, viz within the stipulated period of three weeks. Proof of payment of the said cost is placed at **Annexure A-2,** pages 12-14 of the Affidavit filed by the Financial Creditor.

(b) has filed IA No.87 of 2022 in Company Appeal (AT) (Ins.) No.636 of 2020 before the Hon'ble NCLAT, Principal Bench, New Delhi, enclosing therewith Amended Application under section 7 of the I&B Code, 2016 as ANNEXURE-3 (COLLY.) at pages 15 to 788 of the Affidavit with a request to take said Amended Application on record and adjudicate the same in accordance with the directions issued by the Hon'ble Supreme Court vide order dated 20.10.2021 in Civil Appeal No.2264 of 2021.

(vi) The Hon'ble NCLAT vide order dated 11.01.2022 has allowed IA No.87 of 2022 in Company Appeal (AT) (Ins) No.636 of 2020 and permitted the Financial Creditor to amend the Application under section 7 of the IBC.

(vii) The Hon'ble NCLAT vide order dated 23.08.2022 allowed Company Appeal (AT) (Ins) No.636 of 2020, set aside the order of this Tribunal, remanded the matter to this Tribunal to reconsider the Amended Application filed under section 7 of the I&B Code, 2016 at the instance of

the applicant and directed that the parties shall appear before this Tribunal on 11.10.2022.

**3.** Thus, we hereby proceed to deal with the Amended Application under section 7 of the I&B Code, 2016 (Annexure-3 to the Affidavit 14.12.2022 filed by the Financial Creditor) and Counters, Written Arguments, etc. filed by both the sides in accordance with the directions issued by the Hon'ble Supreme Court, more particularly bearing in mind that,

> *"the questions relating to the case set up by the Financial Creditor relating to the acknowledgement flowing from Master Restructuring Agreement (MRA) dated 26.09.2013 and One Time Settlement (OTS) dated 19.06.2015 shall not be revisited."*

**4.** The Contentions as put-forth by the Financial Creditor are:

(i) The petitioner/ State Bank of India, Stressed Asset Management Branch is the Financial Creditor. The respondent is, inter alia engaged in the business of research, marketing and export of hybrid seeds.

(ii) The Corporate Debtor had approached the Financial Creditor seeking financial assistance by way of Cash Credit, Corporate Loan, Term Loan, Working Capital Term Loan, Priority Debt, etc.

(iii) Upon the Corporate Debtor executing various documents, copies of which are filed at pages no.71 to 535, the Financial Creditor has provided the following financial assistance to the Corporate Debtor:

- Total exposures sanctioned under various heads : Rs.242,63,00,000/- (Rupees two hundred and forty two crores and sixty three lacs only)
- Total amount disbursed under various heads: Rs.231,21,00,000/- (Rupees two hundred and thirty one crores twenty one lacs only).

(iv) Since the Corporate Debtor was not regular in repayment of debts and the efforts made by the Financial Creditor to restructure the loan account could not get through, the loan account of the Corporate Debtor was classified as Non-Performing Asset (NPA) effective from 30.04.2013 under Income Recognition and Asset Classification (IRAC) norms issued by Reserve Bank of India.

(v) The Financial Creditor has issued Demand Notice dated 20.05.2015 (Anenxure-56, paged 536) under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to the Corporate Debtor. Since the Corporate Debtor could not oblige to honour its obligations the Financial Creditor has been constrained to file this application under section 7 of the IBC.

(vi) The Financial Creditor has enclosed the following documents to this application in support of its claim:

- Authorisation Letter/ Letter of Authority dated 31.08.2018 issued by Dy General Manager authorising Shri B. Sudhakar is at Annexure-1.

- Letter dated 26.03.2011 issued by the Financial Creditor sanctioning working capital and term loans is at Annexure-4.
- Minutes of Meeting of the Board Directors held on 13.04.2011 to accept credit facilities from the Financial Creditor is at Annexure-5.
- Minutes of Meeting of the Board of Directors of M/s Seed Innovations Pvt Ltd., an associate concern of the Corporate Debtor, held on 13.04.2011 resolving to extent Corporate Guarantee to the Corporate Debtor in respect of loans and advances in question are at Annexure-6.
- Board Resolution of Bio-solutions dated 13.04.2011 is at Annexure-7.
- Agreement of Loan dated 13.04.2011 is at Annexure-8.
- Agreement of Hypothecation of goods and assets dated 13.04.2011 is at Annexure-9.
- Form C-4/ Deed of Guarantee for overall limit executed by Paruchuri Vidyasagar, Paruchuri Chandravathi dated 13.04.2011 is at Annexure-10.
- Form C-4/ Deed of Guarantee for overall limit executed by Seed Innovation dated 13.04.2011 is at Annexure-11.
- Board Resolution dated 05.10.2011 is at Annexure-12.
- Sanction letter dated 07.10.2011 is at Annexure-13.
- Board Resolution dated 21.10.2011 is at Annexure-14.
- Supplemental Agreement of Loan for increase in overall limit dated 27.10.2011 is at Annexure-15.
- Supplemental Agreement of Loan for increase in overall limit dated 27.10.2011 is at Annexure-15.

- Supplemental Deed of Guarantee for increase in overall limit dated 27.10.2011 is at Annexure-16.
- Sanction letter dated 28.03.2013 is at Annexure-17.
- Board Resolutions dated 28.03.2013 are at Annexures-18, 19 and 20.
- Board Resolutions by M/s Seed Innovation P Limited dated 28.03.2013 are at Annexures-21 and 22.
- Board Resolutions by M/s Centromere Biosolution Ltd dated 28.03.2013 are at Annexures-23 and 24.
- Deed of Guaranteee for overall limit (Form C4) executed by Paruchuri Vidyasagar, Paruchuri Chandravathi and Seed Innovation dated 29.03.2013 are at Annexures-25 and 26.
- Master Restructuring Agreement dated 26.09.2013 is at Annexure 27.
- Trust and Retention Account Agreement dated 26.09.2013 is at Annexure-28.
- Security Trustee Agreement dated 26.09.2013 is at Anenxure-29.
- Agreement of Loan for Overall Limited (Form-c.1) dated 29.09.2013 is at Anenxure-30.
- Agreement of Hypothecation of goods and assets (Form-C.2) dated 29.09.2013 is at Annexure-31.
- CIBIL Report is at Annexure-31A.
- Bankers Book of Evidence is at Annexure-32.
- Certificate of Incorporation dated 10.05.1995 is at Annexure-33.
- Fresh Registration Certificate dated 15.04.1996 is at Annexure-34.

- Certificate of Registration of order of court confirming transfer of the registered office from on state to another dated 28.04.1998 is at Annexure-35.
- Letter dated 13.04.2011 regarding grant of individual limits within Overall Limit is at Annexure-36.
- Form C-4 Deed of Guarantee for Overall Limit dated 13.04.2011 executed by Seed Innovation Pvt Ltd. is at Annexure-37
- Letter dated 21.04.2011 addressed by the Financial Creditor to the Corporate Debtor on reduction of interest rate on Term Loan, etc is at Annexure-38.
- Letter dated 27.10.2011 regarding grant of individual limits within Overall Limit is at Annexure-39.
- Supplemental Agreement of Hypothecation of goods and assets for increase in Overall Limit (Form C.2-A) dated 27.10.2011 is at Annexure-40.
- Letter confirming mortgage dated 15.05.2012 is at Annexure-41.
- Letter dated 29.03.2013 regarding grant of individual limits within overall limit (Form C.5) is at Annexure-42.
- Letter dated 26.04.2013 addressed by the applicant/ Bank to AGM & Relationship Manager, SBI, CAG Branch regarding handing over share certificate is at Annexure-43.
- Letters dated 09.07.2013 confirming mortgage are at Annexures-44 to 52.
- Letters dated 10.11.2013 confirming mortgage are at Annexures-53, and 54.
- Revival letter dated 06.02.2014 is at Annexure-55.
- Demand Notice dated 20.05.2015 is at Annexure-56

- Proceedings filed by the Financial Creditor against the Corporate Debtor before DRT is at Annexure-57.

**5.** COUNTER DATED 02.04.2019 FILED BY THE CORPORATE DEBTOR.

5.1 At the outset the Corporate Debtor challenged authenticity of Authorisation Letter/ Letter of Authority dated 31.08.2018 issued by Dy General Manager authorising Shri B. Sudhakar (Annexure-1). The Corporate Debtor questioned who empowered the Dy General Manager to issue such a letter of authority and submitted that on this ground the petitioner be rejected.

5.2 On the ground of doctrine of legitimate expectation and breach of promise and for driving the Corporate Debtor into unwarranted/ forced debts through false promises and CDR, the application be rejected.

5.3 The Corporate Debtor has explained the potentialities of the Corporate Debtor / company in paras 5, 6 and 7 of the Counter, which are noted.

5.4 In para 9 of the Counter the respondent/ corporate debtor delved deep into the financial aspects due to which it had sustained financial crunch. They are primarily as under:

**(i)** The Corporate Debtor never defaulted in paying monthly interests and term loan instalments from 1995 to 2012.

**(ii)** The Corporate Debtor called JLM in August, 2012 to explain the drought situation and requested for enhancement of Working Capital Limits and sanction of Adhoc Limits of Rs.50 crores to

tide over crisis. But the Banks did not sanction the Ad-hoc limit of Rs.50 crores.

**(iii)** The Financial Creditor kept the Corporate Debtor under an illusion that the Working Capital limits would be enhanced from Rs.585 cr. to Rs.800 cr. but had only made an exposure of Rs.20 cr. which was again used by the Financial Creditor for keeping its own account standard. Further IDBI has given Rs.10 crs. of which PNB has taken Rs.7 crores to keep their account standard. The PNB promised to return the money within 24 hrs., but failed to release funds for packing material.

**(iv)** The Corporate Debtor was forced to be referred to CDR on agreed model of pre-dispersing of pre-CDR payment of Rs.69 crs., which is to be paid to farmers and packing material creditors. The Financial Creditor sanctioned Rs.16 crs. Out of which, an amount of Rs.10 crs. was adjusted to keep the accounts standard for CDR approval, which is nothing but an utter breach of legitimate expectation and promissory estoppel.

**(v)** The Corporate Debtor had approached Chairmen of all Banks during March and April, 2013 for release of funds but the banks have not made any disbursement.

**(vi)** It is averred that the CDR was approved in June 30, 2013 with a proposed Priority Debt disbursement of Rs.90 cr. as against requested amount of Rs.122 crs. The LOI of CDR was issued in September, 2013 and MRA was signed in November and a PD of Rs.26 cr. was disbursed after the Kharif sales season and the remaining amount was not disbursed by several banks and adjusted towards keeping their account standard. The action of

the banks was a total breach of doctrine of legitimate expectation and promissory estoppel.

**(vii)** In April, 2014 JLM of the Corporate Debtor requested the bankers for sanction of Rs.15 cr. towards packing credit. It was apprised in the JLM and CDR EG that the seeds are seasonal and perishable and the quality of stock gets deteriorated. Therefore the Corporate Debtor needs to act swiftly and it was in dire need of funds to get back on its business and to service all the debts as projected and promised but the Corporate Debtor could not secure the required funds due to inaction of the banks.

**(viii)** The Corporate Debtor even after suffering the dents due to the deliberate and mala fide breaches committed by the banks, submitted two corrective action plans in July 2014 and September, 2014 requesting the banks to give a long restructuring time of 10 years, and options to convert debt into equity and permission to sell non-core assets so that some money can be infused into the Corporate Debtor to enable it re-establish its business in the market.

**(ix)** Banks withdrew from CDR without giving any solution and resorted to legal action.

5.5 In para 10 of the Counter the respondent/ corporate debtor articulated how the wrong decisions and breach of promises by the banks including the petitioner/ financial creditor impacted the respondent/ corporate debtor.

