

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, BENGALURU**

*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Through web-based Video Conferencing Platform)*

**C.P. (IB) No.18/BB/2022**

U/s 9 of I&B Code, 2016

R/w Rule 6 of I&B (AAA) Rules, 2016

**In the matter of:**

**M/s. Metenere Global Limited**

Registered Office at

#138, Main Road, Ghazipur,

New Delhi – 110 096.

... Petitioner/Operational Creditor

**Versus**

**M/s. MLC Estates LLP**

Registered Office at:

No.1 and 2, Murphy Road, Ulsoor,

Bengaluru – 560 008.

... Respondent/Corporate Debtor

**Order delivered on: 08<sup>th</sup> September, 2023**

**Coram:** 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Present:**

For the Petitioner : Shri Abhishek Mishra, Adv.

For the Respondent : Shri W.W. Sundaramurthy, Adv.

**ORDER**

***Per: Manoj Kumar Dubey, Member (Technical)***

1. The instant Petition has been filed on 02.11.2021 u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as 'IBC / Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Metenere Global Ltd. (hereinafter as 'Petitioner / Operational

Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of M/s. MLC Estates LLP (hereinafter as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.12,87,42,491/- due and payable by the Corporate Debtor, with the date of default being 09.07.2014.

2. The Corporate Debtor was incorporated on 10.10.1963 in the form of a Private Company i.e., MLC Industries Pvt. Ltd., which subsequently changed its name to MLC Estates Pvt. Ltd. On 13.01.2015, the Corporate Debtor converted itself into a Limited Liability Partnership in terms of the Limited Liability Partnership Act, 2008. The Corporate Debtor – **M/s. MLC Estates LLP** at present exists as a Limited Liability Partnership Firm with Identification Number being AAD-1908 having its registered address at No.1 & 2, Murphy Road, Ulsoor, Bengaluru-560008. Hence, the jurisdiction lies with this Adjudicating Authority.

3. Brief facts of the case as stated by the Petitioner are as under:

(a) The Petitioner is a Public Limited Company and a Small Scale Industrial Unit engaged *inter alia* in the business of manufacturing and selling Lead Oxide. The Petitioner (*formerly known as M/s. Gupta Pigments & Chemicals Pvt. Ltd.*) instituted a Suit bearing OS No.1947/1998 against the Corporate Debtor (CD) (*formerly known as M/s. M.L.C Industries Pvt. Ltd.*) for a sum of Rs.25,35,050.56/- (Rupees Twenty Five Lakhs Thirty Five Thousand Fifty and Fifty Six Paise Only) along with future interest before the Additional City Civil Court, Bengaluru ('Trial Court').

(b) The said Suit was for the recovery of unpaid operational debt in relation to the transaction pertaining to the supply of red lead for the purpose of production of lead glass tubes from Petitioner to the CD, in respect of Purchase Orders placed by the CD.

- (c) The Trial Court passed a judgment and decree dated 10.04.2014 in OS No.1947/1998 partly decreeing the Suit entitling the Applicant to a sum of Rs.17,94,712/- with future interest at the rate of 1.5x the Prime Lending Rate charged by SBI as per the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 from the date of Suit till complete realization from the CD.
- (d) Despite the Petitioner's attempts to have the decree and judgment executed, the CD has failed to come forward to repay the unpaid operational debt. The said judgment has not been set-aside, modified or varied by any Court of Law and has attained finality. The total unpaid operational debt due and payable by the CD in terms of said Judgment and Decree is Rs.12,87,42,491/- as on 24.07.2021.
- (e) As a result of the non-payment of the legitimate, judicially decreed debt that is due from the CD to the Petitioner herein, the Petitioner issued a Demand Notice dated 02.08.2021 under Rule 5(1)(a) of the Code to the CD, and the same was delivered to the CD on 04.08.2021.
- (f) On receipt of the Demand Notice, the CD vide e-mail dated 09.08.2021 has raised untenable and illusory challenges to the Demand Notice by alleging that (a) the claim in the demand notice is based on fraudulent representation (b) the decree passed in OS No.1947/1998 has been obtained by the Petitioner by means of fraudulent representation before the Trial Court (c) As on the date of passing of the decree dated 10.04.2014 in OS No.1947/1998, the Petitioner was not a Small Scale Industry and therefore was not entitled to the interest under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (d) the demand notice is barred by reason of the initiation of execution proceedings in relation to the decree dated 10.04.2014 in OS No.1947/1988 (e) the Code is not a mechanism to execute decrees passed by Civil Courts.

- (g) It is stated that in respect of the allegations (a), (b) and (c) above, the Corporate Debtor had preferred a W.P. No.55086/2018 against the Petitioner before the Hon'ble Karnataka High Court on the very same grounds as the allegations at (a), (b) and (c) above. The said WP was dismissed *vide* order dated 05.05.2021, wherein, the Hon'ble Karnataka High Court specifically held that the decree passed in O.S No. 1947/1998 was not obtained on the basis of any fraudulent representations by the Petitioner, and it was further held that the Petitioner was indeed entitled to the interest awarded under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.
- (h) The CD unsuccessfully challenged the aforesaid Order dated 05.05.2021 before the Hon'ble Apex Court in SLP (Civil) No.8640/2021 which was dismissed *vide* Order dated 16.07.2021.
- (i) With regard to the allegation (d) above, it is stated that the CD has misconstrued and misunderstood the application and scope of proceedings before this Tribunal and this contest raised by the CD is liable to be dismissed in limine. The Petitioner is a decree holder entitled to legitimate debts, that the Corporate Debtor has failed to repay and as a consequence the instant Petition has been filed. The CD is trying to concoct the existence of a dispute, however, a perusal of the reply clearly demonstrates that it may be at best a patently feeble legal argument and/or an assertion that is unsupported by any evidence. The CD has by way of reply made an attempt to evade the jurisdiction of this Tribunal and to escape paying the legitimate debt to Petitioner.
- (j) Further, the illusory dispute raised by the Corporate Debtor has already been conclusively decided by the Hon'ble Karnataka High Court in WP No.55086/2018 and is clearly barred by the principles of *res judicata*.

(k) As per the Code, the timeline for making payment to the Petitioner expired on 14.08.2021 i.e. 10 days from the receipt of Demand Notice on 04.08.2021. The CD is therefore in gross and consistent default of payment of its debts and liabilities towards the Petitioner. Hence, the application.

(l) In support of its case, the Petitioner *inter alia* filed the following:

- i. *Judgment and Decree dated 10.04.2014 in O.S. No.1947/1998;*
- ii. *Order dated 05.05.2021 in W.P. No.55086/2021;*
- iii. *Order dated 16.07.2021 in SLP (Civil) No.8640/2021;*
- iv. *Statement of Account of M/s. Metenere Global for the period between 06.03.1998 to 24.07.2021.*

**4.** Pursuant to the issue of notice, Respondent filed its statement of objections *vide* Diary No.1397 dated 01.04.2022 by *inter alia* contending as under:

(a) It is contended that the Petitioner has suppressed the material fact that an execution petition bearing No.2588/2015 which was initiated by the Petitioner is pending adjudication in the Hon'ble City Civil Court, Bangalore, where the Respondent herein has challenged maintainability of execution proceedings on the ground the entire judgment and decree obtained in OS No.1947/1998, is obtained by playing fraud on the Court, as the Petitioner herein had filed the Original Suit claiming to be a Small Scale Industrial Undertaking, in the name of M/s.Gupta Pigments & Chemicals Private Limited, and had fraudulently claimed interest as per The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 which is solely meant for small scale industries. Hence, the Petitioner with the sole intention to enrich themselves malafidely, have approached this Tribunal by falsely deposing that the claim is genuine and has been crystalized by other Courts, but have suppressed the material fact that the Ex.No.2588/2015 is pending.

- (b) Further, it is contended that there is a genuine dispute with regards to the amounts claimed by the Petitioner, more precisely the Respondent is questioning the maintainability of the judgment and decree obtained in OS No.1947/1998 (which is being portrayed as debt due in the instant proceedings) as the same being dishonestly obtained by playing fraud upon the Hon'ble City Civil Court, as the said M/s. Metenere Global Ltd. was not a Party to the Suit and was not the Plaintiff who instituted the Suit neither the said M/s. Metenere Global Ltd. was impleaded in the proceedings that was instituted against the Appellant.
- (c) The Petitioner is claiming that M/s. Gupta Pigments and Chemicals Pvt. Ltd., has changed its name to M/s. Met Trade (Global) Ltd. on 29.06.2010, and subsequently M/s. Metenere Global Ltd., a total stranger to the proceedings is trying to enforce the decree by fraudulently portraying itself as the decree holder.
- (d) Moreover, the Plaintiff M/s. Gupta Pigments and Chemicals Pvt. Ltd. had ceased to exist during the pendency of the Suit and the new entity M/s. Metenere Global had changed during the pendency of the Suit had changed its objective from Manufacturing to Trading on 07.06.2010, by which the false plea of the Plaintiff claiming to be a Small Scale Manufacturing Industry falls flat. Hence, it is a clear indication that the Plaintiff knowingly played a fraud on the Court portraying itself as a Small Scale Industry. Copy of Certificate of incorporation reflecting the change in name and character together with affidavit in support of execution petition filed by Petitioner is annexed as Annexure D, D1 to D3.
- (e) It is contended that the said change amounts to change in constitution of the entity and the same is said to have happened during the pendency of proceedings and the said changes was never pleaded by M/s. Gupta Pigments & Chemicals Pvt. Ltd., and brought to the knowledge of the Trial Court, the same amounts to suppression of facts

