IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.135/BB/2021
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

India Resurgence ARC Private Limited
3rdFloor,Unit 304
Piramal Tower
Penisula Corporate Park,
Lower Parel
Mumbai-400013 … Applicant/Financial Creditor

VERSUS

Value Designbuild Private Limited
No.42,2ndFloor,Castle Street
Ashok Nagar,
Bangalore-560066 … Respondent/Corporate Debtor

Order delivered on 13th April 2023

Coram: 1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2.Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner	:	Ms.TaniyaBansil
For the Respondent	:	Shri A.Murali& Shri. Abhijit Atur,

ORDER

Per:Manoj Kumar Dubey, Member (Technical)

1. The Present Company Petition has been filed on 30.09.2021 by M/s **India Resurgence ARC Private Limited** (for brevity 'Financial Creditor') under Section 7 of IBC,2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority)Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against M/s **Value Designbuild Private Limited** (hereinafter called as 'Corporate Debtor'), on the ground that it has committed default for a total amount of Rs.19,29,97,717/-(Rupees Nineteen Crores

Twenty Nine Lacs Ninety Seven Thousand Seven Hundred Seventeen Only) as on 31.08.2021.

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

I. The Financial Creditor is a Company incorporated under the Companies Act,2013 on 29.01.2016.The registered office of the Company is situated at 3rd Floor,Unit 304, Piramal Tower, Peninsula Corporate Park,Lower Parel Mumbai-400013.It is submitted that the Branch Office of the Company is situated at Elexa Resolution Advisors LLP,3rd Floor,No-1133,100 Feet Road,HAL 2nd Stage, Indiranagar,Bangalore,Karnataka-560038.

II. The Corporate Debtor is a Company incorporated under the CompaniesAct,1956 on 02.09.2002 with CIN No.U70102KA2002PTC030953.The Authorised Capital of the Respondent/Corporate Debtor is Rs.80,00,000 /- and the Paid –Up Capital is Rs. 75,00,000/- as per the Company Master Data attached at Annexure P-3 of this application.

III. It is submitted that the Corporate Debtor along with co-borrowers, approached the original lender for availing loan against property and upon their request and representation loan facility of Rs.25,20,00,000/-(Rupees Twenty Five Crores Twenty Lakhs Only) was sanctioned to the Corporate Debtor vide Facility Agreement dated 28.02.2015.

IV. The said loan was secured by creating equitable mortgage in favour of the original lender herein over property bearing description '19 Unsold Units measuring 87,501 square feet, in Project VDB Willow Farm situated at Corporation Katha No.177/21, NarullahalliVillage, K R Puram, Hobli Bangalore, East Taluk.

V. It is submitted that the loan facility was availed by M/s VDB White Field Development Private Limited as the 'Principal Borrower' and the Corporate Debtor along with its Director Mr.Koshy Varghese as 'Co-borrowers'. That vide Deed of Assignment dated 05.11.2019 the original lender i.e., Religare Finvest Limited had assigned/ transferred all its rights , title and interest in respect of the debt of the Corporate Debtor company with underlying security interest, pledges and guarantees in respect of such loans in favour of the financial creditor i.e., India Resurgence ARC Private Limited. The original lender has also transferred the Secured Receivables in favour of the financial creditor.

VI. It is stated that the corporate debtor was irregular in making timely repayment of the loan dues and committed default in making payments. The account of the corporate debtor was declared as NPA on 31.07.2016 and thereafter a demand notice dated 19.08.2016 under Section 13(2) of the SARFAESI Act,2002 was duly served upon the corporate debtor along with other co-borrowers for repaying a sum of Rs.21,84,65,453.22/-(Rupees Twenty-One Crores Eighty –Four Lacs Sixty –Five Thousand Four Hundred Fifty Three and Paise Twenty Two Only. However, the corporate debtor failed to repay the said amount.The declaration as NPA constitutes default in terms of section 3(12) of IBC,2016.