5.6 Loss of seeds inventory resulted significant losses to the Corporate Debtor which eroded complete net worth of the Corporate Debtor; employment loss of 2200 regular employees and 3000 temporary jobs.

**(i)** Rs.85 crores dues for the seed producing farmers in Gujarat, Telangana, AP, Karnataka and Maharashtra got affected impacting 65,000 farmer families of their livelihood.

**(ii)** Notwithstanding several requests made by the Corporate Debtor not to liquidate assets, the banks including the Financial Creditor were bent upon liquidating the assets of Corporate Debtor to recover their dues which is not even 10% of their dues, leaving farmers' dues, workmen's dues and statutory dues.

5.7 In Para 11 of the Counter it is averred that the bank has issued show cause notices on 20.08.2016 and 26.03.2018, as to why promoters cannot be identified as defaulters. The promoters replied that the alleged default had occurred due to natural calamities, failure to sanction WC limits by the banks, failure of ill-designed CDR by SBI Caps under the influence of SBI without considering seasonality of the business of the Corporate Debtor, with short moratorium, failure of SBI as Monitoring Institute (MI) after taking huge fees in making the other banks to implement CDR Package and overseeing the disbursement of Pre-CDR funds and sanctioned Priority Debt (PD) in spite of directions from Chairman, CDR EG and signing of Master Restructure Agreement, and dropping out of the strategic Investor Bayer due to no change in GM seeds Policy of the Government.

5.8 In para 12 of the Counter the respondent/ corporate debtor lamented that if working capital limits sanctioned after JLM held on 28.08.2012 the collapse of the company could have been avoided.

5.9 In para 13 of the Counter the respondent/ corporate debtor submitted that the respondent had addressed representations to the Government of Gujarat and Government of India to bail out the seed industry, more particularly when state of the art infrastructure is created by the respondent/ corporate debtor.

5.10 In para 15 of the Counter it is averred that the majority of dues are from Gujarat organizers and farmers. The Corporate Debtor had made large investments in agricultural research and infrastructure. Banks including the Financial Creditor need to consider for long term deep restructuring of debt, considering the agriculture sector needs, and taking hair cut on interest as the Corporate Debtor became NPA in 2013, and a reasonable haircut on principal as Corporate Debtor has already paid interest and term loans close to Rs.762 crores and convert a part of principal debt into equity and stop all legal actions.

5.11 In para 16 of the Counter the respondent/ Corporate Debtor submitted that the Financial Creditor herein had already moved the Debts Recovery Tribunal to recover the debt alleged even in this application and in view of the serious disputed facts, the claims vis-à-vis the counter claims, the matter and the issue has to be adjudicated after an elaborate trial and cannot be adjudicated in a summary proceedings under I & B Code. It is also averred that the parallel proceedings initiated by the Financial Creditor is an absolute abuse of process of law and also a deliberate, intentional, mala fide action to throw out the promoters from the management of the Corporate Debtor. The application filed by the

Financial Creditor not only hampers future prospects of the Corporate Debtor but also curtails the request that are made by the Corporate Debtor through its promoters to the Central government and to the Government of Gujarat.

5.12 In para 19 of the Counter the respondent/ corporate debtor submitted that the instant application has been filed with absolute mala fide intention to cover up their omissions, commissions, illegal actions, coercive actions which were thrust upon the Corporate Debtor and its promoters

5.13 By the above submissions the respondent/ corporate debtor prayed that the application be rejected.

**6.** ADDITIONAL COUNTER DATED 18.06.2019 FILED BY THE RESPONDENT.

6.1 In para 2 of the Additional Counter the respondent/ corporate debtor has relied on and reproduced sections 3, 7, 8 and 10 of the Insolvency and Bankruptcy Code, 2016, to point out that the Code intends to cover only those cases where the default has occurred only after enactment of the Code. The Code came into effect on 28.05.2016.

6.2 In para 4 of the Additional Counter it is submitted that the language of the statute clearly suggests that the event of a debt becoming due and payable and the same is not being paid must be one that takes place after the Code is enacted. It is submitted that if the intention of the Code was to cover the debt which had already become due and payable several years

prior to enactment of the Code, the language used in the Code would have been materially different, such as,

> *"the amount of debt has or, as the case may be, had become due and payable the same is not paid or as the case may be, was not paid."*

6.3 In para 5 of the Additional Counter the respondent/ corporate debtor has tried to rely on sections 7, 8 and 10 and to read a common expression in all the above three sections, namely, "**default has occurred after the Code was enacted.**" How the respondent tried to find such common expression uniformly in all the above three sections is illustrated as under:

| | | |
|---|---|---|
| Section 7(1) | : | ".. .. when a default has occurred" |
| Section 8(1) | : | "An operational creditor may, on occurrence of default, deliver a demand notice .. .." |
| Section 10(1) | : | "where a corporate debtor has committed a default, .. .." |

6.4 In para 7 of the Additional Counter it is submitted that the default had allegedly occurred on 30.04.2013 when the account of the respondent-company was classified as an NPA, viz. more than three years prior to the Code coming into existence, viz.28.05.2016. The same would be barred by law of limitation, particularly under Article 137 of the Limitation Act. Hence, the present Insolvency Application is not maintainable and is barred by law of limitation.

6.5 In para 8 of the Additional Counter law of limitation has been pressed into service. The Code is enacted on 28.05.2017, whereas the

alleged default occurred on 30.04.2013, viz. three years prior to the enactment of the Code.

6.6 In para 9 of the Additional Counter it is submitted that the Corporate Debtor submitted that it is mandatory for a financial creditor to file Insolvency Application in Form-1 (as per Rule 4(1) of the Insolvency and Bankruptcy (AAA) Rules, 2016. However, the present application is not filed in the prescribed Form-1. The **petitioner/ financial creditor has not provided computation of amount of default and days of default**. Thus, the application under Sub-Section (2) of Section 7 is incomplete.

