

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT CHENNAI**

**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (INS.) No. 184 of 2023**

**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)**  
**(Arising out of the 'Impugned Order' dated 05.06.2023 in**  
**CP(IB) No. 645 / 7 / HDB /2018, passed by the 'Adjudicating Authority',**  
**(National Company Law Tribunal', Bench – I, Hyderabad)**

**In the matter of:**

**Vidyasagar Parchuri**

S/o. Sh. Venkatanarsaya Parchuri  
Suspended Director of Corporate Debtor  
M/s. Vibha Agro Tech Limited  
R/o House No.8-2-293/82/J-111/9,  
Plot No.O-111, Road No.77,  
Jubilee Hills, Hyderabad - 500063

**..... Appellant**

**v.**

**State Bank of India**

Stressed Asset Management Branch  
Secunderabad  
Door No.6-2-915, 5<sup>th</sup> Floor  
Rear Block, HMWSSB Compound  
Khairthabad, Hyderabad – 500004

**..... 1<sup>st</sup> Respondent /  
Financial Creditor /  
Petitioner**

**Vibha Agro Tech Limited**

Through IRP Mr. Ram Ratan Kanoongo  
Office At: 708, 7<sup>th</sup> Floor, Raheja Centre  
Nariman Point, Mumbai,  
Maharashtra - 400021

**..... 2<sup>nd</sup> Respondent**

**Present:**

For Appellant : Mr. Dhruba Mukherjee, Senior Advocate  
For Mr. Kumar Anurag Singh,  
Mr. Paras Mithal and Ms. Pragya Gautam,  
Advocates

For Respondent No. 1 : Mr. M.S. Krishnan, Senior Advocate

For Mr. Pranava Charan, Advocate

For Respondent No. 2 : Mr. S. Patrick, Advocate

**J U D G M E N T**  
**(Virtual Mode)**

**Justice M. Venugopal, Member (Judicial):**

**Introduction:**

The 'Appellant' / 'Suspended Director' of 'M/s. Vibha Agro Tech Limited' ('Corporate Debtor'), has preferred the instant Comp. App (AT) (CH) (INS.) No. 184 of 2023, as an 'Aggrieved Person', in respect of the 'impugned order' dated 05.06.2023 in CP (IB) No. 645 / 7 / HDB / 2018 (Filed by the '1<sup>st</sup> Respondent / Financial Creditor / Bank / Petitioner'), under Section 7 of the I & B Code, 2016, r/w Rule 4 of the I & B (AAA) Rules, 2016, passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – I, Hyderabad).

2. Earlier, while passing the 'impugned order', dated 05.06.2023 in CP (IB) No. 645 / 7 / HDB / 2018, Filed by the '1<sup>st</sup> Respondent / Financial Creditor / Bank / Petitioner', under Section 7 of the I & B Code, 2016, r/w Rule 4 of the I & B (AAA) Rules, 2016), the 'Adjudicating Authority' / 'National Company Law Tribunal', Bench – I, Hyderabad), among other things, at Paragraphs 20 to 28, had observed the following:

20. ``Having anxiously considered the submissions of the Ld. Counsel for both the parties and on careful perusal of the relevant provisions of the IB Code, besides by taking into consideration the well settled legal position in this regard, the submission of the Ld. Counsel for the Corporate Debtor that, the 'default' which is the sine qua non, for setting in motion the application under section 7 of IB Code, the Legislature in its wisdom meant only the "default" that occurred at the first instance and not the extended default, by virtue of acknowledgement of debt or on the basis of entry in the Balance Sheets of the Corporate Debtor, therefore, the present application having not been filed within three years from 30.04.2013 is barred by limitation, is uncomprehensive, firstly for the reason that subsection (1) of Section 7 of IB Code, merely states that when a default has occurred an application by one or more persons can be filed for initiating corporate insolvency resolution process against a corporate debtor, before the Adjudicating Authority. The Legislative intent behind use of the word 'default' in subsection (1) of section 7 is very clear and unambiguous, hence there is no room for any interpretation, such as default extended, etc.

21. It is well settled principle of statutory interpretation that in a statute the Court cannot read an additional word which has not been used by legislator. The definition of Default in Sub-Section (12) of Section 3 itself comprises several events i.e. non-payment of debt when whole or any part or instalment of the amount of debt has become due. The default may be of different nature on some default the entire amount may become due like when Account is declared NPA, there may be some default by happening of which only fraction of amount became due like in present case nonpayment of interest on 30th June, 2015 only interest part became due. IBC does not comprehend that on first default committed by any debtor, all creditors should rush to IBC. The core objective of IBC is resolution of insolvency of a Corporate Debtor. All provisions have been made; the entire scheme of the IBC has been contemplated to achieve the aforesaid object. Where debtor is unable to pay a fraction of debt which becomes due there is no presumption that Debtor has become insolvent and, in an event, the Creditor awaits for some more time like default by non-payment of first instalment or entire due as in the present case the right of creditor shall not be foreclosed. What is intended by scheme of statute is that no Application under Section 7 can be filed for default from which date the due claim has become time-barred. Time-barred debt cannot be revived by any proceeding under Section 7 which has time and again been reiterated by Hon'ble Supreme Court of India. We are thus not persuaded to read an additional word 'First' before Company Appeal (AT) (Insolvency) No. 911 of 2021 the expression 'Default' under sub-section (1) of Section 7 as contended by Learned Counsel for the Applicant.

22. In fact, a similar argument put forth has been out-rightly rejected by the Hon'ble NCLAT in the matter between Koncentric Investments Ltd. Vs. Standard Chartered Bank, London, CA (AT) Insolvency No. 911/2021 dated 27.01.2022, and it was held as under: -

*“8. ... Sr. Advocate appearing for the Respondent No.1 refuting the submissions of Learned Sr. Counsel for the Appellant submits that Facility Agreement dated 22nd May, 2013 was amended by Supplemental Agreement dated 19th August, 2013 and first disbursement of amount was made on 30th August, 2013 hence 27 months period was to expire on 30th November, 2015 and first instalment thus became due only on 30th November, 2015. It is true that interest due on 30th June, 2015 was not paid but not filing Section 7 Application on the ground of default in payment of interest amount shall not take away the right of bank to sue when first instalment became due or when entire loan became due in view of the Acceleration Notice dated 05.01.2017. Section 7 (1) of the Code speaks of Company Appeal (AT) (Insolvency) No. 911 of 2021 default it does not mention first default. To accelerate Financial Facility by the Bank, the permission of Reserve Bank of India was necessary for proceeding for accelerating the facility which permission was also applied on 24th November, 2015 but could be granted only on 07.12.2016 thereafter Notice of Acceleration was given on 05.01.2017 and the entire amount became due, computing the period of limitation from first default of principal amount i.e. 30th November, 2015. The Application filed on 28th November, 2015 was well within three years and the Adjudicating Authority did not commit any error in admitting the Application.”*

*“10. ... Sr. Advocate in his Rejoinder submits that subsequent events are not relevant for deciding the maintainability of the Application under Section 7 of the Code, prerequisites for acceleration is interest default when default was committed on 30th June, 2015, any non-payment of interest by the Corporate Debtor, cause of action has a reason for filing Section 7 Application and when limitation starts running it cannot Company Appeal (AT) (Insolvency) No. 911 of 2021 be stopped hence Application could have been filed before 30th June, 2018 only and the Application filed on 28th November, 2018 was well beyond three years and liable to be rejected. The Bank was effectively injured on 30th June, 2015 when payments were not made. .... Sr. Advocate submits that the unstamped document could not be admitted in evidence and could not have been looked into for any purposes.”*

*“16. ... The question to be answered is as to whether non-filing of the Application within three years from 30th June, 2015 shall make the Application filed by the Financial Creditor under Section 7 as barred by time since admittedly the Application have been filed on 28th November, 2018..... , Sr. Advocate has emphatically submitted that according to the Code when the first default has been committed, time shall start running and the Application under Section 7 cannot be filed for time barred debt. He further submits that the Financial Creditor has not filed the Section 7 Application within three years from the date i.e. 30th June, 2015 and thus their claim is barred by time and application ought to have been rejected.” (Emphasis supplied)*

*“18. ... In the present case, non-payment of amount of interest on 30th June, 2015 was non-payment of part of debt since interest was also part of debt. We thus agree with the submissions of Learned Sr. Counsel for the Appellant that there was default when interest was not paid on 30th June, 2015. Now question is as to when a Financial Creditor has not filed the Application on first default i.e. payment of interest whether he is precluded to file Application for subsequent defaults i.e. when default is committed for an instalment or for whole debt when it becomes due.” (Emphasis supplied)*

*“21. The Insolvency and Bankruptcy Code including rules and regulations, does not indicate that it is mandatory for the Financial Creditor to rush to file Section 7 Application whenever first default is committed in payment of interest. Although it had liberty to file an application even if there is default in payment of interest. Section 7 (1) of the Code uses the expression when a default has occurred there is no indication under Section 7 of the Code that unless an Application is filed on first default committed, no application can be filed when subsequent defaults are committed. The Financial Creditor is at liberty to file Section 7 Application but is neither mandatory nor necessary that on first default Financial Creditor should rush to the Insolvency Court. Financial Creditor may await and give more time to Corporate Debtor to find out as to whether actually the Corporate Debtor has become insolvent and unable to repay the debt and even Financial Creditor ignores non-payment of interest when the Corporate Debtor first defaulted it shall not lose its right to file Application under Section 7 of the Code when default of instalment or whole amount became due. The only statutory requirement is that default as claimed in the Application under Section 7 should be within three years from the date when application is filed under Section 7 of the Code because any default of amount committed before three years of filing of the Application*

*Company Appeal (AT) (Insolvency) No. 911 of 2021 shall become time barred debt and cannot be said to be payable and due within the meaning of Section 3(11) and Section 3(12) of the Code.”*

*(Emphasis supplied)*

*“22. .. .. Thus, for applying the law of limitation on Section 7 Application it is to be seen as to whether the date of default as claimed in the application and payment of debt and debt due is not beyond three years and if the date of default as claimed in the Application is within three years the Application cannot be thrown out as barred by limitation. The mere fact that the Financial Creditor has ignored or not claimed any due which was due three years prior to the date of default as claimed in the Application shall not disentitle the Financial Creditor to claim the debt which was payable within three years from the date of filing. ... ”*

*(Emphasis Supplied)*

23. *Hon'ble Supreme Court of India in 'B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates' [(2019) 11 SCC 633] had occasion to consider the law of limitation in reference to Insolvency and Bankruptcy Code and Section 3(11) and 3(12). Hon'ble Supreme Court held that Financial Creditor or Operational Creditor can initiate an application with relation to debt which has not become time barred. It was held that:*

*“42. It is thus clear that since the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*

*“Thus, for applying the law of limitation on Section 7 Application it is to be seen as to whether the date of default as claimed in the application and payment of debt and debt due is not beyond three years and if the date of default as claimed in the Application is within three years the Application cannot be thrown out as barred by limitation. The mere fact that the Financial Creditor has ignored or not claimed any due which was due three years prior to the date of default as claimed in the Application shall not disentitle the Financial Creditor to claim the debt which was payable within three years from the date of filing. We are conscious of the law as declared by Hon'ble Supreme Court that normally date of default is a date when account of borrower has been declared NPA. When account is declared NPA it is open for the lender*

*to claim for debt and any Application filed beyond three years from the date account became NPA shall be dismissed and barred by time”.*

24. Hon'ble Supreme Court in '*Laxmi Pat Surana Vs. Union of India and Anr.*' [(2021) 8 SCC 481] in the above case the default had occurred on 30th January, 2010 which was a date on which loan in question was declared NPA. Supreme Court in paragraph 43 held as follows:

*"43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits default. Section 7, consciously uses the expression default not the date of notifying the loan account of the corporate person as NPA. Further, the expression default has been defined in Section 3(12) to mean non- payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."*

25. To accept the submissions made by Learned Counsel for the applicant, we have to read one additional word under Section 7 before the word 'Default' under Sub-Section 1 of Section 7 of the Code i.e. the word 'First'. The submission of the Appellants is that when first default is committed by a Debtor, the Creditor

*has necessarily and mandatorily to Company Appeal (AT) (Insolvency) No. 911 of 2021 initiate Application under Section 7 failing which the right of creditor to file an Application under Section 7 of the Code shall be defeated by law of limitation.*

*26. Hon'ble Supreme Court of India in re Dena Bank v. C. Shivakumar Reddy, at page 144 & 145 held as follows:-*

*“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.”*

*Therefore, in the light of the law as laid down in the rulings aforesaid, we have no hesitation in rejecting the above submissions of the Ld. Counsel for the Corporate Debtor.*

*27. Now we shall address the plea that the petition is not complete. Having perused the documents produced by the Corporate Debtor regarding the authority of the person to file this petition we are convinced that the said person had been fully authorized. In so far as the other objection that the statement of accounts is not duly certified as per the provisions of Banker Book of Evidence Act, is concerned, we are afraid the same is untenable in the background of the fact that the financial debt as well as its default are not in dispute in this case.*

*28. As already observed existence of financial debt of the sum over Rupees one crore is due and its default is not in controversy. Having carefully examined the plea of limitation, we are fully satisfied that, the Petition as filed is within the prescribed period of limitation.”*



and ultimately, admitted the 'Petition', under Section 7 of the I & B Code, 2016, declared 'Moratorium', and appointed an 'Interim Resolution Professional', etc.

**Appellant's Submissions:**

3. The Learned Counsel for the Appellant contends that the 'impugned order', dated 05.06.2023, made in CP (IB) No. 645 / 7 / HDB / 2018, by the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – I, Hyderabad), is resting upon a 'Time Barred Debt', because of the fact that the 'Amendment Application', was preferred, beyond the 'Statutory Period' of 'three years', from the 'date of Last Cause of Action'.

4. According to the Appellant, the 'Adjudicating Authority' / 'Tribunal', at the time of passing the 'impugned order', dated 05.06.2023, in CP (IB) No. 645 / 7 / HDB / 2018, had failed to appreciate that the 'Debt', sought to be enforced even by incorporating alleged acknowledgements in the 'Balance Sheets' of the 'Corporate Debtor', was 'Time Barred', in as much as the last acknowledgement, as per the 'Amended Application', under Section 7 was 27.08.2016 and the 'Amended Application', was filed on 17.11.2021 Viz. beyond the statutory period of 3 years.

5. The Learned Counsel for the Appellant, advances a plea that it is a 'trite Law', that the 'amendment', although, properly made cannot 'relate

back', to the 'date of filing' of the 'Original Petition', but to the 'date of filing' of the 'amended Application'.

6. The Learned Counsel for the Appellant, takes a stand that the 'cardinal principle of Law', that if an 'amendment made, introduces a different 'new cause of action', based on fresh facts, then, the said 'amendment', cannot possibly relate back to the 'Date of Filing' of the 'Petition', but, to the 'Date of Filing' of the 'Amendment Application'.

7. The Learned Counsel for the Appellant, points out that the 'Amendment Application', was filed on 17.11.2021, Viz. much later than 27.08.2019, which is beyond the 'Limitation Period', and as such, the 'impugned order', based on the 'Amendment Application', is 'bad in Law', and is liable to be 'set aside'.

8. According to the Appellant, for argument sake, if it is taken that the 'Amendment', should relate back to the date, when the 'Defence', was first raised, then, as well the 'Defence', in regard to an 'Acknowledgement' in 'Balance Sheet', was taken for the time on 25.11.2020, in the 'Rejoinder', before this 'Appellate Tribunal', New Delhi, which is again, is much later than the 'Statutory Time Period', and hence, the 'Claim', sought to be enforced, is 'Barred by Time', even then.

9. The Learned Counsel for the Appellant, adverts to the 'Order' of the Hon'ble Supreme Court of India, dated 20.10.2021 (vide Civil Appeal No.2264 of 2021), between State Bank of India v. Vibha Agro Tech Limited, wherein, it is observed as under:

*“We are of the view that subject to the appellant being put to terms, the course adopted by this Court in Asset Reconstruction Company (India) Limited (Supra) should be followed. Accordingly, we allow the 'Appeal' and 'set aside', the 'impugned order'. The 'Appeal' is remanded back and will be restored back to file.*

*We permit the appellant to seek amendment of the application under Section 7 as to incorporate the case based on acknowledgement as contained in the balance sheets allegedly of the Respondent.*

*We leave open all contentions available to the Respondent. This benefit will be available to the appellant subject to the appellant paying a sum of Rs.3 Lakhs as costs to the Respondent within a period of three weeks from today.*

*The appeal is allowed as above.*

*We make it clear that the questions relating to the case set up by the 'Appellant', relating to the acknowledgement flowing from MRA dated 26.09.2013, and O.T.S. dated 19.06.2015 shall not be revisited.”*

10. In this connection, the Learned Counsel for the Appellant, refers to the 'Order', dated 23.08.2022, passed by the Principal Bench of this 'Tribunal', in Comp. App (AT) (INS.) No. 636 of 2020, between State Bank of India v. Vibha Agro Tech Limited, wherein, at Paragraphs 8 & 9, it is observed as under:

*8. “The issue regarding the appreciation of the balance sheets which has now become part of record is to be looked into by the Adjudicating Authority to hold as to whether the application filed under Section 7 of the Code is within limitation or not. Therefore, we are of the considered opinion that this matter requires a relook by the Adjudicating Authority especially after the amendment has been made in the application filed under Section 7 of the Code to find out*

*as to whether the application filed under Section 7 is within limitation in terms of the alleged acknowledgment of the part of the Respondent by way of the entries made in the balance sheets.*

*9. In the view of the aforesaid discussion, the appeal is allowed and the order of the Adjudicating Authority is set aside. The matter is remanded back to the Adjudicating Authority to reconsider the amended application, filed under Section 7 of the Code, at the instance of the Appellant. It is needless to mention that the Hon'ble Supreme Court has also given liberty to the Respondent to raise all the issues available to it in order to contest the said application. The said liberty shall remain open. The parties shall appear before the concerned Adjudicating Authority on 11.10.2022.'*

and contends that it is clear, that the 'Doctrine of Relation Back', would not apply to the facts of this case for the reason, that the Court which allowed the 'amendment', expressly allowed it subject to all contentions being open to the Corporate Debtor including the plea of 'Limitation', indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the 'Doctrine of Relation Back', applying so that a legal right that had accrued in favour of the 'Corporate Debtor', should be taken away.

11. The Learned Counsel for the Appellant, adverts to the decision of the Hon'ble Supreme Court of India, in L.C. Hanumanthappa (since Dead), Represented by his 'Legal Representatives' v. H.B. Shivakumar (vide Civil Appeal No. 6595 of 2015 dated 26.08.2015), reported in (2016) 1 SCC at Page 322, Spl Pg: 346, wherein at Paragraphs 26 and 29, it is observed as under:

26. *“It is clear that on the facts in the above case the amendment was allowed subject to the plea of limitation which could be taken up by the Defendant when the trial in the case proceeds.*

29. .... *It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the Defendant should be taken away.....”*

12. The Learned Counsel for the Appellant, comes out with a plea that it is the case of the ‘1<sup>st</sup> Respondent / Bank’, that the ‘Corporate Debtor’, in its ‘Balance Sheets’, for the Financial years 2013-2014, 2014-2015 and 2015-16, acknowledge the ‘Grant of Financial Assistance’, by the ‘Bank’. Further, it was stated that the ‘Entries in Balance Sheets’, cannot be read in ‘Isolation’, and in the instant case, the amount exhibited in the ‘Balance Sheets’, is different from what is being claimed by the ‘Financial Creditor’, and hence, there is a ‘Dispute’, in regard to the ‘Acknowledgement of Liability’, by the ‘Corporate Debtor’.

13. The Learned Counsel for the Appellant, refers to the Judgment of the Hon’ble Supreme Court of India dated 15.04.2021, in the matter of Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr. (vide Civil Appeal No. 323 of 2021), reported in India Kanoon, wherein, at Paragraph 22, it is observed as under:

22. *“A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies*

*Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.''*

14. The Learned Counsel for the Appellant, submits that in the decision of the Hon'ble High Court of Calcutta, in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, reported in 1961, SCC OnLine Cal. 128., it was observed that 'though the filing of a Balance Sheet is by compulsion of 'Law', the 'Acknowledgment of a Debt', is not necessarily so.

15. According to the Appellant, in the instant case, the 'Sum', mentioned in the 'Balance Sheets', is admittedly different, from what is being claimed by the 'Financial Creditor', and further, that for the purpose of extending the period of Limitation (under Section 18 of the Limitation Act, 1963), the 'amount acknowledged', must be exactly the same as claimed by the 'Financial Creditor', otherwise, the 'Financial Creditor', is not entitled to get the benefit of 'extension of period of Limitation'.

16. The Learned Counsel for the Appellant, emphatically takes a stand that the 'Debt', is 'Time Barred', for the reason that the 'Financial Creditor', for the purpose of seeking an extension of 'Period of Limitation', can only rely upon the 'Balance Sheets', in respect of the 'Financial Years 2013-14 & 2014-15, signed on 16.08.2014 and 27.08.2015' respectively and no reliance can be placed on the 'Balance Sheet', for the 'Financial Year 2015-16', signed on 27.08.2016, as the same was signed, after the 'expiration of the period of Limitation', from the 'Date of Default'.

