NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 22.03.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.47/7/AMR/2021		7 of IBC	Sree Vaibhavi Infrastructures Pvt Ltd Vs Medipro Edu Management Pvt Ltd

Counsel for Petitioner(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP(IB) No.47/7/AMR/2021 is dismissed, vide separate orders.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD
*** *** ***

CP (IB) No. 47/7/AMR/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
M/s. MEDIPRO EDU MANAGEMENT PVT. LTD.

Between:

M/s.Sree Vaibhavi Infrastructures Private Limited,
R/o. Plot – 549/B, Road No.27, Jubilee Hills,
Hyderabad – 500033
Also at : 54-20/9-6, Timmarasu Street,
Srinagar Colony, Vijayawada,
Andhra Pradesh - 520008.

... Financial Creditors

AND

M/s. Medipro Edu Management Private Limited,
Registered office: 59-12-10,
Lingamaneni Corporate House,
Ramachendra Nagar, Vijayawada - 520008.

...Corporate Debtor

Date of Order: 22.03.2022

CORAM:

Justice TelaproluRajani, Member Judicial.

Appearance:

For Financial Creditors : Mr. PBA Srinivasan, Advocate.

For Corporate Debtor : Mr.V.S.R.Avadhani, Advocate.

ORDER

1. This Application is filed by the Financial Creditors seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor due to the default committed by the Corporate Debtor in discharging the debt due to the Financial Creditor which amounts to Rs.39,47,88,211/-.

2. The facts as stated in the Application are as follows:

   i. The Financial Creditor No.1 is one of the group entities managed by one Dr.Boppana Satyanarayana Rao, his family members and associates (herein after referred to as BSR Group). In the year 2015, the BSR group and some individual family members provided financial assistance by way of an investment to the Corporate Debtor, its group Companies and individuals of Lingamaneni family members (herein after referred to as Lingamaneni Group). In lieu of the said financial assistance, both the groups entered into a Memorandum of Understanding (MoU) dated 25.10.2015 for a total debt extended by the BSR Group to Lingamaneni Group. As per the said MoU, BSR Group has advanced an amount of Rs.219 Crores for acquisition of various companies, however same was withdrawn, Lingamaneni Group accepted to pay back the total amount of Rs.219 Crores along with compensation of Rs.32 Crores on or before 31.01.2016.

ii. It was further agreed that a collateral security for the amount should be paid by Lingamaneni Group. They agreed to register the freehold properties and upon fulfilment of the payments to BSR Group as agreed upon, the BSR Group shall re-convey the security to Lingamaneni Group. If Lingamaneni Group fails to pay the amount, BSR Group has absolute right to sell the security to realise the amounts. It was further agreed upon that in case of deficit, Lingamaneni Group would compensate such deficit along with interest from 31.01.2016. Since Lingamaneni Group failed to adhere to the terms and conditions of the MOU dated 25.10.2015, second MOU dated 24.06.2016 was executed. As per the second MOU the amount payable to BSR Group was reckoned as Rs.300 Crores plus interest @ 18% p.a. Since Lingamaneni Group failed to repay the debt as agreed, BSR Group initiated some criminal complaints against Lingamaneni Group and FIR's are registered. Lingamaneni Group filed quash petitions before the Hon'ble High Court of Telangana but the Court directed to continue the investigation made. Lingamaneni Group has issued various cheques which were returned. Instead of paying the amounts, Lingamaneni Group has issued a reply notice to the notices issued by the BSR Group, denying the payment on various reasons though it acknowledged the liability. The BSR Group filed various private complaints against Lingamaneni Group. The Corporate Debtor has issued cheque for Rs.15,00,00,000/- dated

19.11.2020 which was returned hence, the debt towards the said dishonoured cheque is still unpaid. The date of default is 24.11.2020 and the debt default days are 1977 i.e., from 31.01.2016 to 30.06.2021. Based on the above facts the Financial Creditors sought for initiation of CIRP against the Corporate Debtor.

3. The Corporate Debtor filed counter denying the contents of the Application and further contending that the Application is not maintainable as the Financial Creditor No.1 is a Private Limited Company and could not lend money and cannot be called as a creditor for the purpose of IBC. The Memorandum & Articles of Association of the Creditor Company did not authorise the Board of the Company to lend money for profit. The Financial Creditors claiming to have invested the money to purchase the property from the individuals, who happened to be Directors of the Corporate Debtor and that on failure of those individuals to allot or acquire property the amount became repayable and that non-repayment of invested money becomes debt is absolutely false. Even on the own showing of the applicant Creditor, such non-repaid money will not become a debt much less a Corporate Debt for the purpose of initiating CIRP. Without admitting the liability of the Corporate Debtor it is submitted that the creditor made a self-conflicting statement in the Petition. It is stated that there was a Memorandum of Understanding (MOU) dated 25.10.2015 between BSR Group and Lingamaneni Group for a total debt extended by the BSR Group to

the other group and in terms of that MoU, the BSR Group advanced an amount of Rs.219 Crores to Lingamaneni Group for acquisition of various companies and Lingamaneni Group agreed to repay Rs.219 Crores with compensation of Rs.32 Crores on or before 31.01.2016. The Corporate Debtor does not know whether there are two such groups having corporate entity known as BSR Group and Lingamaneni Group. So far as the Corporate Debtor is concerned, it is a Company having individual corporate identity and it did not enter into any MoU either on 25.10.2015 or any time later and never undertook to repay any amount as stated. The binding nature, enforceability and truth of MOU dated 25.10.2015 is denied. A reading of the MOU dated 25.10.2015 reveals that nobody has signed the same on behalf of the Corporate Debtor. It does not indicate that the Corporate Debtor is a party to the said MOU. The said MOU is between two individuals namely Sri Boppana Satyanarayana Rao referred as investor and Sri Ramesh Lingamaneni referred as Company. It does not disclose any involvement of two groups. The description of Sri Boppana Satyanarayana Rao is shown as investor and not as lender and Sri Ramesh Lingamaneni is described as a mere company without prefixing which company. These circumstances would establish the fact that there was no *consensus-ad-idem* between the parties to MOU, as to which entities they are representing, in order to constitute a valid contract. In the worst case, it can be said that the said document is a non-concluded contract and it cannot be enforced

unless clauses 5 to 7 thereof are fulfilled. Neither the Memorandum nor Articles of Association of the Corporate Debtor permit the Director to accept investments from 3rd parties. There is no such power conferred on Mr.Ramesh Lingamaneni nor there is any resolution of the Board to that effect. The signatory to the MOU dated 25.10.2015 and 24.06.2016 has no authority to sign MOU, to accept investments from the others and execute any contracts. He acted beyond his powers and in conflict with the interest of the Corporate Debtor. The Books of account of the Corporate Debtor do now show any amount paid by the Creditor as loan to the Corporate Debtor. The MOU dated 24.06.2016 stipulates and demonstrates that the intention of signatories thereto was to form a joint venture company by identifying a strategic partner. On incorporation, a company becomes a separate legal entity as compared to its members. Its assets and liabilities are separate and distinct from those of its members. The averment that the Corporate Debtor is one of the members of Lingamaneni Group and that it has issued a cheque for Rs.5 Crores is denied. The creditor cannot take advantage showing the date of default as 24.11.2020, whereas the petition shows that the amounts were paid in terms of investment on various dates and not Rs.5 Crores independently. The MOU only shows that there are contractual disputes between the parties which requires evidence which is beyond the powers of this Tribunal. Hence, the petition is liable to be dismissed.

4. The Financial Creditors filed rejoinder by stating that;

i. The MOU dated 25.10.2015 enumerates the terms and conditions of the investment with all details. In the reply dated 08.01.2021 the Corporate Debtor itself admitted that it had taken money from the Financial Creditors.

ii. As regards the limitation, the petition is well within the limitation. Section 18 of the Limitation Act, 1963 was held to be applicable to the proceedings under IBC by the Supreme Court. The Corporate Debtor is one of the Group entities owned by Lingamaneni Family, who has been well acquainted with the family of Dr.B.S.Rao who was the founder of Financial Creditor No.1. Having long standing personal relationship between both the families they did many business transactions over the past 20 years which resulted in personal lending and lending between the Trusts and Companies. The Corporate Debtor in their reply affidavit at para No.12 admitted the signing and issuance of cheques but at the same time stated that the authorised representative was ignorant of the fact and law. The person signing the reply affidavit is one of the noticee and in his reply dated 08.01.2021 at para No.4 the same person states that his families and group entities closed all transactions and settled all accounts with Financial Creditor's Families and Group entities by the end of December, 2016. The Director of the Corporate Debtor, Ramesh Lingamaneni and authorised

signatory of the Corporate Debtor accepted the money from Financial Creditor through bank transfers, which was appropriated according to their needs and necessities. Moreover, the Corporate Debtor accepted and acknowledged the debt by issuing present cheque in favour of the Financial Creditor. Members of Lingamaneni family and different companies belonging to Lingamaneni Family received money from the individuals and entered into MOUs. In the said MOUs the members, Trusts and Companies belonging to the family of Dr.B.S.Rao were represented by Sricharan Veeramanchaneni as party A in which the Financial Creditors were included and the members and Companies belonging to Lingamaneni Family were represented as party B in which the Corporate Debtor is included. It clearly shows that Mr.Ramesh Lingamaneni was authorised and undertook to represent the persons and different companies belonging to him. The nomenclature given to the two groups is not important and the contents of the MOUs are to be thoroughly examined. The balance sheet for the year ending by 31.03.2020 of the CD shows liability of more than Rs.15 Crores out of which the debt payable to the Financial Creditors is Rs.150 Crores by the Corporate Debtor Company. The date of default is the date on which or within which the other party is supposed to make repayment but fails. In the present case the Corporate Debtor acknowledged the debt by executing MOU dated 24.06.2016. According to clause 6 of the

MOU dated 24.06.2016 the interest should have been calculated from 01.12.2015 instead of from 31.01.2016 onwards and the same can be corrected while repayment is made. The remaining contents of the rejoinder are mere reiteration of the contents of the Application.

5. Heard both the Counsel and perused the written submissions made on behalf of both the parties. From the pleadings and the arguments the points that arise for consideration are as follows;

i. Whether the application is filed within the period of limitation and whether the MoUs between the Financial Creditors and Corporate Debtor are executed under proper authorization.

ii. Whether there is any debt which is due to be paid to the Financial Creditors and whether any default in terms of Section 3(12) has been committed by the Corporate Debtor.

iii. To what result.

I. Whether the application is filed within the period of limitation and whether the Memorandums of Understanding between the Financial Creditors and Corporate Debtor are executed under proper authorization.

And

II. Whether there is any debt which is due to be paid to the Financial Creditors and whether any default in terms of Section 3(12) has been committed by the Corporate Debtor.

Both the points are considered together since the discussion on the points overlaps.

The claim is based on two Memorandums of Understanding (MoUs) entered into between the parties. The first Memorandum of Understanding (MoU) is dated 25.10.2015 to which the parties are Sri Boppana Satyanarayana Rao resident of Poranki, Vijayawada (hereinafter referred to as "Investor") and Sri Ramesh Lingamaneni resident of Gayathri Nagar, Vijayawada (hereinafter referred to as "Company"). There is no description or there is no name or description of the Company which is mentioned against the name of Sri Ramesh Lingamaneni. The MoU recites that the investor has advanced certain amounts to the Company towards acquiring stakes in various businesses of the Company, through its nominees. The Investor and the Company have mutually agreed for the advancement of the investment made by the Investor on certain terms and conditions. The first condition recites that, the Investor wants to withdraw hence, the Company has accepted to pay back the total amount of Rs.219 Crores along with the compensation of Rs.32 Crores on or before 31.01.2016. It also recites that an amount of Rs.24 Crores for aviation business was agreed to be paid back before 30.11.2015. An amount of Rs.20 Crores which was invested for Solar Power Project was also agreed to be paid back by the said date. An amount of Rs.15 crores advanced to the Company for the various business requirements of the Company was also agreed to be paid back by the said date. It is also recited that a collateral security for

the amount payable by the Company to the Investor was provided. The Company has agreed to register certain freehold properties before 15.11.2015. As per the said MoU, upon fulfilment of payment as per Clause (1) therein, the Investor shall re-convey the said properties to the Company. If the Company fails to pay the amounts as per clause (1) the Investor gets absolute right to dispose of the properties given as security. If the Investor cannot realise the amounts equivalent to the amount due from the Company, Company shall compensate such deficit along with interest from the due date i.e., 31.01.2016. It is also mentioned that the Company and Investor agreed to execute the necessary documentation required for re-conveyance of title to the Investor and discharge the liability of the Company and upon registration of the properties mentioned in the name of the Investor, the Investor shall call his nominees to issue a No Due Certificate (NOC) to the Company. From the above MoU it can be understood that certain amounts were advanced by the Investor to the Company for various purposes and since the Investor wanted to withdraw, amounts were agreed to be repaid to the Investor by the specified dates. As per the default clause, the right of the Investor against the Company would be only to proceed against the properties given as security and not to file any suit or application for recovery of the said amounts.

In the first place the Counsel for the Corporate Debtor raises an objection regarding the authority of Sri Ramesh Lingamneni to bind the Corporate Debtor with the said Memorandum of Understanding. The contention is based on the fact that there is no authorization given to said Ramesh to enter into any MoU and that the MoU would only reflect that the said Ramesh Lingamaneni has signed on the MoU in his individual capacity and there is nothing in the MoU from which it can be inferred that he signed on behalf of the Corporate Debtor. It is also contended that the mentioning of the name "Company" would not suffice to bind the Corporate Debtor. The Counsel relies on a judgment of the ***Hon'ble Supreme Court (2010) 5 SCC 306 between Indowind Energy Limited Vs. Wescare (India) Limited and Another***, wherein it was held that each Company is a separate and distinct legal entity and the mere fact that the two Companies have common shareholders or common Board of Directors, will not make the two Companies a single entity. Anyhow in this case there are no two Companies. The contention is only that the person who signed on the MoU is not authorised by the Corporate Debtor. It is not disputed that the said person is not authorized and no evidence of due authorization is produced by the Financial Creditor. There is no indication in the MoU that Sri Ramesh Lingamaneni was entering into the MoU on behalf of the Corporate Debtor. Hence, it has to be concluded that the MoU

dated 25.10.2015 does not bind the Corporate Debtor. So also, the MoU dated 23.06.2016 which is executed in the same manner between one Sri Sricharan Veeramanchaneni and Ramesh Lingamaneni. The description however, has undergone a slight change in respect of Mr.Ramesh Lingamaneni, wherein it is stated that he is representing Group of recipient individuals and Companies described in Annexure-1 and referred as party-B. But the Annexure does not help in understanding which group of recipient individuals and Companies Mr.Ramesh Lingamaneni is representing. The Corporate Debtor is LEPL Ventures which does not find place in the Annexure. The person who signed on the reply affidavit is different from the person who signed on the MoUs. Though the surname of both the persons is same, there is nothing placed on record to show that Ramesh Lingamaneni was given any authority to sign on the MoUs. Hence, both the MoUs are held as not binding the Corporate Debtor.

Apart from the MoUs not binding the Corporate Debtor, it can be seen that the agreement or the contract between the parties to the MoUs is not a concluded contract. The MoU dated 23.06.2016 recites that as per the MoU dated 25.10.2015 party-B had to pay an amount of Rs.310 Crores by 30.11.2015 to Pary-A but he paid only Rs.15 Crores and failed to pay the balance of Rs.295 Crores and hence, the parties decided to structure the transaction as specified in the MoU. The two

clauses pertaining to the repayment i.e., 6 & 7 of the MoU dated 23.06.2016, specify that while repaying the agreed amount (Rs.300 Crores for 20% stake) after six months or while arriving at the value for distribution property after the expiry of six months from then, the amount due to party-A shall be returned i.e., Rs.300 Crores + interest @18% p.a. from 01.12.2015 and the depreciation and appreciation of the value of the property shall be borne by Party-B. Clause 7 specifies that the parties shall execute a shareholders agreement to give effect to the said MoU within 7 days upon incorporation/identifying a Company to be the JVC.

A detailed timeline and next steps are attached to the MoU as Annexure-3. The terms of understanding under the MoU would show that party-B has failed to pay the agreed amount of Rs.295 Crores by 30.11.2015 and has agreed to compensate Party-A by offering stake in 400 Acers Smart City Project in the manner specified therein. Party-B undertook to identify and arrange joint venture with the strategic partner before the end of August, 2016 and upon such strategic partnership, the Party-A shall be entitled for a consideration of Rs.3 Crores per acre for the additional equity to be allotted to him as per Clause 1(d) therein. Clause 4 specifies that if Party-B fails to have strategic partnership and pay Party-A a total amount of Rs.300 Crores, Party –B has to sell the land either by developing into plots or on as is where basis and pay Party-A an amount of Rs.300

Crores within a period of 6 months from the date of the said MoU. Party-B will identify the portions of land that will be planned for plotting immediately and attach the property plan to the MoU. Clause 5 specifies that if Party-B fails to dispose of the property and reimburse Party-A within six months from then, the party shall appoint two independent valuers to valuate the property and distribute the property at an average value of the two independent valuations in proportion to their respective stakes in the lands of 20/25 Acre plots each having independent access. Hence, the above terms would show that the failure of Party-B to pay the amount would not entitle party-A therein to file a suit or an application before the appropriate forums for recovery or for the default straight away, but would place a responsibility on Party-B to repay the amount by selling the properties which were given as security. The Counsel for the Corporate Debtor contends and rightly so, that the obligations that are to be fulfilled under the MoU dated 23.06.2016 are not fulfilled and hence, it stands to be a non-concluded contract. He contends that according to Clause 3 of the MoU, a joint venture has to be arranged but the same was not arranged. However, it is party-B who has to arrange it. The failure of Party-B to arrange a joint venture would only impose upon him an obligation under clause 4, wherein he has to sell the land by developing into plots and pay the amount. In order to implement clause 4, clause 5 have to be fulfilled, which

obligates both the parties to appoint two independent valuers to value the property and distribute the property as specified therein. From the MoUs it can be understood that there are several obligations on either party before Party-A can initiate action for recovery of any amount from Party-B. The recovery action can only lie when the amount raised by selling the property is not sufficient to discharge the debt of Rs.300 Crores which is due to Party-A.

The second MoU dated 23.06.2016 can be taken as basis for the payment schedule since, it has structured the transaction by ignoring the earlier MoU. As per the MoU dated 23.06.2016 Party-B has to pay an amount of Rs.300 Crores after six months or while arriving at the value for distribution of property after the expiry of six months. Hence, the date of default would be either after six months from 23.06.2016 or while arriving at the value for distribution of property. Hence, unless the obligations under the MoU are fulfilled it cannot be said that there is any default committed by Party-B.

The present Application which is filed after three years from the date of the MoU or from the date on which the six months falls, which is also beyond three years, is based on a cheque dated 19.11.2020 which is issued by the authorized signatories of LEPL Ventures Private Limited. The date of MoU being 23.06.2016, six months from then would be ending

by 23.12.2016. If three years is construed from 23.12.2016, the three years period would be completed by 23.12.2019. Hence, clearly the limitation for filing a suit, based on the MoUs, stands expired by the date of this application. The contention is that by virtue of the cheque dated 19.11.2020, the debt stands acknowledged and hence, a fresh limitation starts from 19.11.2020. In support of the said contention, the Counsel for the Financial Creditor relies on certain judgments. A judgment of the ***Hon'ble Supreme Court reported in 2000 SCC Online Guj 137 between Hindustan Apparel Industries Vs. Fair Deal Corporation, New Delhi,*** in which the Supreme Court considered the judgment of ***Patna High Court in Rajpatiprasad's Case Vs. Kaushlya Kuer reported in AIR 1981 Pat 187***, wherein the view expressed was that all the post-dated cheques in satisfaction of dues would amount to acknowledgment of liability irrespective of the fact whether the cheques were subsequently dishonoured was relied upon. Before proceeding with examining the relevance of the above judgment it would be beneficial to refer to the Judgment of the ***Supreme Court reported in (2019) 11 SCC 633 between B.K.Educational Services Private Limited Vs. Parag Gupta and Associates***, wherein it is held that the limitation act is applicable to applications filed under Section 7 and 9 of the IBC from the inception of the Code. Article 137 of the Limitation Act gets attracted. It was held that the right to sue

therefore accrues when a default occurs and if the default has occurred over three years prior to the filing of the date of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases wherein Section 5 of Limitation Act may be applied to condone the delay in filing such application.

Subject to the finding on the contentions of the Counsel for the Financial Creditor, by virtue of the above judgment, this application stands to have been filed after three years, when reckoned from the dates mentioned in the MoUs, as observed in the above paragraphs. Coming to the Judgment of the Supreme Court in Hindustan Apparel Industries, the Patna High Court has already held that a post-dated cheque would amount to acknowledgement of liability irrespective of it being dishonoured subsequently. It is also observed that a statement written in the form of a cheque will obviously amount to an acknowledgment in writing and that the said proposition is accepted in ***Chintaman's case (AIR 1956 Bombay 553)***. It was observed that the division bench has observed that unless the cheque is honoured it could not be regarded as an acknowledgement in writing as contemplated in the provision regarding part payment in writing as appearing in Section 20 of the previous Limitation Act (now Section 19). According to the Bench if the cheque is dishonoured, the original debt which was conditionally satisfied, would be deemed to revive. It is

observed that when the drawer issues a cheque it is very much in his mind that it does show as part of his jural relationship with the person to whom he issues the cheque and there may be different state of his mind at the stage when the cheque is presented for payment. What is important to be noticed from the judgments discussed by the Supreme Court as observed by the Supreme Court is, in the first place a cheque is undoubtedly an acknowledgement of right or debt or liability and when the same is not issued as a post-dated cheque, date of issuance of the cheque would assume importance, whether subsequently it is honoured or dishonoured. It is thus at the stage of issuance of the cheque that there surfaces an intention on the part of the debtor to acknowledge the liability/right/debt owing to the person in whose favour the cheque is issued. If the cheque is honoured it would amount to part payment in writing and the same would fall under Section 19 of the Act (Section 20 of the Previous Act).

It was held that a cheque would *prima facie* amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made i.e., when the cheque was issued. What flows from the above judgment is that, by simple dishonour of cheque the acknowledgement of the debt cannot be done away. If the

cheque is dishonoured, the date of acknowledgment of debt would be the date of the cheque. The judgment does not discuss about whether such acknowledgement should be before the expiry of the period of limitation construed from the date of the debt i.e., when the jural relationship between the parties is in existence or not. Section 18 of the Limitation Act was discussed by the Supreme Court in the above said judgment and Section 18 discussed therein is Section 19 of the Previous Limitation Act. Section 18 is extracted hereunder for ready reference.

"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 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."

Hence, according to Section 18 the acknowledgement of liability should be made before the expiration of the prescribed period for a suit or application in respect of the debt. If the acknowledgement is beyond the said period it does not amount to acknowledgment in terms of Section 18 of the Limitation

Act. The Supreme Court held that the statement on which the plea of acknowledgment is founded must relate to a present subsisting liability and indicate the existence of jural relationship between the parties. It is also observed that the debtor and creditor should have an intention to admit such jural relationship, which need not be in express terms but can be inferred by implication from the nature of the admission and surrounding circumstances. It was held that a statement written in the form a cheque will obviously amount to acknowledgement in writing. The said proposition is observed as being settled in Chintaman's Case. Hence the contention of the Counsel for the Corporate Debtor that unless the acknowledgement is in writing as specified under Section 18 (1) it is not a valid acknowledgement as per Section 25 (3) of Indian Contract Act, gets nullified since, issuance of cheque is held to be an acknowledgement in writing. Section 25 (3) of Indian Contract Act, is as under:

"***Section 25***: *Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. — An agreement made without consideration is void, unless —*

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that

behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits."

But however, the said acknowledgement not being during the period when the jural relationship is in existence it cannot be said that the cheque was issued for an enforceable debt. That apart, the cheque issued by the authorized signatory of LEPL Ventures Private Limited does not have any basis of a debt. It is disjunctive from the MoUs which are executed by an individual named Ramesh Lingamaneni. Hence, unless a nexus can be established between the cheque and the liability under the MoUs, it cannot be said that the LEPL Ventures has issued the cheque in discharge of the liability under the MoUs. However, the issuance of a cheque would only be a prima facie evidence of the acknowledgement of debt and presumption arising there from is a rebuttable presumption and as held by the ***Supreme Court in (2019) 10 SCC 287 between Uttam Ram Vs. Devinder Singh Hudan and another,*** to rebut the statutory presumption, proof beyond reasonable doubt is not expected and if something which is probable is brought on record, the burden of proof would shift back to the drawee of the cheque. To disprove the presumption, the drawer of the cheque should bring on record such facts and circumstances, upon consideration of which the Court may either believe that the consideration and debt did not exist or its non-existence was so probable that a prudent man

would under the circumstances of the case act upon the plea that they did not exist. Even circumstantial evidence was held as sufficing to rebut the presumption. If the circumstances so relied upon are compelling the burden may shift to the Applicant.

The judgment of NCLAT, New Delhi in ***Company Appeal (AT) (Insolvency) No.366/2020 between Mr.Rajendrakumar Kundanmal Jain vs. Mr.Vijal A.Jain and Others***, also does not help the Financial Creditor, as it is not on the aspect of the time barred debt.

As regards, the argument of the Counsel for the Corporate Debtor that in respect of the questions such as whether MoUs executed by individuals in their personal capacity is binding on Corporate Debtor who is not a party, whether the investment made by the Financial Creditor is liable to be refunded, as to what was the purport of the terms of the investment as envisaged in MoUs etc., the NCLT has to conduct a rowing enquiry to pierce the corporate veil of the Corporate Debtor which is not permissible at this stage, the counsel for the Financial Creditor relies on a judgment of the Supreme Court in ***1996 4 SCC 622 between Delhi Development Authority vs. Skipeer Construction Company (P) Limited and Another***, wherein it is held that the concept of corporate entity was evolved to encourage and promote trade and commerce but not

to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

There is no doubt that this Tribunal has jurisdiction to lift the corporate veil, to understand the genuineness of the transaction. But for the purpose of understanding the genuineness of the transaction, if evidence need to be taken, the Tribunal would not have jurisdiction. In this case, from the terms of the MoU itself, it can be concluded that there is no concluded contract between the parties and that the due date for the debt has not arrived and consequently no default has been committed.

The counsel for the Financial Creditor contends that in the quash petition filed by the Corporate Debtor it is admitted that an MoU was entered between M/s.LEPL Project Limited on 27.08.2012 and hence it amounts to an admission of the MoU, cannot be considered, since, MoU dated 27.08.2012 is not the basis of the claim herein and the said MoU is not filed along with the Petition. Moreover, they mentioned the said fact only to deny it and not to admit the same. The MoUs which are admitted to have been entered into, in the quash petition, are not

filed before this Tribunal. However, even if it is accepted that the MoUs dated 25.10.2015 & 23.06.2016 are admitted by the Corporate Debtor, since the obligations under the MoUs stand unfulfilled, the right to file this Petition does not arise. Moreover, in the quash petition several disputed facts with regard to the issuance of the cheques are raised, which require a detailed enquiry which is not within the scope of this Tribunal.

Hence viewed from the angle of limitation and the angle of debt becoming due and the angle of the commission of default, the Petition is liable to be dismissed. If the Financial Creditor is bent upon realizing the amounts he has to get the performance of the MoUs done by approaching the appropriate Forum, but not by way of an application under Section 7 of IBC, 2016.

III. <u>To what result</u>.

In view of the findings under point No. I & II, the CP(IB) No.47/7/AMR/2021 is dismissed.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu