Koncentric Investments Limited & Anr vs Standard Chartered Bank & Anr on 27 January, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 911 of 2021

(Arising out of Order dated 06.10.2021 passed by National Company Law Tribunal, Mumbai Bench, Court-III in C.P. No. 4468/IBC/MB/2018).

IN THE MATTER OF:

1. Koncentric Investments Ltd.
A Company incorporated under Laws
of Mauritius having its office at
Manor House, 1st Floor, Corner Street
George/Chazal Street, Port Louis, Mauritius

2. Prakash Khubchandani
Adult, Indian Inhabitant, having his residence
At 115, Madhuli, Dr. Annie Besant Road,
Worli, Mumbai 400 018 being a Member of the
Suspended Board of Directors of
Khubchandani Hospitals Pvt. Ltd.,
Having its registered office at 508,
Ceejay House Anni Besant Road, Worli,
Mumbai 400018 ...Appellants

Versus

1. Standard Chartered Bank, London
A body corporate incorporated under the
Royal Charter 1853, having its registered
Office in India at CRESCEND 7th Floor,
C-38/39, G Block, Bandra-Kurla Complex,
Bandra (E) Mumbai 400051, Maharashtra
India

2. Mr. Anshuman Chaturvedi
Insolvency Professional, Registration No.:
IBBI/IPA-001/IP-P00158/2017-18/10327
Having his address at 211, 2nd Floor,
Janki Centre, Off. Veera Desai Road,
Andheri (WEST) Mumbai 400053 ...Respondents

Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kunal Mehta, Mr. Kunal Cheema, Mr. Gautam Sahni, Mr. Vividh Tandon, and Mr. Apoorv Shukla, Rajshree Chaudhary, Ms. AnkitaVed, Kaazvin Kapadia, Prabhleen

Kaur, Ishita Farsaiya, Advocates.

Respondents: Mr. S. Niranjan Reddy, Sr. Advocate with Mr. Shyam Kapadia, Mr. Divyam Agarwal, Mr. Varghese Thomas, Ms. Pallavi Kumar, Mr. Abhishek Sharma and Ms. Fatema Kachwalla, Advocates for R-1.

Mr. Murtaza Kachwalla and Ms. Bhavika Deora and S.M. Algaus, Advocates for R-2.

JUDGEMENT

Ashok Bhushan, J:

1. This Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'Code') challenging the Order dated 06.10.2021 passed by Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-III) admitting the Application being CP. No. 4468/IBC/MB/2018 under Section 7 filed by the Respondent-Standard Chartered Bank, London.

2. The brief facts of the case and sequence of the events necessary to be noted for deciding this appeal are:

Appellant-Koncentric Investments Limited, A Company incorporated under the Companies Act, 1956 entered into a Facility Agreement dated 22nd May, 2013 with Respondent No. 1-Standard Chartered Bank, London for disbursal of a Loan up to an amount USD 49 Million as an external commercial borrowing.

In Amendment and Supplemental Agreement dated 19th August, 2013 the Facility Agreement was revised for an amount of USD 45 Million only and amount of USD 15 Million was disbursed to the Corporate Debtor in three tranches of USD 5 Million each only on 30th August, Company Appeal (AT) (Insolvency) No. 911 of 2021 2013, 31st October, 2013 and 31st December, 2013. Certain part- payments were made by the Corporate Debtor towards interest due in each tranches until 15th May, 2017 after which no payment towards interest was made. The payment of interest amount which became due on 30th June, 2015 was not paid by the Corporate Debtor. The first principal instalment became due for repayment on 30th November, 2015.

Financial Creditor-Standard Chartered Bank, London (hereinafter referred as 'Financial Creditor') wrote a Letter dated 24th November, 2015 seeking permission of the Reserve Bank of India to accelerate the facility. The Reserve Bank of India vide

Letter dated 07.12.2016 granted its No Objection Certificate regarding acceleration of facility. The Financial Creditor issued an Acceleration Notice dated 05.01.2017 in accordance with Clause 5.8 of the Facility Agreement cancelling the facility and declaring that all monies outstanding under the facility has been immediately due and payable. In reply to Acceleration Notice dated 05th January, 2017 neither any response was given by the Corporate Debtor nor any payment was made. On 11th June, 2018 Default Notice was issued by Financial Creditor demanding payment of outstanding amounts. On 28th November, 2018 the Financial Creditor filed an Application under Section 7 of the Code claiming an amount of USD 18,194,742.69/- as on 31st October, 2018. In the Application under Section 7 of the Code, computation of amount of default was made as on 31st October, 2018. In the Company Appeal (AT) (Insolvency) No. 911 of 2021 Application at Part-IV 'Particulars of Financial Debt', the 'Registered Mortgage' dated 26th June, 2013, 'Share Pledge Agreement' dated 15th June, 2013, Facility Agreement dated 22nd May, 2013 and various documents to prove the existence of debt were filed along with the Application. The Corporate Debtor filed Miscellaneous Application No.613/2019 challenging the maintainability of Section 7 Application on the ground that same is barred by limitation and each of the Facility Documents are insufficiently stamped. The Corporate Debtor also filed a Reply to Section 7 Application to which a Rejoinder has also been filed by the Financial Creditor. Both the parties filed their Written-Submissions before the Adjudicating Authority and were heard and by Order dated 06.10.2021 admitted the Section 7 Application. Ld. Adjudicating Authority held that Application under Section 7 is not barred by time. Adjudicating Authority initiated Corporate Insolvency Resolution Process with default date 30th November, 2015 when the first instalment of principal was payable and the petition having been filed on 29.11.2018 was well within three years from the date of default.

This Appeal has been filed by Appellant No. 1-Promoter/Shareholder of the Corporate Debtor and by Appellant No. 2- a Member of the Suspended Board of Directors of Khubchandani Hospitals Pvt. Ltd. These Appellants being aggrieved by the Impugned Order has come by this Appeal and has challenged the impugned order on various grounds.

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3. We have heard Mr. Ramji Srinivasan, Sr. Advocate for the Appellants and Mr. S. Niranjan Reddy, Sr. Advocate for the Respondent No. 1-Standard Chartered Bank, London.

4. Mr. Ramji Srinivasan, Sr. Advocate for the Appellant submits that limitation for filing an Application under Section 7 of the Code is the date when the right to apply accrues. Admittedly the amount of interest which was payable on 30th June, 2015 was not paid by the Corporate Debtor hence right to apply accrues to the Bank since the Bank could have filed the Application within three years i.e. by 30th June, 2018

and the Application filed on 28th November, 2018 i.e. more than three years from the date of default is clearly barred by time. The date on which Corporate Debtor committed default on payment of interest due is 30Th June, 2015. The date of default is the fixed date which cannot be changed due to non-payment of future instalments. There shall not be date of default with respect to default in each instalments. In Part-IV of the Application the date of default was not mentioned. The facility was granted on 22nd May, 2013 and repayment was to start after 27 months. Default of Interest and Default of Principal both are default within the meaning of Section 3(12) of the Code. Debt is defined under Section 3(11) of the Code consisting of both interest and principal amount although it is open for the Bank to file suit for recovery claiming only the debt which is not time barred but the Application under Section 7 filed on 28th November, 2018 is barred by time.

5. Even an interest default will trigger the right to apply for an application under Section 7 of the Code. The right to apply accrued on the Company Appeal (AT) (Insolvency) No. 911 of 2021 day when any part of the debt (including interest) stood due and payable and was not paid.

6. A plain reading of the object clause of IBC, makes it clear that IBC is enacted to ensure that there is early "identification" and "resolution" of the insolvency of the Corporate Debtors. If the interpretation sought to be given by the Respondent No. 1 is accepted, the same shall render the entire IBC otiose. It is precisely to plug the problem of delayed identification and resolution of insolvencies that IBC is enacted so as to achieve early and time bound resolution of Corporate Debtors.

7. It is further submitted that the Facility Agreement dated 22rd May, 2013 is unstamped document which cannot be looked for any purpose.

Stamping a document is for the purpose of revenue requirement of the Government which cannot be ignored.

8. Mr. S. Niranjan Reddy, 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 disbursal 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.

9. On submissions regarding the stamp duty, it is submitted by Learned Sr. Counsel for the Respondent that there is a Registered Mortgage Deed entered between the parties on 4th July, 2013 evidencing the Financial Facility. It is also submitted that the default can be accepted by Adjudicating Authority on the documents filed by Applicant without filing any registered document and stamped document as claimed by the Appellant. In the pleading, the Corporate Debtor has not denied taking up the financial facility. It is submitted that in pursuance of Invitation of Expression several expressions of interests have been received.

10. Mr. Ramji Srinivasan, 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, pre-requisites 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. Mr. Ramji Srinivasan, Sr. Advocate submits that the unstamped document could not be admitted in evidence and could not have been looked into for any purposes.

11. Learned Sr. Counsel for the parties have relied on various Judgments of Hon'ble Supreme Court and this Tribunal, we shall consider the same while considering the submissions in detail.

12. We need to first notice transactions of Facility Agreement dated 22nd May, 2013 entered into between the Financial Creditor and Corporate Debtor.

13. By the Facility Agreement, the Lenders had agreed to make available to the borrower a term loan facility for an amount of USD 49,000 million which was to be utilised in one or more utilisations each utilisation to be minimum of USD 5 million. Clause 5.8 provides for acceleration. According to Clause 6.1 the rate of interest applicable to the facility will be rate referred to in the Schedule 3 (Term Loan Facility). Rate of Interest on each utilisation was to be paid per annum. Clause 13 deals with default, non-payment is an event of default. When the borrower does not pay on the due date any amount payable pursuant to a finance document, event of default shall occur. Clause 13.1 provides for if an event of default occurs and is continuing after the applicable cured period the lender may take any action Company Appeal (AT) (Insolvency) No. 911 of 2021 in accordance with the Clause 5.8. Clause 5.1 deals with repayment. Clause 5.1 are as follows:

> "5.1 Repayment On the expiry of a period of 27 (Twenty-Seven) months from the first Utilisation Date (Moratorium Period of MP) the Borrower will repay the Facility in 14 unequal semi-annual instalments as per the below schedule (each a Payment):

Repayment Instalments Repayment instalment (as % of Total Amount (in USD Million) Commitments) 1% 0.49 At MP 1% 0.49 MP+6 months MP+12 2% 0.98 months MP+18 2% 0.98 months MP+24 5% 2.45 months MP+30 5% 2.45 months 7% 3.43 MP+36 months 7% 3.43 MP+42 months MP+48 9% 4.41 months 4.41 MP+54 9% months MP+60 12% 5.88 months MP+66 12% 5.88 months MP+72 14% 6.88 months Company Appeal (AT) (Insolvency) No. 911 of 2021 MP+78 14% 6.88 months

14. Amendment and Supplemental Agreement to the Facility Agreement was executed on 19th August, 2013 which had modified the original facility agreement table mentioned in Clause 5.1 as noted above was modified in following manner:

"2.2. The table mentioned in Clause 5.1-'Replayment' shall stand replaced as follows:

On the expiry of a period of 27 (Twenty-Seven) months from the first Utilisation Data (Moratorium Period or MP). The Borrower will repay the Facility 14 unequal semiannual instalment as per the below schedule (each a Repayment Instalment):

Repayment Instalment (as % of Total Commitments)	Repayment instalment Amount (in USD Millions)
1%	0.45
At MP 1%	0.45
MP+8 months	
2%	0.9
MP+12 months	
MP+18 2%	0.9
months	
MP+24 5%	2.25
months	
MP+30 5%	2.25
months	
MP+36 7%	3.15
months	
MP+42 7%	3.15
months	
MP+48 9%	4.05
months	

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15. Now, we come to the Section 7 Application filed by the Appellant which was filed in Form-1, Part-IV which deals with particulars of Financial Debt, the same are as follows:

1 Total amount of debt Total debt granted USD granted and date(s) of 15,000,000/- (United States Dollars disbursement Fifteen Million only) disbursed in three instalments of Rs. 5,000,000/-

(United States Dollars Five Million only) each.

Dates of Disbursement:

USD 5,000,000/- (United States Dollars Five Million Only) on August 30, 2013 (No. 001520597) USD 5,000,000/- (United States Dollars Five Million Only) on December 31, 2013 (No. 001692783) USD 5,000,000/- (United States Dollars Five Million Only) on December 31, 2013 (No. 001760894) Amount claimed to be in USD 18,194,742.69 United States 2 default and the date on Dollars Eighteen Million One which the default Hundred and Ninety.

occurred Four Thousand Seven Hundred Forty-Two and Sixty-Nine Cents only) as on October 31, 2018.

Enclosed herewith as "Annexure I-

C" is a copy of the workings for computation of amount and days of default as on October 31, 2018 in tabular form, commencing from November 30, 2015.

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16. We have noted Clause 5.1 as substituted by Amendment and Supplemental Agreement that repayment of loan was to start after expiry of 27months from the first utilisation data, Part-IV of the Section 7 Application clearly mentions that first disbursement was made of 5 Million USD on 30th August, 2013 and 27 months' period expires on 30th November, 2015. Thus, the first instalment which was to be paid of 0.45 USD Million was only on 30th November, 2015. The interest payment as per Facility Agreement was to be made per annum. Admittedly the interest due on 30th June, 2015 was not paid which is an admitted fact. 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. Mr. Ramji Srinivasan, 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 Section7 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.

17. Now, we may notice certain provisions of the Code in regard to above.

Section 3(11) of the Code defines 'Debt' and Section 3(12) defines 'Default' which are as follows:

"3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Company Appeal (AT) (Insolvency) No. 911 of 2021 3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;"

18. Section 7 (1) of the Code provides that a Financial Creditor may file an Application for initiating 'Corporate Insolvency Resolution Process' against the Corporate Debtor before the Adjudicating Authority when a default has occurred. The definition of Debt under Section 3(12) of the Code the expression used is 'Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid'. Default as statutorily defined to mean non-payment of debt when:

a. Whole or any part or instalment of the amount of debt has become due thus default shall be there within the meaning of Section 3(12) when either or whole or any part or instalment has not been paid.

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.

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19. The Application under Section 7 of the Code can be filed when a default has occurred. Thus, Application could have been filed by Financial Creditor on default of payment of interest on 30th June, 2018 but the mere fact that Financial Creditor did not choose to file Section 7 Application on committing of default with interest whether the Financial Creditor is precluded to file an Application when first instalment was due or when whole amount was due is the question to be answered. In the present case, as noted above, the first instalment of repayment became due only on 30th November, 2015 and even before that on 24th November, 2015 the bank had written to Reserve Bank of India

seeking permission to accelerate the facility which permission was given in the form of 'No Objection Certificate' issued by Reserve Bank of India on 07.12.2016. The Acceleration of Facility was done by letter dated 05.01.2017 of the Bank and thereafter the entire amount became due. The Application filed on 28th November, 2018 was well within three years as per below:

> a. Well within first instalment became due on 30th November, 2015 and;
>
> b. When entire loan became due after notice acceleration dated 05.01.2017 The Application under Section 7 is well within three years from above two defaults i.e. default of instalment and default for whole.

20. The Application under Section 7 is to be filed in Form-1 as per sub- rule 1 of Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority Rules) 2016 Part-IV requires Particulars of Financial Debt that Company Appeal (AT) (Insolvency) No. 911 of 2021 specifically requires "amount claimed to be in default and the date on which default occurred" if an application is filed within three years from the date on which default occurred the amount claimed shall be amount due and payable if the said Application is filed within three years from the date of default.

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.

22. 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. In paragraphs 30 and 42 following was laid down:

> "30. Shri Dholakia also referred to and relied upon Sections 60 and 61 of the Contract Act, which are set out hereunder:

> "60. Application of payment where debt to be discharged is not indicated.-Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor. Whether its recovery is or is not barred by the law in force for the time being as to the limitation on suits.
>
> 61. Application of payment where neither party appropriates.-Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately"

These sections also recognise the fact that limitation bars the remedy but not the right. In the context in which Section 60 appears, it is interesting to note that Section 60 uses the phrase "actually due and payable to him..." whether its recovery is or is not barred by the limitation law. The expression "actually" makes it clear that in fact a debt must be due and payable Company Appeal (AT) (Insolvency) No. 911 of 2021 notwithstanding the law of limitation. From this, it is very difficult to infer that in the context of the Contract Act, the expression "due and payable" by itself would connote an amount that may be due even though it is time-barred, for otherwise, it would be unnecessary for Section 60 to contain the word "actually" together with the later words, "whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits"

> 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.

Company Appeal (AT) (Insolvency) No. 911 of 2021 Hon'ble Supreme Court of India in 'B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates' [(2019) 11 SCC 633] has clearly laid

down that intention of the Code is not to give a new lease of life to debts which are time-barred. In [(2020)15 SCC 1] 'Babulal Vardhaji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.'same principle has been reiterated in Paragraph 35 which is to the following effect:

> "35. Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they enure to the benefit of respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as '8.7.2011 being the date of NPA'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No. 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part-V of the application and even in residuary Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgment or any other date of default."

23. We may also refer to Judgment of the 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 held that ordinarily date on which Account has been declared NPA is to be treated as date of default. In paragraph 43 following was laid down:

> Company Appeal (AT) (Insolvency) No. 911 of 2021 "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."

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24. In the above case, the amount was declared NPA of the borrower on 30th January, 2010 which was mentioned in Column 2 of Part-IV has been accepted by the Hon'ble Supreme Court itself and the Application was filed on 13th February, 2019 hence the Court held that the Application was barred by time. In the above case, recall notice was issued on 19th February, 2019 demanding total amount including interest and principle and amount was calculated from the date of default. IBC Proceedings are proceedings which are intended to be proceeding for Resolution of the insolvency of the Corporate Debtor, it is for the purpose that when a Corporate Debtor becomes insolvent, proceeding for resolution of insolvency may be commenced. If we accept the submissions of the Learned Sr. Counsel for the Appellant that on every first default even if it small fraction of loan, Financial Creditor has to rush to the IBC for initiating Insolvency Proceeding the same shall not be in accordance with the object of the Code. The Code is not recovery proceeding so as to on fraction of default a creditor rush to IBC Code. Financial Creditor can very well give little more time to borrower or to itself for coming to the conclusion that Corporate Debtor has apparently become insolvent although at the risk of forfeiting its right to claim amount which is barred by time.

25. To accept the submissions made by Learned Sr. Counsel for the Appellant, 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. 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 non-payment 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 can not 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 Sr. Counsel for the Appellant.

26. When an application is filed within three years from the date when whole amount became due it well within period of limitation. We may refer to a Full Bench judgment of Allahabad High Court reported in AIR 1952 Alld 900 'Sheo Lal and Ors. Vs. L Devi Das and ors.' where the Allahabad High Court had occasion to consider articles 181 and 182 of the Limitation Act, 1908 and following three questions were referred to:

> "32. It appears to us, therefore, that the decisions of this Court cannot be reconciled and, in our opinion, the case should be referred to a larger Bench in order that a final and authoritative decision may be given on the following questions:
>
> 1. Where a preliminary decree (or money allows instalment and provides that in case of default in payment of any specified number of instalments, the entire amount then remaining unpaid would become payable, whether the words "when the right to apply accrues" in the third column in Article 181, Limitation Act are confined to the first default or include every fresh accrual of the right to apply upon the happening of each successive default and limitation for applying for a final decree for the balance then due may be counted from the accrual of the last default?
>
> 2. Whether in such a case the right to apply for a final decree in respect of the instalments not barred by limitation as individual instalments, remains intact in spite of the omissions to take advantage of the default clause?
>
> 3. Whether the answers to the above two questions would be affected if the default clause instead of being worded as "the decree-holder shall have a right to apply," or "the decree-holder shall have the option to apply", is worded as "the entire decretal amount shall become payable," or "the Company Appeal (AT) (Insolvency) No. 911 of 2021 entire decretal amount shall become due", or, "the judgment-debtor shall pay the entire decretal amount", even though in all these cases the default clause be intended for the benefit of the decree-holder?

We, therefore, order that the case may be laid before the Hon'ble the Acting Chief Justice for the constitution of a Full Bench for a decision of the above questions.

27. The full bench answering the aforesaid three questions in Paragraph 37 laid down that the right to apply is intended to be right to apply for a particular cause of action there may be more than one cause of action. Paragraph 37 is as follow:

> 37. The Article of the Indian Limitation Act applicable to an application for the preparation of a final decree is 181. The period of limitation for the application is three years and it begins to run from the time "when the right to apply accrues." The right to apply may occur only once or may occur more than once. It will all depend upon the cause of action. It is an error to suppose that in all cases the right to apply can accrue only once. No doubt, for one particular cause of action the right to apply can accrue only once. But where there are different causes of action, or where after the accrual of one cause of action, another cause of action arises by reason of a change in the circumstances the right to apply can be said to arise upon the accrual of each of the causes of action.

For example, in respect of a preliminary decree payable by instalments when there is no defaults clause, as many applications for the preparation of a final decree can be made as there are instalments to be recovered. It cannot be that in such a case there should be only one final decree, for if an application for the preparation of a final decree is made after default is made in the last instalment, some of the earlier instalments may have fallen due more than three years earlier. Thus the first principle to be remembered is that when we speak of 'the right to apply', what is intended is the right to apply for a particular cause Company Appeal (AT) (Insolvency) No. 911 of 2021 of action bearing in mind always that there may be more than one causes of action under one decree."

28. The answer to the above three questions were given by Full-Bench in Paragraph 65 is to the following effect:

> "65. By the Court--The answers to the questions referred to the Full Bench are as below:
>
> 1. The words "when the right to apply accrues" in the third column in Article 181, Limitation Act must mean the first default giving rise to the particular cause of action on the basis of which the application for a final decree is made, unless there has been a waiver, express or implied of the first default in which case the words "when the right to apply accrues" would mean the next succeeding default which is not waived, but the decree-holder will have a right to apply for realisation of each successive instalment as it falls due, provided the decree is not so worded that the only right left to the decree-holder after the first default is to realise the whole decretal amount.
>
> 2. The answer to the second question is the same, that is, the right to apply for a final decree in respect of the instalments not barred by limitation as individual instalments would remain intact in spite of the omission to take advantage of the default clause provided the default clause is not so worded that the decree-holder has a right to rely on that alone and the decree after the default ceases to be an instalment decree.
>
> 3. It is immaterial that the default clause is worded as "the decree-holder shall have a right to apply", or as "the decree-holder shall have the option to apply", or as "the

> entire decretal amount shall become payable", or as "the entire decretal amount shall become due", or as "the judgment-debtor shall pay the entire decretal amount", as in all such cases the default clause is to be interpreted liberally and for the benefit of the decree-holder and the rights of the decree-holder mentioned by us in our answers to questions 1 and 2 will not be affected."

Company Appeal (AT) (Insolvency) No. 911 of 2021 The full bench held that the decree holder shall have a right to apply for realisation of each successive instalment as it falls due.

