NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.467/2023

In the matter of:

Emgee Media Integrated Services Pvt. Ltd.
#H No. 3-6-700 & 701, Flat No. 103, Senate Apts.,
Street No. 12, Himayathnagar,
Hyderabad, TG – 500 029 **… Appellant**

V

Vyjayanthi Televentures Pvt. Ltd.
Flat No. 104, Road No. 71, Nava Nirman Nagar,
Jubilee Hills, Hyderabad, Telangana – 500 053 **… Respondent**

Present :

For Appellant : Mr. TK. Bhaskar, Advocate

ORDER
(Hybrid Mode)

20.04.2026:

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

The Appellant is an Applicant to the proceedings under Section 7 of I & B Code, 2016, which is to be read with Rule 34 of the NCLT Rules, 2016, which they had initiated by preferring the same before the Ld. NCLT, Hyderabad Bench. The proceedings was ultimately registered as CP (IB) / 483 / 7 / HDB / 2019 and the same has been rejected by the impugned order of 22.05.2023 on the ground that the initiation of proceedings itself was barred by limitation. Aggrieved against the same, hence, the instant Company Appeal.

2. When the Company Appeal was instituted before this Tribunal on 06.07.2023, the same was taken up for arguments at admission stage on 19.01.2024, after permitting the rectification of defects, this Tribunal has issued notices to the Respondent on the Condone Delay Application.

There was an Office Report of 25.01.2024 that the Respondent had been served with the notices, but, none had appeared till date nor any Counter Affidavit has been filed.

3. Hence, in the light of the order passed by us on 19.07.2024, the matter was directed to be listed, awaiting appearance of the Respondent.

Consequently, we had to pass an order to serve the Respondent by substitutive mode of service as per Part VII of NCLAT Rules, 2016, and in compliance thereto, an affidavit of service was filed by the Appellant informing thereof that the notices by way of publication as already been served and still the Respondent had not put an appearance. Hence, we directed the matter to proceed ex parte against the Respondent, in the light of the provisions contained under Rule 53 of the NCLAT Rules, 2016.

4. Even none appears for the Respondent today.

Brief facts that engages consideration in the instant Company Appeal are that;

The Appellant claiming itself to be the Financial Creditor of M/s. Vyjayanthi Televentures Private Limited, the Corporate Debtor herein, claims to have been incorporated on 11.06.2010, under the name and style of M/s. Emgee Media Integrated Services Private Limited, as per the provisions contained under the Companies Act, 1956. It is showed that the Appellant was engaged in a business of Media, Publishing, Printing and such other Allied Services.

5. The Appellant contends that it has advanced an Unsecured Loan of Rs.9,09,80,000/- to the Corporate Debtor, by virtue of series of transactions as would be reflected from the Ledger Accounts and the Balance Sheets of the Corporate Debtor (on record of Company Petition), which were maintained by it, wherein the amount was shown as to be an unsecured loan and with a remark that it has been shown has to be the borrowing.

6. The Financial Debt, occurred as per the Books of Account of the Appellant and the same became due and payable, as on 09.06.2016, owing to its confirmation of liability / debt made by the Respondent, which has been treated has to be an acknowledgement, wherein the Respondent had given an expression vide its communicating to the Appellant confirming the balance amount due to be paid observing thereof that an Unsecured Loan, as on 31.03.2016 had accrued, which as per Respondents stood confirmed by verification of the Books of Accounts and further, also affirmed that the said balance outstanding was shown in the Books of Accounts of the Corporate Debtor.

7. Its this unrebutted communication of 09.06.2016 that has been taken has to be the communication affirming the confirmation or an acknowledgement of debt payable by the Respondent.

This date of confirmation of the balance due, to be paid i.e. on 09.06.2016 is being taken up by the Appellant to be falling within the ambit of Section 18 of the Limitation Act.

Based upon the above short facts, the Ld. Tribunal while deciding the controversy have framed the following two major points for determination:

(a) Whether the debt claimed as due and payable by the Respondent to the Petitioner is barred by limitation; and

(b) Whether the financial debt of a sum over Rs. 1 Crore claimed as due and payable to the Petitioner by the Respondent exists, if so, whether the Petitioner has defaulted in the repayment of the same.