6.7 In paras 11 and 12 of the Additional Counter it is submitted that the Applicant Bank has stated that it has produced authorization or letter of authority at Annexure-I dated 31.08.2018 to the Application mentioning the name of Mr. B. Sudhakar. It is submitted that there ought to be some independent document or source of power which authorizes the signatory. In the absence of any such independent document giving such powers to Mr. B. Sudhakar, the certificate produced at Annexure-1 to the Application has no value and the present Insolvency Application filed on behalf of the Applicant Bank is totally without any authority whatsoever and the same is not maintainable.

6.8 In para 15 of the Additional Counter it is submitted that verification to the Insolvency Application is made not in individual/ personal capacity of the deponent but it is signed "For" or "on behalf of" the Applicant Bank, a body corporate. Such verification is not verification in the eye of law. The Insolvency Application is filed without there being any valid affidavit in support thereof.

6.9 In paras 19 and 20 of the Additional Counter it is submitted that the petitioner/ financial creditor has submitted various certificates allegedly under section 2A of the Bankers' Books Evidence Act, 1891. The Corporate Debtor further submitted that ledger accounts not being books of original entries they cannot be accepted in evidence and cannot be relied upon at all except when in the case of a Bank it has to produce "certified copy" as envisaged under the Bankers' Books Evidence Act, 1891 particularly in compliance with the requirements of Sections 2(8), 2A and 4 thereof.

6.10 In para 27 of the Additional Counter it is submitted that the Statement of Account produced by the petitioner/ financial creditor shows the rate of interest as "0.00% p.a.", whereas on pages 4, 6, 8, 10, 12, 15 and 16, the rate of interest is shown as "ranging from 11.60% to 13.75%". Some other inconsistencies have been pointed out by the respondent/ corporate debtor in the Statement of Account produced by the petitioner/ financial creditor.

6.11 In para 30 of the Additional Counter certain inconsistencies have been pointed out in letter dated 15.06.2018 (ANNEXURE XI to the petition) with regard to "the scope of work for IRP". It is submitted that the items of work mentioned in the enclosure to the said letter (Page XII) do not fall under the scope of work of an IRP. Acceptance of assignment by the IRP is against the provisions of the Code.

7. WRITTEN SUBMISSIONS FILED ON BEHALF OF THE FINANCIAL CREDITOR dated 22.11.2019.

7.1 In para 7(A) of the Written Submissions it is submitted that the contention of the respondent/ corporate debtor that Insolvency and Bankruptcy Code, 2016 is prospective and not retrospective and that the code shall not apply to transactions which have taken place prior to the Code coming into force is not tenable. The *petitioner/* financial creditor has ridiculed the interpretation advanced by the respondent/ corporate debtor in paras 2 to 7 of its Counter. It is averred that neither any Tribunal nor the Hon'ble Supreme Court of India has struck down any application under section 7 of the Code on the ground that the Code is prospective in nature, not retrospective. Even this Tribunal admitted several applications under section 7 of the Code, the transactions of which relate to pre-inception of the Code.

7.2 In para 7(B) of the Written Submissions the *petitioner/* financial creditor submitted that the contention of law of limitation raised by the respondent/ corporate debtor in para 8 of its Additional Counter is not tenable. The *petitioner/* financial creditor relied on para 6 of the decision of the Hon'ble Supreme Court in the case of Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company India Ltd & another, in Civil Appeal No.4952 of 2019, which reads as under:

> *"So far as Mr. Banerjee's reliance on para no.7 of B.K. Educational Services Pvt Ltd. (supra) suffice it to say that the report of the Insolvency Law Committee itself stated that the intent of the Code*

*could not have been to give a new lease of life to debts which are already time barred."*

It is submitted that the Hon'ble Apex Court in the above case was dealing with the aspect of time barred debt. Whereas, in the present case, the debt of the respondent/ corporate debtor is not time barred. Hence the said decision is not applicable to the present case.

7.3 In para 7(C) of the Written Submissions the *petitioner/* financial creditor submitted that the contention of the respondent/ corporate debtor raised in para 9 of the Additional Counter is not tenable. The *petitioner/* financial creditor submitted that a perusal of Column No.2, Part-IV of Form-1 filed by the *petitioner/* financial creditor clearly shows the total amount due which is Rs.327,03,72,501.81 and date of default, viz. 30.04.2013.

7.4 In para 7(D) of the Written Submissions the *petitioner/* financial creditor submitted that the contention raised by the respondent/ corporate debtor in paras 10-17 of the Additional Counter that the application is not filed by authorized person is not tenable. It is submitted that the *petitioner/* financial creditor has filed letter of authority dated 31.08.2018 (ANNEXURE-1, page no.1) issued in favour of Mr. B. Sudhakar by DGM of the *petitioner/* financial creditor, specifically authorizing Mr. B. Sudhakar to initiate CIRP against the respondent/ corporate debtor.

7.5 In para 7(E) of the Written Submissions the *petitioner/* financial creditor submitted that the contention raised by the respondent/ corporate debtor in paras 18-28 of the Additional Counter that the application is not

accompanied by a proper certificate issued under Bankers' Book of Evidence, is not tenable. It is submitted that a perusal of Volume No.3, paras 458-485 of the application filed by the *petitioner/* financial creditor would clearly establish that the *petitioner/* financial creditor has enclosed the said certificate.

**8.** COUNTER DATED 05.01.2023 FILED BY THE CORPORATE DEBTOR CONTENDS THAT:

8.1 The Corporate Debtor has submitted that in view of the observations of the Hon'ble Supreme Court the issues that are required to be considered by this Tribunal are:

- Can the default allegedly occurred on 30.04.2013 stand extended in view of the Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 as pleaded by the applicant?
- Can definition of 'default' include the extended dates than the one mentioned in the Statutory Form?

8.2 It is submitted by the Corporate Debtor that section 7 of the I&B Code speaks about filing of application by the Financ0ial Creditor for initiation of CIRP against the Corporate Debtor before the Adjudicating Authority when a default has occurred. It does not speak about extended default as pleaded by the applicant herein.

8.3 The Corporate Debtor has distinguished the expressions '**acknowledgement**' and '**default**' as under:

| **Contention of the Financial Creditor** | **Contention of the Corporate Debtor** |
|---|---|
| The Financial Creditor in its Amended Application contended that even subsequent to declaration of the account as NPA, the Corporate Debtor had continuously and repeatedly year on year acknowledged and admitted the debt owed to the banks in its Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 for the Financial Years 2013-14, 2014-15 and 2015-16. On each of the said dates, when the Corporate Debtor acknowledged the debt it shall be computed in terms of section 18 of Limitation Act and therefore, the Financial Creditor claims that the application filed u/s 7 of the I&B Code, 2916 on 06.09.2018/ 12.09.2018 is within the period of | The Corporate Debtor submits that Article 137 of the Limitation Act states that in respect of, "Any other application for which no period of limitation is provided elsewhere in this Division" -- three years is the period of limitation, when 'right to apply accrues.<br><br>In the instant case as admitted by the Financial Creditor and in terms of sec. 7 of the IBC, right to accrue would start from the date of default and therefore, three-year period has to be reckoned from 30.04.2013 itself and cannot be read as acknowledging in every Balance Sheet, since the word 'acknowledgement' is different from the word 'default' as occurring in section 7 of the IBC, 2016. |

| | |
|---|---|
| limitation under Article 137 of the Limitation Act. | |

8.4 The Corporate Debtor also contended that section 7 of IBC is meant for initiation of CIRP and not for recovery of debt. Application needs to be filed when default is occurred, not when debt is acknowledged.

8.5 The Corporate Debtor also submitted that when account of the Corporate Debtor was classified as NPA effective from 30.04.2013, by no stretch of imagination it can be said that Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 would give a fresh cause to declare the Corporate Debtor a 'defaulter' again and again or to declare its accounts as NPA again and again.

8.6 It is also submitted by the Corporate Debtor that once the account of the Corporate Debtor is classified as NPA in terms of the RBI Guidelines, no further transaction is allowed by the Bank. RBI Guidelines/ IBC provide neither extension of default nor acknowledgement of default nor renewal of default. Viewed from any angle this application is time-barred.

8.7 The Corporate Debtor also relied on definitions as provided by different Dictionaries as to word 'default' :

| | | |
|---|---|---|
| Black's Law Dictionary | .. | Failure. |
| Oxford Dictionary | .. | Failure to do something that must be done by law, especially paying a debt. |
| Chamber Dictionary | .. | Fail to do what one should do, especially fail to pay what is due. |

In view of the above, the Financial Creditor cannot stretch the meaning of word 'default' by reading an alleged acknowledgement in the Balance Sheets after account of the Corporate Debtor was declared as NPA from 30.04.2013 itself.

8.8 The Corporate Debtor submitted that debt may not be barred by limitation, if it is acknowledged from time to time and Recovery Application can be made within the period of limitation under section 18 of the Limitation Act. Whereas, for initiating CIRP, application has to be filed within three years from the date of default, not from the date of due of payment or extended due date for payment. Thus is the difference between the initiation of CIRP and recovery of debt. The Corporate Debtor laid emphasis on past tense 'when a default occurred' and said it is not past continuous tense. It is settled law that Courts cannot amend the Statute and cannot read the words into the Statute, but the Statute has to be read as it is.

8.9 The Corporate Debtor submitted that as regards the authorised signatory, no authorisation is filed in the name of J. Vijay Kumar, Assistant General Manager, who has signed the Amended Petition.

## 9. WRITTEN SUBMISSIONS DATED 25.05.2023 FILED BY THE FINANCIAL CREDITOR.

9.1 The Financial Creditor submitted that at the request of the Corporate Debtor, the Corporate Debtor was referred to Corporate Debtor Restructuring Cell (CDR Cell), which is a non-statutory mechanism set up under the aegis of RBI guidelines. The CDR Empowered Group has approved restructuring package under which financial facilities were to be restructured. In order to give effect to said CDR, the Corporate Debtor, the Financial Creditor and its Associate Banks and other lenders have entered into Master Restructuring Agreement (MRA) on 26.09.2013 (page 206, Vol. II of the Company Petition). Even after restructuring the account, the Corporate Debtor had committed default and its account declared NPA from 30.04.2013.

9.2 Date of default is 30.04.2013. The petition was filed on 12.09.2018. However, the Corporate Debtor has continuously and repeatedly, year on year acknowledged and admitted the debt owed to the Financial Creditor and other consortium lenders in its Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 for the Financial Years 2013-14, 2014-15 and 2015-16 respectively, by which fresh period of limitation is computed in terms of section 18 of the Limitation Act. Thus, the present petition is well within the period of limitation. In support of its contention of the Corporate Debtor having acknowledged the debt from time to time, the Financial Creditor has placed reliance on the Financial Statements as under:

| Sl. No. | Financial Statements for the year | Details of borrowing | |
|---|---|---|---|
| | | Page No. in IA No.87 of 2022 | Nature of borrowing |
| 1. | 2013-14 | 691 and 719 | Long term |
| 2. | 2014-15 | 723 and 719<br>736 | Long term<br>Other current liabilities |
| 3. | 2015-16 | 761 and 770<br>774 | Long term<br>Other current liabilities |

**10.** WRITTEN ARGUMENTS DATED 25.05.2023 FILED BY THE CORPORATE DEBTOR.

Most of the submissions in these Written Arguments are reiteration of what has been submitted in Counter dated 05.01.2023 filed by the respondent. They are recapitulated as under.

10.1 The Corporate Debtor laid emphasis on the following observations contained in order dated 20.10.2021 of the Hon'ble Supreme Court:

> "*We make it clear that the questions relating to the case set up by the appellant relating to the acknowledgement flowing from MRA dated 26.09.2013 and OTS dated 19.06.2015 shall not be revisited.*"

By virtue of the above observations of the Hon'ble Apex Court the only issue that needs to be considered by this Tribunal, on remand, is:

- Can the default allegedly occurred on 30.04.2013 stand extended in view of the Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 as pleaded by the applicant?
- Can definition of 'default' include the extended dates than the one mentioned in the Statutory Form?