VII. It is submitted that as on 23.06.2021 a sum of Rs.19,28,65,504/-(Rs.Nineteen Crores Twenty Eight Lacs Sixty Five Thousand Five Hundred and Four Only) was due and payable from the corporate debtor and as on 31.08.2021 a sum of Rs.19,29,97,717/- (Rupees Nineteen Crores Twenty Nine Lacs Ninety Seven Thousand Seven Hundred Seventeen Only) is due and payable from the corporate debtor.Thus there is a debt and a default.

VIII. For limitation, Writ Petition filed before the Hon'ble Karnataka High Court in the SARFAESI proceedings has been cited, and the period of such litigation (19.08.2016 to 07.05.2018), has been sought to be excluded; along with the Hon'ble Apex Court judgment for Covid period in Suo Moto WP No.03/2020.Further part payment on 12.01.2018 of Rs.5,00,000/- by the Corporate Debtor also been mentioned.

3. The Respondent/Corporate Debtor opposed the C.P., vide Diary No. 1285 dated 25.03.2022 by *inter alia* contending as under:

1) The Financial Creditor's claim is barred by limitation. The Financial Creditor has deliberately suppressed certain facts and documents. Even prior to the filing, the Corporate Debtor has raised the bar of limitation to the Financial Creditor's claim. The Financial Creditor issued a demand notice dated 23.06.2021. Inresponse, the Corporate Debtor issued a reply dated 13.07.2021 and paragraph 7 of such reply, the Corporate Debtor raised the objection of limitation.

2) The Financial Creditor has deliberately suppressed from this Tribunal its notice dated 23.06.2021 and the Corporate Debtor's reply dated 13.07.2021.Similarly, the Financial Creditor has also suppressed the date of the alleged default, solely in order to conceal the fact that the petition is barred by limitation. The Financial Creditor has only mentioned the date of declaration of the Corporate Debtor's account as NPA as the date of default.

3) The Financial Creditor has deliberately mentioned the date of classification of the Corporate Debtor's account as NPA to be the date of default, instead of the date when the Corporate Debtor failed, if at all, to pay any instalment of principal/ interest. The norms of the Reserve Bank of India on asset classification state that an account can be classified only when principal/ interest remain overdue for more than 90 (ninety) days. Hence, with malafides to bring the petition within limitation, the Financial Creditor has considered the date of NPA classification as the date of default to wrongly exclude 90 days from the period of limitation.

4) The date of default is 31.07.2016, the Petition is still clearly barred by limitation since the petition was filed on 24.09.2021. The period of limitation, under Article 137 of the Schedule to the Limitation Act,1963 is 3 (three) years from 31.07.2016 which ended on 31.07.2019, whereas the petition has been filed on 24.09.2021.Hence, the filing of the present petition is clearly barred by limitation.

5) It is stated that there can be no dispute that the provisions of the Limitation Act,1963 apply to applications filed under the Code by virtue of Section 238-

A of the Code. The Hon'ble Supreme Court of India, in *B.K Educational Services Pvt Ltd v.Parag Gupta & Associates* (2018 SCC Online 1921) held that, if the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act. Therefore there is no dispute that the 3 year period of limitation under Article 137 of the Schedule to the Limitation Act,1963 applies to the present petition and hence the petition is barred by limitation.

6) The Financial Creditor seeks to avail the exclusion, under Section 14 of the Limitation Act,1963, of the period from issuance of the notice under Section 13(2) of the SARFAESI Act,2002(19.08.2016) till the date when the first payment of Rs.1crore was to be made as per the direction of theHon'ble High Court (07.5.2018). For the purpose of exclusion, the Financial Creditor has put forth a creative argument that the entire period of time for which proceedings under SARFAESI Act were conducted, and thereafter, till an order of stay was passed by the Hon'ble High Court,ought to be excluded.

7) As per Section 14, it is clear that the sine qua non for availing the benefit of the provision are (a) the civil proceeding relates to the same matter in issue; and (b) that the other court where the party was prosecuting the civil proceedings, was unable to entertain it from defect of jurisdiction or other cause of a like nature. These sine qua nons are not fulfilled in the present case.

8) It is settle law that an exception or exclusion cannot be granted or availed as a matter of course and the party seeking to avail such exclusion has to clearly establish its entitlement. It is clear that the Financial Creditor's acts do not entitle it to the benefit of Section 14 of the Limitation Act,1963 and there can be no question of exclusion of limitation. The Financial Creditor relied up on Section 14 of the Limitation Act, 1963 on the judgement in *Sesh Nath Singh & Ors v.BaidyabatiSheoraphuli Co-operative Bank Ltd &Ors.* The said judgment is wholly inapplicable to the Financial Creditor's case on account of a critical difference in the factual matrix, which has been carefully suppressed by the Financial Creditor in its petition.

9) In para 85 of the said judgement, the Hon'ble Supreme Court took note of the critical fact that the Hon'ble High Court stayed the proceedings under the SARFAESI Act on the prima facie ground of want of jurisdiction, thus bringing it in the scope of Section 14 of the Limitation Act,1963. Defective jurisdiction is a sine qua non under this provision. In the present case, proceedings before the Magistrate were not terminated or stayed for lack or defect in jurisdiction. Hence, the facts of the present case materially different from *Sesh Nath Singh.*

10) The protection conferred by the Hon'ble Supreme Court order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No 3 of 2020 does not cover the Financial Creditor's claim.

11) It is not the case of the Financial Creditor that the Corporate Debtor issued any written admission of liability during the period of limitation or even thereafter. The Nesl records as on 18.06.2021 state 'disputed' of the claim of the Financial Creditor. The copy of the Nesl record stating 'disputed' is attached as Annexure E to the statement of objection.

12) In the present case, the Financial Creditor, in paragraph 6.4(E) of the petition, makes no mention of any such acknowledgment of payment issued by the Corporate Debtor.

13) It is stated that the Financial Creditor has based its petition on the alleged NPA declaration on 31.07.2016. Such being the case, when the predecessor-in- interest of the Financial Creditor i.e, Religare chose not to take any legal action against the Corporate Debtor, the mere execution of the assignment deed which placed the Financial Creditor in the shoes of Religare did not create a new cause of action.

14) It is stated that, in Clause 20, disputes arising out of the Facility Agreement dated 28.02.2015 were required to be referred to arbitration and the parties were barred from agitating disputes in the Court of law. The Financial Creditor initiated arbitration in respect of this dispute against the corporate debtor by issuing a notice and appointing an advocate Mr.Siddarth Tomar by a letter dated 24.06.2016 as the sole arbitrator.

15) It is state that, it was mutually agreed that the parties would resolve the disputes between themselves and thus, arbitration proceedings were required to be kept in abeyance. Therefore, the Corporate Debtor issued a letter dated 04.08.2016 to the Learned Arbitrator and requested that the said proceedings be kept in abeyance.

16) Without prejudice to the contention that the claim is barred by limitation, by virtue of the arbitration agreement and the initiation of arbitration, the Financial creditor is barred from invoking the jurisdiction of this Tribunal under section 7 of the Code. In fact, the Corporate Debtor had raised this objection in paragraph 2 of its reply dated 13.07.2021 issued to the letter dated 23.06.2021 issued by the Financial Creditor. The Financial Creditor has deliberately suppressed the reply dated 13.07.2021 issued by the Corporate Debtor to the Financial Creditor from this Tribunal.

17) It is stated that the Corporate debtor does not owe any amount to the Financial Creditor, since all due amounts have already been repaid within the tenure of the loan. Infact, the Corporate Debtor has even overpaid amounts to the Financial Creditor, which the Corporate Debtor has also communicated to the Financial Creditor and Religare earlier.

18) The Financial creditor claims to have disbursed Rs.25.2 crore to the Corporate Debtor.In return, the Corporate Debtor has repaid an amount of Rs.26,96,83,213/-)Rupees Twenty Six Crore Ninety Six Crore Ninety Six Lakh Eighty Three Thousand Two Hundred and Thirteen Only) to the Financial Creditor between January 2015 and July 2019. The payments made by the Corporate Debtor are recorded in its bank statement and ledger statement.Copy of the bank statement and ledger statement of the corporate debtor is produced as Annexures H and I.

4. The Petitioner/Financial Creditor has filed Rejoinder vide diary no 1729 dated 21.04.2022, by *inter alia* stating as follows:

a) It is submitted that, after availing the loan facility in the year 2015, the corporate debtor was irregular in making payments. The due date for each installment was 1st of every month, however, the corporate debtor never made payments on time and sometimes delayed part payments were made without overdue/late/cheque bounce charges etc. and moreover certain instalments were not made, consequently the account of the corporate debtor was classified as NPA on 31.07.2016, leading to initiation of the SARFAESI proceedings.

b) It is submitted that as claimed/admitted by the Corporate Debtor the alleged payments were made by the corporate debtor from 14.01.2015 till 26.07.2019(Ledger statement at annexure I,Page 74-77 of the objections).That if the alleged payments as claimed by the corporate debtor is assumed to be true, the present petition as per the own case of the corporate debtor is within the period of limitation which is 3 years from the date of last payment(26.07.2019) and a fresh period of limitation shall be computed from the date of part payments in the light of Section 19 of the Limitation Act,1963

c) The Hon'ble NCLAT,New Delhi in the case of *"Atharva Auto Logistics Pvt Ltd v Intec Capital Ltd.&Anr CA (AT)(Insl).No.303 of 2022* dated 24.03.2022 held that the Financial creditor is entitled to take benefit of 3 years period of limitation from the date of last payment.

d) It is submitted that, as per the statement of accounts, the Corporate Debtor intermittently made part-payments and the last successful part payments of Rs.5,00,000/- was received on 28.02.2018(value date 12.01.2018). Thus a fresh period of limitation shall be computed from the date pf part payments in the light of section 19 of the limitation act,1963.(page 185 of section 7 petition)

e) It is submitted that due to outbreak of novel Covid 19 and sudden increase in the number of cases, the Hon'ble Supreme Court took Suo Moto Writ Petition (Civil) No.3/2020 thereby extending the period of limitation.

f) It is submitted that the Corporate Debtor issued a Cheque bearing No.561 dated 14.02.2019 towards the part payment, for an amount of Rs.13,00,00,000/- however, the same was bounced on 8.03.2019 due to insufficient funds. Thus the said cheque towards the part payment/ repayment of the loan amounts to acknowledgement of debt in terms of Section 18 of the Limitation Act,1963. Thus the present petition is very much within the period of limitation.

g) The Hon'ble NCLAT New Delhi in the case of *Mr.Rajendrakumar Kundanmal Jain v Mr.Vijal A Jain &Ors CA(AT)(Insl) N0.366 of 2020* dated 04.03.2021 had observed that the cheque amounts to acknowledgment of debt although the said cheque dishonoured. The decision passed by the Hon'ble Supreme Court in the case of *Sesh Nath Singh and Ors v Baidyabati Sheoraphuli Co-operative Bank Ltd and Ors dated 22.03.2021* reported in (MANU/SC/0205/2021) is limited to the fact that whether Section 14 of the Limitation Act,1963 is applicable to applications under Section 7 of the Code and exclusion of time in computing the period of limitation when the applicant was prosecuting another civil proceeding with due diligence against the same party and for the same relief.

h) In terms of Section 238 of the Code and the legal position settled in *Indus Biotech case,* it clearly stipulates that the provisions of Insolvency and Bankruptcy Code, 2016 shall prevail over Arbitration. Therefore, the submission that the Financial Creditor and corporate debtor be referred to arbitration pending before Learned Arbitrator to Mr.Siddharth Tomar is not maintainable and is no ground to defeat an application filed under section 7 of the Code.

i) It is submitted that the allegation levelled that the NeSL records states that the claim of Financial Creditor is disputed is baseless for the reason that corporate debtor have not annexed the complete report/authentication from NeSL and it is required that complete report be looked into. Moreover, the dispute is not upon the existence of debt but, the information provided to NeSL about the outstanding amount is stated to be wrong and hence the status 'deemed to be authenticated'.