and fraud. This being the situation, the Petitioner herein is repeatedly making a fraudulent attempt before this Tribunal to execute the Judgment and Decree obtained in OS No.1947/1998. Therefore, it is contended that the dispute between the Petitioner and Respondent is subsisting from the year 2015; which is prior to issuance of the demand notice, and thus the instant Application liable to be dismissed. Further, the Petitioner has not filed an Affidavit of Dispute which is mandatory requirement under the Code.

- (f) It is stated that the Judgment Debtor in Execution No.2588/2015 did not prefer the writ petition, but it is objector who preferred a writ on an IA and not on the main Execution Petition, hence, the proceedings before the Hon'ble Karnataka High Court and Hon'ble Apex Court were disposed off without any direction.
- (g) It is also contended that the Petitioner's claim is not a legitimate debt and the CD is not liable to pay the same as the decree was passed in favour of a non-entity that is to say that Gupta Pigments ceased to exist on 29.06.2010 and the decree was passed on 10.04.2014 which is a nullity and further M/s. Metenere Global Ltd., was not the plaintiff in OS No.1948/1998 hence it cannot claim to be a recipient of a decree and is barred from making the claim.
- (h) It is clarified by the Respondent that there is no due payable to the Petitioner herein, however, a sum of Rs.50 Lakhs was made against the order dated 17.12.2018 to obtain an ad-interim stay with regard to the execution proceedings No.2588/2015 by the Objector.
- (i) In support of its case, the Respondent relied on the following decisions:
- i. *International Asset Reconstruction Co. Pvt. Ltd. v. Jayant Vitamins Ltd., in NCLT Indore Bench in CP (IB) No.135/7/NCLT/AHM/2019;*
  - ii. *Digamber Bhondwe v. JM Financial Asset Reconstruction Co., Company Appeal (AT) (Ins) No.1379 of 2019 dated 05.03.2020;*

- iii. *Sh. Sushil Ansal v. Ashok Tripathi & Ors., in Company Appeal (AT) (Ins) No.452 of 2020 dated 14.08.2020;*
- iv. *HDFC Bank Ltd. v. Bhagwan Das Auto Finance Ltd., in Company Appeal (AT) (Ins) No.1329 of 2019 dated 09.12.2019;*
- v. *Wrinkle Marketing Pvt. Ltd. v. Roselabs Polymers Ltd., NCLT Ahmedabad Bench in CP (IB) 570 & 571/7/NCLT/AHM/2019;*
- vi. *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., MANU/SC/1196/2017.*

5. Subsequently, Petitioner filed Rejoinder *vide* Diary No.2616 dt.20.06.2022, by *inter alia* further stating as under:

- (a) As regards the contention about the suppression of Execution Case, it is stated that the Applicant has made relevant averments in the main CP pertaining to the same and has also produced subsequent orders passed in appeals arising from Execution Case No. 2588/2015, *viz.*, Order 05.05.2021 passed by the Hon'ble Karnataka High Court in WP No.55086/2021 and the Order dated 16.07.2021 passed by the Hon'ble Supreme Court of India in SLP (Civil) No.8640/ 2021. Therefore, Applicant has not suppressed any material facts.
- (b) As regards the contention of maintainability of Petition, it is settled law that a Decree Holder comes under the classification of an Operational Creditor and has statutory right to institute proceedings u/s 9 of the Code. Further, the pendency of execution proceedings is no bar to filing an application u/s 9 of the Code. It is trite law that, a creditor does not cease to be a creditor upon obtaining a decree in its favour. In such cases, Decree Holder has the option to simultaneously pursue both (i) execution of the decree and (ii) initiation of CIRP of the Debtor.
- (c) As regards the contention that Petitioner is not a Decree Holder in OS No.1947/1998, it is stated that the Petitioner was earlier known as M/s.Gupta Pigments & Chemicals Pvt. Ltd. Thereafter, its name was changed to M/s. Met Trade (Global) Pvt. Ltd. on 29.06.2010. Its name

was again changed to M/s. Met Trade (Global) Ltd. on 13.08.2010. Thereafter, its name was changed to M/s. Metenere Global Ltd. on 21.11.2013. The Petitioner has only changed its name as provided u/s 21 of the Companies Act, 1956 and in no way affects its status as the Decree Holder and resultantly as Operational Creditor. Further, Sec. 23(3) of Companies Act, makes it clear that a mere change in the name of a Company will not render any legal proceeding by or against the Company defective, and any legal proceedings which have been continued or commenced by or against the Company by its former name may be continued by or against the Company by its new name.

- (d) As regards the maintainability of Decree dated 10.04.2014, it is stated that the contention of the Respondent that the Decree was obtained by Plaintiff by falsely claiming to be a Small Scale Industrial Undertaking among other contentions were urged by CD in Execution Case No.2588/ 2015 by way of IA Nos.2, 3, 4/2018, and all these IAs were dismissed by Execution Court by a Common Order dt.07.11.2018, wherein, it is held that the Applicant is the recipient of the Decree passed in OS No.1947/1998; the Corporate Debtor is not a stranger to the Decree and is indeed the Judgment Debtor and the Decree was not obtained based on any fraudulent representations.
- (e) It is reiterated that there is no pre-existing dispute between the Parties, as contemplated u/s 8 of IBC and the CD is trying to concoct the existence of a dispute to put up a moonshine defence, which is not permissible. The CD is also wrongly construing the mere change in name of the Petitioner to be a change in its nature and constitution so as to extinguish past transactions. The said contention has also been considered and rejected by the Hon'ble Karnataka High Court in its order dated 05.05.2021.

- (f) In support of its case, the Petitioner relied upon following *vide* Diary No.5104 dated 25.11.2022:
- i. Ashok Agarwal v. Amitex Polymers Pvt. Ltd., (2021) SCC OnLine NCLAT 49;*
  - ii. Mukul Agarwal v. Royale Resinex (P) Ltd., (2022) SCC OnLine NCLAT 255;*
  - iii. Sec.47 of Code of Civil Procedure, 1908*
  - iv. Articles 136 and 137 of the Limitation Act, 1963.*
- 6.** The Respondent filed its synopsis *vide* Diary No.1679 dated 24.03.2023, by *inter alia* further contending as under:
- (a) It is contended that when the decree was passed by the Trial Court on 10.04.2014, the entity namely M/s. Gupta Pigments & Chemicals Pvt. Ltd., was not in existence since the entity itself stood extinguished on 31.03.2007, this contention has been raised in E.P. No.2588/2015, which is pending adjudication. The Operational Creditor is outside the purview of The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Repealed), and is trying to fraudulently claim interest which a small scale industry is entitled to inspite being a stranger to the Decree.
  - (b) In response to the Demand notice issued by the Petitioner, the CD *vide* its reply dated 09.08.2021 has denied the liability vehemently. Further, no purchase order, no invoices have been produced. Also, there is no proof of supply of material as the Invoice column is blank. It is stated that an affidavit of no dispute has not been filed by the Petitioner which establishes that the claim is disputed and thus there is a pre-existing dispute. Moreover, the principal amount under the decree is only Rs.17,94,712/- well below the threshold limit and the claim is also barred by limitation.

7. The Petitioner filed brief synopsis *vide* Diary No.1970 dated 11.04.2023, by *inter alia* stating as under:
- (a) The Petitioner approached this Tribunal as an Operational Creditor by virtue of being the Decree Holder in O.S. No.1947/1998. It is settled law that a Decree Holder is 'no way excluded from the purview of the ambit of the term 'Operational Creditor' as per Section 5(20) of the Code. The mere fact that Execution Application filed by the Operational Creditor is pending in Civil Court was no impediment for initiating proceedings under the Code.
  - (b) The Petitioner's entitlement to interest flows not just from contractual terms but from a vested statutory right accrued to it under the said Interest Act. The said entitlement has been upheld and specifically awarded by the Ld. Trial Court in the Decree passed in above O.S. As per the operative part of the Decree the Applicant has been awarded a sum of Rs.17,94,712/- along with future interest at the rate of one and a half times the Prime Lending Rate charged by the SBI as per the provisions of the said Interest Act from the date of Suit i.e.,06.03.1998 till complete realization from the Defendant i.e., the Corporate Debtor.
  - (c) Consequently, the total debt due as on 24.07.2021 is Rs.12,87,42,491 which is computed as per the final decretal amount; therefore, the Petitioner satisfies the threshold limit u/s 4 of the Code.
  - (d) Petitioner relied on the Judgment of the Hon'ble NCLAT in *Mr. Prashant Agarwal v. Vikash Parasrampurua in Company Appeal (AT) (Ins) No. 690 of 2022 dated 15.07.2022*, wherein it is held that interest on delayed payments gives one an entitlement to the 'right to payment' u/s 3(6) of the Code and therefore forms part of 'debt' as defined u/s 3(11) of the Code.

(e) As regards Limitation, the Petitioners have filed the following list of dates and events:

| <b>Date</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Reference</b>                                   |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 06.03.1998  | O.S. No.1947/1998 filed for recovery of a sum of Rs.25,35,050.56/- and interest thereon before the City Civil Court, Bengaluru                                                                                                                                                                                                                                                                                                |                                                    |
| 10.04.2014  | Judgment passed in O.S. No.1947/1998 for Rs.17,94,712/- with future interest at 1.5 times the Prime Lending Rate charged by SBI as per the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 from date of suit till realization                                                                                                                                                      | Annexure II(A)<br>Page 25 of Main C.P.             |
| 09.07.2014  | Date of Default                                                                                                                                                                                                                                                                                                                                                                                                               |                                                    |
| 18.11.2015  | Execution Case No.2588/2015 filed by the Applicant before the XXX Additional City Civil and Sessions Judge, Bengaluru                                                                                                                                                                                                                                                                                                         |                                                    |
| 19.12.2015  | Corporate Debtor filed the following I.A.s in Ex.2588/2015:-<br><br>a. I.A. No.2 under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 for dismissal of the execution petition as the decree does not operate against the Corporate Debtor.<br>b. I.A. No.3/2018 under Section 151 of the Code of Civil Procedure, 1908 for stay of the operation of the decree, pending the disposal of the I.A. No.2. | Annexure B of Synopsis                             |
| 2018        | Corporate Debtor filed I.A. No.4 in Ex No.2588/2015 under Section 151 of the Code of Civil Procedure, 1908 for dismissal of the Execution Petition as the same is filed by a stranger (Applicant) who is falsely claiming to be the Decree Holder                                                                                                                                                                             |                                                    |
| 07.11.2018  | Vide a Common Order the Learned Trial Court dismissed I.A. Nos.2, 3 and 4 in Ex No.2588/2015                                                                                                                                                                                                                                                                                                                                  |                                                    |
| 07.12.2018  | Corporate Debtor filed Writ Petition No.55086/2018 before the Hon'ble High Court of Karnataka challenging the Order dated 07.11.2018 passed in Ex No.2588/2015                                                                                                                                                                                                                                                                | Annexure C of Synopsis                             |
| 17.12.2018  | The Hon'ble High Court of Karnataka passed an Order in W.P. No.55086/2018 directing the Corporate Debtor to pay Rs.50,00,000/- to the Applicant                                                                                                                                                                                                                                                                               | Annexure D of Synopsis                             |
| 03.01.2019  | Payment of Rs.50,00,000/- made to the Applicant by the Corporate Debtor pursuant to Order passed by the High Court of Karnataka in W.P. No.55086/2018                                                                                                                                                                                                                                                                         |                                                    |
| 05.05.2021  | W.P. No.55086/2018 filed by Corporate Debtor was dismissed by the Hon'ble High Court of Karnataka                                                                                                                                                                                                                                                                                                                             | Annexure II(B),<br>Page 80 of the Main Application |
| 05.07.2021  | SLP (Civil) No.8640/2021 filed by the Corporate Debtor before the Hon'ble Supreme Court of India challenging the Order dated 05.05.2021 passed by the Hon'ble High Court of Karnataka in W.P. No.55086/2018                                                                                                                                                                                                                   | Annexure E of Synopsis                             |

|            |                                                                                                                                         |                                                |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| 16.07.2021 | SLP (Civil) No.8640/2021 filed by the Corporate Debtor was dismissed by the Supreme Court of India                                      |                                                |
| 02.08.2021 | Demand Notice issued by the Applicant under Rule 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 | Annexure I(A), Page 13 of the Main Application |
| 04.08.2021 | Demand Notice served on CD                                                                                                              |                                                |
| 25.10.2021 | Instant Company Petition e-filed                                                                                                        |                                                |
| 02.11.2021 | Instant Company Petition physically filed before NCLT                                                                                   |                                                |

