IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/54/KOB/2024
(Under Section 9 of the IBC, 2016)

In the matter of: -
M/s. Handicrafts Development Corporation of Kerala Ltd.

Memo of parties:
M/s. Shree Gayatri Trust, registered office at 1076, Dr. E. Moses Road, Worli, Mumbai- 400 018. Through its Trustees, Rajendra Somani, Surendra Somani, and Susheel Somani.

...Petitioner

-Vs.-

M/s. Handicrafts Development Corporation of Kerala Ltd, registered office at P. B. No. 171, Puthen Chanthai, Trivandrum, Kerala, India, 695 001 Email: hdckerala@gmail.com.

... Corporate Debtor

Order delivered on: 01.05.2025

Coram:

Smt. Madhu Sinha.	Shri. Vinay Goel.
Hon'ble Member (Technical)	**Hon'ble Member (Judicial)**

Appearances:

For the Petitioner	: Mr. Akhil Suresh, Advocate.
For the Corporate Debtor	: M/s. B.S. Krishnan Associates.

O R D E R

Per Coram

1. This instant application is filed by M/s. Shree Gayatri Trust (hereinafter referred to as 'Petitioner'), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, 'the Code'), with a prayer to initiate the Corporate Insolvency Resolution Process in respect of M/s. Handicrafts Development Corporation of Kerala Ltd. (hereinafter referred to as 'Corporate Debtor').

2. The present petition has been filed on 21.10.2024 before this Adjudicating Authority by the Trustees of M/s. Shree Gayatri Trust. The total amount of debt is Rs. 3,81,87,329/- (Rupees Three Crores Eighty-Seven Thousand Three Hundred Twenty-Nine Only) along with interest @ 6% per annum, Rs. 6,47,80,823.21/- (Six Crore Forty-Seven Lakh Eighty Thousand Eight Hundred Twenty-Three Rupees and Twenty-One Paisa only). The Demand Notice sent by the Petitioner to the Corporate Debtor is annexed to the Petition as Annexure- A-4(Colly).

3. **SUBMISSIONS MADE BY THE PETITIONER**

   a) The Petitioner, M/s Shree Gayatri Trust, is a private trust based in Mumbai. The Petitioner initially filed Suit No. 208/251 of 2000 under the provisions of the T.E. & R. Act before the Small Causes Court in Mumbai, seeking the eviction of the Corporate Debtor and the recovery of mesne profits. The suit arose from the Corporate Debtor's continued occupation of the premises without payment of the due rent, prompting the Petitioner to seek both eviction and compensation for wrongful occupation. After hearing both parties, the Small Causes Court passed a judgment and order, along with a decree, on 6th December 2013 in favour of the Petitioner. This decree was subsequently challenged by the Corporate Debtor (who had, by then, become the Judgment Debtor) by filing Appeal No. 744/2004 before the Small Causes Court itself. However, the appeal was dismissed, thereby upholding the original decree in favour of the Petitioner.

b) Subsequently, the Petitioner filed Miscellaneous Notice No. 335/2004 in T.E. & R. Suit No. 208/251 before the Small Causes Court, seeking a computation of the mesne profits owed by the Corporate Debtor for its continued occupation of the suit premises. After examining the matter, the Small Causes Court, by its decree dated 06.12.2013, directed the Corporate Debtor to pay mesne profits to the Petitioner for the period from the date of the Original Suit (20.10.2000) until the eventual delivery of possession of the premises (21.06.2006). The mesne profits were calculated at the rate of Rs. 145/- per square foot per month for the 3,868 square feet of the suit premises, amounting to a total of Rs. 3,81,87,329/-. In addition, the Court awarded interest on this amount at the rate of 6% per annum, after adjusting for certain deposits and payments made by the Corporate Debtor during the relevant period.

c) It is stated that the key directives from the order dated 06.12.2013 were that the defendant (Corporate Debtor) was obligated to pay the aforementioned mesne profits along with interest, subject to the deduction of a deposit of Rs. 57,816/- and certain payments made by the defendant towards rent. Furthermore, the plaintiff (Petitioner) was required to pay court fees on the mesne profits awarded, and both parties were instructed to bear their own legal costs.

d) It is stated that, upon calculation of the amounts owed by the Corporate Debtor after adjusting for the payments made, the total outstanding debt stood at Rs. 6,47,80,823.21/-, which included mesne profits amounting to Rs. 3,81,29,512.99/- and interest calculated at

6% per annum, amounting to Rs. 2,66,51,310.22/-. The debt continued to accrue further interest at the rate of 6% per annum until the full realization of the decretal amount.

e) Subsequent to these calculations, the Corporate Debtor attempted to execute the decree but was unsuccessful in recovering the dues owed. As a result, the Petitioner initiated Darkhast Application No. 52/2015 for the enforcement of the decree. On 23.11.2022, the Civil Judge, Senior Division, Thane, issued an order in this Darkhast Application, directing the issuance of warrants for the attachment of the Corporate Debtor's immovable property located at Plot No. 8, Sector 30A, Vashi, Navi Mumbai, District Thane. Warrants for the attachment of both movable and immovable properties were accordingly issued. In furtherance of the decree's execution, the Petitioner is awaiting the disposal of Darkhast Application No. 45/2016, through which Shree Gayatri Trust has initiated steps to finalize the public auction of the attached properties. However, complications have arisen as the State of Kerala has challenged the attachment of these properties before the Appellate Bench of the Additional District Judge at Belapur, on the ground that the Corporate Debtor does not hold legal title to the attached properties. As a result, the matter remains sub judice before the Court.

