NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEALS (AT) (INSOLVENCY) NO. 644 of 2019
&
I.A. Nos. 2106, 2660, 4316, 2609 & 2614 of 2019

(Arising out of the Order dated 03rd June, 2019 passed by National Company Law Tribunal, Mumbai Bench, in C.P. (IB) No.- 4135/I&B/MB/2018)

IN THE MATTER OF:

Darshan Gandhi
Ex-Director, Lok Housing and Constructions Ltd.
Having his residential address at
"Swadhin" 7 Golden Acres Society
Ruia Park, Off. Military Road, Juhu,
Mumbai – 400049. **…Appellant**

Versus

1. USV Private Limited
BSD Marg,
Station Road, Govandi,
Mumbai – 400088. **…Respondent No. 1**

2. Lok Housing and Construction Pvt. Ltd.
Through the Interim Resolution Professional
Hemant J Mehta
Registration No. IBBI/IPA-001/IP-P00027/2016-17/10060
B-4, Panchsheel, Nath Pai Nagar,
Ghatkopar (E), Mumbai – 400077,
Email: hemant@apmh.in **…Respondent No. 2**

Present

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Utsav Mukherjee, Ms. Megha Tyagi, Mr. Rajat Sinha, Ms. Deepti Babel, Mr. Hardik Khatri, Advocates.**

Mr. Darshan Gandhi, Party in person.

For I.A. No. 2106/2019:	**Mr. P.B.A. Srinivasan, Advocate in I.A. No. 2106 of 2019.**
For I.A. No. 4316/2019:	**Mr. Shikhil Suri, Advocate in I.A. No. 4316/2019.**
For I.A. No. 2609/2019:	**Mr. Rajendra R. Mishra, Advocate in I.A. No. 2609/2019.**
For Respondent No. 2:	**Ms. Anjali Sharma & Ms. Simmi Bhamrah, Advocates for R-2.**

(J U D G E M E N T)

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Appeal namely Company Appeal (AT) (Insolvency) No. 644 of 2019 is to the Impugned Order dated 03.06.2019 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in C.P. (IB) No. 4135/I&B/MB/2018, whereby the Learned Adjudicating Authority has admitted the Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'), preferred by the first Respondent/*'M/s. USV Private Limited'*. The Adjudicating Authority in the Impugned Order has observed as follows:

> *"3. The Petitioner submitted that the debt is arising out of a Financial transaction wherein the Corporate Debtor borrowed money from the petitioner for repayment of loan taken by the Corporate Debtor from a third party namely Vipal Healthcare Pvt. Ltd. Hence the debt is a financial debt within the meaning of Section 5(8) of the Code and the petitioner is a financial creditor as provided under Section 5(7) of the Code.*

4. This Petition was listed on 20.11.2018, 11.12.2018 and 10.01.2019 wherein the Corporate Debtor failed to appear. On 24.01.2019, one Mr. G.S. Sethi, Advocate had undertaken to file vakalat on behalf of the Corporate Debtor and he was directed to file reply on or before 30.01.2019. When the matter was listed on 30.01.2019 both sides took time on the ground that the matter is likely to be settled. On 25.03.2019 it was reported that the property offered by the corporate debtor towards the settlement of the claim is not acceptable to the Petitioner and hence the Corporate Debtor was directed to file the reply on or before 03.04.2019, with a direction to list the matter on 08.04.2019. On 08.04.2019, at the request of the both parties, the case was posted to 15.04.2019. On 15.04.2019 there was no representation on the side of the Corporate Debtor and an order was passed to the effect that if the Corporate Debtor fails to appear on the next date of hearing i.e., 01.05.2019, the right to file reply will be forfeited. On 01.05.2019 the Counsel for the Corporate Debtor was present but no reply has been filed and right to file reply was forfeited."

2. Submissions of the Learned Sr. Counsel for the Appellant, Mr. Krishnendu Datta, appearing for the ex-Director of the Corporate Debtor, Lok Housing and Constructions Ltd.:

- It is submitted that the present proceedings are based out of two Intercorporate Deposits of Rs.25 Lakhs/- each, totalling to Rs. 50 Lakhs/- which M/s. Vipal Healthcare Pvt. Ltd. ('VHPL') had placed with the 'Corporate Debtor' in 1996. With a view to secure the repayment of the said deposit, the 'Corporate Debtor' had evolved a scheme called Short-Term Finance Refund Plan ('STFR Plan'). By 1997, the 'Corporate

Debtor' made a payment of Rs.4,09,652/-. It is submitted that an oral understanding was reached between the 'Corporate Debtor', VHPL and the first Respondent, by virtue of which, the first Respondent would make payment to the 'Corporate Debtor' an amount equivalent to the outstanding amount by the 'Corporate Debtor' to VHPL. Based on this understanding, the first Respondent placed a sum of Rs. 53,31,170/- with the 'Corporate Debtor'. It is contended that there was no written arrangement reflecting any consideration for 'time value of money'. In the meantime, the 'Corporate Debtor' was declared as an NPA in 2002.

- The Respondent issued a Notice under Section 433 read with Section 434 of the Companies Act, 1956 calling upon the 'Corporate Debtor' to pay the debts based on the cheques issued. A suit was filed before the Hon'ble Bombay High Court on the basis of these cheques and it was subsequently transferred to the City Civil Court, Mumbai, whereunder the Respondent took fresh summons for Judgement. However, no Financial Agreement evidencing the same was placed on record. The City Civil Court on 17.11.2017 observed that the cheques given were a non-gratuitous act and was covered under Section 17 of the Indian Contract Act, 1872. It was also observed that the suit was maintainable under Order 37 Rule 1(2)(ii). The Learned Court *inter alia* granted conditional leave to the 'Corporate Debtor' to defend the suit on deposition of an amount of Rs.52.07 Lakhs/-

on or before the next date. A decree was passed directing USV to recover the amount of Rs.52.07 Lakhs/- along with interest at 9% p.a. from the date of the suit to its actual realization. It is submitted that no execution proceedings have been initiated against the 'Corporate Debtor' till date.

- On 29.10.2018, the first Respondent filed an Application under Section 7 of the Code relying on the decree of the Ld. City Civil Court dated 19.12.2017. The Adjudicating Authority gave time to the parties for settling the matter from November 2018 to March 2019. Thereafter the 'Corporate Debtor' offered its properties worth Rs.5Crores/- to secure the claim of USV. However, the same was rejected by the Respondent and the Adjudicating Authority without appreciating the case of the 'Corporate Debtor', on 01.05.2019, forfeited its right to file Reply in this case. An Appeal was preferred before this Tribunal, which was dismissed as infructuous reserving the right of the 'Corporate Debtor' to challenge the Order.
- It is submitted that the 'Corporate Debtor' was making sincere efforts to settle the dispute and vide Order dated 19.06.2019, this Tribunal stayed the formation of the Committee of Creditors ('CoC') which was later vacated vide Order dated 28.08.2019. The 'Corporate Debtor' challenged the Order dated 28.08.2019 before the Hon'ble Supreme Court, which had vide Order dated 25.10.2019 directed that though the CoC may be formed, none of the

decisions of the CoC are to be implemented till the Appeal is decided by this Tribunal. The RP in consultation with the CoC published an EoI inviting potential Resolution Applicants and despite the Appellant's objections vide emails dated 17.11.2020 and 23.12.2020, the RP went ahead and published the EoI on 04.01.2021.

- It is contended that an Application under Section 7 cannot be a substitute to the execution Petition under Order 21 of the CPC. Proceedings under IBC are not Execution Proceedings and therefore the CIRP initiated under Section 7 of the Code, is hit by Section 65 of the Code and is liable to be quashed. It is vehemently argued that the Respondent is not a 'Financial Creditor' as no document has been placed on record to establish that there was any financial transaction attracting consideration for time value of money. Even if a 'decree' is covered under the definition of Creditor under Section 3(10) of the Code, it does not fall within the class of Creditors classified as 'Financial Creditor' unless the debt was disbursed against consideration for time value of money. Learned Counsel placed reliance on the decision of ***'Suhsil Ansal' Vs. 'Ashok Tripathi'***[1] passed by this Tribunal in support of his case that in the absence of any written

[1] Comp. App. (AT) (Ins.) No. 452 of 2020

arrangement, the first Respondent cannot be termed as a 'Financial Creditor'.

- Although the Company had a money decree against it, there was no default on behalf of the 'Corporate Debtor' as per the provisions of the Code. A 'default' can only be said to occur when the decree is rendered as non-executable for the want of monies or funds of the Judgement debtor. It is argued that in this case, the 'Corporate Debtor' had offered to secure the debt by offering its Assets which are of greater value than the purported claim.
- The right to sue under the Code occurs from the date when the default occurs, which in the present case is beyond the Limitation period prescribed. Learned Counsel placed reliance on the following Judgements in support of his case that the period of Limitation is three years from the date when the right to apply accrues and in the present case, the account of the 'Corporate Debtor' was declared as NPA in 2002 which is the relevant date for calculating the Limitation period:
    - *'Babulal Vardharji Gurjar' Vs. 'Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.'*[2].
    - *'Vashdeo R. Bhojwani' Vs. 'Abhyudaya Co-operative Bank Ltd. & Anr.*[3].

[2] 2020 SCC OnLine SC 647
[3] Civil Appeal No. 11020 of 2018

- *'B.K. Educational Services Pvt. Ltd.' Vs. 'Parag Gupta & Associates'*[4].
- *'Stressed Assets Stabilization Fund' Vs. 'Royal Brushes Pvt. Ltd.'*[5].
- *'Bishal Jaiswal' Vs. 'Asset Reconstruction Company (India) Ltd. & Ors.*[6].

- It is contended that the date of default would be the date when the account was declared as NPA and therefore the period of Limitation of three years has lapsed and that this Application is barred by Limitation.
- It is also contended that the Impugned Order was passed in breach of the principles of Natural Justice without considering the submissions made by the Appellant, though the Appellant has been constantly making genuine efforts to settle all the claims time and again.

3. <u>Submissions of the Learned Counsel appearing on behalf of the first Respondent:</u>

- It is submitted that the subject amount was lent to the 'Corporate Debtor' to repay another 'Financial Debt'/Incorporate Deposits availed by it from VHPL, pursuant to its scheme namely STFR Plan, in respect of which, a 'Tripartite Arrangement' was entered into between the 'Corporate Debtor', VHPL and the first Respondent/ Ms. USV on 10.02.1998. An amount of Rs.53,31,170/- was paid by the first Respondent to the 'Corporate Debtor'

[4] 2018 SCC OnLine SC 1921
[5] Comp. App. (AT) (Ins.) No. 949/2020
[6] Comp. App. (AT) (Ins.) No. 385/2020

and therefore a 'Financial Debt' came into existence. A part payment was made on 15.04.1998 of Rs.1,23,767/- which also included an interest amount of Rs.15,972/-. An outstanding 'Financial Debt' was acknowledged by the 'Corporate Debtor' in their letter dated 19.06.1998 addressed to the first Respondent. However, they failed to pay the 'Financial Debt' which was also confirmed by the Order dated 19.12.2017 passed by the Hon'ble City Civil Court, Mumbai, in Summary Suit No. 7306/2001, which Order has not been challenged. As the existence of 'Financial Debt' and 'default' is evident, the Adjudicating Authority has rightly admitted the Petition based on the ratio of the Hon'ble Supreme Court in ***'M/s. Innoventive Industries Limited' Vs. 'ICICI Bank & Anr.'***[7]**.**

- It is argued that there is a specific acknowledgement in writing of availing of the 'Financial Debt' by the 'Corporate Debtor in its letter dated 10.02.1998 and therefore the argument that there is no written contract cannot be sustained. Reliance is placed on the Judgement of this Tribunal in ***'Narendra Kumar Agarwal' Vs. 'Monotrone Leasing Pvt. Ltd.'***[8] in which this Tribunal has observed that *'the written contract cannot be treated as an essential element to prove the 'Financial Debt' if the*

[7] (2018) 1 SCC 407
[8] Comp. App. (AT) (Ins.) No. 549/2020

transaction's nature is proved otherwise'. Moreover, the City Civil Court Order conclusively establishes existence of 'debt' and 'default'.

