

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.594/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[IN: TAN MUMB14834B]

...Financial Creditor/Petitioner

V/s

Valecha Engineering Limited

[CIN: L74210MH1977PLC019535]

...Corporate Debtor/Respondent

Order Dated: 21/10/2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Subir Kumar a/w Ms. Disha
Ponda, Advocates.

For the Respondent(s) : Mr. Prateek Seksaria a/w
Mr. Atishay Jain, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 594/MB/C-IV/2021 filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Valecha Engineering Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Application is filed by Mr. Satyawan R Rane, Assistant General Manager and Case Lead Officer (XI) of the Financial Creditor, claiming total default of Rs.347,95,29,063.03/- (Rupees Three Hundred Forty Seven Crores, Ninety-Five Lakhs, Twenty-Nine Thousand and Sixty-Three Rupees and Three Paise only) which includes:

Principal outstanding of Rs.205,77,90,867.65;

Interest outstanding of Rs.118,13,05,451.72 as on 08.04.2015

Penal Interest of Rs.24,04,32,743.66 as on 08.04.2015
3. The Date of Default as mentioned in the Petition is 31.03.2016. The Petition is filed on 13.01.2021.

The case of the Financial Creditor is as under:

4. The Financial Creditor submits that the Corporate Debtor had approached them for grant/sanction of various credit facilities. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned the credit facilities to the tune of Rs. 252 Crores alongwith other lender Banks i.e. Canara Bank, Axis Bank Limited, Standard Chartered Bank. The State Bank of India and other consortium lenders Bank entered into Working Capital Consortium

Agreement on 08.01.2008 and by consent of all the Banks, the State Bank of India, Financial Creditor herein is designated as lead Bank.

5. To secure the aforesaid credit facilities to the tune of Rs. 252 crores, the Corporate Debtor executed various loan and security documents i.e. Joint Deed of Hypothecation, Memorandum of Entry, Inter-se agreement and Deed of Guarantee all dated 08.01.2008 in favour of the Financial Creditor and all consortium lenders Bank.
6. Further, the Corporate Debtor again approached the Financial Creditor Bank for grant/sanction/enhancement of existing credit facilities from Rs. 252 Crores to Rs. 365 Crores. The Corporate Debtor Bank again considered the request of the Corporate Debtor and granted/sanctioned/enhanced the existing credit facility vide sanction letter dated 24.11.2008.
7. On the request of the Corporate Debtor, the Financial Creditor enhanced the existing Bank Guarantee by Rs.30 Crores vide sanction letter dated on 10.03.2011.
8. Further, again the Corporate Debtor approached the Financial Creditor for grant/sanction/enhancement of existing working capital facility/credit facility from Rs.365 crores to Rs.536.80 Crores. The Financial Creditor alongwith other consortium lenders Bank considered the request of the Corporate Debtor and enhanced the working capital facility/credit facility from Rs.365 crores to Rs.536.80 Crores. The Corporate Debtor and other consortium lenders Bank entered into second working capital consortium agreement on 20.01.2012.

9. To secure the aforesaid facilities, the Corporate Debtor executed various loan and Security documents i.e. Supplemental Inter-se Agreement, Deed of Guarantee, Deed of Mortgage cum charge and Security Trustee Agreement all dated 20.01.2012 in favour of Financial Creditor and other consortium lender Banks. The Corporate Debtor again approached the Financial Creditor for renewal of the existing working capital limits. The Financial Creditor considered the request of the Corporate Debtor and renewed the Working Capital facility vide sanction letter dated 08.04.2015.
10. On 05.09.2015, the 3rd Supplemental Working Capital Consortium Agreement executed between the Corporate Debtor and SBI, Canara Bank, Axis Bank Limited, Lakshmi Vilas Bank, wherein the Standard Chartered Bank has opted out of the consortium and the Lakshmi Vilas Bank is inducted in the SBI consortium for the purposes of the credit facilities not exceeding a sum of Rs. 536.80 Crores.
11. The pledge Agreement executed by Valecha Investments Private Limited (Pledger) and the Corporate Debtor/Borrower in favour of SBICAP Trustee Company Limited as the Security Trustee setting out the details of the Lender(s) facilities, sanction letters and Facility Agreements as on the date of agreement.
12. On 11.01.2016, the Corporate Debtor executed revival letter in favour of the SBICAP Trustee Company Limited acknowledged for the purpose of section 18 of Limitation Act, 1963 and any like limitation in order to preclude any question of limitation law.
13. On 24.01.2017, the Corporate Debtor through its Advocate issued Legal Notice thereby recalling for the outstanding dues to the tune of

Rs. 339,30,00,000/-. Despite receipt of said legal notice, the Corporate Debtor failed to liquidate the outstanding dues. The Financial Creditor submits that the Corporate Debtor availed and enjoyed the credit facilities but failed to repay the dues as a result of which the accounts of the Corporate Debtor were classified as Non-Performing Asset 28.06.2016 as per Reserve Bank of India prudential norms.

