IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH,
PRAYAGRAJ

CP (IB) No.19/ALD/2021

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

<u>IN THE MATTER OF:</u>

M/S PROTECH IMPEX PVT LTD
Having its office at
C-54 Shalimar Appts, South Extension-II,
New Delhi-110049
through its Director Mr. Arvind Johri

...Applicant/Operational Creditor

Versus

M/S UTTAR PRADESH RAJKIYA NIRMAN NIGAM LIMITED

Vishweshwaraiya Bhawanvibhuti Khand,

Gomti Nagar, Lucknow, Uttar Pradesh

226001

...Respondent/Corporate Debtor

Order pronounced on 17.05.2023

CORAM:
Sh. Praveen Gupta : Member (Judicial)
Sh. Ashish Verma : Member (Technical)

PRESENT-
Sh. Sohaib Alam, Adv. : For the Operational Creditor

Sh. Vedant Agarwal, Adv. for Sh. Vivek Saran, Adv.
: For the Corporate Debtor

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ORDER

1. The instant application is filed on 20.02.2020 by **M/S Protech Impex Pvt Ltd** (hereinafter referred as 'Applicant'/'Operational Creditor') incorporated under the provisions of the erstwhile Companies Act, 1956 and having CIN No.U45400DL1998PTC094075, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "I & B Code, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (hereinafter referred as "the Rules"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') in respect of **M/S Uttar Pradesh Rajkiya Nirman Nigam Limited** (hereinafter referred as 'Respondent'/'Corporate Debtor') due to default in payment of outstanding amount of Rs.3,65,75,820/- (Three Crore Sixty Five Lakh, Seventy Five Thousand Eight Hundred Twenty) which is stated to be due as principal amount and Rs.3,45,83,690/- (Three Crore Forty Five Lakh, Eighty Three Thousand Six Hundred Ninety) as interest @ 24% p.a. simple interest till 23rd December, 2019 for the work done on credit basis.
2. This petition has been filed by the one Director, Mr. Arvind Jauhari of M/s Protech Impex Pvt Ltd duly authorized by the Applicant/Operational Creditor vide Resolution dated 20.12.2019 passed by it in the meeting of the Board of Directors. He has further issued authority letter and vakalatnama in favour of Mr. Dhruv Gupta, Advocate and Mr. Sohaib Alam, Advocate who represented the case of the Applicant/Operational Creditor from time to time before this Adjudicating Authority.

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3. The Respondent Company M/S Uttar Pradesh Rajkiya Nirman Nigam Limited is a State Government undertaking Company of the Government of Uttar Pradesh. This company was incorporated in 1975 under the provisions of erstwhile Companies Act, 1956 and having CIN NO.U85320UP1975SGC004116 and registered office situated at Vishweshwaraiya Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh 226001. Since, the registered office of the Respondent/Corporate Debtor is in Uttar Pradesh, this Tribunal having territorial jurisdiction, is the Adjudicating Authority in relation to the prayer for initiation of CIRP against the Respondent/Corporate Debtor under sub-section (1) of Section 60 of the I & B Code, 2016. The Respondent/Corporate Debtor has been represented by Sri Vedant Agarwal and Sri Vivek Saran, Advocates under the letter of authority/vakalatnama issued by it and they appeared before this Adjudicating Authority from time to time for filing reply and arguing the case on behalf of the Respondent/Corporate Debtor.

4. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form 5 containing Part I, II, III, IV & V are that:-

   i. The Applicant/Operational Creditor had undertaken the civil construction job on turnkey basis for National Institute of Occupational Health (NIOH), Ahmadabad awarded to it by M/S Uttar Pradesh Rajkiya Nirman Nigam Limited i.e. Respondent/Corporate Debtor.

   ii. The scope of work included all civil works (Finishing and structural works). The work executed by

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Applicant/Operational Creditor as per the details provided by it included Lab-1, Lab-2 (2nd to 4th Floor), Guest House cum Student Hostel, connecting corridor, toilet block and substation in NIOH, Ahmedabad. These works were executed during the period 2012-2015.

iii. As per the details further provided by the Applicant/Operational Creditor, the above mentioned works were executed as per the work order and agreement signed between the parties vide contract agreement dated 18th October, 2014. As stated by the Applicant/Operational Creditor, the Corporate Debtor inspected the works completed by the Operational Creditor and the details were entered in their measurement books with the satisfactory details about the quality/volume of work done, technical proficiency and on time completion of the work executed. Thereafter, as stated by the Operational Creditor that it successfully handed over the completed project work to the Corporate Debtor for which the performance/completion certificate was issued by the Corporate Debtor. Various running bills were issued by the Operational Creditor during the course of execution of the work from 2012-2016.

iv. As mentioned in Point No. 8 of Part V of the application, following documents have been annexed alongwith the application to provide the particulars of operational debt (Documents, Records and Evidence of Default).

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1. Work Order issued by the Corporate Debtor (Page No.25A to Page No.42A of the Application)

2. Contract dated 18.10.2023 signed between the Corporate Debtor and Applicant (Page No.43 to Page No.62 of the Application)

3. Performance/Completion Certificate dated 15.01.2016 issued by the Corporate Debtor (Page No.109 of the Application)

4. Bank Statement from Canara Bank, Lajpat Nagar Branch, New Delhi showing part payment receipt from the Corporate Debtor (Page No.110 to Page No.136 of the Application)

5. Various Invoices issued by the Operational Creditor (Page No.63 to Page No.110 of the Application)

6. Demand notice issued under Section 8 of the I & B Code, 2016 read with Rule 5(1) of the Rules (Page No.140 to Page No.157 of the Application)

v. After providing the above details and attaching the supporting documents as discussed above, the Applicant/Operational Creditor by placing reliance on these details and documents, submitted that the Respondent/Corporate Debtor regularly defaulted in payment of running bills from the initial period. It is also stated by it that the security deposit of the Operational

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Creditor has also not been paid till the filing of the instant application and even after the expiry of the defect liability period of 1 year from the date of issue of the Completion Certificate.

vi. Following calculation chart showing the operational debt as declared in Part IV of the Application, has been provided in the application:-

Particulars	**Amount**
Total amount of work Executed	18,20,00,000/-
TDS Deductions	29,40,152/-
Total Amount Payable	17,90,59,848/-
Total Amount Paid	14,24,84,028/-
Total due	3,65,75,820/-

Apart from the above principal amount claimed to be due for payment, interest has also been calculated from 15.01.2016 till 23.12.2019 @ 24% p.a. simple interest and total amount under default is thus calculated as under.

S. No.	Particulars	Amount
1	Principal amount outstanding for construction of Lab 1 & 2 (2nd to 4th Floor), Guest House cum Student Hostel & connecting corridor in NIOH, Ahmadabad Fell Due on-15.01.2016	3,65,75,820/-

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2	Interest on non-payment which fell due on 15.01.2016 Calculated till 23.12.2019 (24% p.a. simple interest)	3,45,83,690/-
3	Total payment pending till 23.12.2019.	7,11,59,510/-

For the above default amount, the date on which the default has occurred as declared by the Applicant/Operational Creditor in Point No.2 of Part IV is reproduced as under.

*"The default on payment occurred on **15th January, 2016**. When completion certificate for the work done was granted to Operational Creditor"*

vii. In view of the details as provided in the petition discussed above, it has been finally contended that the non-payment of running bills and security deposit to the Applicant/Operational Creditor, the outstanding amount is squarely covered as an operational debt under Section 5(21) of the Code and accordingly, the Applicant is the Operational Creditor as defined under Section 5(20) of the I & B Code and the Respondent is the Corporate Debtor under Section 3(8) of the I & B Code. Therefore, as stated by the Operational Creditor notice u/s 8 of I & B Code, 2016 read with the Rule 5 of the Rule in Form 3 has been issued to the Corporate Debtor but neither any payment has been made nor any reply to the said notice has been filed. In view of

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this, petition under Section 9 of the I & B Code has been filed for initiation of CIRP against the Corporate Debtor due to non-payment of aforesaid outstanding amount.

Reply of the Corporate Debtor and arguments taken during the course of hearing.

5. Against the averments made by the Applicant/Operational Creditor in the instant petition as discussed above, the Respondent/Corporate Debtor filed a reply vide counter affidavit dated 20.09.2021 and further, substantiated its submission during the arguments advanced before us in the final hearing and the same is discussed as under:-

i. In its reply, the Respondent/Corporate Debtor disputed the amount of outstanding claim made in the application. Despite disputing the amount of outstanding claim, it is also stated that the alleged claim of outstanding debt, as raised by the Applicant, is barred by limitation by virtue of Section 238-A of the Insolvency and Bankruptcy Code, 2016 read with Article 137 of the Limitation Act. The Ld. Counsel of the Respondent/Corporate Debtor during the hearing mentioned that the Applicant Company in its synopsis on Page 4 had stated that the bill fell due on 15.01.2016 and thus, the alleged claim made by the Applicant in its petition is grossly time barred as the Company Petition was filed on 13.01.2021 and the same is thus beyond the limitation period of three years provided under Section 238-A of the Insolvency and Bankruptcy Code, 2016, read with Article 137 of the Limitation

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Act, for initiating the proceeding under I & B Code, 2016 before the Adjudicating Authority (NCLT). In this regard, he referred to a judgment of the Hon'ble Supreme Court of India in the case of B.K. Educational Services Private Limited reported in (2019) 11 SCC 633 wherein it has been held as under:-

> "*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.*"

ii. As regard the outstanding debt, it has been submitted on behalf of the Corporate Debtor that the Applicant Company was given 23 work orders arising out of one contract, each for distinct estimated value, a total of it being for Rs.22,86,24,787/-. However the actual amount of work done against each work order was computed after its verification and measurements by the competent authority and that was for Rs.15,28,81,359/-. This amount included the TDS and the other taxes and charges as well as the security amount. The net payment paid was of Rs. 14,38,83,104/- (an amount of Rs.36,14,500/- towards security is being withheld). It is further explained that the modes of payment was either in the form of advances or through periodic release of funds normally being settled in each financial year. Detailed chart of measurement of the works done and the payments made by

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the Corporate Debtor has also been enclosed with the reply showing the total payment of 14,38,83,104/- made out of actual cost of work computed at Rs. 15,28,81,359/-.

iii. As regards the outstanding amount of Rs. 36,14,500/- as mentioned above, it has been stated by the Corporate Debtor that this amount was withheld towards the security amount by the Respondent Company as per norms and this amount has since been released and paid after the Applicant/Operational Creditor furnished the bank details pursuant to the order dated 08.02.2022 of this Tribunal. Thus, it has been contended that the admitted amount has already been paid by the Respondent/Corporate Debtor. It is also further emphasized that the claim of the Applicant is based on the total estimated value of distinct work orders/contract which is mentioned at Approx. Rs.18.20 Crore in Completion Certificate dated 15.01.2016 relied upon by the Applicant. Rather the amount paid to him is the actual value of the work done by him arrived after its measurement, (which comes to Rs.15,28,81,359/- as mentioned in the measurement book). Thus, the claim is wholly unfounded and frivolous and is denied by the Respondent/Corporate Debtor. It is also categorically stated by the Corporate Debtor that no amount is due except Rs.36,14,500/- which is the security amount and same has since been also unpaid.

iv. The Corporate Debtor in its reply has also submitted that the entire basis of the claim of the Operational Creditor is being harped upon on the basis of the performance certificate dated

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15.01.2016 purported to be issued by their Project Manager, Sri O.P. Pathak showing an approximate value of Rs.18.20 Crore and this performance certificate is not acceptable to the answering respondent as the same is based in approximation and not actuality of facts.

Rejoinder filed by the Applicant and argument taken during hearing by the Ld. Counsel of the Applicant.

6. Against the reply filed by the Corporate Debtor, the Applicant/Operational Creditor filed Rejoinder reiterating its claim made in the petition stating that-

i. The Operational Creditor was issued the completion certification by the Corporate Debtor, wherein, undisputedly it has been categorically mentioned that the amount of work done by the Operational Creditor was worth Rs.18,20,00,000/- hence, as per the Applicant, the Corporate Debtor owed Rs.18,20,00,000/- to the Operational Creditor. It is further pointed out that the Corporate Debtor has admitted in its reply that Rs.14,24,84,028/- has been paid by it, and after TDS deductions, the pending debt is Rs.3,65,75,820/-

ii. As regards the averment of the Corporate Debtor that the present petition is barred by limitation, it has been argued by the Ld. Counsel for the Applicant that it is not only misplaced but also contrary to the facts. He contended that the completion certificate was finally issued on 15.01.2016 and further, he pointed out that the Corporate Debtor has admitted

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in its reply on Page No.8 that the last payment made was on 16.10.2017 which in his view is the date on which the cause of action has arisen and therefore, the Operational Creditor is well within the limitation. He also pointed out that the present petition was filed physically on 20.02.2020 before the Hon'ble Tribunal therefore, the objection of limitation raised by the Corporate Debtor, is unfounded. He also contended that many follow up emails were sent to the Corporate Debtor but of no avail and therefore, a demand notice was then served on 23.12.2019. This demand notice was duly served upon the Corporate Debtor vide email as well as registered post, but no reply was ever given by the Corporate Debtor.

iii. As regards the amount of Rs. 36,14,500/-, it has been contended in the Rejoinder as well as argued before us that without prejudice to the fact that the operational debt is Rs.7,11,59,510/- which is due and payable to the Operational Creditor and without accepting otherwise, it is submitted that the Corporate Debtor has himself categorically and specifically acknowledged in para 4 of its reply that the outstanding debt which he owes to the Operational Creditor is for an amount of Rs.36,14,500/- towards security which was withheld. By relying upon as to the reference of amount of Rs.36,14,500/- being withheld by the Corporate Debtor as stated in the aforesaid reply, the Ld. Counsel of the Operational Creditor submitted that it is a clear admission of outstanding debt by the Corporate Debtor, which is sufficient for triggering the CIRP. He referred to the decision of the Hon'ble Supreme Court

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in ***Innoventive Industries Ltd. Vs ICICI bank*** mentioning the relevant part of the decision as under:

> *"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed."*

iv. As regard to there being any pre-existing dispute with respect to the outstanding debt, it has been pointed out by the Ld. Counsel of the Applicant that after duly receiving the demand notice under Section 8, the Corporate Debtor has neither shown any existence of dispute nor any proof of payment of unpaid debt has been adduced either in its reply or through any document to the effect that the outstanding amount has been released, which in his opinion, it is an acknowledgment of the debt that the Corporate Debtor owes to the Operational Creditor. He also pointed out that the Corporate Debtor admitted that it has defaulted in payment of the outstanding amount due to non-availability of funds from the principal employer NIOH Ahmedabad. As per him, the Corporate Debtor has not disputed the completion certificate dated 15.01.2016. He also made reference to the association of the Corporate Debtor with the Applicant on certain other project till March 2018 to bring home the point that there was no pre-existing

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dispute. He finally, pleaded that in the interest of justice and fairness, the petition under Section 9 filed by the Operational Creditor may be admitted and IRP may be appointed by this Tribunal.

Analysis and Findings

7. All the details and documents as brought before us in the pleadings as well as during the arguments by the Ld. Counsels of both the parties, have been duly considered and examined. As the issue relating to applicability of the provisions of the Limitation Act is material before deciding the admission of the application under I & B Code, considering the provision of Section 238-A of the Code, we have first dealt with this issue to see whether the instant application has been filed within the limitation period or not. In this regard, the facts as stated in the application filed in Form 5 by the Applicant/Operational Creditor are that, it is clearly declared in Part IV of the application on Page No.12 that the default of payment occurred on 15th January, 2016, when completion certificate for the work done was granted to the Operational Creditor. The Corporate Debtor in its reply has pointed out that the instant application was e-filed on 13.01.2021 and therefore, it was barred by limitation as being beyond the limitation period of 3 years. However, the Applicant/Operational Creditor has explained that the present Petition was filed physically on 20.02.2020 before it was e-filed on 13.01.2021. After verification of this fact from the Registry, it has been found that the petition was physically filed on 20.02.2020 as per the receipt stamp put on the said paper book of the Application. Therefore,

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considering this fact we are inclined to take the date of filing of the petition as 20.02.2020.

8. As regards the date of default, it has been explained by the Applicant/Operational Creditor that after the completion certificate was finally issued on 15.01.2016, the last payment was made by the Corporate Debtor on 16.10.2017 as admitted by it in its reply at Page No.8. Citing this fact, the Applicant/Operational Creditor contended that the last date of payment being 16.10.2017, the cause of action arose after that date only and therefore, filing of application on 20.02.2020 is well within the limitation period of 3 years. This fact has been verified from the reply of the Corporate Debtor and it has been found that the last payment of Rs.10 lacs was made on 16.10.2017 vide Cheque No.000488.

9. However, the date on which the debt became due for payment after issuance of completion certificate is undisputedly 15.01.2016 as clearly mentioned by the Applicant/Operational Creditor in Part IV of its application in Form 5 and the same is also admittedly mentioned as date of default of payment. **Therefore, the question before us now to be decided is whether date of default as mentioned in Part IV of Application in Form 5 based on the date when the debt became due and payable, can be presumed to be legally changed/shifted on the basis of subsequent payments.**

10. To decide this issue, we have perused the definitions as contained in the I & B Code, 2016. The “default” in Section 3(12) of the I &

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B Code, 2016 is defined as under:

3(12) “"Default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;”

As per the above definition, non-payment of debt has to be reckoned from the date when it has been due and payable and actually not paid by the Debtor or Corporate Debtor.

11. On this issue, the decision of NCLAT in Case of ***SLB Welfare Association vs. PSA IMPEX Private Limited [2023] 146 taxmann.com 93***, may be relevant in which it has been held that the date of acknowledgement and the date of default were two different events and date of default is not dependent on the date of acknowledgement of debt. In this case, date of default given by the Operational Creditor in Section 9 application was 31.03.2020 but subsequently, on issuing of notice to the Corporate Debtor for payment of the debt, it acknowledged the debt vide its letter dated 03.06.2021. Therefore, the Operational Creditor took the plea that its date of default has to be taken to be the subsequent date on which the Corporate Debtor has acknowledged the debt i.e. on 03.06.2021. However, the NCLAT held that the date of default will remain 31.03.2020 only when the debt has become due and payable and this date is hit by Section 10A. It has been held by the Hon’ble NCLAT that the Application under Section 9 was liable to be rejected and accordingly the order admitting the application by the NCLT considering the date of default as 03.06.2021 was

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set-aside. The relevant part of this decision of NCLAT is as under:-

"17. The reason given by Adjudicating Authority for rejecting argument of Section 10A was based on alleged acknowledgement letter dated 03.06.2021 received from the Corporate Debtor. When the date of default given by Operational Creditor in Section 9 Application is 31.03.2020, the mere fact that acknowledgement has been given by Corporate Debtor on 03.06.2021 accepting the debt, shall not change the date of default. We, thus, do not agree with the reasons given by the Adjudicating Authority that since acknowledgement is 03.06.2021, the date of default will become 03.06.2021. The date of default and acknowledgement are two different events and date of default is not dependent on acknowledgement of debt. Hence, the Application filed under Section 9 was also liable to be rejected being hit by Section 10A, especially when on the same ground of date of default, i.e., 31.03.2020 earlier Application filed under Section 9 was dismissed as withdrawn one week before giving fresh Section 8 Notice. In Section 9 Application, which was filed by the Operational Creditor on 24.12.2021, there was not even mention of earlier proceedings initiated by Operational Creditor being IB-461(ND)/2021. As noted above, on 12.01.2022, the Adjudicating Authority itself formed an opinion that it has prima facie satisfied that Application is barred by Section 10A and thereafter time was granted by the Adjudicating Authority to file additional affidavit. The additional affidavit gives only explanation of letter by the Corporate Debtor acknowledging the debt dated 03.06.2021. The letter dated 03.06.2021 was also before Adjudicating Authority, when order dated 29.11.2021 was passed dismissing the earlier Application, which was dismissed as withdrawn."

12. In another decision of NCLAT Delhi in case of ***Next Education India Pvt. Ltd. Vs. K12 Techno Services Pvt. Ltd.*** in ***Company Appeal (AT) (Insolvency) No. 98 of 2019 dated 17.03.2021***, the question before the Appellate Tribunal was that whether the Operational Creditor can be allowed to change the date of default

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by confining the invoices to a later period. In this regard, it has been held as under.

> *"13. Whether the 'Operational Creditor' can change the 'date of default' by confining the invoices to a later period, when the Demand Notice under section 8 includes all the invoices from the date of default and the 'debt amount' is crystallized based on the invoices?*
>
> *21. As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the 'Operational Creditor'. Form III gives the details of the invoices. In the instant case, the 'Operational Creditor' has given the details of invoices from (pages 399 to 406 of Volume II) and has also crystalized the amount at Rs. 2,39,85,521.35/-, which is unpaid from 2011. Therefore, the argument of the Learned Counsel for the 'Operational Creditor' that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under Section 8. We are of the view that the Tribunal does not have jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery."*

13. In the above decision, it has been held by the Hon'ble NCLAT that the moment, there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a demand notice to the Corporate Debtor and whatever details are provided in this notice, would determine the date of default and the amount of default as per the details given in the said notice. The demand notice issued by the Operational

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Creditor in the instant case is available from Page No.140 to Page No.150 of the application filed by the Operational Creditor. As per the details provided in this demand notice, the date of default is clearly mentioned as 15.01.2016 stating that the amount of demand has fallen due on 15.01.2016 which remained unpaid as on the date on which demand notice was issued, which was 23.12.2019 much after the last date of payment of Rs.10 lacs made on 16.10.2017 by the Corporate Debtor. While issuing the demand notice, the Operational Creditor has kept the date of default intact as being 15.01.2016 from the date on which the outstanding amount has become due and payable defined under Section 3(12) of the I & B Code 2016 as already reproduced above. Now, only for the sake of argument, Ld. Counsel has contended to show that the Application under Section 9 is within limitation period. It is being argued before us that the date of default has shifted to 16.10.2017 on the basis of the last date of payment but the same has not been found by us legally permissible as per the definition of default which clearly stipulate that default will occur on the date when debt has become due and payable and is not paid by the Debtor. The date of default therefore, cannot be deemed to be shifted and any contention to the contrary would thus, be a legal fallacy. Even Hon'ble NLCAT in its various judgment have held that the date of default cannot be shifted by acknowledgement of debt by the Corporate Debtor at a later date or by confining the invoices of subsequent period, meaning thereby, date of default will remain the date on which debt has become due and payable and would not change by subsequent acknowledgement or payment by the Corporate Debtor.

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Therefore, we are inclined to hold that the date of default in the present matter is 15.01.2016 only as mentioned in Part IV of the application under Section 9 and since the application under Section 9 has been filed on 20.02.2020, the same is beyond the prescribed limitation period of three years as defined under Section 238-A of I & B Code read with Section 137 of the Limitation Act. Thus, considering the decision of the Hon'ble Supreme Court in Case of ***B.K. Educational Services Private Limited (supra)*** and two decisions of NCLAT as discussed in the aforesaid paras, we are thus, of the considered view, that the present application is patently barred by limitation hence, cannot be admitted for initiating CIRP proceeding. Therefore, the Petition No. CP (IB) No.19/ALD/2021 is dismissed as barred by limitation.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Ashish Verma)
Member (Technical)

(Praveen Gupta)
Member (Judicial)

17th May, 2023

Priya Agarwal
(Stenographer)