29. Learned Sr. Counsel for the Appellant has relied on the Judgment of this Tribunal dated 17th March, 2021 in 'Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd.' 2021 SCC Online NCLAT 105. In that case the Application was filed by Operational Creditor under Section 9 of the code and the same was rejected by the Adjudicating Authority against which the Appeal was also dismissed by this Appellate Tribunal and under the Orders of Hon'ble Supreme Court in Civil Appeal No. 7646 of 2019 the Company Appeal was again heard and dismissed by this Appellate Tribunal upholding the Order of Adjudicating Authority dismissing the Application barred by time. In the above case, Corporate Debtor in notice under Section 8 has mentioned the date of default as 12.03.2011 but in the Application under Section 9 the date of default was mentioned as 30th June, 2017. The argument was raised before the Tribunal that period could be confined only from 2015 to 2016. This Court rejected the prayer made on behalf of the Appellant, in Paragraphs 21, 22 and 23 following as has been laid down:

> "21. As the Code mandates, Section 9 Application is filed after the issuance of Demand Notice under Section 8(1) which contains the details of unpaid Operational Debt. It is also interesting to note that Part IV of the Application under Section 9 mentions the 'date of default' as 'June 30, 2017'; for an amount of Rs. 2,39,85,521.35/-. It is seen from the record that the date of first default is March 2011 and the cumulative amount claimed is Rs. 2,39,85,521.35/-. Section 9 Application emanates from the Demand Notice under Section 8(1). Both have to be read conjointly and the date of default cannot be construed to be different Company Appeal (AT) (Insolvency) No. 911 of 2021 merely because it is differently mentioned as '2011' in Section 8 Notice and '2017' in Application under Section

9.

22. As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the 'Operational Creditor'. Form III gives the details of the invoices. In the instant case, the 'Operational Creditor' has given the details of invoices from (pages 399 to 406 of Volume II) and has also crystallized the amount at Rs. 2,39,85,521.35/-, which is unpaid from 2011. Therefore, the argument of the Learned Counsel for the 'Operational Creditor' that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under Section 8. We are of the view that the Tribunal

does not have Jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery.

23. To reiterate, once the default takes place, the Right to file Application accrues as provided under Article 137 of the Limitation Act, 1963. In the instant case, we are of the considered view that the 'Right to Application' first accrued within three years of 12.03.2011, which limitation ends on 12.03.2014. If the argument of the Counsel for the Operational Creditor is accepted, then there would be several dates of default 2011, 2012, 2015 etc. It is not the discretion of the Tribunal to accept one date or the other. The date of default is fixed and hence a crucial date and cannot be shifted and hence - 19- Company Appeal (AT) (Insolvency) No. 98 of 2019 we are of the considered opinion that the first date of default in the instant case is 12.03.2011."

30. The Appellate Tribunal in the above case held the Application barred by time since date of default as shown by the Appellant in Section 8 Notice Company Appeal (AT) (Insolvency) No. 911 of 2021 was 12.03.2011 and the Application became barred by time on 12.03.2014 and Section 9 Application filed after 12.03.2014 was held as barred by time. The Appellate Tribunal held the date of default as 12.03.2011 since the date of default was claimed as 12.03.2011 and the Application under Section 9 was filed after expiry of three years the application was rejected as barred by time on the aforesaid ground. In the present case the date of default is claimed by the Appellant as 30th November, 2015 and amount have been claimed computing with effect from 30th November, 2015 to 31st October, 2018. The Judgment of this Tribunal in Next Education India Pvt. Ltd. (supra) is clearly distinguishable and was based on the facts of that case which has been noted in the Judgment. It is true that Appellate Tribunal refused to change the date of default on the prayer made by the Appellant confining it from 2015 to 2017 because the Appellant could not have been allowed to change the date of default as claimed in Section 9 Proceeding, but the above judgment cannot be read to hold that if from the date of default as claimed in the Section 9 Application the Proceeding is initiated within three years the same shall also be held to be barred by time.

31. The Adjudicating Authority has already relied on a Judgment of Delhi High Court of 'Kotak Mahindra Bank Limited Vs. Anuj Kumar Tyagi' wherein paragraph 12.2 following was laid down:

> "12.2. ... ... Quite clearly, the period of limitation, would, relate back to last defaulted EMI as, vide the aforementioned notice the appellant gave a final opportunity to the respondent to repay the amount, which was due and payable on the date of notice. The right to sue would occur, in my opinion, each time when, there is a default in payment of an EMI on its due date... ... ..."

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32. We thus conclude that non-filing of the Application under Section 7 of the Code by the Appellant on default of interest which occurred on 30th June, 2015 shall not foreclose the right of the Financial Creditor to file an Application under Section 7 of the Code when default on first instalment occurred on 30th November, 2015 and when entire loan became due by notice dated 05.01.2017.

33. The Appellant has not claimed in Section 7 Application the amount of defaulted interest on 30th June, 2015. Thus the Application filed by the Financial Creditor under Section 7 claiming amount of default of the first instalment and default of the entire loan which occurred on 30th November, 2015 and 01st February, 2017 was well within time which has been filed on 28th November, 2018. The submission of Mr. Ramji Srinivasan, Sr. Advocate that no date of default has been given in Part-IV of Section 7 Application is not correct when we read Item 2 of Part-IV as extracted above it is clear that computation of amount from the date of default as on 31st October, 2018 in tabular form was from 30th November, 2015 thus 30th November, 2015 was clearly indicated as date of default under Section 7 Application. We thus do not find any substance in the submissions of Learned Sr. Counsel for the Appellant that Application under Section 7 of the code was barred by time.

34. Now we come to the second submission raised by Learned Sr. Counsel for the Appellant that the Facility Agreement dated 22nd May, 2013 as well as the Supplemental Agreement dated 19th August, 2013 relied by Financial Creditor being insufficiently stamped as per the provisions of Maharashtra Stamp Act, 1958 and Adjudicating Authority could not have acted on the Company Appeal (AT) (Insolvency) No. 911 of 2021 said documents. The insufficiently stamped documents were not admissible as evidence.

35. Before we proceed any further, we need to notice necessary ingredients to prove a financial in an Application under Section 7 of the IBC. Hon'ble Supreme Court in [(2018) 1 SCC 407] 'M/s. Innoventive Industries Ltd. Vs. ICICI Bank Ltd. and Anr.' considered the scheme under Section 7 of the Code and it has contrasted with the scheme under Section 8 of the Code in Paragraph 29 and 30 following have been laid down:

> "29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.
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> 30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

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36. The above preposition is again reiterated by Hon'ble Supreme Court in [(2018) 1 SCC 363] 'Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited' wherein paragraph 37 following was observed:

"37. It is now important to construe Section 8 of the Code. The operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority. This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject matter of the judgment delivered by this Court on 31.8.2017 in Innoventive Industries Ltd. v. ICICI Bank & Anr. (Civil Appeal Nos.8337-8338 of 2017). In this judgment, we had held that the adjudicating authority under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact."

37. The ratio of the above judgments is that in case of Corporate Debtor who commits a default of financial debt, the Adjudicating Authority has merely to see the records of the information and other evidence produced by Financial Creditor to satisfy itself that default has occurred. From the documents which are placed before the Adjudicating Authority by Financial Creditor if it can come to the conclusion that default has occurred it can proceed with Section 9 Application. It is true that in the present case the Facility Agreement dated 22nd May, 2013 and 19th August, 2013 were not duly stamped but there were other materials on record which could be relied Company Appeal (AT) (Insolvency) No. 911 of 2021 on for coming to the conclusion that default has been committed by the Corporate Debtor in paying the debt. Learned Sr. Counsel for the Respondent has referred to a Registered Mortgage Deed entered between the parties on 26 June, 2013 which registered document has been brought on record at page 202 of the Appeal Paper Book. The registered mortgage deed was filed along with Section 7 Application. The indenture of mortgage entered between the Corporate Debtor and Standard Chartered Bank refers to facility agreement dated 22nd May, 2013 providing borrower Foreign Currency Facilities aggregating USD 49,000/- million and to secure the Facility Agreement the corporate debtor created security interest by a mortgage of the Mortgage Property detailed in the mortgage deed. The present is the case where borrower in his pleading has not denied disbursement of amount of Five Million Dollars on 30th August, 2013, 31st October, 2013 and 31st December, 2013. The detail correspondences between the Respondent brought on record by the Financial Creditor including the No-Objection of Reserve Bank of India for accelerating the entire financing, all reflected the taking finance by Corporate Debtor. Adjudicating Authority had substantial materials on record to come to the conclusion that default has been committed by the Corporate Debtor and the amount as claimed is due.

38. Now we may notice two judgments of Hon'ble Supreme Court relied on by the Learned Sr. Counsel for the Appellant. Learned Sr. Counsel for the Appellant has placed reliance on Judgment of

Hon'ble Supreme Court in 2020 8 SCC 531 'Committee of Creditors of Essar Steel Ltd. Vs. Satish Kumar Company Appeal (AT) (Insolvency) No. 911 of 2021 Gupta and Ors' reliance has been placed on paragraph 152 and 153 which is to the following effect:

> "152. So far as Civil Appeal No. 7266 of 2019 and Civil Appeal No. 7260 of 2019 are concerned, the resolution professional has rejected the claim of the Appellants on the ground of non-availability of duly stamped agreements in support of their claim and the failure to furnish proof of making payment of requisite stamp duty as per the Indian Stamp Act despite repeated reminders having been sent by the resolution professional. The application filed by the Appellants before the NCLT came to be dismissed by an order dated 14.02.2019 on the ground of non-prosecution. The subsequent restoration application filed by the appellants then came to be rejected by the NCLT through judgment dated 08.03.2019 on two grounds: one, that the applications could not be entertained at such a belated stage; and two, that notwithstanding the aforementioned reason, the claim had no merit in view of the failure to produce duly stamped agreements. The impugned NCLAT judgment, at paragraphs 93 and 94, upheld the finding of the NCLT and the resolution professional. In view of these concurrent findings, the claim of the Appellants therefore requires no interference. Further, the submission of the Appellants that they have now paid the requisite stamp duty, after the impugned NCLAT judgment, would not assist the case of the Appellants at this belated stage. These appeals are therefore dismissed.
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> 153. So far as Writ Petition (Civil) No. 1064 of 2019 is concerned, we have perused the relevant documents and paragraph 36 of the impugned NCLAT judgment and find force in the contention of the Writ Petitioner that the NCLAT has wrongly noted that the claim amount was notionally admitted by the resolution professional at INR 1 only. The resolution professional has admitted the claim of the Writ Petitioner to a tune of INR 17.09 crore and the same is recorded in the list of creditors prepared by the resolution professional. In view of the same, this part of the NCLAT judgment is thus erroneous and the claim shall be the claim as admitted and registered by the resolution Company Appeal (AT) (Insolvency) No. 911 of 2021 professional. The Writ Petition is thus allowed to this extent."

39. In the above case, the claim was rejected by the Resolution Professional on the ground of non-availability of duly stamped agreement in respect of their claim and failure to furnish proof of making payment of requisite stamp duty as required by Indian Stamp Act despite repeated reminders having been sent by the Resolution Professional. The present was the case where the Adjudicating Authority was to satisfy that default has been committed by the Corporate Debtor in payment of debt. As noted above there were umpteen materials on record to prove that debt was due and was not paid by the Corporate Debtor. The present is the case where Financial Creditor has by materials on record in addition to Facility Agreement dated 22nd May, 2013 and 19th August, 2013 has proved the Financial Debt which remained unpaid.

40. The next Judgment relied on by Learned Sr. Counsel for the Appellant is Judgment of Hon'ble Supreme Court of India in 2021 4 SCC 379 'M/s. N.N.Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Pvt. Ltd. & Ors'. In this case, the Hon'ble Supreme Court of India had occasion to consider Section 8 and Section 11 of the Arbitration and Conciliation Act, 1996. In paragraphs 21 to 23 Hon'ble Supreme Court of India laid down as under:

> "21. The issue which has arisen in the present case is whether the arbitration agreement incorporated in the unstamped Work Order dated 28.09.2015, would also be legally unenforceable, till such time that the Work Order is subjected to payment of Stamp Duty. Undisputedly, the Work Order is chargeable to payment of Stamp Duty under Item No. 63 of the First Schedule to the Maharashtra Stamp Act, 1958.
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> Company Appeal (AT) (Insolvency) No. 911 of 2021
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> 22. In our view, the non-payment or deficiency of Stamp Duty on the Work Order does not invalidate the main contract. Section 34 provides that an unstamped instrument would not be admissible in evidence, or be acted upon, till the requisite stamp duty is paid. This would amount only to a deficiency, which can be cured on the payment of the requisite stamp duty.
>
> 23 The point for consideration is whether the non- payment of Stamp Duty on the Work Order, would render the arbitration clause invalid, nonexistent, or unenforceable in law, till the stamp duty is paid on the substantive commercial contract"

41. The Supreme Court held under the Maharashtra Stamp Act, 1958 the work order is chargeable to extend stamp duty hence till the stamp duty is paid work order remain enforceable. There can be no dispute regarding the preposition laid down by the Hon'ble Supreme Court of India in the above cases. The present is not a case where proof of financial debt by financial Creditor was only the Facility Agreement dated 22nd May, 2013 and 19th August, 2013, other materials including Registered Mortgage Deed clearly proved the financial debt. Furthermore, present is a case where Corporate Debtor has not denied receiving of Financial Facility as extended by Standard Chartered Bank and there is no denial of disbursement of 5 million dollars in three tranches and there was sufficient material before the Adjudicating Authority to come to the conclusion that default has been committed in payment of debt.

42. We are thus of the view that the decision of the Adjudicating Authority that Corporate Debtor has committed default is not vitiated which was fully supported by the materials on record even if Facility Agreement dated 22nd Company Appeal (AT) (Insolvency) No. 911 of 2021 May, 2013 and 19th August, 2013 are ignored. The Corporate Debtor has taken a Financial Benefits from Standard Chartered Bank and obtained disbursal in three tranches of 5 Million Dollar each, which disbursements have not been denied in a pleading before the Adjudicating Authority. The submission of the Appellant that facility agreement being not stamped Section 9 Proceeding ought not to have proceeded has to be rejected.

We thus find no substance in any of the submissions of Learned Sr. Counsel for the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan] Chairperson [Dr. Alok Srivastava] Member (Technical) NEW DELHI 27th January, 2022 Basant B. Company Appeal (AT) (Insolvency) No. 911 of 2021