

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-10-2023 AT 10:30 AM

CP (IB) No. 391/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Financial Creditor

VS

GVK Gautami Power Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, the CP is admitted under section 7 of the IBC ordering initiation of CIRP against the CD/ GVK Gautami Power Limited, declaring moratorium and appointed Mr. Anil Kohli having Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219 as Interim Resolution Professional.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH, AT HYDERABAD**

C.P. (IB) No.391/07/HDB/2022

**PETITION U/S 7 OF IBC, 2016 TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER THE
INSOLVENCY AND BANKRUPTCY CODE, 2016**

BETWEEN:

Edelweiss Asset Reconstruction Company Limited,
(acting in its capacity as a Trustee of EARC Trust SC 341)
Represented by its Authorized Signatory Vaishnavi Macherla
Edelweiss House,
Off C.S.T Road,
Kalina, Mumbai,
Maharashtra- 400098.

.... Financial Creditor

AND

GVK Gautami Power Limited
Plot # 10, Paigah Colony, Phase-I, Sardar Patel Road,
Secunderabad Hyderabad, Telangana – 500003

.... Corporate Debtor

Date of order: 20.10.2023

Coram:

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Petitioner: Shri Shabbeer Ahmed, along with Shri. Indraprateek Naidu, Advocates

For Respondent: Shri Ch.Pushyam Kiran, Advocate

**PER BENCH
ORDER**

1. This Petition is filed under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Financial Creditor i.e. Edelweiss Asset Reconstruction Company Limited, seeking admission of the Petition for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent/ GVK Gautami Power Ltd, defaulted in the payment of alleged debt of Rs. 1447,15,01,731/- (Rupees One Thousand Four Hundred and Forty-Seven Crores Fifteen Lakhs One Thousand Seven Hundred and Thirty-One Only) which includes the Principal amount of Rs. 746,57,08,033/-

and interest amount of Rs. 700,57,93,698/- as on 15.11.2022.

2. *The averments in the Petition in brief are:-*

- 2.1 The Corporate Debtor (CD) availed various loan facilities from several lenders over the years for the purpose of setting up a 469 MW gas based combined cycle power plant and related facilities near Kakinada, Andhra Pradesh (Project). The said loan facilities included rupee term loans of Rs. 1042 Crores and foreign currency loans for US\$ 30 million.
- 2.2 The Corporate Debtor in the year 2010, owing to the difficulties faced by the Corporate Debtor in servicing the principal and interest to the then existing lenders, had approached Infrastructure Development Finance Company Limited (Assignor Bank) for grant of a Rupee Term Loan for partial refinancing of existing loans of the CD (which were obtained from various lenders.)
- 2.3 Accordingly, the Assignor Bank extended three Rupee Loans:

- a. Rupee Loan – I of Rs. 500 Crores
- b. Rupee Loan – II of Rs. 150 Crores
- c. Rupee Loan – III (Funded Interest Term Loan) of Rs. 153 Crores

2.4 After extending the credit facilities of Rs. 650 Crores to the CD through Rupee Loan – I and Rupee Loan – II, the Assignor Bank became the lead lender and after the withdrawal of Power Finance Corporation Limited i.e. the erstwhile Security Agent and Facility Agent, the existing lenders of the CD unanimously decided to appoint the Assignor Bank to act as the Facility Agent and the Security Agent. After Assignor Bank was appointed as the Facility Agent and the Security Agent, Rupee Loan – III was extended to the CD. Rupee Loan – III was specifically granted for the purpose of financing the interest for a period starting from 01.01.2014 to 29.02.2016 on the existing loans disbursed by the Assignor Bank i.e. Rupee Loan – I and Rupee Loan – II.

2.5 The Corporate Debtor availed a total of Rs. 803 Crores from the Assignor Bank sanctioned as rupee term loans.

However, the total amount disbursed to the CD is Rs. 746,57,08,033/-. Due to various defaults committed by the CD, the CD's loan account with the Assignor Bank was declared as a Non-Performing Asset on 15.07.2014 by the Assignor Bank.

- 2.6 The Financial Creditor/petitioner submits that in order to settle its outstanding dues with all the lenders including the Assignor Bank, the Corporate Debtor issued One Time Settlement Proposals dated 07.03.2018 and 20.06.2018. However, the said proposals were never materialized.
- 2.7 On 05.02.2018, the Corporate Debtor issued Revival Letter to the Assignor Bank, acknowledging its liability to the Assignor Bank.
- 2.8 Over the years, the CD has issued two One Time Settlement Proposals to the Assignor Bank, one revival letter to the Assignor Bank and one revival letter to the Financial Creditor while acknowledging the debt of the Assignor Bank/Financial Creditor in all its annual statements since 2015.

- 2.9 The Assignor Bank assigned the Corporate Debtor's debt to the Financial Creditor herein vide Assignment Agreement dated 24.08.2018.
- 2.10 Subsequently, a Revival Letter was issued by the Corporate Debtor to the Financial Creditor on 25.06.2020, acknowledging its outstanding debt due to the Financial Creditor.
- 2.11 Later, a loan recall notice was issued by the Financial Creditor to the Corporate Debtor on 21.01.2022 followed by a notice under Section 13(2) of the SARFAESI Act.
- 2.12 According to the Financial Creditor/ Petitioner, the outstanding is Rs. 1447,15,01,731/- (Rupees One Thousand Four Hundred and Forty-Seven Crores Fifteen Lakhs One Thousand Seven Hundred and Thirty-One Only) which includes the Principal amount of Rs. 746,57,08,033/- and interest amount of Rs. 700,57,93,698/- as on 15.11.2022 and the date of default is reckoned as 15th October, 2016 which is the date by which the Corporate Debtor was obligated to make the first

tranche as per the Amortisation Schedule of Rupee Loan -
III.

3. Counter is filed by Corporate Debtor inter-alia, contending as follows:-

3.1 That the Corporate Debtor is the successful bidder to develop and operate the 440 MW combined cycle power project at Vetlapalem, Samalkot Mandal, East Godavari District and for setting up, for operating and for collection of tariff, it had entered into Power Purchase Agreement (PPA) approved by Andhra Pradesh Electricity Regulatory Commission (APERC) with Power Distribution Companies of Andhra Pradesh (APDISCOMs) on 31.03.1997. Further the Corporate Debtor had entered into several Agreements with GAIL, RIL etc. However, since the Corporate Debtor faced many issues with APDISCOMs, several litigations have been filed before various forums claiming a sum of Rs. 1400 crores and is pessimistic of succeeding in these litigations. It is further stated that from the date of the first drawdown i.e. 15.06.2004 till the date of filing the present petition, the Corporate Debtor had repaid a

sum of Rs. 1,497.97 crores on term loans. Subsequently, the account of Corporate Debtor was declared as NPA by IDFC Bank on 15.07.2014. The Corporate Debtor has not offered any comments on the Deed of Assignment dated 24.08.2018 that was entered between IDFC and the Petitioner as it is unaware of the same as it was not a party to the same.

3.1.1 Petition is barred by limitation:

According to the Corporate Debtor, the present petition is not maintainable as the Petitioner failed to exercise its rights within the period of limitation. Further according to the Corporate Debtor, the cause of action had arisen on 15.07.2014, but the present petition is filed on 07.12.2022. The amount claimed by the Petitioner in the present petition is not reflected in the audit reports and balance sheets of the Respondent for the years 2015-16, 2016-17 and 2018-19, though certain amount shown to be in default by the Respondent to the Petitioner in the audit report for the year 2018-19. Further it is stated that the audit report is of

16.05.2019 and even if this date is taken into consideration, the present petition is barred by limitation.

3.1.2 According to the Corporate Debtor, the letters relating to one time settlement issued to the Consortium of Banks including IDFC (but not the petitioner herein) on 07.03.2018 & 20.06.2018 and the Revival Letter dated 05.02.2018 issued to IDFC Bank (but not to the Petitioner), cannot be considered as acknowledgement of debt.

3.1.3 The Corporate Debtor further submits that the revival letter dated 25.06.2020 issued by the Petitioner is beyond the period of three years from the date of default i.e. 15.07.2014 (NPA) as there is a specific reference in the said letter with regard to date i.e. 30.09.2017 for the purpose of Section 18 of the Limitation Act, 1963. As such the petition according to the Corporate Debtor is barred by limitation.

3.1.4 The Corporate Debtor further contended that the Petitioner has claimed the date of default as 15.10.2016, however according to the Corporate Debtor, the date of declaration of NPA should be reckoned as date of default which is

15.07.2014. The Corporate Debtor further submitted that even assuming but not admitting, if 15.10.2016 is taken as the date of default, even then the Petition is barred by limitation.