The Ld. Tribunal answered question no. 1 against the Appellant holding thereof the proceedings to be barred by one day, the findings that has been recorded therein holding the proceedings to be barred from one day. Though, the Ld. Tribunal accepts the acknowledgement of 09.06.2016 while determining the aspect of limitation, but, it has failed to take into consideration that once the proceedings has been filed on 10.06.2019, the Ld. Tribunal was bound to extend the benefit of Section 4 as it was pleaded also before the Ld. Tribunal. The aspect was skipped to be considered, as no finding qua the effect of Section 4 of Limitation Act has been recorded.

8. Based upon the aforesaid short analysis and the points framed by the Ld. Tribunal, we could not divide our consideration from four major points which are enumerated hereunder:-

(a) How would be the question of limitation would be determined after the interplay of Section 4 & 18 of the Limitation Act?

(b) What would be the impact of the inference given by the Ld. Tribunal to the letter of 09.06.2016, by treating it to be ``inadvertently'' written?

(c) How would be the aspect of debt and default was required to be determined by the Ld. Tribunal?

(d) How the interpretation of Section 7 sub-section (3) of the Code would have bearing on the present controversy? and;

(e) Effect of Written Submissions?

<u>How would be the question of limitation would be determined after the interplay of Section 4 & 18 of the Limitation Act?</u>

9. The provisions contained under Section 18 of the Limitation Act, prescribes that, in any proceedings where in writing and signed by the party, there

is an acknowledgement of the liability to pay an amount, the said acknowledgement in itself will be giving a fresh period of limitation, and the limitation thereafter for practical purposes would be computed from the time would be computed from the time when the acknowledgement was so signed, which in the instant case, is being argued by the Appellant to be as 09.06.2016, where the acknowledgement at the behest of the Respondents accrued in the light of the provisions contained under Section 18 of the Limitation Act and thus, the limitation is being treated to be within time for the purposes of initiation of the proceedings under Section 7 of the I & B Code, 2016, which was ultimately filed by the Appellant on 10.06.2019, before NCLT.

10. The Appellant had come up with a case that the proceedings, which was initiated by the Appellant under Section 7 of the Code, by instituting the same on 10.06.2019, if that is construed to be determined from 09.06.2016 or even from the date of the Demand Notice dated 22.05.2019 that will be falling within the prescribed period of limitation and the benefit of Section 18 of Limitation Act, ought to be extended to the Appellant and the proceedings could not have been rejected, hold it to be barred by limitation.

11. The Ld. Counsel for the Appellant had further argued that, under the circumstances of the instant case, when the proceedings were instituted on 10.06.2019, it was Monday and the preceding two days i.e. Saturday and Sunday, were holidays and since the Registry of the Tribunal remains closed the Company

Petition could not be filed, hence, the exemption of two days period, it ought to be extended to the Appellant in the light of the provisions contained under Section 4 of the Limitation Act. Because of the intervening Saturday and Sunday i.e. falling on 08.06.2019 and 09.06.2019 respectively, no proceedings could have been drawn for filing of the Petition by the Appellant by instituting the same under Section 7 of the Code and hence, filing of the same on 10.06.2019 would be absolutely justified and the proceedings itself would not be barred by limitation, in the light of the provisions of Section 4 of Limitation Act, which is extracted hereunder:-

> ``***4. Expiry of prescribed period when court is closed.***—*Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.*
>
> *Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day''*

12. Thus, in a nut shell, the Appellant argues that he would be entitled for the benefit of Section 18 which for the purposes of present case has to be read with Section 4 of the Limitation Act for the purposes of determination of the aspect of limitation, from the date of acknowledgement i.e. 09.06.2016. Hence, he pleads that the proceedings are well within time.

13. We make it clear at this juncture itself that, so far as the aspect of acknowledgement of debt is concerned i.e. 09.06.2016, when the proceedings

were taken before the Ld. NCLT, the admission of debt by virtue of a communication of 09.06.2016, was not in dispute and was even never debated upon at the behest of the Respondent and hence acknowledgement of debt on 09.06.2016, in itself will fall to be an acknowledgement granting the extension of limitation under Section 18 of the Limitation Act, which has to be read with Section 4 of Limitation Act.

14. Another important feature, which has been argued by the Ld. Counsel for the Appellant in context of which for the first time in the written submissions, the Respondent has taken a plea with regards to the proceedings to be time barred since the Application having been preferred on 10.06.2019. No such plea of bar of limitation was taken by the Respondents ion their main Counter filed to the Company Petition, besides when there was no denial of the communication made by the Respondents on 09.06.2016.

What would be the impact of the inference given by the Ld. Tribunal to the letter of 09.06.2016, by treating it to be ``inadvertently'' written?

15. An after thought pleadings, under the law of pleading, when any particular document is placed before the Court to be read in evidence and the same is being taken as to be the basis for establishment or denouncing the case of either of the parties, in that eventuality, the document in itself, when it's contents is not been specifically denied, merely a bald statement without there being any specified material being placed on record, the plea taken therein cannot be said to be

``inadvertent'' particularly when it goes to the root of the proceedings on the question of limitation and that too, when ``inadvertent'' expression has not been expressly explained or even remotedly attempted to be explained by the Respondent in the proceedings before the Ld. Tribunal.

16. Since the plea of ``inadvertence'' is not a plea established, before the Ld. Tribunal or even attempted to be established about the factum of ``inadvertence'' to the admission or acknowledgement of the debt, the presumption would be that, the communication of 09.06.2016 would be an admission of debt and default and in that eventuality, the limitation has to be determined in the light of the provisions contained under Section 18 to be read with Section 4 of the Limitation Act.

17. The only reason, which has been taken and recorded by the Tribunal for deciding the question of limitation against the Appellant was, based on the stand taken by the Respondent, that the acknowledgement was ``**inadvertently**'' made by them, regards the nature of loan, the amount due to be paid, and issuance of the letter of 09.06.2016, falling of the intervening holidays of Saturday and Sunday, prior to the filing of Section 7 of the Code are the facts admitted and never even attempted to be denied in the Appellate stage proceedings.

18. We are constrained to make an observation that, when a particular document is on record in any Court proceedings and which is when taken has to be the foundation of the proceedings, and particularly when the executor of the

said document is not denying the contents of the same. The stand taken by the executor of the document relied by the Appellant i.e. an acknowledgement of 09.06.2016, cannot be refused to be read in evidence merely because of the fact that the Respondent has taken out a case that was ``inadvertently'' written, there will be two aspect of it.

(a) In the instant case, the Respondent admits the execution of the letter of 09.06.2016, if the execution itself is admitted ``inadvertence'', cannot be a plea, which is available to the Respondent and to be accepted too by the Ld. Tribunal. Otherwise, it would be very convenient to any litigant in any proceedings to deny the document on the ground that it was ``inadvertently'' executed particularly when the execution of the same itself has not been denied.

(b) Inadvertence cannot be to the contents of letter, particularly when its execution itself has been admitted.

19. In that eventuality, the Tribunal(s) or the Court(s) will have to read the document as it is on the face of it and not the way it has been projected by the Respondent of having ``inadvertently'' executed the document particularly when the inadvertence is not proved, which could be a very easy and a convenient plea to be taken by the Respondent to overcome the embargoes faced by the Respondent, based upon the acknowledgement dated 09.06.2016 and that too, particularly, when it was not a case of the Respondent before the Ld. NCLT nor

they have taken a plea before this Appellate Tribunal too, in relation to the impact of the acknowledgement of 09.06.2016 as the proceedings have been carried ex parte against them.

How would be the aspect of debt and default was required to be determined by the Ld. Tribunal? and;

20. What would be relevant herein is that, if we take the aforesaid extract into consideration, the amount of Rs.5,04,80,000/- was admitted to be due to be paid to the Applicant / Appellant, which was admittedly cleared from the accounts that were maintained by the Corporate Debtor and in relation thereto, because, the aforesaid extract refers to a summary of the unsecured loan in the Balance Sheet for the Financial Year 2015-2016.

21. If the averments made in Para V is considered, it specifically refers to an amount, which was due to be paid to the Applicant i.e. Rs.5,04,80,000/- and if that is compared with the extract of the summary of the unsecured loans, as it was given by the Respondent in the Balance Sheet summary of 10.05.2022 in its entry 6, it's the same balance amount, which has been reflected to be due to be paid to the Applicant. The relevant extract of the summary of the Unsecured Loans as mentioned for the Financial Year 2015-2016 is extracted hereunder:

Sl No.	*Name*	*Amount (in Rs.)*
1.	*Vish Entertainments Pvt Ltd*	*42,00,000/-*

2.	*Vishnu Vardhan*	*26,20,000/-*
3.	*Rhythm Media Works Private Limited*	*1,49,50,000/-*
4.	*Rhythm Entertainments Private Limited*	*23,92,000/-*
5.	*First Counsel Educonsultants*	*5,00,000/-*
6.	*Emgee Media Integrated Service Private Limited*	*5,04,80,000/-*
7.	*Aswini Dutt Group*	*73,25,002/-*
8.	*Swapna Dutt and Associates*	*4,05,00,000/-*
Total		*12,29,67,002/-*

The extracts as given hereinabove, Entry 6 itself shows an admission of the amount payable reflecting Rs.5,04,80,000/-, which corresponds to the arguments extended by the Respondent in their written objection, while referring to the said amount in Para V of the written submissions. Nothing much is required be said about the balance amount due to be paid.

22. It's based upon the aforesaid backdrop of pleadings, the Appellant contends that, while submitting his response to the pleadings raised in the written submissions, the Appellant had rather pleaded that, there is a confirmation of an admission of liability, even as per the written submissions filed by the Respondent and a stand to the said effect was taken by the Appellant in his reply submitted to the written submissions particularly that as contained in Para (f) where the Appellant pleaded that the Corporate Debtor on 10.05.2022 has given the list of

Unsecured Creditors as in the Financial Year of 2015-2016 where it mentions the Financial Creditor, is one of the Creditors from whom an unsecured loan is taken to the tune of Rs.5,04,80,000/-.

23. A very remarkable feature, which has to be taken into consideration by us is that, when the aforesaid plea has been taken up before the Ld. Tribunal about the acknowledgement of debt by the Respondent vide its communication of 09.06.2016. The Respondent in the proceedings before the Ld. Tribunal had come up with a peculiar stand and that was taken note of also by the Ld. Tribunal that the written admission of the liability of debt on 09.06.2016, was argued by the Respondent as if it has been taken ``**inadvertently**''.

24. The finding, which has been recorded by the Ld. Tribunal in Para 17 of the impugned Judgment, as regards to the issue, as to whether the Debt was alive in the shape of an Unsecured Loan, by the date of the purported execution of the letter of confirmation of balance, that itself could be culled out from the stand taken by the Respondent themselves in the written submissions, as well as, in the extracts of the Balance Sheet pertaining to 2015-2016, which we have already dealt with above that in the Financial Year 2015-2016, itself there is an admission on part of Respondent of existing debt due to be paid to the Appellant in the shape of an unsecured loan and that admission in itself happens to be prior to the alleged execution of letter of confirmation of Balance dated 09.06.2016. Hence, the manner in which the determination has been made by the Ld. Tribunal for the

aspect of debt due and limitation is not acceptable by us, since the confirmation of the balance happens to be even much prior to the acknowledgement of 09.06.2016 which has never been denied, and rather as reflected in the Balance Sheet of Financial Year 2015-2016, the benefit of Section 18 to be read with Section 4 of the Limitation Act, would be extended to the Appellant and the proceedings under Section 7 of the I & B Code, 2016 would be well within time.

25. The second question has been wrongly decided by the Ld. Tribunal, without taking into consideration that the plea raised in context of Point No. 2, was never a case, which was at all developed by the Respondent in their pleading and if we go through the other co-related documents on record, which has to conjointly read for a rationale conclusion, the amount due to be paid was standing in the Books of Accounts of the Corporate Debtor that, would have been payable to the Appellant in accordance with the own document as filed by the Respondent.

How the interpretation of Section 7 sub-section (3) of the Code would have bearing the on the present controversy?

26. The Ld. Tribunal had misconstrued the implication of sub-section (3) of Section 7 of the Code, regarding the responsibility casted upon the Applicant for the purposes of providing the records of the default as referred to under sub-section (a) (3) of Section 7 of the Code.

Sub-section (3) of Section 7 of the Code has had to be interpreted in a manner as if it only calls upon the Applicant, the Financial Creditor that by way of an application preferred under Section 7 of the Code, it should prima facie disclose the existence of a liability or a debt to be paid by the Corporate Debtor.

The records of the default and the information utility as contemplated therein, does not mean that it has had to be a strict proof in its precision for considering the entertainment of the application under Section 7 nor it could be taken has to be the basis to reject the application. The purpose of sub-section (3) of Section 7 is to establish the prima facie to be proceeded on merits, it does not entail an established debt and default at that stage of filing of the Company Petition, this provision is not a substantive provision which could be taken to throw the Application by the Ld. Tribunal, on the basis of its interpretation of Section 7(3) of the Code.

27. The logic behind it is that, the provisions contained under sub-section (3) of Section 7 of the Code is only an enabling provision to prima facie sustain the application when it comes before the Ld. Tribunal for admission upon an establishment of a default, before calling upon the Corporate Debtor, but, it cannot be taken as to be reason to reject the Application, without attempting to consider the aspect of debt and default on its merits.

28. The use of word ``Information Utility'' given therein or such other records has been alternatively used in the provision and which does not strictly envisages that at the stage of institution of the application under Section 7 of the Code, there has to be a strict description or proof of the financial liability which was required

to be satisfied to be established by the Appellant to sustain the application under Section 7 of the Code.

29. In order to answer the observations as made by the Ld. Tribunal while rejecting the application on the ground of sub-section (3) of Section 7 of the Code, first of all, it is not a substantive provision, which could be isolatedly and exclusively be drawn to reject an application because its only upon the proceedings being instituted and proceeded on merits, when the parties are called upon to participate in the proceedings, when the pleadings come forward by way of an objection etc., its at that stage also, if the aspect of default as referred to in the application under Section 7 of the Code is established by pleading or documents on record, that itself would still suffice the purpose to establish the default to sustain an application under Section 7 of the Code. That too would meet satisfy the purpose of Section 7(3) of the Code, which only intends to regulate frivolous proceedings, but not to curtail the remedy to law even if prima facie case of default is made out.

30. The necessity of Section 7 (3) of the Code is not a tool to be utilized to reject an application on a simpliciter determination made by the Ld. Tribunal, on its own violatory wisdom, particularly when in the instant case, when there has been no objection, as such raised by the Respondent qua the particulars prescribed by the Appellant in Part IV & V of the application. That in itself has to be read as

an establishment of debt and default, which would be sufficient for the purposes to sustain the filing of the application under Section 7 of the Code.

Further, we will have to take into consideration the other documents, which has been filed by the Appellant showing the establishment of a liability to pay towards the unsecured loan, which itself was the fact established by the Appellant and not denied by the Respondent in the proceedings before the Ld. Tribunal and hence, the manner in which Section 7 (3) of the Code is being interpreted by the Ld. Tribunal for the purposes of rejecting of the Application under Section 7 of the Code is not acceptable by this Appellate Tribunal. Hence, the same is turned down.

Effect of Written Submissions?

31. One of the question that would fall for consideration is, as to whether at all a written submission, which is being normally filed before the Ld. NCLT after the conclusion of the argument could at all be taken has to be the part of the pleading for the purposes of deciding the question of limitation which would be an aspect touching the merits of the case as agitated therein for the first time without the said plea of limitation being raised in the principle objection to the Application at the first given opportunity to object Application under Section 7 of the Code, because of the fact that, in the proceedings that was held before the Ld. Tribunal particularly in context of the objection filed by the Respondent. If we go through the entire document itself, there is not even a single averment even

a faint whisper made by the Respondent raising a plea of objection towards the limitation contending thereof that the proceedings were barred by limitation.

32. Under the NCLT Rules, 2016, which governs the proceedings before NCLT, has defined the ``pleadings'', under Rule 2 (19), which reads as under:-

> *``(19) **"pleadings"** means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;''*

The aforesaid definition of pleadings does not include within it the written submissions, which area being normally solicited by the parties to the proceedings to be filed to facilitate the Tribunal to deliver an order of Judgment. Thus, the written submissions filed by the parties to the proceedings, cannot be beyond the principal proceedings as included in the definition of pleadings, because in written submission, no new pleading having a vital bearing could be permitted to be raised, as any such introduction of plead by way of written submissions after inclusion of arguments would remain unrebutted, which would not permissible under procedural law and such new plea cannot be read on merits to decide a petition, as written submission under law are not the pleadings, which could be read for deciding a case on merits.

33. One of the question that, emerges herein to be considered is as to whether at all when the objection was filed for the first time on 10.12.2019, if the said

ground was not taken whether at all in a subsequent written submissions filed, which is not part of the pleading or in other words which is not a pleading in itself can for the first time a question of limitation be raised by way of written submissions, which would obviously be an unrebutted pleadings.

34. In the written submission, which was filed by the Respondent, another remarkable feature, which is required to be noticed by us is that, the pleadings which has been raised by them in Para V of the written submission, wherein they have submitted as under:

> *``V. Further the other part of the amount Rs.5.04 crores is brought in by M/s. Emgee Media Integrated Services Pvt. Ltd. towards allotment of shares which is clearly mentioned under the notes of the Ledger account of the Applicant, in due course of time (Pg No.171 of 241 Application filed by the Petitioner). This amount was brought in by Mr. Mandala Srinivas the director of the Petitioner Company with his intention of taking over the CD by increasing the shareholding in the CD, but backed out of the same decision at the later stages. It was Mr. Madala Srinivas who had suggested the CD to convert the unsecured loans to Equity Shares. The entire transaction was uploaded by the Company Secretary was uploaded by the Company Secretary of Applicant Company. However, Mr. Mandala Srinivas did not convert his part of unsecured loan to equity shares. The CD gave every chance to the Applicant to convert the unsecured loans to Equity Shares. The amount of Rs.5.04 Cr which is due to the Applicant is clearly accounted and the same is clear in the extract of summary of the unsecured loans mentioned in the XBRL Balance Sheet filing for the FY 2015-16 attached herewith.''*

35. By virtue of the excerpts as given above, the Respondent rather admit the extract of the summary of the unsecured loans as mentioned in the Balance Sheet

of the Corporate Debtor pertaining to the Financial Year 2015-2016, which establishes an admitted debt and default, as reflected from the books of accounts of the Respondents.

36. The findings, which has been recorded by the Ld. Tribunal were even without placing the same to the Appellant in the proceedings before the Ld. NCLT, as to how the aspect of limitation would be determined qua the implication of Section 18 to be read with Section 4 of Limitation Act, and still proceeded to observe that the said period has expired before the actual expiry of period of limitation to institute a proceedings.

37. In the instant case, the Ld. Tribunal has wrongfully construed that since the letter is of 09.06.2016, the period of limitation would expire on 08.06.2019. If it is computed from the perspective of Article 137 of the Limitation Act. But, the Ld. Tribunal has wrongly construed the implication of Section 4 of Limitation Act, and wrongly informed that, Section 4 is not come to the rescue of the Appellant that expiry of the period of limitation for the purposes of Section 18 of Limitation Act, herein has had to be read in consonance to the provisions contained under Section 4 of the Limitation Act and that will automatically remain extended by a further period of two days because of the intervening holiday. This aspect has not been correctly determined by the Tribunal, which holding the Application under Section 7 of the Code, to be barred by limitation, as there being delay of one day.

38. If that is taken into consideration, the filing of the proceedings on 10.06.2019 was well within time. For the reason being that, the acknowledgement of debt was also much prior to the expiry of the period of limitation.

39. The Ld. Counsel for the Appellant in support of his contentions to overcome the embargo of delay in preference of the proceedings under Section 7 of the Code had made reference to a Judgment as reported in ***2023 ibclaw.in 787 NCLAT in the matters of Vijay Kumar Singhania v. Bank of Baroda & Anr.***, and particularly, he has referred to Para 28 of the said Judgment which is extracted hereunder:

> *``28. Regulation 20 of the IBBI (Information Utilities) Regulations, 2017 as amended w.e.f 14.06.2022 i.e. Regulation 20(1A) requires Financial Creditor before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21. The submission is that after insertion of the above sub-regulation (1A) in Regulation 20, now no application can be filed under Sections 7 and 9 if it is not accompanied by record of default issued by Information utility as contemplated by Regulations 20 and 21. Regulation 20 although has been amended w.e.f 14.06.2022 but there is no amendment either in Section 7 of the IBC which empowers Financial Creditor to file record of the default recorded in the information utility* ***or such other record and default as may be specified*** *or in Rules 2016 or CIRP Regulations 2016. The statutory scheme, thus, contemplates furnishing record of default by the financial creditor as recorded with the information utility or such other record or evidence of default as may be specified. We have already noticed that the record of default for purposes of Section 7(3)(a) has been specified by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thus, record of default*

recorded with the information utility is not the only document which has to be furnished by financial creditor. Financial creditor is at liberty to submit such other record of default as may be specified which is a statutory provision contained in Section 7. Further Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 clearly refers to provide for record or evidence of default by financial creditor. We have also noticed that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which are Rules framed by the Central Government provides for filing of the application under Section 7 in Form-1 and under Form-1, Part-V under 'particulars of financial debt (documents, records and evidence of default)', it is not only the record of default with information utility but other record of default has also been contemplated. We have noticed that Regulations framed by the Board as per Section 240(1) has to be consistent with provisions of the Code and the Rules. If Regulation 20(1A) is to be read as Regulation now mandating the Financial Creditor to file only the record of default in the information utility, the said Regulation will not be consistent with provision of Section 7(3) of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which provides that what documents have to be filed by the Financial Creditor. Sub-rule (1) of Rule 4 provides for documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thus, CIRP Regulations 2016 are referred to in Rule 4 sub-rule (1), hence, the interpretation of Regulation 20(1A) as put by the Counsel for the Appellant shall also not be consistent with Rule 4. When Section 240 itself provides that regulations have to be consistent with provision of Code and Rules, no regulation can be implemented or enforced which is not in consonance with the Code and the Rules.''

40. What the Ld. Counsel for the Appellant has intended to argue under the strength of Para 28 as extracted above is that, if the Regulations specifically does not contemplates a process that is required for satisfying the aspect of delay owing to the facts that when delay has been involved in a particular case that cannot be

forced upon to be established which is not in consonance to the Code or which is not in consonance to the Rules framed thereunder.

41. It has laid down that the Scheme of the Code is frames only furnishing of the records of the default by the Financial Creditor as recorded with the information utility or such other records or evidence of default as may be specified.

42. The scrutiny of the evidence of default could itself to be taken as to be the basis to submit that such records were the records of the default, as it has been specified within a statutory provisions contained under Section 7 of the Code.

43. It has further prescribed that it's not only necessary that the records of the default with the information utility should be furnished, but, other records of the default has also to be taken into consideration, as contemplated under the rules and the Regulations framed thereunder by the Board and thus, the information utility and the said Regulations, if they are read in consistency with one another, the Information Memorandum as submitted in any form may be by Books of Accounts or by email communication that itself will suffice the purpose to establish that, there had been a default.

44. In that eventuality, the default herein becomes necessary to be determined on basis of entire records for the purposes of computation of limitation as it has been observed by the Ld.

Tribunal that the proceedings under Section 7 of the Code would be barred by limitation.

45. The Information Memorandum which was supplied by the Appellant that itself shows that once it was an admission of default, the Information Memorandum has to be construed liberally in the light of the provisions contained under Section 4 & 18 of the Limitation Act and thus, the determination of limitation has to be done in the light of the principles laid down by the Hon'ble Apex Court in the aforesaid Judgment.

46. Apart from it, the Ld. Counsel for the Appellant had also drawn our attention to the determination of an aspect of limitation in context of the provisions contained under Section 18 and Section 4 of the Limitation Act.

47. The Appellant, before the Ld. Tribunal has taken a specific plea about the respective dates of confirmation of debt, presentation of the Petition and the impact of the intervening holidays of Saturday and Sunday, by raising a specific plea of Section 4 of the Limitation Act, observing thereof that, those two dates in case if it is excluded, then filing of the Company Petition on 10.06.2019 would be well within the prescribed period of limitation even from the date of the acknowledgement and it will be falling within the period as prescribed under Article 137 of the Limitation Act.

48. Not even that, in the instant Company Appeal too, the Respondent has been absolutely derelicting in participating in the proceedings, because despite of notices having been issued to them, despite of the Respondent having been served with the notices by way of substitutive mode of service, when despite of the fact that proceedings of the Appeal has been directed to be proceeded ex parte, it will be deemed that, all the grounds and assertions made by the Appellant in the instant Company Appeal by putting a challenge to the impugned order of 22.05.2023, would be treated to be not denied by the Respondent and would be deemed to be admitted and be treated to be true and we have to accept the same as it is.

49. The aforesaid ratio has been laid down in the authorities as referred to hereinabove, which prescribes when the pleadings are not controverted, it be deemed to be admitted?

50. The reasons as given above, the impugned order is quashed. The Respondent admitted to Section 7 proceeding of CIRP. The Ld. Adjudicating Authority is directed to proceed further in accordance with Section 14 of the I & B Code, 2016.

51. As a consequence of admitting the Corporate Debtor to face the CIRP process under Section 7 of the Code, the Ld. Adjudicating Authority is directed

to impose the moratorium and proceed as such under all the terms and conditions given under Section 14 of the Code.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR/MS/AK