(f) It is stated that the *lis* raised by the CD by filing IA Nos.2, 3 and 4 u/s 47 r/w 151 of the CPC attained finality with the dismissal of the SLP (Civil) No.8640/2021 on 16.07.2021. Thereafter, on 25.10.2021, the instant CP is filed and thus the same is within limitation.

8. Heard Shri Abhishek Misra, Ld. Counsel appearing for the Petitioner and Shri W.M. Sundaramurthy, Ld. Counsel appearing for the Respondent and perused the pleadings on record.
9. It is seen that the instant Petition has been filed by M/s. Metenere Global Limited seeking to initiate CIRP against the Corporate Debtor – M/s. MLC Estates LLP for defaulting to pay the amount due and payable by the Corporate Debtor. As seen from Part-IV of Form-5 of the Petition, the total amount claimed to be in default is Rs.12,87,42,491/-, with the date of default being 09.07.2014.
10. As stated supra, the Petitioner filed the instant Petition being a Decree Holder *vide* Judgment and Decree dated 10.04.2014 in O.S. No.1947/1998 partly decreeing the Suit entitling the Petitioner a sum of Rs.17,94,712/- with future interest at the rate of 1.5x Prime Lending Rate charged by the State Bank of India as per the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 from the date of the Suit till the complete realization from the Corporate Debtor herein.
11. It is noticed that this application has been filed for execution of a Decree of the City Civil Court, Bengaluru in which the Judgment was rendered on 10.04.2014 and accordingly the Petitioner has mentioned 09.07.2014 as

the 'Date of Default'. The Petitioner has tried to explain the satisfaction of the condition regarding limitation with the above mentioned Table of Dates and Events. In essence, the contention is that the Corporate Debtor filed IAs against the Execution Petition filed on 18.11.2015 in Execution Case No.2588/2015, which was dismissed *vide* Order dated 07.11.2018. Against the same, a Writ Petition was filed by the Corporate Debtor in WP No.55086 /2018, which was dismissed by the Hon'ble High Court of Karnataka on 05.05.2021, and the SLP filed by the Corporate Debtor against the Hon'ble High Court order was dismissed by the Hon'ble Supreme Court of India on 16.07.2021. The Petitioner has explained that only after dismissing of the SLP, the matter has attained finality and therefore e-filing of the Company Petition on 25.10.2021 is within limitation.

- 12.** This contention of the Petitioner is not tenable in Law. In Form-5, the Date of Default has been mentioned as 09.07.2014. In pursuance to the Decree ordered by the City Civil Court, Bengaluru, the cause of action has deemed to arise on the same date as 09.07.2014, which is stated to be the 'Date of Default'. The subsequent challenge to this Decree was made by the Corporate Debtor by filing IAs, Writ Petition in the Hon'ble High Court and SLP in the Hon'ble Supreme Court. However, the limitation period will not be extended by filing of these Applications by the Corporate Debtor against the City Civil Court Order. The Petitioner has also filed an Execution Petition bearing E.C. No.2588/2015, which is yet to be decided and is still pending. In this connection, a recent decision of the Co-ordinate Bench of NCLT Kolkata Bench in CP (IB) No.60/KB/2021 Order dt.04.08.2023 is referred to, in which case also the Petition under Section 9 of the Code was filed consequent to a Decree. In that case, the Execution Order was also passed and the date of the Order in Execution Petition was treated as the 'Date of Default'. The relevant paras of the decision of Kolkata Bench are reproduced hereunder:

"9. Now the issue that comes to the fore is that **can the Date of Default be shifted forward to the date of decree?** From the records it is evident that the civil suit was filed by the Operational Creditor on non-receipt of payment from the Corporate Debtor, which means that default must have occurred then and triggered the Operational Creditor to file a suit for recovery. Hence, time must have begun then.

10. It is needless to point out that the law relating to the applicability of Section 18 of the Limitation Act, 1963 is fairly well settled. In **Jignesh Shah and Another v. Union of India and Another** (2019) 10 SCC 750, the Hon'ble Apex Court has pointed out that when time begins to run, it can only be extended in the manner provided in the Limitation Act.

11. Further, in **Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another** (2021) 6 SCC 366 this Court while applying Section 18 of the Limitation Act, the Hon'ble Supreme Court even went to the extent of holding that an entry in the balance sheet of the company could also be treated as an acknowledgement in writing, subject however to any caveat found in the accompanying reports.

12. For this issue, it is also useful to refer the Judgment of the five Members Bench of the Appellate Tribunal in the Case of **V. Padamkumar Vs. Stressed Asset Stabilization Fund (SASF) & Anr.** C.A. (AT) (Ins) No.57 of 2020, Para No.16 to 18 as under:-

"16. Appreciating the aforesaid Judgment of the Hon'ble Patna High Court, the Hon'ble Supreme Court in "Jignesh Shah and another vs. Union of India and another" (Supra) observed that the aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding-up proceeding. Thus, while holding so, the Hon'ble Supreme Court held that the date of default to be taken into consideration for computing the period of limitation of application under Section 7. As the decision of the Hon'ble Supreme Court is binding, we hold that mere filing of a suit for recovery or a decree passed by a Court cannot shift forward the date of default.

17. A suit for recovery of money can be filed only when there is a default of dues. Even if the decree is passed, the date of default cannot be shifted forward to the date of decree or date of payment for execution as a decree can be executed

*within specified period i.e. 12 years. If it is executable within the period of limitation, one cannot allege that there is a default of decree or payment of dues.*

**18. Therefore, we hold that a Judgment or a decree passed by a Court for recovery of money by Civil Court/Debt Recovery Tribunal cannot shift forward the date of default for the purpose of computing the period for filing an application under Section 7 of the 'I&B Code'."**

**13.** Therefore, relying on the ratio of the decisions mentioned therein, including the Judgment of the Hon'ble Apex Court and the five Members Bench of the Hon'ble NCLAT mentioned supra, it was held that the mere filing of a suit for recovery or the Decree passed by a Court cannot shift forward the 'Date of Default' and accordingly the Date of Default cannot be shifted to the Date of Decree. In this case, the Applicant has chosen the Date of Default of 09.07.2014 as subsequent to the Date of Decree of 10.04.2014. However, for the purpose of limitation they have further claimed that the subsequent sequence of the challenges to the Decree including the IAs filed in the City Civil Court and the Writ Petition and the SLP filed in the Hon'ble High Court of Karnataka and the Hon'ble Apex Court by the Corporate Debtor will extend the limitation period, which is not acceptable in view of the above decision.

**14.** In this connection, it is pertinent to mention the basic requirement of Section 9(3)(a) and (b), which are as under:

**"9. Application for initiation of corporate insolvency resolution process by operational creditor.**

.....

**(3)** The operational creditor shall, along with the application furnish-

**(a)** a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

*(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*

*.....”*

- 15.** The Respondent has rightly contended that these requirements are not fulfilled by the Petitioner since no copy of invoice has been furnished along with the Application as required u/s 9(3)(a) of the Code. Similarly, the condition given in Section 9(3)(b) is also not satisfied since no Affidavit as required therein has been filed. Further, though the Applicant relied upon the decision of the Hon'ble NCLAT in the case of Mr. Prashant Agarwal v. Vikash Parasrampurua in Company Appeal (AT) (Ins) No.690 of 2022 dated 15.07.2022, but the essential feature of the decision and other such decisions is that the interest can be considered for the threshold requirement in Section 9 only if there is a specific Agreement, or it is categorically mentioned in the Invoice or the Purchase Order. Here, there is no such document furnished; neither there is an Agreement or Purchase Order nor any Invoice.
- 16.** In view of the above discussion, it is held that the Application/Petition filed u/s 9 of the Code is not maintainable in the facts and circumstances of the case; mainly on account that the limitation has expired as well as the other conditions of Section 9 of the Code have not been fulfilled.
- 17.** Accordingly, **C.P. (IB) No.18/BB/2022 is hereby dismissed.** However, this Order will not preclude the Petitioner in pursuing other legal remedies under any other Law, if so advised.

**Sd/-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**T. KRISHNAVALLI**  
**MEMBER (JUDICIAL)**

*jsr*