10.2 The Corporate Debtor contended that right to maintain application u/s 7 of the IBC for CIRP is from the date of occurrence of default, but not from the date of acknowledgement of debt, as alleged. Section 7 is different from section 9 of IBC. Admittedly, date of default mentioned by the Financial Creditor in the statutory form is 30.04.2013 and the application was filed on 12.09.2018, which is beyond the period of three years as mentioned under Article 137 of the Limitation Act.

**11.** Therefore, in the backdrop of the order of the Hon'ble Supreme Court of India, *supra,* and contest put forth by the parties, the short and the only point that emerges for the consideration of this Tribunal is:

- Whether it is correct to say that in terms of section 7(1) of IB Code, application for initiation of corporate insolvency resolution process should necessarily be filed within three years when a default has occurred and an application filed beyond three years of default but within three years from the date of due acknowledgement of debt is barred by limitation?

**12.** We have heard Shri Yash Vardhan, Ld. Counsel for the Financial Creditor and Shri T. Surya Satish, learned Counsel for the Corporate Debtor, perused the records and case laws.

**13.** Shri Yash Vardhan, learned Counsel for the Financial Creditor vehemently contended that, the argument that the default in repayment of the subject debt in this case since occurred on 30.04.2013 when the account of the Corporate Debtor was declared as NPA, hence the present Company Petition ought to have been filed within three years from 30.04.2013, however, as the same has been filed on 12.09.2018 it is barred by limitation as *sub section* 1 of Section 7 of IB Code, mandates that the application for initiation of corporate insolvency resolution process should necessarily be filed within three years when a default has occurred, is *contrary* to the well settled legal position being that an application under Section 7 of the IBC when filed beyond a period of three years when default has occurred, will not be barred by limitation, when the debt which has been defaulted is duly acknowledged by the Corporate Debtor, before expiry of the period of limitation of three years as the said acknowledgement would extend the period of limitation afresh from the date of acknowledgement.

**14.** According to the Ld. Counsel the contention that the legislative intent behind using the word 'default' in *sub section* (1) of section 7 of IB Code, is the '*default* at the first instance' and not the 'extended default' as such an application for initiation of corporate insolvency resolution

process filed beyond three years being on '*extended date of default*' is barred by limitation, is wholly unsustainable, in as much as there is nothing like default at first instance and extended default under the I&B Code, 2016. Learned counsel also submitted that the present petition since is in order the same deserves to be allowed and CIRP against the Corporate Debtor be triggered. In support of his contentions, the Ld. Counsel for the Financial Creditor relied on the rulings referred supra.

**15. Per contra,** the Ld. Counsel Shri Surya Satish for the Corporate Debtor, *strenuously* contended that the Financial Creditor having declared the subject account of the Corporate Debtor as NPA on 30.04.2013, the present petition in terms of sub section (1) of section 7 of IB Code, ought to have been filed within three from the said date of default, which is 30.04.2013, as the same has been filed on the '*extended date of default'* by virtue of the acknowledgement of debt, is barred by limitation. In this regard, the Ld. Counsel also placed reliance on sub-section (1) of section 7 of the I&B Code, 2016, which is as below:

> "***7. Initiation of corporate insolvency resolution process by financial creditor.***
>
> *(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process*

*against a corporate debtor before the Adjudicating Authority when a default has occurred.*"

According to the learned counsel on a plain interpretation of Section 7(1) of IBC, the petition for initiation of Corporate Insolvency Resolution Process (CIRP) shall be filed within three years from the date of default. However, as the present application has been filed nearly five years after the date of default, the petition is hopelessly barred by limitation and on this ground the petition is liable to be dismissed.

**16.** Ld. Counsel further contended that the revival letter dated 06.02.2014 and 16.08.2014, and balance sheets of the corporate debtor for the FY 2013-14. 2014-15, 2015-16 and 2016-17, at best may extend the limitation but cannot extend the default that has taken place in this case on 30.04.2013. So much so, according to the Ld. Counsel, the present petition under Section 7 of IBC since on "extended date of default" is not maintainable and the same is barred by limitation.

**17.** Referring to Section 7(5) of IBC, Ld. Counsel contended that the petition is not complete, hence on this ground also, the present petition is liable to be dismissed. In this regard, the Ld. Counsel contended that the person who signed the petition on behalf of the Financial Creditor, had

filed letter of authorization dated 31.08.2018 is not validly authorized, besides that the petition is not accompanied by a proper certificate issued under Bankers Book Evidence Act, as such the account statements cannot be looked into. Thus, contending, the Ld. Counsel for the Corporate Debtor prayed for dismissal of the Petition.

**18.** Before we proceed to decide the point afore-stated, we wish to refer to the definition of debt and default as contained under IBC, *besides* Section 7 of IBC, which are as below: -

> **Section 5(8) of the IBC,** a **financial debt** is defined as:
>
> "*a debt together with interest, if any, that is distributed against the consideration for time worth of money and includes: money borrowed against interest payment*
>
> *As per Section 3(12) of IBC,* ***"default"*** *means "non-payment of debt when whole or any part or instalment of the amount of the debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.*"

**Section 7 IB Code :** Initiation of corporate insolvency resolution process by financial creditor.

> "*7(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

*Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:*

*Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*

*Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.*

*Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

*(2) The financial creditor shall make an application under sub-section (1) in such 1 Subs. by Act No. 26 of 2018, sec. 4 for the words "other financial creditors" (w.e.f. 6-6-2018). 2 Ins. by Act No. 1 of 2020, sec.3 (w.e.f. 28-12-2019). 14 form and manner and accompanied with such fee as may be prescribed.*

*(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 )th e name of the resolution professional proposed to act as an interim*

*resolution professional; and (c) any other information as may be specified by the Board.*

*(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3): 1 [Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]*

*(5) Where the Adjudicating Authority is satisfied that – (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application: Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*

*(7) The Adjudicating Authority shall communicate- (a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor; (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."*

**19.** There is no quarrel that the *financial debt* of the sum over Rs. One Crore is due by the Respondent to the Petitioner and the same is defaulted by the Respondent. Bone of contention is whether the debt claimed under the present application is within the prescribed period of limitation or not.

**20.** Having anxiously considered the submissions of the Ld. Counsel for both the parties and on careful perusal of the relevant provisions of the IB Code, besides by taking into consideration the well settled legal position in this regard, the submission of the Ld. Counsel for the Corporate Debtor that, the 'default' which is the *sine qua non*, for setting in motion the application under section 7 of IB Code, the Legislature in its wisdom meant only the "default" that occurred at the first instance and not the extended default, by virtue of acknowledgement of debt or on the basis of entry in the Balance Sheets of the Corporate Debtor, therefore, the present application having not been filed within three years from 30.04.2013 is barred by limitation, is uncomprehensive, firstly for the reason that sub-section (1) of Section 7 of IB Code, merely states that *when a **default** has occurred* an application by one or more persons can be filed for initiating corporate insolvency resolution process against a corporate debtor, before the Adjudicating Authority. The Legislative intent behind use of the word 'default' in subsection (1) of section 7 is very clear and unambiguous, hence there is no room for any interpretation, such as default extended, etc.

**21.** It is well settled principle of statutory interpretation that in a statute the Court cannot read an additional word which has not been used by

legislator. The definition of Default in Sub-Section (12) of Section 3 itself comprises several events i.e. non-payment of debt when whole or any part or instalment of the amount of debt has become due. The default may be of different nature on some default the entire amount may become due like when Account is declared NPA, there may be some default by happening of which only fraction of amount became due like in present case non-payment of interest on 30th June, 2015 only interest part became due. IBC does not comprehend that on first default committed by any debtor, all creditors should rush to IBC. The core objective of IBC is resolution of insolvency of a Corporate Debtor. All provisions have been made; the entire scheme of the IBC has been contemplated to achieve the aforesaid object. Where debtor is unable to pay a fraction of debt which becomes due there is no presumption that Debtor has become insolvent and, in an event, the Creditor awaits for some more time like default by non-payment of first instalment or entire due as in the present case the right of creditor shall not be foreclosed. What is intended by scheme of statute is that no Application under Section 7 can be filed for default from which date the due claim has become time-barred. Time-barred debt cannot be revived by any proceeding under Section 7 which has time and again been reiterated by Hon'ble Supreme Court of India. We are thus not persuaded to read an

additional word 'First' before Company Appeal (AT) (Insolvency) No. 911 of 2021 the expression 'Default' under sub-section (1) of Section 7 as contended by Learned Counsel for the Applicant.

**22.** In fact, a similar argument put forth has been out-rightly rejected by the Hon'ble NCLAT in the matter between *Koncentric Investments Ltd. Vs. Standard Chartered Bank, London*, CA (AT) Insolvency No. 911/2021 dated 27.01.2022, and it was held as under: -

> *"8. .. .. Sr. Advocate appearing for the Respondent No.1 refuting the submissions of Learned Sr. Counsel for the Appellant submits that Facility Agreement dated 22nd May, 2013 was amended by Supplemental Agreement dated 19th August, 2013 and first disbursal of amount was made on 30th August, 2013 hence 27 months period was to expire on 30th November, 2015 and first instalment thus became due only on 30th November, 2015. It is true that interest due on 30th June, 2015 was not paid but not filing Section 7 Application on the ground of default in payment of interest amount shall not take away the right of bank to sue when first instalment became due or when entire loan became due in view of the Acceleration Notice dated 05.01.2017. Section 7 (1) of the Code speaks of Company Appeal (AT) (Insolvency) No. 911 of 2021 default it does not mention first default. To accelerate Financial Facility by the Bank, the permission of Reserve Bank of India was necessary for proceeding for accelerating the facility which permission was also applied on 24th November, 2015 but could be granted only on 07.12.2016 thereafter Notice of Acceleration was given on 05.01.2017 and the entire amount became due, computing the period of limitation from first default of principal amount i.e. 30th November, 2015. The Application filed on 28th November, 2015 was well within three years and the Adjudicating Authority did not commit any error in admitting the Application."*

*"10. .. .. Sr. Advocate in his Rejoinder submits that subsequent events are not relevant for deciding the maintainability of the Application under Section 7 of the Code, pre-requisites for acceleration is interest default when default was committed on 30th June, 2015, any non- payment of interest by the Corporate Debtor, cause of action has a reason for filing Section 7 Application and when limitation starts running it cannot Company Appeal (AT) (Insolvency) No. 911 of 2021 be stopped hence Application could have been filed before 30th June, 2018 only and the Application filed on 28th November, 2018 was well beyond three years and liable to be rejected. The Bank was effectively injured on 30th June, 2015 when payments were not made. ..... Sr. Advocate submits that the unstamped document could not be admitted in evidence and could not have been looked into for any purposes."*

*"16. .. .. .. The question to be answered is as to whether non-filing of the Application within three years from 30th June, 2015 shall make the Application filed by the Financial Creditor under Section 7 as barred by time since admittedly the Application have been filed on 28th November, 2018..... , Sr. Advocate has emphatically submitted that according to the Code when the first default has been committed, time shall start running and the Application under Section 7 cannot be filed for time barred debt. He further submits that the Financial Creditor has not filed the Section7 Application within three years from the date i.e. 30th June, 2015 and thus their claim is barred by time and application ought to have been rejected."* (emphasis supplied)

*"18. .. .. .. In the present case, non-payment of amount of interest on 30th June, 2015 was non-payment of part of debt since interest was also part of debt. We thus agree with the submissions of Learned Sr. Counsel for the Appellant that there was default when interest was not paid on 30th June, 2015. Now question is as to when a Financial Creditor has not filed the Application on first default i.e. payment of interest whether he is*

*precluded to file Application for subsequent defaults i.e. when default is committed for an instalment or for whole debt when it becomes due.*" (Emphasis supplied)