f) It is stated that the operational debt remains unpaid, exceeding Rs. 1 crore. The Corporate Debtor has defaulted in its obligation to pay the mesne profits and interest as decreed by the court. It has become evident that the Corporate Debtor is unable to make payments of the requisite amounts. Consequently, the Petitioner now finds it appropriate to initiate the Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The outstanding dues qualify as operational debt under Section 5(21) of the IBC, which defines operational debt as a claim in respect of goods or services, including employment, or a debt arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority. As such, the Petitioner is eligible to file the present application under Section 9 of the IBC, seeking initiation of CIRP against the Corporate Debtor to recover the unpaid operational debt.

4. The reply affidavit dated 05.02.2025 furnished by the Corporate Debtor states as follows: -

   a) The default alleged by the Petitioner pertains to the decree dated 06.12.2013 in Miscellaneous Petition No. 335/04 before the Court of Small Causes, Mumbai. In the present company petition, the default is claimed to have occurred from the date of the aforesaid judgment/decree, i.e., 06.12.2013, and the petition has been filed on 08.10.2024. That being the case, even based on the averments of the Petitioner, the limitation period would begin to run from the date of the decree, i.e., 06.12.2013. Accordingly, the present company petition is time-barred, as it has been filed beyond the three years prescribed by the statute of limitations.

   b) It is stated that the Corporate Debtor had taken a 3,868 sq. ft. area for the Kairali showroom at Nariman Point, Mumbai, in the year 1969, in a building owned by M/s. Rajendra Somani & Others, based on an agreement entered into with them. Upon the expiry of the agreement, the Corporate Debtor continued to occupy the premises by virtue of its rights as a deemed tenant. Meanwhile, the law relating to lease and rent underwent changes in the State of Maharashtra, pursuant to which the respondent corporation sought to assert its rights of deemed tenancy.

c) It is further stated that M/s. Rajendra Somani & Others filed a suit on 01.10.2000 before the Court of Small Causes, Mumbai, seeking the eviction of the Corporate Debtor, which was registered as Suit No. 208/251/2000. On 22.04.2004, the Court of Small Causes, Mumbai, allowed the suit and also directed the Corporate Debtor to pay mesne profits to the plaintiffs from the date of the suit until they received possession of the suit premises. However, the quantum of mesne profits was not fixed by the Court at that time.

d) It is further stated that, against the decree and judgment dated 22.04.2004 in Suit No. 208/251/2000, the Corporate Debtor filed Appeal No. 744/2004 before the Appellate Bench. The said appeal was also dismissed. A further appeal, numbered Appeal No. 3756/2006, was filed by the Corporate Debtor before the Hon'ble High Court of Bombay, and the same was dismissed on 07.06.2006. Consequent to the above, M/s. Rajendra Somani & Others took possession of the premises in question with the assistance of the Court Bailiff on 21.06.2006. The Corporate Debtor also filed SLP(C) No. 15833 of 2006 before the Hon'ble Supreme Court of India, challenging the order of the High Court; however, the same was dismissed on 29.09.2006. Meanwhile, M/s. Rajendra Somani & Others had preferred Miscellaneous Petition No. 335/2004 in Suit No. 208/251/2000 for the determination of the quantum of mesne profits. In the said petition, they claimed mesne profits at the rate of Rs. 160/- per sq. ft. for the 3,868 sq. ft. area occupied by the Corporate Debtor from the date of the suit, i.e., 01.10.2000, until they received vacant possession on 21.06.2006.

e) It is stated that the Small Causes Court at Mumbai, by judgment/decree dated 06.12.2013, ordered the payment of mesne profits amounting to Rs. 3.81 crores (at the rate of Rs. 145/- per sq. ft., as opposed to the Rs. 160/- claimed by the plaintiffs), along with 6% interest (for the period from 01.10.2000 to 21.06.2006). The Corporation filed an appeal against the above order before the Small Causes Court at Mumbai, registered as Appeal No. 113/2014. While the appeal was pending, M/s. Rajendra Somani & Others approached the Civil Court at Thane via Application No. 52/2015 (Special Darkhast) and obtained an attachment warrant in execution of the decree/judgment dated 06.12.2013. In furtherance of the execution of the warrant, M/s. Rajendra Somani & Others moved against the new sales unit of the Corporate Debtor, located at Kerala House, Navi Mumbai. It is further stated that, in the meantime, Appeal No. 113/2014 filed by the Corporate Debtor before the Small Causes Court was dismissed on 07.01.2017. Challenging the dismissal, the Corporate Debtor filed a writ petition before the Hon'ble High Court of Bombay, numbered as Writ Petition No. 4953/2017. The Hon'ble High Court of Bombay issued notice to the Corporate Debtor by order dated 05.02.2024, and the writ petition is still pending.