3.2 Suppression of material facts:-

Prior to filing of the present petition, the Petitioner had filed OA No. 593 of 2022 before the Debts Recovery Tribunal-I Mumbai with respect to the same claim and pending adjudication. However, the Petitioner had suppressed the said fact in the petition and allege that the Petitioner has approached this Tribunal with unclean hands.

3.3 It is further submitted that huge sum of money is due from APDISCOMs and claims to the tune of Rs. 1,400 crores is pending adjudication.

3.4 Thus submitting, prayed this Tribunal to take into consideration the circumstances stated in the counter while deciding the present case.

4. Rejoinder is filed by the Financial Creditor rebutting to the contentions raised in the counter, as under:-

- 4.1 In response to the averments stated in the counter that the Corporate Debtor has initiated several legal proceedings against the DISCOMs and other Governmental authorities claiming a sum of Rs. 1400 crores and there is a likelihood of Corporate Debtor succeeding in those proceedings, the Financial Creditor submits that no material is placed on record to demonstrate that the Corporate Debtor would succeed in its endeavor.
- 4.2 It is further contended that this Tribunal while deciding Section 7 IBC petition, only has to see whether there is debt and default but not the operational difficulties being faced by the Corporate Debtor. In the present case, the Corporate Debtor not only failed to repay the debt, but had acknowledged the debt by way of One Time Settlement letters issued to IDFC Bank (Assignor Bank) and Loan Revival Letters issued to the Assignor Bank and the Petitioner/Financial Creditor. It is further stated that the proceedings initiated by the Corporate Debtor against the DISCOM authorities before various courts

can still be continued by the Resolution Professional during CIRP.

4.3 The Petitioner contends that the Corporate Debtor has only repaid a part of the debt that is owed to the Financial Creditor and a substantial amount is still pending. The Independent Auditor's Report of the Corporate Debtor for the Financial Year 2018-19 annexed at page 1255 of the petition shows demonstrate the same.

4.4 In response to the contention of the Corporate Debtor that the Petition is barred by limitation, the Petitioner submits that though the Assignor Bank declared the loan account of the Corporate Debtor as NPA on 15.07.2014, however, the said date of NPA was pertaining to loan accounts for Rupee Loan-1 and Rupee Loan-II. Thereafter, the Assignor Bank extended Rupee Loan-III for Rs.153 crores specifically granted for financing the interest for the period from 01.01.2014 to 9.02.2016 on the existing loans disbursed by the Assignor Bank. The first instalment for repayment of the loan was

15.10.2016 as per the Amortisation Schedule. Further the Corporate Debtor has periodically acknowledged its debt due to the Assignor Bank in the Independent Auditor's Reports for the years 2015-16 and 2016-17, annexed at page 1203 to the petition, Loan Revival Letter to the Assignor Bank on 05.02.2018 annexed at 1142, One Time Settlement letters dated 07.03.2018 and 20.06.2018 and the Loan Revival letter dated 25.06.2020, which extends the limitation to the Petitioner to file the present petition. To buttress its case, the Petitioner further placed reliance on the Suo Motu Writ Petition (civil) No. 3/2020 whereby limitation period was extended with effect from 15.03.2020 till 28.02.2022. Therefore, according to the Petitioner, the present petition is within limitation.

- 4.5 In response to the contention of the Corporate Debtor that the Petition has approached this Tribunal with unclean hands, the Petitioner submits that it is a matter of record that OA No. 593 of 2022 has been initiated by Financial Creditor before DRT

Mumbai-1, however it does not bar the Financial Creditor to initiate proceedings before this Tribunal under IBC.

5. **Clarificatory Memo by the Financial Creditor**

The record reflects that upon hearing the Ld. Counsels for both sides, this Tribunal had directed the Ld. Counsel for the Financial Creditor to explain how the limitation aspect is saved as the revival letter of Corporate Debtor has been purportedly executed after three years from the last date on which payment is due. Accordingly, the Financial Creditor filed clarificatory memo stating that the date of default in an application under Section 7 of IBC need not be the date on which the loan account of the Corporate Debtor was notified as NPA by relying on the ruling of Hon'ble Supreme Court of India in **re Laxmi Pat Surana Vs. Union Bank o India (2021 8 SCC 481**. Further the Petitioner emphasized acknowledgement of debt owed by Corporate debtor by way of OTS letters dated 07.03.2018 and 20.06.2018 issued by the Corporate Debtor to the Assignor Bank. As such, according to the Petitioner, fresh

