S.No.13

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
31-03-2023 AT **10:30 AM**

Company Petition IB/74/2021
u/s. 7 of IBC, 2016

IN THE MATTER OF:
Stressed Assets Stabilisation Fund **…Financial Creditor**

VS

Terrygold (India) Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

CP. IB 74/2021

Orders in company petition pronounced, recorded vide separate sheets. In the result, we found that the application has instituted is within the period of limitation. As such since the debt and its default are not in dispute. We have no hesitation in allowing this application. Accordingly, this petition is allowed and the Corporate Debtor is put under CIRP.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Swapna

NATIONAL COMPANY LAW TRIBUNAL

COURT No.1, HYDERABAD BENCH, HYDERABAD

CP (IB) No.74/7/HDB/2021

Under section 7 of I&B Code, 2016 read with Rule 4 of I & B (AAA) Rules, 2016.

In the matter between:
Stressed Assets Stabilisation Fund
A trust established by
Government of India
Represented by its Manager
3rd Floor, IDBI tower
WTC Complex, Cuffe Parade
Mumbai – 400 005.

.. **Petitioner**
Financial Creditor

VERSUS

M/s Terrygold (India) Ltd
U18100TG1991PLCO13466
4th Floor, 6-2-966/5/1. Hill Colony
Khairatabad, Hyderabad.

.. **Respondent**
Corporate Debtor

<u>Date of order :31.03.2023</u>

<u>Coram:</u>

Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)
and

Shri Charan Singh,
HON'BLE MEMBER (TECHNICAL)

Parties / counsels present:

For petitioner/ Financial Creditor: Shri. Deepak Bhattacharya, Sr. Counsel for Smt. PS Sujatha, Advocate for Applicant.

For respondent/ Corporate Debtor: Shri Naga Deepak, Advocate.

<u>ORDER</u>

1. The Company Petitioner, *namely*, Stressed Assets Stabilisation Fund, which was incorporated as a Trust established by Government of India vide Trust Deed dated 24.09.2004, and entrusted to acquire and resolve stressed assets transferred to it by the erstwhile IDBI, filed this

company petition under section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional against the Respondent/Corporate Debtor, alleging that the corporate debtor has defaulted in repayment of the financial debt of a sum of Rs. 646,46,29,947.00.

2.1 The Applicants states that the respondent/ Corporate Debtor, which was incorporated on 13.11.1991 as a limited Company, registered with the R o C, Hyderabad, engaged in the business of manufacture of printers, dyers, calenderers, bleachers, processors, designers, weavers, spinners, mercers, brokers, was declared as sick by BIFR under the Sick Industrial Companies Act, 1985. The cases before BIFR, AAIFR and Hon'ble High Court, ultimately culminated vide order dated

08.10.2014 ***upholding*** the order of BIFR declaring the Corporate Debtor as sick industrial company.

2.2 The lender IDBI, through SASF in the year 2001 has approached Debts Recovery Tribunal (DRT), Hyderabad in 1997, by filing O.A 562 of 2001 against the Corporate Debtor, herein for recovery of a sum of Rs. 22,77,31,456.00/- and the same was allowed vide order dated. 20.11.2003.

2.3 On 29.04.2004 a Recovery Certificate for recovery of an amount of Rs. 37,49,43,862.00/- has been issued in favour of the applicant. As the respondent corporate debtor failed in discharging the debt due and payable under the recovery certificate, the applicant/ Financial Creditor, on 26.04.2019 obtained an order of attachment of the properties of Corporate Debtor from the Recovery Officer, of DRT, Hyderabad, in RP 710/2003 in O.A.No.562/2001. Thereafter filed the present application for initiation of CIRP against the respondent/corporate debtor.

2.4 The applicant relied on the Information Utility (ANNEXURE-40), viz. National E- Governance Services Limited (NeSL) for the purpose of the date of default as 30.06.2000. In support of the plea that the debt claimed as due and payable by the respondent is well within the prescribed period of limitation the applicant relied on the following proposals of the respondent requesting for One Time Settlement (OTS) acknowledging its liability, *namely,* OTS letter dated 16.03.2007 of the Corporate Debtor (Exhibit 25), OTS letter dated 08.09.2007 of the Financial Creditor (Exhibit 26), letter dated 08.05.2008 of the Financial Creditor revoking the OTS (Exhibit 27), OTS letter dated 06.12.2011 of the Corporate Debtor (Exhibit 29), OTS letter dated 05.12.2012 of the Financial Creditor (Exhibit 30), OTS letter dated 21.11.2017 of the Corporate Debtor (Exhibit 34), and OTS letter dated 16.12.2017 of the Financial Creditor (Exhibit 35), OTS letter dated 11.09.2018 of the Corporate Debtor (Exhibit 36). Besides the Audited Balance Sheets of the respondent for the financial years 2010-2011 to 2017-18. Financial Creditor further states that the Corporate Debtor was declared as sick industrial company by the BIFR. The time consumed in the proceedings before, BIFR, AIFR and the Hon'ble High Court for winding up needs to be excluded while of calculating the period of limitation for filing the present company application for initiation of CIRP.

3.1 The Corporate debtor in its counter has pleaded that the petition under section 7 of the IB Code, 2016 is not signed by the authorised representative of the Financial Creditor. No document to show SASF is competent to file this petition: It is further contended that Foreign Currency Loan of Rs.90 lacs had been disbursed on 31.03.1997 (according to the Financial Creditor it was disbursed in May/ June 1995) by Industrial Development Bank of India (IDBI). The present petition is filed by Stressed Assets Stabilisation Fund (SASF) without any document to show that SASF is competent to file the present application at the behest of IDBI. The present petition filed on 06.01.2021 for a loan disbursed in 1995 and 1997, claiming date of default as 01.07.2000 is hopelessly barred by limitation. According to the respondent, the time consumed in the proceedings before the Hon'ble High Court for winding up and before AAIFR in appellate proceedings does not save the period of limitation for filing application for initiation of CIRP, since BIFR has permitted the Financial Creditor to legally enforce its debts. The DRT has issued Recovery Certificate during the pendency of reference before BIFR. The AAIFR vide order dated 08.102.014 has upheld the order of the BIFR for winding up of the Corporate Debtor. The period consumed in the above proceeding does not qualify for exclusion from limitation.

3.2 It is further stated that Section 22 of the Sick Industrial Companies Act (SICA) prohibits initiation of legal proceedings in respect of companies whose reference is pending before BIFR. It does provide for exclusion of such time. However, permission has once been granted by BIFR to enforce its debts against the Corporate Debtor. Exclusion is meant to save right of Financial Creditor who is prevented from enforcing claim under section 22 of the SICA. Hence the Financial Creditor cannot seek exclusion for the purpose of limitation. Audited Balance Sheets as relied on by the Financial Creditor does not save limitation. The amount claimed in the present application does not come within the purview of section 5(8) of the Code. Thus, there is no question of invoking jurisdiction of this Tribunal. Besides, Information Utility annexed to the application signifies date of default as 30.06.2000. It is further stated that during the Pendency of proceedings before BIFR, the Financial Creditor has preferred OA No.562 of 2001 before the DRT and an Execution Petition against the said order is pending before the DRT.

4.1 The Applicant filed Rejoinder contending that, the authority of the deponent who filed the present petition it is submitted by the Financial Creditor that Trust Deed dated 24.09.2004 (Exhibit 1) makes a provision for appointment of an Executive

Trustee to administer and mange affairs of the Trust of the Financial Creditor and the Government of India has appointed Shri Alok Agarwal as Executive Trustee, who has delegated power to Shri Sandeep Kumar Saini (vide Exhibit 2, page 37). Thus, the application is filed by the duly authorised officer of the Financial Creditor.

4.2 The contention of the Corporate Debtor that the petition is barred by limitation by reiterating what is submitted in the Company Petition, it is stated that BIFR has referred the matter to the Hon'ble High Court for winding up of the Corporate Debtor, which is still pending before the Hon'ble High Court.(as on the date of filing rejoinder) . As regards non-execution of Recovery Certificate, the Financial Creditor submitted that IDBI was allowed to continue the proceedings in OA before DRT, but it shall **not** be executed without the order of BIFR. Although the OA was allowed and Recovery Certificate was issued by the DRT, the same could not be executed because of the above restriction.

4.3 As regards 'two dates of default' as pointed out by the Corporate Debtor, it is submitted by the Financial Creditor that the Corporate Debtor made defaults since 1997. The Corporate Debtor was granted certain re-scheduling of outstanding Foreign Currency Loan and deferment of payments of interest and other dues during 1998. However, the Corporate Debtor failed to discharge its obligations. Date of default mentioned in the present Company Petition is 30.06.2000, which is based on Loan Recall Notice dated 21.07.2000, wherein due amount was calculated upto 30.06.2000. The Corporate Debtor could not produce evidence qua purported 'two dates of default'.

4.4 In support of its contention that Audited Balance Sheets amounts to acknowledgement of liability by the Corporate Debtor, the Financial Creditor has relied on judgment of the Hon'ble Supreme Court dated 15.04.2021 in Asset Reconstruction Company (India) Limited Vs. Bhisal Jaiswal & Another, Civil Appeal No.323 of 2021, wherein it is held that Balance Sheet constitute acknowledgment of debt for the purpose of section 18 of the Limitation Act. Therefore, acknowledgment of liability contained in any of the balance sheets extended limitation and a separate letter or document addressed to the creditor is not necessary.

5. Both sides filed written submissions reiterating their oral submissions and by relying on the case law.

6. Though the Corporate Debtor resisted the Application raising certain defences in addition to the plea of limitation, during the course of submissions the Ld. Counsel for the corporate debtor Shri. Naga Deepak, fairly conceded that he is opposing the present application on the ground of limitation only, therefore, he would be limiting his submissions only to the plea of limitation and accordingly both sides have made oral submissions and also filed written submissions.

7. Therefore, since contest has been limited to the plea of limitation, the only point that arises for our consideration is,

Whether the debt under the present company petition is barred by limitation?

8. We have heard the Ld. Senior Counsel Shri Deepak Bhattacharjee for the Petitioner and Ld. Counsel Shri Naga Deepak for the Respondent, perused the records and case law.

Point.

Whether the debt under the present company petition is barred by limitation?

9. It is trite to say that whether or not the opposite party raises the plea of limitation, it is incumbent on the part of the Applicant/Suitor to establish that the claim as made is not barred by limitation and the burden lies on the Applicant to establish that the claim as made is not barred by limitation.

10. Learned Senior Counsel for the Financial Creditor in support of the plea that the financial debt due under the present application is well within the prescribed period of *limitation,* firstly, contends that, vide its several One Time Settlement (OTS) Proposals made before the expiry of the period of

limitation, between 2007 and 2018 the Corporate Debtor has "acknowledged the debt" from time to time, as such the period of limitation for enforcing the debt due and payable under the Recovery certificate has extended by 3 years on every occasion when the said debt was acknowledged, as such the claim as made is well within the period of limitation. *Nextly*, Learned Senior Counsel would contended that even assuming that acknowledgments that were made by the Corporate Debtor were after expiry period of limitation, yet there being a promise in writing made by the Corporate Debtor to pay the time barred debt, the subject claim is well in the period of limitation, in terms of Section 25(3) of Indian Contract Act. *Lastly,* Learned Senior Counsel would contended that the time consumed in the proceedings before, BIFR, AIFR and the

Hon'ble High Court needs to be excluded while of calculating the period of limitation for filing the present company application for initiation of CIRP.

11. We shall now proceed to examine, the first plea of acknowledgement of debt by the corporate debtor from time to time as above, and for the purpose of our discussion on this point, we usefully refer to the following dates, documents and the events.

- 30.06.2000 is the date of *default* and 22.01.2021 is the date of filing of this Application.
- The applicant, in the year 2001 filed O.A 562 of 2001 against the Corporate Debtor, herein for recovery of a sum of Rs. 22,77,31,456.00/- before Debts Recovery Tribunal, (DRT) at Hyderabad, and the same was allowed vide order dated. 20.11.2003.
- On 29.04.2004 a Recovery Certificate for recovery of an amount of Rs. 37,49,43,862.00/- from the Respondents/Corporate Debtor has been issued by the DRT.
- On 16.03.2007 the Corporate Debtor has submitted request to the applicant for One Time Settlement (OTS) of the outstanding dues.

- On 08.09.2007 the Financial Creditor has sanctioned OTS subject to the terms and conditions mentioned therein.
- On 08.05.2008 due to non-compliance of the terms of OTS the above OTS has been revoked.
- The balance sheet of the corporate debtor for the financial year 2010-2011
- On 06.12.2011 the Corporate Debtor once again submitted letter of OTS however, the same has been rejected on 05.02.2012.
- The balance sheet of the corporate debtor for the financial year 2011-2012
- The balance sheet of the corporate debtor for the financial year 2012-2013.
- The balance sheet of the corporate debtor for the financial year 2013-2014.
- The balance sheet of the corporate debtor for the financial year 2014-2015
- The balance sheet of the corporate debtor for the financial year 2015-2016
- Again on 21.11.2017 the Corporate Debtor submitted a proposal for one-time settlement for outstanding dues.
- 16.12.2017, the Financial Creditor rejected the same.
- The balance sheet of the corporate debtor for the financial year 2016-2017
- On 11.09.2018, once again the Corporate Debtor submitted one more request for OTS.
- 20.12.2018 the Financial Creditor has rejected the same.

- The balance sheet of the corporate debtor for the financial year 2017-2018

BIFR, AIFR & HIGH COURT PROCEEDINGS

- The Corporate Debtor filed an application under section 3(1)(0) of before the Board for Industrial and Financial construction (BIFR) under of SICK Industrial Companies (Special Provisions) Act 1985, vide case No. 210/2000, and the BIFR vide its order dated 30.11.2013 dismissed the same.
- As against the said order the Corporate Debtor approached AIFR Vide Appeal No.78/2013, and the Appeal was dismissed on 08.10.2014.
- The Corporate Debtor filed against the dismissal order of AIFR Writ Petition No.11230/2015 before High Court of Telangana and the same was dismissed on 17/04/2015.

12. We shall now refer to Section 18 in The Limitation Act, 1963 which is as below:

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment 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 acknowledgment 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 acknowledgment 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 a 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.

13. According to the Learned Senior Counsel for the Financial Creditor, the OTS requests made by the Corporate Debt under the letters referred above, besides the entry regarding the subject liability in the balance sheet of the corporate debtor is nothing but 'acknowledgement of debt' from time and all these 'acknowledgements' having been made before the expiration of the prescribed period of limitation for filing an application under Section 7 of IB Code, the present application is well within the period of limitation

14. In support of the plea that OTS requests made by the Corporate Debt under the letters referred above amounts to

acknowledgement of debt, Ld. Sr. Counsel relied on the ruling in , *Dena Bank Vs Shivakumar Reddy*, wherein Hon'ble Supreme Court of India, held that;

> **"**. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract <u>Section 18</u> of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.**"**

> "Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

15. Ld. Sr. Counsel further contends that once an acknowledgement of debt is established, the period of limitation stands extended by three years from the date of each of the acknowledgements made and in that view of the matter,

the acknowledgments of debt made in this case by the Corporate Debtor, besides the entry regarding the subject liability in the balance sheet of the corporate debtor have resulted in extending the period of limitation, beyond 22.01.2021 and the present application having been filed on 22.01.2021 is within the prescribed period of limitation.

16. However, the Learned Counsel for the Corporate Debtor would contend that the request for OTS made under the afore said letters will not constitute acknowledgment of debt in terms Section 18 of Limitation Act, as the same were not made before the expiration of the limitation period, as such no reliance can be place on the so called OTS request and the company petition therefore is liable to be dismissed as barred by limitation.

17. In view of the ruling of Hon'ble Supreme Court, *in re,* Dena Bank, Supra, there cannot be any doubt that, an application requesting for OTS, and the entries in the Balance Sheets &

Financial Statements of the Corporate Debtor amounts to acknowledgement of debt, when made while the debt is alive within the meaning of Section 18 of Limitation Act. However, since the corporate debtor herein, contends that the acknowledgments relied on by the applicant were not made before the *expiration* of the prescribed period of limitation as such no reliance can be placed on these acknowledgments, we wish to address the same on the basis of the factual *matrix* of this case.

18. In Para 26 of the preliminary counter filed by the Corporate Debtor, the Corporate Debtor has contended as below.

"The Financial Creditor herein has already approached DRT vide O.A.No. 562/2001 and an Execution Petition is pending before Hon'ble DRT, in the light of the same the present application is liable to be dismissed."

That a part the Financial Creditor filed a copy of the order of attachment of the properties of Corporate Debtor Dt.26.04.2019 passed by Recovery Officer, of DRT, Hyderabad, in RP 710/2003 in O.A.No.562/2001.

19. Thus, from the above it is quite clear that the Recovery Certificate dt.29.04.2004 has already been put under execution as such plea that the debt due and payable under the said recovery certificate is barred by limitation *shall fail invariably*.

20. Be that as it may, admittedly the corporate debtor before the expiry of three years period from the date of the issuance of recover certificate, i.e. on 16.03.2007 requested for OTS in respect of the amount payable under the recovery certificate dated 29.04.2004, and the said request has been accepted by

the financial creditor vide OTS sanction letter dated 08.09.2007. However, due to non-compliance of the terms of OTS the above OTS has been revoked on 08.05.2008. The audited balance sheets of the Corporate Debtor for the financial years 2010-2011,2011-2012,2012-2013,2013-2014,2014-2015,2015- 2016, 2016-2017 and 2017-2018 under the head “long term borrows,” disclose the subject financial debt. However, the Learned Counsel for Corporate Debtor contends that the entry in balance sheet of the Corporate Debtor for the year 2017- 2018, under the head ‘long term borrowings’ has no reference to the applicant herein, as such no reliance can be placed on the said entry. We do not find any force in the said submission in the light of the certificate of the Auditor dated 16.11.2022, filed by the applicant giving the breakup of the said amount and disclosing the amount that the Corporate Debtor had borrowed from IDBI Bank and others, which certificate is not disputed by the corporate debtor by placing any record contradicting the entries in said certificate.

21. Hon'ble Supreme Court of India in Dena Bank, supra, held that,

> " Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In *Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar*, this Court had no occasion to consider any proposal for one-time settlement**.**
>
> **"Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.** (Emphasis is ours)

22. Thus, the OTS request letter dated 16.03.2007 which has been accepted on 8.9.2007 and the OTS request letters dated 21.11.2017 and 11.09.2018 which were rejected by the

financial creditor on 05.12.2012 and 20.12.2018, besides the entries in balance sheets of the corporate debtor for the financial years 2010-2011 to 2017-2018 disclosing the subject debt, undoubtedly constitute acknowledgement of liability by the corporate debtor before expiry of limitation, as such the three years period of limitation commencing from the date of issuance of Recovery Certificate for initiation of action under section 7 of I&B Code, got extended by three years from the date of each of the above OTS requests and the annual balance sheets of the corporate debtor, and thus, kept the subject claim live beyond 22,01,2021. The present application having been filed on 22.01.2021 therefore, is within the prescribed period of limitation.

23. Now coming to the next contention of the Financial Creditor that pendency of proceedings before BIFR and AIFR, by virtue of section 22(5) of SICA, saves limitation, and thus, make the claim well within the period of limitation, it may be stated that the order of AIFR dated 08.10.2013 has been challenged by the Corporate Debtor, vide Writ Petition No.11230/2015 before the High Court of Telangana are still pending, however, the High Court did not stay the operation of the impugned order dated 08.10.2014, despite the prayer for stay.

24. Here it is necessary to refer to Section 4 (b) of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003

> 4(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated: Provided that a company:—
> (i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;
>
> (ii) which had become a sick industrial company as defined in clause (46AA) of section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier, and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956):
>
> Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand abated under this clause:
>
> Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in PART VIA of that Act;

The Repeal Act has come into force effective from 01.12.2016

25. As per Article 137 of the Limitation Act, which is as below:

> "Any other application for Three years when the right to apply accrues. Which no period of limitation is provided elsewhere in this division."

26. Therefore, order of AIFR dated 08.10.2014 though challenged before the Hon'ble High Court of Telangana, since the Hon'ble High Court had not stayed or suspended the said order, the time spent in pursuing the matter before AIFR up to 08.10.2014, needs to be excluded for the purpose of calculating the limitation, for enforcing the Recovery Certificate, in terms of Section 22(5) of SICA. So much so, the right to enforce the Recovery Certificate having accrued to the Applicant only on 08.10.2014, three years period of limitation, is available to the Applicant in terms of Section 137 of the Limitation Act.

27. As already observed, the Corporate Debtor in its balance sheets for the years 2014-15, 2015-16, 2016-17 & 2017-18 had acknowledged the liability. That apart, the Corporate Debtor on 21.11.2017 and 11.09.2018 made request for OTS, which

however was not accepted by the Financial Creditor. Post filing of the WP No. 11230/2015 by the Corporate Debtor, the Financial Creditor on 26.04.2019 obtained an order of attachment of the properties of the Corporate Debtor from the Recovery Officer, DRT-Hyderabad vide RP 710/2003 in OA No. 562/2021. Therefore, the present application having been filed on 22.01.2021 is within the period of limitation.

28. That apart, in terms of Section 22 (5) of SICA, supra, in computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded. As already stated the order of AIFR dated 08.10.2014 has not been stayed. Therefore, for the period up to 08.10.014 shall be excluded for the purpose of calculating limitation, if any, in this case. The Corporate Debtor once again on 21.11.2017 and 11.09.2018 made request for one-time settlement of outstanding dues, thereby acknowledged the outstanding liability. Upon

dismissal of the writ petition *supra*, the financial creditor on 26.04.2019 obtained an order of attachment of the properties of Corporate Debtor from the Recovery Officer, of DRT, Hyderabad, in RP 710/2003 in O.A.No.562/2001.

The Point is answered accordingly.

29. In the light of our categorical finding on limitation plea, we are of the view that discussion on the 3rd plea of the financial creditor is only academic. Be that as it may, according to the Learned Senior Counsel, that even assuming that the acknowledgements of debt made by the Corporate Debtor were not made when the debt was alive, yet the OTS proposal admittedly made by the Corporate Debtor on 11.09.2018 amounts to promise to pay a time-barred debt, within the meaning of Section 25(3) of the Indian Contract Act, hence the same would extend the limitation by three years effective from 11.09.2018 and the present application since filed on 22.01.2021 is within the Period of Limitation, in view of the suspension of the

provisions of the Limitation Act by virtue of the Judgement of the Hon'ble Supreme Court of India in, suo moto, case No.323/2021.

30. However, Learned Counsel for the respondent Corporate Debtor would contend that unless there is a "promise" as defined under Section 2(b) of Indian Contract Act on the part of the Corporate Debtor herein to pay the time-barred debt, Section 25 Sub clause 3 is not applicable and the OTS request of the respondent since remained as an offer, due to non acceptance, no reliance can be placed on Section 25 Clause 3 of the Indian Contract Act.

31. In support of his contentions, Learned Senior Counsel for the Corporate Debtor relied on the following rulings

1) ***Union of India (UOI) v/s Bikaner Textiles and others, Hon'ble High Court of Rajasthan …. MANU/RH/0062/1961***

2) ***Soore Venkatappaya v/s Yalavarthi Venkatappaaya and others …. MANU/TN/0203/1945***

32. Learned Senior Learned Counsel for the Financial Creditor invited our attention to Section 9 of the Indian Contract Act and contended that for the purpose of Section 20 Sub clause 3 of the Indian Contract Act , the definition of "promise" envisaged under Section 2(b) of Indian Contract Act, cannot be applied as it has been held by the Hon'ble Supreme Court of India, that request for OTS amounts to acknowledgement of debt having the effect of extending the limitation by three years from the date of acknowledgement.

33. Learned Senior Counsel in support of his submissions placed relevance of the ruling of the Hon'ble Supreme Court of India, in the matter between " ABG Shipyard v/s Central Board of Indirect Taxes and Customs in Civil Appeal No.7667 of 2021."

34. Having given our anxious consideration to the submissions of both sides, we are of the opinion that the "promise" contemplated under Section 25 Sub clause 3 of the Indian Contract Act, cannot be equated with the promise as defined

under Sub clause(b) of Indian Contract Act, in as much as the context in which the word "promise" is used in Section 25(b) of Indian Contract Act, is for the purpose of limitation and not for creation of a contract. In fact, "promise" under Section 25 Sub clause 3 is nothing but an assurance or confirmation by the debtor that he would pay the debt even though the debt is barred by limitation.

35. We therefore are not inclined to accept the submission of the Learned Counsel for the Corporate Debtor that there is no "promise" on the part of the Corporate Debtor to pay the purportedly time barred debt.

36. Indisputably, existence of financial debt of a sum over Rs. One crore due and payable by the respondent corporate debtor to the applicant is not in dispute, the plea of the corporate debtor that the subject debt is barred by limitation since rejected and the present application is found to be in order, we unhesitatingly admit this Company Petition and order initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium for the purposes

referred to in Section 14 of the Code, with effective from the date of this order with the following directions: -

(A) The Corporate Debtor, Terry Gold (India) Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(B) The Bench hereby prohibits 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; transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That 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 Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) Accordingly, this Tribunal appoints Shri Ramakrishnan Sadasivan having registration no. IBBI/IPA-001/IP-P00108/2017-18/10215, New No.28, Old No. 22, Menod Street, Purasawalkam, Chennai- 600007 E-Mail: sadasivanr@gmail.com, mob: 9444455982 as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. Proposed IRP filed Form-B issued by the Institute of Insolvency Professional. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with and further registry is directed to inform the order of admission of CIRP against the corporate debtor to the concerned parties.

(I) The IRP shall perform all is functions as contemplated, inter-alia, by Sections 17,18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation, under Section 19 of IBC, 2016 to extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to the Adjudicating Authority with a prayer for passing an appropriate order.

(J) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per rules.

(K) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.

Accordingly, this application is admitted.

Sd/-	Sd/-
(Charan Singh) Member (Technical)	(Dr.Venkata Ramakrishna Badarinath Nandula) Member (Judicial)

Binnu