f) It is stated that the default alleged in this petition pertains to the decree dated 06.12.2013 in Miscellaneous Petition No. 335/04 before the Court of Small Causes, Mumbai. As is evident from the above narration of facts, the judgment/decree dated 06.12.2013 is under challenge before the Hon'ble High Court of Bombay in Writ Petition No. 4953/2017, which has been pending since 2017.

g) It is stated that the mere pendency of the above Writ Petition indicates that the award is in dispute, thereby rendering the present case one of a pre-existing dispute. As per the Insolvency and Bankruptcy Code, 2016, insolvency resolution can only be initiated in clear cases where there is no dispute between the parties. The Hon'ble Supreme Court has consistently held that the Code cannot be used in terrorem to extract any sum of money on a dispute that is pending. Therefore, it is stated that the present petition is liable to be rejected in terms of Section 9(5)(ii)(d) of the Code.

h) It is stated that, in the proceedings for the execution of the judgment/decree dated 06.12.2013, a notice of attachment was issued by the Executing Court (the Civil Court at Thane) on 27.01.2023. As per the notice, the Corporate Debtor was required to remit the number of mesne profits as per the judgment of the Small Causes Court dated 06.12.2013, on or before 07.02.2023. Since the Civil Court, Thane, did not have jurisdiction over the attachment of immovable properties, the case was transferred to the Civil Court, Belapur (renumbered as Special Darkhast 45/2023). The aforesaid execution petition is also pending before the Civil Court, Belapur. It is further stated that the Government of Kerala filed a petition before the Civil Court, Belapur, seeking the lifting of the above-mentioned attachment, as the property sought to be attached belonged to the Government of Kerala. This application was rejected by the Civil Court, Belapur. The challenge to the aforesaid order of the Civil Court, Belapur, by the Government of Kerala is also pending.

i) It is stated that the Petitioner has already initiated execution proceedings in furtherance of the decree dated 06.12.2013. The execution proceedings are pending before the execution court, and the Petitioner has approached this Tribunal under Section 9 of the Code. The Hon'ble Supreme Court has consistently held that the Code is not intended as a mechanism for the realization of debt, and the creditor cannot use the Code as a substitute for debt enforcement proceedings. In the present case, the Petitioner, having initiated the execution, cannot file the present petition under Section 9 of the Code. It is further stated that the Corporate Debtor is not insolvent and is capable of repaying the debt.

j) It is further stated that the demand notice issued in the present case is not in the proper form and does not contain the relevant particulars. The application under Section 9 is also not in the proper form. It is neither properly verified nor authenticated. Additionally, it is not accompanied by the documents required under Sub-section (3) of Section 9. The application is also not accompanied by a certificate from the financial institutions as required by Section 9(3)(c) of the IBC, 2016. Therefore, the application under Section 9 is incomplete and is liable to be rejected.

5. The rejoinder dated 05.02.2025 furnished by the Corporate Debtor states as follows: -

a) The decree in question was passed on 06.12.2013. Insofar as civil decrees are concerned, the limitation period for execution under Article 136 of the Limitation Act, 1963, is twelve (12) years from the date the decree becomes enforceable. It is, therefore, legally untenable to suggest that any claim arising from the decree is time-barred. The Petitioner's recourse to the Insolvency and Bankruptcy Code, 2016 ("IBC") does not extinguish or curtail those 12 years. In *Dena Bank v. C. Shivakumar Reddy* in Civil Appeal No. 1650 of 2020, the Hon’ble Supreme Court reiterated that a decree may form the basis for the initiation of proceedings under the IBC, subject to proof of default within the meaning of the Code.

b) The Petitioner states that the existence of a decree establishes the liability conclusively, unless set aside or stayed by a competent court. There is no legal impediment to proceeding under the IBC to realize such a liability, particularly when the default remains unsatisfied. The Petitioner's right under the IBC is not foreclosed simply because civil execution remedies exist. Nor does the availability of an execution mechanism under the Code of Civil Procedure, 1908 ("CPC") preclude the Petitioner from seeking a remedy under Section 9 of the IBC. It is well settled that the IBC is a separate, time-bound mechanism for resolution or liquidation in cases of default, and does not merely serve as a substitute for the execution of decrees.

c) The Petitioner further states that there is no order of stay, injunction, or any other restraining order from the Hon'ble High Court in WP(C) No. 4953/2017 regarding the execution or enforcement of the decree. The mere pendency of proceedings, unaccompanied by any stay on the decree, does not amount to a live dispute. In *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, it was held that the dispute must be "substantial" and cannot be "spurious, hypothetical, or illusory." In this case, the Respondent's liability has been adjudicated and remains undisputed, as there is no interim relief modifying or negating the operative decree.

d) The Petitioner reiterates that the decree dated 06.12.2013 has attained finality in the sense that it is enforceable. The existence of an unresolved writ petition without any stay cannot, in law, be equated with a pre-existing dispute under Section 8(2)(a) of the IBC. The Supreme Court in *Innovative Industries Ltd. v. ICICI Bank* (2018)