14. The Financial Creditor issued Demand Notice u/s 13 (2) of the SARFAESI Act, 2002 on 07.09.2017 thereby demanding for repayment of outstanding dues to the tune of Rs.249,48,00,170/-. Despite receipt of said Demand Notice, the Corporate Debtor neither replied to the same nor repaid the outstanding dues. Hence this Petition.
15. The Petitioner/Financial Creditor filed the tabulation of claimed amount at page 20 of the Petition. The said computation is reproduced hereunder: -

Name of the Account			Valecha Engineering Limited							
Sheet No	Faculty	Account No	Interest Calculated from	Interest Calculated Till	Spread	Penal Int Rate %	Principal o/s	Interest Accrued	Penal Interest	Total Dues
1	RA-OD	30068027704	01.07.16	31.12.2020	2.00	0.03	75,28,93,345.72	539828628.38	110979741.89	1403701715.99
2	AUCA-CC	36364160872	26.12.16	31.12.2020	2.00	0.03	1184067108.12	554315151.49	124012331.77	1862394591.38
3	RA-TL	61210163869	26.12.16	31.12.2020	2.85	0.01	75913514.81	53781062.86	3418182.31	133112759.97
4	RA-TL	61302925883	26.12.16	31.12.2020	3.30	0.01	44916899.00	33380609.00	2022487.69	80319995.69
TOTAL							2057790867.65	1181305451.72	240432743.66	3479529063.03

16. The Financial Creditor/Petition filed certificate under Banker's Book Evidence Act and CRILIC report.

Reply by the Corporate Debtor

17. The Corporate Debtor through its reply dated 04.04.2022, raised the following objections to the Petition:

- i. Present petition is barred by the law of limitation;
- ii. The petitioner does not have locus to file the present petition;
- iii. Lack of authority for filing the present petition;
- iv. Including the scheme pending adjudication before this Hon'ble Tribunal.

Present petition is barred by the law of limitation

- a. The Corporate Debtor submits that the Petition filed under Section 7 of the Code is barred by law of limitation because it has been filed after three years of the purported default having occurred.
- b. In Part IV of the petition i.e. Form 1 it is mentioned that the date of default in relation to the debt on which the present petition is filed on 31.03.2016. Admittedly, the petition Form I of the petition is dated 13.01.2021. Therefore, the said Petition has been filed 5 years after the date of default by the Petitioner pleaded by the Corporate Debtor. The Corporate Debtor pleaded that it is settled law that in case of a petition under section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") the right to sue accrues when a default occurs. A petition under section 7 of IBC has to be filed within a period of three years from the date of default and if a default has occurred over three years prior to the date of filing of the petition, the petition would

be barred under Article 137 of the Limitation Act, 1963. The Corporate Debtor also raised objections regarding maintainability of the Petition.

The Financial Creditor does not have locus to file the present petition

- a. The Corporate Debtor submits that the Financial Creditor was a part of Loan granted by various other lenders i.e., Laxmi Vilas Bank, Axis Bank Limited, Canara Bank, Standard Chartered Bank including the Petitioner ("Lenders") Sal Lenders had executed Working Capital Consortium Agreements dated 08.01.2008, 20.01.2012 and 05.09.2015 ("Consortium Agreements") with the Corporate Debtor with respect to the loan granted by the Lenders.
- b. The SBICAP Trusteeship Company Limited was appointed by the Lenders to act as Security Trustee on their behalf vide Security Trustee Agreement dated 05.09.2015. The right to enforce/initiate legal proceedings against the Corporate Debtor was only available with the Security Trustee under the Security Trustee Agreement as well as under the statute and therefore, the present Petition could not have been filed by the Financial Creditor herein. The Security Trustee was designated to act as an agent to act on behalf of the said Lenders under the Consortium Agreement dated 05.09.2015 (clause 8 and article v sub clause 4). Furthermore, under clause 6 of the Supplementary Inter-se Agreement dated 05.09.2015, the Security Trustee was authorized by the lenders to act as an agent on behalf of the lenders to exercise such powers and discretion under the said

Consortium Agreements and the other financing agreements executed between the parties. At clause 6 the Supplementary Inter-se Agreement dated 05.09.2015 executed between the Lenders, each of the Lenders have agreed that all the matters including the enforcement of any right of the Lenders under the agreements shall be coordinated with the said Agreements.

- c. The Petition is defective since the authorized representative is not competent to file the said Petition on behalf of the Financial Creditor as there is no Board Resolution annexed to the said Petition. The said Petition is deposed and affirmed by the authorized representative of the Petitioner on the sole basis that the power is given to him under the Power of Attorney dated 22.12.2020. It is pertinent to mention that the Hon'ble National Company Law Appellate Tribunal in the case of Palogix Infrastructure Private Limited v/s ICICI Bank Limited held that:

"32. The I&B Code' is a complete Code by itself. The provision of the Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder.

33. The Hon'ble NCLAT further held that a 'Power of Attorney Holder' is not competent to file an application on behalf of a Financial Creditor or 'Corporate Applicant."

The Corporate Debtor further states that in view of the above settled position of law the present Petition needs to be dismissed as the same has serious defects since the Financial Creditor has not filed specific authorization to initiate the Corporate Insolvency Resolution Process as the law mandates.

Proceedings including the scheme pending adjudication before the Hon'ble Tribunal.

- a. The Hon'ble Supreme Court vide its order dated 30 April 2021 in SLP (Civil) No. 7103 of 2021 filed by Valecha Investments Pvt. Ltd. (a shareholder of the Corporate Debtor holding 17.77% of total equity shares of the Corporate Debtor) granted express liberty to the said Valecha Investments Pvt. Ltd. to approach the Company Judge by way of a formal petition/application and present the scheme of settlement.
- b. The Hon'ble Supreme Court has further directed that such a scheme of settlement has to be considered by the Company Judge on its own merits in accordance with law and all contentions available to the concerned parties were kept open, to be decided by the Company Judge.
- c. It is pertinent to note that the Corporate Debtor was under liquidation in proceedings pending before the Hon'ble Bombay High Court in Company Petition No. 761 of 2015 and Company Petition 173 of 2016. In such proceedings, Valecha Investment Pvt. Ltd. had propounded a scheme of compromise/

arrangement and had filed Company Summons (L.) No. 25113 of 2021 before the Hon'ble Bombay High Court in that regard for appropriate directions in that regard.

- d. The Financial Creditor filed an Interim Application (L.) No. 28359 of 2021 seeking transfer of Company Petition No. 761 of 2015 and Company Petition 173 of 2016 pending before the Hon'ble Bombay High Court to this Hon'ble Tribunal.
- e. The Hon'ble Bombay High Court vide its order dated 1.12.2021 was pleased to recall the orders of admission dated April 2017 and 30 January 2018 along with order of winding up dated March 2018 and 26 April 2018 passed in the proceedings before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court was also pleased to transfer Company Petition No. 761 of 2015 and Company Petition 173 of 2016 to this Hon'ble Tribunal.
- f. The Company Petition No. 761 of 2015 and Company Petition 173 of 2016 have been transferred to this Hon'ble Tribunal and are pending adjudication before this Tribunal.
- g. Pertinently, in view of the express liberty granted by the Hon'ble Supreme Court in its order dated 30th April 2021 and the Hon'ble Bombay High Court in its order dated 17th December 2021, the said Valecha Investment Pvt. Ltd. has filed a Company Scheme Application bearing e-filing no

2709138/00977/2022 before this Tribunal, which is under scrutiny.

h. Accordingly, the following proceedings are pending before this Tribunal before different benches:

a. The present Petition filed by State Bank of India under section 7 of IBC before this Tribunal;

b. Company Scheme No.2709138/00977/2022; Application bearing e-filing;

c. Petition under section 7 filed by the Central Bank of India before this Hon'ble Tribunal Bench II;

i. The Company Scheme Application filed by Valecha Investment Pvt. Ltd., all financial creditors of the Corporate Debtor including the Financial Creditor herein shall be paid 14% of their principal amounts in the Financial Year 2022-23.

j. It is clear through the conduct of the Petitioner that it is a case of a well strategized and calculated method of recovering its alleged and purported claim which is also barred by limitation.

Written Submissions of the Financial Creditor

18. In response to the reply filed by the Corporate Debtor, the Financial Creditor rejoined the contentions of Corporate Debtor in its written submissions.

- i. Present petition is barred by law of limitation:
 - a. It is settled law that, a 'Balance Sheet' is an acknowledgement of subsisting liability as per decision held in "*Rampur Engineering Company Limited Vs. Syed Raza Ali Khan Bahadur*" and *Ambika Mills Limited Vs. I.T. Commissioner*.
 - b. It is therefore, clear that, the continuous acknowledgements in the confirmation letters and 'Balance Sheets' and under the acknowledgement letters and 'Balance Sheets' are admitted for an extension of time under Section 18 of the Limitation Act.
 - c. Hence, the argument of the Corporate Debtor that the captioned company petition is barred by limitation is not sustainable in the eyes of law.
- ii. The petitioner does not have locus to file the present petition:
 - a. It is the contention of the Corporate Debtor that, the Petitioner has not complied with the terms of the Consortium Agreements read along with the Supplementary Inter-se Agreement, as the Petition under section 7 of the Code was required to be filed by the security trustee and not the Petitioner alone.
 - b. The Hon'ble NCLAT in the matter of *Oriental Bank of Commerce Versus M/s Ruchi Global Limited* has clarified this position of law and observed that execution of Inter-se Agreements between the

parties does not create any bar for filing an application under the Code.

- c. In our view the Agreement being Inter-se between the Banks and the Corporate Debtor cannot take benefit of the Clauses in that agreement, which are binding only the Banks. If there is a default to any member of the Consortium, it would be a matter for the other banks to be aggrieved with and Corporate Debtor cannot take benefit of the same to raise grievance. If the Appellant Bank did not act in tune with the Consortium Agreement, it may be matter of consideration for other Bank/s of the Consortium and/or Reserve Bank of India. However, there is nothing which bars filing of Section 7 of IBC Application by the Appellant. Even if there was Clause that the Bank which wants to take action should give notice of 30 days, if notice was not given that would be a matter for the Lead bank to look into. That does not create bar for the Appellant Bank to move Application under Section 7 of IBC. In judgment in the matter of *Asian Natural Resources (India) Ltd. & Anr. Vs. IDBI Bank Ltd. [Company Appeal (AT) (Insolvency) No. 1251 of 2019]* this Tribunal has held in para 7 of the Judgment as under:

"7. Apart from that the Inter-se Agreement between different Banks is not binding in nature, the 'Corporate Debtors' not being signatories cannot derive advantage of such Inter-se Agreement. This apart, the 'financial creditors' having right to file application under Section 7 of

the I&B Code, individually or jointly on behalf of other 'financial creditors' as quoted below, the Inter se Agreement between the 'financial creditors cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code."

- d. In view of the above-mentioned judgment, it is evident that 'financial creditors' have right to file application under Section 7 of the Code, individually or jointly on behalf of other 'financial creditors' and that the Inter se Agreement between the 'Financial Creditors' cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code.

iii. Lack of Authority for filing the Present Petition:

- a. The Corporate Debtor contends that the authorized representative of the Financial Creditor is not competent to file the said Petition on behalf of the Petitioner as there is no board resolution annexed to the said Petition.
- b. It is noteworthy that, the Official Gazette of India dated 27.03.1987 bearing No. ORG/17405 read along with Regulation 76 (1) and Regulation 77 of the State Bank of India (General Regulations, 1955) framed under Section 50 of the State Bank of India Act, 1955 authorizes all the officers in the grades of SMGS IV and above to sign any documents/pleadings on behalf of the Bank. And that no specific authority letter is required Page No.15 unless expressly

directed by a Court/Tribunal. The relevant portion of the Official Gazette of India dated March 27th, 1987 bearing No. ORG/17405 read along with Regulation 76 (1) and Regulation 77 of the State Bank of India (General Regulations, 1955) is extracted herein for ease in reference;

All Officers in the Grades of SMGS IV and above — To sign "all documents, instruments, accounts, receipts, letter and advices, etc. connected with the current or authorized business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being.

- c. It is pertinent to note that, the captioned Company Petition is sworn by one Mr. Satyawan R. Rane (Assistant General Manager & Case Lead Officer (XI)) who is designated as SMGS-V (Assistant General Manager). Hence, this defense of the Corporate Debtor will also not sustain.
- iv. Proceedings including the Scheme Pending Adjudication before this Hon'ble Tribunal:
 - a. The contention of the Corporate Debtor that there are several pending proceedings including the Company Scheme Application does not have any bearing on the present section 7 Application filed by the Financial Creditor. The IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section

238, which makes it clear that in case of conflict, the provisions of the IBC will prevail.”

Written Submissions Filed By The Corporate Debtor.

19. The written submissions filed by the Corporate Debtor dated 02.05.2022 is taken on record. While on perusal of the written submission, this Bench observed that the plea taken by the Corporate Debtor is already covered in his reply dated 04.04.2022. However, in relation of said written submissions, the Corporate Debtor also filed additional written submissions wherein the Corporate Debtor contended that the Financial Creditor could not have contested the Company Petition during the pendency of winding up proceedings before the Hon'ble Bombay High Court in relation to a company which is being finally wound up.
20. The Corporate Debtor has further submitted in its Written Statements as under:
- a) It is trite law that the winding up of a company is deemed to be commenced from the date of presentation of the petition. S.441 of the Companies Act, 1956 is reproduced:

*“S. 441. Commencement of winding up by Court. (1)
Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings*

taken in the voluntary winding up shall be deemed to have been validly taken. (2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.”

- b) Once a winding up proceeding is commenced, it is for the benefit of all the creditors and becomes *proceedings in rem*. Hence, such winding up petition by single creditor or contributory is actually treated as a joint petition of creditors and contributories, so that the order of winding up operates in favour of all the creditors and all the contributories. Section 278 of Companies Act, 2013 is reproduced below:

“S. 278 - The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.”

- c) In such situation, there are limited rights available to any contributory/ creditor of the Company i.e. 1) to lodge claim with the Official Liquidator 2) Inspect statement of affairs 3) prefer a scheme u/s 230 for arrangement/ compromise or 4) vote on scheme u/s 230 as a member of a class 5) approach Company Court against acts of Liquidator. Reliance is placed on the *Kaledonia Jute and Fibres Private Limited v. Axis Nirman and Industries Limited & Ors.* (2020 SCC Online SC 943):

“40. That takes us to the next question as to who are “the parties to” the winding up proceedings. The Companies Act, 1956 does not define the expression “party”. The Companies (Court) Rules, 1959 also does not define the expression “party”. The Companies Act 2013 does not define the expression “party”. The Companies (Transfer of pending proceedings) Rules, 2016 also does not define the expression “party”. Even the IBC, 2016 does not define the expression “party”.

41. But there are certain clues inherently available in the Companies Act, 1956, to indicate the persons who may come within the meaning of the expression “party to the proceedings”. The provisions which contain such clues are as follows:

41.1. Section 447 of the Companies Act, 1956, which is equivalent to Section 278 of the Companies Act, 2013 states that an order for winding up shall operate in favour of all the creditors and of all the contributories of the company as if it has been made on the joint petition of a creditor and of a contributory. There is a small change between the wording of Section 278 of the 2013 Act and the wording of Section 447 of the 1956 Act.

- d) Section 278 of the 2013 Act shows that any petition by a single creditor or contributory is actually treated as a joint petition of creditors and contributories, so that the order of winding up operates in favour of all the creditors and all the contributories.

- e) The Corporate Debtor, to support the above contentions has relied on various judgments mentioned hereunder-
- i. Asian Power Controls Ltd. Vs. Bubbles Goyal [2013(3) Mh.L.J.
 - ii. Jaipur Metals and Electricals Employees Organization v. Jaipur Metals and Electricals Limited
 - iii. Forech India Limited Vs. Edelweiss Assets Reconstruction Company Limited & Anr.
 - iv. Sicom Ltd. Vs. Hanung Toys & Textiles Ltd.
 - v. Ganesh Jain Lal & Ors. Vs. Vasan Health Care Pvt. Ltd. & Ors.
21. However, with a view to provide another mechanism for revival/ resolution of the company, the discretionary power to transfer the winding up petition to NCLT as petition under S.7 or S.9 is given to the Hon'ble Company Court. Any creditor (being a joint applicant of the winding up petition) can apply to the Company Court for transfer of the winding up petition to NCLT for seeking 18 resolution of the company as if the winding up petition was an IBC petition u/s 7, 9 or 10.
22. Therefore, the prayers of the Financial Creditor in the interim application before the Hon'ble High Court was seeking transfer of Company Petition 761 of 2015 and Company Petition No. 173/2016 to NCLT. The order of Hon'ble High Court transferring the Winding up Petition to the NCLT is also clear and it is the transferred petition which shall be considered by the Hon'ble NCLT as IBC Petition.

23. A section 7 petition e-filed during the pendency of winding up proceedings in respect of a company where final winding up order is already passed is not possible and hence, the only option available for any creditor is to seek transfer of the winding up proceedings before the Company Court. Such transferred winding up petition will then be admitted by the NCLT as IBC Petition and IRP will be appointed to carry out CIRP Process.

FINDINGS

24. We have prudently gone through the pleadings available on record. The Financial Creditor alongwith others Consortium lender Banks i.e. Axis Bank, Canara Bank and Standard Chartered Bank has granted/sanctioned/enhanced the Working Capital Credit Facility in favour of the Corporate Debtor time to time. However, the Corporate Debtor borrowed the credit facilities but failed to liquidate the outstanding dues as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Asset on 28.06.2016 as per Reserve Bank of India prudential norms. The Financial Creditor was constrained to issue notice u/s 13 (2) of the SARFAESI Act, 2002 on 07.09.2017. Despite receipt of the same, the Corporate Debtor failed to liquidate the outstanding dues.
25. The Company Petition for winding up of the Corporate Debtor i.e. CP. No. 761/2015 and 173/2016 filed before the Hon'ble Bombay High Court was transferred to this Hon'ble Tribunal vide order dated 17.12.2021.
26. During the course of arguments, the Ld. Counsel appeared on behalf of the Corporate Debtor vehemently argued that the company petition

filed by the Financial Creditor is barred by the Limitation and the same is not maintainable under this Code. Further, the Ld. Counsel for the Corporate Debtor relied on the judgment of ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited & Anr.*** (2020) 15 SCC 1 wherein it was held:

“32. When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore:

(a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;

(b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;

(c) that intention of the Code is not to give a new lease of life to debts which are time-barred;

(d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;

(e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor,

that is to say, that the right to apply under the Code accrues on the date when default occurs;

(f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and

(g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and

(h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application.

27. Ld. Counsel for the Corporate Debtor also argued that the Balance Sheets for the period Financial Year 2017-18, 2018-19 & 2019-20 sought to be relied upon by the Financial Creditor are neither signed copies nor signed by authorized person. Further, assuming without conceding them to be true and correct, Balance Sheets refer to a period between 2017-2020 when the Corporate Debtor Company was being wound up and under the hands of Official Liquidator. In such case, the Directors were strip off their power to represent the Corporate Debtor and make any representation on behalf of the Company and hence, such Balance Sheet cannot rely upon by the Petitioner. Further, if it is assumed that the said Balance Sheets were signed after the winding up proceedings were transferred from Bombay High Court, then it will be after 2021 which is a period beyond the 3 years from the date of default and in such case also, the Company Petition is barred by law of limitation and not maintainable.

28. However, the Ld. Counsel on behalf of the Financial Creditor rebut the contentions of the Corporate Debtor on the point of limitation by bringing on record the public documents as available on the Ministry of Corporate Affairs (MCA) website to demonstrate that the Financial Statements uploaded on the MCA vide AOC-4 Form are digitally signed, as per the requirement of Ministry of Corporate Affairs notification dated 06.11.2017 as applicable to public listed companies (i.e. the Corporate Debtor) for signing the Financial Statements.
29. The word 'Signed' used in Section 18 of Limitation Act, 1963, includes digital signature, which is complied with by signing the 'AOC-4 Form-4' as per MCA notification dated 06.11.2017. Section 18 is as under-

Section 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);

(a);

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

(c)

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30. The Corporate Debtor also argued that pursuant to the order dated 06.04.2018, the Company Petition No. 761/2015, the Hon'ble Bombay High Court was pleased to direct the official liquidator not to take control of assets of the Corporate Debtor. Therefore, the Board of Directors of the Corporate Debtor continued to discharge their day to day functions and kept on signing the Financial Statements including the annual reports through their authorized signatory adhering the provisions of Company law as applicable to the Public Limited Company. The same is undoubtedly evident from the AOC-4 Form for the Financial Year 2017-18, 2018-19, 2019-20 filed by the Corporate Debtor. Even on bare perusal of the said AOC-4 filed by the Corporate Debtor, it can be seen that the AOC-4 Form is signed by the authorized signatory Mr. Vijay Kumar Modi, the Company Secretary and Legal of the Corporate Debtor, who further verifies and declares that the contents of the documents as uploaded on the MCA website, which includes the Financial Statements and annual report are true and correct. The declaration tendered by authorized signatory of the Corporate Debtor, Mr. Vijay Kumar Modi, the Company Secretary & Legal Head of the Corporate Debtor in AOC-4 Form.
31. On perusal of said financial statements, it can be seen that the Corporate Debtor has physically signed, stamped and uploaded the said Financials as signed, stamped and uploaded the said Financials on the site of MCA.
32. The Financial Creditor relied on three-Judges Bench of the Hon'ble Supreme Court, in *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal* [Civil Appeal No. 323 of 2021] reported in 2021 SCC Online SC 321 and *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative*

Bank [Civil Appeal No. 9198 of 2019] settles the position in law that ‘the entries made in balance sheets of the Corporate Debtor amounts to acknowledgement of debt as envisaged under Section 18 of the Limitation Act’.

33. The Hon’ble Supreme Court in “Dena Bank vs C. Shivakumar Reddy and Anr. Held that-

“118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 18 [“Bengal Silk Mills”] and in Re Pandem Tea Co. 19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana 20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

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

143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of

a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

34. The Financial Creditor had also initiated recovery proceedings against the Corporate Debtor before the Debt Recovery Tribunal, Mumbai on 08.08.2018 bearing Original Application No. 232/2020 for recovery of its legitimate dues. Hence, according to the *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank* (supra) judgment passed by the Hon'ble Supreme Court, proceedings under the SARFAESI Act would, qualify for exclusion under Section 14(2) of the Limitation Act. The relevant paragraph of the judgment is reproduced below:

99. The Chief Metropolitan Magistrate or the Judicial Magistrate, as the case may be, exercising powers under Section 14 of the SARFAESI Act, functions as a Civil Court/Executing Court. Proceedings under the SARFAESI Act would, therefore, be deemed to be civil proceedings in a Court. Moreover, proceedings under the SARFAESI Act under Section 13(4) are appealable to the DRT under Section 18 of the SARFAESI Act. Mr. Dave's argument that proceedings under the SARFAESI Act would not qualify for exclusion under Section 14

of the Limitation Act, because those proceedings were not conducted in a Civil Court, cannot be sustained.

101. In our considered view, keeping in mind the scope and ambit of proceedings under the IBC before the NCLT/NCLAT, the expression 'Court' in Section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under the SARFAESI Act.

35. Hence, the contention taken by the Corporate Debtor with regard to the limitation is not sustainable accordingly rejected.
36. On perusal of above facts and circumstances and after going through the records, this Bench is of the considered opinion that this matter is fit for admission.
37. The Financial Creditor filed an Interlocutory Application having No. 1931 of 2021 u/s 5 of Limitation Act, 1963 seeking condonation of delay of 654 days in filing of captioned company petition. In view of the Balance Sheets filed by the Financial Creditor for the Financial Years 2017-18, 2018-19 and 2019-20, it shows that there is already an acknowledgment of its liability by the Corporate Debtor and hence nothing survives in this Application. The same is disposed of.
38. After perusal of the material on record, this Bench is of considered view that this is a fit case for admission of the Petition u/s 7 of the IBC by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.

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39. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, it is the fit case for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
40. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
41. The Applicant has proposed the name of Mr. Anurag Kumar Sinha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00427/2017-18/10750] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 594/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by State Bank of India, Financial Creditor/ Applicant against M/s. Valecha Engineering Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:

- 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 any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.

- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Anurag Kumar Sinha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00427/2017-18/10750], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email or Whatsapp. Compliance report of the order by Joint/Deputy Registrar is to be submitted today.

Sd/-
Manoj Kumar Dubey
Member (Technical)
21/10/2022
/NP/

Sd/-
Kishore Vemulapalli
Member (Judicial)