

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**

C.P. (IB) No.144/BB/2017

U/s 7 of IBC, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016**Between:****M/s. Pegasus Assets Reconstruction  
Private Limited,**

Registered office at: 507, Dalamal House,  
Jamnalla Bajaj Marg, Nariman Point,  
Mumbai – 400 021

... Financial Creditor /Petitioner

**And****M/s. Yashomati Hospital Private Limited**

No.2371/3, HAL Airport,  
Varthur Main Road,  
Munnekolalal, Marathahalli,  
Bangalore – 560 037

...Corporate Debtor/ Respondent

**Order Pronounced on: 16<sup>th</sup> March, 2021**

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
  2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (through Video Conference):**

For the Petitioner : Shri Dinakar Singh

For the Respondent : Shri Ajesh Kumar

**ORDER****Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.144/BB/2017 is filed by M/s. Pegasus Assets Reconstruction Private Limited U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Yashomati Hospital Private Limited, on the ground, that it has committed default for total amount of Rs.14,61,02,892.63/- (Rupees Fourteen Crores Sixty One Lakhs Two

Thousand Eight Hundred and Ninety Two and Sixty Three Paise Only) as on 30.01.2014.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Pegasus Assets Reconstruction Private Limited (hereinafter referred to as 'Petitioner/Applicant/Financial Creditor) was incorporated on 20.01.2004, bearing the CIN: U6599MH2004PTC144113 and having its Registered Office situated at 507, Dalamal House, Jamnalal Bajaj Marg, Nariman Point, Mumbai - 400021.
- (2) M/s. Yashomati Hospital Private Limited (herein after referred to as Respondent/Corporate Debtor) was incorporated on 16.03.2007 having CIN: U85110KA2007PTC068050 and having its registered Office situated at No.2371/3, HAL Airport, Varthur Main Road, Munnekolalal, Marathahalli, Bangalore - 560037. Its authorised Share Capital is Rs.52,00,00,000/- and Paid-up Share Capital is Rs.401,456,840/- .
- (3) The Financial Creditor is an Assignee of South Indian Bank (SIB) Limited vide an Assignment Agreement dated 30.03.2016. The Corporate Debtor availed term loan of Rs.15 Crores from the assignee Bank South India Bank Limited, which is now assigned to the Financial Creditor, under Consortium arrangement with State Bank of India, who has also granted term loan of Rs.20 Crore as the Lead Bank, as per Sanction letter dated 26.02.2009.
- (4) The Corporate Debtor made payment Rs.3,47,00,000/- on 27.11.2014, again Rs 53,00,000/ on 28.11.2014 to the Financial Creditor. SBI, being lead Member of Consortium Banks (SBI & SIB), issued demand notice vide legal notice dated 27.10.2014 on its behalf as well as on behalf of the Financial Creditor and also U/s 13(2) of SARFESI Act 2002. The

Corporate Debtor vide letter dated 29.11.2014 to the SBI with copy to the SIB (Assignee Bank) acknowledged the payments made to SIB in discharge of its liability to SIB and the Corporate Debtor, vide its certificate dated 20.11.2015 certified the 'Debt' owed and payment against such 'Debt' to SBI & SIB.

- (5) The account of the Corporate Debtor was declared as 'Non-performing Asset' on 30.01.2014. However, this Application is filed on 23.11.2017, which is within the period of limitation in view of the acknowledgement of payments on 27<sup>th</sup> and 28<sup>th</sup> November, 2014 by the Corporate Debtor in discharge of its liability and then issuing certificate dated 20.11.2015. Hence the petition.
3. The Corporate Debtor has filed the statement of objections to the amended petition of the Financial Creditor, on 10.02.2021, by interalia stating as follows:
- (1) South Indian Bank (assignor) had filed O.A. No.932/2014, which is re-numbered as TA No. 681/ 2017 on 04/04/2014 and on perusal of para No.4 of said OA, South Indian Bank refers to the Letter of Revival dated 03/02/2012 and the Letter of Acknowledgment dated 05/04/2011. Therefore, they aver that the filing of Original Application on 04/04/2014 was within a period of Three years from the Letter of Acknowledgment of Debt dated 05/04/2011. The same is in contradiction with the cause of action averred in the present Company Petition.
- (2) As per the Supplementary Consortium Agreement dated 29/01/2011 entered between State Bank of India and South Indian Bank, as per Clause 8.1, State Bank of India being the 'A' Bank Consortium may by a Notice, to this Corporate Debtor declare that the principle and all accrued interest on the Term Loan due and payable forthwith. The Event of Default are described under the Supplementary Consortium Agreement dated 29/01/2011. Throughout the said Agreement, State Bank of

India and South Indian Bank are referred to as the 'A' Bank Consortium and that State Bank of India is designated and recognized as the lead Bank of the 'A' Bank Consortium.

- (3) Further, the Financial Creditor has executed Letter of Authority dated 25.03.2009 in favour of State Bank of India whereby they have authorized SBI to act on their behalf. In para No.5.16 of the O.A. No.932/2014, the South Indian Bank claims that they issued a Notice for recalling of the entire Loan on 17/03/2014 and the said South Indian Bank clearly admits that the only documents are the Term Loan Consortium Agreement dated 25/03/2009, the Joint Deed of Hypothecation dated 25/03/2009 in favour of the Consortium Bank, Inter-se Agreement dated 25/03/2009 in favour of Consortium Bank and the Supplementary Consortium Agreement dated 29/01/2011 in favour of the Consortium Bank. The Financial Creditor has only produced a copy of the Agreement, which is executed in favour of State Bank of India. In fact, in the said Agreements, South Indian Bank is not even a signatory. The South Indian Bank and State Bank of India have exercised their right as per Article 8 of the Agreement dated 29/01/2011 and as per Article 8 they have issued a Joint Notice dated 27/10/2014. As per the said Notice dated 27/10/2014, both State Bank of India and South Indian Bank has appointed an Authorised Officer to issue a Notice under the SARFAESI Act.
- (4) Once the Consortium comprising of State Bank of India and South Indian Bank have elected to act as a Consortium by issue of a Notice dated 27/10/2014, then the subsequent proceedings arising would be binding on both the members of the Consortium. The subsequent Notice dated 17/10/2015 by the Authorised Officer under the SARFAESI Act is also issued on behalf of the Consortium comprising of State Bank of India and South Indian Bank. In response to the Notice issued by the Authorised Officer

who is undisputedly a Statutory Officer under the SARFAESI Act, proceedings initiated on behalf of the Consortium comprising of State Bank of India and South Indian Bank was impugned by this Respondent in W.P. No.52886/2015. Further, apart from the Letter of Revival 03/02/2012 and the Letter of Acknowledgment dated 05/04/2011 the Corporate Debtor has not executed or signed any documents to prove the acknowledgement of Debt as per Section 25 (3) of the Contract Act or as per Section 18 of the Limitation Act.

- (5) On perusal of the Amended Petition filed by the Financial Creditor at Part IV of Form I, the Financial Creditor has mentioned the date of default as 30.01.2014 i.e., the date of NPA and further mentioned two subsequent dates 27<sup>th</sup> November, 2014 being the date of payment and a Letter dated 20<sup>th</sup> November, 2015. It is settled principle of law that the dates on which payments are made cannot be acknowledgement of Debt. Further, even assuming the date of NPA being cause action, the said Petition is time barred. On one side, South Indian Bank has initiated proceedings before the Debt Recovery Tribunal vide O.A. No.932/2014 and the same has been stayed by the Debt Recovery Tribunal by its Order dated 23/11/2016, and the same is in force as on this date. South Indian Bank has by the Doctrine of Election chosen to act jointly with SBI through an Authorised Officer appointed under the SARFAESI Act and Rules without whose proceedings are subject to challenge and the Interim Orders dated 04.12.2015 and 12.10.2017 of the High Court and therefore, binding on South Indian Bank. The Financial Creditor, on date of taking over of the above debt through the Assignment Agreement dated 30<sup>th</sup> March, 2016, was fully aware of all the pending disputes.
- (6) The Hon'ble High Court by its Order dated 04/12/2015, has passed an Interim Order with reference to the action taken by the

Authorised Officer on behalf of the Consortium comprising of State Bank of India and South Indian Bank. The same was subsequently modified by the Order of the Hon'ble High Court dated 12/10/2017. It is most important to note that the Order dated 4<sup>th</sup> December 2015, wherein the action of the Authorised Officer who was acting for the Consortium comprising of South Indian Bank and State Bank of India had restrained any further proceedings other than what had been impugned before the Debt Recovery Tribunal.

- (7) Therefore, once the Consortium comprising of South Indian Bank and State Bank of India elected to act together and engage the Authorised Officer who issued the Notices referred to supra on both their behalf. The Petition filed before this Hon'ble Tribunal will have to be subject to the outcome of the proceedings in the said Writ Petition which is still pending consideration before the Hon'ble High Court of Karnataka, Bengaluru. At this juncture the Financial Creditor had to seek permission from the Hon'ble High Court of Karnataka.
4. Shri Ramakanth Pandey, Senior Manager of the Petitioner, has filed a Rejoinder through Affidavit for the Statement of objections filed by the Respondent, on 22.02.2021 by interalia stating/contending as follows:
- (1) The objection of the Corporate Debtor is not filed in accordance in law as there is no document annexed with the reply/objection to substantiate the authority in favour of the person, who has deposed the content of the objection. Further, it is an admitted fact that the Corporate Debtor has to pay a sum of Rs. 15, 43, 83,042.73/- as the outstanding dues being the borrowing from South Indian Bank, which stands assigned to the Applicant.
- (2) The Applicant, vide Notice dated 17.03.2014, recalled the entire advance and demanded payment of the amount due from the Corporate Debtor. When the Corporate Debtor failed to pay the

total outstanding demanded amount, the O.A bearing No. 932/2014 was filed to recover the demanded amount. Further, Hon'ble NCLAT vide its judgement dated 24.11.2020 passed Company Appeal (AT) (Ins) No. 1337 of 2019 filed by the Financial Creditor has already rejected similar vague contentions of the Corporate Debtor. Hence it is legally not permissible to the Corporate Debtor to raise such vague defence.

- (3) The Corporate Debtor vide its letter dated 29.11.2014 to SBI with copy to SIB acknowledged the payments made to SIB in discharge of vide it liability to SIB. The Corporate Debtor in its objection has admitted its letter dated 29.11.2014. Further the Corporate Debtor vide its certificate dated 20.11.2015 certified the debt owed and payments made against such debt to SBI & SIB. The Corporate Debtor in its certificate/letter dated 20.11.2015 had acknowledged and confirmed the outstanding dues of South India Bank to the tune of Rs. 8.60 crores. Further as per the law laid down by the Hon'ble NCLAT in the matter of "Yougeshkumar Jashwantlal Thakkar v/s Indian Overseas Bank and others" in Company appeal (AT) (Ins) No. 236 of 2020 it is very clear that the ingredients of Section 18 of the Limitation Act, 1963 are applicable both for suit and application. Hence even though the account of the Respondent was declared as 'Non performing Asset' on 30.01.2014 yet the application filed by the Applicant before the Adjudicating Authority on 23.11.2017 was well within period of limitation in view of the categorical acknowledgement of payments on 27<sup>th</sup> and 28<sup>th</sup> November 2014 by the Corporate Debtor in discharge of its liability and then issuing certificate dated 20<sup>th</sup> November 2015.
- (4) Under the provisions of SARFAESI Act, 2002, especially U/s. 5, when such an assignment is made, the assignee being an ARC, registered with RBI, steps into the shoes of the assignor, and acquires all the right, title and interest as available to the

assignor and therefore, obtains every right to enforce the securities secured in favour of the original Lender. So far as contention with regard to taking leave of Hon'ble High court is concerned, the Hon'ble high Court of Karnataka never restrained the Appellant to pursue its remedy under provisions of the Code. The Hon'ble High Court of Karnataka has seized only with the issue relating to proceedings under SARFAESI Act, 2002. Further, the issue before the Hon'ble High Court relates to proceedings initiated by the SBI pursuant to fresh demand notice dated 09.03.2017 issued in its individual capacity wherein SBI in its individual capacity has raised demand of Rs. 20, 05, 05, 013/- raised U/s 13 (2) of SARFEASI Act, 2012 and consequently possession notice upon the Corporate Debtor on 05.08.2015 under Rule 8 (1) of The Security Interest (Enforcement) Rules, 2002 pursuant to demand notice dated 09.03.2017. The Corporate Debtor had filed I.A No. 1/2017 in WP No. 52886/2015 wherein the challenge was in respect of the fresh demand notice dated 09.03.2017 as well as possession notice dated 19.08.2017 issued by SBI in its individual capacity and not on behalf of consortium demanded payment of Rs. 20,05,05,013/-. The Hon'ble High Court, vide its order dated 12.10.2017 passed in the said Writ petition has interalia directed the sole Respondent (SBI) not to precipitate the issue till consideration of the main petition.

- (5) The Applicant being registered ARC, has unfettered independent right by the operation of Section 5 of the SARFAESI Act, 2002 to invoke the provisions of Section 7 of the code 2016 against the Respondent herein dehors to the fact that the Appellant has till date not substituted in the proceedings pending before the DRT. The pendency of the proceedings before the DRT and before the High Court, initiated by the Corporate Debtor cannot be legal bar



- on the exercise of legal right of the Appellant to move before the adjudication authority, under Section 7 of the Code, 2016.
- (6) As per Scheme, under the code 2016, there should be default in respect of financial debt owed to Financial Creditor to the corporate Debtor u/s 7 (1) of the Code, 2016. U/s. 7 (2), an Application is to be made under sub-section (1) in such form and manner as is prescribed, under Application to Adjudicating Authority Rules 2016. In this regard, it is relevant to mention that the Hon'ble Supreme Court in 'M/s. Innoventive Industries Limited v/s ICICI Bank and Another' has settled the law that the Adjudicating Authority has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial Creditor, which shall be done within 14 days of the receipt of the Application and the moment the Adjudicating Authority is satisfied that a default has occurred, the Application must be admitted unless it is incomplete, in which case it may given notice to the application to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.
- (7) And said issue was already settled by the Hon'ble NCLAT in the Company Appeal (AT) (Ins) No. 1337 of 2019. The Hon'ble NCLAT has rightly observed that the Applicant or its assignor Bank i.e. South Indian Bank were never made parties in the Writ Petition No. 52886-52887 of 2015 or the I.A No. 01 of 2017 filed by the Corporate Debtor and therefore, there was no restrain order against the Financial Creditor or its assignor Bank i.e, South Indian Bank. Moreover, the Hon'ble NCLAT further observed that although there is no bar in the I & B Code, 2016 for a financial Creditor/Bank to initiate CIRP proceedings individually even when it is part of a consortium. The Financial Creditor is competent to maintain the Section 7 application on the basis of



the separate overdraft facility which it had granted to the Corporate Debtor outside the consortium.

5. Heard Shri Dinakar Singh learned Counsel for the Petitioner, and Shri Ajesh Kumar, Learned Counsel for the Respondent **through Video Conference**. We have carefully perused the pleadings of both Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
6. Shri Dinakar Singh, Learned Counsel for the Petitioner, while reiterating the various averments made in the petition, as mentioned supra, has further submitted that the debt and default in question are not in dispute and the instant application is filed in accordance with law and a qualified Insolvency Professional Ms. Medha Kulkarni bearing Registration No. IBBI/IPA-001/IP-P00121/2017-18/10263, e-mail: [medha1273@gmail.com](mailto:medha1273@gmail.com), is suggested as IRP, who has also filed written Communication in Form-2 dated 08.07.2019/01.03.2021, by *inter-alia* declaring that she is a qualified Insolvency Professional; there are no disciplinary proceedings pending against her with the Board or ICSI Insolvency Professional Agency. Therefore, he urged the Adjudicating Authority to initiate CIRP. In support of his case, the following judgments are relied upon:

- (1) *B.K. Education Services Private Limited v/s Parag Gupta and Associates Civil Appeal No. 23988 of 2017 passed by Hon'ble Supreme Court of India on 11.10.2018*
- (2) *Babulal Vardharji Gurjar V/s Veer Gurjar Aluminium Industries Private Limited Civil Appeal No. 6347 of 2019 passed by Hon'ble Supreme Court of India,*
- (3) *Saurav Mukerjee v/s Oriental Bank of Commerce Company Appeal (AT) (Insolvency) No. 940 of 2019 passed by Honb'le NCLAT, New Delhi.*
- (4) *Yogesh Kumar Jashwantlal Thakkar v/s India Overseas Bank Company Appeal (AT) (Insolvency) No. 236 of 2020 passed by Hon'ble NCLAT, New Delhi;*
- (5) *Sant Lal Mahton v/s Kamal Prasad 1951 AIR 477, 1952 SCR 116)*
- (6) *Shanthi Conductors (P) Limited v/s Assam State Electricity Board and others (2020 2 SCC 67)*

(7) *Innoventive Industries Limited v/s ICICI Bank and another (2018) 1 SCC 407*

7. Shri Ajesh Kumar, Learned Counsel for the Respondent, on the other hand has strongly opposed the maintainability of the instant Company petition, and once again reiterated various averments made in the Reply, as briefly stated supra. He relied upon following judgements in support of his case:

- (1) *Nasiruddin and other v/s Sita Ram Agarwal in Civil Appeal No. 5077 of 1998 passed by the Hon'ble Supreme Court of India*
- (2) *Postmaster General and others v/s Living Media India Limited and another in Civil Appeal No. 2474-75 of 2012 passed by the Hon'ble Supreme Court of India;*
- (3) *Yogesh Kumar Jashwantlal Thakkar, v/s Indian Overseas Bank and another in Company Appeal (AT) (Insolvency) No. 236 of 2020 passed by the Hon'ble NCLAT;*
- (4) *V.Padmakumar v/s Stressed Assets Stabilisation Fund (SASF) & Another in Company Appeal (AT) (Insolvency) No. 57 of 2020 passed by Hon'ble NCLAT, New Delhi;*
- (5) *State of Gujarat v/s Kothari and Associates in Civil Appeal No. 1770 of 2005 passed by the Hon'ble Supreme Court of India*
- (6) *Shanti Conductors Private Limited v/s Assam State Electricity Board and other in Civil Appeal No. 8442-443 of 2016 Review Petitions (C) Nos. 786 -87 of 2019*
- (7) *Bimalkumar Manubhai Savalia v/s.Bank of India and another in Company Appeal (AT) (Insolvency) No. 1166 of 2019 passed by the Hon'ble NCLAT*
- (8) *Manish Kumar v/s. Union of India and another in W.P (C) No. 26 of 2020 passed by the Hon'ble Supreme Court of India*
- (9) *Rajendra narottamdas Sheth and another v/s Chandra Prakash Jain and another in Company Appeal (AT) (Insolvency) No. 621 of 2020 by Hon'ble NCLAT*
- (10) *Balalkrishnan v/s. Kotak Mahindra Bank Limited and another in Company Appeal (AT) (Insolvency) No.1406 of 2019 passed by the Hon'ble NCLAT*
- (11) *B.Prashanth Hegde v/s. SBI and another in Company Appeal (AT) Insolvency No. 68 of 2019 passed by Hon'ble NCLAT*

The Learned Counsel for the Respondent has also relied upon the judgement in *Company Appeal (AT) (Insolvency) No. 407 of 2019 C.ShivaKumar Reddy v/s Dena Bank* passed by the

*L. S. Reddy*

Hon'ble NCLAT, New Delhi on 18.12.2019. However, the same is challenged by Dena Bank before the Hon'ble Supreme Court of India in C.A No. 1650 of 2020 and the same is pending.

8. As per history of case, the Respondent has initially filed I.A No. 69 of 2019 by interalia seeking to dismiss the present company petition, which was dismissed by the Adjudicating Authority on 21.02.2019. Aggrieved by this order, the Respondent has filed W.P No. 14107 of 2019 before the Hon'ble High Court of Karnataka, which was disposed of by an order dated 25.04.2019 by "quashing the impugned order and directed the Adjudicating Authority to decide the objections preferred by the Petitioner with regard to the maintainability of the Company petition by a speaking order within a period of three weeks from the date of receipt of the certified copy of the order passed today." Accordingly, the Adjudicating Authority allowed I.A No. 69 of 2019, by an order dated 10<sup>th</sup> October, 2019, consequently dismissed the main company petition by reserving liberty to the Petitioner to file fresh company petition in accordance with law after the Hon'ble High Court decides the issues pending before it.
9. Aggrieved by the said order, the Petitioner has preferred an appeal before the Hon'ble NCLAT, New Delhi bearing Company Appeal (AT) (Ins) No. 1337 of 2019. After hearing the Parties, the Appeal was disposed of by an order dated 24.11.2020, with following orders/directions:

*"For the above reasons we set aside the Impugned Order. The I.A No. 69 of 2019 filed by the Respondent is dismissed. The Company Petition CP (IB) No. 144/BB/2017 is restored to the file of the Adjudicating Authority. We hold that the Application is maintainable. The matter is remitted back to the Adjudicating Authority with a direction to permit the Appellant – Financial Creditor to rectify defect in the format and file documents with regard to limitation as indicated above. The Adjudicating Authority*



*will then hear both the parties and if the Adjudicating Authority find the Applicant to be within limitation and if the application is otherwise complete, the same shall be admitted and further necessary orders should be passed.*

*The Appeal is disposed accordingly.”*

In pursuant to the above order, the Petitioner has filed I.A No.07 of 2021 by seeking to amend the petition with regard to question of limitation and to take on record the Form -1 and the same was allowed an order dated 21.01.2021.

10. In the light of order passed by the Hon'ble NCLAT in the said Appeal, which stated to have become final, short point for consideration is whether the instant Company Petition/Application is within limitation, as per law, in the light of facts of case.
11. Since the Hon'ble NCLAT, by considering the findings of this Adjudicating Authority mentioned in the impugned order, has interalia held that the AA has erred in directing South Indian Bank to go and get directions from the High court or to await decision of issue by the High Court, when SIB was not even party in the Writ Petition. It is also observed that CD is aware that both the orders were against SBI as portions reproduced from its statement of objections (Diary No. 18701), and held that it was difficult to accept that there was restraint order against SIB. Therefore, the contentions raised again on behalf of Respondents, with respect to those issues are not being adverted to or to decide them again, as the Hon'ble NCLAT has set aside the impugned order.
12. So far as the issue of limitation is concerned, admitted facts are that Corporate Debtor, in pursuance to its due to the Petitioner, made part payment Rs.3,47,00,000/- on 27.11.2014, again Rs. 53,00,000/ on 28.11.2014 SBI, being lead Member of Consortium Banks (SBI & SIB), issued demand notice vide legal notice dated 27.10.2014 on its behalf as well as on behalf of the Financial Creditor and also U/s 13(2) of SARFESI Act 2002. The Corporate Debtor vide letter dated

29.11.2014 to the SBI with copy to the SIB (Assignee Bank) acknowledged the payments made to SIB in discharge of its liability to SIB and the Corporate Debtor, vide its certificate dated 20.11.2015 certified the 'Debt' owed and payment against such 'Debt' to SBI & SIB. The account of the Corporate Debtor was declared as 'Non-performing Asset' on 30.01.2014. However, the instant Petition/ Application is filed on 23.11.2017. Therefore, the question is whether limitation starts from date of NPA or from subsequent dates of acknowledgement of debt and part-payments made, and what is law on the issue.

13. In terms of Section 18 of the Limitation Act, period of limitation started a fresh from the date of acknowledgement of debt by the debtor. Section 18 of the Limitation Act is reproduced herein in verbatim:

**18. Effect of acknowledgment in writing. —**

*(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform*

*gpd*

*or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.*

14. So far as a provision of Code is concerned, Section 238A, inserted in the Code by way of Amendment Act No. 26 of 2018 is deemed to have come into effect from 06.06.2018. This Section 238A, being directly relevant for the present purpose, could also be usefully reproduced as under: -

*"238-A Limitation. - The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."*

In the case of B. K. Educational Services, by referring other connected judgements, it is interalia held that the date of the Code's coming into force on 01.12.2016 was wholly irrelevant to the triggering of any limitation period for the purposes of the Code, and Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of I & B Code does not and cannot form a trigger point of limitation for Applications filed under the Code. Equally, since "Applications" are petitions, which are filed under the Code, it is Article 137 of the Limitation Act, which will apply to such "Applications." Article 137 governs Applications U/s 7 of the Code, which being the residuary provision on the period of limitation for "other Applications" is held applicable by this Court for the purpose of reckoning the period of limitation for an Application under Section 7 of the Code.

15. So far as the decisions relied upon by the Learned Counsel for the Respondent is concerned, as stated supra, different ratios/obiter dicta have been made or observed in those cases, basing on set of facts and circumstances as available in those cases, and they will not have direct application to the facts and circumstances in the instant case and we have kept in mind the decisions rendered in those cases while deciding the instant case. The Hon'ble NCLAT, has extensively dealt with decision rendered by the Hon'ble Supreme Court, in Civil Appeal No. 6347 OF 2019 *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.* Dated 14th August, 2020, wherein the Hon'ble Court interalia held that:
- “In the interest of justice, we also make it clear that the observations in this judgment are relevant only in regard to the issue determined that the application under Section 7 of the Code is barred by limitation and not beyond. In other words, nothing in this judgment shall have bearing on any other proceeding that shall be dealt with on its own merits and in accordance with law”*
16. So far as the Debt and default in question are concerned, there is hardly any dispute raised by the Respondent except raising that matter is pending before Hon'ble High court, DRT, stay is granted and continuing etc, which are already considered by the Hon'ble NCLAT in the said Appeal and negative also, and thus there are no more res Integra. Therefore, there is no other alternative for Adjudicating Authority except to initiate Insolvency proceedings against the Corporate Debtor.
17. By analysing the facts of case available in the instant case, as stated supra, and the law on the issue, the instant Petition is deemed to be within limitation prescribed. The instant Company Petition is found to be filed in accordance with law and the Petitioner also suggested a qualified Insolvency Professional Ms. Medha Kulkarni bearing Registration No. IBBI/IPA-001/IP-P00121/2017-18/10263, e-mail: [medha1273@gmail.com](mailto:medha1273@gmail.com), as IRP, who has also filed written



Communication in Form-2 dated 08.07.2019/01.03.2021, by *inter-alia* declaring that she is a qualified Insolvency Professional; there are no disciplinary proceedings pending against her with the Board or ICSI Insolvency Professional Agency. Hence, the instant Company Petition is fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.

18. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 7 and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.144/BB/2017** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Yashomati Hospitals Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) **Ms. Medha Kulkarni** bearing Registration No. IBBI/IPA-001/IP-P00121/2017-18/10263, e-mail: [medha1273@gmail.com](mailto:medha1273@gmail.com), Karnataka, Bengaluru, who is qualified Insolvency Professional, is hereby appointed as Insolvency Resolution Professional, in respect of the Respondent/Corporate Debtor namely **M/s. Yashomati Hospitals Private Limited** to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
  - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
  - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
  - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
  - 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
  - 5) Since the IRP chosen by the Petitioner is not found in the list of Insolvency Professionals empanelled by the IBBI for Bengaluru Bench for the duration January-June 2021, the Registry is directed to forward a copy of this order for their consideration to confirm her name.



- 6) The Registry is directed to forward a copy of this order immediately to both the Parties.
- 7) Post the case for report of IRP on 16<sup>th</sup> April, 2021.



**(ASHUTOSH CHANDRA)  
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL**

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