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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/116/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016*

In the matter of ***M/s. Marg Limited***

Srishaila Constructions Private Limited

No.515, Hennur Bellary Road,
4th Main, 1st Cross,
1st Stage, 4th Block, HBR Layout,
Bangalore – 560043

... Operational Creditor

-Vs-

M/s. Marg Limited

Reg. Off:-

Sri Sai Subhodhaya Apartment
Basement No.57/2B,
East Coast Road,
Thiruvanmiyur,
Chennai – 600 041

...Corporate Debtor

Order Pronounced on 28th September 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Pradeep Dahiya, Advocate
N. Mahendra Babu, Advocate*

For Corporate Debtor : B. Ramana Kumar, Advocate

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

Under Adjudication is IBA/116/2020 that has been filed by

M/s. Srishaila Constructions Private Limited (hereinafter

referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Marg Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Company incorporated under the Companies Act, 1956. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number L45201TN1994PLC029561 and registered office of the Corporate Debtor as per the Application is stated to be at Sri Sai Subhodhaya Apartments, Basement No.57/2B, East Coast Road, Thiruvanmiyur, Chennai - 600 041. As per Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

3. Part IV of the application signifies the amount of debt to the tune of Rs.6,68,12,000/- as outstanding which is due and payable

by the Corporate Debtor. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as described below:

- i) Copy of all the work orders executed
- ii) Copy of the invoices / bills raised against completion of work by the Operational Creditor.
- iii) Copy of the reconciliation statement as on 01.02.2013
- iv) Copy of the letter of acknowledgment dated 28.12.2015.
- v) Copy of the Demand Notice dated 30.11.2018
- vi) Copy of the Reply to the Demand Notice dated 13.12.2018
- vii) Copy of the Order dated 28.05.2019 passed by this Tribunal in CP/541/IB/2018
- viii) Copy of the claim submitted by the Operational Creditor to the RP on 10.09.2019.
- ix) Copy of the order dated 30.09.2019 passed by Hon'ble National Company Law Appellate Tribunal in Company Appeal No. 618 of 2019
- x) Copy of the email dated 15.10.2019 sent by the Resolution Professional to the Operational Creditor.
- xi) Copy of the ledger of the Corporate Debtor in the books of the Operational Creditor project wise.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had entered into various work orders with the Corporate Debtor for construction and piling work at Karaikal Port and the details of the Work order are as under;

DATE	PURPOSE
14.07.2010	Construction of Berth No.04 at Karaikal Port
19.08.2011	Construction of OSV Berth Extension by 71 mts at Karaikal Port

04.12.2011	Piling & Foundation Civil Works of Mechanization System (Conveyor)
13.09.2011	Civil Works for Rail Track for strake cum Reclaimer Project

5. The Learned Counsel for the Operational Creditor submitted that as against the said work order various bank guarantees were furnished by the Operational Creditor towards mobilization advance and performance of work and also after the work was completed, the said bank guarantees were duly discharged and returned. It was submitted by the Learned Counsel for the Operational Creditor that subsequent to the completion of work, the Operational Creditor had raised various R.A. Bills against the Corporate Debtor and despite the same were acknowledged by the Corporate Debtor, only part payments were made and that too in a highly irregular manner.

6. The Learned Counsel for the Operational Creditor submitted that the total outstanding in respect of work done by the Operational Creditor as per the work orders mentioned above and as per the reconciliation sheet dated 01.02.2013, amounts to Rs.6,98,12,000/-. In pursuance of the same, it was submitted that the Operational Creditor had written various emails to the Corporate Debtor; however none of them were replied by the Corporate Debtor. Further, it was alleged by the Learned Counsel

for the Operational Creditor that the Corporate Debtor in a meeting held on June 2015 had informed the Operational Creditor that they were facing financial crunch and that the Corporate Debtor had offered some its machineries, being concrete pump to set off a part of the outstanding amount of Rs.6,98,12,000/-. In pursuance of the same, it was submitted that the Operational Creditor has accepted the offer and decided to buy the machinery of the Corporate Debtor at Rs.30,00,000/- and that the Operational Creditor by their letter dated 28.12.2015 has categorically stated that the balance outstanding, after setting off the purchase of machinery, in the books of the Operational Creditor, is Rs.6,68,12,000/-.

7. The Learned Counsel for the Operational Creditor submitted that, thereafter no payments were made by the Corporate Debtor from December 2015 onwards despite numerous request from the Operational Creditor and personal follow ups from the Operational Creditor. Under such circumstances, it was submitted that the Operational Creditor issued a Demand Notice as stipulated under Section 8 of IBC, 2016 to the Corporate Debtor on 30.11.2019, to which it is seen that the Corporate Debtor had replied on 13.12.2018 denying its liability to pay the outstanding amount on the primary ground that the same is being time barred. However, the Operational Creditor on being dissatisfied by the contentions

raised by the Corporate Debtor in their reply to the Demand Notice has preferred to file the present Application under Section 9 of IBC, 2016 seeking to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

8. The Respondent has filed counter and the Learned Counsel for the Respondent *prima facie* submitted that the present Application is barred by limitation since the Application under Section 9 of IBC, 2016 is filed based upon an alleged letter dated 28.12.2015 which is a purported and a tampered one, and for the sake of argument, if said date is taken into consideration then the three year period comes to an end on 28.12.2018; however the present Application has been filed before this Tribunal only on 06.01.2020, which is well beyond the period of 3 years of the date of Limitation as prescribed under Article 137 of the Limitation Act, 1963.

9. The Learned Counsel for the Respondent submitted that the adjustment of machinery as stated by the Operational Creditor in their letter dated 28.12.2015, to the tune of Rs.30 Lakh is only to create an alibi to show that the said letter is a genuine one and if the same is true, it should have been reflected in the Balance Sheet of the Application for the year ended 31.03.2016. Further, it was submitted that the last payment in respect of the dues of the

Corporate Debtor was made on 31.05.2012 for Rs.15,00,000/- and after the same, there is no acknowledgment being made on the part of the Corporate Debtor to the Operational Creditor and hence the claim of the Operational Creditor is time barred.

10. It was further submitted that the Corporate Debtor had originally admitted into CIRP by the order of this Tribunal dated 28.05.2019 passed in CP/541/IB/2018 and the Operational Creditor herein had submitted its claim in Form – B before the IRP on 10.09.2019, which claim to be rejected for the reason as 'time barred'. In the meantime, it is also seen that in the appeal filed by the Corporate Debtor as against the CIRP admission order, the Hon'ble NCLAT vide its order dated 30.09.2019 in Company Appeal No. 618 of 2019 has allowed for withdrawal of CIRP under Section 12A of IBC, 2016 and set aside the CIRP order passed by this Tribunal. Under the said circumstances, the Learned Counsel for the Corporate Debtor submitted that the present Application filed by the Operational Creditor is liable to be dismissed on the ground of limitation alone.

11. Since, the Learned Counsel for the Corporate Debtor has raised an issue with in relation to the aspect of limitation, it becomes imperative for this Tribunal first to address the said issue, before going into the merits of the case.



12. The Operational Creditor has placed reliance only upon the letter dated 28.12.2015 in order to show that the same amounts to an acknowledgment by the Corporate Debtor. A perusal of the said letter shows, which is annexed at Page No. 98 of the typed set filed along with the Application that the same has been written by the Operational Creditor to the Corporate Debtor and it does not contain any seal or acknowledgment of the Corporate Debtor. Further, the Operational Creditor has also failed to attach the proof as to whether the said letter was served to the Corporate Debtor, since in the reply to Demand Notice, the Corporate Debtor has categorically denies the receipt of the said letter and states that the same is a fabricated one. In order to dispel the said contention, the Operational Creditor has not placed on record any documents to prove to the contrary. Be that as it may, the letter dated 28.12.2015 as relied on by the Operational Creditor shall not in any way, be construed as an acknowledgment by the Corporate Debtor. Even assuming for the sake of argument that the said letter amounts to acknowledgment, the letter 3 years period of limitation would end on 28.12.2018 and admittedly, the present Application which is filed before this Tribunal on 06.01.2020 is hopelessly barred by limitation.



13. Further, the Hon'ble Supreme Court in the matter of **Babulal Vardharji Gurjar –Vs- Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.** in Civil Appeal No. 6347 of 2019 dated 14.08.2020, while dealing with the aspect of limitation in relation to Applications filed under Section 7 and 9 of IBC, 2016 has held as follows;

“When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore: (a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation; (b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor; (c) that intention of the Code is not to give a new lease of life to debts which are time-barred; (d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs; (f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and (g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under Section 7

of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application."

14. Thus, by taking into consideration the points discussed supra, *prima-facie* it is seen that the debt which is being claimed to be in default from the Corporate Debtor is barred by limitation and hence we are constrained to **dismiss** the petition. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond