

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

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB) No.126/BB/2022
U/s 7 of I&B Code, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

Union Bank of India

(Erstwhile Corporation Bank)
Central Office at No.239,
Vidhan Bhawan Marg, Nariman Point,
Mumbai – 400 021.

Branch Office at:

Union Bank of India
South End Road, Mill Corner,
Seshadripuram Post,
Malleshwaram,
Bangalore – 560 020.

... Petitioner / Financial Creditor

Versus

M/s. Mindlogicx Infratec Limited

Registered Office at:
Unit-1, Techllano 10/1-B,
Graphite India Road, Hoodi Village,
K.R. Puram Hobli,
Bangaluru – 560 048.

... Respondent / Corporate Debtor

Order delivered on: 09th June, 2023

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

Present:

For the Petitioner : Shri V.B. Ravi Shankar, Adv.
For the Respondent : Shri Kanishk Ravindran, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

- 1.** The present Petition has been filed on 15.12.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC / Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Union Bank of India (erstwhile Corporation Bank)** (hereinafter referred to as 'Petitioner / Financial Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. Mindlogicx Infratec Limited** (hereinafter referred to as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.14,72,37,646/- with the date of NPA being 29.05.2014.
- 2.** The Corporate Debtor Company was incorporated on 28.07.2010 with CIN: U72200KA2010PLC054598 having its registered office situated at Unit-1, Techllano 10/1-B, Graphite India Road, Hoodi Village, K.R. Puram Hobli, Bangalore-560048. Hence, the jurisdiction lies with this Adjudicating Authority. Its Authorised Share Capital is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) and Paid-up Share Capital is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only).
- 3.** Brief facts of the case as stated by the Financial Creditor are as under:
 - (a) The Corporate Debtor (CD) sought for overdraft loan of a sum of Rs.1 Crore to meet the day to day working capital requirements and term loan of a sum of Rs.10 Crores for purchase of software items for executing contract work awarded by the Gujarat Technological University and the said loans were sanctioned on 22.05.2013. The CD availed Overdraft Loan of Rs.1 Crore in Loan A/c No. OD/01/130002 and Term Loan of Rs.10 Crores in Loan A/c No. TLS/01/130004 on 30.05.2013 and agreed to pay the said loan within 48 months in 15 quarterly instalments of a sum of Rs.67 Lakhs per month and the last

instalment of a sum of Rs.62 Lakhs after repayment holiday of 3 months along with interest.

- (b) As security for the said Loans, the CD executed collateral security of Commercial Property situated at Sy. No.123, Sub Dvn. No.14, Block No.17, Adyar Village, New Door No.17, New Street Kottur, Chennai and executed various documents, namely, on demand promissory note, take delivery letter to DPN, letter of undertaking, general power of attorney for book debts and supply bills, agreement for term loans, guarantee agreements, memorandum of deposit of title deeds, common deed of hypothecation, etc. in favour of the Financial Creditor on 30.05.2013 and the same were placed on record.
- (c) The CD sought for rephasing of the repayment schedule of the term loan in 36 months in five half yearly instalments and the first instalment was to be paid on or before June 2015 and the said loan was rescheduled and subsequently, the CD also executed a Supplemental Common Deed of Hypothecation of movables in favour of the Financial Creditor. As the CD did not comply the terms of sanction, the Central Statutory Auditors had annulled the rescheduling of the said loan and classified the account as Non-Performing Asset (NPA) by passing a Memorandum of Charge and communicated to the CD *vide* letter dated 11.08.2014 calling upon the CD to deposit a sum of Rs.1.14 Crores for regularization of the loan account held with the Financial Creditor, as the account has slipped into NPA w.e.f. 29.5.2014.
- (d) As the CD did not pay the said amount, the Financial Creditor issued a letter dt.18.08.2014 annulling the restructuring order issued by it and declared the A/c has become a NPA. After disallowing the restructure process, it called upon the CD to pay a sum of Rs.2.70 Crores on or before 28.08.2014, failing which, the Financial Creditor would initiate recovery proceedings against the Corporate Debtor.