"*21. The Insolvency and Bankruptcy Code including rules and regulations, does not indicate that it is mandatory for the Financial Creditor to rush to file Section 7 Application whenever first default is committed in payment of interest. Although it had liberty to file an application even if there is default in payment of interest. Section 7 (1) of the Code uses the expression when a default has occurred there is no indication under Section 7 of the Code that unless an Application is filed on first default committed, no application can be filed when subsequent defaults are committed. The Financial Creditor is at liberty to file Section 7 Application but is neither mandatory nor necessary that on first default Financial Creditor should rush to the Insolvency Court. Financial Creditor may await and give more time to Corporate Debtor to find out as to whether actually the Corporate Debtor has become insolvent and unable to repay the debt and even Financial Creditor ignores non-payment of interest when the Corporate Debtor first defaulted it shall not lose its right to file Application under Section 7 of the Code when default of instalment or whole amount became due. The only statutory requirement is that default as claimed in the Application under Section 7 should be within three years from the date when application is filed under Section 7 of the Code because any default of amount committed before three years of filing of the Application Company Appeal (AT) (Insolvency) No. 911 of 2021 shall become time barred debt and cannot be said to be payable and due within the meaning of Section 3(11) and Section 3(12) of the Code.*" (Emphasis supplied)

"*22. .. .. .. Thus, for applying the law of limitation on Section 7 Application it is to be seen as to whether the date of default as claimed in the application and payment of debt and debt due is not beyond three years and if the date of default as claimed in the Application is within three years the Application cannot be thrown out as barred by limitation. The mere fact that the Financial Creditor has ignored or not claimed any due which was due three*

*years prior to the date of default as claimed in the Application shall not disentitle the Financial Creditor to claim the debt which was payable within three years from the date of filing.* .. .. "
(emphasis supplied)

**23.** Hon'ble Supreme Court of India in 'B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates' [(2019) 11 SCC 633] had occasion to consider the law of limitation in reference to Insolvency and Bankruptcy Code and Section 3(11) and 3(12). Hon'ble Supreme Court held that Financial Creditor or Operational Creditor can initiate an application with relation to debt which has not become time barred. It was held that:

"*42. It is thus clear that since the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.*"

"*Thus, for applying the law of limitation on Section 7 Application it is to be seen as to whether the date of default as claimed in the application and payment of debt and debt due is not beyond three years and if the date of default as claimed in the Application is within three years the Application cannot be thrown out as barred by limitation.* ***The mere fact that the Financial Creditor has ignored or not claimed any due which was due three years prior to the date of default as claimed in the Application shall not disentitle the Financial Creditor to claim the debt which was payable within three years from the date of filing.*** *We are conscious of the law as declared by Hon'ble Supreme Court that*

*normally date of default is a date when account of borrower has been declared NPA. When account is declared NPA it is open for the lender to claim for debt and any Application filed beyond three years from the date account became NPA shall be dismissed and barred by time*".

**24.** Hon'ble Supreme Court in 'Laxmi Pat Surana Vs. Union of India and Anr.' [(2021) 8 SCC 481] in the above case the default had occurred on 30th January, 2010 which was a date on which loan in question was declared NPA. Supreme Court in paragraph 43 held as follows:

"*43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits default. Section 7, consciously uses the expression default not the date of notifying the loan account of the corporate person as NPA. Further, the expression default has been defined in Section 3(12) to mean non− payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non−payment of debt.* ***Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of***

***the Code enures.*** *Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.*"

**25.** To accept the submissions made by Learned Counsel for the applicant, we have to read one additional word under Section 7 before the word 'Default' under Sub-Section 1 of Section 7 of the Code i.e. the word 'First'. The submission of the Appellants is that when first default is committed by a Debtor, the Creditor has necessarily and mandatorily to Company Appeal (AT) (Insolvency) No. 911 of 2021 initiate Application under Section 7 failing which the right of creditor to file an Application under Section 7 of the Code shall be defeated by law of limitation.

**26.** Hon'ble Supreme Court of India in re Dena Bank v. C. Shivakumar Reddy, at page 144 & 145 held as follows:-

"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."*

Therefore, in the light of the law as laid down in the rulings aforesaid, we have no hesitation in rejecting the above submissions of the Ld. Counsel for the Corporate Debtor.

**27.** Now we shall address the plea that the petition is not complete. Having perused the documents produced by the Corporate Debtor regarding the authority of the person to file this petition we are convinced that the said person had been fully authorized. In so far as the other objection that the statement of accounts is not duly certified as per the provisions of Banker Book of Evidence Act, is concerned, we are afraid the same is untenable in the background of the fact that the financial debt as well as its default are not in dispute in this case.

**28.** As already observed existence of financial debt of the sum over Rupees one crore is due and its default is not in controversy. Having carefully examined the plea of limitation, we are fully satisfied that, the Petition as filed is within the prescribed period of limitation. Therefore, it is a fit case to allow the Petition and admit the Corporate Debtor into CIRP.

**29.** Hence, the Adjudicating Authority admits this Petition under Section 7 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Vibha Agro Tech Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of **moratorium** shall have effect **from the date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri Ram Ratan Kanoongo,** having Registration No. IBBI/IPA-001/IP-P00070/2017-2018/10156 as Interim Resolution Professional, whose contact details are:

e-mail ID: rrkanoongo[at]gmail[dot]com
Address: 708, 7th Floor, Raheja Centre, Nariman Point, Mumbai City, Maharashtra PIN: 400021.
(as recorded in IBBI Website)

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 15th June 2018 [PAGE-XIII of the pre-amended application]. His Authorisation for Assignment is valid

till 10.11.2023. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

**30.** Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

**31.** Accordingly, this Petition is admitted.

05-06-2023

CHARAN SINGH
MEMBER (TECHNICAL)

5/6/23

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

*karim*

12/6/2023

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP (IB) No. 645/7/HDB/18
निर्णय का तारीख
DATE OF JUDGEMENT 5/6/23
प्रति तैयार किया गया तारीख
COPY MADE READY ON 12/6/23