- As regarding Limitation, the Learned Counsel submitted that the suit was decreed on 19.12.2017 and the debt has been acknowledged by the 'Corporate Debtor' in their Balance Sheets 2014-15 and the Section 7 Application was filed in the year 2019 and therefore it cannot be said to be 'barred by Limitation'.
- As regarding breach of principles of Natural Justice, it is submitted by the Learned Counsel that the 'Corporate Debtor' was given several opportunities to file their Reply from 10.01.2019 to 01.05.2019, but they failed to do so and therefore the right to file Reply was forfeited. Hence, it cannot be said that there was any breach of principles of Natural Justice.
- Learned Counsel placed reliance on the Judgement of the Hon'ble High Court in ***'Videocon Industries Ltd.' Vs. 'Intesa Sanpaolo S.P.A."***[9] by which Order, the Hon'ble Bombay High Court has rejected the argument that the CIRP may not be admitted if no steps for execution of a decree was taken and that the value of properties are sufficient to meet the liabilities.

[9] APPEAL (L) No. 29 of 2014

4. Submissions on behalf of the second Respondent/the Resolution Professional ('RP'):

- It is submitted that the Balance Sheets of the 'Corporate Debtor' for the years 01.04.2003 to 31.03.2015 and also certificate from the independent Chartered Accountant namely M/s. IP Mehta & Co. show the confirmation of the debt owed by the 'Corporate Debtor' to the 'Financial Creditor'.
- On 10.02.1998 a Tripartite Understanding was arrived at between the 'Corporate Debtor' M/s. VHPL and the first Respondent, which was acted upon and the cheques issued are evidence of the fact that there was an underlying contract which was binding upon the parties.
- The Appellant is blowing hot and cold stating on one hand that the Bank Accounts of the 'Corporate Debtor' and its Directors were frozen by the Economic Offences Wing on 20.12.2017 and in the same breath, the Appellant is submitting that they are ready and willing to settle the amounts. It is only a dilatory tactic adopted by the Appellant to frustrate the IBC Process.
- Both Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also sub-Regulation 2(b)(iii) and 2(b)(iv) of Regulation 8 have to be read together which show that an Order of a Court or Tribunal that has been adjudicated upon non-payment of any debt, can be used to substantiate the claim of a 'Financial Creditor'.

The RP has annexed the copies of the Balance Sheets for the relevant period in support of his submissions that the amount has been acknowledged as debt from Financial Year 2003 – 2015.

5. <u>I.A. 2106/2019:</u>

- I.A. 2106/2019 has been preferred by State Bank of India seeking impleadment as a necessary party on the ground that the Applicant is a 'Financial Creditor' having financial relations with the Appellant since 1995, having sanctioned housing loans to the Appellant, the details of which credit facilities are provided as hereunder:

Name of the Project	**Amount Sanctioned**	**Book Outstanding**	**Amt. Assigned (in Crores)**	**Date of Sanction of SBIHFL**	**Date of NPA**
Lok Everest	14.95	14.63	7.31	28.03.1995	30.04.1997
Lok Sarita	5.00	5.00	2.50	23.03.1996	31.12.1997
Lok Dhara & Lok Upavan – II	9.95	6.72	3.36	27.04.1995	31.08.1998
TOTAL	**29.90**	**26.35**	**13.17**		

- It is submitted that the Appellant submitted a compromise proposal on 08.06.2006 and on 13.08.2012. Another settlement was advised by the Applicant SBI vide letter dated 25.04.2015 which again failed due to non-payment by the Appellant. SBI also initiated action under SARFAESI Act

2002 and issued Notice under Section 13(2) on 31.03.2009 and possession Notice under Section 13(4) on 05.09.2010. The Appellant filed a Writ Petition No. 2366/2009 before the Hon'ble High Court of Bombay challenging the SARFAESI action taken by the Appellant. The Hon'ble High Court of Bombay has stayed the action initiated by the Applicant under SARFAESI Act. Two more suits for recovery were filed by SBI before Hon'ble High Court of Bombay on 17.10.2003 for Rs.68.43Crs./- and before the Hon'ble High Court of Calcutta on 09.06.2003 for Rs. 33.77 Crores against the Appellant.

- After initiation of CIRP against the 'Corporate Debtor' vide Order dated 03.06.2019, on the basis of the Public Announcement, SBI filed a claim Form-'C' on 25.06.2019 before the IRP for Rs.796,61,89,624.40/- and the same was accepted by the IRP. The Appellant preferred an Appeal before this Tribunal for settling the matter with the first Respondent by paying the total decretal amount.
- It is strenuously argued by the Counsel for the Intervenor/SBI that SBI is the 'Financial Creditor' and is liable to pay the entire amount claimed and therefore allowing of the present Appeal would only bypass the CIRP Process prove detrimental to the 'Financial Creditor'/SBI.
- Learned Counsel for the Appellant vehemently contended that this is a belated Application seeking intervention and does not deserve any merit.

It is argued that it is a belated claim with respect to amounts released way back almost a decade ago and that there are no grounds given by SBI as to why they have not initiated a Section 7 Application themselves before the Adjudicating Authority.