period of limitation is reckoned from the issuance of the OTS letter dated 20.06.2018. Though the petitioner ought to have filed the petition before 19.06.2021, the present petition is filed on 07.12.2022, as according to the Petitioner, the limitation is saved by virtue of Hon'ble Supreme Court of India in Suo Motu (C) No. 3/2020, whereby period from 15.03.2020 till 28.02.2022 was excluded for the purpose of computation of limitation. Therefore, the Financial Creditor had limitation till 31.05.2023.

6. **Additional Counter by the Corporate Debtor to the clarificatory memo filed by the Petitioner.**

The Corporate Debtor submits that there is no acknowledgement of liability by the Respondent as required under Section 18 of Limitation Act, 1963 within a period of three years from 15.07.2014. It is further stated that the judgements relied upon by the Petitioner are different from the present case. It is alleged that the Petitioner in order to bring the present petition within limitation has recorded the date of

default as 15.10.2016 instead of 15.07.2014. According to the Corporate Debtor the revival letter dated 05.02.2018 cannot be considered as acknowledgement of debt by the Corporate Debtor for the purpose of extending limitation u/s 18 of Limitation Act as it is beyond three years from the date of default i.e. 15.07.2014 and because the loan agreements referred to in the revival letter are not the loan agreements on the basis of which the present petition is filed. Rest of the pleas taken in the additional counter have already been made in the main counter.

7. Written submissions are filed by both the parties reiterating the averments made in the Petition and rebuttal by way of counter. The judgements relied by both the parties are as under: -

Financial Creditor/Petitioner

- (1) Hon'ble Supreme Court of India in re ***Laxmi Pat Surana vs Union Bank of India (2021) 8 SCC 481***, wherein it has used the expression "default" which has been defined in Section 3

(12) of IBC and does not mention that such a “default” shall mean the date on which the loan account of the CD was notified as NPA.

- (2) Hon’ble NCLAT in re ***Abhay Narendra Lodha vs Bank of Baroda in Company Appeal (AT)(Insolvency) No. 997/2022*** and in re ***Edelweiss Asset Reconstruction Company Limited vs Perfect Engine Components Pvt Ltd, 2022 SCC OnLine NCLAT 1622*** wherein the case of Laxmi Pat Surana was referred to and reiterated the principles laid down therein that the date of declaration of NPA need not be the date of default.
- (3) Hon’ble Supreme Court of India in re ***Khan Bahadur Shapoor Freedom Mazda s Durga Prasad Chamaria and ORs AIR 1961 SC 123***, wherein it was held that Acknowledgement of debt should relate to a present subsisting liability indicating a “Jurial relationship” between the Debtor and the Creditor.
- (4) Hon’ble Supreme Court of India in re ***Innoventive Industries Ltd Vs ICICI Bank and Anr (2018) 1 SCC 407***, wherein it

has held that in a Section 7 Application, the Adjudicating Authority is satisfied that there exists a debt due and default, then the petition is fit for admission.

- (5) NCLAT order in ***Suzlon Synthetics Ltd Vs Stressed Asset Stabilization Fund and Anr in Company Appeal (AT) (Insolvency) No. 662-663 of 2022***, wherein it was held that in an application under Section 7 of IBC, the exact amount of financial debt is immaterial as long as the amount admitted by the Corporate Debtor is more than the threshold amount of Rs. 1 crore.
- (6) NCLAT order in ***Asset Reconstruction Company (India) Limited vs Uniworth Textiles Limited in Company Appeal (AT) (Insolvency) No. 991 of 2020***, wherein it was observed that while looking at the entries of a balance sheet, one should consider the overall scenario after taking into account the Director's Report, Auditor's report, notes to the accounts etc.
- (7) ***Hon'ble Supreme Court of India, in Suo Motu Writ Petition (Civil) No. 3 of 2020***, held that while computing the period of

limitation, the period from 15.03.2020 till 28.02.2022 shall stand excluded.

Respondent/Corporate Debtor

- (1) Hon'ble Supreme Court of India in ***Dena Bank vs C. Shivakumar Reddy (2021) 10 SCC 330 142-143***, wherein it was held that a petition under Section 7 of IBC has to be filed within three years from the date of declaration of the loan account of the Corporate Debtor as NPA unless there is an acknowledgement of debt under Section 18 of the Limitation Act, 1963, by the Corporate Debtor within a period of three years from the date of declaration as NPA.
- (2) Hon'ble Supreme Court of India in re ***Gaurav Hargovindbhai Dave vs. Asset Reconstruction company (I) Ltd, (2019) 10 SCC 572***, wherein it was held that the right to sue accrued on 21.07.2011 (NPA date) and therefore, the period of limitation expired in 2014.
- (3) Hon'ble NCLAT in ***Harsukhbhai P. Lakkad vs. Bank of Baroda in Company Appeal (AT) (Insolvency) No. 32 of 2020***, wherein it was held that the date of declaration of the

account of the Corporate Debtor is the date of default and that the Petitioner cannot show a subsequent date as the date of default to derive advantage of filing the Section 7 petition within limitation.

- (4) Hon'ble NCLAT in ***Deepak Vegpro Pvt Ltd vs. Shree Hari Agro Industries Ltd (Company Appeal (AT) (Insolvency) No. 1085 of 2019***, wherein the Hon'ble NCLAT held that the loan amount shown in the balance sheets is vastly different from the amount being claimed in the petition filed under S.7 of IBC and that, therefore, it would not amount to an unequivocal and unqualified acknowledgement of debt.
- (5) Hon'ble Supreme Court in re ***Vidarbha Industries Power Limited vs Axis Bank Limited (2022) 8 SCC 352***, the Hon'ble Supreme Court held that the Tribunal under Section 7 of IBC has been conferred with the discretion regarding the admission of a petition even though there is a default on the part of the Corporate Debtor.

8. In the light of the contest, the only issue that arises for consideration is:

Whether the financial debt which is due and payable by the Corporate Debtor is barred by limitation?

9. We have heard Shri Shabbeer Ahmed, Ld. Counsel for the Financial Creditor and Shri Pushyam Kiran, Ld. Counsel for the Corporate Debtor, perused the record and case law.

Point:-

Whether the financial debt which is due and payable by the Corporate Debtor is barred by limitation?

10. According to the Ld. Counsel for the Financial Creditor, the account of the Corporate Debtor has been declared as NPA on 15.07.2014 by the Lender Bank, consequent to the defaults committed. Ld. Counsel further states that, as per the Amortisation Schedule of the Rupee Loan-III Agreement, the Corporate Debtor was obliged to make the first tranche of payment on 15.10.2016, which the Corporate Debtor failed to

pay. Therefore, the date of default in this case is 15.10.2016 but not 15.07.2014, the date of NPA (as sought to be contended by the Ld. Counsel for the Corporate Debtor).

11. Ld. Counsel further submitted that post 15.10.2016, the Corporate Debtor has regularly acknowledged the debt in its annual reports and the independent audit reports of the financial years 2015-16, 2016-17 and 2018-19, copies of which are filed. The Ld. Counsel further states that, apart from acknowledging the debt, the Corporate Debtor also on 15.02.2018 executed a Revival Letter dated 25.06.2020 acknowledging the debt. All these debt acknowledgements being within 3 years from the date of default and the present petition having been filed on 08.02.2022 is well within the prescribed period of limitation. Therefore, the plea that the subject debt is barred by limitation is unsustainable and untenable. In support of the plea that the date of default cannot be the date of NPA, the Ld. Counsel relied on the following rulings: -

1. Hon'ble NCLAT in re Abhay Narendra Lodha vs Bank of Baroda in Company Appeal (AT)(Insolvency) No. 997/2022
 2. Edelweiss Asset Reconstruction Company Limited vs Perfect Engine Components Pvt Ltd, 2022 SCC OnLine NCLAT 1622.
12. Per Contra, the Ld. Counsel for the Corporate Debtor while strongly contending that the date of NPA being 15.07.2014, the default cannot be postponed to 15.10.2016 as contended in this case. Therefore, the contention of the Ld. Counsel for the Financial Creditor that the date of default is 15.10.2016 is untenable. Ld. Counsel while accepting that the entries in the balance sheet would constitute acknowledgements of debt, only when such an entry is categorically and unequivocally and not when there is some serious discrepancies as regards the amount payable. Accordingly, to the Ld. Counsel, the date of default in this case since required to be reckoned from 15.07.2014 i.e. the date of NPA, the acknowledgement of debt if any, shall be within 3 years from 15.07.2014. The two audit