17. The Learned Counsel for the Appellant, refers to the Judgment of the Hon'ble Supreme Court in Revajeetu Builders & Developers v. Narayanaswamy & Sons & Anr., (vide Civil Appeal No. 6921 of 2009 dated 09.10.2009), reported in (2009) 10 SCC Page 84 at Spl Pg: 102, wherein, at Paragraph 63, under the caption 'Factors to be taken in to consideration, while dealing with applications for amendments', it is observed as under:

*''63(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.''*

18. The Learned Counsel for the Appellant, seeks in aid of the decision of the Hon'ble Supreme Court in Sampuran Singh & Ors. v. Niranjan Kaur

& Ors. (vide Civil Appeal No. 4544 of 1984 dated 23.02.1999), (1999) 2 SCC 679, wherein, at Spl Pg: 684, at Paragraph 9, it is observed as under:

*9. ``..... Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement.....''*

19. The Learned Counsel for the Appellant, submits that the 'Date of Default' and the 'Date of Non Performing Asset(s)', are both distinct and different dates. Further, it is represented on behalf of the Appellant that in terms of the 'Reserve Bank of India's Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances', dated 01.10.2021, an 'Account', has to be declared as 'Non Performing Asset', minimum 'after 90 days of the Date of Default'.

20. According to the Appellant, 'Default', is under the 'Borrower's control', and that the 'Date of Non Performing Asset', is controlled by the 'Lender Bank', and further, the 'Bank', may declare an 'Account', immediately after 90 days, as per the 'RBI's Master Circular' and since, it is within their control, the 'Bank', may declare the 'Account' as 'Non Performing Asset', after one to two years, for the purpose of managing 'Limitation', and therefore, the 'Date of Non Performing Asset', cannot be the 'Date of Default'.



21. The Learned Counsel for the Appellant, points out that Section 7 (1) of the I & B Code, 2016, entitles a 'Financial Creditor', to prefer an 'Application', seeking initiation of 'Corporate Insolvency Resolution Process', when a 'Default', has occurred.

22. The Learned Counsel for the Appellant, refers to the definition Section 3(12) of the I & B Code, 2016, where 'Default', is described as meaning 'non-payment of debt', when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be'.

23. The Learned Counsel for the Appellant, points out that a cumulative reading of the ingredients of Section 7 (1) and Section 3(12) of the I & B Code, 2016, would mean that a 'Right' to file an 'Application', under Section 7 of the Code, accrues in favour of a 'Financial Creditor', on the happening of 'Default' (not the Date of Non Performing Asset), and thus for the purpose of 'Limitation', as well as the same date, requires to be taken into account.

24. It is represented on behalf of the Appellant that the 'Amendment Application', dated 17.11.2021 (Filed by the 1<sup>st</sup> Respondent / Bank / Petitioner), was without proper Authorisation and hence, the said

`Application', ought to have been dismissed by the `Adjudicating Authority' / `Tribunal', and to lend support to his contention, the Learned Counsel for the 1<sup>st</sup> Respondent / Bank, adverts to the `Order' of this `Tribunal', dated 20.09.2017, in Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd. (vide Company App (AT) (INS.) No. 30 of 2017), wherein at Paragraph 31, it is observed as under:

*31. ``As per Section 7 of the 'I&B Code' an application for initiation of 'Corporate Insolvency Resolution Process' requires to be filed by 'Financial Creditor' itself. The form and manner in which an application under section 7 of the 'I&B Code' is to be filed by a 'Financial Creditor' is provided 'Form-1' of the Adjudicating Authority Rules. Upon perusal of the Adjudicating Authority Rules and Form-1, it may be duly noted that the 'I&B Code' and the Adjudicating Authority Rules recognize that a 'Financial Creditor' being a juristic person can only act through an "Authorised Representative". Entry 5 & 6 (Part I) of Form No.1 mandates the 'Financial Creditor' to submit "name and address of the person authorised to submit application on its behalf. The authorization letter is to be enclosed. The signature block of the aforementioned Form 1 also provides for the authorised person's details is to be inserted and also includes inter alia the position of the authorised person in relation to the 'Financial Creditor'. Thus, it is clear that only an "authorised person" as distinct from "Power of Attorney Holder" can make an application under section 7 and required to state his position in relation to "Financial Creditor".''*

25. The clear cut stand of the Appellant, is that, the `Adjudicating Authority' / `Tribunal', had failed to appreciate that there was no authorisation to and in favour of Mr. J. Vijay Kumar, Asst. General Manager, who had signed the `amended Petition', indeed, the requirement of specific authorisation, is `mandatory', to prefer an `Application', under Section 7 of the I & B Code, 2016.

26. The other contention projected on behalf of the Appellant, is that the 'non-mention of Actual Date of Default', by the 'Financial Creditor', in the captioned matter, makes the Section 7 Application, a 'defective' one and hence, the 'Admission Order', passed by the 'Adjudicating Authority' / 'Tribunal', is liable to be set aside.

27. On behalf of the Appellant, it is pointed out that the 'Interim Resolution Professional', from the time, he took over, the premises of the Corporate Debtor, had deputed his 'security guards' at the 'site' and is not permitting the 'ex-management' to function and keep the Corporate Debtor as a 'going concern'. Also that, the 'deferment' on the implementation of the 'impugned order', 'implies' deferment of on the powers of 'Interim Resolution Professional', to take over / continue with the possession of the premises of the 'Corporate Debtor'. Also that the Appellant is in 'talks' 'with the 'Bankers' including the 'Petitioner' and an 'OTS' is at an advanced state. Indeed, the talks between the 'promoter' and the bankers for revival of the company is in the best interest of everyone and reasonable time must be given for the talks to conclude.

28. On behalf of the Appellant, a reference is made to the decisions:

- i) LC Hanumanthappa vs. H.B. Shivakumar, repoted in 2016(1) SCC 332 (paragraphs 6, 11, 12 & 29).

- ii) Revajeetu Builders & Developers V. Narayanaswamy & Ors.  
(2009) 10 SCC 84 (paragraph 67).
- iii) Raju Ramsing Vasave V. Mahesh Deorao Bhivapurkar &  
Ors., (2008) 9 SCC 54, (paragraph 22 & 24).
- iv) Saurav Jain & Ors. Vs. A.B.P. Design & Ors., AIR 2021 SC  
3673 (paragraph 34)

29. According to the Appellant, none of the provisions and judgments relied upon by the 1<sup>st</sup> Respondent / Bank can come to its rescue, in as much as the Law is clear that an ‘Amendment’, seeking to introduce, a time barred claim relates back to the date of filing of the ‘Amendment Petition’ and not the original petition.

**1<sup>st</sup> Respondent / Bank’s Contentions:**

30. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, submits that the ‘2<sup>nd</sup> Respondent’ / ‘Corporate Debtor’ (‘Vibha Agro Tech Limited’), had availed numerous facilities, including, but not limited to the ‘Cash Credit’, ‘Corporate Loan’, ‘Term Loan 1 & 2’, ‘Working Capital Term Loan’, ‘Priority Debt’, ‘FITL’, Total Fund based from the ‘1<sup>st</sup> Respondent / Bank’. As a matter of fact, the ‘Corporate Debtor’, had ‘Defaulted’, in its ‘payment obligations’, to the ‘1<sup>st</sup> Respondent / Bank’, and ultimately, the ‘Corporate Debtor’s Account’, is declared as ‘Non Performing Asset’, on 30.04.2013.

31. According to the 1<sup>st</sup> Respondent / Bank, the 'Corporate Debtor', among other things, furnished various 'One Time Settlement Proposal', on 19.06.2015, 22.09.2017, 03.05.2019, 30.04.2021, 18.03.2021, 14.06.2021 and 26.07.2022, respectively. In fact, the 'Corporate Debtor', was indicating the 'Debt and Default', in their 'Balance Sheets', from the years 2016 to 2020, and added further, the 'Corporate Debtor', had not filed their 'Balance Sheet', after the year 2020, for the years 2021 to 2023.

32. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, brings it to the notice of this 'Tribunal', that the 1<sup>st</sup> Respondent / Bank, had initiated 'SARFAESI' and 'Recovery Proceedings', against the 'Corporate Debtor', and because of the continuous default of the 'Corporate Debtor', the 1<sup>st</sup> Respondent / Bank, in order to bring about a 'Resolution' of the 'Account', had filed a Section 7 Application, under the I & B Code, 2016 and originally, the said 'Application', was 'dismissed', by the 'Adjudicating Authority' / 'Tribunal', on the 'ground of Limitation', and the 'Appeal', was also 'dismissed', on the ground of 'Limitation. Subsequently, the 1<sup>st</sup> Respondent / Bank, had filed Civil Appeal No. 2264 of 2021, before the Hon'ble Supreme Court of India, between State Bank of India v. Vibha Agro Tech Limited, and on 20.10.2021, the 'Civil Appeal' was 'allowed',

the 'impugned order' of the 'NCLAT', was set aside, and the 'Appeal', was remanded back and was directed to be restored back to the 'File'.

33. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, draws the attention of this 'Tribunal', that the Hon'ble Supreme Court of India, had permitted the 1<sup>st</sup> Respondent / Bank ('Appellant'), to seek 'Amendment' of the 'Application', under Section 7 with a view to incorporate the case, based on 'Acknowledgement', as contained in the 'Balance Sheets', allegedly of the 'Respondent', and all the contentions availed to the Respondent, were left open and that the 'Appellant', was directed to pay a Sum of Rs.3 Lakhs as costs to the 'Respondent' / 'M/s. Vibha Agro Tech Limited', within a period of three weeks from the date of the order.

34. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, points out that the 1<sup>st</sup> Respondent / Bank, had paid a Sum of Rs.3 Lakhs on 05.11.2021 and that the Bank, had filed IA No. 87 of 2022, praying for an 'Amendment of the Application', under Section 7 of the I & B Code, 2016, and that the IA No. 87 of 2022, was allowed by the Principal Bench of this 'Tribunal', on 11.01.2022.

35. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, brings it to the notice of this 'Tribunal', that the 'Appellate Tribunal', through its 'Order'

dated 23.08.2022, in Comp. App (AT) (INS.) 636 of 2020, had remanded the matter to the 'Adjudicating Authority' / 'Tribunal', by observing that in regard to the appreciation of Balance Sheets, which had become 'Part of Record', was to be looked into the 'Adjudicating Authority', to hold, as to whether the 'Application', filed under Section 7 of the 'Code', is within 'Limitation' or 'not'.

36. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, adverts to the fact that the 'Adjudicating Authority' / 'Tribunal', on 05.06.2023, had admitted the 'Application' / 'Petition', under Section 7 of the I & B Code, 2016, against the 'Corporate Debtor', and appointed an 'Interim Resolution Professional', to take over the 'Affairs' of the 'Corporate Debtor'.

37. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, points out that, in terms of the 'Application' (Filed under Section 7 of the I & B Code, 2016), by the 1<sup>st</sup> Respondent / Bank / Petitioner, the 'Outstanding Sum' in 'Default', as on 31.08.2018, was Rs.327,03,72,501.81/-, and that the 'Outstanding Sum', claimed by the 1<sup>st</sup> Respondent / Bank, was Rs.1061.15/- Crores and also the 'Bank' reliably understands that the Total Sum, claimed by all the 'Financial Creditors', is about Rs.3,400/- Crores.

38. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, refers to the Verbatim of the relevant portion of the 'Petition / Application' (Part IV – Particulars of Debt, Serial No.2), under Section 7 of the Code (vide Page 265 at Page 275 of Vol. II of the Appellant's Paper Book dated 27.06.2023), which proceeds to the following effect:

*“The cause of action / date of default would start on 30.04.2013 when the Accounts were declared NPA, in terms of the RBI guidelines due to failed Restructuring. Even subsequent to the declaration of the Account as NPA, the Corporate Debtor has continuously and repeatedly year on year acknowledged and admitted the debt owed to the banks in its balance sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 for the Financial Years 2013-14, 2014-15 and 2015-16 respectively. On each of the said dates when the Corporate Debtor acknowledged the debt, a fresh period of limitation shall be computed in terms of Section 18 of the Limitation Act. Thus, the application u/s 7, IBC filed on 06.09.2018 is well within the period of limitation u/s 137 of the Limitation Act. Copy of the Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 are annexed hereto and marked as Annexure 58.”*

39. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, forcefully comes out with a plea that the 1<sup>st</sup> Respondent / Bank, had established the 'Admission / Acknowledgement of Liability', through the 'Balance Sheets' of the 'Corporate Debtor', 16.08.2014, 27.08.2015 and 27.08.2016, respectively, in order to 'prove' the 'Claim' of the 1<sup>st</sup> Respondent / Bank, was not 'Time Barred'.

40. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, contends that the plea of 'non-applicability of Doctrine of Relation Back', was never projected by the 'Appellant', before the Principal Bench of this 'Tribunal',



in IA No. 87 of 2022 in Comp. App (AT) (INS) No. 636 of 2020, and further, the 'Appellant', had not contested the aforesaid amendment, as seen from the 'Order', dated 11.01.2022, in this regard.

41. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, submits that Section 11 Explanation IV of the Civil Procedure Code, 1908, pertaining to 'Constructive Res Judicata'', read with Order II Rule 2 of Code of Civil Procedure, 1908, will squarely apply to the facts of the present case. That apart, on behalf of the 1<sup>st</sup> Respondent / Bank, it is pointed out before this 'Tribunal', that the instant Comp. App (AT) (CH) (INS.) No. 184 of 2023, is the 'third round of Litigation', on the very same 'aspect of Limitation'.

42. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, advances a plea, that the Hon'ble Supreme Court, through its 'Order', dated 20.10.2021, in Civil Appeal No.2264 of 2021, between 'State Bank of India v. Vibha Agro Tech Limited', had provided an opportunity, to the 1<sup>st</sup> Respondent / Bank for bringing an 'Acknowledgement of Liability', by the Corporate Debtor, on 'record', and ensure that the 'Claim', was not 'barred', under Article 137 of the Limitation Act, 1963.

43. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, points out that the 1<sup>st</sup> Respondent / Bank, was permitted to bring in the 'Balance Sheets',

and if the plea of the Appellant that the 'Amendment', will only take effect from the 'Date of the Amendment', the 'Order' of the Hon'ble Supreme Court of India, will become a 'meaningless' one. Therefore, it is the stand of the 1<sup>st</sup> Respondent / Bank, that the 'Doctrine of Relation Back', will 'apply', and in fact, the 'Amendment', granted by this 'Tribunal', on 11.01.2022, can only relate back to the 'Filing of an Application' (dated 06.09.2018, but filed on 12.09.2018, before the 'Adjudicating Authority'). Also, it is the stand of the 1<sup>st</sup> Respondent Bank that the 'Ordinary Rule', is that, the 'Amendment', will relate back to the 'Original Date of Filing of the Suit'.

44. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, to fortify the contention of 'Doctrine of Relation Back', places reliance upon the Judgment of the Hon'ble Supreme Court of India, dated 18.10.2001, in *Siddalingamma v. Mamtha Shenoy*, reported in India Kanoon (vide Civil Appeal No.7292 of 2001, wherein, it is observed as under:

*“..... On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the Court excluded the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition.”*

45. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, relies on the Judgment of the Hon'ble Supreme Court of India dated 13.09.2002 (vide

Civil Appeal No.5839 of 2002) in Sampath Kumar v. Ayyakannu, reported in (2002) 7 SCC (at Page 559, Spl Pg : 563, wherein, at Paragraphs 4 and 10, it is observed as under:

*4. ``The Trial Court rejected the application for amendment. During the course of its order the Court observed that the appropriate course for the plaintiff was to bring a new suit. This order has been maintained by the High Court in revision. Although the plaintiff had sought for some more amendment so as to correct the description of the suit property; however the pan of the prayer for amendment was not later pressed by the plaintiff before the Court.*

*10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy MANU/SC/0657/2001 : 8 SCC 561.)''*

46. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, refers to the decision in Ganda Singh v. Zora Singh 1949 SCC Online Pepsu 1 : AIR1950 Pepsu 21, wherein at Paragraph 4, it is observed as under:

*4. ``Certain authorities were quoted before the learned District Judge to show that amendment of a plaint dated back to the date of the presentation of the original plaint. The correctness of this legal position was admitted by the learned District Judge but he distinguished those cases from this case on the ground that those suits were instituted when the cause of action had accrued to the plaintiffs when the original plaint was filed. Satyanarainrao V. Venkataswami, A.I.R. (20) 1933 Mad. 153: (143 I.C. 504) cited before me also shows that the amendment of a plaint relates back to the date of the institution of the suit with regard to the question of limitation. It was also held in Ammaya Pillai v. Narayana Chetti, A.I.R. (12) 1925 Mad. 487 : (86 I.C. 187) that the effect of an amendment of the plaint is to date back the suit where no party is added. No party was added in the present case also.''*

47. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, points out that the Appellant, was classified as a 'Wilful Defaulter', by the 1<sup>st</sup> Respondent / Bank, on 25.03.2019, and further that, the 'Appellant', was also classified as 'Wilful Defaulter', by other two Banks (1) Punjab National Bank and (2) IDBI Bank, and the 'Corporate Debtor', was also declared as 'Fraud', by the 1<sup>st</sup> Respondent / Bank, on 31.07.2019.

48. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, brings it to the notice of this 'Tribunal', that the 'Appellant', is the very same 'Director', who had provided the 'One Time Settlement Proposals', on 19.06.2015, 22.09.2017, 03.05.2019, 30.04.2021, 18.03.2021, 14.06.2021 and 26.07.2022, and that the 1<sup>st</sup> Respondent Bank, had given a Complaint, before the 'Central Bureau of Investigation', for the 'Fraud', committed by the 'Appellant', which is pending as on date.

49. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, submits that the 'Appellant', had not filed the 'Annual Returns', in respect of the 'Corporate Debtor', from 2020 till date, which is punishable under Section 92 & 137 of the Companies Act, 2013. Also that, the 'Appellant' / 'Corporate Debtor', cannot be permitted to go scot-free, when there is an involvement of Public money, to an extent of Rs.3,400/- Crores.

50. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, contends that the 'Appellant', had pleaded that the 'Sum', mentioned in the 'Balance Sheet', is different from what was 'Claimed', under Section 7 of the 'Application'.

51. According to the 1<sup>st</sup> Respondent / Bank, even assuming without admitting, that the 'Sum Claimed', by the 'Bank', is an 'incorrect' one, the same is beyond a 'threshold of Rs.1 Crore, fixed under the I & B Code, 2016. As a matter of fact, the Appellant, had admitted the 'Liability' / 'Default', to the extent of Rs.103 Crores, in the Balance Sheet (vide Page 362 of the Appeal Paper Book – Vol. II of the Appellant dated 27.06.2023).

52. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, refers to the 'Notes to the Financial Statements', for the year ended 31.03.2016 (vide Page 358 of Vol. II of Appellant's Appeal Paper Book dated 27.06.2023), wherein, under the Head, 'Note on CDR' - (h), (i), (j), (k) and (l), reads as under:

*“(h) Fresh Term Loan termed as Priority Debt (PD) was sanctioned to the tune of Rs.90.00 Cr. (disbursed Rs.57.77 Cr.) which is repayable over 3.25 years from COD.*

*(i) The CDR Package sanctioned by the banks in July 25, 2013, could not be implemented as per the sanctioned terms by the banks and correspondingly the banks have revoked the CDR Package in December 2014.*

*(j) The company has defaulted in paying the outstanding dues to the banks & all the Loan Accounts with banks became NPA and all the banks issued the Statutory notice U/s 13(2) of The Securitization and Reconstruction of Financial*

*Assets and Enforcements of Security Interest Act, 2002, by August 2015 for recovery of outstanding dues from the company.*

*(k) All the Term Loans are shown under Note No.10 as Loans repayable on Demand*

*(l) Interest on Term Loans and Working Capital Loans amounting to Rs.103.25 Crores is not provided in the books of accounts of the company during the Financial Year 2015-16.’’*

53. Further, the Learned Counsel for the 1<sup>st</sup> Respondent / Bank, refers to Page 360 of Vol. II of the Appellant’s Paper Book dated 27.06.2023 – Notes to the Financial Statements for the Year ended 31.03.2016, wherein, under the Head `State Bank of India, it is mentioned as `Second Pari passu Charge’, on the following properties for Term Loans:

*(1) Office space situated at Plot No.21, Sector 1, HUDA Techno Enclave, Madhapur Village Serilingampally Mandal, R R District, admeasuring about 12792 Sq.ft. along with undivided Share of land 383.76 Sq. Yards, out of 2028.65 Sq. Yards and bearing S.Y.No. 64, standing in the name of Centromere Biosolutions Pvt. Ltd.*

*Office space situated at Plot No.21, Sector 1, HUDA Techno Enclave, Madhapur Village Serilingampally Mandal, R R District, admeasuring 12792 Sq.ft. along with undivided Share of land 383.76 Sq. Yards, out of 2028.65 Sq. Yards and bearing S.Y.No. 64, standing in the name of Seed Innovations Pvt. Ltd. (first charge with Axis Bank Ltd.).*

*Exclusive Charge on the following properties for all facilities:*

*(a )House no-8-2-268/A/16, Sriniketan Colony, Road No.03, Banjara Hills, Hyderabad in the name of Shri. P. Vidyasagar.*

*(b)Plot no.10A, Shree Balaji Colony, Gandhinagar in the name of Shri. P. Vidyasagar.*

*(c)Flat No.02, Ground Floor, Durga Apartments, Somajiguda, Hyderabad, in the name of Smt. P. Chandravathi.*

*(d) Plot No.56/3 & 56/1 at Jubilee Hills, Madhapur, Hyderabad, in the name of Smt. P. Chandravathi.*

*Others:*

*Corporate guarantee of Seed Innovations Private Limited and Centromere Biosolutions Pvt. Ltd.’’*

54. Besides the above, the Learned Counsel for the 1<sup>st</sup> Respondent / Bank, adverts to Page 362 of Vol. II of the Appellant's Paper Book dated 27.06.2023 – Notes to the Financial Statements for the Year ended 31.03.2016 in Serial No.10 ``Other Current Liabilities'', as at 31.03.2016, it was mentioned as Rs.3,552,689,277 and as at 31.03.2015, the amount was mentioned as Rs.3,549,435,061.'''

55. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, contends that the 'Appellant', had failed to note that every 'Acknowledgement of Debt', in the 'Balance Sheet', be it 2014 or 2015 or 2016, will extend the 'Limitation Period', from that period and as such, there is 'no bar of Limitation', as on 2016.

56. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, takes a stand that there is no requirement, under the 'Law', that the 'Sum Claimed' in the Balance Sheet, should exactly be the same, as 'Sum Claimed', by the 'Financial Creditor'.

57. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, contends that the 'Amended Application', was signed by Mr. Vijay Kumar, who was the Asst. General Manager, deriving his 'Authority', from 'Regulation 76 and 77 of the State Bank of India Regulations General Regulations, 1955. In

this connection, the Learned Counsel for the 1<sup>st</sup> Respondent / Bank, in support of his aforesaid contention, relies on the decision in State Bank of India v. Kashmir Art Printing Press, Sirsa and Ors. 1981 SCC Online P & H 37 : AIR 1981 PH 188, wherein, at Page 5, Paragraph 10, it is observed as under:

*10. `` I cannot lose sight of the fact that the State Bank of India has Branches all over the country and a special statute, namely, the Act, was framed for its working. The Banking transactions are taken up in every Branch Office and if one were to accept the argument of the defendants, even if suits can be filed within limitation after getting the sanction from the Central Board or the Local Board, at least the first appeals, which will lie before the District Judge, would always be time barred because I do not think it would be possible to get instructions from the Central Board or the Local Board to institute an appeal within the period of thirty days. ``*

58. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, cites to the decision in State Bank of India v. Earnest Traders Exporters, Importers & Commission Agents : 1997 (41) DRJ 659, wherein, at Page 2, Paragraph 7, it is observed as under:

*7. ``Thus, any Manager of the plaintiff bank would be fully authorised to sign and verify the pleadings and would also be entitled to institute the legal proceedings, for and on behalf of the bank. In this view I am supported by the decision of the Punjab & Haryana High Court in State Bank of India v. Kashmir Art Printing Press and others, (1983) 54 Comp Cas 56. ``*

59. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, refers to the decision in State Bank of India v. Essar Steel India Limited (C.P.No.(IB)



No.40/7/NCLT/AHM/2017), wherein, at Page 12, Paragraph 15, it is observed as under:

*15. ``In the above said two decisions, the Hon'ble High Courts, after considering Regulations 76 & 77 of the State Bank of India General Regulations, 1955 and Gazette Notifications, held that Manager of the Bank could be duly authorised to sign and verify the pleadings and also would be entitled to institute suits for and on behalf of the State Bank of India. In the case on hand, the officers who have signed in the Applications are above IV Grade. Therefore, the objection raised by the learned Senior Counsel for ESSAR regarding the competency of the person who signed the Application is not a valid objection. In view of the above discussion, Mr. Kshitij Mohan, Deputy General Manager is having valid authority to sign the Application and is competent to file the Application for and on behalf of SBI.``*

60. The Learned Counsel for the 1<sup>st</sup> Respondent / Bank, points out that while the exposure of the 1<sup>st</sup> Respondent / Bank, is about Rs.1,061/- Crores and the exposure of all the 'Financial Creditors', is about Rs.3,400/- Crores, and further, the 'Corporate Insolvency Resolution Process', is not only 'Beneficial', for the 'Creditors', at large, but also, for the 2<sup>nd</sup> Respondent, to revive and therefore, prays for the dismissal of the instant 'Company Appeal', preferred by the 'Appellant', to secure the 'ends of justice'.

**Contents of Status Report of 2<sup>nd</sup> Respondent / IRP:**

61. According to the 2<sup>nd</sup> Respondent / Interim Resolution Professional, he had received various 'Claims', from the 'Creditors' of the 'Corporate Debtor', and the same is mentioned as follows:

**I). Claims received from the 'Financial Creditors':**

<i>S.No.</i>	<i>Name of Creditor</i>	<i>Total Amount</i>
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		<b><i>Claimed (in Crores)</i></b>
1	<i>State Bank of India</i>	1061.15
2	<i>Punjab National Bank</i>	617.97
3	<i>IDBI Bank</i>	441.88
4	<i>Reliance ARC (Assignee of Kotak Mahindra Bank)</i>	434.47
5	<i>Axis Bank</i>	339.19
6	<i>Peagusus ARC (Assignee of Indusind Bank)</i>	184.87
7	<i>Bank of Nova Scotia</i>	105.94
8	<i>Barclays Bank</i>	101.46
9	<i>State Bank of Mauritius</i>	91.73
10	<i>Edelweiss ARC (Assignee of L &amp; T Infra Finance Co. Ltd.</i>	83.51
	<b><i>TOTAL</i></b>	<b>3462.18</b>

**II). Claims received from the 'Operational Creditors':**

<b><i>S.No.</i></b>	<b><i>Name of Creditor</i></b>	<b><i>Total Amount Claimed (in Crores)</i></b>
1	<i>Shrinath Rotopack Pvt. Ltd.</i>	3.12
2	<i>KMV Projects Ltd</i>	2.19
3	<i>Yash Agrotech</i>	1.81
4	<i>Sivasakthi Agro Hybrid Seeds</i>	1.18
5	<i>Priyal Seeds (Prop. Rajesh Patel)</i>	0.97
6	<i>Walsons Services Pvt. Ltd.</i>	0.70
7	<i>Green Crop Agro Agency</i>	0.57
8	<i>Swastik Agro Agency</i>	0.45
9	<i>SBI CAP Trustee</i>	0.48
10	<i>Codak Printers</i>	0.07
11	<i>Transport Corporation of India Ltd.</i>	0.05
12	<i>ESIC, Hyderabad</i>	0.03
	<b><i>TOTAL</i></b>	<b>11.62</b>

62. On behalf of the 2<sup>nd</sup> Respondent / IRP, it is brought to the notice of this 'Tribunal' that the 'Total Claims' of both the 'Financial Creditors' and the 'Operational Creditors', comes to Rs.3,473.8/- Crores, which reflects the magnitude of the problem in the 'Corporate Debtor', which is huge and

further that the 'Corporate Debtor', is not a going concern and that the 'Manufacturing Operations' of the 'Corporate Debtor', are stopped.

63. It is represented on behalf of the 2<sup>nd</sup> Respondent / IRP, that the 'Corporate Debtor', had not filed its 'Annual Returns' for the past two years and in fact, the 'Interim Resolution Professional', had sent a mail on 14.06.2023, to the 'Appellant' / 'Suspended Director', with a request, to provide 'documents / vital information', relating to the 'Corporate Debtor', required initially, for the purpose of taking control and custody of the 'Assets' of the 'Corporate Debtor'. Although, the 'Interim Resolution Professional', had sent emails to the 'Statutory Auditors' of the 'Corporate Debtor', requesting the 'Financial Statements', for the Financial Year 2020-21 onwards, along with various 'allied information', he had not received the 'requisite information', till date.

64. It is pointed out by the 2<sup>nd</sup> Respondent / IRP that the 'Representatives' of the 'Interim Resolution Professional', after mutual affirmation, had determined to visit the 'Registered Office', 'Manufacturing Units' and 'Properties' of the 'Corporate Debtor', on 23.06.2023, and took 'possession of numerous Assets', 'Properties' and 'Facilities' of the 'Corporate Debtor', and appointed the 'Security Personnel'.

65. The Learned Counsel for the 2<sup>nd</sup> Respondent / IRP, submits that the 'Interim Resolution Professional', had filed an 'Application', before the 'Adjudicating Authority' / 'Tribunal', under Section 19(2) of the I & B Code, 2016, seeking necessary directions, to be issued to the 'Suspended Directors' (vide Diary / Filing No.3607130 / 01659 / 2023) and because of the 'Order', passed by this 'Tribunal', for 'Deferment' of the 'impugned order', the '2<sup>nd</sup> Respondent / IRP', has not moved the said 'Application', thereafter.

66. The Learned Counsel for the 2<sup>nd</sup> Respondent / IRP, points out that the 'Total Outstanding Sum', dues of the 'Corporate Debtor', is more than Rs.3,400/- Crores, as per the 'Claims', received and further that the 'Appellant' / 'Suspended Board', is intentionally not revealing or disclosing the 'Records', since, the same would have adverse implications on the 'Corporate Debtor'.

67. The Learned Counsel for the 2<sup>nd</sup> Respondent / IRP, contends that the 'Corporate Debtor', requires a 'Comprehensive Resolution', and therefore, prays for 'allowing' the 'Order' of 'Admission' of the 'Adjudicating Authority' / 'Tribunal', in admitting the 'Corporate Debtor' in the

`Corporate Insolvency Resolution Process', and to `dismiss', the instant `Appeal', preferred by the `Appellant'.

**Features of I & B Code, 2016:**

68. An `Application', under Section 7 of the I & B Code, 2016, is to be considered by an `Adjudicating Authority' / `Tribunal', on its own merits, taking into account of the `available materials on record'. It is not the `property', which is at the `root' of the `Code', and it is the `cash liquidity', which is the `foundation', for triggering the `Corporate Insolvency Resolution Process'.

69. An `Application', under Section 7 of the Code, is not to be turned down, by an `Adjudicating Authority' / `Tribunal', just on `technical grounds'. The reason for inability of a `Corporate Debtor', to pay its `Debt', is not to be looked into, by an `Adjudicating Authority' / `Tribunal', while dealing with an `Application' (Filed by a `Financial Creditor', under Section 7 of the I & B Code, 2016). To put it differently, the `situation / circumstances', under which, a `Corporate Debtor', could not `repay', the `Financial Debt', need not be taken as a `Defence', in a proceeding, under the `Code'.

70. The `Adjudicating Authority' / `Tribunal', need not wait for the determination, to be made by the `Debt Recovery Tribunal'. Although,

`Debt', is `Disputed', if the `Amount', is more than `Rs.1 Lakh' (`Rs.1 Crore', after `amendment', to the `Code'), the `Application', under `Section 7', is `maintainable in Law'.

71. To be noted, the `Adjudicating Authority' / `Tribunal', is not a `Civil Court', to determine the `Violation of Contract', between the `Parties'. A mere dispute, about the `Quantum of Payment', does not affect the `Right of a Financial Creditor', to initiate `appropriate proceedings', under the I & B Code, 2016. Under the Code, the shift is `inability to pay', to the `existence of Default'. Merely because a `Financial Creditor', has approached the `Debt Recovery Tribunal', for `an appropriate relief', it cannot be said that, it cannot proceed under the `I & B Code' 2016.

**Discretion:**

72. Indeed, the term `Discretion', when applies to a `Court of Justice', means, `Sound Discretion', guided by `Law'. In this connection, this `Tribunal', worth recalls and recollects the Judgement of the Hon'ble Supreme Court of India dated 22.02.1967 (vide Civil Appeal No. 1038 of 1965), in S.G. Jaisinghani v. Union of India & Ors., , reported in India Kanoon, AIR 1967 SC 1434, wherein, it is observed as under:

*``..... Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes(2), "means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague and fanciful."*

73. The word 'Discretion', is a 'Science of Understanding', to 'discern', between 'falsity' and 'truth', between 'right' and 'wrong', between 'shadows' and 'substance', between 'Equity' and 'Colourable Glasses', and 'Pretences', and not according to Men's 'wills' and 'private affections'.  
[Lord Edward Coke, *Rooke's case* (1598) 5 rep 99 (b)]

**Admission:**

74. An 'Admission', is a 'self harming' (if not, a 'self serving') one, and it is a 'piece of evidence', in 'Law'. An 'Admission', is 'Confession' or a 'Voluntary Acknowledgement', made by a 'Party' or 'someone identified with him', in 'legal interest', of the existence of certain facts, which are in 'issue' or 'relevant to an issue', in the case, as per decision in *Ajodhya Prasad Bhargava v. Bhawani Shanker Bhargava*, reported in AIR 1957 All Page 1 at Spl. Pg: 11 (FB).

75. Also that, 'Admission', is the 'species' and 'confession' is 'sub-species', as per decision of the Hon'ble Supreme Court of India, in the matter of *Saghoo v. State* AIR 1966 SC Page 40.

**Acknowledgement:**

76. An 'Acknowledgement of Liability', is to be in 'Writing', signed by a 'Party', against whom, the 'Property' or 'Right', is claimed, and the same is to be within the 'Limitation Period'. An 'Acknowledgement', must relate

to an 'Existing Liability', as per decision Rangasami v. Thangavelu, 42 Mad 637.

77. It cannot be brushed aside that the statement on which an 'Acknowledgement Plea', is resting upon, need not amount to 'promise' and need not include the 'exact nature' of the 'liability', as per decision of Hon'ble Supreme Court of India in Lakshmiratan Cotton Mills Co. Ltd. v. Aluminium Corporation of India Ltd., AIR 1971 SC Page 1482.

78. In Law, an 'Acknowledgement', extends the 'Period of Limitation', as per decision P. Sreedevi v. P. Appu, AIR 1991, Ker 76. No wonder, the 'burden', lies upon the 'Creditor', to establish that an 'Acknowledgement', was made in time, as per decision Gur Saran v. Shib Singh, reported in AIR 1943 ALL 393 (FB).

**Appraisal:**

79. Before the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – I, Hyderabad'), the 1<sup>st</sup> Respondent / Bank, had filed an 'Application', in CP (IB) No. 645 / 7 / HDB / 2018 (under Section 7 of the I & B Code, 2016, r/w Rule 4 of the I & B (AAA) Rules, 2016), wherein, in Form I, under Part – IV ('Particulars of Financial Debt'), it is mentioned as under:



*Part-IV*

<i>PARTICULARS OF FINANCIAL DEBT</i>				
<i>1</i>	<i>Total amount of Debt granted</i>	<i>Total Debt Granted &amp; Disbursed by State Bank of India</i>		
		<i>Nature of facility by SBI</i>	<i>Debt Granted Rs. in crores</i>	<i>Debt Disbursed Rs. in crores</i>
	<i>Total disbursed amount.</i>	<i>Cash Credit</i>	79.85	79.85
		<i>Corporate Loan</i>	50.00	50.00
		<i>Term Loan 1</i>	6.75	6.75
		<i>Term Loan 2</i>	47.00	35.58
		<i>Working Capital Term Loan</i>	19.46	19.46
		<i>Priority Debt</i>	19.89	19.89
		<i>FITL</i>	19.68	19.68
		<i>Total Fund Based</i>	242.63	231.21
		<i>EPCG BG</i>	0.00	0.00
		<i>Total NFB</i>	0.00	0.00
		<i>Total Exposure</i>	242.63	231.21
	<i>Date(s) of disbursement</i>	<i>Nature of facility</i>	<i>Dates of disbursement</i>	
		<i>Cash Credit</i>	30.04.2011	
		<i>Corporate Loan</i>	15.04.2011	
		<i>Term Loan 1</i>	12.07.2011	
		<i>Term Loan 2</i>	30.06.2011	
		<i>Working Capital Term Loan</i>	27.09.2013	
		<i>Priority Debt</i>	27.09.2013	
		<i>FITL</i>	27.09.2013	
		<i>EPCG BG</i>	---	
<i>2.</i>	<i>Amount claimed to be in default as on 31.08.2018 and the</i>	<i>Nature of facility</i>	<i>Account No.</i>	<i>Amount claimed to be in default SBI</i>
		<i>Cash Credit</i>	31725043394	1442785322.14
		<i>Corporate Loan</i>	31710363445	461507456.38
		<i>Term Loan 1</i>	31829601852	58000404.15
		<i>Term Loan 2</i>	31810754741	302574813.06
		<i>Working Capital Term Loan</i>	33334205427	341728402.90
		<i>Priority Debt</i>	33334614702	345890831.56
		<i>FITL</i>	33334493275	317885271.62
		<i>EPCG BG</i>	---	---

	<i>TOTAL (A)</i>		<i>3270372501.81</i>
<i>Date on which the default occurred*</i>	<i>* The accounts of the unit were classified NPA w.e.f. 30.04.2013 due to failed restructuring as per the provisions of classification of IRAC issued by Reserve Bank of India. Copy of the Statement of Account is filed herewith as Annexure No.2 (Page No.2 to 68)</i>		

80. Before the 'Adjudicating Authority' ('National Company Law Tribunal', Bench – I, Hyderabad'), the 'Corporate Debtor' / 'Vibha Agro Tech Limited', had filed a Counter to main CP (IB) No. 645 / 7 / HDB / 2018, among other things (vide Paragraph 8), stating that, due to unforeseen circumstances which were beyond its control, there were delayed payments made to the seed organisers, and added to the calamity, the 'Bankers', had not supported the 'Corporate Debtor', even after giving specific assurances of support, and added further, the loss of Seeds Inventory, had resulted in significant losses to the 'Corporate Debtor', which eroded its complete Networth and Rs.85 Crores dues for Seed Producing Farmers in Gujarat, Telangana, AP, Karnataka and Maharashtra got affected impacting 65,000 farmer families of their livelihood, the Banks (including the Financial Creditor), were bent upon 'liquidating the assets of Corporate Debtor', to recover their dues, which was not even 10% of their dues, leaving farmers' dues, workmen's dues and statutory dues'.

81. In this connection, this 'Tribunal', relevantly points out that the 'Corporate Debtor', in its 'Counter', before the 'Adjudicating Authority' / 'Tribunal' to the main CP (IB) No. 645 / 7 / HDB / 2018 (Filed by the 1<sup>st</sup> Respondent / Bank / Financial Creditor, vide Paragraph 11), had mentioned that to the 'Show Cause Notices', issued on 20.08.2016 and 26.03.2018, by the 'Bank', the 'Promoters', gave a 'reply', stating that the 'Default', took place, because of the 'natural calamities', and failure to 'sanction WC Limits', by the Banks', 'failure of ill designed 'CDR', 'SBI CAPS', under the influence of 'State Bank of India', without considering seasonality of the 'Business' of the 'Corporate Debtor'.

82. Apart from the above, the 'Corporate Debtor', had pointed out in its 'Counter' (before the 'Adjudicating Authority'), that the 1<sup>st</sup> Respondent / Bank / Financial Creditor, had approached the 'Debt Recovery Tribunal', to recover the 'Debt', alleged even in the present 'Petition' (before the 'Adjudicating Authority', and because of the disputed facts, the 'Claims' and 'Counter Claims', the matter could not be decided in a 'Summary Proceedings', under the I & B Code, 2016. In Short, the parallel proceedings, projected by the '1<sup>st</sup> Respondent / Bank / Financial Creditor, is an 'Abuse of Process of Law', and hence, prayed for 'rejection' of the 'Applicant'.

83. The 'Corporate Debtor' / 'Vibha Agro Tech Limited' ( before the 'Adjudicating Authority'), in its 'Additional Counter', had averred that the '1<sup>st</sup> Respondent / Bank', had filed various 'Certificates', purportedly under 'Section 2 (A) of the Bankers' Books Evidence Act, 1891', and that the 'Ledger Accounts' (not being 'Books of Original Entries'), cannot be accepted in evidence and not to be relied upon, except when the 'Bank', produces a 'Certified Copy', as per the 'Bankers' Books Evidence Act, 1891', particularly in fulfilment of the requirements of ingredients of Sections 2 (8), 2A and 4 thereto.

84. Not resting with the above, the 'Corporate Debtor', in its 'Additional Counter', had stated that the 'Statement of Accounts', furnished by the 'Bank', indicates that the 'rate of Interest', was '0.00% p.a.', whereas, on pages 4, 6, 8, 10, 12, 15 and 16, the 'rate of Interest', indicates, ranging from 11.60% to 13.75%, etc.

85. Coming to the plea of the Appellant, that this 'Tribunal', in Comp. App (AT) (INS.) No. 636 of 2020, between State Bank of India v. Vibha Agro Tech Limited on 23.08.2022, had 'allowed', the 'Appeal', 'set aside', the 'Order' of the 'Adjudicating Authority' / 'Tribunal', and remanded back the matter to the 'Adjudicating Authority', for reconsideration of the 'Amended Application' (Filed under Section 7 of the I & B Code, 2016),

at the instance of the 'Appellant', etc., and that in the instant case, the 'Doctrine of Relation Back', would not 'apply', to the facts of the present case, for the reason, that the Court which allowed the 'Amendment', expressly allowed it, subject to all the contentions, being open, to the 'Corporate Director' (including the plea of 'Limitation'), indicating thereby that there are no special or extra-ordinary circumstances, in the instant case, to warrant the 'applicability of Doctrine of Relation Back', so that, a 'Legal Right', that had accrued in favour of the 'Corporate Debtor', be taken away, this 'Tribunal', pertinently points out that the 1<sup>st</sup> Respondent / Bank (State Bank of India), before the Hon'ble Supreme Court of India, had filed Civil Appeal No.2264 of 2021, against the 'Vibha Agro Tech Limited' ('Corporate Debtor'), wherein, on 20.10.2021, an 'Order', was passed, in permitting the 1<sup>st</sup> Respondent / Bank ('Appellant'), to 'seek amendment of the Application under Section 7, so as to incorporate the case based on acknowledgement, as contained in the 'Balance Sheets', allegedly, of the Respondent, with costs of Rs.3 Lakhs, which was remitted by the 'Bank', on 05.11.2021, in the 'Account' of the 'Corporate Debtor'.

86. As a matter of fact, resting upon the aforesaid Hon'ble Supreme Court of India in Civil Appeal No. 2264 of 2021, the 1<sup>st</sup> Respondent / Bank, had filed IA No. 87 of 2022 in Comp. App (AT) (INS.) No. 636 of 2020

(before this `Tribunal`), which came to be `Allowed`, on 11.01.2022, pursuant to which, the 1<sup>st</sup> Respondent / Bank was permitted, to carry out the Amendment.

87. In this connection, this `Tribunal`, makes a pertinent mention that generally, an `Amendment` once `Allowed`, will relate back to the `Date of Filing of Petition / Complaint / Written Statement`, as the case may be.

88. To be noted, that the `Doctrine of Relation Back`, in the `context of pleading`, is not of `Universal Application`, the `Court` for reasons to be recorded, has `Jurisdiction`, to decide `whether an amendment`, would be from the `Date of Order` or would `Relate Back to the Institution of Suit`.

89. At this juncture, a mere running of the eye of the `Order` dated 11.01.2022, in Comp. App (AT) (INS.) No. 636 of 2020, passed by this `Tribunal`, latently and patently indicates that this `Tribunal`, had allowed IA No. 87 of 2022, seeking to take on record, the amended Section 7 Application, under I & B Code, 2016, and no pinpointed or specific condition was fastened by this `Tribunal`, at the time of `permitting the Amendment`, prayed for, by the 1<sup>st</sup> Respondent / Bank. It cannot be lost sight off, that there was no representation on the Corporate Debtor's side on 11.01.2022, when IA No. 87 of 2022 in Comp. App (AT) (INS.) No.

636 of 2020 was 'allowed', by this 'Tribunal', and it has attained 'finality', binding the 'inter se Parties'. Viewed in that perspective, this 'Tribunal', is of the earnest view that the 'Amendment', allowed by this 'Tribunal', in IA No. 87 of 2022 in Comp. App (AT) (INS.) No. 636 of 2020, on 11.01.2022, in crystalline manner, relates back to the filing of the Original Section 7 Application (dated 06.09.2018), on 12.09.2018, in CP (IB) No. 645 / 7 / HDB /2018, considering the fact that 'no fetter' / 'condition', was imposed, by the Hon'ble Supreme Court of India in Civil Appeal No. 2264 of 2021, filed by the 1<sup>st</sup> Respondent / Bank as an 'Appellant' or even by this 'Tribunal', when it 'allowed', the 'Amendment', on 11.01.2022. As such, the contra plea taken on behalf of the 'Appellant', that the 'Doctrine of Relation Back', will not 'apply', to the facts of the case, is 'unworthy of acceptance', as held by this 'Tribunal'.

90. As regards the Appellant's contention, that the 'Debt' is 'Time Barred', on the ground that the '1<sup>st</sup> Respondent / Bank / Financial Creditor', for the purpose of claiming extension of 'Limitation Period', can only rely upon the 'Balance Sheets' for the Financial Year 2013 – 14, 2014 – 15, signed on 16.08.2014 and 27.08.2015, respectively and no reliance can be placed upon the 'Balance Sheet' for the Financial Year 2015 – 16, signed on 27.08.2016, as the same was signed, after the 'Lapse' of 'Limitation'

period, from the 'Date of Default', this 'Tribunal', points out that the 'Date of Default', i.e., 30.04.2013 (Declaration of Corporate Debtor's Account as 'Non Performing Asset'), is not to be taken into account, because of the reason that there was a 'CDR Package', in place for 'Restructuring the Account of the 'Corporate Debtor', and that apart, a 'Master Restructuring Agreement', dated 26.09.2013, was executed between the 'Parties', but, the 'Restructuring', had failed on 31.01.2015, because of the repeated 'Defaults', made by the 'Corporate Debtor'.

91. Furthermore, in the instant case on hand, it must be borne in mind, that the 'Corporate Debtor', had availed the benefit of a 'Restructuring Exercise', on various occasions, had admitted the 'Debt', including by providing 'One Time Settlement Proposals', on 19.06.2015, 22.09.2017, 03.05.2019, 30.04.2021, 18.03.2021, 14.06.2021 and 26.07.2022 to the 1<sup>st</sup> Respondent / Bank. As such, this 'Tribunal', in an unequivocal term holds that the 'Date of Non Performing Asset' i.e., 30.04.2013, is not the 'Date of Commencement of Limitation'.

92. At this stage, this 'Tribunal', on perusing the 'Balance Sheet' of the 'Corporate Debtor' / 'Vibha Agro Tech Limited', in respect of the Financial Year 2013-14 (Balance Sheet as at 31.03.2014, signed on 16.08.2014, by the Partner of P. Murali & Co., Chartered Accountants, the Managing



Director and the Director of 'Corporate Debtor' / 'Vibha Agro Tech Limited'), Financial year 2014-15 (Balance Sheet as at 31.03.2015, signed on 27.08.2015, by the Partner of P. Murali & Co., Chartered Accountants, the Managing Director and the Director of the 'Corporate Debtor' / 'Vibha Agro Tech Limited'), significantly points out that there was an 'Acknowledgement of Debt', by the 'Corporate Debtor', in respect of the '1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner'. As such, the 'Limitation' period, is elongated, which is an 'unfavourable circumstance', against the 'Corporate Debtor and the Appellant'.

93. Likewise, in the 'Balance Sheet as at 31.03.2016' (for the Financial Year ending 31.03.2016, the Partner of P. Murali & Co., Chartered Accountants, the Managing Director and the Director of the 'Corporate Debtor' / 'Vibha Agro Tech Limited', had affixed their Signature on 27.08.2016, and in this Document (Balance Sheet), the 'Corporate Debtor', had acknowledged its 'Debt', in respect of the '1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner', and the same, extends the 'Limitation' period'. Therefore, from the 'Date of Non Performing Asset' i.e., 30.04.2013, in the present case, there are numerous 'Acknowledgement of Debts' right from the year 2014, and this 'Tribunal', in a cocksure fashion,

holds that there is 'no bar' of 'Limitation', as on 2016, and the point is so answered, against the 'Appellant'.

94. In so far as the plea of the Appellant that Section 7 Application, filed by the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner (under Section 7 of the I & B Code, 2016), that the same was filed before the 'Adjudicating Authority' / 'Tribunal', 'without proper Authorisation', this 'Tribunal', points out that in the teeth of Regulations 76 and 77 of the State Bank of India, General Regulations, 1955 & Gazette Notifications, the amended Application, was signed by one Mr. Vijay Kumar, who was the Asst. General Manager of the 'Bank', who derived his authority from the aforesaid Regulations, and therefore, he was authorised, to verify and sign the pleadings. Also that, the IA No. 87 of 2022 in Comp. App (AT) (INS.) No. 636 of 2020, was 'allowed', by this 'Tribunal', on 11.01.2022, and admittedly, the same become 'Final', 'Conclusive' and 'Binding', between the 'Parties'. As a matter of fact, the 1<sup>st</sup> Respondent / Bank, had filed the 'Amended Section 7 Application', of the I & B Code, 2016, to initiate 'Corporate Insolvency Resolution Process', against 'Vibha Agro Tech Limited' ('Corporate Debtor'), before the 'Adjudicating Authority' / 'Tribunal' (pursuant to the 'Order' dated 20.10.2021, passed by the Hon'ble Supreme Court of India, in Civil Appeal No.2264 of 2021).

Therefore, this `Tribunal`, holds that the Section 7 Application (filed under the I & B Code, 2016), by the `1<sup>st</sup> Respondent / Bank`, was filed with `proper authorisation`, by the concerned `Officer / Authority` of the `Bank`, and the `contra plea`, taken on behalf of the `Appellant`, is `not acceded to`.

95. At this juncture, this `Tribunal`, worth points out that in an `exceptional case`, an `amendment`, can be `allowed`, which would have the effect of taking away from the `Defendant`, a `right` accrued to him, by an efflux of time, as per decision of the Hon'ble Supreme Court of India, in the matter of Shanti Kumar R. Canji v. The Home Insurance Co., reported in AIR 1974, SC 1719.

96. Dealing with the plea of the Appellant that the `Amendment Application`, in IA No. 87 of 2022 in Comp. App (AT) (INS.) No. 636 of 2020, was filed on 17.11.2021, much later than 27.08.2019, which is beyond the `Statutory period of 3 years` (in the light of alleged acknowledgements in Balance Sheets of the `Corporate Debtor`, was `Time Barred`, because of the fact that the `last acknowledgement`, as per the `Amended Application`, under Section 7, was 27.08.2016), and as such, the `impugned order`, passed by the `Adjudicating Authority` / `Tribunal`, based on the `Amendment Application`, is bad in `Law`, this `Tribunal,

points out that the CP (IB) No. 645 / 7 / HDB / 2018, dated 06.09.2018 (Filed by the 1<sup>st</sup> Respondent / Financial Creditor / Bank on 12.09.2018), and considering the fact that the Hon'ble Supreme Court of India, on 20.10.2021, in Civil Appeal No.2264 of 2021, had permitted the 1<sup>st</sup> Respondent / Bank ('Appellant' - Before the Hon'ble Supreme Court of India), to seek 'Amendment' of 'Section 7 Application', with a view to incorporate the case, based on the 'Acknowledgement', as contained in the Balance Sheets', allegedly of the 'Respondent / Corporate Debtor', keeping in mind of the fact that IA No. 87 of 2022 in Comp. App (AT) (INS.) No. 636 of 2020, was filed by the 1<sup>st</sup> Respondent / Bank, before this 'Tribunal', on 17.11.2021, and the same being 'allowed' on 11.01.2022, and later, on 23.08.2022, this 'Tribunal', had 'disposed of' the Comp. App (AT) (INS.) No. 636 of 2020 (filed by the 1<sup>st</sup> Respondent / Financial Creditor / Bank), by 'allowing', the said 'Appeal', by setting aside the 'impugned order', passed by the 'Adjudicating Authority', and remitted the matter back to the 'Adjudicating Authority', to reconsider the 'Amendment Application', filed under Section 7 of the Code, at the instance of the 'Appellant', etc., this 'Tribunal', bearing in mind a 'primordial fact' that, no condition was imposed, by the Hon'ble Supreme Court of India, while permitting the 'Amendment', comes to a consequent conclusion that it cannot be said that the 'Amendment', cannot relate back to the 'Date of Filing of the Petition',

coupled with the decision of the Hon'ble Supreme Court of India, in South Konkan Distilleries v. Prabhakar Gajanan Naik, (2008) 14 SCC 632, to the effect that the 'Amendment Allowed', relates back to the 'Date of Filing of the Suit', and without any 'simmering doubt', this 'Tribunal', holds that the 'Amendment', in the 'Petition', relates back to the 'Filing of the main Petition in CP (IB) No. 645 / 7 / HDB / 2018' (dated 06.09.2018 – but, filed on 12.09.2018), and as such, the 'contra plea', taken on behalf of the 'Appellant', is negated, by this 'Tribunal'.

97. In regard to the plea of the Appellant that the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner', cannot place reliance upon the 'Balance Sheet' for the Financial Year 2015-16, signed on 27.08.2016, as the same is post the 'Period of Limitation', from the 'Date of Default' i.e., 30.04.2013 ('NPA'), this 'Tribunal', points out that the provisions of 'Non Performing Asset', relates to 'Debt Recovery Tribunal' proceedings (the 1<sup>st</sup> Respondent / Bank, against the 'Corporate Debtor', had filed OA No.2256 of 2017 (Old No. 417 of 2016), before the 'Debt Recovery Tribunal', Hyderabad), and it has nothing to do with the I & B Code, 2016, in the considered opinion of this 'Tribunal'.

98. A 'Balance Sheet', is a 'Characteristic / Sacred Document', of a 'Company'. After the 'Balance Sheet', is prepared, the 'Auditors', have to

`certify' that the `Filings', contained therein, are in `conformity', with the `Entries', in the `Books', which are regularly maintained and have been examined, by them.

99. A `Balance Sheet' of a `Company', showing a certain `Debt', which included the `Debt', due to a `Shareholder', `Creditor', is sufficient evidence of an `Acknowledgement of Debt', due to the `Creditor'.

100. It is pointed out that Section 129 of the Companies Act, 2013, deals with the `Financial Statement', and Section 137 of the Act, pertains to `Filing of Copy of Financial Statement', with the `Registrar of Companies'. Indeed, `Rule 12 of Companies (Accounts) Rules, 2014, lays down the manner of `Filing Financial Statements', and `Fees', to be paid thereon.

101. It is to be remembered, that the `Date on which, the Balance Sheet', is `approved', in the `Board Meeting', and signed by the `Two Directors', as per the Companies Act, is `sufficient acknowledgement', for the purpose of `Limitation Act'. Also that, where the `Balance Sheets', is signed by the several `Directors', several months, after the `Balance Sheet' date, the `Acknowledgement of Debt', shown in the `Balance Sheet', can

relate back to the 'Balance Sheet' date and not the 'Date', on which, the 'Directors' signed it.

102. A 'Statement in a Balance Sheet', where, in the 'List of Creditors', the 'Liability', is 'accepted', by the 'Company', and if there is no 'Dispute', about the 'Liability', it clearly amounts to an 'Acknowledgment of Liability', as per decision in Sheetal Fabrics v. Coir Cushions Ltd., reported in 2005 (120) DLT 693.

103. At this stage, this 'Tribunal', points out that in Rishi Pal Gupta v. S.J. Knitting & Finishing Mills Pvt. Ltd., reported in 1998 (73) DLT, it is held, that in view of the aforesaid 'Acknowledgement of Debt', in 'Balance Sheet', as also in 'Reply', sent by the 'Respondent', through one of its 'Directors', constitutes an 'acknowledgement in writing', within Section 18 of the 'Limitation Act'.

104. Further, this 'Tribunal' points out in the decision of the Hon'ble Supreme Court of India in Mahabir Cold Storage v. Commissioner of Income Tax, Patna, reported in AIR 1991 SC 1357, it is observed and held that the 'Entries', in 'Books of Accounts' of the 'Appellant', would amount to an 'acknowledgement of liability', within the meaning of Section 18 of

the Limitation Act, and extend the 'Limitation Period', for the 'discharge of liability', as 'Debt'.

105. In the decision of Hon'ble Supreme Court of India in A.V. Murthy v. B.S. Nagabasavanna AIR 2002 at Page 985, wherein, it is observed that 'if the amount borrowed by the Respondent', is shown in 'Balance Sheet', it may amount to an 'acknowledgement', and the 'Creditor', might have a 'fresh period of Limitation', from the 'date on which', an 'acknowledgement', was made.

106. It cannot be gainsaid that if a 'Debtor', 'acknowledge', receiving the 'Payment', but, chose to amuse itself, by 'denying' the 'liability', the 'document', would still be 'one', that would keep the claim 'alive', within the 'ambit' of 'Section 18 of the Limitation Act, 1963'. Also that, if the 'Sum', borrowed by the Respondent, is shown in the 'Balance Sheet', it may amount to an 'acknowledgement', and the 'Creditor', might have a 'fresh Period of Limitation', on the date on which, an 'acknowledgement', was made.

107. At this stage, this 'Tribunal', aptly points out the decision of the Hon'ble Supreme Court of India, in Syndicate Bank v. R.Veeranna, reported in AIR SCW 138, wherein, it is observed and held, that the



Acknowledgement of Liability’, not only saves the ‘Limitation Period’, but also, gives ‘cause of action’, to the plaintiff, to rest its ‘Claim’.

108. As a matter of fact, the ‘Balance Sheets’ of the ‘Corporate Debtor’, dated 16.08.2014, 27.08.2015 and 27.08.2016, the 1<sup>st</sup> Respondent / Bank, unerringly points out the ‘admission’ of ‘acknowledgment of liability’, and therefore, it is established on the part of the 1<sup>st</sup> Respondent / Bank that its ‘Claim’, made in ‘Section 7 Application’, in CP (IB) No. 645 / 7 / HDB / 2018, dated 06.09.2018, but filed on 12.09.2018 (before the ‘Adjudicating Authority’ / ‘Tribunal’), is ‘not a Time Barred’ one.

109. In the instant case on hand, this ‘Tribunal’, points out on 31.08.2018, going by the ‘Application’ (Filed by the 1<sup>st</sup> Respondent / Financial Creditor / Bank / Petitioner, under Section 7 of the Code, vide CP (IB) No. 645 / 7 / HDB / 2018), the ‘Sum’ claimed to be in ‘Default’, was Rs.327,03,72,501.81/- (vide Page 76 of the Appellant’s Appeal Paper Book, Vol-I, Form-I, Part IV - ‘Particulars of Debt’, at Page 79), from the ‘Corporate Debtor’ / ‘Vibha Agro Tech Limited’. According to the 1<sup>st</sup> Respondent / Bank, the ‘Outstanding Sum’, claimed before the ‘Interim Resolution Professional’, is Rs.1,061.15 Crores.

110. It is the version of the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner, that the 'Total Sum', claimed by all the 'Financial Creditors', is around Rs.3,400/- Crores. Further, according to the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner, the Punjab National Bank and IDBI Bank, had termed the 'Appellant', as a 'Wilful Defaulter', besides the 'Corporate Debtor', was declared as 'Fraud', by the 'Bank', on 31.07.2019. Besides these, it is brought to the notice of this 'Tribunal', on behalf of the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner that the 'Appellant', is the same 'Director', who have furnished the seven 'One Time Settlement Proposals' periodically, ranging from 19.06.2015 till 26.07.2022.

111. One cannot remain in oblivion of a vital fact that to commence a 'Corporate Insolvency Resolution Process' proceedings, by the 'Financial Creditor', against the 'Corporate Debtor' (under Section 7 of the I & B Code, 2016), the twin requirements, (a) Debt and (b) Default, are to be proved and once they are established, then, the 'Application', which is complete in all respects, is to be 'admitted', by the 'Adjudicating Authority' / 'Tribunal'.

112. Be that as it may, in the present case on hand, the 1<sup>st</sup> Respondent / Bank, had claimed a Sum of Rs.327,03,72,501.81/- as 'Debt', 'due and

payable’, by the ‘Corporate Debtor’, as on 31.08.2018 (vide in its Application in CP (IB) No. 645 / 7 / HDB /2018, before the ‘Adjudicating Authority’ / ‘Tribunal’), this ‘Tribunal’, keeping in mind of the ‘primordial fact(s)’ the ‘Corporate Debtor’, had tacitly ‘Acknowledged’, its ‘Debt’ / ‘Liability’, in its ‘Balance Sheets’, for the Year ending 2013-14 dated 16.08.2014, for the Year ending 2014-15 dated 27.08.2015 and for the Year ending 2015-16 dated 27.08.2016, the same being ‘not Barred by Time’, taking note of the entire conspectus of the facts and circumstances of the present case, in an encircling manner, and exercising its subjective discretion, comes to a resultant conclusion that the aspect of ‘Debt and Default’, committed by the ‘Corporate Debtor’, have been duly proved by the ‘1<sup>st</sup> Respondent / Bank’. Viewed in that perspective, the ‘impugned order’, dated 05.06.2023, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Bench – I, Hyderabad) in CP (IB) No. 645 / 7 / HDB / 2018), in ‘admitting’ the ‘Section 7 Application’ (Filed by the 1<sup>st</sup> Respondent / Bank / Financial Creditor / Petitioner), is free from any ‘Legal Infirmities’. Accordingly, the instant ‘Appeal’ fails.

### **Conclusion:**

In fine, the instant Comp. App (AT) (CH) (INS.) No. 184 of 2023 is ‘dismissed’. No costs. The ‘Interim Order’, dated 28.06.2023, granted by

this `Tribunal`, shall stand `Vacated`. The connected IA No. 587 of 2023  
(`For Direction`) and IA No. 588 of 2023 (`For Exemption`) are `Closed`.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

**N.B.:**

This judgment, is delivered on behalf of the  
Hon'ble Bench, in terms of Rule 92 of NCLAT,  
Rules, 2016.

16 /10 / 2023

SR / TM