6. <u>I.A. No. 2660/2019</u>

- This IA has been preferred by Accel Realtors Pvt. Ltd. seeking intervention on the ground that the Appellant is trying to avoid the CIRP Proceedings by arriving at a settlement with the first Respondent, whereas the Applicant herein has filed a claim pursuant to the Public Announcement dated 13.06.2019. The constitution of the CoC has been stayed vide Order dated 19.06.2019 which was sought for by the Appellant only to delay and cause hinderance to the present proceedings.
- The Appellant filed a Reply to this Application I.A. 2660/2019 stating that the Applicant has no locus standi to challenge the present proceedings; that the claim of Rs.9.5Crs./- along with interest at 12% p.a. can be redressed at the appropriate forum; that the Code is not a recovery proceeding; the Applicant cannot be allowed to obstruct a settlement between two private parties; that the Applicant made a payment of only Rs.2.5Crs./- instead of the complete amount of Rs.5Crs./- have agreed in terms of the JVA and therefore failed to adhere to the terms of the JVA; all disputes between the parties were settled by way of a modificatory JVA executed between the

Appellant and the 'Corporate Debtor'; the Applicant failed to take benefit of the MJV and raised disputes against the 'Corporate Debtor' through Arbitration which was eventually settled through an award in respect of which execution has been filed and therefore their Claim is not maintainable.

7. <u>I.A. No. 4316/2019:</u>

- I.A. No. 4316/2019 has been preferred by the Applicants Mr. Hitesh Ramji Javeri and Ors. seeking intervention on the ground that they are 4.92% Shareholders of the total paid up capital of the 'Corporate Debtor'. It is submitted that the Applicants had invested a sum of Rs.5,05,55,481/- towards subscription of 23Lakhs Equity Shares and it is only due to their deliberate non-compliance and indulgence by the Promoters of the 'Corporate Debtor', that the Bombay Stock Exchange suspended the trading of Equity Shares on the Stock Market. By an Order passed by the Bombay Stock Exchange under Regulation 22(i) of the SEBI Regulations, 2009, the Equity Shares were directed to be delisted. In accordance with Regulation 23(3) of the delisting Regulations, the Promoters of the 'Corporate Debtor', were duty bound to acquire the delisting Equity Shares from the Shareholders by making payment of the fair value determined by the valuer as declared in the Public Notice dated 22.11.2018.

- The Applicants corresponded with the IRP and also had personal meetings with the Promoters of the 'Corporate Debtor' seeking clarification regarding the steps taken towards acquisition of the delisted Equity Shares of the 'Corporate Debtor', but have not received any response. Hence, they seek impleadment seeking necessary directions to safeguard the interest of the Shareholders.
- In their Reply Affidavit, the Appellants submitted that the Applicants have no *locus standi* in the present proceedings; that they are completely unrelated parties; that they are neither necessary parties nor proper parties for adjudication of the present dispute; that they should approach the Resolution Professional if they have any claims as such that the investment was made by them through Stock Market and not through the Appellants and therefore the contentions raised by the Applicants is only an abuse of the process of law.

8. <u>I.A. 2609/2019:</u>

- This IA has been preferred by M/s. Trade Tech, a partnership firm incorporated under the provisions of Indian Partnership Act, 1932. It is submitted that the Applicant had filed a Summary Suit in the Hon'ble High Court of Bombay wherein a decree was passed on 14.02.2017 in favour of the Applicant for recovery of amount of Rs.79,38,828 together with 18% interest till the date of realization. Pursuant to the said decree, the Applicant

filed an Execution Application before the Hon'ble High Court of Bombay being the Commercial Execution Application No. (L) 354/2019 before the Hon'ble High Court of Bombay.

- Pursuant to the Admission of the Section 7 Application and the Public Announcement, various Creditors were called upon to submit their claims.
- It is contended by the Learned Counsel for the Appellant that M/s. Trade Tech seeking to intervene is not a necessary party and that the dispute between the Applicant and the 'Corporate Debtor' is prior to the year 2000 and that they should first approach Resolution Professional with respect to their claims as the 'Corporate Debtor' is under Insolvency. If the Applicant is still aggrieved it can file separate proceedings for verification of its claim and redressal of its grievances, but it cannot be permitted to intervene.

9. <u>I.A. No. 2614/2019</u>

- I.A. 2614/2019 has been preferred by M/s. Lok Everest Co-operative Housing Society Ltd. seeking to intervene on the ground that it is a Creditor of Lok Housing and Constructions Ltd./'Corporate Debtor', and has large dues in the form of corpus fund of Rs.195.67Lakhs/- together with the interest, clubhouse fees, for which claims made order pending for final hearing before the NCDRC. It is also submitted that they have already filed their claims on 25.06.2019 before the RP. It is also submitted that the Appellant is disqualified as Director of the 'Corporate Debtor', in view of

continued defaults in compliance with the SEBI Regulations, SEBI had delisted the Company on 05.11.2018, to other Directors who have resigned in the year 2017 itself and the accounts of the 'Corporate Debtor' have not been audited for the last five years and have not been filed as per the Company Master Data of the 'Corporate Debtor' available on the Ministry of Corporate Affairs ('MCA') portal. A large part of the assets of the 'Corporate Debtor' might have been diverted during the last five years. During which period no Audit has been done and this would have a direct bearing on the recovery of the amounts due to the intervener. It was argued that it is necessary for the I.A. to be allowed and the Applicant to be impleaded as one of the parties.