reports and extract of balance sheets which are within three years from 15.07.2014 are of the years 2015-16 and 2016-17. According to the Ld. Counsel, a perusal of the Audit Reports for the year 2016-17 would show that no principal amount stated as being due to IDFC Bank/lender bank and the interest amount of Rs. 2.79 crores is shown as amount of default. Ld. Counsel contended that the audit report for the year 2016-17 shows the default amount as Rs. 35,84,71,483/-. However, extract of the balance sheet for the year 2016-17 does not provide any figure as being due to the Financial Creditor and the claim which is due and payable in the present petition is Rs. 746,57,08,033/- which is substantially higher to what was been reflected in the Audit Reports for the year 2015-16 and 2016-17. The Ld. Counsel submits that the balance sheet cannot be relied upon, therefore, the claim is barred by limitation. In support of his contentions, the Ld. Counsel relied on the following rulings.

- (i) Hon'ble NCLAT in ***Harsukhbhai P. Lakkad vs. Bank of Baroda in Company Appeal (AT) (Insolvency) No. 32 of 2020***, wherein it was held that the date of declaration of the account of the Corporate Debtor is the date of default and that the Petitioner cannot show a subsequent date as the date of default to derive advantage of filing the Section 7 petition within limitation.
- (ii) Hon'ble NCLAT in ***Deepak Vegpro Pvt Ltd vs. Shree Hari Agro Industries Ltd (Company Appeal (AT) (Insolvency) No. 1085 of 2019***, wherein the Hon'ble NCLAT held that the loan amount shown in the balance sheets is vastly different from the amount being claimed in the petition filed under S.7 of IBC and that, therefore, it would not amount to an unequivocal and unqualified acknowledgement of debt.

13. Barring the plea of limitation, no other plea is urged before us by the Corporate Debtor.

14. In the light of the contest as afore-stated, we have carefully perused the record. The date to be reckoned for the purpose of calculating the limitation in a petition filed under section 7 of IBC is no longer *res-integra* as held in catena of rulings, including in the ruling of Dena Bank (Now Bank Of Baroda) vs C. Shivakumar Reddy **(2021) 10 SCC 330 142-143**, wherein Hon'ble Supreme Court of India has categorically held as under:-

A petition 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.

Therefore, the argument that the date of NPA shall be reckoned for the purpose of calculating the limitation cannot be

accepted. Having said so, it has been seen that the acknowledgement of debt claimed by the Corporate Debtor are as per Section 18 of the Limitation Act, lest the limitation cannot be saved, though there is controversy.

14. As regards the amount shown in the balance sheets for the years 2016-16 & 2016-17, as per the Corporate Debtor, the Revival Letters dated 05.02.2018 and 25.06.2020 are not in dispute. The first revival letter dated 05.02.2018 is certainly within three years from the date of default. So also, the second revival letter dated 25.06.2020. The present petition since filed on 08.02.2022 is well within the period of limitation.

The point is answered accordingly.

15. In the light of our discussion on the above point, we are of the considered view that the Petitioner had satisfied there is a Financial Debt due and payable by the Corporate Debtor and its default. We also found that this Petition is in order. Hence, the Adjudicating Authority hereby admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

ORDER

- (1) *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;*
- (2) *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.*
- (3) *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.*
- (4) *That the order of moratorium shall have effect from 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.

- (5) That this Bench hereby appoints Shri Anil Kohli having IBBI Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219 as Interim Resolution Professional, whose contact details are:

e-mail : insolvency@arck.in
Address: Flat No. 409, 4th Floor Ansal Bhawan
16 Kasturba Gandhi Marg, Connaught Place
New Delhi – 110001
Mob No. 9810071182

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Proposed IRP to file Form-2 within 2 days of receipt of this order. Authorisation for Assignment is valid till 28-03-2024. This information is also 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.

- (6) *That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.*

- (7) The Petitioner is directed to deposit an amount Rs.2,00,000/- with the IRP to meet the initial CIRP expenses including the fee of IRP.
- (8) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (9) The 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.

The Petition is admitted accordingly.

SD/-
(Charan Singh)
Member (Technical)

SD/-
(Dr. N. V. Ramakrishna Badarinath)
Member (Judicial)

Binnu