Sl. No. 1

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 24.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/54/7/AMR/2021		7 of IBC	State Bank of India Vs K[illegible] Ceramics Pvt Ltd

ORDER

Present: None appeared for both the parties.

Orders pronounced. **CP (IB)/54/7/AMR/2021 is admitted and record vide separate sheets.**

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SANJAY PURI
MEMBER (TECHNICAL)

sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Venkatesh (Steno)

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI
* * *

CP (IB)/54/7/AMR/2021

[Petition 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]

AND

In the matter of
M/s. KARUTURI CERAMICS PRIVATE LIMITED

BETWEEN:

State Bank of India,
Stressed Assets Management Branch,
Secunderabad, Door No.6-2-915, 5th Floor,
Rear Block, HMWSSB Compound,
Khairthabad, Hyderabad – 500068
Represented by Mr.Chittem Ravi Sankar,
Assistant General Manager & Cash Lead Officer.

... Financial Creditor

AND

M/s. Karuturi Ceramics Private Limited,
(CIN: U26933AP2010PTC117739)
23-16-44, Jaigopal Bhavan, Haripuram,
East Godavari, Rajahmundry,
Andhra Pradesh, India- 533105.

... Corporate Debtor

Date of order: 24.04.2024

<u>CORAM</u>:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

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Appearance:

For Financial Creditor : Mr. G. P. Yash Vardhan, Advocate.

For Corporate Debtor : Mrs. A Sandhya Rani, Advocate

ORDER
[***Per: Bench***]

1. This petition has been filed on 26.08.2021 by the Applicant - State Bank of India i.e., the Financial Creditor (in short FC) against the Respondent - M/s. Karuturi Ceramics Private Limited i.e., the Corporate Debtor (in short CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as "IRP") and declare the moratorium for making defaulted in payment of its outstanding dues Rs.**54,78,94,954.15**/-(Rupees Fifty Four Crores Seventy Eight Lakhs Ninety Four Thousand Nine Hundred and Fifty Four and Fifteen Paisa Only) as on 31.08.2018.

2. The facts which lead to filing of this Petition are briefly as follows:

   a) The Financial Creditor is a Public Sector Bank incorporated on 01.07.1955. The Corporate Debtor is a Private Limited

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Company incorporated on 18.06.2010 being CIN: U26933AP2010PTC117739 registered in the State of Andhra Pradesh and is in the business of manufacturers, representatives, dealers, traders, suppliers, stockiest, exporters, importers, factors, agents, consignors and consignees of all classes, kinds, types and nature of ceramic parts used in machineries including tower packing items, sanitary wares, wash basin, traps, tub, bath tub and all types of sanitary wares, ceramic tiles, etc., and other allied activities.

b) The CD approached the FC and requested for sanction of credit limits. Based on the representation of the CD, the FC agreed to the same and issued a sanction letters dated 29.11.2010 and 13.07.2011 with credit limits of Rs.24.49 crores, the same is confirmed by the CD in its Board Meeting held on 16.03.2011 and further request of the CD, the FC enhanced the credit limits vide its sanction letter dated 23.12.2013, the same has been accepted by the CD in their Board meeting held on 30.12.2013.

c) Based on the request of the CD, the FC issued letter dated 07.01.2014 for granting individual limits within the overall limits of Rs.33.29 Crores and they are entered into Working Capital Consortium Agreement dated 07.01.2014. Further, FC issued another sanction letter dated 27.07.2015 by sanctioning

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of proposed credit limits of Rs.32.03 Crores and the same was acknowledged by the CD and passed resolution to furnish guarantees to the FC.

d) Vide letters dated 09.07.2018 & 14.08.2018 issued by the FC informing the CD about the sanction of restructuring /enhancement of credit limits under resolution plan of Stressed Assets Management and the same was acknowledged by the CD in their Board Meeting held on 16.08.2018.

e) The FC further alleged that the CD has executed various agreements dated 21.08.2018 in favour of the FC with regard to the creation of charge, and Hypothecation of Goods and Assets.

f) Thereafter, the Corporate Debtor was not able to pay the instalments of principal and interest and thus on default in the payment of dues. The FC has issued Demand Notice dated 18.09.2020 to the CD under SARFAESI Act.

g) The FC has issued letter dated 19.10.2020 to the CD by informing about the Scheme of One Time Settlement of NPA's and AUCAs. In response to the same, the CD has submitted OTS proposals on various dates, which are rejected by the FC. Finally, the FC has issued Demand Possession Notice dated 22.06.2021 to the CD under SARFAESI Act. The Demand

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Notice dated 18.09.2020 (sent through registered post) seeking payment of the defaulted amount provided 15 day notice period from the date of issuance of the notice and accordingly the last date of default would be 03.10.2020. Hence, the present Petition.

3. The Corporate Debtor filed counter, denying the contents of the Petition and further contending that the Petition is barred by limitation. It is further submitted that the CD is MSME (Micro Small and Medium Enterprise) and involved in manufacturing.

3.1 The Corporate Debtor as contemplated under sanction letter dated 29.11.2010 issued by the FC availed Fund and Non-Fund based credit limits for Rs.24.49 crores and the repayment of term loan is scheduled of 27 quarterly installments commencing after initial disbursement of loan or 6 months after commercial production in any case not later than September, 2012. Due to administrative reasons, terms and conditions of credit limits under sanction letter dated 29.11.2010 were modified by the FC without any changes to sanctioned limits and based on his request, the FC revalidated and enhanced the limits.

3.2 The account of the CD became NPA on 24.07.2015 and the FC vide its sanction letter dated 27.07.2015 has restructured the Term Loan and thereby downsized the Fund and Non-Fund based limits from 33.29 Crores to 32.03 Crores.

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3.3 The Board of Directors of the CD under previous management from 2010 to 2015 passed Board resolutions and submitted the same to Banks for availing/restructure for enhancement and downsize the credit limits. But there is no material is available on record to show that the Bank after 27th July, 2015 has corresponded with the previous management of the CD with regard to alleged debt and there is no reliance is placed on record the show that they have classified the loan account as "restructured standard account" from classified of NPA after 27.07.2015.

3.4 The Financial Creditor vide its Lr. No. SAMB:SEC:KSS497 dated 09.07.2018 accorded permission for change of ownership of CD and for restructuring/enhancement of credit limits under resolution plan of stressed assets management. But the FC has misconstrued the contents of sanction letter dated 09.07.2018 issued by it for restructuring/enhancement of credit limits under resolution plan of stressed assets management. The FC after having series of discussions with the previous management and proposed new management of the CD, issued sanction letter and thereby approved resolution plan of new management on its terms to revive the CD and disbursed Rs. 1,00,00,000/- and appropriated the same towards accrued interest under loan account. Therefore the assurances of the FC and disbursement made under Sanction letter

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09.07.2018 is only on paper and the Bank has increased the liability of the CD or further.

3.5 The existing management of the CD requested the bank to change the status of loan A/c from NPA to standard or restructured standard asset as the investors who wants infuse funds in corporate debtor to meet the working capital, however, all their attempts were made proved futile. In result of same the Investors gone back from investing in Corporate Debtor just because the Account of the CD keep continuing as NPA from 27.07.2015, which has caused serious prejudice to new management.

3.6 It is submitted that as per the Master Circular No. RBI/2017-18/131 dated 12.02.2018 issued by the Reserve Bank of India in exercise of its power conferred U/s 21 and 35-A of the Banking Regulation Act, 1949 where under issued guidelines for revised framework for Resolution of stressed assets, fixed timelines for large accounts referred under IBC & restructuring norms.

3.7 It is submitted that as per the Master Circular dated 01.07.2015 makes it amply clear that every NPA would fall either in the category of sub-standard or doubtful or loss asset and it clearly emerges that the decision of the Bank before classifying an asset as NPA should be based on the record of recovery. An account which has some temporary deficiencies like non-availability of adequate disbursing power based on the latest

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available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of limits on the due date etc., should not be classified as NPA. Clause 4.2.5 of the said Master Circular mandates that where the arrears of interest and principal are cleared by the borrower in the case of loan accounts classified as NPAs, the accounts should not be any longer treated as non-performing and may be classified as 'Standard' account. Thus, in nutshell, it is concluded that where the borrower expresses willingness for regularizing the loan account by discharging the arrears of interest and principal, the Bank/financial institutions are obligated to accept the same and Act and declare the account to be 'Standard' account.

3.8 It is further submitted that a judgment in *Sravan Dall Mill P. Limited Vs. Central Bank of India*, AIR 2010 AP, 35, the Andhra Pradesh High Court was considering Clause 4.2.4 of the RBI guidelines which were prevalent then which are akin to Clause 4.2.5 of the RBI Master Circular dated 01.07.2015, had held that the classification of Account as NPA must be in accordance with the directions or guidelines relating to assets classification issued by RBI. Further, it was categorically recorded that it is incorrect to presume that once an NPA is always an NPA. It was noticed that clause 4.2.4 of Prudential Norms specifically provides that if the interest and principal are paid by the borrower in the case of loans classified as

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NPA, said account should no longer be treated as NPA. The relevant Para of the judgment.

> *10. Further, to have an account upgraded from an NPA to a standard account, it is not necessary that the entire amounts due 28 of 30 from the borrower to a creditor are paid in full. It is sufficient if the amounts due at the material time towards principal and interest are paid. This is clear from the opening words of the first sentence of Clause 4.2.5 of the Master Circular - "If arrears of interest and principal are paid by the borrower…………". These words clearly indicate that payment of the amounts due at a particular point of time towards interest and principal is sufficient for the account not to be treated any longer as an NPA and to have the same classified as a standard account. If it were otherwise, the clause would have been worded entirely differently. It would have required the borrower to pay all the dues of the lender. Indeed, in that event, there would be no question of reclassifying the account from an NPA to a standard account for upon repayment the account would stand closed. Clause 4.2.5 contemplates the continuation of the accounts and not the closure thereof."*
>
> *"23. The right of the borrow to have a due consideration of objections is, therefore an important right of the*

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borrower where the bank is bound to apply its mind and inform the borrower of its reasons as to why and how the account is classified as NPA, particularly, when the borrower raises specific objections in that regard. The reply of the bank must indicate application of mind by the bank that the decision of the Bank in classifying the account as NPA was fully in conformity with the prudential norms of RBI. Non consideration of the said objection by mere statements in the reply that the bank has considered the same cannot be said to be the fulfillment of the obligation of the bank under Section 13(2) and 13(3)(A) of the SARFAESTAct. It also cannot be disputed that even assuming that particular had become NPA, the subsequent payments by the borrower entitled a borrower to upgrade the said account as NPA. Therefore, it is incorrect to presume that once an NPA is always an NPA and it 27 of 30 is precisely for the said reason that the clause 4.2.4 of the prudential norms specifically states that interest and principal are paid by the borrower in case of loans classified as NPA, the said account should no longer be treated as NPA and may be classified as substandard account. Consequently, therefore, the action under the SARFAEST Act with regard to the said account would not be tenable, as

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jurisdictional fact under Section 13(2) of the SARFAEST Act would remain unsatisfied."

3.9 The new management of the CD in its reply given under 13(3) of SARFAEST Act, 2002 to the Demand Notice issued by the Bank on 22.07.2020 where under, the existing promoters raised their serious concerns and non-cooperation of the banks in coming forward to revive the CD. In Para No. 10 reply to demand notice, the Respondent herein stated that "*the Bank's unilateral wrong decision has put us jeopardized the fresh investment of Rs. 25.25 crs in new unit which include upfront payment of Rs.5.00 cr to the bank. That despite bank's continuous indifferent attitude towards unit, new promoters raised additional resources from friends and relatives and entered into an agreement with Kajaria Ceramics Limited, the India's largest and World's 9th largest tile manufacturer for purchase of total production of the Company and restarted the plant in February, 2020 and started supplying tiles to Kajaria from March, 2020.*

3.10 Mr. Amit Chaturvedi, Director of CD sent an email dated 31.08.2020 to the FC, proposal of restructure and permission to allow operations after tagging of 5% in their account till approval of restructure and also requested the FC, to restructure the loan account on various tenable grounds and however the bank has not acted upon the same and kept the same in abeyance without giving valid reasons.

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3.11 It is submitted that the FC has disowned their own stipulations framed under sanction letter dated 09.07.2018 and released the properties of outgoing guarantors and thereby they have frustrated the contract entered with the existing management of CD and FCs failure to changing the status of loan a/c of CD to standard, is a violation of RBI circular dated 12th February, 2018. Pertinent to mention classifying an asset as NPA should be based on the record of recovery. An account which has some temporary deficiencies like non-availability of adequate disbursing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of limits on the due date etc., should not be classified as NPA more over when new promoters have come to revive the CD under Resolution Plan of stressed assets.

3.12 It is contended that the claims mentioned in Part-IV at column No.2 in the Petition is that the amount of debt disbursed is Rs.33,27,00,000/- and at column No.3 claimed that a consolidated default amount is Rs.54,78,94,954.15/- by giving without any particulars of bifurcated amounts of Principle and accrued interest thereon and also fails to demonstrate in the Company Petition as to how they have arrived or calculated the alleged consolidate amount of Rs.54,78,94,954.15/- defaulted by the CD.

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3.13 It is submitted that the FC clearly admitted in Part-V of the Petition that there is no record of default with the information utility as far as CD is available with the FC. The admitted fact is that the date of default is 24.04.2015 and there is no whisper in Company Petition whether the alleged claim is within limitation or barred under law as contemplated U/s 238-A of IBC, Section 18 and Articles 137 of Limitation Act. On plain reading of the admission made by the FC with regard to date of default as 24.04.2015 in Petition and the date mentioned in demand notice dated 18.09.2020 issued U/s 13(2) of SARFAESI Act, 2002 that the Bank has classified the loan a/c of CD as Non-performing Asset on 27.04.2015 clearly speaks that the alleged claim of the FC is barred under law in all aspects.

3.14 Undisputedly, the CD availed limits from 2010 to 2015 and the existing management entered into the shoes of CD to revive the Company under Resolution Plan of stressed assets. But the FC has given no reasons for continuing CD loan account as NPA even after approving the Resolution Plan of stressed assets after 09.07.2018. Hence, this Company Petition is liable to be dismissed.

4. The Financial Creditor filed rejoinder, denies all the allegations averred in the counter and further contending all the new issues averred by the CD in their counter.

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4.1 It is submitted that as per the request, it has provided financial assistance to the CD to a tune of the Rs. 24,49,00,000/- vide sanction letter dated 29.11.2010 and as per the sanction terms the CD had to pay interest@4.00% margin above the base rate which was at 8.25% p.a. effective rate 12.25% p.a. at monthly rests and the Term Loan was repayable in total 27 quarterly installments commencing from 18 months after initial disbursement of loan or 6 months after commencement of commercial production in any case not later than September 2012. Thereafter, due to sudden demise of the Sri. Karuturi Surya Rao (Guarantor), the FC has issued modified sanction Letter dated 13.07.2011 and the CD has also executed agreement of loan dated 19.03.2011 and supplemental agreement of the loan for overall limit dated 18.07.2011.

4.2 In response to the application dated 01.12.2013 requesting fund based working capital of Rs.8,00,00,000/- by the CD, the FC has sanctioned the same in the form of cash credit and total limits provided was Rs.33.29/- crores, vide its Sanction Letter dated 23.12.2013 and the CD has executed Working Capital Consortium Agreement dated 07.01.2014. In pursuant to availing the financial assistance, the CD has committed default in paying the outstanding amounts on 24.04.2015 and hence, due to continuous default, the account of the CD was declared as NPA on **24.07.2015**.

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4.3 Thereafter, as per the request letter dated 31.03.2015 addressed by the CD, the FC has restructuring of the account of the CD vide its sanction letter dated 27.07.2015 and as per the Sanction Terms, the CD has to pay interest @ 3.75% above Base Rate on cash credit (present effective rate 13.45%). On term Loan and WCTL the Corporate Debtor had to pay rate of interest @ 3.90% above Base Rate on cash credit (Present effective rate 13.60%) monthly rests. On FITL-1 &FILT-II 'Zero' rate of interest during moratorium period and afterwards it will carry rate of interest of 3.90% above Base rate applicable to SBI rated companies with present effective interest rate of 13.60%. FC (SBI) shall at any time and from time to time be entitled to vary the margin based on the Credit Risk Assessment of the borrower and Base Rate at its discretion.

4.4 Vide letter dated 05.03.2018, the CD requested the FC for restricting of the existing credit facilities and also proposal for change in ownership of the CD and same has accepted by the FC under the revised framed work of the Reserve of India circular 12.02.2018 (“**RBI Circular, 2018**”) and issued sanctioned letter dated 09.07.2018 approving the restructuring the credit facilities and also for change of ownership/management of the CD. The CD has accepted and

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agreed to the terms and conditions of the sanction letter by executing its signature and also passed board resolution on 16.08.2018 by accepting the terms and conditions of the sanction letter dated 09.07.2018. The CD has inter-alia executed Agreement of Loan for overall limit dated 21.08.2018, in order to secure the repayment of the financial assistance, a hypothecation charge has been established on the stocks, movables, receivables, Plant and Machinery, and other mortgaged properties in favor of the FC by executed Guarantee Agreements guaranteeing the repayment of the financial assistance obtained by the CD.

4.5 As part of the restructuring by change in ownership and management of the CD, under the revised framed work of the RBI circular 12.02.2018, M/s. IKYA Ceramics Pvt Ltd have bought 1,35,00,000 equity shares of the CD by executing a Share Purchase Agreement and nominated 3 of its directors into the board of the directors of the CD by passing Board Resolution dated 02.02.2018 and in order to secure the repayment of financial assistance availed by the CD, has pledged the above shares in favour of the FC by executing Pledge Agreement dated 04.01.2019.

4.6 Thereafter, as per the request made by the CD vide letters dated 16.07.2018, the FC has approved the same vide its

Sanction Letter dated 14.08.2018 and that 'Personal guarantees of the existing promoters (1) Smt. K.Yashoda, 2) Sri. Sandeep Rao, (3) Dr. K. Kishore Babu, (4) Smt.K.Ramalakshmi should be released only upon the account coming out of the NPA status' is waived, but the release of personal guarantees is subject complying with the stipulations mentioned in our letter dated 09.07.2018.

4.7 It is submitted that despite restructuring the loan account and as per Sanction Letter dated 09.07.2018, the CD has committed default and the last payment was made on 29.08.2018. Due to failed restructuring, the date of default is w.e.f. 24.04.2015 and NPA is 24.07.2015 as per RBI guidelines) and violated the terms of the conditions stipulated in the Sanction letter dated 09.07.2018 and 14.08.2018, the FC has issued demand notice dated 18.09.2020 to the CD and Personal Guarantors calling upon them to repay the outstanding amounts. However, neither the CD nor the Guarantors have come forward to pay the outstanding amounts. The CD has in its financial statements for the year 2015-2020 and also submitted One Time Settlement ("OTS") letters dated 24.02.2021, 03.03.2021 and 21.06.2021 admitting its liability towards the FC.

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4.8 It is further denied that, as per terms of Sanction Letter dated 09.07.2018, there is no breach or violation committed by the FC, and in fact, it is the CD which has committed default, despite restructuring of its loan account.

4.9 It is further denied that, the claim amount defaulted by previous management not in the tenure of present management. As per the request of the CD, the FC has restructuring of the existing credit facilities and also proposal for change in ownership of the Corporate Debtor and also restructured the loan account and the CD does not dispute terms of payment and other terms and conditions as stipulated under the Sanction Letter dated 09.07.2018 & 14.08.2018 nor execution of loan document pursuant to the restructuring of the loan account of the CD neither the date of default.

4.10 It is submitted that, it has filed statement of account along with certificate under bankers' book of evidence, revival letters and financial statements of the CD which clearly established that, the CD has committed default and same due payable by the CD till date and the CD is unable to pay the outstanding loan amounts,. Hence, this petition.

5. The CD filed additional counter, reiterating the contents of the counter filed earlier and further contending that the release of personal guarantees of promoters Smt. K. Yashoda, Sr. K. Sandeep

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Rao, Dr.K.Kishore Bau, Smt. K.Ramalakshmi and allowed them to go scot-free without adhering to terms of sanction letter dated 09.07.2018 i.e., restoring the loan account of the CD to as Standard from NPA status. In pursuant to verification of bids received from prospective purchasers against sale notice, the FC declared M/s. Varun Infra & M/s. Lakshmi Srinivasa Agro Traders as successful bidders for purchase of guarantors two properties owned by Mr.Hridayanath Chaturvedi and R Ruchita Chaturvedi for a total sale consideration of Rs.4,94,00,000/- out of its alleged claim. The FC failed to bring relevant facts on record in whose tenure the default has occurred and who is responsible for the same. Hence, this Petition is liable to be dismissed.

6. Heard both sides and perused the written submissions. From the pleadings and the arguments, the points that emerge for consideration of this Tribunal are as follows:

I. Whether the Petition is filed within the limitation period.

II. Whether the FC has violated the Terms of Sanction Letter date 09.07.2018 and RBI Circular Dated 12.02.2018 by releasing the Personal Guarantees.

III. Whether the Corporate Debtor has committed default in repaying the debt due to the Financial Creditor.

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IV. To what result.

I. <u>Whether the Petition is filed within the limitation period</u>.

The Corporate Debtor has taken the plea of limitation as the primary objection to the application filed by the Financial Creditor. The ground on which such plea is taken is that the Corporate Debtor was declared as NPA on 24.07.2015. This application is filed on 26.08.2021 which is beyond period of three years. There is no quarrel on the aspect of the application of the Limitation Act to the proceedings under IBC. The law is too well settled. Section 238-A of IBC provides for the application of the Limitation Act, 1963, as far as may be, to the proceedings before the NCLT and there is no quarrel with regard to the application of Article 137 of the Limitation Act to the proceedings under IBC. Since, Article 137 applies to those case where the period of limitation is not provided, the Limitation for filing an application under Section 7 of IBC would be three years from the date when the right to apply accrues, which is the date of default. The Supreme Court in ***B.K Educational Services Pvt Ltd vs Parag Gupta And Associates*** in Civil Appeal No.23988 of 2017 held that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted; the right to

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sue, therefore, accrues when a default occurs and if the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act; the said principle was reiterated in several cases and it stands settled. But the contention of the Counsel for the Financial Creditor is that the fresh period of limitation starts from the date of acknowledgment of debt by the Corporate Debtor if before the lapse of three years from the date of default. The Counsel for the Financial Creditor has filed several judgments, relevant of which is rendered by the NCLAT, Chennai in the matter of ***State Bank of India vs. Hackbridge Heweittic and Easun Limited.*** The main issue which was decided in the said judgment was whether the OTS proposal is considered as acknowledgement. The NCLAT held that in the terms of the section 128 of the Indian Contract Act, 1872 the liability of the Respondent was always co-extensive with debt of Principal Borrower and therefore the acknowledgement of debt by various 'OTS' proposals, as discussed earlier, were also deemed acknowledgments by the Respondent.

We relied on the judgment rendered by the Supreme Court in ***Civil Appeal No. 2734 of 2020 between Laxmi Pat Surana Vs. Union Bank of India & Another***. The main issue which was decided in the said judgment was whether an

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application under Section 7 of the Code filed after three years from the date of declaration of the loan account as Non-performing Asset, being the date of default, is not barred by limitation. The Court held that ordinarily upon declaration of loan account as NPA that date can be reckoned as the date of default to enable the Financial Creditor to initiate action under Section 7 of the Code; however, Section 7 comes into play when the Corporate Debtor commits "default"; Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA; further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be. It further held that if the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years there from, including the fresh period of limitation, due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act; Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code ensures; Section 18 of the Limitation Act would come

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into play every time when the principal borrower and/or the corporate guarantor (Corporate Debtor), as the case may be, acknowledge their liability to pay the debt; such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code; further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.

In the light of the above binding precedent, which is not disputed by the Counsel for the Corporate Debtor, what now has to be seen is whether there is any acknowledgement by the Corporate Debtor within three years from the date of the account of the Corporate Debtor being declared as NPA, which is 24.07.2015. Before proceeding with the said aspect, a reading of Section 18 of the Limitation Act would be beneficial. The same 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,*

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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."*

An application was filed by the Financial Creditor under SARFAESI Act and a reply was issued by the Corporate Debtor to the notice issued under Section 13(2) dated

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18.09.2020. The contention of the Counsel for the Financial Creditor is that a fresh period of limitation would start from 18.09.2020, which would end by 18.09.2023. There is no dispute that the debt was admitted by virtue of the reply issued under Section 13(2) of SARFAESI Act.

The Corporate Debtor admittedly submitted OTS proposal on 24.02.2021, 03.03.2021 and 21.06.2021 and the Registered Agreement of Loan for Overall Limited dated 21.08.2018 executed by the CD and also the debt was reflected in the CD's Audited Balance Sheets for the Financial Year 2017-2018, 2018-2019 & 2019-2020, which would amount to acknowledgement of debt. Hence, the limitation would stand extended for another three years commencing from 18.09.2020 which would end by 18.09.2023. But even thereafter the Corporate Debtor and the new management of the CD i.e., Iyka Ceramics Pvt Ltd is also acknowledged the debt in their Minutes of the Board of Directors dated 03.01.2019 and also various letters addressed to the Financial Creditor.

By virtue of all the above documents which evidence the acknowledgment of debt by the Corporate Debtor last of which is the OTS proposal dated 21.06.2021, there is a clear acknowledgement of the loan and the amount defaulted.

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Hence, in view of the above it can be held that the application is well within the period of limitation.

II. Whether the FC has violated the Terms of Sanction Letter dated 09.07.2018 and RBI Circular Dated 12.02.2018 by releasing the Personal Guarantees.

The Corporate Debtor taken another plea that the FC has violated the Terms of Sanction Letter dated 09.07.2018 and RBI Circular dated 12.02.2018 and filed judgment rendered by the Supreme Court in the matter of ***Dharani Sugars Chemicals Limited vs. Union of India dated 02.04.2019***, wherein the Supreme Court held that "*there is nothing to show that the provisions of Section 45L(3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular*

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is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is ultra vires insofar as banks are concerned. For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est. In view of the declaration by this Court that the impugned circular is ultra vires Section 35AA of the Banking Regulation Act, it is unnecessary to go into any of the other contentions that have been raised in the transferred cases and petitions. The transferred cases and petitions are disposed of accordingly."

The FC contending that there is no violation of Sanction letter and RBI Circular by evidencing that as per clauses of the RBI Circular, 2018, which are reiterated herein under:

"Prudential Norms:

A. Asset Classification: *In case of restructuring, the accounts classified as 'standard' shall be immediately*

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downgraded as non-performing assets (NPAs), i.e., 'sub-standard' to begin with. The non-performing assets, upon restructuring, would continue to have the same asset classification as prior to restructuring. In both cases, the asset classification shall continue to be governed by the ageing criteria as per extant asset classification norms.

B. Conditions for Upgrade: *Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan/facilities in the account demonstrate 'satisfactory performance' (i.e., the payments in respect of borrower entity are not in default at any point of time) during the 'specified period' (as defined in paragraph 10 of the covering circular).*

F. Conversion of Principal into Debt/Equity and Unpaid Interest into Funded Interest Term Loan (FITL), Debt or Equity Instruments: *The FITL/debt/equity instruments created by conversion of part of principal/unpaid interest, as the case may be, will be placed in the same asset classification category in which the restructured advance has been classified.*

G. Change in Ownership: *In case of change in ownership of the borrowing entities, credit facilities of the concerned borrowing entities may be*

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continued/upgraded as 'standard' after the change in ownership is implemented."

From the above clauses, NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan/facilities in the account demonstrate "satisfactory performance' during the 'specified period'. Therefore, till the outstanding loans are paid on time and the same demonstrate satisfactory performance, the status of the account will continue to the NPA. The CD has failed to place any document/evidence on record to prove he has paid the entire outstanding loan amounts as per the terms and conditions of the sanction letters and loan documents.

Hence, keeping in view of the above clauses, we are opine that the FC has not violated the Terms of Sanction Letter and Circular.

III. Whether the Corporate Debtor has committed default in repaying the debt due to the Financial Creditor.

Except on the question of limitation there is absolutely no defence offered by the Corporate Debtor with regard to the amount of debt due to the Financial Creditor and the default

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committed by it. Hence, this point is answered in favour of the Financial Creditor.

IV. To what result:

In view of the findings under the **point No. I to III** the Petition is admitted. The Financial Creditor suggested one Mr.Naga Bhushan Bhagawati as Insolvency Resolution Professional (IRP). Hence, Mr. Naga Bhushan Bhagawati as Insolvency Resolution Professional (IRP). The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

ORDER

i. Mr. Naga Bhushan Bhagawati, **(Registration No. IBBI/IPA-001/IP-P00032/2016-17/10085);** having office at 1-1-380/38, Ashok Nagar Extension, Hyderabad, Telangana-500020; e-mail:**bnagabhushan@yahoo.com;** is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder. Specific consent of the IRP in Form 2 along with disclosures as required under

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IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.

iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.

iv. The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under section 31(1) or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.

v. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code. . Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make

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appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

vi. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakhs Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

viii. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional (IRP).

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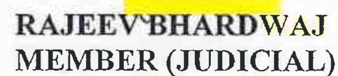
ix. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.

x. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

7. Accordingly, **CP (IB)/54/7/AMR/2021 stands admitted.**



SANJAY PURI
MEMBER (TECHNICAL)

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu (PS)