1 SCC 407 clarified that once a debt becomes due and payable, the corporate debtor must demonstrate a bona fide dispute that truly exists before the receipt of the demand notice. The petition under the IBC cannot be rejected merely because the corporate debtor has initiated or maintains legal proceedings in another forum. The burden is on the Respondent to show that a genuine dispute regarding liability existed before the receipt of the Section 8 notice. In this case, the Respondent has not shown any such genuine dispute, aside from referencing a Writ Petition with no operative stay.

e) The Petitioner categorically denies that any pre-existing dispute, as understood in law, exists between the parties. The decree for mesne profits granted by the competent civil court is conclusive on the question of liability for the period in dispute. The Respondent's continued failure to pay the decretal amount or secure a stay order from the appellate court confirms that there is no live controversy requiring adjudication. In *K. Kishan v. Vijay Nirman Company Pvt. Ltd.*, the Hon'ble Supreme Court emphasized that a dispute must exist before the issuance of the Section 8 notice and must be raised in a manner recognized under the Code. A post-decree writ petition that merely challenges the quantum or seeks to set aside the decree, but remains un-stayed, does not oust the jurisdiction of this Tribunal to admit the petition if the default is otherwise established.

f) It is stated that the Respondent's attempt to characterize the subject matter as purely a landlord-tenant dispute, outside the purview of operational debt, is misplaced. The Petitioner has proceeded on the clear position that the liability crystallized by a court decree arises from a commercial arrangement, where the premises were used by the Corporate Debtor in furtherance of its business. The claim, therefore, falls within the broader framework of "operational debt," as recognized by certain judicial authorities, where lease or license dues for commercial purposes have been deemed operational. Regardless, the question of classification under operational debt is secondary to the fact that the Respondent, being a judgment debtor, owes a definite amount, which remains unpaid without any legitimate dispute.

g) The Petitioner refutes the Respondent's reliance on "pre-existing dispute" jurisprudence to claim non-maintainability. The ratio of *Mobilox* does not aid the Respondent in this case because the dispute was conclusively decided at the civil court stage. Had there been a bona fide dispute, it would have been decided against the Petitioner. Instead, the Petitioner succeeded, obtained a decree, and there is no injunction preventing its enforcement. The entire Writ Petition concerns the quantum of mesne profits and associated relief, but that, by itself, lacking any interim order, cannot constitute a dispute that invalidates this present action under the IBC.

h) The Petitioner reiterates that the alleged "dispute" invoked by the Respondent is nothing more than an unsubstantiated challenge raised in a parallel forum without any interim relief. The existence of such a proceeding cannot, in itself, eclipse the finality of the decree or the Petitioner's entitlement under the IBC. The Petitioner also points out that the continued default in payment of the decretal sum ensures that the "default" under Section 3(12) of the IBC remains operative. The Respondent's failure or refusal to satisfy the decree is, therefore, a clear instance of a corporate debtor defaulting on an ascertained liability.

i) The Petitioner asserts that there is no bar to the Petitioner electing to enforce its rights either through execution under the CPC or by invoking the IBC, as the IBC provides a distinct mechanism aimed at insolvency resolution or liquidation in cases of unpaid debts. The Respondent's repeated references to "execution proceedings" do not affect the maintainability of an insolvency petition, especially where the statutory prerequisites of Section 9 of the IBC are fully met.

6. **<u>ANALYSIS AND FINDINGS: -</u>**

7. We have heard both sides and also gone through the records. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Petitioner. On the basis of a decree passed by the Civil Court dated 06.12.2013. In fact, one inquiry was directed for determination of quantum of mesne profits under order XX Rule 12 of Civil Procedure Code as per order dated 22.06.2004 passed by Civil Court in suit captioned "Rajendra Somani V/s Handicraft Development Corporation of Kerala Limited" bearing T.E. & R. Suit No. 208/251 of 2000 instituted on 01.10.2000. The Corporate Debtor (Handicraft Development Corporation of Kerala Limited) was a tenant in premises measuring 3868 sq ft. and a Court-drawn decree out of such dispute in favor of the Petitioner. Thereafter, the Decree Holder filed an execution and against such judgement, the Judgment Debtor filed an appeal before the Small Causes Court which was dismissed on 07.01.2017 and against such dismissal order Judgement Debtor/Corporate Debtor filed a Writ Petition before Hon'ble High Court of Bombay, bearing No. 4953 of 2017 and such Writ Petition is pending adjudication.

8. In the meantime, the Decree Holder/Petitioner filed an execution application, and the Execution Court issued warrants against the Judgment Debtor for attachment of the property of the Judgment Debtor.

Amidst such litigation, the Petitioner sent a letter of demand on Form 3 to the Corporate Debtor dated 04.09.2024 claiming Rs. 3,81,29,512/- as operational debt.

9. In this Petition, under Section 9 of IBC, the Corporate Debtor has raised two important defences: limitation and pre-existing dispute. The counsel for the Petitioner, while arguing his case, vehemently argued that as per article 136 of the Limitation Act, the limitation for execution of decree is 12 years; as such, the Company Petition filed by the Petitioner is within time. He further takes shelter in the Balance sheets of Corporate Debtor, wherein the amount has been reflected as payable to the Petitioner. Whereas, it is the case of the Corporate Debtor that it is barred by limitation and only within three years of the decree, one can invoke provisions of IBC, 2016 for resolution under Sections 7 & 9 of the Code.
10. Having heard both sides, it is an undisputed fact that there exists a decree dated 06.12.2013 in favor of the Petitioner and against the Corporate Debtor. Further, that decree is not based on any financial debt, so, applicant has rightly categorized the debt as operational debt.
11. As far as the arguments of the Petitioner that in the Balance sheet of financial years 2022 & 2023, the Corporate Debtor shows amounts due are concerned that would not be helpful to the Petitioner, because there is a footnote and a disclaimer that the Corporate Debtor is not acknowledging any such liability. Once, the entry is shown with some conditions that would not be considered as any acknowledgement.
12. The acknowledgment of debt should be clear, unambiguous, and without any blemishes. Any recital of any liability in the balance sheet in itself would not become an acknowledgment, particularly when such recital has been clogged with some condition or denial. Relevant portion of the balance sheet is reproduced as under: -

Diluted EPS is calculated by including share application money pending ...

28. Deferred Tax has not been considered as the Company is not certain in generating sufficient profit in future.

29. Contingent Liabilities:

1. Claims against the Company not acknowledged as debt.

a) M/s. Gayathri Trust Mumbai, the landlord of the building where Kairali Mumbai is situated had filed a suit No. 208/251 of 2000 in the court of small causes Mumbai for the recovery of the rent arrear at the rate of ₹. 6, 18,880/- per month from October 98 to June 2000 and for the recovery of mesne Profit at the rate of ₹. 6, 18,880/- per month from July 2000 onwards. There is no rent arrears as per the rent agreement. The Hon'ble Judge has ordered that the defendants (Corporation) shall pay mesne profit to the plaintiffs in respect of the suit premises for the period from the date of suit till the plaintiffs received possession of the suit premises and to vacate the premises within four months. Aggrieved by the above order the Corporation has filed an appeal with the appellate bench of this Court, and the Hon'ble Court was pleased to stay the order of the lower Court. The case is still pending. Stock at Kairali Mumbai has been removed by the landlord and shifted to some unknown place. Corporation has filed a theft case against the landlord which is pending. The corporation had a showroom at Mumbai taken on lease(1969) which the lesser got evicted by court order (2004) and filed a suit no: 208/251 of 2000 for mesne profit for ₹ 3,81,87,329/- along with interest @ 6% p.a. in the honorable court of small causes, Mumbai. The case is still pending. They have filed a spl. Darkhast No. 52 of 2015 at the Hon. court of Civil Judge, Thane. The Court issued a warrant for execution on 19.07.2016. They have executed the decree by the Thane Court and attached the property of ₹.3.08 lakhs worth items. On 27.01.2023, the officials from Thane court along with Advocate came to our showroom at Navimumbai and issued notice of attachment. Meanwhile case has been transferred to Civil court, Belapur, since Thane court does not have jurisdiction for the place occupied by Kerala House, Navimumbai.

b) The claim raised by the New Delhi Municipal Committee for payment of house tax for the building occupied by the Corporation at Delhi during the previous years were set aside by Hon'ble High Court of New Delhi. The total tax claim up to 31.03.2002 amount to ₹.2.82 lakhs (approximately). Although New Delhi Municipal Committee preferred an appeal before the Hon'ble Supreme Court, in view of the stand taken by the Corporation and the verdict of Hon'ble High Court of New Delhi, no provision has been made in the accounts in respect of this amount.

For HANDICRAFTS DEVELOPMENT CORPORATION OF KERALA LTD.

Director

Appeal pending against Provident fund commissioner order for payment against 7/2003/08/2003/11/2003 to 8/2004 for Rs.5,05,671/-

Case filed by Retna Jewellers in arbitration case for ₹.32.60 lakhs, towards the supply of goods to HDCK Ltd is pending.

Sri.A.Vijayakumaran Nair, Driver had filed a case in the High Court at Ernakulam for his retirement benefits of ₹.1,34,880/-
The case is still pending.

M/s.Mahalakshmi Handicrafst, Bangalore has filed a suit for the realization of money for the brass items claimed to have supplied during the year 2003-04 to various units of HDCK amounting to ₹.5,26,404/-. As per the records of HDCK the amount payable is ₹.3,56,056/-. On 09.12.15 the court has decreed the suit for ₹.4,37,016/- with interest @ 6% p.a from the date of suit till the date of realisation. As per court order, we have given 50% of amt ie. ₹.3,25,228/- as court deposit and balance 50% ie.3,25,228/- as Bank guarantee. The case is still pending.

Lessor of Kairali Ernakulum has claimed rent enhancement and filed a petition. The Rent Control Court allowed the petition and fixed the enhanced rent @ ₹.189630/-p.m. An appeal has been filed but dismissed. Meanwhile Corporation vacated the showroom.

The EPF commissioner has levied ₹.28,04,742 towards interest and damages for belated payment of EPF from october 2000 to January 2018.

Appeal pending before Hon'ble Highcourt against 7Q damages levied by EPF Commissioner ₹.10,23,160 and appeal pending before Industrial Tribunal cum labour court against 14B penal charges levied ₹.2118071/-

30. As per agreement dated 26.03.1969 executed between Govt. of Kerala and Handicrafts Development Corporation of Kerala ltd, the management of SMSM Institute and its business devolved on the corporation and the staff of the institute became the staff of the corporation. Accordingly the corporation became solely responsible for the assets and liabilities, Profits and Losses arising on the transaction made for and on behalf of the institue from 01.03.1969. The corporation holds the assets and liabilities of the SMSM Institute as agents of the trustees viz; Govt of Kerala. The depraciation for the assets and agency fees are charged in Profit and Loss account and treated as payable to Govt of Kerala.

31. Estimated amount of contracts remaining to be executed on capital account and not provided for ₹.53.62 lakhs.

32. The quantitative particulars of purchases made, opening stock and closing stock with break up of goods traded by the company could not be disclosed as required in Schedule III of the Companies Act, 2013 in view of the innumerable varieties of articles handled. Request sent to Central Government for getting exemption.

33. Expenditure in foreign currency.-Nil.

34. The company has incurred a net loss of ₹. 4,33,835.30 hundreds during the year ended 31st March 2023 and, as on that date, the Company's current liabilities exceeded its current assets by ₹. 52,40,514.25 hundreds, the management is on the opinion that the company would be in a position to continue as a going concern.

35. The Company has taken working capital loan from Indian Overseas Bank ₹50 lakhs on the security of Fixed Deposit from Bank balance of NBCFDC Account

36. Previous Years figures have been regrouped and recast, wherever necessary, to suit the current year's lay out and disclosure.

Place : Thiruvananthapuram
Date: 19.06.2023
For and on behalf of the Board of directors

For
R. VENKITACHALAM & ASSOCIATES
Chartered Accountants

13. So, the reference to alleged liability in the balance sheet comes under the heading of contingent liability; it is not a clear or unambiguous acknowledgement; it is with some rider and condition. Such a reference in the balance sheet would not come within the ambit of Section 18 of the Limitation Act,1963. Furthermore, Petitioner has failed to place on record all documents which may constitute periodical acknowledgments to show and prove continuity of the limitation period. It would be profitable to quote the Judgment of the Hon'ble Supreme Court in ***State Bank of***

India Vs. Krishidhan Seeds Pvt. Ltd *((2022) ibclaw.in 40 SC)* wherein the Court held as follows: -

- *The provisions of Section 18 of the Limitation Act were held applicable to IBC proceedings by a two-Judge Bench of this Court in Sesh Nath Singh v Baidyabati Sheoraphuli Coop. Bank Ltd. (2021) ibclaw.in 49 SC. While the observation in Sesh Nath Singh (supra) was obiter dicta, the matter has been set at rest in a decision of a three-Judge Bench of this Court in Laxmi Pat Surana v Union Bank of India and Anr. (2021) ibclaw.in 53 SC.(p9-10)*
- *An acknowledgement in a balance sheet without a qualification can be relied upon for the purpose of the proceedings under the IBC. This principle also emerges from the decision in Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr., (2021) ibclaw.in 55 SC, which noted the decisions in Sesh Nath Singh (supra) and Laxmi Pat Surana (supra).(p11).*
- *The decisions in Sesh Nath Singh (supra), Laxmi Pat Surana (supra) and Asset Reconstruction Company (supra) have subsequently been followed in numerous decisions of this Court delivered by two-Judge Benches, namely:*
    - *(i) Dena Bank v. C. Shivakumar Reddy & Anr. (2021) ibclaw.in 69 SC;*
    - *(ii) State Bank of India v Vibha Agro Tech Limited (2021) ibclaw.in 225 SC;*
    - *(iii) Devas Multimedia Private Ltd. v Antrix Corporation Ltd. and Anr. (2022) ibclaw.in 04 SC;*
    - *(iv) SVG Fashions Pvt. Ltd. v Ritu Murli Manohar Goyal and Anr. (2022) ibclaw.in 17 SC. And*
    - *(v) Rajendra Narottamdas Sheth & Anr. v. Chandra Prakash Jain & Anr. (2021) ibclaw.in 155 SC (a more recent decision of a three-Judge Bench)(p12)*
- *In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this Court. The principles which emerge are that:*
    - ***(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and***
    - ***(ii) An acknowledgement in a Balance Sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was***

within a period of three years from the original date of default.(p13)

14. In this case, the reference in the balance sheet is with rider; as such, Petitioner cannot claim any benefit out of it.

15. The decree was passed by the Civil Court on 06.12.20213, and the Petition under Section 9 of the IBC, 2016, has been filed on 07.11.2024. Now question which requires consideration of this Tribunal would be whether the Petitioner would be entitled to 12 years or 3 years for the computation of limitation. Ld. Counsel for the Corporate Debtor has relied upon the judgment of the Hon'ble Supreme Court of India.

16. We have gone through the decision of the Hon'ble Supreme Court in **B.*K Educational Services Pvt Ltd vs Parag Gupta and Associates*** *(2019 (11) SCC 633)* wherein the Apex Court held that: -

> *22. We have already seen from the judgment in V.R. Kalliyanikutty (supra), that the expression "due" will depend upon the context in which that word appears. It will be seen from a reading of the definition of "debt" in Section 3(11) of the Code, that "debt" is said to mean a liability or obligation in respect of a claim which is "due" from any person, and includes a financial debt and an operational debt. "Financial debt" is defined in Section 5(8) as follows:*
>
> *"5. Definitions.—In this Part, unless the context otherwise requires,— xxx xxx xxx (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*
>
> *(a) money borrowed against the payment of interest;*
>
> *(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
>
> *(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation.—For the purposes of this sub- clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

Operational debt is defined in Section 5(21) as follows:

"5. Definitions.—In this Part, unless the context otherwise requires,— xxx xxx xxx (21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the

Central Government, any State Government or any local authority;" The definition of "default" in Section 3(12) uses the expression "due and payable" followed by the expression "and is not paid by the debtor or the corporate debtor……". "Due and payable" in Section 3(12), therefore, only refers to the whole or part of a debt, which when referring to the date on which it becomes "due and payable", is not in fact paid by the corporate debtor. The context of this provision is therefore actual non-payment by the corporate debtor when a debt has become due and payable.

23. Section 7 applies to a financial creditor who may file an application for initiating a corporate insolvency resolution process against a corporate debtor when a "default" has occurred. The same expression is used when it comes to an operational creditor, who may on the occurrence of a "default" under Section 8, deliver a demand notice as may be prescribed. What throws considerable light on the expression "default" is Section 8(2)(a) which reads as follows:

"8. Insolvency resolution by operational creditor. —

xxx xxx xxx

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;" It will be seen from a reading of Section 8(2)(a) that the corporate debtor shall, within a period of 10 days of the receipt of the demand notice, bring to the notice of the operational creditor the existence of a "dispute". We have seen that "dispute" as defined in Section 5(6) includes a suit or arbitration proceeding relating to certain matters. Again, under Section 8(2)(a), the corporate debtor may, in the alternative, disclose the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice. It is clear therefore, that at least in the case of an operational creditor, "default" must be non-payment of amounts that have become due and payable in law. The "dispute" or pendency of a suit or arbitration proceedings would necessarily bring in the Limitation

Act, for if a suit or arbitration proceeding is time-barred, it would be liable to be dismissed. This again is an important pointer to the fact that when the expression "due" and "due and payable" occur in Sections 3(11) and 3(12) of the Code, they refer to a "default" which is non-payment of a debt that is due in law, i.e., that such debt is not barred by the law of limitation. It is well settled that where the same word occurs in a similar context, the draftsman of the statute intends that the word bears the same meaning throughout the statute (see Bhogilal Chunilal Pandya v. State of Bombay, 1959 Supp. (1) SCR 310 at 313-314). It is thus clear that the expression "default" bears the same meaning in Sections 7 and 8 of the Code, making it clear that the corporate insolvency resolution process against a corporate debtor can only be initiated either by a financial or operational creditor in relation to debts which have not become time-barred.

24. Strong reliance was placed by Shri Dholakia on France B. Martins v. Mafalda Maria Teresa Rodrigues, (1999) 6 SCC 627, by which Section 24A was inserted in the Consumer Protection Act, 1986 by a 1993 amendment, making the provisions of the Limitation Act applicable to the Consumer Protection Act. In turning down the plea that Section 24A would cover the period from 1986 to 1993, this Court held that the legislature in its wisdom thought it appropriate not to prescribe a period of limitation for proceedings under the Act as the object of that Act was for the better protection of the interest of consumers. The Court, therefore, held that the addition of Section 24A in the Act shows that initially, the legislature did not intend to prescribe any period of limitation for filing complaints under the Act as it would stultify the beneficent social legislation contained therein. This case is again wholly distinguishable in that the Court found that the Consumer Protection Act is a beneficial social legislation, whose object was not to apply the Limitation Act when it was first enacted. On the contrary, in the present case, we find that the object of the Code was subserved by applying Section 433 of the Companies Act from the very inception of the Code. Also, the Insolvency Law Committee Report of March, 2018 makes it clear that the object of the Code from the very beginning was not to allow dead or stale claims to be resuscitated. In this view of the matter, we are afraid that this judgment also would have no bearing.

25. The chart handed up by Shri Dholakia, in which he wished to demonstrate that various tribunals under different Acts either apply or do not apply the Limitation Act, again leads us nowhere. Depending upon the intention of the legislature in each of the enactments mentioned in the chart, either the legislature thought it fit to apply the Limitation Act, or it did not, depending upon the subject matter of the Act in question. We have held that at least insofar as the Code is concerned, the intention of the legislature, from the very beginning, was to apply the Limitation Act to the NCLT and the NCLAT while deciding applications filed under Sections 7 and 9 of the Code and appeals therefrom. Section 433 of the Companies Act, which applies to the Tribunal and the Appellate Tribunal, expressly applies the Limitation Act to the Appellate Tribunal, the NCLAT, as well. Also, the argument that the NCLAT is an appellate tribunal which is common to three statutes, under one of which, viz., the Competition Act, no period of limitation has been prescribed, would not lead to any anomalous situation. When the Appellate Tribunal, i.e., the NCLAT decides an appeal under the Competition Act, since an appeal is a continuation of the application filed before the Competition Commission (See Lachmeshwar Prasad Shukul and Ors. v. Keshwar Lal Chaudhuri and Ors., AIR 1941 FC 5), the NCLAT will decide the appeal on the footing that the Limitation Act did not apply to an application made before the Competition Commission. On the other hand, insofar as applications are filed under Section 7 or 9 of the Code, or petitions or applications filed under the Companies Act, the NCLAT will decide such petitions/applications on the footing that the Limitation Act will apply to such petitions/applications. Merely because appeals under different statutes are sent to one appellate tribunal would make no difference to the position in law. Undoubtedly, if three separate appellate tribunals had been constituted under the three enactments in question, this argument would have no legs to stand on. Merely because, from the point of view of convenience, appeals are filed before one appellate forum would not mean that any anomalous situation would arise as each appeal would be decided keeping in mind the provisions of the particular Act in question. Therefore, this argument also must be rejected.

26. Shri Dholakia argued that the Code being complete in itself, an intruder such as the Limitation Act must be shut out also by *application of Section 238 of the Code which provides that, "notwithstanding anything inconsistent therewith contained in any other law for the time being in force", the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows:*

"60. Adjudicating Authority for corporate persons.—

xxx xxx xxx

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded." This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238A of the Code, apply the provisions of the Limitation Act "as far as may be". Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater. This argument, therefore, must also be rejected.

27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

17. We have also gone through the decision of the Hon'ble Supreme Court in ***Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India)*** *(2019 (10) SCC 572)* wherein the Court held that: -

3) An independent proceeding was then begun by Respondent No.1 on 03.10.2017 being in the form of a Section 7 application filed under the Insolvency and Bankruptcy Code in order to recover the original debt together with interest which now amounted to about 124 Crores of rupees. In the Form-I that has statutorily to be annexed to the Section 7 application in Column II which was the date on which default occurred, the date of the NPA i.e. 21.07.2011 was filled up. The NCLT applied Article 62 of the Limitation Act which reads as follows:-

Description of suit	Period of limitation	Time from which period begins to run
To enforce payment of money secured by a mortgage or otherwise charged upon immovable property	Twelve years	When the money sued for becomes due

conclusion that since the limitation period was 12 years from the date on which the money suit has become due, the aforesaid claim was filed within limitation and hence admitted the Section 7 application. The NCLAT vide the impugned judgment held, following its earlier judgments, that the time of limitation would begin running for the purposes of limitation only on and from 01.12.2016 which is the date on which the Insolvency and Bankruptcy Code was brought into force. Consequently, it dismissed the appeal.

4) Mr. Aditya Parolia, learned counsel appearing on behalf of the appellant has argued that Article 137 being a residuary article would apply on the facts of this case, and as right to sue accrued only on and from 21.07.2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in B.K. Educational Services Private Limited vs. Parag Gupta and Associates, 2018 SCC OnLine SC 1921 in order to buttress his argument that it is Article 137 of the Limitation Act which will apply to the facts of this case.

5) Mr. Debal Banerjee, learned Senior Counsel, appearing on behalf of the respondents, countered this by stressing, in particular, para 7 of the B.K. Educational Services Private Limited (supra) and reiterated the finding of the NCLT that it would be Article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that, being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.

6) Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee's reliance on para 7 of B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

18. Thereafter, we have also gone through the decision of the NCLT, Principal Bench, New Delhi in ***M/s Ananya Infraventures Private Limited Vs. M/s Tulsiani Constructions & Developers Private Limited*** *(CP(IB)-286(PB)/2019)* wherein the Tribunal held that: -

> *xx. We further here appreciate the observation of the Hon'ble Supreme Court made in the case of Radha Exports (India) (P) Ltd. v. K.P. Jayaram (2020) 10 SCC 538 that it is for the applicant invoking the Corporate Insolvency Resolution Process, to prima facie show the existence in his favor, of a legally recoverable debt. In other words, the applicant had to show that the debt is not barred by limitation. In the present case, we note that the Applicant has miserably failed to prove that Application has been filed within the prescribed period of limitation.*

19. Ld. Counsel for the Petitioner has relied upon the judgment of Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. (Civil Appeal

No.1650 of 2020). But the facts of that case are different footings and not applicable to the facts and circumstances of the present case.

20. So, this is not a suit. The Petition for Insolvency under Section 9 cannot be treated as an execution or a suit, and as such, it would not be governed by Article 136 of the Limitation Act 1963, rather it would fall within the ambit of Article 137 of the Limitation Act,1963 as no specific period of limitation has been prescribed under IBC, 2016. We find merit in the arguments advanced on behalf of the respondents.

21. Further, pendency of Writ Petition before the Hon'ble High Court after dismissal of the first appeal against the decree dated 06.12.2013 would come within the ambit of pre-existing dispute. On that count, also, the Petition merits dismissal.

22. The Petitioner has filed this Company Petition just for the recovery of its dues, and as such, such practice is liable to be reprimanded. If we allow the platform of IBC, 2016, for the recovery of dues, that would be against the basic objectives of the Code. Considering the foregoing findings, the Petition lacks merit, and **CP(IBC)/54/KOB/2024 is dismissed.**

23. The file will be consigned to record storage (current).

24. Let a copy of the order be served to the parties.

Dated this the 01st day of May, 2025.

Sd/-	Sd/-
MADHU SINHA	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Rajasree R. Nair/LRA