NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IN

Company Petition No. (IB) – 21/(ND)/2021

IN THE MATTER OF:

UNIEXCEL LIMITED
(Through its Director: Ms. Ni Chun Huei)
Having its Office at:
354-1, Fu Hsing North Road,
Taipei 104,
Taiwan R.O.C

... Petitioner/
Financial Creditor

VERSUS

UNIEXCEL DEVELOPERS PRIVATE LIMITED
414A, D-Mall, Netaji Subhash Place,
Pitampura, New Delhi – 110034

... Respondent/
Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 12.12.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. Vivek Sood, Adv. Rachit Batra, Adv. Nikhil Singh Raman

For the Respondent : Sr. Adv. P. Nagesh, Adv. Saurabh Kalia, Adv. Aaryan Sharma, Adv. Sadhvi Swarup

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned petition has been preferred under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"the Code"**) for initiation of Insolvency Resolution Process against the Respondent. The Petitioner viz. Uniexcel Limited (hereinafter referred to as **"Petitioner/FC"**) was incorporated on 14.05.2001 vide Identification No. 444341, under the International Business Companies Act (Cap 291), Territory of the British Virgin Island.

2. The Respondent hereinafter referred to as **"Respondent/CD"** viz. Uniexcel Developers Private Limited was incorporated on 30.05.2007 vide Identification No. U45300DL2007PTC164196. The Authorized Share Capital of the CD is Rs. 2,00,00,000/- and its Paid-Up Share Capital is Rs. 28,36,000/-.

3. As can be gathered from the pleadings and documents available on record, the FC Company transferred US $ 124,000/- vide TT No. TAO075066MNYN on 05.05.2008 and further transferred US $ 142,000/- vide TT No. on 22.09.2008, totalling to US $ 1,14,02,640/-, to the CD Company as share application money pursuant to which Mr. Suresh Kumar Chauhan was inducted as a Director of CD on 18.01.2008. As has been espoused by the petitioner, the object of the transfer of share money and appointment of Mr. Suresh Kumar Chauhan was to set up a project in the Information Technology Sector/Park on a plot of land allotted by the NOIDA Authorities. However, the allotment of shares was put on hold on request of

Mr. Suresh Kumar Chauhan, due to dispute raised on the project land by the NOIDA Authorities which later became subject matter of a petition pending before the Hon'ble High Court of Judicature at Allahabad. The dispute remained pending for several years resulting in loss of interest in the project by FC. Subsequent to which, Mr. Suresh Kumar Chauhan, vide his Letter dated 27.04.2015, requested the CD for refund of share application money and resigned from the Board of CD vide communication dated 27.04.2015. Another letter dated 27.04.2015 was addressed to the Board of Directors of CD by Mr. Suresh Kumar Chauhan pointing out that Mr. Ajit Kumar Gupta, Director of CD agreed to refund the share application money reflected in the Balance Sheet of CD subject to approval of Reserve Bank of India. Furthermore, vide letter dated 27.04.2015, the CD issued No Objection Certificate addressed to Mr. Suresh Kumar Chauhan. The FC vide letter dated 03.07.2015 once again requested CD to refund the money.

4. The FC has also relied upon Rule 2(1)(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as **"Rules"**) which stipulates that if a company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before 01.04.2014 against which the allotment is pending on 31.03.2015, the company is mandatorily required to either return such amounts to the person from whom it was received or allot the shares, stock in compliance of the provisions of the Rules by 01.06.2015. It is further submitted by the FC that the CD having miserably failed to issue any shares reflected the amount of 1,14,06,240 in its balance sheet as on 31.03.2016 as 'Current Liabilities' and continues to show the said amount in its balance sheet for the year

ending 2018-19. The FC instituted a petition under Section 7 of the Code before this Adjudicating Authority viz. IB-403/(ND)/2019 in which notice was issued to the CD by this Adjudicating Authority vide order dated 22.02.2019. The CD filed its reply contesting the application and thereafter the petitioner filed its rejoinder. Thereafter, this Adjudicating Authority pronounced its judgment dated 25.07.2019 wherein it framed three issues to be dealt with in the petition viz. IB-403/ND/2019, which reads thus: -

"a. Whether the Applicant's claim is barred by limitation?

b. Whether the share application money can be categorized as financial debt?

c. Whether there is default on behalf of the Respondent in payment of the amounts claimed?"

The Adjudicating Authority settled the first two issues in favour of the Petitioner i.e. the Petition was within limitation and the share application money can be treated as a financial debt. However, on the third issue, the Adjudicating Authority observed that there was no proof of delivery of letter dated 03.07.2015 to the CD and in view of submission of CD that it was willing to refund the money provided the procedure as prescribed by the RBI could be followed. The applicant was directed to complete the formalities within three months and in the event of non-payment of money, liberty was given to Petitioner to revive the application and the application was dismissed. Copy of the order passed by this Adjudicating Authority on 25.07.2019 is on record at Annexure P-15 to the Petition.

5. Being aggrieved by the order dated 25.07.2019 passed by this Adjudicating Authority (ibid), the CD challenged the same before Hon'ble NCLAT by way of appeal. The Hon'ble NCLAT disposed of the appeal vide its order dated

26.11.2019, giving liberty to the Respondent (Financial Creditor) to take necessary steps (which were found wanting in terms of para 11 of the order passed by this Adjudicating Authority, assailed in the appeal) and file fresh application under Section 7 of IBC, if so advised. The question of limitation was kept open to be considered by this Adjudicating Authority. Paras 9 & 10 of the order passed by Hon'ble NCLAT, reproduced in the list of dates filed by the Petitioner qua the captioned Petition reads thus: -

> *"9. We do not want to go into these necessities whether the application making claim is properly made or whether the Appellant has justification for not refunding the money. Once the Adjudicating Authority came to the conclusion that default has not been proved, the only option it had was to reject the application and the conditional offer could not have been gone into. We find that the underlined portion of impugned order (referred supra) where it gives directions to fulfil requirements and liberty to revive cannot be maintained. We set aside the portion of the impugned order in paragraph-11 which reads:*
>
> > *"Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI as followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order. If the Respondent fails to refund the money, the Applicant has the liberty to revive this application."*
>
> *The reasons and finding as recorded in paragraph -10 of the Impugned Order regarding it being financial debt, is not agitated before us and we find no reason to disturb the finding.*
>
> *10. We are disposing this appeal with liberty to the Respondent - Financial Creditor to take necessary steps (which were found wanting in paragrqaph-11 of the Impugned Order) and it may file fresh application under Section 7 of IBC, if so advised. In the*

circumstance, we keep question of limitation open for consideration when such application is moved."

6. As has been averred by the Petitioner, in terms of the order passed by the Hon'ble NCLAT (ibid), the Petitioner vide communication dated 06.12.2019, it again satisfied the requirement of letter dated 02.07.2015, so that the amount of share application could be refunded to it.

7. According to the Petitioner, despite receiving the communication dated 06.12.2019, the CD failed to refund the amount of US $ 266,000 to the Petitioner. Regarding the issue of limitation, the Petitioner could plead that could the application be barred by limitation, the liberty to file fresh application could not have been reserved to the Petitioner. It is also the plea espoused by the Petitioner that the amount of default being shown in the Balance Sheet of CD for the F.Y. ending 2018, the Petition filed in the year 2019 could not be treated as time barred.

8. To oppose the Petition, the CD filed its reply dated 15.07.2023. It is the case of the CD that the Petitioner had approached the Respondent Company and remitted an amount of Rs. 4,99,8440/- on 05.05.2008 and Rs. 6404200/- on 22.09.2008 for allotment of shares qua it (Respondent Company). It was agreed that Mr. Suresh Kumar Chauhan shall be one of the Directors of the Respondent Company, thus he was so appointed on 18.01.2008. In any case, on account of dispute in respect of the land raised by NOIDA Authority, the allotment of shares could be put on hold at the request made by Mr. Suresh Kumar Chauhan, which formed subject matter of petition pending before Hon'ble High Court of Judicature at Allahabad.

9. It is also the plea espoused on behalf of the CD that after remitting the share application money in the year 2008-2009, the Applicant slept over the matter and only after expiry of more than 5 years, Mr. Suresh Kumar Chauhan sent a letter dated 27.04.2015 to the CD seeking refund of the amount of Rs. 1,14,02,640/- i.e. the share application money. It was Mr. Chauhan at whose request, the allotment of the shares was put on hold by the CD. While asking for putting the allotment of shares on hold, Mr. Chauhan also tendered his resignation from the CD (Respondent Company). Mr. Chauhan also issued letter dated 27.04.2015 stating that he proposed to transfer his holding of 35000 Equity Shares to Mr. Ajit Kumar Gupta at Nil Value. In the said letter, he admitted his denial for allotment of the shares.

10. According to CD, a No Objection Certificate stating that no existing member of the CD had any objection to transfer of shares to Mr. Ajit Kumar Gupta and upon transfer, Mr. Chauhan being ceased to be member of the Respondent Company was issued by it. Based on the request received by Mr. Chauhan, the Respondent Company vide its letter dated 29.06.2015 forwarded the request for refund to the HDFC Bank for processing the refund of share application money. But vide e-mail dated 25.06.2015, the HDFC Bank informed the CD that as per the RBI guidelines, the refund could not be sought by third party, since the application for refund was made by Mr. Chauhan and not by the Petitioner, the request could not be accepted and the same was intimated to the Petitioner vide email dated 02.07.2015. Thereafter no communication was received by the CD from the Petitioner and the Respondent Company vide another email dated 12.10.2015 sent a reminder letter for the same, but to no avail.

11. The Company Petition (IB) bearing No. 403/ND/2019 filed before this Tribunal on 13.02.2019 was after a lapse of 3.5 years from the date of alleged default. The Company Appeal (AT) (Ins.) No. 962 of 2019 against the order dated 25.07.2019, in terms of which this Adjudicating Authority had dismissed the Company Petition (IB) 403/ND/2019 with liberty to Petitioner to revive the same if the refund was not made even after compliance with the required formalities could be disposed of with the following view:-

> *"9. We do not want to go into these necessities whether the application making claim is property made or whether the Appellant has justification for not refunding the money. Once the Adjudicating Authority came to the conclusion that default has not been proved, the only option it had was to reject the application and the conditional offer could not have been gone into. We find that the underline portion of impugned order (referred supra) where it gives directions to fulfil requirements and liberty to revive cannot be maintained. We set aside the portion of the impugned order in paragraph-11…"*

12. While passing the aforementioned order dated 26.11.2019, the Hon'ble NCLAT kept the question of limitation open for consideration by this Adjudicating Authority. In the wake, the Petitioner filed the captioned Petition which could be rejected in terms of the order dated 10.02.2021 as barred by limitation.

13. The order dated 10.02.2021 was challenged before Hon'ble NCLAT in terms of the Comp. App. (AT)(Ins.) No. 771 of 2021, in which Hon'ble NCLAT passed the order dated 21.11.2022, remanding the matter back to this

Adjudicating Authority for decision, both on merits and limitation. Para 9 of the order dated 21.11.2022, passed by Hon'ble NCLAT reads thus:-

> *"**9.** Keeping in view that the Adjudicating Authority has placed reliance on **'V. Padmakumar' (Supra)** and has dismissed the Section 7 Application, is 'barred by Limitation' and thereafter the Hon'ble Supreme Court has reversed the ratio of **'V. Padmakumar' (Supra)** and also the fact that the Hon'ble Supreme Court has laid down in a catena of Judgements regarding Acknowledgement under Section 18 of the Limitation Act, 1962 and also having regard to the fact that the issues pertaining to the Financial Statements/Balance Sheets apart from other issues raised by both the parties has not been addressed to by the Adjudicating Authority. We find it a fit case to allow this Appeal and remand the matter back to the Learned Adjudicating Authority to decide the matter both on Limitation and on merits as expeditiously as practicable as it is the case of second round of Litigation."*

14. The salient contentions raised on behalf of the CD to oppose the Petition are:-

(i) The captioned Petition is barred by limitation.

(ii) The share application money cannot be treated as financial debt.

(iii) As Mr. Suresh Kumar Chauhan had himself put the allotment of shares on hold, there is no default.

(iv) As it was Mr. Suresh Kumar Chauhan who himself had stalled the allotment of shares, there was no failure of CD in terms of the provisions of Section 42(6) of the Companies Act, 2013.

(v) The share application money remitted by the Petitioner for allotment of shares does not fetch any compensation in the form of 'time value of money', thus cannot be treated as a financial debt.

(vi) The deposit is different from loan, thus the deposit cannot be treated as debt.

(vii) The amount demanded should have been as per the exchange rate prevalent at the time of remission of the share application money and not the exchange rate prevalent at the time of filing of the present Petition. The disbursed amount was Rs. 1,14,02,640/- and not Rs. 1,98,03,700/-

(viii) The refund was demanded by Mr. Chauhan and not by the Petitioner.

(ix) The default has not been reported to NeSL.

15. The FC filed its Written Submissions espousing that the share application money is a financial debt; in the event of non-allotment of shares, it attracts interest under Section 42(6) of the Companies Act, 2013 thus involves time value of money and the finding recorded by this Adjudicating Authority that the share application money is financial debt cannot be re-opened. In the written arguments filed by it, the FC has espoused that the amount of share application money is reflected in the Balance Sheet of the CD, even now, thus the Petion cannot be held as time barred. Regarding the judgment of Hon'ble NCLAT in **Pramod Kumar Sharma vs. Karanaya Heartcare Private Limited,** the Petitioner has contended that the judgment does not lay down a ratio on the issue, thus

need to be ignored only as sub silentio and cannot be followed as binding precedent.

16. Relying upon the judgment of Hon'ble Supreme Court in Civil Appeal No. 2722(NT) of 1991 (**State of U.P. and Ors. vs. Synthetics and Chemicals Ltd. and Ors.)** the Ld. Senior Counsel for the Petitioner tried to define the expression sub-silentio. In the said judgment Hon'ble Supreme Court noted the meaning of 'Incuria' viz. carelessness and viewed that per in curium appears to mean per ignoratium. In terms of the view taken by the Hon'ble Supreme Court, English Courts developed said principle in relaxation of the rule of stare decisis. According to the view taken by Hon'ble Supreme Court, the 'quotable in law' is avoided and ignored if it is rendered in ignoratium of a statute or other binding authority. In para 5 of the judgment, while examining the documents of precedents, Hon'ble Supreme Court viewed that a decision passed sub-silentio in the technical sense has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. Para 5 of the judgment reads thus: -

> ***"5.*** *Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. 1941 1KB 675, the Court*

did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur MANU/SC/ 0323/1988 : AIR1989SC38 . The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141 Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In Shama Rao v. State of Pondicherry AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down there-in'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

17. In the written submissions filed by it, the CD has contended that in view of the order dated 21.04.2022 passed in Pramod Sharma vs. Karanaya HeartCare Pvt. Ltd. [Comp. App. (AT) (Ins.) No. 426 of 2022], the Petitioner is not a Financial Creditor as there is no debt or default. According to the CD:- (i) the share application money was strictly for the purpose of issuance of shares and not for any other purpose; (ii) the Petitioner did not disburse the share application money for any time value, thus the money does not fall within the definition of 'Financial Debt', given in Section 5(8) of the Code; (iii)

the allotment of shares was put on hold by the Petitioner himself and subsequently the same was transferred to Mr. Ajit Kumar Gupta; (iv) no debt is due and payable by the Respondent Company and the amount claim by the Petitioner is disputed; (v) the Adjudicating Authority is not Debt Recovery Forum (**Capri Global Capital Limited vs. Value Infracon India Pvt. Ltd.** [CA (AT) (Insolvency) No. 29 of 2019]) dated 14.05.2019 and (Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Limited (2019 12 SCC 697); (vi) the decree passed by Trial Court stands merged the decree passed by the Appellate Court (**Chandi Prasad and Ors. vs. Jagdish Prasad and Ors.** (Manu/SC/0852/2004); **Kunhayammed and Ors. vs. State of Kerala and Ors.** (Manu/SC/0432/2000); (viii) the petition is barred by limitation; (ix) though in the balance sheet qua the CD, the money is deflected upto the year 2019, but there is no indication therein that the money belonged to Petitioner only.

18. We heard the counsels for the parties and perused the record. As far as the plea of limitation is concerned, it can be seen from the order dated 21.11.2022 passed by Hon'ble NCLAT, the acknowledgment in balance sheet need to be considered the commencing point of prescribed period of limitation, in terms of the provisions of Section 18 of Limitation Act, 1962. The exact expression used by Hon'ble NCLAT in the aforementioned order passed in Company Appeal (AT) (Insolvency) No. 771 of 2021 is that the court may consider the acknowledgment in the balance sheet for extending the period of limitation.

19. In the written synopsis filed on behalf of the CD, it has been categorically admitted that in the balance sheets of the Respondent Company, the share application money could be reflected upto the year 2019. Though, the CD has tried to contend that there is no specific name mentioned in the balance sheets with reference to the share application money, thus it cannot be viewed that the amount of money is reflected as payable to the Petitioner only. The plea is contrary to the averment made in the reply filed on behalf of the CD. As can be seen from para 12 of the reply, the CD has admitted that the share application money disbursed by the Petitioner was to tune of Rs.1,14,02,640/-. The para 12 reads thus: -

> *"12. Moreover and without prejudice, it is submitted that the amount claimed by the Petitioner is Rs. 1,98,03,700/- which is in accordance with the present exchange rate, however, the Share Application Money disbursed was to the tune of Rs. 1,14,02,640/- and it is a settled principle that one can only claim the amount which was actually disbursed and not in excess of the same. In the matter* ***Capri Global Capital Limited vs. Value Infracon India Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 29 of 2019]*** *dated 14.05.2019 the Hon'ble NCLAT, inter-alia, held that "In view of the fact that the three entities were provided separately in their respective Bank Accounts, the Adjudicating Authority rightly held that the Appellant as a "Financial Creditor" can claim its voting shares based on the amount actually disbursed in favour of Value Infracon India Pvt. Ltd. (Corporate Debtor)".*

20. Further, in Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Ors. [Civil Appeal No. 323 of 2021, 3228, 3765 of 2020, 3 of

2021 and Civil Appeal No. 1569 of 2021) (Arising out of SLP (C) No. 1168 of 2021) dated 15.04.2021, Hon'ble Supreme Court ruled thus: -

> *"**11**. Section 18 of the Limitation Act reads as follows:*
>
> > ***18.** Effect of acknowledgement in writing.--(l) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
> > *(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*
> >
> > *Explanation.--For the purposes of this section,--*
> >
> > > *(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*
> > >
> > > *(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*
> > >
> > > *(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.*
>
> ***12.** In an illuminating discussion on the reach of Section 18 of the Limitation Act, including the reach of the Explanation to the said Section, this Court, in Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad, MANU/SC/0254/1961 : (1962) 1 SCR 14C ["Shapoor Fredoom Mazda"], after referring to Section 19 of the Limitation Act, 1908, which corresponds to Section 18 of the 1963 Act, held:*

It is thus clear that acknowledgement as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgement rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter.

13. *The next question that this Court must address is as to whether an entry made in a balance sheet of a corporate debtor would amount to an acknowledgement of liability Under Section 18 of the Limitation Act.*

14. *Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act. Thus, in Mahabir Cold Storage v. CIT, MANU/SC/0320/1991 : 1991 Supp (1) SCC 402, this Court held:*

> ***12.*** *The entries in the books of accounts of the Appellant would amount to an acknowledgement of the liability to M/s. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt. ...*

15. *Likewise, in a case concerning the dishonour of a cheque Under Section 138 of the Negotiable Instruments Act, 1881, this Court, in A.V. Murthy v. B.S. Nagabasavanna, MANU/SC/0089/2002 : (2002) 2 SCC 642 ["A.V. Murthy"], held:*

> ***5.*** *... It is also pertinent to note that Under Sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, the Appellant has submitted before us that the Respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the Appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-3-1997 is also produced before us. If the amount borrowed by the Respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the Respondent.*

The judgment in A.V. Murthy (supra) was followed in S. Natarajan v. Sama Dharman, Crl. A. No. 1524 of 2014 (decided on 15.07.2014) as follows:

> ***7.*** *In this connection, we may usefully refer to a judgment of this Court in A.V. Murthy v. B.S. Nagabasavanna [A.V. Murthy v. B.S. Nagabasavanna, MANU/SC/0089/2002 : (2002) 2 SCC 642] where the Accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the Accused by the complainant four years ago was dishonoured by the bank for the reasons "account closed". The Magistrate had issued summons to the Accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the Accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that Under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that Under Sub-section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the Accused therein is shown in the balance sheet, it may amount to acknowledgement and the creditor might have*

a fresh period of limitation from the date on which the acknowledgement was made. ...

16. *An exhaustive judgment of the Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, MANU/WB/0033/ 1962 : AIR 1962 Cal 115 ["Bengal Silk Mills" held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt as follows:*

> ***9.*** *In support of the contention that the balance-sheets do not amount to acknowledgements of liability, because they were prepared under compulsion of law Mr. Banerji relies upon the decision in Kashinath v. New Akot Ginning and Pressing Co. Ltd., MANU/NA/0037/1949 : I.L.R. 1950 Nag. 562 at 568 : A.I.R. 1951 Nag. 255. It is true that the balance-sheets were required to be made both by the Indian Companies Act, 1913 as also by the articles of association of the Defendant company. There was a compulsion upon the managing agents to prepare the documents but there was no compulsion upon them to make any particular admission. They faithfully discharged their duty and in doing so they made honest admissions of the Company's liabilities. Those admissions, though made in discharge of their duty, are nevertheless conscious and voluntary admissions. A document is not taken out of the purview of Section 19 of the Indian Limitation Act merely on the ground that it is made under compulsion of law, see Venkata v. Partha Saradhi, MANU/TN/0182/1892 : 1892 I.L.R. 16 Mad. 220 at 222, Udaya Thevar v. Subrahmania Chetti, (1896) 6 M.L.J. 266, 269, Good V. Jane Job, 120 E.R. 810 at 812. I am unable to agree with the reasoning of the Nagpur decision that a balance-sheet does not save limitation because it is drawn up under a duty to set out the claims made on the company and not with the intention of acknowledging liability. The balance-sheet contains admissions of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not cease to be acknowledgements of liability merely on the ground that they were made in discharge of a statutory duty. I notice that in the Nagpur case the balance-sheet had been signed by a director and had not been passed either by the Board of Directors or by*

the company at its annual general meeting and it seems that the actual decision may be distinguished on the ground that the balance-sheet was not made or signed by a duly authorized agent of the company.

10. *Mr. Banerji next contends that none of the balance-sheets contains an admission of liability subsisting on the date of which it is made. According to him the balance-sheet for the year ended 30-11-1936 which was made on 1-6-1937 contains an admission of past liability as on 30-11-1936 but not an admission of liability existing on 1-6-1937. Mr. Banerjl contends that such an admission does not satisfy the test of an acknowledgement Under Section 19 of the Indian Limitation Act. His contention is supported by Jwala Prasad v. Jwala Bank Ltd., MANU/UP/0044/1957 : A.I.R. 1957 All. 143 at 145. In that case the Allahabad High Court held that the balance-sheet did not contain any acknowledgement of an existing liability and therefore could not be treated as an acknowledgement Under Section 19. Mr. Banerji also relied upon the decisions in Kandasami Reddi v. Suppammal, MANU/TN/0155/1921 : I.L.R. 45 Mad. 443, Venkata v. Partha Saradhi, MANU/TN/0182/1892 : I.L.R. 18 Mad. 220, Rustomji on Limitation, 6th Edition, pages 191-193 and the cases collected therein. Now it is well settled that in order to satisfy the test of an acknowledgement Under Section 19 the admission of liability must be an admission of subsisting liability. In Kandasami Reddi v. Suppammal, MANU/TN/0155/ 1921 : I.L.R. 45 Mad. 443 at 445, Ayling J. said, "Liability can only signify present liability at the time of acknowledgement and this is clearly laid down in Venkata v. Parthasaradhi, MANU/TN/0182/1892 : (1893) 16 Mad. 220." In Venkata v. Parthasaradhi, MANU/TN/0182/1892 : I.L.R. 16 Mad. 220 at 223 Muttasami Ayyar, J. said, "It is therefore necessary that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor must appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relation, and then an intention to continue it until it is lawfully determined must also be evident." The Section requires a definite admission of liability in respect of the debt, but even an admission that the debt existed at a previous date may,*

having regard to the language used and the surrounding circumstances, amount to an implied representation that the debt is still subsisting (see Maniram Seth v. Seth Rupchand, MANU/PR/0026/1906 ; I.L.R. 33 Cal. 1047 P.C.). In my opinion the balance-sheets satisfy the test of an acknowledgement Under Section 19. Each of them contains an admission that balances have been struck at the end of the previous year and that a definite sum has been found to be the balance then due to the creditor. The natural inference to be drawn from the balance-sheet is that the closing balance due to the creditor at the end of the previous year will be carried forward as the opening balance due to him at the beginning of the next year. In each balance-sheet there is thus an admission of a subsisting liability to continue the relation of debtor and creditor and a definite representation of a present intention to keep the liability alive until it is lawfully determined by payment or otherwise. There is necessarily a time lag between the date of the signing of the balance-sheet and the end of the previous year. The balance-sheet contains no admission of the amount due on the date of the signature, that amount may be and often is different from the amount shown as due at the end of the previous year, but that fact alone does not take the document out of the purview of Section 19. Take the case of a banker and its depositor. Suppose the banker sends to the depositor a monthly statement of account made for the month of February 1961 and signed on March 15, 1961. The statement gives the balance due on February 28, 1961. The amount due on March 15 may be quite different; the banker might have been made payments for the customer, nevertheless the statement amounts to a sufficient acknowledgement Under Section 19. I am therefore unable to agree with the decision in Jwala Prasad v. Jwala Bank Ltd., MANU/UP/0044/1957 : A.I.R. 1957 All. 144.

11. *To come Under Section 19 an acknowledgement of a debt need not be made to the creditor nor need it amount to a promise to pay the debt. In England it has been held that a balance-sheet of a company stating the amount of its indebtedness to the creditor is a sufficient acknowledgement in respect of a specialty debt Under Section 5 of the Code of Civil Procedure Act, 1833 (3 and 4 Will — 4c. 42), see Re: Atlantic and Pacific Fibre Importing*

and Manufacturing Co. Ltd., 1928 Ch. 836 Under Section 1 of Lord Tentenden's Act, 1828 (9 Geo. 4, c. 14) read with Section 13 of the Mercantile Law Amendment Act, 1856 (19 and 20 Vict. c. 97), see Re: The Coliseum (Burrow) Ltd.,(1930) 2 Ch. 44 at 47 and Under Sections 23 and 24 of the Limitation Act, 1939 (c. 21), see Ledingham v. Bermejo Estancia Co. Ltd., (1947) 1 A.E.R. 749 and Jones v. Bellgrove Properties Ltd., (1949) 2 K.B. 700, on appeal from (1949) 1 A.E.R. 498. Section 5 of the Code of Civil Procedure Act, 1833 did not require that the acknowledgement should be given to the claiming creditor and consequently a balance-sheet containing an admission of indebtedness to the debenture holders was a sufficient acknowledgement of liability in respect of the debentures under that section, though it was sent only to the debenture holders who happened to be the shareholders of the company and not to the other debenture holders, see Re: Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd., (1928) 1 Ch. 836. Under Tentenden's Act, 1828 as also under the Limitation Act, 1939 (c. 21) the acknowledgement must be made to the creditor or his agent and if the balance-sheet is sent to a shareholder who is also a creditor the requirements of those Acts were satisfied, see Re: The Coliseum (Burrow) Ltd., (1930) 2 Ch. 44 at 47, Jones v. Bellgrove Properties Ltd., (1949) 1 A.E.R. 498 at 504 affirmed (1949) 2 K.B. 700. The decision in the last case has been followed in India and it has been held that an admission of indebtedness in a balance-sheet is a sufficient acknowledgement Under Section 19 of the Indian Limitation Act, see Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Co. Ltd., MANU/TN/0116/1952 : (1951) 2 M.L.J. 535 at 550-1 : A.I.R. 1952 Mad. 136 at 145, Lahore Enamelling and Stamping Co. Ltd. V. A.K. Bhalla, MANU/PH/0099/1958 : A.I.R. 1958 Punjab 341 at 347, First National Bank Ltd. v. The Mandi (State) Industries Ltd.,(1957) 59 Punjab Law Reports 589 and in an unreported decision of S.R. Das Gupta, J. in matter No. 449 of 1955 Re: Vita Supplies Corporation Ltd. decided on December 7, 1956.

Importantly, this judgment holds that though the filing of a balance sheet is by compulsion of law, the acknowledgement of a debt is

not necessarily so. In fact, it is not uncommon to have an entry in a balance sheet with notes annexed to or forming part of such balance sheet, or in the auditor's report, which must be read along with the balance sheet, indicating that such entry would not amount to an acknowledgement of debt for reasons given in the said note.

17. *Bengal Silk Mills (supra) also dealt with the judgment in Kashinath Sankarappa v. New Akot Cotton Ginning & Pressing Co. Ltd., MANU/NA/0037/1949 : AIR 1951 Nag 251 ["Kashinath"] by distinguishing the said judgment on the ground that the balance sheet in that case was not made or signed by a duly authorised agent of the company. Quite apart from this, if the said judgment is perused, what becomes clear is that the observation made in paragraph 20 is really an obiter observation, as the High Court went on to hold in paragraph 26 that the balance sheets that were produced were never proved in accordance with law, apart from being validly rejected by the shareholders, as a result of which, such balance sheets could not, therefore, operate as acknowledgements of liability Under Section 19 of the Limitation Act, 1908.*

18. *In an appeal to the Supreme Court in Kashinath Sankarappa Wani v. New Akot Cotton Ginning and Pressing Co. Ltd., MANU/SC/0007/1958 : 1958 SCR 1331, this Court referred to Section 3(b) of the Commercial Documents Evidence Act (XXX of 1939) and then held that under the said Act, the balance sheet of the Respondent company for the year 1940-1941 should have been admitted in evidence. This Court held that, unfortunately, the provisions of the said Act had not been brought to the attention of the High Court. However, having so held, this Court then went on to hold that on the facts of that case, no presumption that the balance sheet was duly made Under Section 3(b) could be raised,*

as a result of which there could be no acknowledgement of liability on the facts of that case.

19. *Two other judgments - of the Andhra Pradesh High Court and the Gauhati High Court - were also relied upon by the counsel for the Respondents. So far as the Andhra Pradesh High Court is concerned, in Vijayalakshmi v. Harl Hara Ginning and Pressing, Nandigaon, OS A No. 40 of 1998 (decided on 03.03.1999), Liberhan, C.J. differed from a Karnataka High Court judgment which stated that showing of an amount in a balance sheet would amount to an acknowledgement Under Section 18 of the Limitation Act. This was done as follows:*

> ***5.*** *The learned Counsel for the Appellant relied on a decision of the Karnataka High Court in State Bank of India v. Hegde and Golay Ltd., MANU/KA/0225/1985 : ILR 1987 Kar 2673, wherein it is observed that showing of an amount in a balance sheet amounts to an acknowledgement in terms of the Indian Limitation Act. Consequently, the amount having been admitted and the Respondent having not paid the same, the petition required admission as laid down by the said judgment that civil suit as well as legal proceedings can continue simultaneously. Without expressing our opinion on the law laid down in the said judgment, though it cannot be categorically laid down that mere showing a debt due in a balance-sheet would amount to acknowledgement, we may observe that it is a well-established law that for giving an acknowledgement, a person has to be conscious of his act to the knowledge of the other person. Merely showing a debt in a balance-sheet cannot, prima fade, as presently advised, be termed to be an acknowledgement in terms of the Indian Limitation Act. The acknowledgement as envisaged by the Limitation Act categorically had to be with the intention of accepting the debt with the object of extending the limitation for recovery, which is not the case herein. Thus, we do not find the case in hand to be covered by the law laid down by the said judgment though we have our own doubts with respect to correctness of the law laid down in the said judgment.*

This judgment does not, in any manner, even purport to lay down the law. That apart, the statement that an acknowledgement, as envisaged by the Limitation Act, has to be with the intention of accepting the debt with the object of extending the limitation for recovery is de hors Section 18 of the Limitation Act and directly contrary to Shapoor Fredoom Mazda (supra) which is, in fact, referred to in the very next paragraph of the aforesaid judgment. Shapoor Fredoom Mazda (supra) had made it plain that all that was necessary was that the acknowledgement establishes a jural relationship of debtor and creditor, which undoubtedly was established on the facts of that case. This judgment, therefore, cannot avail the Respondents."

In view of the aforementioned, the captioned Petition filed in the year 2021 cannot be treated as time barred. Thus, the plea of the limitation raised on behalf of the CD is rejected.

21. Since, in terms of the order dated 21.11.2022 (ibid), Hon'ble NCLAT has remitted the matter back to this Adjudicating Authority to decide the matter both on limitation and merits, it is apparent that a view independent of the order dated 25.07.2019 passed in IB-403/ND/2019 need to be taken. Even otherwise also, in terms of the order dated 26.11.2019 passed in Company Appeal (AT) (Insolvency) No. 962 of 2019, para 11 of the order has been set aside. Even in terms of the order dated 26.11.2019 (ibid), Hon'ble NCLAT had left the issue of limitation open for consideration in subsequent application if any. Thus, the entire issue is at large before us to be adjudicated. In the wake, the proposition espoused on behalf of the CD viz. the decree passed by the Trial Court stands merged with that of Appellate Court does not arise to be determined in the present case.

22. Whether the share application money can be treated as a financial debt or not is the vital issue which arises to be determined in the present case. To appreciate the proposition, we may refer to Sec. 39 of the Companies Act, 2013. Section 39(1) of the Act provides that no allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument. In terms of the provisions of Section 39(2) of the Act, the amount payable on every security should not be less than 5% of the nominal amount of the security or such other percentage or amount as may be specified by the Securities and Exchange Board by making regulations in this behalf. Also, in terms of the provisions of Section 42(1) of the Companies Act, 2013, the company may subject to the provisions of the section make a private placement of securities. The private placement is needed only to a select group of persons identified by the Board, whose numbers should not exceed 50 or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the companies being offered securities under a scheme of Employees Stock Auction in terms of provisions of clause (b) of sub-section (1) of Section 62] in a financial year subject to such conditions as may be prescribed. In terms of the provisions of Section 42(3) of the Companies Act, 2013, a company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such a manner as may be

prescribed. The proviso to Section 42(3) of the Act provides that the private placement offer and application shall not carry any right of renunciation. We can see from Section 42(4) of the Companies Act, 2013, that every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or banking channel and not by cash, provided that the company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section 8. Section 42(6) provides that a company making an offer or invitation under this Section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period it shall be liable to repay that money with interest @ 12% per annum from the expiry of the 60th day. Nevertheless, in terms of the proviso to Section 42(6), the monies received on application under Section 42(4) of the Act need to be kept in a separate bank account in a Schedule Bank and is not to be utilised for any purpose other than for adjustment against allotment of securities or for the repayment of monies where the company is unable to allot securities.

23. As has been noted hereinabove, indubitably, the Petitioner had paid the share application money to the CD. What we need to comprehend is as to whether the issuance of private placement offer and application under Section 42(3) of the Companies Act, 2013, to identified persons and

submission of application along with subscription money for private placement of shares under Section 42(4) of the Companies Act, 2013, constitute transaction having the commercial effect of borrowing within the meaning of Section 5(8)(f) of IBC, 2016. To decipher, we may look at the definition of transaction. The term has been defined in Section 3(33) of IBC, 2016, and includes an agreement or arrangement in writing for the transfer of assets or funds, goods or services, from or to the Corporate Debtor. The definition reads thus: -

> *"Transaction" includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;"*

24. Now the first thing we need to see is, "whether the shares are covered by the definition of assets or goods". The goods as defined in Section 2(7) of the Sale of Goods Act, 1913, includes stock and shares. We can see from Section 3(27) of IBC, 2016 that the definition of property includes money, goods, actionable claims, land, and every description of property situated in India or outside India and every description of interest included present or future or vested or contingent interest arising out of or incidental to property. Thus, the shares are both goods and property. Apparently, there was an arrangement/transaction of making private placement of the shares. It is not gainsaid that when a company wants to raise additional funds it can either increase borrowing or issue new shares. When a listed company issues shares the same is called placement. According to the Companies Act, 2013, a company raises money through three ways which are public offer, private placement and right or bonus issue. The method of private placement

refers to the issue of shares to select group of investors. If the securities/shares for which the application money received is not allotted within 60 days from the receipt of the application money, then the amount need to be refunded/repaid within 15 days and if amount is not repaid within the said period of 15 days, the same should be treated as deposit and interest @ 12% per annum is payable on the amount of deposit.

25. While examining the proposition, we may also refer to the definition of share given in Section 2(84) of the Companies Act, 2013. In terms of the definition, shares mean a share in share capital of the company and includes stock. We find from Section 5(8)(c) of the IBC, 2016, that any amount raised pursuant to loan stock or any similar instrument need to be treated as financial debt. As the shares for which the share application money was subscribed were not allotted, the amount remained deposited with CD for time value of money i.e. on interest @ 12% per annum. It is in this backdrop, Mr. Rachit Batra, Senior Advocate argued with vehemence that it is the judgment of Hon'ble NCLAT in **Kushan Mitra vs. Amit Goel and Ors.** in (Company Appeal (AT) (Insolvency) No. 128 of 2021, I.A. 2340 of 2021 and 2413 of 2021) delivered on 16.12.2021, which lays down the law and the judgment dated 21.04.2022 passed by Hon'ble NCLAT in **Pramod Sharma vs. Karanaya HeartCare Pvt. Ltd.** in (Com. App. (AT) (Ins.) No. 426 of 2022) need to be ignored as sub-silentio. As has been noted hereinabove, in **State of U.P. and Ors. vs. Synthetics and Chemicals Ltd. and Ors.** (Civil Appeal No. 2722(NT) of 1991), Hon'ble Supreme Court ruled that one of the exceptions when the decision of the Appellate Court is not binding is the decision being per-incuriam. Another exception to the judicial precedence

being binding is rule of sub-silentio. In terms of the principle, a decision which is not express and is not founded on reasons cannot be deemed to be a law declared to have a binding effect. Para 4 and 5 of the judgment in Comp. App. (AT) (Ins.) No. 426 of 2022 reads thus: -

> *"4. We have considered the submissions of the Counsel for the Appellant and perused the record. The Adjudicating Authority in para 7 of the impugned order has made following observations:*
>
> > *"7. The matter between both the parties was amicably settled as recorded in order dated 11th October, 2017 of the Hon'ble National Company Law Tribunal passed in C.P. No. 205(ND)/2017, between the parties along with that the Respondent failed to show any agreement to substantiate the fact that money was paid as a financial debt or that the money was paid against the payment of interest. Therefore, we find that the share application money does not fall under any of the clauses of Section 5(8) of the Code and it cannot be said to fall under the definition "a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money" since no debt was disbursed by the Applicant to the Respondent and no time value has been attached with the share application money. Thus, since the claim is not a financial debt the present application under Section 7 of the Code is not maintainable and is dismissed with no costs."*
>
> *5. Admittedly, the amount was given, as per the case of the Appellant, as a Share Application Money on which no share was allotted. Under some settlement, the principal amount was refunded and thereafter, the Application under Section 7 was filed by the Appellant. We are of the view that the Adjudicating Authority rightly took the view that the amount which was given by the Appellant as Share Application Money cannot be treated to be a financial debt so as to enable the Appellant to trigger the Insolvency Process under Section 7 of the Code."*

26. Maybe it is so that the judgment dated 21.04.2022 delivered by Hon'ble NCLAT in **Pramod Sharma vs. Karanaya HeartCare Pvt. Ltd.** does not contain detailed reasons for the view that the share application money is not financial debt, but it is not so that the judgment is mere obiter-dicta. As can be seen from para 3, 4 and 5 of the judgment, the view taken by Hon'ble NCLAT is with reference to the proposition involved in the matter and the view that share application money cannot be treated as financial debt is ratio decidendi, which may not be ignored to be followed by this Tribunal. It may be so that the aforementioned judgment could not take note of the provisions of Section 42 of the Companies Act, 2013, and the earlier judgment passed by Hon'ble NCLAT in **Kushan Mitra vs. Amit Goel and Ors.** in [Company Appeal (AT) (Insolvency) No. 128 of 2021, I.A. 2340 of 2021 and 2413 of 2021) delivered on 16.12.2021, but ideally it is only the same Bench or a coordinate bench of Hon'ble NCLAT, which may be refuse to follow its earlier judgment as per-incuriam or sub-silentio. As far as this Tribunal is concerned, once a three-member Bench of Hon'ble NCLAT presided by Hon'ble Chairperson has taken a particular view and that too on a subsequent date i.e. 21.04.2022, it is not open for it to follow an earlier judgment delivered by two-member-Bench of Hon'ble NCLAT. We may also be not oblivious of the fact that one of the Hon'ble Members of the Bench which passed the order dated 16.12.2021 was also the member of the three-member-Bench which passed the order dated 21.04.2022. As could be viewed by Hon'ble Supreme Court in **Union of India (UOI) and Ors. vs. K.S. Subramanian** (Civil Appeal No. 212 of 1975) delivered on 30.07.1976, the view taken by the larger Bench need to be given preference over those

expressed by the Bench of lesser strength. Para 12 of the judgment reads thus: -

> *"12. We do not think that the difficulty before the High Court could be resolved by it by following what it considered to be the view of a Division Bench of this Court in two cases and by merely quoting the views expressed by larger benches of this Court and then observing that these were insufficient for deciding the point before the High Court. It is true that in each of the cases cited before the High Court, observations of this Court occur in a context different from that of the case before us. But, we do not think that the High Court acted correctly in skirting the views expressed, by larger benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view."*

27. It is also contended by the Ld. Senior Counsel appearing for the Petitioner that the judgment dated 16.12.2021 passed by the Hon'ble NCLAT in Kushan Mitra vs. Amit Goel and Ors. ([Company Appeal (AT) (Insolvency) No. 128 of 2021, I.A. 2340 of 2021 and 2413 of 2021) delivered on 16.12.2021(supra), though stayed by Hon'ble Supreme Court in terms of the order dated 25.02.2022 passed in Civil Appeal No. 3719 of 2022, has not ceased to exist. According to him, the interim order passed by Hon'ble Apex Court staying the aforementioned order passed by Hon'ble NCLAT could not

destroy the binding effect of the judgment. To buttress the plea, he relied upon the judgment of Hon'ble Supreme Court in **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras** (Civil Appeal No. 2553 of 1991 with C.A. No. 126 of 1992) decided on April 29, 1992 and the judgment of Hon'ble High Court of Kolkata in **Pijush Kanti Chowdhury vs. State of West Bengal & Ors.** (W.P.L.R.T. No. 442 of 2006) decided on May 14, 2007. Para 10 of the judgment of Hon'ble Supreme Court (ibid) reads thus: -

> *"10. ….While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence….."*

28. In any case, as the subsequent judgment of larger Bench Hon'ble NCLAT in **Pramod Sharma vs. Karanaya HeartCare Pvt. Ltd.** (supra) holds a view different from the view taken by Division Bench in Kushan Mitra vs. Amit Goel, stayed by Hon'ble Supreme Court, it would not be open to us to rule on the proposition that whether share application money *per-se* amounts to financial debt or not, differently from the view taken by the three-member-Bench of Hon'ble NCLAT. In the wake, the issue regarding the ramification of the judgment, the operation of which could be stayed by the Hon'ble Supreme Court does not arise to be determined in the present case.

29. Nevertheless, as can be seen from paras 10 and 11 of the order dated 25.07.2019, passed by this Adjudicating Authority in IB-403/ND/2019, the CD had agreed to refund the money on receipt of the required letter from the Applicant. Thus, apparently the CD had accepted the liability to pay the amount of Rupees over One Crore to the Applicant and such willingness of the CD could be recorded by this Adjudicating Authority. Para 10 and 11 of the order reads thus: -

> *"10. It is clear from a reading of Section 42 of the Act and the Deposit Rules that if she shares are not allotted within 60 days of the receipt of the money the share application money has to be refunded and of the refund does not taken place within 15 days from the expiry of the 60 days' time limit, then the share application money will be treated as a deposit. On the non-allotment of shares, after the expiry of the time limit of 75 (60+15) days the share application money will be a deposit advanced to the company, which has to be returned by the company at the rate of 12% per annum from the expiry of the 60th day. The person applying for the shares will get compensation for the time value of the share application money given by him to the company, which makes the money advanced a financial debt to be repaid by the company. Thus, the Respondent's plea that he nature of the money given will not change into a loan does not stand as the Act itself allows such recategorization. In the present case the money was transmitted in 2008 and the allotment has not been made till date, thus, the money transmitted is a deposit and can be treated as a financial debt.*
>
> *11. However, the third issue cannot be answered in favour of the Applicant as a perusal of the documents show that the Respondent has been ready to refund the money after it receives the required letter from the Applicant. Although the Applicant has placed on record a letter dated 03.07.2015 signed by the Applicant's*

representative, there is nothing to show that the said letter was actually delivered to the Respondent. Even if it was delivered by hand as claimed by the Applicant, there should have been an acknowledgement of receipt by the Applicant on the copy of the letter. In the absence of anything to show that the delivery was actually made and that the Applicant has fulfilled all its formalities, it cannot be said that it is the Respondent's fault that the refund of the money has not been made. Allowing this application in such circumstances would amount to allowing the Applicant to take the benefit of its own wrong. Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI is followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order. If the Respondent fails to refund the money, the Applicant has the liberty to receive this application. Thus, the application is dismissed, with liberty to the Applicant to revive the application if the refund is not made ever after the Applicant complies with the required formalities."

30. Though, in terms of the order dated 26.11.2019 passed by Hon'ble NCLAT in Company Appeal No. 962/2019, the aforementioned order passed by NCLT was interfered, but the view taken in para 10 (ibid) of the order passed by NCLT was not interfered. The appeal was disposed of with liberty to Financial Creditor to take necessary steps in terms of para 11 of the order dated 25.07.2019 passed by this Tribunal and then to file fresh application under Section 7 of IBC, if so advised. Thus, the necessary corollary one must infer from the order passed by Hon'ble NCLAT is that instead of reviving the IB-403/ND/2019, the Applicant could file fresh application only. The view otherwise taken by this Tribunal was not interfered by Hon'ble NCLAT. Para 9 and 10 of the order passed by NCLAT reads thus: -

"9. We do not want to go into these necessities whether the application making claim is properly made or whether the Appellant has justification for not refunding the money. Once the Adjudicating Authority came to the conclusion that default has not been proved, the only option it had was to reject the application and the conditional offer could not have been gone into. We find that the underlined portion of impugned order (referred supra) where it gives directions to fulfil requirements and liberty to revive cannot be maintained. We set aside the portion of the impugned order in paragraph-11 which reads:

> *"Since the Respondent is willing to refund the money even now provided the procedure as prescribed by RBI as followed, the Applicant is hereby directed to fulfil the formalities to get the refund, within three months from the date of this order If the Respondent fails to refund the money, the Applicant has the liberty to revive this application."*

The reasons and finding as recorded in paragraph -10 of the Impugned Order regarding it being financial debt, is not agitated before us and we find no reason to disturb the finding.

10. We are disposing this appeal with liberty to the Respondent – Financial Creditor to take necessary steps (which were found wanting in paragraph-11 of Impugned Order) and it may file fresh application under Section 7 of IBC, if so advised. In the circumstance, we keep question of limitation open for consideration when such application is moved."

31. The fresh application viz. IB-21(ND)/2021 could be rejected on the ground of limitation. Para 14 to 16 of the order reads thus: -

"14. We also notice that earlier this Adjudicating Authority while deciding the application i.e. IB No. 403/2019, on the basis of the balance sheet held that the amount is not barred by limitation. Since, the Hon'ble NCLAT while deciding the appeal in Company Appeal (AT) (Insolvency) No. 962/2019 held that the issue of

limitation shall remain open, we would like to reconsider the issue, in view of the latest law on limitation decided by Hon'ble NCLAT in the case of V. Padmakumar vs. Stressed Assets Stabilisation Fund (SASF) and Anr. in Company Appeal (AT) (Insolvency) No. 57 of 2020. On the basis of that decision, we are of the considered view that the amount shown in the balance sheet of the Corporate Debtor does not come within the purview of acknowledgement of debt under Section 18 of the Limitation Act.

15. Therefore, the contention of the applicant that the amount shown in the balance sheet of the Corporate Debtor would protect the right of the applicant under Section 18 of the Limitation Act, in our considered view, is not liable to be accepted.

16. So, in view of the above discussion, we are of the considered view that the application filed by the applicant is barred by limitation. Hence, we have no option but to dismiss the present application at this stage itself."

32. The order was challenged before Hon'ble NCLAT by way of Company Appeal (AT) (Ins.) No. 771 of 2021. Taking the view that its judgment in **'V. Padmakumar' vs. 'Stressed Assets Stablilisation Funds (SAFS) and Anr.'**, [Comp. App. (AT) (Ins.) No. 57/2020] was reversed by Hon'ble Supreme Court in **'Asset Reconstruction Company (India) Ltd.' vs. 'Bishal Jaiswal & Anr.'** (Civil Appeal No. 323/2021), Hon'ble NCLAT could set aside the order passed by this Adjudicating Authority. Para 5 of the judgment reads thus: -

"5. *Counsel for the Appellant in Written Submissions and course of final arguments submitted that the Judgment of this Tribunal in* ***'V. Padmakumar (Supra)*** *has been overruled by the Hon'ble Supreme Court in the case of* ***'Asset Reconstruction Company (India) Ltd.' Vs. 'Bishal Jaiswal & Anr.' Civil Appeal No.***

323/2021 *and referred to paragraph 22 of the Judgment and submitted that the Court may consider the acknowledgment in the Balance Sheet for extending the period of Limitation under Section 18 of the Limitation Act, 1962."*

33. In the said order, the Hon'ble NCLAT even noticed the earlier order passed by it on 26.11.2019 in Company Appeal (AT) (Insolvency) No. 962/2019. As has been noticed hereinabove, in terms of the said order, Hon'ble NCLAT had not interfered with the findings recorded in para 10 of the order passed by this Adjudicating Authority in (IB)-403/ND/2019. Para 8 of the order dated 21.11.2022 passed in Company Appeal (AT) (Ins.) No. 771 of 2021 reads thus: -

"8. Further, Counsel for the Appellant also submits that this is the second round of Litigation between the parties and earlier in the Order of this Tribunal dated 26.11.2019 ***'Uniexcel Developers Pvt. Ltd.' Vs. 'Uniexcel Ltd."*** *in Comp. App. (AT) (Ins.) No. 962/2019, the main Bench of this Tribunal, passed the following Orders:*

"The reasons and finding as recorded in paragraph-10 of the Impugned Order regarding it being financial debt, is not agitated before us and we find no reason to disturb the finding.

10. We are disposing this appeal with liberty to the Respondent – Financial Creditor to take necessary steps (which were found wanting in parapraph-11 of the Impugned Order) and it may file fresh application under Section 7 of IBC, if so advised. In the circumstance, we keep question of limitation open for consideration when such application is moved.

11. Disposed accordingly. No costs."

34. The situation emerges from the two orders passed by Hon'ble NCLAT is that it interfered with the view taken by this Tribunal accordingly liberty to

the F.C./Petitioner to revive IB-403/ND/2019 and dismissing (IB)-21/ND/2021 as time barred. The findings recorded in para 10 and part of para 11 of the order passed in IB-403/ND/2019 was never interfered. Thus, the consent given by the CD to pay back the amount due to the Applicant on being demanded by it still subsist and stands. The tenor of such consent is that in a way the CD was prepared to pay the amount of over Rs. 1 Crore to Petitioner/FC on being demanded. As could be viewed by Hon'ble NCLAT in **Sree Bhadra Parks and Resorts Ltd. vs. Sri Ramani Resorts and hotels Pvt. Ltd.** [Company Appeal (AT) (CH) (Ins) No. 95 of 2021] decided on 06.09.2021, the Hon'ble NCLAT ruled that once there was an agreement between the parties for purchase of shares (Share Purchase Agreement), in terms of which the advance to purchase the share was paid and once there was settlement between the parties regarding refund of the money, in terms of the settlement, the amount become payable and non-payment of the same constitute default in repayment of financial debt. Paras 13, 16 to 20 and 60 to 66 of the judgment reads thus: -

> ***"13.*** *The Learned Counsel for the 'Appellant' contends that an advance of Rs. 1 Crore was paid by the Respondent under the 'Share Purchase Agreement' dated 21.11.2012 red with 'Addendum' dated 21.11.2012 which forms an integral part of the said 'Agreement'. Also, that the clauses of the 'Share Purchase Agreement' dated 21.11.2012 do not contemplated refund of the advance paid and resultantly, there was no understanding as to interest payable on refund thereof or any other form of 'time value of money' being consideration."*
>
> ***XXX***
>
> ***16.*** *The Learned Counsel for the 'Appellant' points out the Judgment of this 'Tribunal' dated 29.01.2019 in the matter of*

Pushpa Shah and Ors. v. I.L. & F.S. Financial Services Ltd. & Ors. (vide Comp. App. (AT) (INS) 521 and 643 of 2018) wherein at paragraph 18 it is observed as under:

> *18. "On careful reading of the agreement such as 'SPA' and 'La-Fin LoU', we find that the 'IL & FS Financial Services Limited', (financial creditor) has disbursed the amount and the 'Corporate Debtor' has raised the amount with an object of having economic gain or commercial effect of borrowing. The clauses of 'SPA' if read along with the 'LoU', we find that the terms of transaction involved not only the purchase of shares but it shows the date by which the amount of transaction was to be repaid by the 'Corporate Debtor' which had fallen due on 19th August, 2012. There was an element of 'time value of money', particularly, when one of the conditions related to 'internal rate of return of 15%' on the transaction, therefore, the time value of money having already shown, we hold that the amount disbursed by 'IL & FS Financial Services Limited'- (financial creditor) and the 'Corporate Debtor' had agreed to reverse the transaction by purchasing the shares within a specified time along with the payment of 15% accrual on 20th August, 2009. We hold that the amount if disbursed by 'IL & FS Financial Services Limited' – (financial creditor) comes within the meaning of 'financial debt' therefore, the 'IL & FS Financial Services Limited'- (financial creditor) has been rightly claimed to be a 'financial creditor' and filed Form-1 under Section 7 of the 'I & B Code.'*

17. *The Learned Counsel for the 'Appellant' emphatically points out that what is significant for the purpose of Section 5(8) of the Code, is the 'nature of debt' at the time of 'disbursal' and as such, placing reliance by the Respondent, upon the 'subsequent*

communications' between the parties whereby the 'Appellant' had purportedly agreed to refund the money with interest is a misplaced one.

18. *The Learned Counsel for the 'Appellant' contends that the subsequent arrangements between the parties at the time of exploring a commercial settlement after the 'Share Purchase Agreement' failed to fructify does not close the monies advanced under the 'Share Purchase Agreement' with the characteristic of a 'financial debt'. Therefore, an argument is projected on the side of the 'Appellant' that placing reliance upon the communications dated 05.09.2014, 17.03.2014, email dated 28.11.2018, etc. do not heighten the case of the Respondent in any manner.*

19. *The Learned Counsel for the 'Appellant' submits that the order dated 25.08.2020 passed by the 'Adjudicating Authority' was recalled and that the main application was disposed off on 24.09.2020 and in fact, the 'Authority' on 24.09.2020 had disposed off the 'Insolvency Proceedings' initiated as regards the 'Appellant' (vide order dated 25.08.2020), by virtue of the 'Settlement' between the parties and had reserved the right of the Respondent to file 'fresh application' in the event of non-compliance with the terms of the 'Settlement'. Therefore, it is the stand of the 'Appellant' that in view of the order dated 24.09.2020 of the 'Adjudicating Authority' and in view of the recall order dated 25.08.2020, nothing survives in the order dated 25.08.2020.*

20. *The Learned Counsel for the 'Appellant' comes out with the legal plea that the reliance placed by the 'Respondent' in respect of the judgment of the Hon'ble Supreme court in Premier Tyres Ltd. v. Kerala State Road Transportation reported in MANU/SC/0176/1993 : AIR 1993 SC Page 1202 on the aspect of Res judicata is misplaced, since the same deals with the question of non-filing of an 'Appeal' in the connected suit, which is not the case of the 'Appellant' herein.*

XXX

60. *'Section 3(12) of the Code concerns with 'default' meaning '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.'*

61. *Section 5(7) of the Code pertains to 'financial creditor' meaning 'any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to'.*

62. *Section 5(8) of the I & B Code defines 'financial debt' meaning 'any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to'.*

63. *The essence of any 'debt' to be described as 'financial debt' is the 'time value of money' as 'Borrowing' is a name for 'money transaction'. The word 'debt' is applicable to a sum of money which has been promised at a future day as against a sum nor due and payable. In fact, a sum of money which is certainly and in all events payable is a 'debt', in regard to the fact whether it is payable now or a future date.*

64. *Under the I & B Code, 2016 the shift is from 'inability to pay' to an 'existence of default'. No doubt, the 'Adjudicating Authority' is not required to decide the amount of 'default'. Even if a 'debt' is disputed, if the same is more than Rs. 1,00,000/- then the application filed under Section 7 of the Code is maintainable in Law.*

65. *It is to be pointed out that the plea of disqualification of 'Directors' of the Respondent/Applicant was quashed by the Hon'ble High Court in W.P. No. 18641 of 2020 as per order dated 27.01.2020.*

66. *As far as the present case is concerned, the 'actuality of debt' was proven by virtue, of the concerned terms which formed part of the order of the 'Adjudicating Authority' dated 24.09.2020. When a 'Settlement' was arrived at between the parties, it is the pre-module duty of the 'Corporate Debtor' to effect payments proposed by virtue of the 'Settlement' after committing 'default', the 'Appellant' cannot take altogether different stand, especially when the tenor and spirit of 'Share Purchase Agreement' was not adhered to. To put it precisely, when the 'Appellant' had promised to repay the advanced sum paid by the 'Respondent'/'Applicant' to it, then there is not only a violation of the 'Share Purchase Agreement' dated 21.11.2012 but also the non-payment of amounts comes squarely under definition of Section 5(8) of the I & B Code pertaining to 'Financial Debt'.*

35. As far as the issue of refusal by Mr. Chauhan to take share and keeping the allotment of the same on hold is concerned, it can be seen from Section 113 of the Companies Act, 2013 that any decision by a body corporate whether a company within the meaning of act or not is to be taken by way of Resolution to be passed by the Board of Directors of the Company/Body Corporate authorising any person to act on its behalf. Thus, the decision taken by Mr. Chauhan, who himself had become a Director of CD to stall the allotment of shares was of no consequence. The CD itself had taken a stand before this Tribunal in IB-403/ND/2019 that Mr. Suresh Chuhan was not authorised even to seek refund of share money from the CD. Para 3(d) and (e) of the order passed in IB-403/ND/2019 reads thus:

"3(d) Based on the request received from Suresh Chauhan, the Respondent forwarded the said request to concerned bank official in the month of June, 2015. Vide email dated 25.06.2015, the HDFC Bank informed the Respondent that as per RBI guidelines,

refund should be sought by the person who remitted the money and not by a third party i.e. Suresh Chauhan. The Respondent wrote an email dated 02.07.2015 to the Applicant and stated that since the share application money has been received from the Applicant, the refund must also be sought by the Applicant. Thereafter, no email was received from the Applicant.

(e) Further, vide email dated 12.10.2015, the Respondent once again sent a reminder letter to the Applicant, however, no response was received from the Applicant. Therefore, due to non-availability of documents from the Applicant and Suresh Chauhan, the said refund could not be initiated with concerned bank."

36. In the wake, the plea espoused on behalf of the CD regarding stalling the allotment of shares by Mr. Chauhan is not tenable thus rejected.

37. It is also the plea raised on behalf of the CD that the Petitioner/FC has not furnished any NeSL Certificate regarding the default in repayment. As can be seen from Section 7 (3) (a) of IBC, 2016, the record of the default recorded with IU (Information Utility) is not the only reliable evidence regarding non-payment of debt. Besides, the NeSL record, other evidence of default as may be specified can also be relied upon. In the present case, the CD has not denied the amount of share money paid to it. Rather, it has specifically admitted the same. Additionally, the balance sheet of the CD acknowledged the amount of default outstanding towards the FC/Petitioner. As can be seen from para 11 of the order passed in IB-403/ND/2019, the Respondent was willing to repay/refund the share money subject to fulfilment of the procedure prescribed by RBI. Thus, there is sufficient evidence that the CD has the liability to repay an amount of Rupees Over

One Crore to FC and is defaulted to pay the same. As far as the procedure by RBI regarding refund of share application money to Foreign Investors is concerned, as can be seen from clause 5 (1)(2), of the master circular no. 15 by 2011-12 issued by RBI, in the event of non-allotment of shares within 180 days, from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) Account the amount of consideration should be returned immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B). The clause ii reads thus:-

> *"(ii) Time frame within which shares have to be issued*
>
> *The equity instruments should be issued within 180 days from the receipt of the inward remittance or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions. In exceptional cases, refund/allotment of shares for the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank, on the merits of the case."*

38. In any case, in the present proceedings, it is not the stand by the CD that the procedure prescribed by the RBI has not been followed. Besides, as required in terms of the order dated 25.07.2019, the FC could furnish the

required information on 08.08.2019. Part IV (26) of the application reads thus:

> *"Part IV (26): In compliance of Order dated 25/07/2019, the Applicant vide letter dated 08.08.2019 furnished the required information as wanted by the Corporate debtor and claimed to be not supplied earlier. Copy of letter dated 08.08.2019 along with delivery status confirmation is annexed herewith' as* ***Annexure P16 Colly."***

39. The CD has not disputed the documents enclosed as Annexure P16 to the application. In the wake, particularly, in view of the judgment dated 06.09.2021 passed by Hon'ble NCLAT in Sree Bhadra Parks and Resorts Ltd. vs. Ramani Resorts and hotels Pvt. Ltd. [Company Appeal (AT) (CH) (INS) No. 95 of 2021], we are left with no option but to admit the present application. Ordered accordingly. In the backdrop of the admission of the application, in view of the provisions of Section 7 (6) of IBC, 2016, the CIRP qua the CD stands commenced.

40. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof 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 Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial

interest therein;

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

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

41. As proposed by the Petitioner, Mr. Bhim Singh Goyal, having Registration No. IBBI/IPA-002/IPN000726/2018-19/12216 (e-mail id: bsgoyal1@gmail.com) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that Mr. Bhim Singh Goyal, IRP (Registration No. IBBI/IPA-002/IP-N00726/ 2018-19/12216) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

42. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

43. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

44. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)