

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB) No.98/BB/2021
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

In the matter of:

M/s. Global Emerging Markets India Ltd.
B-28, Pushpanjali Farms Bijwasan,
New Delhi - 110061

... Petitioner/Financial Creditor

VERSUS

**M/s. Lepakshi Science and Technology
Park Private Limited,**
Sy. No. 35/2, 35/1 (Part) 1st Cross,
Ananthapura Village,
Singanayakanahalli, Yelahanka,
Bengaluru - 560064

... Respondent/ Corporate Debtor

Order delivered on: 03rd June, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioner : Shri Dhyan Chinnappa, Senior Counsel
Shri Rohan Kothari
For the Respondent : Shri R.V Yogesh

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, (hereinafter referred to as 'IBC'/Code) 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Global Emerging Markets India Limited (hereinafter referred to as 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Lepakshi Science and Technology Park Private Limited (hereinafter referred as 'Respondent'). The amount claimed to be in default is Rs. 25,84,94,000/- (Rupees Twenty Five Crore Eighty Four Lakh Ninety Four Thousand only).

2. It is stated that on 19.03.2012 the Financial Creditor and M/s Lepakshi Science and Technology Park Private Limited (**Corporate Debtor**) executed an Inter Corporate Deposit (“**ICD**”) agreement by which an amount of Rs. 5,00,00,000/- (Rupees Five Crores) was forwarded by the Financial Creditor to the Corporate Debtor. The ICD was executed in furtherance of Memorandum of Understanding dated 07.01.2012 entered by the Financial Creditor with Lepakshi Knowledge Hub Private Limited (**Project Proponent**). Under the MOU the Financial Creditor was investing in the project undertaken by the Project Proponent. The Project Proponent had entered into a Memorandum of Agreement with the Government of Andhra Pradesh on 22.12.2008 (MOA) for the purpose of setting up global knowledge hub. By way of this MOA the Government of Andhra Pradesh agreed to allot and transfer required land to the Project Proponent. Further the Project Proponent incorporated two entities i.e., the Corporate Debtor and Lepakshi Heritage Wellness Village Private Limited (**Guarantor**).
3. It was the understanding between the Financial Creditor and the Project Proponent in terms of the MOU that the Project Proponent was in the process of transferring 2000 acres and 650 acres of land to the Corporate Debtor and the Guarantor.
4. Under the MOU with the Project Proponent the Financial Creditor agreed to purchase 100% equity shareholding in the Corporate Debtor and the Guarantor for a total consideration of Rs. 2,38,50,00,000/- and it was agreed that within 5 days from the date of MOU, the Financial Creditor shall forward an amount of Rs. 5,00,00,000/- to the Corporate Debtor through an Inter Corporate Deposit or a similar instrument. Consequently, the ICD was entered into.
5. The purpose of the ICD was solely for payment of agreed amount of stamp duty for transfer of 2,650 acres of land from the Project Proponent to the Corporate Debtor and the Guarantor. The term of the ICD was set as 6 months with an interest of 18% per annum after the term of the ICD. Further consequent to the ICD on 29.03.2012 the Guarantor had executed a corporate guarantee infavour of the Financial Creditor guarantying repayment of the amount transferred by the Financial Creditor to the Corporate Debtor. On 16.04.2012 the Financial Creditor, Project Proponent and IndusInd Bank Limited (**escrow agent**) entered into an escrow

agreement by which the entire shares of the Corporate Debtor was deposited with the escrow agent for the benefit of the Financial Creditor as security for the ICD. Thereafter, the Financial Creditor and Project Proponent were in discussion for entering into definitive agreements/ share purchase agreement in terms of the MOU, when the Project Proponent informed the Financial Creditor that the Andhra Pradesh government had proposed to cancel the MoA given to the Project Proponent. Consequently no definitive agreement was entered into. The Project Proponent continuously assured the Financial Creditor that all disputes will be resolved and obligations under the MOU will be honoured. At the request of the Project Proponent, the Corporate Debtor and the Borrower, the Financial Creditor refrained from recalling the ICD.

6. It is stated that the Financial Creditor was constrained to recall the ICD on 19.09.2020 when a notice was issued to the Project Proponent, Corporate Debtor and Guarantor calling upon return of Rs. 5,00,00,000/- along with compound interest amounting, to Rs. 17,97,00,000/-. On 07.10.2020 a joint response was received from the Project Proponent, Corporate Debtor and Guarantor denying liability on unsustainable ground. Further, it is stated the Corporate Debtor in its Balance Sheet filed with Ministry of Corporate Affairs from the financial year 2011-12 to 2018-19 admitted to the liability towards the Financial Creditor.
7. The Petitioner/Financial Creditor in support of the C.P. averments has enclosed the following documents among other documents, to the C.P:
 - i. Memorandum of Agreement dated 22.12.2008 between the Government of Andhra Pradesh and Lepakshi Knowledge Hub Private Limited
 - ii. Memorandum of Understanding dated 07.01.2012 between Financial Creditor and Lepakshi Knowledge Hub Private Limited the Project Proponent.
 - iii. Inter Corporate Deposit dated 19.03.2012 executed by the Financial creditor and Corporate Debtor
 - iv. Escrow Agreement dated 16.04.2012 between the Financial Creditor, Lepakshi Knowledge Hub Private Limited the Project Proponent and IndusInd Bank Limited
 - v. Balance Sheet of Corporate Debtor from the Financial years 2011-12 to 2018-19
 - vi. Recall letter issued by the Financial Creditor to the Corporate Debtor, Project Proponent and Guarantor dated 19.09.2020

- vii. Verifying affidavit filed by the Financial Creditor.
 - viii. Written Communication by the proposed Interim Resolution Professional in Form 2
 - ix. Board Resolution dated 04.02.2020
 - x. Record of Default with Information Utility (Form C)
 - xi. Copy of the Master Data of Corporate Debtor
8. The Corporate Debtor/Respondent while opposing the Company Petition has filed the reply/objections to the petition contending as follows:
- i. It is stated that the contents of the petition and each and every averment are denied as incorrect unless the same are specifically admitted to hereunder. The instant proceeding by the Petitioner is a sheer of abuse of process as explained hereinafter, also attracting penalty under Section 65 of IBC.
 - ii. It is stated that the Petitioner and Respondent are already engaged in a full-blown litigation in multiple fora, with the principal dispute pending before a three-judge arbitration tribunal. After failing to get the desired interim relief in the ongoing litigation, the Petitioner has maliciously instituted the instant proceedings blatantly suppressing material facts and information.
 - iii. The Respondent is a fully owned subsidiary of M/s. Lepakshi Knowledge Hub Private Limited (LKH). LKH was incorporated on 26.03.2008. The LKH, in turn is a wholly owned subsidiary of M/s. Indu Projects Limited (IPL) and was incorporated with an objective to develop a world class project in the backward district to Anantapur, Andhra Pradesh. The project was conceived as an integrated project to provide integrated infrastructural support to university clusters, science and technology parks, medical parks, aviation/aerospace parks, agro-food parks, IT/BT parks, theme parks, logistical parks, etc. Towards such objective, LKH made an application to the Andhra Pradesh Industrial Infrastructure Corporate (APIIC) which was the nodal agency in Andhra Pradesh to provide lands for industrial and infrastructural development. After following due process, the government of Andhra Pradesh and APIIC in total provided for around 8,848 acres of the land to LKH at Chilamattur and Gorantla in Anantapur district, Andhra Pradesh. Thereafter, LKH paid the

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necessary sale consideration after which the APIIC executed several registered sale deeds conveying the total land to LKH.

- iv. It is stated that in 2011, negotiations ensued between the Petitioner and LKH to enable the Petitioner to participate in part of the project. It was agreed that 2650 acres out of total land proposed to be developed by the Claimant (subject land) would be transferred to the Respondent and M/s. Lepakshi Heritage Wellness Private limited, after which the Petitioner will fully acquire the equity of the LST and LHW for a total consideration of Rs. 238,50,00,000/-. Towards this purpose, LKH and Petitioner had executed a Memorandum of Understanding dated 07.01.2012. Further, the MOU categorically stipulated an order of performance to take forward the transaction. A conjoint reading of Clause 4, more specifically Clause 4.1, 4.2 and 4.3 demonstrate the following order of performance.

- a) *Within a period of 5 days from the execution of the MOU, Petitioner should transfer an amount of Rs 5 crores to LST towards the cost of land transfer from LKH to LST and LHW.*
- b) *After the transfer of Rs. 5 crores, LKH was to transfer the subject land to LST and LHW through registered sale deeds.*
- c) *After the transfer of land from LKH to LST and LHW, the Petitioner was required to pay the first tranche of the sale consideration (Rs. 25 crores) along with definitive agreement towards first tranche of share purchase (26% of the paid-up shareholding of LST and LHW).*

- v. In the year 2012, after the execution of the MOU, the Petitioner transferred Rs. 5 crores to LST. Thereafter, LKH duly transferred the subject land to LST and LHW. As contemplated by the MOU's order of performance, the next obligation was on the Petitioner to transfer the initial payment towards the initial closing along with the definitive agreements. However, despite negotiations and discussions, Petitioner deliberately did not take the transaction forward by performing its part of the promise. After the transfer of land from LKH to LST and LHW, there was no further obligation to be performed by the Lepakshi companies before the initial closing. It was fully incumbent on the Petitioner to perform further steps so that LKH was paid the initial payment consideration towards the transfer of the first tranche of shares.

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- vi. It is stated that despite some follow-up and negotiations, the Petitioner did not come forward to pay the first tranche of sale consideration. As the Petitioner deliberately and intentionally backed out from the transactions without paying the initial payment along with definitive agreements, the parties considered the transactions as failed. The Petitioner and the M/s. Lepakshi entered into several ancillary agreements being Inter Corporate deposit Agreement dated 19.03.2012, Corporate Guarantee dated 29.03.2012 and an Escrow Agreement dated 16.04.2012. None of these agreements had any independent existence apart from the terms and performance of the MoU. With the lapse of the MOU because of non-performance by the Petitioner, the parties always considered that the entire transaction as failed and all the ancillary agreements paled into insignificance without any legal effect. Further, it is stated that Rs. 5 crores transferred from the Petitioner to LST was admittedly not towards share transfer but only towards the cost of land transfer from LKH to LST and LHW. If not for the specific promise of the Petitioner to invest in LST and LHW and implement the project, the very need for the transfer of land from LKH to LST and LHW contemporaneously would not have arisen in the first place. The terms of the agreement make it very clear that the amount of Rs. 5 crores were transferred to LST as cost of Land transfer. Moreover, even as per admitted stand of the Petitioner, the said 5 crore was to be adjusted in the sale consideration to be immediately paid by the Petitioner to Lepakshi group. Therefore, it is apparent that the parties considered Rs. 5 crore to be part of expenses to be incurred towards the transaction, obviously subject to the payment of MOU consideration by Petitioner to LKH.
- vii. M/s. Lepakshi were contemporaneously hopeful that the MOU will be implemented as it was part of the larger scheme to implement the project, towards which the land was allotted by the Government. However, for reasons only known to Petitioner, possibly to disassociate from the limelight after the criminal allegations arose qua the subject project-the Petitioner did not come forward to implement the MOU. Despite some discussions thereafter, the MoU was not taken forward.

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- viii. After the failure of MOU, none of the parties gave any significance to the MOU or its terms. It is pertinent to note that, as originally contemplated in the MoU, all the Directors in LST and LHW were to resign and only Mr. Balaji and Mr. Gulshan Jhurani were to be on the Board of LST and LHW. However, the Board of LST and LHW consistently had another director(s) which demonstrate that the parties gave no credence to the MOU as it did not fructify into any definitive agreements, that too because of Petitioner's non-performance. Infact, the entire project got mired in legal controversy because of certain criminal allegations levelled against the Promoters of IPL (Indu Projects Limited) which resulted inter alia in criminal proceedings initiated by the Central bureau of Investigation (CBI) and the Enforcement Directorate (ED). The CBI filed a charge sheet dated 17.09.2013 towards the subject project. This was followed by the ED issuing a Provisional Attachment Order dated 25.03.2015 attaching the total land, including the subject land way back in the year 2015. The ED's provisional attachment order was also contested before the Adjudicating Authority, which was followed up with an appeal before the Appellate Authority, where it is currently pending.
- ix. It is stated that, in view of the allegations and the attachment proceedings, and lack of support from the Government, the subject project could not be implemented as contemplated. As such, the company's business has been in a stand-still, therefore, Mr. Gulshan Jhurani who was appointed when the MoU was contemplated, continued to be director fortuitously as no operations were being performed *per se* in LST and LHW. Similarly, M/s. Lepakshi did not take any steps towards the ancillary agreements as the operations were anyway in a standstill and no party considered these agreements as subsisting. It is further stated that it is Petitioner's own stand that *"the MOU is the principal agreement in furtherance of which the other agreements such as the ICD Agreements, the Corporate Guarantee and the Escrow Agreement have been entered into among the Petitioner and M/s. Lepakshi."*
- x. It is submitted that, at no point of time, including during the CBI's proceedings or the ED's proceedings, the Petitioner ever asserted its

- rights resulting from the MOU or other ancillary agreements. Infact one of the allegations in the CBI charge sheet relate to the transfer of land from LKH to LST and LHW. The Petitioner never addressed a single correspondence to CBI or ED claiming any proprietorial rights or shareholding or managerial rights in LST or LHW.
- xi. As LST's business has been in a stand-still all along without any regular operations, an entry made contemporaneous to the MoU in 2012, subsisted in the books. Any reference to the ICD *qua* the Rs. 5 cr. was also removed after FY 2016-17 and the Rs. 5 cr. subsisted as an 'other liability' as a balancing entry towards the cost of land transfer which was incurred as capital expenditure (occurring on the assets side of the Respondent No.2's Balance Sheets). The Asset's side entry is not reversible as the Stamp Duty and Registration Charges once paid will not be returned if the transaction is cancelled. As LST incurred this expenditure purely on account of Claimant's promise to pay the initial tranche, which was admittedly, not honoured, the entries remained as they were due to accounting compulsion. Moreover, no sale consideration is paid till date to LKH from LST or LHW, which was also to be paid from the consideration promised to be paid by the Petitioner. As such, the sale between LKH and LST & LHW itself is void. M/s. Lepakshi could not cancel the transaction in view of the attachment.
- xii. It is stated that the Petitioner itself never indicated the amount of Rs. 5 cr. as an ICD or a loan (short term or long term) in its books. The Petitioner also never depicted any interest on ICD in its income. Rs. 5 cr. is not classified as an ICD in Petitioner's Balance sheet despite the Claimant's Balance Sheet having a separate head for "Advances and ICD's". The Petitioner has intentionally deliberately suppressed its own financial statements to mislead this Hon'ble Tribunal.
- xiii. It is stated that while everyone considered the transaction contemplated in the MOU as failed and abandoned, the Petitioner curiously in 2019 started a malicious litigation. Around 2018-19, Indu Project Limited (IPL) (the ultimate holding company of M/s. Lepakshi) was on the brink of Insolvency proceedings and the whole pursuit of the Petitioner to claim rights from an abandoned

transaction was to scuttle IPL's Insolvency Proceedings and unduly gain therefrom by using this litigation as an arm twisting measure. The true intentions of the Petitioner would be apparent if one appreciates the Petitioner's emails to the IPL's Resolution Professional and Bankers as explained hereinafter.

- xiv. In the year 2019, the Petitioner's executives personally contacted the Director of LST and LHW Mr. Balaji and informed that they wish to have a meeting with him. In the course of this discussion, Mr. Balaji was apparently informed that the Petitioner does not have documents pertaining to the transaction in 2012 and they would be glad if Mr. Balaji could help them in securing the copies of the documents only for their record purposes. Even at this point of time, the Petitioner never asserted any rights from the MOU or sought any performances of the MOU. As the Petitioner's executives only asked for the copies of the documents for their record purpose, Mr. Balaji issued the letter so that copies would be handed over to the Petitioner's executives.
- xv. In fact, a mere perusal of the email correspondence in the early and mid 2019 would now make it evident that it is an oblique correspondence with a malicious aim to foist false litigation. It is stated that the Petitioner never asserted any rights from the MOU in these emails, because the executives of Indus Ind Bank specifically informed the Petitioner that their request for the provision of documents is not being honoured because "*there has been no communication between account bank and the respective parties to the escrow for a long time (more than 6 years)*". The bank's executives also asked for "*reason for not signing the definitive agreement.*" Despite objection on aforementioned grounds, Petitioner's executives never asserted anything with respect to the validity of the MOU. The whole correspondence was deliberately conducted clandestinely to later spin a false narrative.
- xvi. It is stated that in December 2019, for the very first time, the Petitioner started addressing emails and letters to the IPL's RP claiming that the Petitioner is 100% equity shareholders of LST and LHW. The mendacity of these letters and correspondence to IPL's RP is ex-facie evident as the Petitioner who intentionally abandoned the

MOU because of their non-performance, nearly after 8 years, sent a letter claiming to be "100% equity shareholders," having admittedly not paid a single rupee towards share till date. Petitioner did not mention about Rs. 238.5 Crores which the Petitioner should have paid from 2012, out of which nothing was paid till date. The Petitioner evidently tried to pull a fast one with the RP in hope that their clandestine trick will go unnoticed, so that they can later claim to have corresponded with the RP and the RP acknowledged their transaction. The mala fide intent of the Petitioner would be evident by the emails from December 2019 sent by the Petitioner to IPL's RP, along with all the banks who formed the IPL's Committee of Creditors.

- xvii. The Petitioner who in early and mid 2019 was conveniently corresponding with personal email id of Mr. Balaji, all of a sudden from December 2019 ensured that correspondence is addressed to M/s. Lepakshi's official email-id's apart from copying IPL's RP and CoC. Vide multiple letters, IPL's RP interalia cogently responded setting the record straight informing the Petitioner that the MOU does not have any legal effect after 8 years as no definitive agreements were executed pursuant to the MoU. Further stated that the Petitioner addressed a letter dated 19.09.2020 to M/s. Lepakshi, again falsely claiming that it is the 100% shareholder of LST and LHW and the MOU is binding after 8 years. The Petitioner baselessly sought the amount of Rs. 5 crores along with 18% interest apart from disputing the Directorships. M/s. Lepakshi cogently responded to this letter vide letter dated 07.10.2020 through email on the same date to the Claimant. A physical copy of the letter was also dispatched on 07.10.2020 to the Claimant. Despite pleading about this letter in its petition, the Petitioner did not deliberately file the same.
- xviii. It is stated that before proceeding to the narration on litigation between the Petitioner and M/s. Lepakshi, the pleadings therein are filed along with the instant reply. To maintain brevity, the entirety of the events and contention in litigation are not enumerated, but for the facts relevant for the purpose of these proceedings. Similarly, there has been a catena of litigious correspondence between the Petitioner and M/s. Lepakshi in the year 2020 and 2021. The Respondent

- craves leave to read and rely on the documents filed to demonstrate the respective parties stand in these proceedings.
- xix. As a part of its malafide litigation, the Petitioner first filed a petition u/s 9 of the Arbitration Act before the Hon'ble Delhi High Court. M/s. Lepakshi filed their reply to the Section 9 petition in due course, to which the Petitioner also filed a rejoinder. The Petitioner invoked arbitration on 02.12.2020 and the Respondent issued their reply on 28.12.2020. Ultimately this was followed by the constitution of the Arbitration Tribunal. Thereafter, the Section 9 petition was converted into an application u/s 17. After elaborate hearing on the Section 17 application, the Hon'ble Arbitration Tribunal granted interim relief *qua* limited to the shares held in escrow. The true copy of the order dated 30.03.2021 passed by the Ld. Arbitration Tribunal is annexed as Annexure 18 of the reply.
- xx. It is stated that the Petitioner then preferred an appeal u/s 37 of the Arbitration Act before the Hon'ble High Court of Delhi. The Hon'ble High Court disposed of the Section 37 appeal on the first day. The true of the copy of order dated 24.05.2021 by the Hon'ble High Court of Delhi is attached as Annexure- 20 of the reply. The Petitioner has also filed its statement of claim before the Ld. Arbitration Tribunal. The Respondent has also filed their statement of defence and the issues have framed by the Ld. Arbitration Tribunal. The Respondent has elaborately dealt with the events concerning the transaction, its failure, the litigation and all other allied circumstances in the Statement of Defense. The same is not elaborated herein given the scope of instant proceedings. The Respondent craves leave to rely on the pleadings in the Statement of Defense and the contents may be read as part and parcel of Respondent's reply.
- xxi. After having failed to get the desired interim relief in the arbitration proceedings, the Petitioner started a malicious pursuit of parallel litigations as further arm-twisting tactics. The Petitioner knows fully well that its claim on merits is baseless. Therefore, after the passage of the interim order (s) stage in the arbitration proceedings, the Petitioner began delaying the arbitration proceedings by taking adjournments at every procedural stage to delay the arbitration. As on

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last date, the Parties were to inter alia file their evidence affidavits in the arbitration proceedings. However, the Petitioner again sought an adjournment of 6 weeks to further delay the arbitration. It is stated that concerning the Petitioner objection on IPL's Insolvency process and its effect on Petitioner's claim before the arbitration, the Hon'ble High Court granted liberty to the Petitioner to approach the concerned form. After the Hon'ble High Court's order, the Petitioner also seem to have approached the Hon'ble NCLT by way of an application. From the orders available on the portal of the Ld. NCLT, Hyderabad, it is learnt that the said application was also considered infavour of the Petitioner's contention that the Insolvency proceedings do not affect the instant litigation. Despite the same, the Claimant seems to have challenged the order before the Hon'ble Ld. NCLAT.

- xxii. It is stated that the Petitioner also filed a frivolous application purportedly u/s 14 of the IBC to seek stay/termination of its own arbitration proceedings. Quite shockingly, while the Petitioner claim is evidently baseless, also contested - tooth and nail - in a catena of litigation proceedings, the Petitioner maliciously invoked this Hon'ble Tribunal's jurisdiction under I&B Code, 2016 purporting to be a Financial Creditor u/s 7 of the IBC. If the Petitioner's litigation above elaborated is appreciated, it is abundantly clear that Petitioner's actions, at all points of time, are only intended towards arm twisting tactics. The instant proceedings are also filed with the same malicious intent.
- xxiii. The instant petition is also liable to be dismissed in limine as the Rs. 5 crore which forms the basis of instant proceedings is neither a financial debt in the first place as contemplated u/s 7 of IBC nor the Petitioner is financial creditor as contemplated under IBC. No amount is owed to the Petitioner and as such these proceedings are fundamentally mendacious. The Petitioner, on its own default backed out from the MOU and the order of performance contemplated in the transaction was dishonoured by the Petitioner. The bouquet of transaction contemplated in the MOU can never come under the ambit of financial debt and moreover as the transaction failed due to

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- Petitioner's own non-performance there can never be any default and as such no money is owed to the Petitioner.
- xxiv. It is stated that the Petitioner's own balance sheets do not depict the 5 cr. as a debt, but as "*Other investments (Group Companies)*". Petitioner also did not depict any accrual of interest in the past 8 years. As such this belated litigation of the Petitioner is evidently malafide.
- xxv. The Respondent also sufficiently explained as to how the entry towards Rs. 5 cr subsisted on the balance sheets of LST and how any reference to the ICD *qua* the Rs. 5 cr., was also removed after FY 2016-17 and the Rs. 5 cr., subsisted as an 'other liability' as a balancing entry towards the cost of land transfer which was incurred as capital expenditure (occurring on the asset's side of the Respondent No.2 balance sheets). From FY 2016-17, the balance sheets do not contain any reference to the Petitioner. Infact, the Petitioner's own financial statements do not depict the Rs. 5 cr., as a debt, much less financial. No entries in this regard exist in the Petitioner's books. The Petitioner also failed to demonstrate any written acknowledgement of debt in 3 years prior to the instant Section 7 proceedings making any reference to the alleged ICD in a manner that extends the time as provided under the Limitation Act. Therefore, apart from being baseless on merits any claim in this regard is also hopelessly barred under the law of limitation.
- xxvi. It is stated that the Petitioner's malicious invocation of Insolvency jurisdiction of this Ld. Tribunal, in the facts and circumstances of the present case, is a blatant abuse of legal process squarely attracting penalty u/s 65 of the IBC. The brazen manner in which the Petitioner deliberately concealed the catena of events and documents to avoid getting the matter dismissed at the threshold further demonstrates Petitioner's malicious motives. Petitioner did not even whisper about the plethora of ongoing litigation in its Section 7 petition.
- xxvii. The IBC has been enacted with the objective to quickly resolve Insolvency situations. Courts have consistently deprecated invocation of insolvency jurisdiction as arm twisting measures, even under old regime. The Respondent humbly prays that the harshest of penalty should be imposed on the Petitioner u/s 65 so that unscrupulous

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litigants like the Petitioner do not abuse the Insolvency jurisdiction under IBC.

9. The Petitioner has filed the rejoinder to the reply filed by the Respondent stating as follows:
- i. The Petitioner denies all the statements, contentions and allegations raised in the Respondent's reply. Nothing contained in the reply shall be deemed to be admitted unless such an admission is specifically made hereunder.
 - ii. The Respondent/Corporate Debtor has at no place in its reply denied the execution of the ICD Agreement dated 19.03.2012 between the parties or denied having received the ICD amount of Rs. 5,00,00,000 (Rupees Five Crores only) from the Petitioner. Infact the Respondent in seeking the present arguments on why the debt should not be repaid, admits the debt. Therefore, there is no question that a financial debt actionable u/s 7 IBC 2016 exists. The only substantial objections taken to the initiation of CIRP that there are already other litigations pending between the parties and the Petitioner falls foul of the law of limitation. A secondary objection has also been taken to the effect that the ICD amount does not constitute debt as it has not been reflected as such in the financial records of the Petitioner.
 - iii. It is stated that none of the objections put forth by the Respondent are legally tenable and is a malicious attempt to mislead this Hon'ble Tribunal, and they merit outright rejection. It is trite law that the existence of prior dispute or litigation does not preclude the initiation of CIRP by a Financial Creditor u/s 7 of the IBC 2016. Similarly, it is trite law that the period of limitation begins afresh each year that the Respondent records an entry of debt in its own financial records. In the present case, the Respondent has recorded the ICD amount as an outstanding liability consistently from the date of its issuance, till the present. Further it is submitted that the manner in which the Financial Creditor records an entry pertaining to a loan/ ICD/ financial assistance can have no bearing on the initiation of CIRP. Notwithstanding the same, the Petitioner seeks permission of this Hon'ble Tribunal to place on record an opinion dated 17.01.2022 issued by a firm of Chartered Accountants which states unequivocally

that the ICD amount provided to the Respondent, has infact been properly and consistently reflected in its books of account and also an affidavit dated 27.01.2022 issued by Mr. Gulshan Jhurani, presently a director of the Respondent affirms that payment of the ICD amount of Rs. 5,00,00,000/- was in the nature of a short term loan.

- iv. It is stated that nothing in the objections filed by the Respondent disputes the delivery and acceptance of neither the ICD amount, which constitutes the financial debt. Once the financial debt is acknowledged, and a default has been committed, the pre-requisites for initiating CIRP are satisfied. In the present case, these pre-requisites have been amply met; therefore the present petition ought to be admitted. It is further stated that the Respondent admits that it has received the funds in accordance with the ICD Agreement and also admits that at all times the ICD amount is reflected in its financial records as a liability and admits that the debt has not been paid.
- v. It is stated that the Respondent primarily relied on the existence of a contractual dispute between the parties in connection with the MOU dated 07.01.2012. The Respondent is not even a party to the MOU and therefore, the Respondent cannot and ought not to be permitted to rely upon alleged violation or termination of a contract to which it is not a party, as a means to refute its liability to a financial creditor. The thrust of the Respondent's argument is that since the transaction contemplated in the MOU has not been completed, monies loaned to it under an independent ICD, at its request and in order to assist it to perform its obligation under the MOU, stand forfeited, and cannot form the basis of a petition to initiate CIRP. Such a contention, besides being factually inaccurate, is also not founded in law. Further the Respondent has in its own books of account, acknowledged the amount paid under the ICD agreement as a liability and such acknowledgement persists till date.
- vi. It is stated that if credence were to be given to the position taken by the Respondent, almost every incidence of a default in respect of a financial debt would become immune to provisions of the IBC and to the initiation of CIRP. Debt is taken by corporate entities almost always with a view to facilitate some commercial transaction or

- operation. This debt remains regardless of whether the proposed transaction is realised or not. As a corollary, a default in respect of such debt cannot be wished or willed away simply because the proposed transaction is not realised. If that were the case, Corporate Debtor would only have to allege a dispute to avoid CIRP.
- vii. It is stated that throughout its objections, the Respondent has adopted the position that the MOU dated 07.01.2012 could not be taken to fruition due to lapses on behalf of the Petitioner. The Petitioner respectfully submits that this not true. The Respondent has conveniently failed to state the reason for the delay in the execution of the MOU was not the failure of the Petitioner to comply with its obligations, but due to external legal disputes cropping up over the subject matter of the MOU, i.e. the land, soon after the payment of the ICD amount of Rs. 5,00,00,000/- (Rupees Five crores only). It is matter of record that soon after the payment of the ICD amount of Rs. 5,00,00,000/- by the Petitioner concessions granted by the Govt. of Andhra Pradesh in respect of the MOA dated 22.12.2018 (executed with the parent company of the present Respondent) came to be withdrawn. In fact, on 09.07.2012, the Petitioner received a letter from the Dept. of Information Technology and Communication, AP Govt., stating that certain audit objections had been raised against the Respondent's parent company. In light of the same, the letter stated that the MOA dated 22.12.2008 would be kept in abeyance.
- viii. It is stated that following the same, the Petitioner made inquires with the Respondent's parent company about the status of the execution of the MOU. To this, the Petitioner was informed that the Respondent's parent company had challenged the cancellation of the MOA dated 22.12.2008 by the AP Govt. before the Hon'ble High Court of Andhra Pradesh vide W.P No. 5028/2014 and that an interim order dated 24.02.2014 had also been passed therein and the said writ petition is currently still pending before the Hon'ble High Court. Besides this, the land involved in the MOU also became part of criminal investigation by the CBI and the ED. It is stated that the Petitioner cannot be faulted for not asserting its contractual rights to a criminal investigation agency – the criminal proceedings did not pertain to the

Petitioner. All through this time period, the Petitioner was in constant contact with the Respondent as well as its parent company. It must be remembered that in consonance with the terms of the MOU dated 07.01.2012, the Petitioner's representative, Mr. Gulshan Jhurani was a Director in the Respondent as well as the Respondent in CP (IB) No. 107/BB/2021. The Petitioner was constantly assured by the Respondent as well as its parent company that all the legal disputes with the Govt. of AP as well as the criminal investigative agencies would be resolved soon, and it is on the basis of such assurances that the Petitioner continued to believe that terms of the MOU would be fulfilled.

- ix. The Petitioner states that the parties have been in talks till 2019 to find a way forward and only now that the Respondent has taken this belated and utterly dishonest stand that MOU was a purportedly failed transaction. Infact it is the Respondent and the borrower who failed to comply its obligation as per the MOU and shifting the entire blame on the Petitioner is merely an afterthought to wriggle out from its own liabilities.
- x. The Respondent has taken the position that the Petitioner reneged on its contractual obligation, and therefore the transactional documents executed between parties stood terminated. It is stated that if the position sought to be canvassed by the Respondent were true, then nothing prevented the Respondent from formally issuing a notice of termination in accordance with the robust termination provisions present in the MOU dated 07.01.2012. Further, if the MOU had indeed lapsed or become non-actionable, nothing explains the diligent representation of the ICD amount in the Respondent's books as an outstanding liability. Further the Respondent is now, for its own convenience, seeking to weave a narrative of a failed/still-born transaction. Further, it is quite hard to fathom a situation where a Director remains in his position fortuitously. If, as per the Respondent, the MOU indeed stood lapsed or terminated, it could have taken steps to remove the Petitioner's representative, Mr. Gulshan Jhurani, as a Director, but it took no such steps is indicative of the falsity in the Respondent's case.

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- xi. As far as the ICD amount goes, the Respondent has taken the facetious and factually incorrect position that the same was only cost towards land transfer and was to be treated as sale consideration payable by the Petitioner to the Lepakshi Group. It is submitted this is a direct contradiction of the terms of the ICD Agreement. And for the purposes of this petition it is only the ICD agreement that is material. The relevant terms of the ICD Agreement is extracted at Para 15, Page-6 of the rejoinder filed by the Petitioner.
- xii. The ICD Agreement was to be secured by way of bank guarantee for the same amount. However, borrower was unable to furnish the said bank guarantee and in lieu of the same the Respondent in CP (IB) No. 107/BB/2021 furnished corporate guarantee dated 29.03.2012 infavour of the Petitioner. The relevant contents of Corporate Guarantee are as follows:
- “3. In consideration to the Beneficiary granting an ICD of Rupees Five Crores (Rs. 5,00,00,000/-) to the principal pursuant to the ICD Agreement, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary the due and punctual pursuant to the ICD Agreement and agrees to pay to the Beneficiary from time to time on demand all sums of money which the principal is at any time liable to pay to the Beneficiary under or pursuant to the ICD Agreement and which have been become due and payable but have not been paid at the such demand is made.”*
- xiii. It is clear from the ICD Agreement dated 19.03.2012 and the Corporate Guarantee dated 29.03.2012, that Rs. 5,00,00,000/- (Rupees Five crores only) is nothing but a short-term financial assistance taken by Respondent which was guaranteed by Respondent in CP (IB) No. 107/BB/2021. The transactional documents on the basis of which this financial assistance was provided, clearly states that the same was repayable on demand and carried interest. However, the Respondent as well as its parent entity repeatedly assured the Petitioner that the MOU would indeed be fructified, despite the delays occasioned due legal proceedings to which the Petitioner was not a party. The Petitioner did not seek repayment of the ICD amount earlier due to these assurances.
- xiv. Regarding reflection of the ICD amount in the Respondent's financial records, it is submitted that the Respondent's case that this entry

subsisted due to an 'accounting compulsion', is completely baseless. There is absolutely no accounting compulsion that requires disclosure of a liability once it ceases to exist. It is only the existence of a liability that compels its disclosure.

- xv. It is stated that the Respondent has taken pains to contend that the Petitioner's claims are belated because it was only in the year 2019 that litigious steps were taken by it by initiating correspondence with the Resolution Professional appointed in respect of Indu Projects Ltd. It is submitted that the initiation of correspondence or litigation by the Petitioner in respect of Indu Projects Limited., has nothing to do with the present petition. The Petitioner acted fully within its rights in informing the concerned RP of its contractual rights qua the subsidiaries of Indu Projects Limited.
- xvi. It is stated that a conjoint reading of the ICD Agreement along with Corporate Guarantee Agreement reflects the terms of repayment and default. The pendency of the Arbitration proceeding between the parties does not in any way affect the present petition. The Petitioner has approached the present Tribunal u/s 7 of the Code and all the elements necessary for initiation of CIRP have been shown to exist by the Petitioner. Therefore, the pendency of Arbitration proceedings or any other proceedings bears no water before the present Tribunal.
10. The Petitioner has filed its written submissions by reiterating the facts stated in the synopsis and in the rejoinder and the same is taken on record. The Petitioner further stated as follows:
- i. It is stated that the Respondent has, at no point disputed or denied the execution of the ICD and the Corporate Guarantee, the receipt of the ICD amount of Rs. 5,00,00,000/-, the receipt of the recall notice dated 19.09.2020 and the non-payment of the ICD amount along with accrued interest. Infact the ICD amount has been recorded as a liability in all the Respondent's financial statements from the year 2012 till its most recent filings in the year 2019. Default on the ICD amount and accrued interest is also reflected in the record of the information utility pertaining to L2 and L3. Further, it is stated that the present petition is not barred by time, the law point is settled where the existence of a financial liability is acknowledged in a party's

- financial statement, the period of limitation begins a fresh from each such date of acknowledgement.
- ii. It is stated that in the present case, at no place the Respondent made any note or comment in its financial statement that though the ICD amount is being acknowledged as a liability due to reasons of legal compliance, the said amount does not amount to a debt. It is submitted that the Respondent's contention that the present petition is barred by time holds no water. Further, as far as the existence of the larger arbitral dispute between the Petitioner L1, L2, L3 and other parties is concerned, it submitted that the same has no bearing whatsoever on the present proceedings. As stated in the Petitioner's rejoinder, and in line with the decisions of the Hon'ble Supreme Court on Section 7 of the IBC, it is reiterated that the existence of any suit or proceeding between the parties is no bar to admission of a Section 7 petition and for the purposes of determining whether a Section 7 petition is to be admitted or not, this Hon'ble Tribunal is only required to examine whether there exists a financial debt which has been defaulted upon.
- iii. It is submitted that the ICD does not constitute a financial debt given the larger transaction contemplated between the Petitioner and L1 is also without merit. It is stated that the ICD is a contract executed with a party that is legally distant from its parent company and the same applies to execution of the Corporate Guarantee as well. Nothing in the MOU or in any documents produced by the Respondent shakes the foundation of the fact at the ICD was success or failure of the transaction contemplated under the MOU can have no bearing on L2's liability to repay the ICD amount along with interest infact L2 and L3 are not even party to the MOU. Infact the MOU and the transactions contemplated under it have no connection or impact on the liabilities of L2 and L3 to its creditors, and the present petition has been filed in respect of one such financial liability, and nothing else.
- iv. It is further stated that all the share of the Respondent are pledged as security and continue to remain in the custody of the Escrow Agent (Indusland Bank) and have been further subject to protective orders passed by the Hon'ble High Court of Delhi. The escrow account held

with Indusland bank is still active and operational which making it evident that the Respondent's position that it considered the MOU has lapsed or terminated is false.

- v. It is submitted that the reliance of the Respondent on the decision of the Supreme Court in Indus Biotech is thoroughly misplaced. Nowhere in the said decision has the Supreme Court departed from the general rule relating to the limited scope of inquiry where a petition u/s 7 has been filed. Further, the facts in Indus Biotech were completely different from the present case, and infact, the reason for dismissal of the Section 7 petition as determined by the Hon'ble Supreme Court was because the Adjudicating Authority found that there was no default committed by the proposed Corporate debtor.
11. The Petitioner has also filed a memo of citations vide dated 17.02.2022 and additional memo of citations vide Diary No. 787 dated 25.02.2022 by producing the following judgements:
- i. *M/s. Innoventive Industries Limited v/s ICICI Bank and another in Civil Appeal No. 8337-8338 of 2017, order passed by Hon'ble Supreme Court of India*
 - ii. *Karan Goel v/s M/s. Pashupati Jewellers and another in Company Appeal (AT) (Insolvency) No. 1021 of 2019 by Hon'ble NCLAT, NewDelhi;*
 - iii. *Indus Biotech Private Limited vs. Kotak India Venture (offshore) Fund in Arbitration Petition (Civil) No. 48/2019 passed by Hon'ble Supreme Court of India;*
 - iv. *Asset Reconstruction Company (India) Limited vs Bishal Jaiswal and another in Civil Appeal No. 323 of 2021 passed by Hon'ble Supreme Court of India;*
 - v. *Commissioner of Income Tax v/s Auto Kashyap India (Private) Limited in IT Appeal No. 418 of 2010 passed by Hon'ble High Court of Delhi;*
 - vi. *Commissioner of Income Tax v/s Indo Widecom International Limited in IT Appeal No. 715 of 2012 passed by Hon'ble High Court of Allahabad;*
 - vii. *The Commissioner of Income Tax, Chennai v/s Metropolitan Transport Corporate (Chennai) Limited in Tax Case Appeal No. 467 of 2008 passed by Hon'ble High Court of Madras;*

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12. The Respondent has filed its written submissions by reiterating the facts stated in the reply and the same is taken on record. The Respondent further stated as follows:
- i. The crux of the Petitioner's case is that as the ICD agreement dated 19.03.2012 is not disputed, the Petitioner must be admitted and all other contentions of the Respondents are irrelevant u/s 7 of IBC. Exactly same submissions were rejected by the *Hon'ble Supreme Court in Indus Biotech v/s. Kotak India ventures.*
 - ii. It is stated that, if the Petitioner's stand in the facts of present case is to be accepted, then in cases of composite commercial transactions – irrespective of the true default in the totality of facts – the party which momentarily advances a sum, can maliciously, at gun point drag the actual contractually compliant party to insolvency, that too without any adjudication on the merits of the whole dispute.
 - iii. It is stated that MOU and other agreements including ICD are part of same composite transaction with the MOU being the principal agreement. Further, stated that the Petitioner is not a bank or financial institution who loaned Rs. 5 crores to the Respondents. Rs. 5 crores is a part of series of reciprocal promises whereby, ultimately it was the Petitioner who should have paid Rs. 238.5 crores to Lepakshi. But the Petitioner did not pay a single rupee of the promised Rs. 238.5 crores after the land was transferred to LST and LHW and deliberately backed out from the transaction. If Clause 4 of the MOU, which contained the reciprocal obligations, is appreciated, then it would be evident that there was no further obligation on Lepakshi and it was the Petitioner who had to pay the amounts, which admittedly was never done. In the instant case, right from inception, the ICD of Rs. 5 crores was only a small part of reciprocal promises with the final payment obligation of the Petitioner unlike Indus Biotech where the discussions towards converting the debt into equity happened subsequently. Therefore, entertaining the current Section 7 petition would be punishing the Respondent for the Petitioner's contractual default.
 - iv. It is stated that there is nothing in the balance sheet three years before the petition which can constitute a written acknowledgement of

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debt satisfying the requirements of Section 18 of the Limitation Act. The Petitioner relied on several judgements under taxation statutes to contend that alteration of head of entry does not alter or extinguish the liability. The issue is not about the extinguishment of liability but about the acknowledgement of debt. If an earlier entry/head is changed and the new entry does not retain the character of the old entry and the note in the old entry is removed, it constitutes an emphatic denial of any liability. Further, if the Petitioner's contention based on the taxation judgements of the Hon'ble High Courts in Additional Memorandum of Citations is extended to acknowledgement of debt u/s 18, then it will go directly contrary to the ratio of the Hon'ble Supreme Court's judgement in Bishal Jaiwal. The instant case does not only deserve to be dismissed but also stringiest penalty should be levied u/s 65 and Section 75 of the IBC.

v. The Respondent has also relied on the following judgements:

- a) *Indus Biotech Private Limited v/s Kotak India Venture (Offshore) Fund in Arbitration Petition (C) No. 48 of 2019 by the Hon'ble Supreme Court of India dated 26.03.2021;*
- b) *Swiss Ribbons (P) Limited v/s. Union of India and others in Writ Petitioner (C) No. 99 of 2018 by the Hon'ble Supreme Court of India dated 25.01.2019;*
- c) *Asset Reconstruction Company (India) Limited v/s Bishal Jaiswal and another in Civil Appeal No. 232 of 2021 by the Hon'ble Supreme Court of India dated April 15, 2021.*

13. Heard Shri Dhyhan Chinnappa, Learned Senior Counsel a/w Shri Rohan Kothari, Learned Counsel for the Petitioner and Shri R.V. Yogesh, Learned Counsel for the Respondent and have also perused the pleadings carefully including the Written Submissions filed and Judgements relied on by both sides.

14. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. in Civil Appeal Nos.8337-8338 of 2017* observed as under:

"27. 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. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is 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, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

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15. Section 7(5)(a) of the Code is as follows:-
*“5) Where the Adjudicating Authority is satisfied that-
 (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”.*
16. As per the enunciation of law by the Hon'ble Apex Court, in an Application under Section 7 of the IBC, 2016, what is required to be seen by this Adjudicating Authority, is whether the application filed within the period of limitation and whether the Petitioner/Financial Creditor proved the debt and default thereon.
17. It is the settled principle of law that the amount given under an Inter Corporate Deposit is a financial debt. The Learned Counsel appearing for the Respondent/Corporate Debtor while not disputing the said principle, however, mainly contended that the subject Inter Corporate Deposit was given by the Petitioner/Financial Creditor to the Respondent/Corporate Debtor as a part of the investment made and hence it cannot be treated as a financial debt and the C.P should be dismissed. The Learned Counsel, in order to substantiate this submission drawn our attention to various Clauses of the Memorandum of Understanding dated 07.01.2012 executed between M/s. Lepakshi Knowledge Hub Private Limited and Global Emerging Markets India Limited i.e., the Petitioner/Financial Creditor in the instant C.P. Accordingly, it is submitted that the true nature of the transaction was to invest in the Respondent/Corporate Debtor Company, and to purchase the shareholding. Advancing the money through the Inter Corporate Deposit was also part of the said investment scheme.
18. On the other hand, the Learned Senior Counsel appearing for the Petitioner submits that the Inter Corporate Deposit is an independent transaction and cannot be treated as part of any action or document in pursuance of the Memorandum of Understanding dated 07.01.2012 executed between the Petitioner and a third party.
19. We find force in the submissions made by the Learned Senior Counsel appearing for the Petitioner/Financial Creditor. The Memorandum of Understanding dated 07.01.2012, on which the Respondent placed reliance

was admittedly executed between the Petitioner and a separate legal entity known as M/s. Lepakshi Knowledge Hub Private Limited. Further, the amount received by the Respondent/Corporate Debtor under the subject Inter Corporate Deposit dated 19.03.2012 was not for purchasing of any shares by the Petitioner in the Respondent Company. On the other hand, it was for meeting certain expenses by the Respondent/Corporate Debtor. Hence, the contention of the Petitioner in this regard is rejected. The other contention with regard to the pending Arbitration proceedings etc., have no relevance in the application u/s 7 of the IBC 2016. The contention of the Respondent/Corporate Debtor that the Petitioner/Financial Creditor in the Balance Sheets shown the subject amount as 'other investments' but not shown as Inter Corporate Deposit and hence the C.P is liable to be dismissed, is invalid and unsustainable, since the execution and transfer of money under the Inter Corporate Deposit was not in dispute.

20. The Petitioner/Financial Creditor is able to prove the debt and default by placing reliance on various documents enclosed to the instant company petition.
21. The other issue for consideration is whether the present application is filed within limitation. The subject, Inter Corporate Deposit was dated 19.03.2012 and tenure of the same was for the period of 6 (six) months and was interest free during the said term. It was further provided that if the Inter Corporate Deposit is not repaid within the said term, the Corporate Debtor undertakes to repay Rs. 5,00,00,0000/- (Rupees Five Crores only) along with interest at the rate of 18% per annum to the Financial Creditor/Petitioner. As the Corporate Debtor admittedly not repaid the amount received under Inter Corporate Deposit within the specified period, the Financial Creditor/Petitioner recalled the Inter Corporate Deposit amount along with 18% interest from the Corporate Debtor/Respondent vide recall letter dated 19.09.2020. The instant C.P was filed on 13.10.2021. The Corporate Debtor/Respondent has acknowledged the receipt of Rs. 5,00,00,000/- (Rupees Five Crores only) from the Financial Creditors/Petitioners in its Balance Sheets from the Financial Years 2011-2012 to 2018-2019. Hence the C.P is well within the period of limitation.

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22. The various decisions, on which the Learned Counsel for the Respondent/Corporate Debtor placed reliance, have no relevance to the facts of the present case.
23. The application filed in the prescribed Form No.1 is found to be complete.
24. In the circumstances and for the aforesaid reasons and since the C.P. is complete, the same is **admitted** in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
 - (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in;
 - (b) any court of law, tribunal, arbitration panel or other authority;
 - (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (d) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
 - (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

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25. In Part-III of Form No.1, Shri Hemendra Paliwal bearing Registration No. IBBI/IPA-001/IP/P-01830/2019-20/12788 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 29.06.2021 has been filed along with the C.P is found at Page Nos.297-298 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Shri Hemendra Paliwal, there is nothing adverse against him. In view of the above, we appoint **Shri Hemendra Paliwal** bearing Registration No. IBBI/IPA-001/IP/P-01830/2019-20/12788, having registered address at A-1901, Raheja Eternity, Thakur Village, Kandivali East, Mumbai - 400101, email- paliwal.hemendra@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
26. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
27. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)