



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.40/ALD/2023

In the matter of

An application 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:

**Assets Care and Reconstruction Enterprise Limited
(Acting in its capacity as trustee of ACRE-127-TRUST)**

2nd Floor, 13, Mohan Dev Building,
Tolstoy Marg,
New Delhi-110001

...Applicant/Financial Creditor

Versus

M/s Khatema Fibres Limited

UPSIDC Industrial Area, Lohia Head Road
Khatema (Udham Singh Nagar)
Uttarakhand -262308

...Respondent/Corporate Debtor

Order pronounced on 13.10.2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Ms. Jasmine Damkewala with : **For the Financial Creditor**
Sh. Devesh Bhatia, Advs.

Sh. R.P. Agarwal, Sr. Adv. : **For the Corporate Debtor**
assisted by Sh. Devesh
Srivastava, Adv.

-Sd-

-Sd-



ORDER

Per : Ashish Verma, Member (Technical)

1. The Present Application has been filed on 15.06.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**I & B Code, 2016**”) by the Applicant/Financial Creditor namely, **Asset Care and Reconstruction Enterprise (acting in its capacity as trustee of Acre-127-TRUST)** seeking initiation of the Corporate Insolvency Process (hereinafter referred as “**CIRP**”) against the Respondent/Corporate Debtor i.e. **M/s Khatema Fibres Limited**, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.
2. The petition has been filed due to an outstanding financial debt totaling to Rs.996,70,00,000/- (Nine Hundred Ninety-Six Crore Seventy Lakh Rupees only) as on 15.01.2023 including accruing interest, default interest, expenses, and charges up to the date of repayment. The original approved financial debt amounted to INR 95,30,00,000/- (Ninety-Five Crore Thirty Lakh Rupees). The initial default is stated to have occurred on 28.08,2008, however, the default on



payment of debt has been continuously acknowledged over a period of time and the most recent acknowledgment being on 21.09.2022. This debt is also being acknowledged by the Corporate Debtor by the consistent inclusion of the same in its annual Balance Sheets, the latest of which was as on 31.03.2022 for the fiscal year 2021-2022.

3. Briefly stated facts of the present case as averred by the Applicant/Financial Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that:-

i. The financial debt in question stems from multiple credit facilities obtained by the Corporate Debtor from two Banks over a period of time, one is Bank of Baroda and another one is ICICI Bank. The credit facilities availed by the Corporate Debtor from the Bank of Baroda in respect of which default has been committed are stated as follows:

Sr.No.	Account Number	Account Type
1.	00850500000504	Cash Credit
2.	00850600000591	Term Loan
3.	00850600000597	Term Loan
4.	00850600001105	FITL-I
5.	00850600000590	Term Loan
6.	00850600001106	WCTL
7.	00850600000841	Term Loan
8.	00850600000982	Corporate Loan
9.	00850600001143	FITL-II



The credit facilities availed by the Corporate Debtor from the ICICI Bank in respect of which default has been committed are stated as follows:

Sr.No.	Account Number	Account Type
1.	003751000009	Cash Credit and Derivative Loss
2.	000768000268 and 000769001844	Devolved LCs
3.	K181301001, K181302001, K181303001, K181304001, K181305001, K181306001	Term Loans

ii. The Corporate Debtor's loan accounts with ICICI Bank and Bank of Baroda were categorized as Non-Performing Assets (NPAs) on 28.08.2008 and 31.03.2011 respectively.

iii. As default continued, ICICI Bank had filed a case on 15.09.2014 with reference number OA 420/2014 against the Corporate Debtor in the Delhi Debt Recovery Tribunal (DRT) in pursuit of recovering a sum totaling to Rs.91,20,08,675.94/. Similarly, on 30.10.2014, Bank of Baroda had also initiated legal proceedings under case number OA No 856/2014



against the Corporate Debtor at the Debt Recovery Tribunal (DRT) in Lucknow, seeking to recover an amount totaling to Rs.137,45,82,834.18/-. Subsequently, this case, identified as OA No 856/2014, was transferred to the jurisdiction of the Debt Recovery Tribunal in Dehradun through Transfer Application No. 565/2018. Since the Corporate Debtor promised to repay its debts, both these OAs were withdrawn subsequently by these two banks in terms of the settlement as entered into with the Corporate Debtor.

iv. Subsequently, **the outstanding financial debt of the Corporate Debtor, arising from these credit facilities availed from the two banks i.e. Rs.187,04,00,000/- from Bank of Baroda and Rs.226,32,21,907/- from ICICI Bank, was assigned to Assets Care & Reconstruction Enterprise Limited (in its capacity as trustee of ACRE-49-TRUST) vide assignment agreements dated 28.09.2018 and 30.04.2019 respectively.**

v. Pursuant to these assignments, two Settlement Agreements were executed between the Corporate



Debtor and Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST). *Vide* the Settlement Agreement dated 29.10.2018, the Corporate Debtor and Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) agreed to settle the dues of the Corporate Debtor arising out of credit facility availed from the Bank of Baroda for an amount of Rs. 33,65,00,000/- (*Rupees Thirty-Three Crore Sixty-Five Lakh Only*) as against the total outstanding dues of Rs.187,04,00,000/- (*Rupees Hundred Eighty-Seven Crore Four Lakh Only*).As per this Settlement Agreement, the Corporate Debtor undertook to repay the settlement amount of Rs. 33,65,00,000/- in 12 equal monthly instalments with certain upfront amount and/or on such rescheduling /extension as was permitted by Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST). Under Clause 2.1 and Clause 4.1 of the Settlement Agreement dated 29.10.2018, it was agreed by the Corporate Debtor and Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) that in the event of default, Assets



Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) shall be at liberty to recover the entire outstanding financial debt assigned to it by the Bank of Baroda, on the terms and conditions set out in the original loan documents/agreements executed by the Corporate Debtor with the Bank of Baroda.

- vi.** Similarly, *vide* the Settlement Agreement dated 30.05.2019, the Corporate Debtor and Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) agreed to settle the dues of the Corporate Debtor arising out of the credit facilities availed from the ICICI Bank for an amount of Rs. 17,50,00,000/- (*Rupees Seventeen Crore Fifty Lakh Only*) as against the total outstanding dues of Rs. 226,32,21,907/- (*Rupees Two Hundred Twenty-Six Crore Thirty-Two Lakh Twenty-One Thousand Nine Hundred Seven Only*). The Corporate Debtor undertook to repay the settlement amount of Rs. 17,50,00,000/- in 12 equal monthly installments with certain upfront amount and/or on such rescheduling /extension as



was permitted by Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST). Under Clause 2.1 and Clause 4.1 of the Settlement Agreement dated 30.05.2019, it was agreed by the Corporate Debtor and Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) that in the event of default, Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) shall be at liberty to recover the entire outstanding financial debt assigned to it by the ICICI Bank, on the terms and conditions set out in the original loan documents/agreements executed by the Corporate Debtor with the ICICI Bank.

- vii.** Despite the Applicant/Finance Creditor settling the outstanding dues with the Corporate Debtor at a substantial reduced amount in the Settlement Agreements dated 29.10.2018 and 30.05.2019, the Corporate Debtor defaulted on making the payments to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) as envisaged in the repayments and/or such extension as has been



granted by the Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) in terms of the Settlement Agreements dated 29.10.2018 and 30.05.2019.

viii. In the above mentioned both Settlement Agreements, it is stipulated that the settlement amounts should be paid following the schedules mentioned therein or any extensions approved by Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST). In the event of a default by the Corporate Debtor, Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) retained the right to recover the entire outstanding financial debt assigned to it by Bank of Baroda and ICICI Bank.

ix. On four occasions, i.e., 24.07.2019, 21.08.2019, 02.09.2019 and 27.11.2019, the Corporate Debtor requested for extension of 12 months moratorium for repayments of principal amounts owed to Bank of Baroda. The Applicant/Financial Creditor acceded to the requests and extended the date of repayment till 11.12.2019.



- x.** On 28.08.2020, the Corporate Debtor issued a letter to Assets Care & Reconstruction Enterprise Limited (Acting As A Trustee Of Acre-49-Trust) submitting the following proposal:
- a.** Conversion of interest accrued (for the period 01.03.2020 till 31.08.2020) into Funded Interest Term Loan (FITL) at a concessional ROI of 11%. The FITL can be repaid after the repayment of principal outstanding of term loan.
 - b.** Rescheduling the repayment of Principal instalments for the period from 31.03.2020 to 31.03.2021 with first quarterly instalments for starting from 30.06.2021 i.e., moratorium till 31.03.2021.
 - c.** Reduction in ROI to 15% with retrospective effect from 01.03.2020.
 - d.** Waiver of default interest on principal/interest over dues for the period 31.03.2020 to 31.03.2021.



- xi.** The Corporate debtor continuously defaulted on several occasions till 30.06.2022 in payment of the installment amount in contravention of the repayment schedule as envisaged in the Settlement Agreement dated 30.05.2019 for the credit facility availed from the ICICI Bank.
- xii.** After repeated defaults, the Corporate Debtor *vide* Letter dated 30.06.2022, approached Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) with a proposal for full and final settlement of its outstanding financial debt as assigned to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) from the Bank of Baroda and the ICICI Bank, for an amount of Rs. 50,00,00,000/- (*Rupees Fifty Crore Only*).
- xiii.** The Corporate Debtor *vide* e-mail dated 05.07.2022, again proposed to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) to settle the outstanding financial debt for a one-time settlement amount of Rs. 58,00,00,000/- (*Rupees Fifty-Eight Crore Only*). The Corporate Debtor



made a commitment to pay this settlement amount by or before 31.08.2022. This proposal was accepted by the Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) *vide* an email dated 19.07.2022, with the condition that if the Corporate Debtor failed to make payment of Rs. 58,00,00,000/- (*Fifty-Eight Crore Rupees*) by 31.08.2022, Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) would have the right to recover the entire debt amount assigned to it from Bank of Baroda and ICICI Bank.

xiv. The Corporate Debtor *vide* letter dated 26.08.2022 again approached the Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) for extending the time line for payment of Rs. 58,00,00,000/- from 31.08.2022 to 20.09.2022. However, the Corporate Debtor still defaulted on making the specified payment by 31.08.2022, and even by the extended timeline of 20.09.2022. In view of this default, Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) issued an email to the Corporate Debtor informing that the



one-time settlement proposal of the Corporate Debtor is no longer valid but the Corporate Debtor again requested Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) vide an email to extend the time line till mid-October 2022. However, despite giving of several opportunities to the Corporate Debtor on its request to extend the time line, it failed on every such extended timeline and even one-time settlement amount of Rs.58,00,00,000/- remained unpaid till 31.12.2022.

- xv.** Owing to the defaults committed by the Corporate Debtor in making the payment of its outstanding dues in terms of the Settlement Agreement dated 29.10.2018 and 30.05.2019, and also in terms of its proposal dated 05.07.2022, Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) issued a demand/recall notice dated 06.01.2023 calling upon the Corporate Debtor to immediately pay the entire outstanding financial debt amounting to Rs. 923,91,75,780/- (*Rupees Nine Hundred Twenty-Three Crore Ninety-One Lakh Seventy-Five Thousand Seven Hundred Eighty Only*) computed up to 31.08.2022



along with accrued future interest. However, as stated in the application, the Corporate Debtor again defaulted in making the payments on one pretext or the other. On 08.02.2023, the Corporate Debtor once again wrote to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST) acknowledging the debt and requesting for further accommodation on time.

xvi. On there being repeated failure by the Corporate Debtor to pay the one-time settlement amount and then not even making any payment after giving of recall notice, as explained by the Applicant that as an internal arrangement made by the Assets Care & Reconstruction Enterprise Limited, the total outstanding financial debt amounting to Rs. 996,70,00,000/- (computed up to 15.01.2012 along with underlying interest) (*Rupees* Nine Hundred Crore Ninety-Six Seventy Lakh Only)of the Corporate Debtor was assigned from ACRE-49-TRUST to ACRE-127-TRUST vide assignment deed dated 14.02.2023. For ACRE-127-TRUST also, Assets Care & Reconstruction Enterprise Limited acted as trustee. Thus, trustee of



the entire loan amount remained Assets Care & Reconstruction Enterprise Limited and only the trust with which the fund of outstanding debt was to be managed is changed to ACRE-127-TRUST as an internal arrangement for better management as explained by the Ld. Counsel of the Applicant. In the assignment agreement dated 14.02.2023, it is recorded that the total outstanding dues as on 15.01.2023 amounted to Rs. 996,70,00,000/-.

xvii. Subsequently, on 24.02.2023, the Corporate Debtor was duly informed by Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST) about the assignment of financial debts in favor of Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST). The Corporate Debtor was called upon to settle its outstanding financial debt immediately, including accrued interest, default interest, costs, charges, and expenses until the date of payment. In response, the Corporate Debtor acknowledged this communication in its letter dated 01.05.2023. Nevertheless, the Corporate



Debtor once again defaulted on its outstanding financial debt.

xviii. It is contended in the application that the Corporate Debtor consistently acknowledged its outstanding financial debt in its letters, emails, settlement agreements, and balance sheets, constituting an acknowledgment within the meaning of Section 18 of the Limitation Act, 1963. It is specifically pointed out in the application that after the outstanding debt of Rs. 996,70,00,000/- has been assigned to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST), the Corporate Debtor vide letters dated 18.04.2023 and 01.05.2023 acknowledged the intimation/demand letter dated 24.02.2023 sent by Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST).

xix. Under the facts and circumstances as presented in the instant application and discussed above in this order, it has been explained in the application that no effective recourse was left for Assets Care &



Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST) but to file the current application u/s 7 of the I&B Code, 2016 as Financial Creditor to initiate CIRP against the Corporate Debtor. **Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST) is hereinafter referred as Applicant/Financial Creditor in this order.**

4. The Respondent/Corporate Debtor, Khatema Fibres Limited (hereinafter referred as “**KFL**” in short) has submitted its reply stating that the application suffers from material defects which can neither be rectified nor ratified as the alleged trustee AECRE-127-TRUST that is claiming the debt amount as a trust has nowhere authorized the Assets Care & Reconstruction Enterprise Limited (hereinafter referred as “**ACRE**” in short) to act on behalf of ACRE-127-TRUST to initiate the insolvency proceedings. Even the validity of the affidavit filed along with the application has been questioned by pointing out defect in it as it does not disclose which trust is claiming the amount i.e. ACRE-49-TRUST or ACRE-127-TRUST. The following contentions have been raised in



the reply of the Respondent pleading for the dismissal of this petition:

- i.** As regards the defect in the Affidavit filed along with the application, it is pointed out that according to a fundamental legal principle, an affidavit should be precise and clearly state as to for whom it is deposed and sworn. It is also pointed out that in the entire petition, the petitioner has not disclosed information about the trustees and beneficiaries of the trust, and what actually happened which led to the changing of the trust from ACRE-49-TRUST to ACRE-127-TRUST. Therefore, it is contended that the present IB petition is itself not maintainable in the eyes of law and liable to be rejected on this ground only.
- ii.** The Respondent further submitted that the date of loan disbursement mentioned in the petition is the date when the original creditors disbursed the loan, not when it is assigned to ACRE. As per the Respondent, the date of disbursement should have been in 2018 because this is the time when ACRE came into picture. It is also pointed out in the reply that the loan amount



stated to be disbursed was never disbursed by the applicant, which in view of the Respondent is making of misleading averment and also misrepresentation on the part of the Petitioner/Applicant before this Hon'ble Tribunal. It is also pointed out that it is settled law that the person should approach to Hon'ble Courts with the clean hands.

iii. It is further submitted that the application lacks specific details about the financial debt, as it lists the disbursed amounts of the original creditor not what actually has been disbursed by them. It is further pointed out that all the litigations is settled between the Bank of Baroda, ICICI Bank, and KFL. Therefore, the Respondent raised the point of maintainability of the petition on the ground that the petition is silent on these matters as mentioned above, which amounts to concealment of facts and the same has been done as a ploy to thwart the business activities of the Respondent and take over the Company of the Respondent in a clandestine manner.



iv. It is further submitted in the reply that the debt claimed by ACRE is time-barred, as KFL's account was declared Non-Performing Asset (NPA) by ICICI Bank on 28.08.2008 and by Bank of Baroda on 31.03.2011. It is further pointed out that no payments were made to the banks after the date of the account's categorization as NPA until ACRE-49-Trust took over the debt in 2018 (Bank of Baroda Debt), with a payment of INR 3,15,00,000/- being made to ACRE-49-Trust. The last payment to the banks was in the Financial Year 2008-09, and hence, in view of the Respondent the debt is time-barred as per Section 18 of the Limitation Act, 1963.

v. It is also submitted in the application that the present Application is frivolous and mischievous attempt on the part of the Applicant along with one Moglix Labs (India) Private Limited (hereinafter referred as “**Moglix**” in short), in collusion to push KFL into insolvency and take over its operations. As per the information provided in the reply by the Respondent, Moglix had agreed to provide working capital to KFL in exchange for exclusive distributorship rights for 3 years, as per



the Exclusive Trade Advance and Distributorship Agreement ('**Trade Agreement**') dated 17.02.2022, and an Agreement in Principle ('**Term Sheet**') was also executed between KFL and Moglix dated 27.06.2022. However, Moglix failed to provide the working capital and did not fulfill its commitments under the Term Sheet. As further submitted, the settlement between ACRE and KFL also failed as Moglix did not release the funds for the settlement within the agreed-upon timeline.

- vi.** In the reply, status of the Respondent Company KFL is also tried to be explained stating that KFL is a registered MSME unit operating in Uttarakhand and is engaged in the manufacturing of wide range of eco-friendly papers for a variety of applications and requirements. KFL provides livelihoods to approximately 1000 workers and their families and is run by a first-generation entrepreneur who has put his blood and sweat in setting up and maintaining the operations of KFL.



vii. It is further submitted that the Respondent Company KFL after acknowledging the assignment of debt by both banks to ACRE paid an amount of Rs. 3.15 crores in order to establish its bona-fide intentions for paying the outstanding debts assigned to ACRE. KFL also offered to settle the outstanding debt assigned to ACRE for a sum of Rs. 33.65 crores with one year moratorium period for the payment and three years to pay the settlement amount entirely and pursuant to that a Settlement Agreement dated 29.10.2018 for debt of Bank of Bank of Baroda and another one dated 20.05.2019 for debt of ICICI Bank was executed between parties. However, as stated by the Respondent in the application that due to working capital restraints and external factors which were slowing down the progress of revival of operations of KFL, it was constrained to seek extension on the moratorium period for a period of one year. Citing the problem of working capital, it is pointed out that several requests were made by KFL on 21.08.2019, 02.09.2019 and 27.09.2019 and on his request, ACRE *vide* its letter granted the extension to KFL. Thereafter, reason of



Covid-19 pandemic was cited for seeking extension on 13.08.2020 and 28.08.2020 and the same was granted by ACRE on 26.09.2020. It is further pointed out that while talks were going on, Moglix had shown keen interest in investing in the company and providing working capital to KFL and paying off the debt of ACRE and therefore, KFL offered a One Time Settlement to ACRE on 30.06.2022 for an amount of Rs. 50 crores *vide* letter dated 30.06.2022. On this offer of KFL, ACRE proposed Rs. 58 crores to be paid by or before 31.08.2022. As further stated in the reply that the due diligence conducted by Moglix in KFL was delayed owing to a legal glitch. Then, Moglix tried to invest in KFL through an associate NBFC and hence, KFL sought an extension by merely 20 days i.e. till 20.09.2022. In support of this contention, the Respondent Company KFL annexed a copy of email dated 26.08.2022 as **Annexure 4** with its reply.

viii. It is further stated that as the legal issue between Moglix and KFL pertaining to the Due Diligence was taking longer than expected, ACRE *vide* email dated 21.09.2022 informed KFL that ACRE is now entitled to



recover Rs. 923.91 crores instead of 58 crores thereby invoking the debt in full. Copy of this email is annexed as **Annexure 5** to this reply.

ix. A recall notice dated 06.01.2023 seeking Rs. 923.91 crores was served to KFL by Applicant. In response to the recall notice, KFL, through a letter dated 08.02.2023, proposed a revised one-time settlement of Rs. 61 Crores to ACRE and informed them that Moglix had agreed to provide the necessary working capital, enabling KFL to operate at its full capacity. Copies of the email dated 06.01.2023 and the letter dated 08.02.2023 have been attached and marked as **ANNEXURE - 6 (Colly)** to this reply.

x. It is further submitted that the debt was transferred from ACRE-49-TRUST to ACRE-127-TRUST without prior notification to KFL. KFL was informed of this change through a letter dated 24.02.2023. Despite KFL's offer of a revised settlement of 61 Crores and circumstances beyond KFL's control, ACRE issued a recall notice claiming Rs.923.91 Crores, whereas the actual principal loan amount was Rs.47.50 crores, and



just a few months prior, it was Rs.58 Crores. Copy of the letter dated 24.02.2023 from ACRE is annexed as **Annexure-7** to the reply.

xi. After receiving intimation from ACRE about the debt transfer to ACRE-127-TRUST from ACRE-49-TRUST, KFL proposed to settle the loan at a total sum of Rs.61 crores with similar terms and conditions through an email dated 25.02.2023, copy of which is annexed as **Annexure-8** of the reply.

xii. In the reply, it is also pointed out that there was no prior agreement between KFL and ACRE-49-TRUST or between KFL and ACRE-127-TRUST. It is also pointed out that ACRE's decision to transfer KFL's account to a different trust is without informing KFL in any way was arbitrary.

xiii. The creation of these trusts not only adversely affects KFL's interests but also raises significant questions about ACRE's operations and intentions, as well as the various trusts associated with it. In this case, after settling with Bank of Baroda and ICICI Bank, ACRE, acting as an asset reconstruction company for KFL,



reached settlements with these banks. It is also pointed out that it was ACRE that settled KFL's loans, not any trust. It is also alleged that ACRE unilaterally created ACRE-49-TRUST without notifying KFL and without disclosing the beneficiaries of the trust.

xiv. As contended by the Respondent in the reply, KFL's account was unilaterally transferred to ACRE-127-TRUST, and when the settlement with ACRE failed and ACRE-127-TRUST entered into the picture and demanded from the Corporate Debtor an amount of Rs.996 crore including interest computed at an exorbitant rate. This demand goes against the established legal principles of the country, as the claimed amount is nearly 20 times the amount that KFL and ACRE should have settled.

xv. It is further submitted that this intra trust transfer of the account of KFL from ACRE-49-TRUST to ACRE-127-TRUST under the aegis of the ACRE without even disclosing the beneficiary, other trustees and without any agreement with KFL raises serious doubt on the bonafide of the ACRE to file such a petition. It is



contended by the Respondent that the petitioner has to stand on its own two legs to assert its claim as such ACRE is working under the cloak of the trusts to unnecessarily saddle KFL with the liability of more than apporx. 20 times of the settlement amount. It is also pointed out by the Respondent that ACRE being an asset reconstruction company has settled with Bank of Baroda on behalf of the KFL for Rs.30.5 crore and simultaneously have settled with ICICI Bank for Rs.17.5 Cr. i.e. total exposure of ACRE for settling with the Banks on behalf of KFL is Rs.48 Crore. Further it is emphatically stated that KFL has paid Rs. 275196522/- to ACRE in lieu of its exposure. Therefore, at this juncture claiming for swelled up amount of Rs. 960 Crore is patently against the Law and any logic.

xvi. It is stressed in the reply that before the debt was assigned to ACRE-127-TRUST, KFL made several attempts to resolve the matter. However, there was no positive or satisfactory response from ACRE. It is also alleged that Moglix which was supposed to invest in working capital, created obstacles for the company's



revival by not releasing funds to utilize the full capacity of its machinery. As further stated in the reply, without the machinery running at full capacity, KFL could not become financially viable due to increased power consumption. Additionally, without optimal machinery utilization, KFL could not meet its operational costs. KFL made numerous requests and appeals to Moglix to release the funds, but despite being fully aware of the dire circumstances, Moglix took no action as alleged further in the reply.

xvii. It is further contended in the reply that due to non-availability of the working capital, KFL operated at a loss, and any funds raised or generated were used to cover these losses resulting from non-optimal machinery utilization and the demurrage and detention costs incurred due to delayed raw material delivery. The settlement between ACRE and KFL was also jeopardized due to delays caused by Moglix. The proposed settlement was based on assurances from Moglix, but Moglix backed out just before the payment deadline, despite KFL offering to pledge its shareholding as collateral. It is also alleged that Moglix



refused with the malicious intent of taking over the loan.

xviii. The Respondent also alleged in the reply that Moglix verbally threatened the promoters, stating that they would recover the money through court processes. As informed by the Respondent in the reply that upon investigation into the whole matter by the Promoters of KFL, it was revealed that the funds were arranged by Moglix and given to Kotak Securities FPI and Kotak Singapore/Mauritius and they have now created ACRE-127-TRUST, to which the debt was assigned by ACRE-49-TRUST. As stated by the Respondent in the reply, ACRE-127-TRUST was specifically created for the purpose of assigning the loan of KFL and through this process, it is being connived as alleged in the reply to unethically take over the control of KFL.

xix. The Respondent further alleged in the reply that there is significant collusion between ACRE and Moglix, involving various collusive dealings managed through a complex and illicit system of trusts located outside India. A copy of the emails dated 03.02.2022 and



07.02.2022 between ACRE, Moglix, and KFL has been attached and marked as **ANNEXURE -9** to prove its point.

xx. The Respondent further contended that in the current insolvency petition, Moglix ought to have been arrayed as a necessary party by ACRE. However, ACRE has deliberately not arrayed Moglix as a party because without adding Moglix as a party, the alleged default could not be ascertained against KFL as Moglix has played a central role in managing the transactions between KFL and ACRE, as such ACRE acknowledges the joint liability of Moblix and KFL by means of the emails dated 03.02.2022 and 07.02.2022 between ACRE, Moglix, and KFL.

xxi. It is also stated in the reply that criminal complaints has been lodged by the directors of KFL against Moglix by filing FIR with police authorities for their alleged role in taking over the Respondent Company and inquiry is still going on by the police authorities. Attempt made by MOGLIX to get this FIR quashed through Hon'ble High Court of Uttarakhand has also not succeeded and



direction by the Court has been issued for all the accused to go to the concerned police station on every fortnight and cooperate in investigation.

xxii. After narrating the facts and circumstances of the case, as discussed above, the Respondent has raised following points in its reply countering the claims made by the Applicant in its application.

a. Claim of the Applicant is barred by limitation

under the provision of Section 18 of Limitation Act, 1963 as Bank of Baroda declared the account of KFL as NPA on 31.03.2011 and ICICI Bank on 28.08.2008. As contented by the Respondent that the last payment to the consortium of Banks was made in Financial year 2008-09 after which no payment were made to Banks and the debt was assigned to ACRE-49-TRUST after a laps of almost 9 years, when a payment was made on 13.09.2018 to ACRE for Rs.3.15 crores along with subsequent interest. Thus, it has been submitted that debt was acknowledged by the KFL after the laps of 3 years period as per Section 18 of the



Limitation Act, 1963. Therefore, in view of the Respondent, the acknowledgment in the ledger or the payment made to ACRE cannot be construed to have extended the limitation for enforcement of debt by ACRE as it was made after the laps of 3 years. In support of its above contentions, the Respondent relied upon the decisions in cases of ***State Bank of India vs. Krishidhan Seeds Private Limited (2023) 1 Supreme Court Cases 209, Rejendra Narottamdas Sheth Vs. Chandra Prakash Jain (2022) 5 SCC 600, Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. (2019) 10 SCC 572 & Babulal Vardharji Gurjar vs. Veer Gurjar Aluminum Industries Pvt. Ltd. & Anr. (2020) 12 SCR 368.*** It is also contended that the proposals of the One Time Settlement by KFL to ACRE for settlement of the loan on 30.06.2022 and subsequent correspondence of the OTS were provided after the expiration of the limitation period under the Code. In view of the Respondent, as per Section 18 of



the Limitation Act, 1963, a fresh period of limitation is computed from the time when a fresh acknowledgment is provided **before the expiration of the limitation period.** Thus, the Applicant cannot be permitted to revive a time barred debt due to its own negligence as such a revival will be against the intended mandate of the Code and judicial precedents. Therefore, the payment made in 2018 and the subsequent interest payments were made to the Applicant after the expiry of the period of limitation and cannot be treated as an extension for the limitation period.

- b. Amount claimed by the Applicant is grossly inflated** as the Applicant is claiming INR 923 Crores from the Respondent considering the fact that the KFL had offered to settle the debt of ACRE by way of a onetime settlement of INR 50 Crores, in response to which, ACRE had countered the offer of settlement and communicated a revised settlement of INR 58 Crores *vide* Email dated 19.07.2022.



c. Collusion between ACRE and Moglix to Illegally Takeover KFL, the fact regarding which have already discussed in previous paras as above.

xxiii. In view of above submission made in the reply, the Respondent pleaded that the petition is liable to be dismissed with exemplary costs in the light of the above-mentioned reasoning as it is in teeth of letter and spirit of Insolvency and Bankruptcy Code 2016 as such it lacks merit and is *non est* in law.

5. The Financial creditor (ACRE) filed a rejoinder dated 31.08.2023 countering all the contentions raised in the “Reply” filed by the Corporate Debtor (KFL) and made the following averments:

i. The Applicant submits that the KFL has time and again defaulted in payments and failed as well as neglected to remit outstanding dues owed to ACRE despite repeated acknowledgements and requests for extensions.

ii. Further, ACRE states that the KFL has neither denied the existence of the financial debt in question



which is over the prescribed limit of Rs. 1,00,00,000/- nor has it denied the defaults in repayment of its financial debt in terms of Section 3(12) of the IBC.

iii. ACRE states that the default outstanding financial debt of KFL amounts to Rs. 996,70,00,000/- along with further interest and default interest thereon, cost charges and expenses till the date of repayment to ACRE and is in accordance with the financial/loan facilities availed by the KFL and is in no way exorbitant as contested by KFL in their Reply.

iv. The ACRE is a company incorporated under the Companies Act, 1956 validly existing under the Companies Act 2013 and registered with RBI under Section 3 of SARFAESI Act 2002 as an asset reconstruction company. Whereas, the KFL is a public listed company registered under the Companies Act, 1956 and is engaged in the business of manufacturing wide range of specialty papers like poster paper for lamination and metallization,



tissues both hard and soft, electrical grade insulation paper, UBTB paper for the battery industry etc.

- v. The preliminary objections raised by the ACRE is that the KFL is trying to evade its financial liability of repaying the debt in pursuance to this Tribunal's order dated 03.07.2023. Instead, of filing a reply to the present petition under section 7, KFL filed a frivolous FIR on 27.07.2023 against the officers of ACRE for alleged offences under Section 420, 467, 468, 471, 120B of the IPC, 1860 which is basically a retaliatory move against ACRE's decision to initiate present proceeding as provided under the law. The ACRE also served a complete Paperbook along with all applications in advance on 13.06.2023 and 14.06.2023. Another copy was served by the Tribunal's order to KFL on 03.07.2023 and a copy of summons on 11.07.2023 once again and another notice was served on 12.07.2023. There was a repeated failure on KFL's part to file their reply to the petition under Section 7 IBC. Then KFL was



granted a last grace period of 10 days to file a Reply in the matter.

vi. After the expiry of the abovementioned grace period, the ACRE moved an application IA No.398/2023 seeking for the right of KFL to file reply to be closed by way of exercise of inherent powers of this Tribunal. The ACRE urged to proceed ex-parte against KFL as per terms of Rule 49 of NCLT Rules 2016. After moving of the said application on 18.08.2023 by ACRE, the KFL filed a reply which was found to be defective on account of want of a proper application seeking condonation of delay supported by an affidavit.

vii. The abovementioned FIR was challenged by the officers of ACRE in W.P. (Crl.) No. 1063 of 2023 before the Hon'ble High Court of Uttarakhand. The High Court issued a notice on the said petition vide order dated 11.08.2023 which stated that that no prima facie case is made out against the officers of the ACRE and therefore, no coercive steps need to be



taken in pursuance of the FIR against ACRE officers till the next date of hearing.

viii. The ACRE is engaged in the business of acquiring and resolving non-performing assets and/or other loans in defaults from banks and financial institutions (including other asset reconstruction companies) under Section 5 of SARFAESI Act. ACRE acts as a Trustee of a securitization trust which acquires the non-performing assets in accordance with the SARFAESI Act and the extant guidelines of the RBI in this respect. As per Section 5 and 7 of SARFAESI Act and master circulars issued by RBI, a Trust is not prohibited under the law from assigning its rights, title and interest in the loans to any other entity or trust. Therefore, the captioned petition has been preferred by ACRE acting in its capacity as a trustee of ACRE-127 TRUST under section 7 of IBC and the same is legally valid as per the Applicant.

ix. ACRE-49 and ACRE-127 are both declared as trusts by Financial Creditor vide trust deed dated 12.06.2018 and 15.02.2022 respectively and since it



is permitted to acquire assets under various trusts declared by it, there is no legal prohibition on the assignment of financial debt of the KFL from ACRE-49 TRUST to ACRE-127 Trust. They therefore, are within contours of applicable laws while assigning the financial debt of KFL from ACRE 49 TRUST to ACRE 127 TRUST.

x. The aforesaid assignment was stated to be an internal reorganization process and has no bearing whatsoever on the rights of ACRE and corresponding obligations of the KFL towards repayment of its outstanding financial debt. There is also no legal compulsion for ACRE to update the KFL about the formation of trusts declared by it but only about the assignment of the loans as per Section 6 of SARFAESI Act which was duly complied with.

xi. On claim of KFL that the assignment to ACRE-127-TRUST was against Section 37 of Indian Trusts Act, 1882, it is contended by the Applicant that the reliance on the said provision is irrelevant as the present assignment is done under Section 5(1) of



SARFAESI Act which makes it a private contract. The respondent's reliance on Section 52 of the Trust Act prohibiting trustee from selling the property to himself or a third person was also unfounded given that was not applicable in the present case. Section 46 prohibiting renouncement of Trust is also contented by ACRE as inapplicable.

- xii.** With regards to the claim of the KFL that the debt is time barred in terms of the Limitation Act, the ACRE states that an acknowledgement of liability made in the balance sheet would amount to an acknowledgement of debt and reliance has been placed on **Dena Bank vs C Shivkumar Reddy & Anr. (2021) 10 SCC 330 and Laxmi Pant Surana vs. Union Bank of India & anr.(2021) 8 SCC 481.** Also, the present proceedings are well within the terms of Section 19 of the Limitation Act 1963 since KFL has made payments from time to time, the last one being on 31.05.2022. The present proceeding is well within the period of limitation as on the date of filing, i.e., 13.06.2023.



- xiii.** The issue of date of disbursement is raised by the KFL stating that the date of disbursement would be the one on which the loan was disbursed. ACRE states that once an Asset Reconstruction Company (ARC) acquires any financial assets from a bank, it substitutes it completely and therefore, gets all its rights and liabilities as per Section 5(2) of SARFAESI Act.
- xiv.** On the issue of existence of material defect in initiation of CIRP, ACRE 127 having not been authorized by ACRE to file the captioned petition, the ACRE states that the KFL has corresponded many times with the Applicant after assignment of loan to ACRE 127 Trust and that as per trust deed dated 15.02.2022, the ACRE has been authorized to institute, conduct, defend etc., any legal proceeding for and on behalf of the trust fund.
- xv.** On the allegation of KFL that the claim of Rs. 923 crores made by the ACRE has been made exorbitantly, the ACRE contends the claim is of Rs. 996.7 crores as on 15.01.2023 along with interest



and default interest, cost charges and expenses till the date of repayment. A debt of Rs.430 crore was assigned to ACRE in 2018-19 pursuant to which the parties agreed to settle the aforesaid dues for an amount of Rs. 51.15 Crore. Another One-time payment opportunity was given to KFL for Rs.58 crore but they failed again to do so. Therefore, on the nonpayment of the abovementioned dues, the amount of interest also gradually got increased. On repeated failure of KFL to repay the amount agreed under One-time settlement, ACRE decided to recall the entire financial debt assigned to it by both the banks as per the terms of clauses 2.1 and 4.1 of the Settlement Agreement and thus, a recall notice dated 06.01.2023 was issued. The total outstanding amount exceeded the threshold limit of Rs 1 crore as directed by the Central Government. Since the total outstanding amount already reached Rs. 413 crores on 29.10.2018 and 30.05.2019, i.e. the dates when settlement agreements were made with both the banks initially disbursed the loan, the same amounts to acknowledgement of debt by the



Respondent. Therefore, the Respondent cannot now rescind from what it has originally agreed upon. The contention by KFL that the interest claimed is unconscionable, expropriatory and contrary to law is unfounded given that the terms of settlement agreements clearly points that interest of 22% p.a. shall be levied.

xvi. As per ACRE, KFL's financial health is not solvent and hence, the Vidarbha judgement relied upon by the Ld. Sr. Counsel of KFL during the hearing of the case is not applicable in the present case. The Applicant pointed out that in the aforementioned judgement, it was held that the Hon'ble Tribunal should exercise discretion in favour of the Corporate Debtor keeping in view the financial health of the company which in the case of the respondent does not look promising. The Applicant has informed that the financial health of the company is not at all solvent and the same is evident by the news clippings produced by the Ld. Counsel of the Applicant during hearing showing that employees of the Corporate Debtor were demanding their dues



sitting on Dharna. Further, a letter dated 05.05.2023 was submitted by the Financial Creditor/ Applicant in which the Commercial Manager of the Corporate Debtor has written to the Asst. Labour Commissioner, stating that the Corporate Debtor has no purchase order from the market hence, employees were kept at lay off. It is also argued that the Corporate Debtor is not able to pay its debt because of bad financial conditions due to its business as not being run in proper manner which the Corporate Debtor itself has admitted that there is difficulty in running the business due to non-availability of working capital for which its talk with Moglix has also failed. All these facts and circumstances surrounding the Corporate Debtor shows that at present, it is not solvent company.

Additionally, the Applicant further states that in the matter of *M Suresh Kumar Reddy vs. Canara Bank and Ors, 2023 SCC OnLines SC 608*, the Hon'ble Supreme Court has stated that the findings made in the judgment of *Vidarbha Industries*, were made in the context of that case, as



also observed in *Axis Bank Limited vs. Vidarbha Industries Power Limited*, (2023) 7 SCC 321. In *M Suresh Kumar Reddy*, the Hon'ble Supreme Court held that the judgment of *Vidarbha Industries* cannot be read to take a view contrary to that which has been laid down in *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407 and the view taken in the case of *Innoventive Industries* still holds the field, i.e., in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. In *M Suresh Kumar Reddy*, the Hon'ble Supreme Court has thus held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.

xvii.

In view of the facts and circumstances of the case, as further discussed by the Applicant in the Rejoinder as well as the arguments put up during the hearing, it has been urged by the Ld. Counsel of



the Applicant that reply of the Corporate Debtor as well as the arguments put up by the Ld. Senior Counsel on behalf of the Respondent lacks merit and deserved in limine rejection under law and the application of the Applicant is to admitted as per the provision of Section 7 (5) of the I&B Code, 2016

- 6.** We have considered the submissions made by the Ld. Counsels for the parties and perused the records.
- 7.** One of the issues for consideration raised before this Tribunal is whether the assignment of debt from one trust to another within the same assets reconstruction company would be permissible or not.
- 8.** As noted earlier, the financial debt in question stems from multiple credit facilities obtained by the Corporate Debtor from both Bank of Baroda and ICICI Bank over a period of time. Subsequently, the outstanding financial debt of the Corporate Debtor, resulting from these credit facilities provided by Bank of Baroda and ICICI Bank, was transferred to Assets Care & Reconstruction Enterprise Limited (in its capacity as trustee of ACRE-49-TRUST) through assignment agreements dated 28.09.2018 and 30.04.2019 respectively.



By an assignment agreement dated 14.02.2023, the financial debt of the Corporate Debtor, totaling Rs. 996,70,00,000/- (*Rupees Nine Hundred Crore Ninety-Six Seventy Lakh Only*) as on 15.01.2023, along with the underlying security interests in favor of Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-49-TRUST), was transferred to Assets Care & Reconstruction Enterprise Limited (acting as trustee of ACRE-127-TRUST). This further intra-transfer has been challenged as illegal by the Respondent.

9. For consideration of this point, we have gone through the Section 5(1)(b), 7(2A)(a) of SARFAESI Act, Section 5(7) of the IBC and Master Circular of RBI. **Section 7(2A)(a) of SARFAESI Act** provides authority to specifically act on behalf of the trust and institute proceedings flowing from the trust deed. **Section 5(7) of the IBC** defines “Financial Creditor” as a creditor to whom debt is due or has been legally assigned. The financial creditor, i.e., ACRE in the present case falls under this definition as debt is legally assigned to it vide an assignment agreement, though earlier it was through a ACRE-49-TRUST but later intra-transferred



to ACRE-127-TRUST but in both cases ACRE acted as Trustee in respect of an Assets Care Enterprise.

- 10.** As per the Master Circular of RBI appended as Annexure p/1 on page 54 of the rejoinder, the relevant clauses of the circular have been reproduced here under:

“Guidance Notes for Asset Reconstruction Companies

- 1. (viii) The assets acquired by ARC should be transferred to the trusts set up by the ARC at the price at which these were acquired from the originator of the asset. However, there is no restriction on acquisition of assets from banks/ FIs directly in the books of trusts set up by ARC. [emphasis supplied]***

Master Circular - Asset Reconstruction Companies

“....2. Definitions

(xv) "Trust" means trust as defined in Section 3 of the Indian Trusts Act, 1882.

7. Securitisation



(1) Issue of SRs - An ARC shall give effect to the provisions of Sections 7(1) and 7(2) of the Act through one or more trusts set up exclusively for the purpose. The ARC shall transfer the assets to the said trusts at the price at which those assets were acquired from the originator if the assets are not acquired directly on the books of the trust :

(i) The trusts shall issue SRs only to QBs; and hold and administer the financial assets for the benefit of the QBs;

(ii) The trusteeship of such trusts shall vest with the ARC;

(iii) The ARC proposing to issue SRs, shall, prior to such an issue, formulate a policy, duly approved by the Board of Directors, providing for issue of SRs under each scheme formulated by the trust;

(iv) The policy referred to in clause (iii) above shall provide that the SRs issued would be transferable / assignable only in favour of other QBs.”

11. As per Section 5(1) (b) of the SARFAESI Act, 2002, an Asset Reconstruction Company (ARC) may acquire financial asset of any bank or financial institution by an agreement. An ARC is a special type of Financial Institution that buys the



bad loans from the bank at a mutually agreed values and attempts to recover debts or associated securities by itself. As per Section 2 (1) (m) (iv) of the SARFAESI Act, an ARC has been included in the financial institution. The master circular of Reserve Bank of India up dated as on 12.08.2022 for Asset Reconstruction Companies has allowed ARCs to acquire financial asset from other ARCs also. As per the clause 1 (viii) of the guidance note with the RBI Circular as reproduced above, the acquisition of the assets can be directly done on the books of the trust. Thus, the Financial Creditors/ Applicant acquired the assets of the Corporate Debtor directly on the books of ACRE-49-TRUST from the Bank of Baroda and ICICI Bank, while ACRE-49-TRUST also held other financial assets as explained by the Ld. Counsel of the Applicant. ACRE-49-TRUST was holding the outstanding Financial Debt of the Corporate Debtor along with other debts as well of others, from the date of the Assignment Agreement entered into with the respective banks till 14.02.2023, when it was transfer to another trust ACRE-127-TRUST. As per clause 7 (1) (iv) of the Master Circular of the RBI, it is clearly provided that an ARC can give effect to the provision of Section 7(1) and 7(2) of the



SARFAESI Act through one or more trust setup exclusively for the purpose and as per the clause 1(viii) of the Guidance Note with the RBI Circular, there is no restriction on acquisition of assets from banks/ FIs directly in the books of trusts set up by ARC. As explained by the Ld. Counsel of the Applicant that since the particular financial asset lying with ACRE-49-TRUST cannot be divided due to its being part of a single SR for ACRE-49 Trust, which includes two assets: M/s Khatema Fibres Ltd. and another one, it was necessary to move this asset to a distinct trust, namely ACRE-127, so that the SR for ACRE-127-TRUST, which includes the Corporate Debtor (Khatema), could be transferred to the aforementioned QB. We find that, as per Clause 1(viii) of the Guidance Note along with the RBI Circular, inter-trust assignments are permissible and the Financial Creditor has complied in furtherance of the same. Further, clause 1(viii) of the Guideline Note of Master Circular states that there is no restriction on ARC to act via multiple trusts.

- 12.** We find that rule 4(2) of the Adjudicating Authority Rules states that in case of assignment of debt, the assignee shall produce documents necessary for an assignment or transfer.

The Ld. Counsel representing the Financial Creditor has



relied on a judgement of **Phoenix ARC Pvt Ltd. Trustee of Phoenix Trust FY 17-18 vs M/s Cherupushpam Films Pvt Ltd. CP(IBC)/51/KOB/2022.** In this judgement, it has been held that:

“Rule 4(2) of the Adjudicating Authority Rules says in case of assignment of the debt, the assignee shall produce all relevant documents pertaining to the assignment or transfer”.

- 13.** In view of above position of law and extant circulars of the RBI, we do not find any infirmity in transfer of debt from ACRE-49-TRUST to ACRE-127-TRUST particularly in view of the fact that as per RBI guidelines already discussed herein before, the Assets Reconstruction Company may transfer to the trusts set up by the ARC. Further also in case of both Trusts, the trustee is ACRE that has filed the present application u/s 7 to whom the debt was legally assigned and Trust is only meant to hold the debt fund for recovery from the Corporate Debtor. Therefore, the objection raised by the Respondent in this regard is rejected and **the Applicant i.e. Assets Care & Reconstruction Enterprises Ltd. (as trustee of the ACRE-127-TRUST) is held to be the “Financial Creditor” as per the section 5(6) of the I&B Code, 2016 to whom the debt under consideration has been legally assigned.**



14. Next question to be decided is whether the application u/s is filed within the prescribed time limit as per the Limitation Act, 1961 or not. The Corporate Debtor claims that the debt enforced by the Financial Creditor is no longer legally enforceable due to the expiration of the time limit as per the section 18 of Limitation Act, 1961. This assertion is based on the fact that the Corporate Debtor's accounts were designated as Non-Performing Assets (NPA) by ICICI Bank on August 28, 2008, and by Bank of Baroda on March 31, 2011. It has also been alleged that no payments were made by the Corporate Debtor until 2018, with the last payment made in the financial year 2008-2009. Therefore, according to Section 18 of the Limitation Act, 1963, the debt is considered time-barred. We find that the loan accounts of the Corporate Debtor held with ICICI Bank and Bank of Baroda were classified as NPAs in August 2008 and March 31, 2011 respectively. Subsequently, the unpaid financial debt owed by the Corporate Debtor, stemming from credit facilities obtained from both ICICI Bank and the Bank of Baroda, was transferred to Assets Care & Reconstruction Enterprise Limited. This transfer occurred with Assets Care & Reconstruction Enterprise Limited acting as the trustee of



ACRE-49-TRUST, and it was executed through Assignment Agreements dated April 30, 2019, and September 28, 2018. Subsequently, Assets Care & Reconstruction Enterprise Limited, still acting as trustee of ACRE-49-TRUST, assigned these loans to Assets Care & Reconstruction Enterprise Limited in its capacity as the trustee of ACRE-127-TRUST. This reassignment took place through an Assignment Agreement dated February 14, 2023.

- 15.** Now, for examining whether this petition is time barred by Limitation or not, we have examined Section 18 (1) of the Limitation Act which states as under:-

“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.



16. Acknowledgement under Section 18 of the Limitation Act shall be deemed by the entries in the financial statement/books of account of the Corporate Debtor as being maintained by it for the purpose of preparation of annual financial statements. The balance sheets of Respondent from FY 2021-2022 have been annexed as **Annexure-P/29** of the petition. Another acknowledgement of the unpaid debt by the Corporate Debtor has been in the form of letters issued by the Corporate Debtor to Bank of Baroda and the ICICI Bank which have been annexed as **Annexure 30** of the application. Further, the Corporate Debtor has sent various letters to ACRE proposing for settlement or requesting for deferment of loan payment period. These letters have been appended as **Annexure 31** of the petition. Further, the Corporate Debtor also sent an email dated 05.07.2022 wherein it proposed a one-time settlement of Rs.58 crore to ACRE, thus acknowledging the unpaid debt. Payments were made also regularly to the Financial Creditor by the Respondent, proof of which has been appended as **Annexure- P/27** to the present application.



17. The principle as envisaged under Section 18 (1) of Limitation Act has also been upheld in the case of **Dena Bank vs C. Shiva Kumar Reddy (2021) 10 SCC 330**, wherein it was held that 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 was 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. In another decision of **Asset Reconstruction Company (India Ltd. vs. Tulip Star Hotel Ltd. & Ors. (Order dated 01.08.2022, Civil Appeals No. 84/85 of 2020)**, the Hon'ble Supreme Court of India has held that *an application u/s 7 of the Insolvency and Bankruptcy Code, 2016, 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 was an acknowledgment 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. In this decision, the Hon'ble Supreme Court has categorically observed that entries in Books of Accounts of a company can be treated as acknowledgement of liabilities in respect of debt payable to a Financial Creditor.

In this regard, it is submitted by the Ld. Counsel of the Applicant that the Corporate Debtor specifically alleged that there is no acknowledgment by the Corporate Debtor for the period between financial years 2013-2014, 2014-2015 & 2015-2016, even in the balance sheets but it has been pointed by her that the said submission is contrary to the record as is also evidenced from the balance sheets of the financial years 2013-2014, 2014-2015 & 2015-2016, relevant pages of which are specifically shown to us wherein it was recorded that recovery proceedings are initiated by banks before DRT Delhi and DRT Lucknow. The Ld. Counsel of the Applicant has also referred to the order of the said DRTs as attached with the application u/s 7 in which such debt contested before the DRT for recovery was clearly discussed in respect of the recovery proceedings filed by Bank of Baroda as well as ICICI Bank. We also noted from the Balance Sheets of the above mentioned financial years that the total amount of outstanding secured loans were



mentioned as lump-sum amount, however, as schedule of the secured loan giving party wise details, were not attached, the Ld. Counsel of the Corporate Debtor by taking advantage of absence of such details in the Balance Sheets, was taking a plea that the said outstanding debt was not recognized by the Corporate Debtor through its annual financial statement. However, we are of the opinion that such incomplete Balance Sheets filed before us without any schedule, cannot help the Corporate Debtor to show the debt as having become time barred when it has been repeatedly contesting before the DRT during recovery proceeding and subsequently, entering into several settlement agreements for repayment of such debts. Therefore, it is clearly proved from the record that outstanding debts as taken over by ACRE through Assignment Agreement from above mentioned two banks are continuously being acknowledged in its record and **the present petition u/s 7 has been filed within prescribed time limit as per the Limitation Act, 1963 and accordingly, the objection of the Respondent in this regard is rejected.**

- 18.** We may also like to take up another contention raised by the Ld. Sr. Counsel for the Respondent regarding allegations of



collusion of the Applicant with the Moglix. On perusal of record, we are of the considered opinion that such allegations are not well founded as sufficient materials could not be produced before us to substantiate such allegations. It is worthwhile to note that the Corporate Debtor introduced a company called Mogli Labs India Private Limited ("Mogli") to the Financial Creditor in 2022. They informed the Financial Creditor about a Trade Agreement involving the Corporate Debtor, their existing Distributor-East West Products Limited, and the proposed Distributor Mogli Labs. The Corporate Debtor requested the Financial Creditor to issue a letter to Moglix granting the right of first refusal or the ability to nominate someone to settle outstanding payments, which is also documented in Clause 7 of the Trade Agreement (Page 77 of the Corporate Debtor's Reply) which is produced hereunder:-

“7.Event of Defaults : Assets Care & Reconstruction Enterprise Ltd.(ACRE) *is an Assets reconstruction Company with which the assets of KFL are already mortgaged as on date.*



In case KFL or EWPL is unable to fulfil their sales commitment and other obligations under the agreement towards Distributor as per terms of the agreement, Distributor/or any person nominated by Distributor, has a right to make payment to ACRE towards ACRE's outstanding dues. Consequently, ACRE will assign the assets in Distributor's name upon full clearance of its dues.

In case ACRE triggers an Event of Default on KFL, ACRE agrees to grant a First Right of Refusal and/or First Right to Offer to Distributor/or any person nominated by Distributor for clearing the outstanding dues on KFL, within 15 days of issuance of notice by ACRE. Consequently, ACRE will transfer Company's assets to Distributor.

On acquisition of the assets of the companies as aforementioned, the Distributor shall have right to take complete control of management of companies and shall be at liberty to deal with the assets of companies at its discretion in order to recover its outstanding dues and cost of acquisition from the companies.”

The Financial Creditor, in good faith, assisted the Corporate Debtor with the necessary documentation.



However, the fact that the arrangement between the Corporate Debtor and their co-parties in the Trade Agreement, to which the Financial Creditor was not a party, did not work out, is not a sufficient reason to withhold payment to the Financial Creditor/Applicant. **Therefore, we are not inclined to agree with the Corporate Debtor's reasoning about not being able to pay the debt because of alleged collusion of Moglix with the applicant with intention to take over the Respondent Company and accordingly this plea of the Respondent is also rejected.**

- 19.** The Respondent has also raised a plea of the amount of Financial Debt claimed by the Applicant being grossly inflated in view of the fact that as against the settlement amount of Rs. 58 crore, an amount of Rs. 923 crore was mentioned in the recall notice dated 06.01.2023 and later, it was enhanced to Rs. 996 crore while transferring the outstanding debt from ACRE-49-TRUST to ACRE-127-TRUST on 14.02.2023. The Ld. Counsel for the Applicant has explained that the amount mentioned in the recall notice is the total outstanding amount of the loan along with the interest computed at the rate of 22% for the entire default period as per the terms of the Settlement Agreement



due to failure of the Corporate Debtor to pay the settlement amount within prescribed time line. We are not entering into the correctness of the amount of the debt as mentioned in the application u/s 7 of the I&B Code, 2016 at this juncture because, even the settlement amount of Rs.58 crore as agreed upon by the Corporate Debtor itself is above the threshold limit of Rs.1 crore, sufficient for admission of the application u/s 7 for starting CIRP against the Corporate Debtor.

The reliance of the Ld. Counsel for the Corporate Debtor on the judgment of the Hon'ble Supreme Court in the Case of Vidarbha Industries Power Limited vs. Axis Bank Limited dated 12.07.2022 has also not been found to be applicable in the present case as in the present case, no viability of recovery of debt from the Corporate Debtor has been found due to the Corporate Debtor having not been found to be solvent on the basis of the evidence produced by the Ld. Counsel for the Applicant, which could not be controverted by the Ld. Counsel for the Corporate Debtor. Also, looking to repeated failure of the Corporate Debtor to pay the outstanding debts, we find it expedient that



resolution process for the Corporate Debtor is to be started as prayed in the application U/s 7 of the I&B Code.

Accordingly, these two objections of the Corporate Debtor are also rejected.

20. In case of **Innovative Industries Limited vs ICICI Bank Ltd (2018) 1 SCC 407**, it has been clearly held by the Hon'ble Supreme Court that if there is a debt and default in repayment of debt and application filed by the Applicant/Financial Creditor is complete in all respect, the application under Section 7 of I & B Code 2016, is to be admitted. In the present case, we have clearly found that there is a debt and also, there is a clear default on not paying of the debt due to failure of the Corporate Debtor to pay the settlement amount and even not paying the entire loan amount (including interest) after a recall notice has been issued. In the present case, there is no dispute on occurrence of default but the amount of default claimed by the Financial Creditor/Applicant is not being agreed upon by the Respondent/Corporate Debtor but in any case, the amount is in fact exceeding the prescribed monetary limit of Rs. 1 Crore and the application is also found to have been



filed within the limitation period. Therefore, we are convinced that the present application filed under Section of 7 of I & B Code 2016, deserves to be admitted.

21. On having examined the assignment agreements, acknowledgement letters by the Corporate Debtor and the Balance Sheets of the Corporate Debtor conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, we are of the considered view that the Petitioner/Financial Creditor has proved the “existence of debt” and “default”. We are further satisfied that the petition has been filed well within the period of limitation. Under the said circumstances, since the debt and default on the part of the Corporate Debtor having been proved, it is fit to be admitted u/s 7(5) of the I&B Code.

22. In Part III of Form 1, the Financial Creditor has proposed the name of **Mr. Satya Prakash Gupta as Interim Resolution Professional (IRP)**. His Registration Number is IBBI/IPA-001/IP-P00737/2017-2018/11234, R/o KBDS & Co. 808, Eros Apartment, 56 Nehru Place, New Delhi, National Capital Territory of Delhi, 110019, *Email: spgfinance@gmail.com*. He has duly given the consent in



Form No. 2 annexed as **Annexure P4** with the Application. The Law Research Associate of this Tribunal, Ms. Aditi Kharbanda, has checked the credentials of Mr. Satya Prakash Gupta, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also, there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 31 October 2023 which is likely to get extended. **After considering these details, we appoint Mr. Satya Prakash Gupta as Interim Resolution Professional (IRP).**

- 23.** In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of one crore and the application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b) and the same has been confirmed for appointment as above. Accordingly, **the present application under Section 7, has been admitted as per Section 7(5)(a) of the I & B Code, 2016 against the Corporate Debtor i.e. Khatema Fibres Ltd. and**



accordingly, moratorium is declared in terms of Section 14 of the Code.

- 24.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- 25.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as 'CoC') and shall file a report certifying the constitution of the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of Constitution of the CoC. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.



26. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- a)** the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in 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 the possession of the corporate debtor.
- e)** It is further directed that the supply of essential goods or services to the corporate debtor as may be specified,



shall not be terminated or suspended or interrupted during the moratorium period.

- f)** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- g)** The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

27. We direct the Financial Creditor to deposit a sum of Rs.2,50,000 with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of



Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

- 28.** A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
- 29.** List the matter on 28.11.2023 for filing of the progress report/further proceeding.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Dated : 13.10.2023

**Aditi Kharbanda
(LRA)**