5. The Corporate debtor filed written submission dated 8.02.2023 vide diary no 740 by inter alia stating as follows:

(a) The Financial creditor is seeking for initiation of CIRP of the corporate debtor on the basis of Assignment deed 05.11.2019 executed between Religare Finvest Limited and the Financial creditor. The said agreement is not stamped as required under Karnataka Stamp Act and therefore, the same is inadmissible in evidence. Further, Schedule 1A of Agreement lists out the details of the borrowers whose loans were purportedly assigned to the Financial Creditor. The name of the corporate debtor is nowhere stated in the said Schedule, except the name of the co-borrower and therefore, unless expressly assigned the loan agreement with the Corporate Debtor cannot be presumed to have been assigned to the Financial Creditor.

(b) The present petition filed by the financial creditor is defective and is not maintainable under law. The petition has been filed by one Ms.Ragini M.K who has been authorized vide power of attorney dated 26.07.2021 (at page 34 of the petition) to initiate legal proceedings against the borrowers as detailed in Schedule II (at page 40 of the petition).However, the name of the corporate debtor is not stated in the said schedule and therefore Ms.Ragini M.K has no locus to initiate the present proceeding and on this ground alone, this petition deserves to be dismissed.

(c) It is submitted that there is already pending disputed between the VDB Whitefield Development Private Limited and Religare in so far as the amounts that are allegedly due. Further, legal notices issued by VDB Whitefield Development Private Limited(produced at page 80-85 of statement of objections) confirms that the total amount have been repaid to Religare and infact, Religare owes substantial amounts to VDB Whitefield Development Private Limited, which has resulted on account of the fraud played by Religare.

(d) The present petition has to be dismissed solely on the ground that the Financial Creditor has intentionally concealed the following material facts and documents such as reply date 13.07.2021 issued by the corporate debtor and others to the demand notice dated 23.06.2021, arbitral proceedings pending between the Religare and the corporate debtor and others, response dated 12.10.2016, notice dated 15.12.2021 and legal notice dated 16.02.2022.it is settled law that person who approached the court with unclean hands shall not be entertained and on this ground alone, the present petition deserved to be dismissed.

(e) The demand notice dated 23.06.2021 issued by the Financial Creditor to VDB Whitefield and others (including the Corporate Debtor herein) was duly responded by the recipients of the demand notice vide 13.07.2021. In the said notice, the Financial Creditor has classified the corporate debtor as the corporate guarantor. However, in the petition the corporate debtor is classified as Principal Debtor, and therefore, there are several inconsistencies in the case put forth by the Financial creditor.

(f) It is submitted that,Religare has played fraud on the corporate debtor and VDB Whitefield Private Limited and enquiry has been initiated by CBI and the loans and repayments made by VDB Whitefield Private Limited is also being investigated. The entire loan advanced by Religare was disbursed to VDB Whitefield Development Private Limited.

6. The Petitioner/Financial Creditor filed brief memo vide diary no 4801 dated 10.11.2022 and additional written submission vide diary no 55 dated 3.1.2023 is taken on record.

7. On 09.02.2023, this Tribunal directed the Counsels to filed written submission along with the copies of the judgments on which they are placing reliance with proper index and pagination and referring to the relevant paragraphs of the judgment. The compliance to the above order, the Petitioner counsel filed written submission vide diary no 945 dated 17.02.2023, by inter alia stating as follows:

I. A bare perusal of the Sanction Letter and the Loan Agreement would evidence that the original Lender i.e., Religare Finvest Limted sanctioned the loan facility to the corporate debtor along with other borrowers jointly. Further, the entire loan agreement refers to all the borrowers as Borrowers(s) and the Schedule annexed to loan agreement (pg 158 of main application) gives details of the Borrowers which includes the corporate debtor herein. Therefore there is no practical distinction in liability of all the Borrowers and the sanction letter as well as the loan agreement categorically places all the borrowers on the same pedestal.(Clause 10.1 of Loan Agreement,pg119 of main application).It is settled position of law, that each of the borrowers, whether termed as a co-borrower or not, is jointly and severally liable for discharging the liabilities against the debt and all the borrowers pertaining to the same loan account stand at the same pedestal.(names of borrowers mentioned in sanction letter at pg. 86 of main application)

II. Since the corporate debtor herein is a party to the Loan agreement and referred to as a borrower in the entire loan agreement, owes a debt to the financial creditor and falls within the ambit of the term Corporate Debtor as defined in section 3(8) of IBC,2016

III. Therefore, the oral contention raised on behalf of the corporate debtor during course of arguments that the corporate debtor only being a co-borrower is not liable for the financial debt to the financial creditor herein, is a futile attempt to create unnecessary distinction, which does not legally exist, between the liabilities of borrowers. Therefore, the said contention is vehemently denied being contrary to the settled position of law i.e., that all borrowers, whether termed as a co-borrower or not , are jointly and severally liable for the debt, as is also clear from the terms of the Loan Agreement(clause 10.1 of loan agreement,pg 119 of main application)

IV. Moreover, an application under section 7 of IBC,2016 by an financial creditor is required to strictly conform to Form 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority)Rules,2016 and neither the IBC,2016 nor any of its Rules or Regulations provides for making any other borrower/co-borrower a party to the proceedings under section 7 of IBC pending/initiated against the corporate debtor, where there are more than corporate persons owing the same debt to the financial creditor. It is submitted that the financial creditor, at its discretion, may or may not file applications under section 7 of IBC,2016 against more than one corporate persons based on the same set of debt.

V. The Hon'ble Supreme Court has settled the position of law in a recent judgement titled *'Maitreya Doshi v Anand Rathi Global Finance Ltd' reported in 2022 SCC Online SC*, while upholding the judgment of the Hon'ble NCLAT, observed that if there are two borrowers or if two corporate bodies fall within the ambit of corporate debtor, then proceedings can be initiated against both corporate debtors meaning thereby that there is no bar on proceeding under section 7 of IBC,2016 against any of the borrowers/co-borrowers.

Needless to mention, the same amount cannot be realized from both the corporate debtors. This, in the present case, the financial creditor herein has preferred an application under section 7, IBC, 2016 against the corporate debtor herein who is a borrower under the Loan agreement.

VI. Since the loan account is held by all the borrowers as mentioned in the sanction letter and loan agreement jointly and severally, therefore all transactions in the loan account, including all disbursements and repayments are made in favor of and on behalf of all the borrowers jointly and severally. Hence, the disbursement made by the original lender in the loan account held by all the borrowers, were made in favor of all the borrowers party to the loan agreement, including the corporate debtor herein. Dates of disbursements are 28.02.2015, 19.3.2015, 28.04.2015, 21.07.2015, 28.09.2015 (entries in statement of accounts maintained by original lender at pg.170-172)

VII. That the debt of the corporate debtor along with all its rights, title and interest with the underlying security interest was assigned vide assignment deed dt.5.11.2019 by the Original Lender to the Financial Creditor herein. The Corporate Debtor has frivolously contended that name of the Corporate Debtor is not present in the Schedule with the Assignment Deed on which the details of the borrowers whose loan were assigned are given. However, the said Schedule gives the details of the loan accounts which clearly mentions the loan account i.e.,XMORKRM0005891;loan account no 622484 (which is held by all the borrowers jointly and severally), that has been assigned as well as the total outstanding amount as on date of assignment. Pertinently, the aforesaid loan account is held in the name of all the borrowers, making each and every borrower liable against the debt to the financial creditor herein upon assignment (annexure p-5,pg.56-85 loan account holder names in statement of account at annexure p.8, pg 170 of main application.

VIII. Similarly, the power of attorney of Ms.Ragini MK in Schedule II,gives details of the loan account against which the authorized representative is eligible to initiate legal proceedings and the said loan account is held by all borrowers, therefore, application filed by the financial creditor under section 7 of IBC,2016 is maintainable.

IX. It is submitted that the date of filing of application is 30.09.2021. Each borrower, including the corporate debtor, is jointly and severally liable to make repayments of the loan facility availed (Clause 10.1 of loan agreement, at Pg.119 of main application) and in discharge of the liability, certain repayments were made in the loan account of the borrowers on behalf of all the borrowers and not any specific borrower.

X. The borrowers including the corporate debtor made certain part-payments in discharge of their liability and pertinently each of these part-payments were made before the expiry of limitation of 3 years and each such payment created a fresh period of limitation. Moreover, the last successful part payment was received on 28.02.2018 of Rs.5,00,000/-. As per provisions of section 19 of the Limitation Act, 1963 a fresh period of limitation shall be computed from date of each such part payment. Dates on which part payments were made for the purpose of limitation -06.04.2016, 08.02.2017, 19.04.2017, 28.02.2018 (pg.175-185 of main application).Vide Supreme Court Suo Moto WPC No.3/2020 period from 15.03.2020 to 28.02.2022 is excluded for the purpose of calculation of limitation.

8. Heard both the counsels and perused the record available.

9. The present petition is filed by India Resurgence ARC Private Limited under section 7 of the IBC, 2016 to initiate Corporate Insolvency Resolution Process against Value Designbuild Private Limited on the ground that the respondent hascommitted default for a total amount of Rs.19,29,97,717/-(Rupees Nineteen Crores Twenty Nine Lacs Ninety Seven Thousand Seven Hundred Seventeen Only) as on 31.08.2021.The Corporate Debtor contented that the date of default is 31.07.2016 and the petition is barred by limitation.

10. It is observed that the amount in default as per Part IV of Form I is Rs. 19,29,97,717/-which is well within the threshold limit prescribed. The date of default is 31.07.2016.However the corporate debtor has made the part payments during the years 06.04.2016, 08.02.2017, 19.04.2017, 28.02.2018, and in accordance with Hon’ble Supreme Court Suo Moto WPC No.3/2020, period from

15.03.2020 to 28.02.2022 is to be excluded for the purpose of calculation of limitation.Moreover, as correctly explained above, the date of cheque no 561 for part payment was 14.02.2019,, hence fresh limitation will be counted from this date.The Company Petition is filed on 30.09.2021 ; hence the petition is filed within the limitation. Therefore the objections raised by the respondents have been duly addressed in the rejoinder & written submissions filed by the petitioners.

11. In the given facts and circumstances, the present petition **CP (IB) 135/BB/2021** being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- the petition is **admitted** in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in

(b) any court of law, tribunal, arbitration panel or other authority;

(c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(d) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h)The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

12. In Part III of Form 1**,** Mr.Prasanna Kumar Rath, Registration No. IBBI/IPA-003/IP-N000140/2017-18/11512 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 14.09.2021 has been filed along with the Petition.

13. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr.Prasanna Kumar Rath there is nothing adverse against him. In view of the above, we appoint Mr.Prasanna Kumar Rath, bearing Registration No. IBBI/IPA-003/IP-N000140/2017-18/11512, registered address at 3A/4 Mullai Street, Sree Hari Nilayam, Brindavan Nagar, Koyambedu, Chennai-600092, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.

15. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

16. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

17. Further IA No 151 of 2022 filed by Value Designbuild Private Limited against the financial creditor-M/s India Resurgence Arc Private Limited under section 8 of the Arbitration and Conciliation Act,1996 , seeking to refer the parties to arbitration in terms of Clause 20 of the Facility Agreement dated 28.02.2015 becomes infructuous in view of the aforesaid admission order passed in the main CP. Accordingly, **IA NO.151 OF 2022 is disposed of**.

-sd/-	**-sd/-**
(**MANOJ KUMAR DUBEY)**	**(T. KRISHNAVALLI)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**