- (e) As against the letter dated 18.08.2014, the CD filed a Writ Petition before the Hon'ble High Court of Karnataka in WP No.42451/2014 seeking to quash the declaration of NPA *vide* letter dated 18.08.2014. The Hon'ble High Court *vide* interim order dated 30.01.2015 restrained the Financial Creditor from taking possession of the movable property and directed the CD to pay a sum of Rs.1.60 Crores. The CD in terms of the order of the Hon'ble High Court deposited a sum of Rs.1.60 Crores.
- (f) It is stated that as the CD did not pay the amounts due to the Financial Creditor, the Financial Creditor preferred O.A. No. 295/2016 before the Hon'ble DRT at Bangalore seeking to declare that the CD is due a sum of Rs.11,63,55,393/- and to direct for sale of the mortgaged immovable property of Guarantors of the CD. The Hon'ble Tribunal *inter alia* had passed an order on 13.04.2016 and confirmed the ex-parte order dated 11.02.2016 in favour of the Financial Creditor. Being aggrieved, the CD challenged the order dt.13.04.2016 in WP No.25380 and 25381/2016 before the Hon'ble High Court. *Vide* order dated 29.04.2016, the Hon'ble High Court stayed the order of the DRT with a condition that the CD deposits a sum of Rs.3 Crores within 3 weeks and accordingly, the CD deposited a sum of Rs.3 Crores with the Financial Creditor.
- (g) Further, the Hon'ble High Court in WP filed by the CD in WP No.42451/2014 has quashed the letter dated 18.08.2014 and also directed the CD to give a fresh representation to the Competent Authority of the Financial Creditor and also directed the Financial Creditor to consider the same *vide* order dated 15.04.2019. As against the order of the Ld. Single Judge in WP No.42451/2014, the Financial Creditor filed a Writ Appeal in WA No.3610/2019 and the same is pending adjudication.
- (h) In terms of above order dated 15.04.2019, the CD had submitted the representation letter dated 07.09.2019 to pay a sum of Rs.8.50 Crores under One Time Settlement Scheme and the same was considered by

the Financial Creditor. Vide letter dated 07.09.2019, the CD had agreed to pay a sum of Rs.1 Crore on or before 20.12.2019, balance amount of Rs.7.50 Crores to be paid in five instalments along with interest on or before 20.11.2020.

- (i) As the CD did not pay the amounts as agreed under OTS, the Financial Creditor had initiated proceedings before this Tribunal in CP (IB) No. 275/BB/2019 u/s 7 of the Code. During its pendency, the CD had contended that it would settle the claim in terms of the OTS letter dated 07.09.2019 and accordingly this Tribunal disposed of the CP *vide* order dated 07.12.2020 with a liberty to file fresh CP if the debt is not paid.
- (j) Pursuant thereto, CD agreed to settle the claim on or before 31.03.2021 and as the CD did not settle the claim, the Financial Creditor annulled the OTS offer. However, the CD did not repay the term loan amounting to Rs.14,72,37,646/- which includes Principal, Interest and Charges, and thus it defaulted in making repayment to the Financial Creditor till date. Hence filed the instant CP within the limitation period.

4. In support of its submissions, the Petitioner *inter alia* filed the following documents:

- (a) *Copy of the Term Loan Agreement, demand promissory note, take delivery letter for term loan and overdraft facilities dt.30.05.2013;*
- (b) *Copy of the Guarantee Agreement entered between the Financial Creditor and the Corporate Debtor dated 30.05.2013;*
- (c) *Copy of common Deed of Hypothecation dated 30.05.2013;*
- (d) *Copy of Credit Sanction intimation dated 22.05.2013;*
- (e) *Copy of notice sent to the Corporate Debtor under SARFAESI Act, 2002 dated 05.09.2014.*

5. Respondent filed its statement of objections *vide* Diary No.5676 dated 23.12.2022, wherein it is *inter alia* contended as under:

- (a) The alleged amount of Rs.14,72,37,646/- due from the Respondent is totally false and is not payable by the Respondent. The Respondent Company was awarded with Software and Services Contract dated 07.01.2023 by the Gujarat Technological University, Ahmedabad. To augment the resources for execution of the aforesaid contract, upon request, the Petitioner sanctioned the facilities by way of term loan and working capital and the term loan repayment commencing from May, 2013, repayable in 48 months in 15 quarterly instalments of Rs.67 Lakhs each and the last instalment being Rs.62 Lakhs.
- (b) It is stated that the billing for the services rendered by the Respondent under the aforesaid contract would happen only twice a year i.e., whenever the examinations were conducted by the University, and hence the cash flow would be only twice a year. In view of the same, the Respondent Company *vide* letter dated 24.05.2014 requested the Petitioner for rescheduling the term loan in 36 months to 5 half yearly instalments i.e., whenever the payments are received by Respondent from the University.
- (c) The Petitioner rescheduled the Term Loan on 28.05.2014 and the Respondent Company was required to repay the loan as per the revised terms commencing from June, 2015 in 5 half yearly instalments. In this regard, the Petitioner required the Respondent Company to execute Supplementary Deed of Hypothecation of Movables dated 28.05.2014 and the same was compiled by the Respondent Company.
- (d) Subsequently, the Petitioner *vide* email dated 11.08.2014, directed the Respondent to deposit a sum of Rs.1,14,00,000/- for regularization of the account and held that the Respondent Company has slipped into a NPA w.e.f. 29.05.2014, which is within a day of restructuring the loan by the Petitioner. The said email was issued by Petitioner unilaterally by completely ignoring the revised restructuring of the term loan. The

same was brought to the notice of Petitioner *vide* email dt.14.08.2014 and in response to the same the Petitioner arbitrarily issued a letter dated 18.08.2014 cancelling the restructuring order issued by it and declaring the account as NPA without any specific reasons.

- (e) That apart, the Petitioner informed the Respondent Company to pay a sum of Rs.2,70,00,000/- on or before 28.08.2014. It is contended that the claim of Rs.1,14,00,000/- was revised arbitrarily to Rs.2,70,00,000 within a week without any reason. Therefore, the Respondent filed WP No.42451/2014 before the High Court of Karnataka on 02.09.2014 seeking to quash the unilateral declaration of NPA *vide* letter dated 18.08.2014 and the Hon'ble High Court granted an interim order on 30.01.2015 against the Petitioner restraining the Petitioner from taking possession of the movables found in the office premises of Respondent for a period of 3 months from 30.01.2015 subject to the Plaintiff depositing a sum of Rs.1.60 Crores within 4 weeks and the same was complied by the Respondent promptly.
- (f) The Petitioner *vide* letter dated 22.04.2015 informed that since the Respondent has failed to clear the dues of the Bank, the immovable assets at Chennai will be sold through online. The Petitioner despite receipt of money as per the revised terms of loan has unilaterally infringing the legitimate rights of the Respondent. The said action of the Petitioner in taking possession of the Secured Assets through the illegal declaration of the account as NPA led to friction between the Respondents and Mr. Kaushik Devasenapathy.
- (g) In pursuance of the same, Petitioner filed OA No.295/2016 before the DRT, Bengaluru seeking to declare that the Respondents are in due to Petitioner a sum of Rs.11,63,55,393/-. DRT *vide* order dt.13.04.2016 confirmed the ex-parte order dt.11.02.2016 in favour of Petitioner observing that the order of attachment shall continue till the Hon'ble

High Court disposes the WPs and WA. Being aggrieved with the order dt.13.04.2016, the Respondents appealed before the Debts Recovery Appellate Tribunal in AIRSA 201/2016 and the same is pending. Due to non-functioning of DRAT, Chennai, the Respondent filed WP No.25380 and 25381 of 2016 before the Hon'ble High Court of Karnataka challenging the order dt.13.04.2016 and the High Court vide order dated 29.04.2016 was pleased to stay the impugned order of DRT with the condition that the Respondent Company deposits Rs.3 Crores within three weeks of the order, and the Respondent complied the said order.

- (h) Nevertheless, the Respondent approached the Petitioner Bank to settle the matter and both the Parties arrived at Rs.9,93,00,000/- including interest as on 31.03.2018, as full and final payment payable by the Respondent and the payment plan letter dated 07.05.2018 was shared to the Petitioner Bank vide email dated 11.05.2018 by the Respondent. Upon request of the Petitioner Bank, the Respondent submitted revised letter dated 29.05.2018 along with 5 self-named security cheques to the Petitioner and awaited confirmation from the Petitioner. However, the Petitioner *vide* email dated 19.06.2018 demanded a sum of Rs.13,01,10,123/- as against Rs.9,93,00,000/- without any reason.
- (i) Meanwhile, Hon'ble High Court in WP No.42451/2014 was pleased to quash the impugned letter dated 18.08.2014 issued by the Petitioner Bank disallowing the restructure and classifying the account of Respondent as NPA and given liberty to Respondent to submit a fresh representation to the Company Authority of the Bank and directed the Bank to consider the same afresh. Accordingly, the Respondent vide letter dated 08.05.2019 requested the Petitioner to consider its request as per the orders of the Hon'ble High Court, however, the Petitioner refused to consider the same and held that the matter was already decided in 2014 itself and there is no need to consider the same vide

letter dated 28.05.2019. It is contended that with quashing of the letter declaring the account as NPA, all the actions of the Petitioner Bank have become infructuous and bad in law.

- (j) The Petitioner filed CP (IB) No.275/BB/2019 against the Respondent alleging a total default of Rs.15,22,11,780/- as against the aforesaid sums, based on the letter dated 18.08.2014 even though it was quashed by Hon'ble High Court. The said CP was disposed of by this Adjudicating Authority *vide* order dated 07.12.2020. The Petitioner submits that, in all, the Respondent Company has paid a sum of Rs.9,78,67,854/- approximately over a period, fulfilled the orders of the Hon'ble High Court and despite the said payment, the Petitioner filed the present Petition seeking payment of the original amount as opposed to the actual amount pending payment.
- (k) It is further contended that the Hon'ble High Court of Karnataka in WP No.42451/2014 has already quashed the declaration of NPA as illegal and thus the Petitioner-Bank does not even have a cause to file this Petition. The Petitioner has failed to even issue the statutory notice as mandated by the Code and thus deserves to be dismissed.

6. Subsequently, the Petitioner has filed Synopsis *vide* Dy.No.1042 dated 22.02.2023 by *inter alia* further stating as under:

- (a) The CD after availing the aforesaid loans, committed default and the same was notified to it *vide* letter dated 18.08.2014, stating the loan accounts would be classified as NPA. The CD filed WP No.42451/2014 before the Hon'ble High Court to quash the said letter dt.18.08.2014. Meanwhile, the Bank classified the loan accounts as NPA on 29.05.2014 and issued a Notice dated 05.09.2014 u/s 13(2) r/w 13(3) of the SARFAESI Act and also filed an application bearing OA No.295/2016

before the DRT for recovery of Rs.11,63,55,393/- against the CD, and the same is pending adjudication.

- (b) The said WP No.42451/2014 was allowed directing the CD to approach the Financial Creditor for the OTS. In terms of the order, the CD submitted its OTS proposal on 06.03.2020 and it was accepted by the Financial Creditor *vide* letter dated 21.03.2020. In spite of accepting the OTS, the CD failed to pay the amounts as per its commitments.
- (c) During the pendency of said proceedings, the Financial Creditor filed Petition bearing CP (IB) No.275/BB/2019 against the CD and this Tribunal *vide* order dt.07.12.2020 disposed of the same with liberty to the Financial Creditor to file fresh CP if debt owed is not repaid by the CD. In spite of giving several opportunities and having considered the OTS offer, the CD has failed to settle the dues of the Financial Creditor.
- (d) Further, the CD in its Balance Sheet for the year 01.04.2018 to 31.03.2019 had shown its liability to the Financial Creditor. In the Disclosure of general information about Company (Corporate Debtor) it is contended at page 133 that:

"(ii) The Company has entered into One Time Settlement with the Corporation Bank for the outstanding loan amount of Rs.6.83 Crores and interest of Rs.1.71 Crores and the cumulative outstanding amount at the year end is in excess of the settlement value. Therefore no further interest has been provided in the books during the financial year."

- (e) In support of its submissions, the Petitioner-Bank had relied upon the following decisions:
- i. Laxmi Pat Surana v. Union Bank of India and Anr. (AIR 2021 SC 1707);*
 - ii. Shanti Conductors Private Limited v. Assam State Electricity Board and Ors. (2020) 2 SCC 677.*

7. Further, the Respondent filed its written synopsis *vide* Diary No.1872 dated 03.04.2023 by *inter alia* contending as under:
- (a) The Hon'ble High Court of Karnataka in WP No.42451/2014 has already quashed the declaration of NPA as illegal and thus the Bank does not even have a cause to file this Petition.
 - (b) In the decision of Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India* relied upon by the Petitioner, it is held that the date of account being declared as NPA can be reckoned as the date of default. The said case law goes against their own case for the reason that, the date of default according to the Petitioner being 29.05.2014, which is the date the Respondent was declared as NPA, is well passed the limitation period of 3 years. Further, in *Jignesh Shah and Ors. v. Union of India and Ors. (MANU/SC/1319/ 2019)*, the Hon'ble Supreme Court held that "with the introduction of Section 238A into the Code, the provision of Limitation Act applies to Application made under the Code."
 - (c) The Balance Sheet of the Respondent of the FY 2018-19 that certain sums of money are due and payable to the Petitioner itself does not provide that the instant proceedings are within the limitation, and that disclosure of sums due and payable to the Petitioner by itself does not give rise to any inference being drawn that such amount has been defaulted by the Respondent to the Petitioner.
 - (d) The Respondent as per the order of this Tribunal in CP (IB) No.275 of 2019 have always been willing to settle the matter and more than Rs.9 Crores have been paid by the Respondent to the Petitioner.
 - (e) It is contended that mere declaration of amount due and payable as per the books of the Respondent does not give rise to cause of action to initiate instant proceedings and thus the Petition be dismissed.

- 8.** Heard Shri V.B. Ravi Shankar, Ld. Counsel for Petitioner and Shri Kanishk Ravindran, Ld. Counsel for the Respondent and perused the pleadings on record.
- 9.** The Petitioner-Bank has earlier filed CP (IB) No.275/BB/2019 u/s 7 of the Code against the Corporate Debtor herein and the same was disposed of by this Adjudicating Authority *vide* order dated 07.12.2020 with liberty to the Financial Creditor to file a fresh CP if the debt owed is not repaid by the Respondent herein as per the settlement talks that are admittedly in progress and pending before the Petitioner-Bank, within a reasonable time.
- 10.** It is seen from the Petition that the present case is filed by the Union Bank of India seeking to initiate the CIRP in respect of M/s. Mindlogicx Infratec Limited. As per Form-1 of the Petition, the Financial Creditor had disbursed Rs.9,28,66,590/- towards Term Loan, Rs.1,00,00,000/- towards Overdraft on 30.05.2013 to the Corporate Debtor. Copies of the relevant Term Loan Agreement & Guarantee Agreement dated 30.05.2013, common Deed of Hypothecation dated 30.05.2013 are placed on record as Annexure 4, 5 and 6 of the Petition.
- 11.** During the course of hearing, Ld. Counsel for the Petitioner informed that the account of the Corporate Debtor became NPA and the Corporate Debtor has defaulted in payment of the amount on 29.05.2014, notice under SARFAESI Act, 2002 was issued to the Corporate Debtor on 05.09.2014. Subsequently, the CD had submitted its 1st One Time Settlement (OTS) proposal on 09.03.2016 by offering Rs.6.75 Crores along with applicable interest. Since the proposal was rejected by the Competent Authority, the Financial Creditor intimated the same to the CD *vide* letter dt.19.03.2016. Subsequently, the Corporate Debtor *vide* another letter dated 29.05.2018 had reached out to the Financial Creditor to settle the claim amicably and proposed for repayment of Rs.9.93 Crores. Ld. Counsel for the Petitioner stated that this OTS proposal is also rejected.

- 12.** During the pendency of CP (IB) No.275/BB/2019 the Corporate Debtor again submitted its proposal to the Financial Creditor on 06.03.2020 and the same was accepted by the Financial Creditor *vide* its letter dated 21.03.2020, copies of the same are annexed to the objections as Annexures-AD and AE respectively. However, the CD failed to pay the amounts as per its commitment and *vide* letter dt.07.07.2020 (Page 214 of the objections) requested Financial Creditor to defer the payments and came up with revised repayment schedule proposing the new repayment dates from 31.01.2021 to 31.07.2021 for paying Rs.650 Lakhs, to which it is contended by the Respondent that there was no reply from the Financial Creditor. Petitioner submits that pursuant to order dt.07.12.2020 passed in CP (IB) No.275/BB/2019, the Corporate Debtor agreed to settle the claim on or before 31.03.2021, and as the Corporate Debtor did not settle the claim of the Financial Creditor, the Financial Creditor is left with no other alternative but to annul the OTS offer and preferred this Petition.
- 13.** As stated supra, pursuant to the order dated 07.12.2020 passed by this AA in CP (IB) No.275/BB/2019, the Corporate Debtor *vide* its OTS letter dated 07.09.2019 assured to settle the claim and therefore this Adjudicating Authority disposed of that Petition with a liberty to the Petitioner to file fresh Petition if the debt owed is not repaid by the CD, within a reasonable time. During the course of hearing, Ld. Counsel for the Petitioner has stated that till date they have not received the payment from the Corporate Debtor. As seen from the records, many OTS proposal discussions occurred between the Parties herein, and inspite of accepting certain OTS proposals by the Financial Creditor, the Corporate Debtor failed to adhere to its commitments till date. The Respondent further contends that mere declaration of amount due and payable as per the books of the Respondent does not give rise to cause of action to initiate instant proceedings. From the above observations, it can be seen that the Respondent from time to

time had approached the Financial Creditor *vide* various emails and put forward OTS proposals and sought for revised repayment schedule with respect to the amounts due to the Petitioner-Bank. As the same is not paid till date, the Corporate Debtor has committed default and the defaulted amount being more than Rs.1,00,00,000/- as required under the Code the 'default' is established. The loan facilities availed by the Corporate Debtor in terms of the Loan Agreement dated 30.05.2013 also contains interest component and as the Respondent has duly signed the said Agreement, the debt has become 'financial debt' as required under the Code.

14. From the aforesaid observations, it is seen that the Corporate Debtor has availed loan facilities from the Financial Creditor against payment of interest and it defaulted in repayment of such 'financial debt' which has become due and payable. Therefore, the first ingredient of 'debt' has been satisfied as required under the Code. Part-IV of Form-1 of the CP shows that the total amount claimed to be in default is Rs.14,72,37,646/- with the date of NPA being 29.05.2014. The Respondent in its reply even though has not disputed the loan facilities availed and the Agreements entered into by it with the Financial Creditor, however, contended that, in all, the Respondent Company has paid a sum of Rs.9,78,67,854/- (Rupees Nine Crores Seventy-Eight Lakhs Sixty-Seven Thousand Eight Hundred and Fifty-Four Only) approximately over a period and fulfilled the orders of the Hon'ble High Court of Karnataka and despite the said payment the Petitioner filed the instant CP, even though the Hon'ble High Court in WP No.42451/2014 has already quashed the declaration of NPA as illegal.

15. Even though the date of NPA is not considered as the date of default, the Respondent *vide* letter dated 07.07.2020 to the Financial Creditor has expressed its inability to pay as per the original sanctioned amount of Financial Creditor in view of the Covid-19 pandemic and proposed new repayment schedule for payment of Rs.650 Lakhs. In this context, we refer

to the decision of the Hon'ble NCLAT dated 12.07.2022 in Company Appeal (AT) (Insolvency) No.371 of 2021 in *Tejas Khandhar vs. Bank of Baroda (2022) ibclaw.in 496 NCLAT*, wherein it is *inter alia* held that the OTS proposal falls within the ambit of acknowledgement of debt as defined u/s 18 of Limitation Act, 1963. The Hon'ble Supreme Court in *Laxmi Pat Surana vs. Union of India & Anr., (2021) 8 SCC 481*, has in para 43 *inter alia* held that Section 18 of the Limitation Act, 1963 gets attracted the moment acknowledgement in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. In addition to the acknowledgement made by the Respondent through its books of accounts for the Financial Year 2018-19, as stated supra, *vide* email dated 07.07.2020 it has sent the OTS proposal to the Financial Creditor and sought for revised repayment dates. The Respondent from time to time has acknowledged the debt to the Financial Creditor through various OTS proposals with the recent one being email dated 07.07.2020. Pursuant to the order passed by this AA on 07.12.2020 in CP (IB) No.275/BB/2019, the Petitioner-Bank *vide* email dated 04.02.2021 has requested the CD to repay the amount pertaining to February, 2021 as accepted by CD. In response to which, the CD *vide* email dated 05.02.2021 has *inter alia* stated that "we had sent an email on the 15.01.2021 confirming our intent to clear the loan either through ARC or by ourselves before 31st March for which we have not received any reply till date." As stated supra, the CD through various OTS proposals has acknowledged its liability to the Petitioner-Bank, the latest one being dated 07.07.2020; and accordingly this CP filed on 15.12.2021 is within the period of limitation. It is noticed that in the Synopsis filed on 03.04.2023, the Respondent has raised the issue of Limitation, which is not acceptable in view of the above proposition of Law regarding the dates of OTS proposals being acknowledgements; and also

the DRT order and other periodical processes discussed above also act to extend the limitation period.

- 16.** Considering the aforesaid discussions and keeping in view the proceedings of the I&B Code being summary in nature, we are of the considered opinion that as long as the default amount is above Rs.1,00,00,000/- (Rupees One Crore Only) this Adjudicating Authority need not delve into the correct amount of the debt owed by it even though certain payments were stated to be made by the Respondent pursuant to the directions of the Hon'ble High Court of Karnataka.
- 17.** We have carefully considered the arguments of the respective Counsels and their pleadings. In view of the facts and circumstances discussed above, the present Petition 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/- (Rupees One Crore Only), the **Petition** is **admitted** in respect of **Respondent-Mindlogicx Infratec Limited** u/s 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - ii. Transferring, encumbering, alienating or disposing off by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. 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;

- iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

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.

The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.

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

18. Pursuant to the observations made in the order dated 24.05.2023, the Financial Creditor *vide* Diary No.2951 dated 06.06.2023 has proposed the name of Smt. Ramanathan Bhuvaneshwari, a qualified insolvency professional having Regn. No. IBBI/IPA-002/IP-N00306/2017-18/10864 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Affidavit and Written Consent of the IRP in Form-2 dt.31.05.2023 has been filed by the IRP, wherein, she *inter alia* affirmed that she is eligible to be appointed as an IRP in the case of the Corporate Debtor and that no disciplinary proceedings are pending against her with the Board or ICSI Institute of Insolvency Professionals.

19. The Law Research Associate of this Adjudicating Authority has checked the credentials of Smt. Ramanathan Bhuvaneshwari, and there is nothing adverse against her. In view of the above, the Bench hereby appoints

Smt. Ramanathan Bhuvaneshwari, bearing Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 with her address at C-006, Pioneer Paradise, 24th Main Road, 7th Phase, JP Nagar, Bangalore-560078, having Mobile: +91-9945527606, Email: bhoona.bhuvan@gmail.com 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. The IRP is also directed to file a copy of the latest AFA within one week from the date of receipt of copy of this order.

- 20.** The Financial Creditor shall deposit 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.
- 21.** The Interim Resolution Professional shall after collation of all the claims received against the 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 her 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.
- 22.** A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioner 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 her e-mail address forthwith.

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

Sd/-
T. KRISHNAVALLI
MEMBER (JUDICIAL)

jsr