**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**CUTTACK BENCH**
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**IA (IB) No. 32/ CB/2022**
**&**
**CP (IB) No.199/CB/2020**

***In the Matter of:***

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

**-And-**

**IA.(IB) No. 32/ CB/2022**

***In the Matter of:***

**Indian Overseas Bank,** having its head office at: 763, Anna Salai, Chennai – 600002 and Branch office at: Saheed Nagar, Bhubaneswar – 751024

**...Financial Creditor**

**-Versus-**

**1. Srabani Construction Private Limited**, having registered office at: Plot No A/16, Nilakantha Nagar, Nayapalli, Bhubaneswar- 751 012

**2. Sibanarayan Chhotray,** having residing at: Plot No. 511 (P), Bolitota Sahi, Nayapalli, Bhubaneswar- 751 012

**3. Swapna Chhotaray,** having residing at: Plot No. 511 (P), Bolitota Sahi, Nayapalli, Bhubaneswar- 751 012

**4. Kirti Sundaray, having residing at:** Nonpadasahi, Nirakarpur, Nunpada, Khurda – 752 109.

**... Corporate Debtor**

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**... Corporate Debtor**

*Appearances (through video conferencing)*

For the Applicant : Mr. Saradindu Jena, CS.

For the Respondent : Mr. Sougat Dash, Adv.

**Order reserved on: 21.11.2022**

**Order Pronounced on: 29.11.2022**

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Coram:

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| Shri P. Mohan Raj | : | Member (Judicial) |
| Shri Satya Ranjan Prasad | : | Member (Technical) |

## ORDER

*Per: P. Mohan Raj, Member (Judicial)*

1. This application under Section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules2016, has been filed by the **Indian Overseas Bank** through its authorised person Assistant General Manager, Mr. Deepak Kumar Tripathy, having address at: Plot No. 232/A, Saheednagar, Bhubaneswar- 751 007 thereby seeking initiation of **Corporate Insolvency Resolution Process (CIRP)** against of **Srabani Construction Private Limited** a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act,2013 having its Registered Office at- Plot no- A/16, Nilakantha Nagar, , Bhubaneswar – 751 012 (Herein and after referred as the **Corporate Debtor).**

2. The petitioner/Financial creditor stated that the respondent availed the term loan of Rs.7,75,00,000/-( Rupees Seven Crore Seventy-Five Lakhs) on 29.03. 2011. The respondent not maintained the account properly and committed default, then the corporate debtor account was declared as NPA on 30.06.2015. The OTS proposal submitted by the respondent dated 09.10.2015 was also failed. The default amount is Rs.15,31,51,373/- as on 30.06.2020. The petitioner filed this petition on 18.09.2020.

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3. When the petition came up for a hearing on 02.12.2020, this Authority directed the petitioner to satisfy on the question of limitation. On 24.09.2021 the petitioner filed an additional petition enclosing the revival letters and financial statements of respondent where the corporate debtor acknowledges the debts. Later it is found that the additional petition was filed without obtaining leave of this Authority hence the same was ordered to return. Thereafter on the petitioner side filed I.A.(IB) No.32/CB/2022 for grant of leave to file additional pleadings and documents. The said application was found defective hence dismissed on 10.03.2022 with liberty to file defect free application. Now the petitioner filed I.A (IB).No.32/CB/2022 to grant leave to file revival letters dated 13.12.2016 and 18.06.2019 and the financial statements for the financial years 2015-16,2016-2017,2017-2018,2018-2019 and treat those documents as part of other documents mentioned in part V of Form-1.

4. On the respondent side in its counter admitted the loan availed and said but due to sudden fall of market could not pay the interest. The corporate debtor repeatedly made a request for settlement, but petitioner with an evil intention to grab the valuable residential property of the corporate debtor filed this petition. Then the parties on 22.01.2020 decided to settle the matter on repayment of Rs.3,30,00,000/- but the Bank authorities did not accept and cancelled the settlement. The company is ready and willing to settle the account. The petition is filed after the expiry of three years from the date of NPA so as per the decision of the Apex court the petition is barred by limitation.

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5. In respect of I.A.(IB) No.32/CB/2022 the respondent filed counter stating that the law is well settled that the party to the suit be filed all documents at the time of filing pleadings, further there is no pleading about the documents intend to be received hence the petition is to be dismissed. The application filed under Rule 55 of NCLT Rules 2016 is not maintainable the said rule deals with filing of additional pleadings. The corporate debtor had approached the petitioner on 27.05.2022 for one time settlement, in this situation the present application is liable to be dismissed.

6. On the basis of the pleadings, it appears that there is no dispute regarding default committed by the respondent and their liability to pay amount. Only legal point raised by this Authority and corporate debtor is regarding limitation.

**The point for consideration is:**

Whether the petition is barred by limitation?

**Point No.1**

7. On the corporate debtor side raised the plea of limitation. According to the petition averments the respondent account was classified as NPA on 30.06.2015. This petition was filed on 18.09.2020 obviously after the period three years from the date of NPA. On the petitioner side submitted in the interlocutory application that after the NPA the respondent acknowledged the debt in by revival letters dated 13.12.2016 and 18.06.2019 and also in its balance sheet for the year 2015-2016 to 2019-2020 before the expiry of three years from the date of NPA hence the period of limitation is extended and three years to be calculated from the

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date of second revival letter i.e., from 18.06.2019 in such a case the petition is filed in time.

8. On the petitioner side filed application I.A (IB). No.32/CB/2022 under Rule 55 of NCLT Rules 2016, seeking leave to file revival letters and Audit & Financial Statements as part of other documents as mentioned in point No.8 of part-V of the Form-I. It is true Rule 55 deals with filing of additional pleadings, not about the filing of additional documents. It is settled law giving wrong provision of law is not fatal, but if the application is presented before competent Authority the concern authority shall deal the application under appropriate provision of law. In a similar situation an application filed under Rule 11 of NCLT Rules 2016 to receive additional documents was entertained and allowed by the Apex court in **Dena Bank (Now Bank of Baroda) Vs Sivakumar and another** (2021) 10 SCC 330. In the situation it is concluded that wrong provision of law mentioned in the application is not fatal. Another objection raised by the respondent is there is no pleading supporting the additional documents intended to be received hence the application to be dismissed. In the hearing date 02.12.2020 this Authority directed the petitioner to satisfy the limitation, in pursuant of the said direction, the petitioner filed this application to prove the limitation. The petitioner prayed to append the additional documents as part of part V of the petition in Form No.1 subsequent to point No.8. Column No.8, starts with caption "List of other documents attached to this application in order to prove the existence of financial debt. The amount and date of default". To prove the existence of debt nineteen documents were filed along with the petition now the petitioner seeks leave of the

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Authority to add other documents viz Revival Letters and Financial and Audit & Financial Statements. It means these documents are required to prove the existence of debt. Apart from this no further pleading required, in fact the pleading is already available in the petition to substantiate the said pleading the petitioner seeks leave of this Authority to file additional documents, hence the objection raised on the respondent side is turned down as not sustainable. On the respondent side also pointed out no separate petition has been filed to carry out the amendment in main petition, of course this amounts to procedural irregularity, it will not fatal to the proceeding particularly, when there is no prejudice caused to the respondent. It is a settled legal position that the construction of rules or procedure which promotes justice and prevents miscarriage has to be preferred. It is settled proposition procedural law are only hand maid to the substantial law. In the circumstances I.A (IB).NO.32/CB/2022 is hereby **Allowed** and admitted the additional documents.

9. On the respondent side relied upon certain citations in its counter viz B.K. Educational service Private Ltd vs Parag Gupta and Associate 2018 SCC Online SCC 1921, Babulal Vardharji Gurjar vs Veer Gurjar Aluminium Industries (2020)15 SCC 1 and Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India) Ltd and another (2019)10 SCC 572, regarding limitation.

In **B.K. Educational service Private Ltd vs Parag Gupta and Associate 2018 SCC Online SCC 1921 decided on 11.10.2018**, the Apex held that Limitation Act is applicable to the petitions filed under section 7 and 9 of IBC from

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the inception of code and the three years period mentioned in Article 137 of Limitation Act be will applicable. In Para 42 of the said judgment stated as follows:

> *42. 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 filling of the application, the application would be barred under Article 1376 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 applications.*

In **Babulal Vardharji Gurjar vs Veer Gurjar Aluminium Industries (2020)15 SCC 1 decided on 14 August, 2020.** The Apex held that the petition under section 7 filed after three years from the date of default is barred by Limitation. In para 38 of the judgment, it is stated as follows:

> *38. The discussion foregoing leads to the inescapable conclusion that the application made by the respondent No. 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 08.07.2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The NCLT having not examined the*

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*question of limitation; the NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders deserve to be set aside and the application filed by the respondent No. 2 deserves to be rejected as being barred by limitation.*

In **Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India) Ltd and another (2019)10 SCC 572,** it is held the proper article applicable to the petitions filed under section 7 IBC 2016 is 137 and not 62 of Limitation Act. In para 6 it runs as follows:

> *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*

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*intent of the Code could not have been to give a new lease of life to debts which are already time-barred.*

10. In these citations referred supra relied by the corporate debtor determined the period of limitation applicable to the cases filed under section 7 & 9 IBC 2016 and also decided the relevant Article applicable is Article 137 of Limitation Act. There is no finding about the acknowledgement of debt and extension of limitation period.

11. In this case the account of the corporate debtor was classified as NPA on 30.06.2015. The debt of corporate debtor with financial creditor was acknowledged by the corporate debtor by Revival letters dared dated 13.12.2016 and 18.06.2019. The respondent admitted the debt of petitioner in his financial statements submitted ROC for the Financial years 2015-2016 to 2019-2020, these factors shows that the petition is filed within three years from the date of revival letter. The acknowledgement of debts was made within three years from the date of default 30.06.2015. Thus, here acknowledgement of debt is made by the corporate debtor as provided under section 18 of Limitation Act, hence petition filed on 18.09.2020 before the expiry of three years from the date of acknowledgement of debt is well within the period of limitation.

The position of law is cleared by the Apex court in **Dena Bank (Now Bank of Baroda) Vs Sivakumar and another** (2021) 10 SCC 330 at 388 para 140 read as follows:

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*140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgement of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.*

Further the Apex court in **State Bank of India vs Krishdhan Seeds Private Ltd (2022) SCC Online 632 para 13** runs as follows:

*13. 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 acknowledgment 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 acknowledgment was within a period of three years from the original date of default.*

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In this case the corporate debtor even after filed this petition submitted requisition to the respondent for OTS. Thus, the petitioner admits the debt and debt is in alive, the section 7 IBC petition is filed in time in consequence it is answered that the petition is not barred by Limitation. In C.P.No.199/CB/2020 the corporate debtor is admitted into CIRP.

12. The financial creditor has taken consent from **Mr. Srigopal Choudhary,** having registration No. **IBBI/IPA-001/IP-P01238/2018-2019/11893,** Email: Sgchoudhary@yahoo.com, having contact address- **Flat 7J Tower 3 South City Residency,375 Prince Anwar Shah Road, Jodhpur Park, Kolkata, West Bengal-700068**, an insolvency Professional to become interim Resolution Professional (IRP) of the Corporate Debtor in FormNo.2 and that no disciplinary proceedings are pending against him.

13. We therefore consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor.

7. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders:

(a) The petition bearing **C.P.(IB)No.199/CB/2020** by **INDIAN OVERSEAS BANK** the financial creditor, under Section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP **against M/S SRABANI CONSTRUCTION PRIVATE LIMITED**, the corporate debtor is **admitted.**

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(b) There will be a moratorium under section 14 of the Code.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

(e) **Mr. Srigopal Choudhary,** having registration No. **IBBI/IPA-001/IP-P01238/2018-2019/11893,** Email: Sgchoudhary@yahoo.com and having contact address- Flat 7J Tower 3 South City Residency,375 Prince Anwar Shah Road, Jodhpur Park, Kolkata, West Bengal 700068, is hereby appointed as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15,17,18,19,20 and 21 of the Code.

(f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC.

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The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

(g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

(h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

(i) In terms of section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post, e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, Cuttack by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

15. **C.P (IB) No.199/CB/2020** to come up on **04.01.2023** for progress report.

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16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

S/d

**Satya Ranjan Prasad**
**Member (Technical)**

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**P. Mohan Raj.**
**Member (Judicial)**

Signed on this 29th day of November, 2022.

Supriya-P. s_