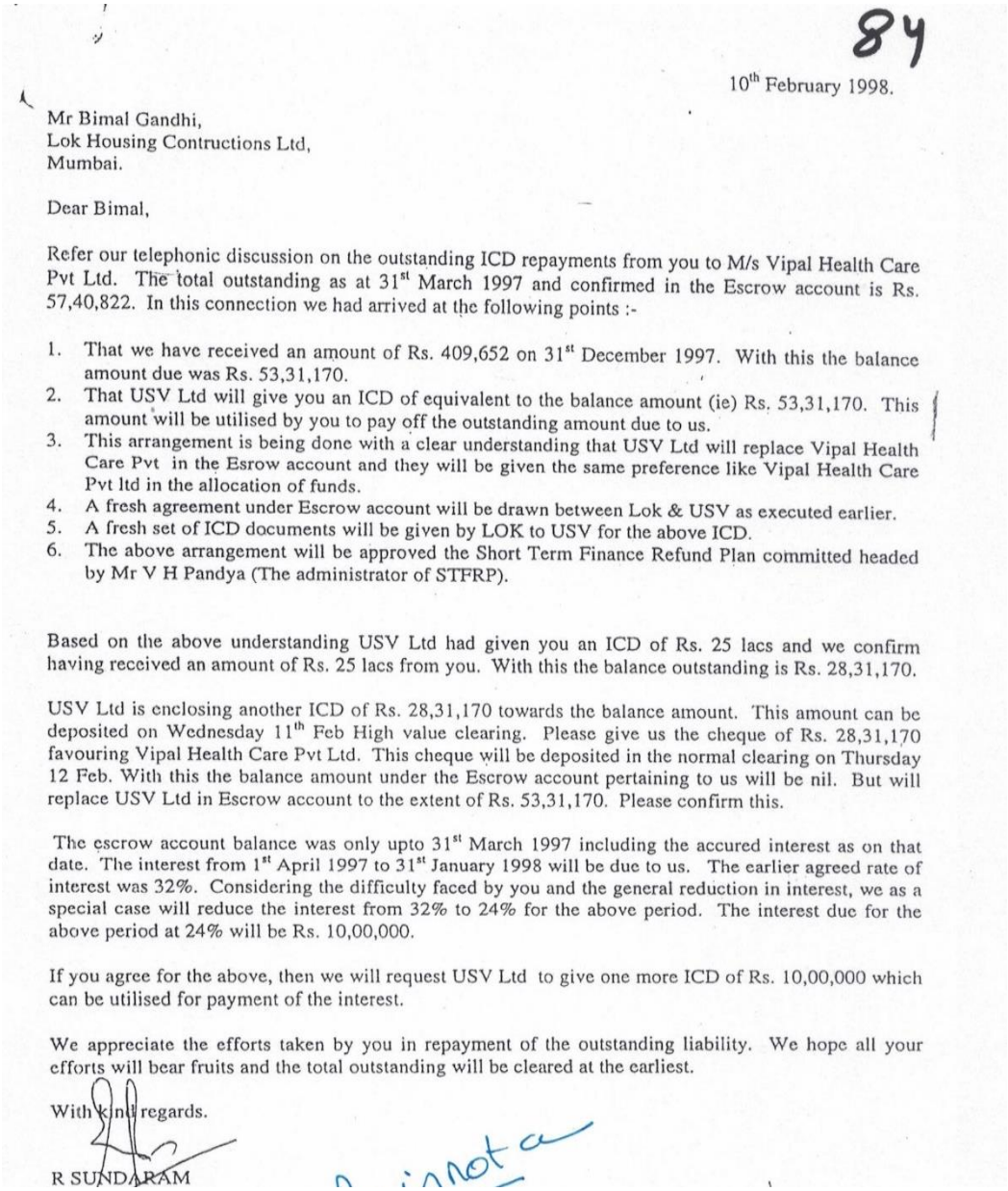
- Learned Counsel for the Appellant reiterated that this Applicant is not a necessary party and claims if any are to be made before the Resolution Professional and denies that any amount might have been diverted by the 'Corporate Debtor' during the last five years.

Assessment:

10. It is the main case of the Appellant that way back in July 1996, one VHPL, placed two Intercorporate Deposits of 25Lakhs/- each, totalling to Rs.50Lakhs/- with the 'Corporate Debtor' and subsequently an oral understanding was reached between the 'Corporate Debtor', VHPL and the first Respondent herein and that it was only based on the oral understanding that the first Respondent paid up sum

of Rs.53,31,170/- to the 'Corporate Debtor' by way of two cheques. It is vehemently argued by the Learned Sr. Counsel, Mr. Datta that there was no written contract and no consideration for 'time value of money' and therefore the said amount does not constitute a ''Financial Debt'' as defined under Section 5(8) of the Code. It is also contended that there was no agreed rate of interest, and therefore there is no 'time value of money' and further that seeking execution of 'decree' does not define the first Respondent as a 'Financial Creditor' and a Decree Holder can be defined as a 'Creditor', but not a 'Financial Creditor'. Further, that the suit was filed in the year 2001 and the Application is 'barred by Limitation'.

11. There is no dispute with respect to the fact that the amount of Rs.53,31,170/- was lent to the 'Corporate Debtor' to repay another Intercorporate Deposit availed by it from VHPL, pursuant to the scheme of the STFR Plan. As regarding the submissions of the Learned Sr. Counsel, Mr Datta that there was no Written Agreement and therefore it cannot be construed as the amount having any 'time value of money', is unsustainable, keeping in view, that there was a Tri-patriate Arrangement, entered into between the 'Corporate Debtor', VHPL and the first Respondent on 10.02.1998, which reads as follows:



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10th February 1998.

Mr Bimal Gandhi,
Lok Housing Contructions Ltd,
Mumbai.

Dear Bimal,

Refer our telephonic discussion on the outstanding ICD repayments from you to M/s Vipal Health Care Pvt Ltd. The total outstanding as at 31st March 1997 and confirmed in the Escrow account is Rs. 57,40,822. In this connection we had arrived at the following points :-

1. That we have received an amount of Rs. 409,652 on 31st December 1997. With this the balance amount due was Rs. 53,31,170.
2. That USV Ltd will give you an ICD of equivalent to the balance amount (ie) Rs. 53,31,170. This amount will be utilised by you to pay off the outstanding amount due to us.
3. This arrangement is being done with a clear understanding that USV Ltd will replace Vipal Health Care Pvt in the Esrow account and they will be given the same preference like Vipal Health Care Pvt ltd in the allocation of funds.
4. A fresh agreement under Escrow account will be drawn between Lok & USV as executed earlier.
5. A fresh set of ICD documents will be given by LOK to USV for the above ICD.
6. The above arrangement will be approved the Short Term Finance Refund Plan committed headed by Mr V H Pandya (The administrator of STFRP).

Based on the above understanding USV Ltd had given you an ICD of Rs. 25 lacs and we confirm having received an amount of Rs. 25 lacs from you. With this the balance outstanding is Rs. 28,31,170.

USV Ltd is enclosing another ICD of Rs. 28,31,170 towards the balance amount. This amount can be deposited on Wednesday 11th Feb High value clearing. Please give us the cheque of Rs. 28,31,170 favouring Vipal Health Care Pvt Ltd. This cheque will be deposited in the normal clearing on Thursday 12 Feb. With this the balance amount under the Escrow account pertaining to us will be nil. But will replace USV Ltd in Escrow account to the extent of Rs. 53,31,170. Please confirm this.

The escrow account balance was only upto 31st March 1997 including the accured interest as on that date. The interest from 1st April 1997 to 31st January 1998 will be due to us. The earlier agreed rate of interest was 32%. Considering the difficulty faced by you and the general reduction in interest, we as a special case will reduce the interest from 32% to 24% for the above period. The interest due for the above period at 24% will be Rs. 10,00,000.

If you agree for the above, then we will request USV Ltd to give one more ICD of Rs. 10,00,000 which can be utilised for payment of the interest.

We appreciate the efforts taken by you in repayment of the outstanding liability. We hope all your efforts will bear fruits and the total outstanding will be cleared at the earliest.

With kind regards.

R SUNDARAM

not a

12. This document shows that there was an understanding between the parties in respect of the fresh loan issued by the Respondent to the 'Corporate Debtor' and unused thereof by the Respondent to make payments to the VHPL. It is an admitted fact that the 'Corporate Debtor' made a part payment of the said debt on 15.04.1998 by paying a sum of Rs.1,23,767/-. The said letter addressed by the 'Corporate Debtor' is reproduced as hereunder:

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LOK HOUSING AND CONSTRUCTIONS LTD.

ENGINEERS • BUILDERS • ARCHITECTS

SHELTER FOR THE PEOPLE
LOK GROUP

LHCL/FIN/STFRP/ 655 /98
15th April,1998.

USV Ltd.
Mumbai.

Dear Sirs,

Sub: Short Term Finance Refund Plan (STFRP)

Please refer to our letter ref. LHCL/FIN/STFRP/ 555 /98 dated 31st December, 1997 alongwith a cheque from the first realisation under the Scheme. We are pleased to inform you that we have now concluded the sale of the part of the land at Cochin to S.I. Property Development Ltd. (SIPD) and we have received the balance sale consideration as detailed below:

Balance sale consideration :	Rs 4.11 crore
Less:	
i) paid directly to Greater Cochin Development Authority against execution of lease agreement	Rs 1.00 crore
ii) adjusted by HDFC Ltd. from their disbursement to SIPD	Rs 2.40 crore
Net amount receivable by Lok Housing & Constructions Ltd.	Rs 0.71 crore

The amount of Rs 0.71 crore now received has been deposited in the special account with UCO Bank as prescribed under the Scheme. As informed to you earlier, HDFC Ltd. was to finance the buyers to the extent of Rs 7.00 crore. However they actually financed Rs 8.00 crore to facilitate expeditious conclusion of the sale and accordingly adjusted higher amount of Rs 4.15 crore as compared to Rs 3.63 crore envisaged earlier towards the dues of Lok Housing & Constructions Ltd.

We endeavored our best to pursuade HDFC Ltd. to restrict their recovery to Rs 3.63 crore as committed earlier but in view of their agreeing to additional funding as a special case, they had also to enhance the amount for their adjustment. The purchaser could not arrange for the funds from other source and since the conclusion of the deal was getting delayed indefinitely, we finally conceded to the recovery of additional Rs 52 lakh. However as indicated earlier also, we propose to make good the shortfall with the funds generated from sale of our certain other properties viz. land at Bhandup, Vikhroli and Andheri(East). We are endeavouring our best to realise resources from the said land at the earliest.

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The meeting of the STFRP Committee was held on 7.04.98 with Mr. V. H. Pandya (The Administrator of STFRP) to review the situation pursuant to the receipt of the balance sale realisation from the part of the Cochin property under the Scheme. As discussed at the said meeting and as directed by the Administrator, the amount of Rs 0.71 crore is now to be distributed to all the lenders covered by the Scheme in proportion to their outstanding as on 31-03-1997. This proportionate amount for each lender will be appropriated towards both principal and interest in the ratio of their outstanding principal and interest as on 31-03-1997.

Accordingly we enclose a cheque no. 535506 dtd. 15.04.98 for Rs. 1,23,767/- which is to be appropriated as under:

			Rs.
Against principal	(A)	:	1,07,796
Against interest/discounting charges outstanding as on 31-03-97	(B)	:	15,972
Less: Tax deducted at source	(C)	:	0
Net amount of interest/discounting charges	(B - C) = D	:	15,972
Total amount of the cheque	(A + D)	:	1,23,767

In respect of the plot earmarked for hotel development, negotiations with a few eminent hotel groups are still in progress. We shall inform you about the details as soon as this deal is finalised.

Thanking you,

Yours faithfully,
for Lok Housing And Constructions Ltd.

Bimal Gandhi
G.M. (Finance) and Member, STFRP

Encl: As above

13. This fact is also recorded in the City Civil Court Order. We are of the considered view that the existence of 'Financial Debt' and its default has been admitted and confirmed by the 'Corporate Debtor', and therefore the absence of any Written Agreement cannot be said to be an essential element to prove the 'Financial Debt', as the nature of transaction has been established that there was

a 'debt' and 'default' thereof. The City Civil Court Order passed a decree confirming the debt. At this juncture, we place reliance on the Judgement of this Tribunal in ***'M/s. Urgo Capital Ltd.' Vs. 'M/s. Bangalore Dehydration and Drying Co. Pvt. Ltd.'***[10] wherein this Tribunal has held as follows:

> *"Based on the decree of the Court this Petition was filed under Section 7 of the Code. Since the definition of the word creditor in I&B Code includes decree-holder, therefore if a petition is filed for the realization of decretal amount, then it cannot be dismissed on the ground that applicant should have taken steps for filing execution case in Civil Court."*

14. In the facts of this case, we are of earnest view that a 'Decree' in respect of a financial claim is an established proof of 'debt' and 'default', and does not require any further Agreements in writing.

15. Next, we address ourselves to the contention of the Learned Sr. Counsel, Mr. Datta regarding limitation and acknowledgement of debt. Learned Counsel placed reliance on paras 33 to 36 of ***'Babulal Vardharji Gurjar' (Supra)*** with respect to acknowledgement under Section 18 of the Limitation Act, 1962, in support of his case that the Application is also 'barred by Limitation'. The said paragraphs are reproduced as hereunder:

> ***"33.*** *While the aforesaid principles remain crystal clear with the consistent decisions of this Court, the only area of dispute, around which the contentions of learned counsel for the parties have revolved in the present case, is about applicability of Section 18 of the Limitation Act*

[10] Comp. App. (AT) (Ins.) No. 984 of 2019

and effect of the observations occurring in paragraph 21 of the decision in ***Jignesh Shah*** *(supra).*

34. *We have noticed all the relevant and material observations and enunciations in the case of* ***Jignesh Shah*** *hereinbefore. Prima facie, it appears that illustrative reference to Section 18 of the Limitation Act, in paragraph 21 of the decision in* ***Jignesh Shah,*** *had only been in relation to the suit or other proceedings, wherever it could apply and where the period of limitation could get extended because of acknowledgment of liability. Noticeably, in contradistinction to the proceeding of a suit, this Court observed that a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed. It is difficult to read the observations in the aforesaid paragraph 21 of* ***Jignesh Shah*** *to mean that the ratio of* ***B.K. Educational Services*** *has, in any manner, been altered by this Court. As noticed, in* ***B.K. Educational Services,*** *it has clearly been held that the limitation period for application under Section 7 of the Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of Limitation Act, if any case for condonation of delay is made out. The findings in paragraph 12 in* ***Jignesh Shah*** *makes it clear that the Court indeed applied the principles so stated in* ***B.K. Educational Services****, and held that the winding up petition filed*
beyond three years from the date of default was barred by time.

34.1. *Even in the later decisions, this Court has consistently applied the declaration of law in* ***B.K. Educational Services*** *(supra). As noticed, in the case of* ***Vashdeo R. Bhojwani*** *(supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7 of the Code while holding that the limitation started ticking from the*

date of issuance of recovery certificate dated 24.12.2001. Again, in the case of ***Gaurav Hargovindbhai Dave*** *(supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA i.e., 21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on 03.10.2017 was barred by limitation.*

34.2. *In view of the above, we are not inclined to accept the arguments built up by the respondents with reference to one part of observations occurring in paragraph 21 of the decision in* ***Jignesh Shah*** *(supra).*

35. *Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they ensure to the benefit of respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as '8.7.2011 being the date of NPA'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No. 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part-V of the application and even in residuary Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgment or any other date of default.*

35.1. *Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for*

suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on behalf of the respondent No. 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in ***Mahaveer Cold Storage Pvt. Ltd.*** *does not advance the cause of the respondent No. 2.*

36. *The submissions made on behalf of respondents that the rules of limitation are not meant to destroy the rights of the parties and reference to the decision in* ***N. Balakrishnan*** *(supra) are also misplaced. Application of the rules of limitation to CIRP (by virtue of Section 238-A of the Code read with the above-referred consistent decisions of this Court) does not, in any manner, deal with any of the rights of respondent No. 2; it only bars recourse to the particular remedy of initiation of CIRP under the Code. Equally, the other submissions made on behalf of the respondents about any stringent application of the law of limitation which was introduced to the Code only after filing of the application by respondent No. 2; or about the so called prejudice likely to be caused to other banks and financial institutions are also of no substance, particularly in the light of the principles laid down and*

consistently followed by this Court right from the decision in ***B.K. Educational Services*** *(supra)****.*** *These contentions have only been noted to be rejected. Needless to add that when the application made by the respondent No. 2 for CIRP is barred by limitation, no proceedings undertaken therein after the order of admission could be of any effect. All such proceedings remain non-est and could only be annulled."*

16. The Hon'ble Supreme Court in ***'Dena Bank (Now Bank of Baroda)' Vs. 'C. Shivakumar Reddy & Anr."***[11] while discussing at length Sections 14 & 18 of the Limitation Act, 1962 has also observed that the Judgement and/or decree for money in favour of the 'Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would gave rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section 7 of the Code, if the dues of the 'Corporate Debtor' under the Judgement/decree or any part thereof remained unpaid. The relevant para is reproduced as hereunder:

"141. *Moreover, a judgement 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 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgement and/or decree or within three years form the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgement and/or decree and/or in terms of*

[11] 2021 10 SCC 330

the certificate of recovery, or any part thereof remained unpaid."

(Emphasis Supplied)

17. The 'Corporate Debtor' was extended protection under the provisions of Bombay Relief Undertaking Act vide notification dated 01.04.2002, which was valid till 31.03.03. This notification has been renewed from time to time and enforced till 25.04.2014. Fresh summons for Judgement by the first Respondent was given on 18.02.2017, pursuant to the liberty granted by the Hon'ble Court vide order dated 23.11.2016. The suit was decreed on 19.12.2017. The debt was acknowledged by the 'Corporate Debtor' in their balance sheets of FY 2014–15. On 29.10.2018, the first Respondent in its capacity of 'Financial Creditor' filed an Application on 29.10.2018 before the Adjudicating Authority and therefore the Application is well within the Limitation period.

18. As regarding breach of Principles of Natural Justice, we have observed from the record that the matter was adjourned several times on request of the 'Corporate Debtor', on the ground that the matter would be settled. The record shows that on 24.01 2019, 'Corporate Debtor' was directed to file the Reply on or before 31.01.2019. On 31.01.2019 the matter was adjourned on request of both parties on the ground of settlement. On 14.02.2019, the matter was again adjourned and the 'Corporate Debtor' did not file their Reply. On 06.03.2019, one more request was made that they would settle the matter. On 25.03.2019,

once again, the 'Corporate Debtor' was directed to file their Reply. On 08.04.2019, once again liberty was given for settlement. On 15.04.2019, the 'Corporate Debtor' was directed to file their Reply within a week. On 01.05.2019, the 'Corporate Debtor' failed to file their Reply and the right to file their Reply was forfeited. These dates show that ample opportunities were given to the 'Corporate Debtor' both to file their Reply and also to settle the matter. The 'Corporate Debtor' has not adhered to any of the above, and therefore the argument that there was a breach of Principles of Natural Justice, is unsustainable.

19. Learned Counsel for the Appellant also placed reliance on the Judgement of the Hon'ble High Court of Tripura at Agartala in ***'Shubhankar Bhowmik' Vs. 'Union of India & Anr.'***[12] in which the Hon'ble High Court has observed in para 11 as follows:

> ***"11.*** *Before proceeding to the same, however, it would be trite to understand the rights of a decree holder per se, i.e., dehors the contours of IBC. The right of a decree holder, in the context of a decree, is at best a right to execute the decree in accordance with law. Even in a case where the decree passed in a suit is subject to the appellate process and attains finality, the only recourse available to the decree-holder is to execute the decree In accordance with the relevant provisions of the Civil Procedure Code, 1908. Suffice it to say, that the provisions contained in Order 21 provides for the manner of execution of decrees in various situations. The said provisions also provide for the rights available to judgment debtors, claimant objectors, third parties etc., to ensure that all stake holders are protected. The*

[12] 2022 SCC OnLine SC 764

provisions of the CPC, therefore subjects the rights of a decree-holder to checks and balances that an executing court must follow before the fruits of such decree can be exercised. Given the same, the rights of a decree-holder, subject to execution in accordance with law, remain inchoate in the context of the IBC. This is principally because, the IBC, by express mandate of the moratorium envisaged by Section 14(1), puts a getter on the execution of the decree itself."

20. Under the scheme of the IBC, the insolvency resolution process begins, when a default takes place, in the sense that a debt becomes due and is not paid. Some of the relevant provisions of the IBC, are reproduced here for convenience:

*"**3. Definitions**.—In this Code, unless the context otherwise requires—*

* * *

*(6) "**claim**" means—*

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

*(7) "**corporate person**" means a company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;*

*(8) "**corporate debtor**" means a corporate person who owes a debt to any person;*

* * *

*(10) "**creditor**" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*

*(11) "**debt**" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

*(12) "**default**" means 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;*

* * *

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

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

***5. Definitions**.—In this Part, unless the context otherwise requires—*

* * *

*(7) "**financial creditor**" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

*(8) "**financial debt**" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire-purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

* * *

6. Persons who may initiate corporate insolvency resolution process*.—Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate*

corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

***7. Initiation of corporate insolvency resolution process by financial creditor**.—(1) A financial creditor either by itself or jointly with 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 sub-section (6-A) of Section 21, an application for initiating 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 and 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 proviso 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 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) the 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):

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."

21. At the cost of repetition, we refer to the Judgement dated 17.11.2017 passed by the City Civil Court and summons for Judgement No. 16 of 2017. The City Civil Court has noted in para 10 of the Judgement that *'the 'Corporate Debtor' has not denied the transactions. On the contrary, it is admitted that there was a Tri-partite Arrangement between the Plaintiff, Defendant and VHPL. Defendant has not denied the documents annexed along with the Plaint. Plaintiff*

has specifically averred that as per the Agreement, Plaintiff paid an amount of Rs.25Lakhs/- and Rs.28,31,170/- by cheque to the Defendant and has entered into the issues of VHPL. This fact has also not been denied by the Defendant'. It is pertinent to mention that in a catena of Judgements the Hon'ble Supreme Court has laid down that a conjoint reading of the provisions of the Code specifies that a final Judgement/decree, if not satisfied, would fall within the ambit of a 'Financial Debt', enabling the Creditor to initiate proceedings under Section 7 of the Code. At this juncture, we find it a fit case to place reliance on the observations made by the Hon'ble Apex Court in ***'Dena Bank (Now Bank of Baroda)' (Supra):***

> ***"130.*** *We see no reason why the principles should not apply to an application under Section 7 IBC which enables a financial creditor to file an application initiating the corporate insolvency resolution process against a corporate debtor before the adjudicating authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any court or tribunal or any arbitral award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 IBC."*

From the aforenoted observations it is clear that the 'debt' in this case arising out of a decree, is a 'Financial Debt'. Section 5(10) of the Code provides that *'Creditor means any person to whom a debt is owed and includes a 'Financial Creditor', 'Operational Creditor', 'Secured Creditor', 'Unsecured*

Creditor' and a ***Decree Holder'.*** As the definition of the word 'Creditor' in the Code includes a Decree Holder if a Petition is filed for realisation of the decretal amount, it cannot be dismissed on the ground that the Section 7 Application should have been taken steps for filing execution case in the Civil Court. Section 3(11) of the Code defines "debt" as a "liability in respect of a claim, and Section 3(6) of the Code defines term "claim" to mean a right to payment, whether or not such right has been reduced to judgement. Therefore, if the submission on behalf of the 'Corporate Debtor' is accepted, it would mean that a claim is excluded from being a financial debt even if reduced to Judgement by way of a recovery certificate.

22. For all the aforenoted reasons, we are of the considered view that there is no illegality or infirmity in the Impugned Order, passed by the Adjudicating Authority in admitting the Section 7 Application, keeping in view the ratio laid down by the Hon'ble Supreme Court in ***'M/s. Innoventive Industries Ltd.' (Supra).*** Hence, this Appeal fails and is accordingly dismissed. We are also conscious of the fact that several opportunities were given before the Adjudicating Authority to settle the matter on behest of the Appellant/'Corporate Debtor', but the same was not adhered to. This is an Appeal of the year 2019 and we do not wish to set the clock back in this time bound IBC process.

23. All the Intervention Applications are being disposed of with a liberty to the Applicants/Interveners to approach the Resolution Professional and submit their

claims in accordance with law. It is to be taken note that we have not expressed any view on the merits of the Intervening Applications regarding the admission/rejection or otherwise of their 'Claims', which is the domain of the Resolution Professional.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

Principal Bench,
New Delhi
16th November, 2022

himanshu