S. No.7

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **24.06.2022** AT 10:30 AM THROUGH VIDEO CONFERENCE

IA (IBC) 28/2022 in Company Petition IB/88/2021
U/s. 95 of IBC, 2016.

IN THE MATTER OF:

L & T Finance Ltd **… Petitioner**

Vs.

Tikkavarappu Venkatarami Reddy & Deccan Chronicle Holdings Ltd
… Respondents

CORAM:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

IA No.28/2022, is allowed, the documents are ordered to be received.

Orders pronounced, in CP IB no.88/2021, recorded vide separate sheets. In the result petition under Section 95 of IBC is here by admitted. Consequently Insolvency Resolution Process is initiated against the personal guarantors.

Sd/- Sd/-

MEMBER(T) **MEMBER(J)**

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

IA No. 28 of 2022
in
CP (IB) No. 88/95 of IBC/HDB/2021

Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

L&T Finance Limited
4th Floor, Brindavan
Plot No. 177, CST Road
Kalina, Santacruz (E)
Mumbai – 400097 …Applicant

VERSUS

Tikkavarapu Venkaram Reddy
8-2-703/A/6/C, Road No.12 Banjara Hills
Hyderabad – 500034 …Respondent/
Personal Guarantor

Date of order: 24.06.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri Vivek Reddy, Senior Advocate assisted by Shri Shabeer Ahmed, Advocate

For Respondent: Shri S. Ravi, Senior Advocate assisted by Shri A. Chandrasekhar, Advocate

PER: BENCH

ORDER

1. This Application is filed by the Financial Creditor for leave to file additional documents mentioned in the Application.

2. No counter is filed by the Respondent. The documents now sought to be filed are documents to which the Respondents are parties besides related to the proceedings between the Financial Creditor and the Respondents herein.

3. Hon'ble Supreme Court of India in re Dena Bank vs C. Shivakumar Reddy & Anr , wherein it is held that

144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.

4. It is nobody's case that there was a wilful delay on the part of the Applicant in filing these documents. Moreover these documents are well within the knowledge of the Respondents as they pertain to the proceedings between the Financial Creditor and the Respondents. We

therefore, find that no prejudice will be caused to the Respondents by receiving these documents.

5. We therefore, allow the application and documents are ordered to be received.

6. IA No. 28//2022 is accordingly disposed of.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Dr. N.Venkata Ramakrishna Badarinath)
Member (Judicial)

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NATIONAL COMPANY LAW TRIBUNAL BENCH-1, HYDERABAD

CP (IB) No. 88/95 of IBC/HDB/2021

Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

L&T Finance Limited
4th Floor, Brindavan
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Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri Vivek Reddy, Senior Advocate assisted by Shri Shabeer Ahmed, Shri V. Aneesh, Advocates

For Respondent: Shri S. Ravi, Senior Advocate assisted by Shri A. Chandrasekhar, Advocate

PER: BENCH

ORDER

7. This petition is filed by L&T Finance Limited (Financial Creditor) under Section 95 of Insolvency of Bankruptcy Code, 2016 (herein after referred as Code) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (herein after referred to as **Personal Guarantors Insolvency Rules, 2019),** seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against **Shri Tikkavarapu Venkatram Reddy/Debtor** who is the **Personal Guarantor** of **M/s Deccan Chronicle Holdings Limited.**

8. The gist apropos to the case of the Petitioner is that the Petitioner sanctioned a term loan of Rs. 25 crores vide sanction letter dated 10.05.2013 to the Corporate Debtor i.e. M/s Deccan Chronicle Holdings Limited (Principle Borrower). Both the petitioner and borrower entered into a Facility Agreement dated 13.05.2011, demand promissory Note dated 13.05.2011.

9. Respondent No.1 herein i.e. Mr. Tikkavarapu Venkatarami Reddy stood as a guarantor to secure the repayment of the financial assistance availed by the Corporate Debtor who is the Principal Borrower. The outstanding amount in default by the Principal Guarantor is Rs. 62,96,35,739.60 as on 31.01.2021.

10. The Financial Creditor annexed the following documents to prove the existence of debt and amount in default: -

    (1) Copy of Sanction letter dated 10.05.2011- Annexure-1

    (2) Copy of Facility Agreement dated 13.05.2011- Annexure -2.

(3) Simple mortgage deed was executed dated 20.05.2011- Annexure-3

(4) Copy of Demand promissory note dated 13.05.2011- Annexure-4.

(5) Copy of deed of guarantee dated 13.05.2011- Annexure-5.

(6) Copy of Arbitral Award dated 15.03.2013 – Annexure-6

11. It is averred, when the Corporate Debtor and the Personal Guarantor committed default under the Facility Agreement and the Deed of Guarantee, arbitration proceedings was initiated by the Applicant in the year 2012 against the Corporate Debtor and the Personal Guarantor. Even though Respondent failed to appear before the Arbitral Tribunal, the Arbitral Tribunal on 15.03.2013 passed an Award against the Corporate Debtor as well as Respondent, directing them to pay an amount of Rs. 25,02,61,350/- along with interest @15% per annum from 27.01.2012 till payment/realization. Aggrieved by the Arbitral Award, the Corporate Debtor and Personal Guarantor challenged the same before Hon'ble High Court of Bombay, which vide its order dated 05.05.2015 dismissed the challenge.

12. In order to enforce the Arbitral Award, the Applicant instituted an Execution Application No. 1434 of 2015 before the Hon'ble High Court of Judicature at Bombay. The Respondent has disclosed his assets albeit partially before the Hon'ble High Court vide Affidavits dated December 2016 and 13.02.2017. The Execution Petition is still pending as the Respondents therein are not appearing and the Applicant is not in a position recover the Arbitral Award.

13. The Financial Creditor i.e. Canara Bank also filed a company petition before this Tribunal under Section 7 of the Code to initiate CIRP against the Corporate Debtor vide CP (IB) No. 41/7/HDB/2017. The Petition

was admitted on 19.07.2017 and subsequently resolution plan submitted by SREI Multiple Asset Investments Trust Vision India Fund was approved on 03.06.2019.

14. Pursuant to framing of Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor Rules, 2019, which came into effect w.e.f 01.12.2019, permitting the Financial Creditor to institute Insolvency Resolution Process against Personal Guarantor of Corporate Debtor, the Financial Creditor/ Petitioner herein issued Demand Notice through registered post on 20.01.2020 to the Personal Guarantor demanding payment of the amount of default which was served on the Personal Guarantor.

15. The Personal Guarantor vide reply notice dated 03.02.2020 denied the claim of the Petitioner and stated that no amount is due and payable to the Financial Creditor and further contended that since the Resolution Plan is approved by this tribunal on 03.06.2019, this petition against Personal Guarantor is not maintainable.

16. On presentation of the petition, this Tribunal on 23.07.2021 granted interim-moratorium and has appointed Ms Renuka Devi as Interim Resolution Professional, directing her to file her report within 10 days of her appointment, in terms of Section 99 of the Code, which has been filed by her on 05.08.2021, recommending the admission of the petition filed under Section 95 of the Code on the ground that despite issuing notice in Form-B the personal guarantor failed to make payment.

17. Counter is filed by Respondent No.1/Personal Guarantor to which rejoinder is filed by the Petitioner as tabulated below:

Objections raised in the counter by Personal Guarantor/Respondent herein	Rejoinder to the objections filed by Petitioner.
There is no liability towards the financial creditor, however he adds that if at all there is any claim *qua* Personal Guarantor it will only survive to the balance extent of Rs. 14,95,34,033/-. That Petitioner cannot invoke the provisions of IBC at the stage when the execution petition is subjudice before the Hon'ble High Court, Mumbai.	The Arbitral Award dated 15.03.2013 issued by the Sole Arbitrator in favour of the Petitioner held that the Respondent/Personal Guarantor and the Corporate Debt/DCHL are jointly and severally liable to pay the claim amount. As such, the Petitioner can invoke provisions of IBC seeking initiation of Insolvency Resolution Process against Respondent being personal guarantor to the Corporate Debtor.
The claim against the Respondent is **time barred** by virtue of **Article 19 and 137 of the Limitation Act**, 1963 as the Financial Creditor approached this Tribunal after 08 years as the debt payable by Corporate Debtor became due on 08.06.2012 when the Financial Creditor exercised the "call option" under the Agreement. The Financial Creditor failed to demonstrate acknowledgement of debt by the personal guarantor.	In response the Petitioner contended that as per clause 16 of the Guarantee executed by Respondent, the guarantee agreement continues to be in full force till the debt owed to the Petitioner is cleared. With respect to Limitation Act, vis-à-vis a continuing guarantee, the Applicant relied on the ruling of the Hon'ble Supreme Court of India in Margaret Lalita Samuel vs Indo Commercial Bank Limited (AIR 1979 SC 102). It is contended that the account of the Corporate Debtor continues to be a live account as interest is being accrued on a regular basis and the dues of the Applicant are yet to be fully cleared. It is also contended that the cause of action is a continuous one as the right to apply accrued on 24.05.2012 when the Corporate Debtor was directed to repay the entire outstanding loan amount by 08.06.2012, subsequently

	on 13.08.2012, 15.03.2013, 31.12.2016, 19.07.2017, 03.06.2019. In the instant case, the limitation in respect of the Guarantor is reckoned from the date of demand and refusal/non-compliance by the guarantor i.e.02.03.2021.
Since the Resolution Plan is approved by the Adjudicating Authority, this Tribunal ceases to have jurisdiction	Per contra, the Applicant contended that this Tribunal has jurisdiction under Section 60 (2) of IBC to entertain the instant petition under Section 95 of IBC, as the CIRP process has not culminated into a binding and effective resolution plan yet. Further, the Application filed by one of the Financial Creditors i.e. Religare Invest Limited seeking liquidation is pending
The Respondent prayed the Tribunal to set aside the Report of IRP dated 13.09.2021 as no opportunity was afforded to Personal Guarantor to place on record certain documents. Further IRP has not responded to the clarification sought for by the personal guarantor, thus alleging violation of principles of natural justice.	Per contra, the Applicant herein stated that the report of IRP is not an order or a proceedings requiring the strict rigours of the principle of natural justice and relied on the ruling of Coordinate Bench, New Delhi order in the matter of Siemens Financial Services Private Ltd vs Vinod Shewa, wherein it as held that *"Chapter-III of IBC does not warrant and provide issuance of notice at the stage of appointing RP under Section 97 of IBC, 2016 for the purpose of examining an application preferred under Section 95 of IBC, 2016 and it does not amount to violation of the Principles of Natural Justice".*

18. It is pertinent to state herein that though the personal guarantor in his counter raised certain contentious pleas, while making the final submissions, the Ld. Senior Counsel for the Respondent Shri S. Ravi

has stated that he is pressing the *plea of limitation alone,* accordingly, both sides have made their submissions on the plea of limitation.

19. Therefore, in the light of the above, the point that emerges for consideration by this Tribunal is;

Whether the present Company Petition for initiation of Insolvency Resolution Process against the Personal Guarantor is barred by limitation?

14. We have heard Shri Vivek Reddy, Ld. Senior Counsel assisted by Learned Counsel Shri Shabeer Ahmed, for the Financial Creditor and Shri S. Ravi, Learned Senior Counsel assisted by Shri A. Chandrasekhar, Ld. Counsel for Personal Guarantor, perused the case law and the material on record.

POINT

Whether the present Company Petition for initiation of Insolvency Resolution Process against the Personal Guarantor is barred by limitation?

15. It is trite law to say that whether or not the of plea of limitation is raised by the adversary, it is imperative for the Applicant/Suitor to establish that the claim as made is not barred by limitation. In so far as the case on hand is concerned, there is no dispute as regards sanctioning of various credit facilities to the 2nd Respondent vide sanction letter dated 10.05.2013, execution of the facility agreement dated 13.05.2011 besides Personal Guarantee by the 1st Respondent guaranteeing due repayment of the amount borrowed by the 2nd respondent from the applicant. The record reveals that the terms and conditions of the Sanction dated 10.05.2013 were breached by the Respondents. Therefore, the Applicant invoked the Arbitration Agreement clause contained in the Facility Agreement, alleging non-payment of the

amount due and payable to the Applicant as afore-stated. The record further reveals that the Respondents remained *ex-parte*, in the Arbitral proceedings before the sole Arbitrator and on 15.03.2013, the Arbitral Tribunal passed an Award directing the Respondents to pay the Applicant jointly and severely, a sum of Rs. 25,02,61,350/- with interest @ 15% per annum from 27.01.2012 till payment besides a sum of Rs. 1,50,000/- towards the costs of Arbitration. The challenge to the said Award by the Respondents before Hon'ble High Court of Bombay, ended unsuccessfully as the Appeal was dismissed vide order dated 05.05.2015.

16. While it was so, at the behest of the Applicant, the 2nd Respondent has been admitted into CIRP, vide order of this Tribunal in CP (IB) No. 41/7/HDB/2017 dated 19.07.2017, pursuant to an Application filed under Section 7 of IBC by the Financial Creditor M/s. Canara Bank. Thereafter the resolution plan submitted by SREI Multiple Assets Investments Trust – Vision India Fund, has been approved by this Tribunal on 03.06.2019.

17. On 20.01.2020 the Applicant issued a notice demanding the 1st Respondent to pay the unpaid debt due and payable under the Arbitration Award. The 1st Respondent in his response to the said notice dated 03.02.2020 raised solitary plea that 'since the Resolution Plan has been approved by this Tribunal on 03.06.2019, the Applicant cannot maintain any proceedings against the 1st Respondent'. In this backdrop, the present application has been filed under Section 95 of IBC by the Applicant for initiation of Insolvency resolution Process against the 1st respondent.

18. Shri. Vivek Reddy, Ld. Senior Counsel for the Applicant would submit that the Arbitration Award dated 15.03.2013 directing the Respondents to pay jointly and severely, the Applicant a sum of Rs. 25,02,61,350/- with interest @ 15% per annum from 27.01.2012 till payment besides a sum of Rs. 1,50,000/- towards the costs of Arbitration which has attained finality since not unsatisfied by the Respondents, the Applicant instituted Execution Application No.1434 of 2015 before the Hon'ble High Court of Judicature at Bombay, vide affidavits dated December, 2016 and 13.02.2017, the Respondent No.1 disclosed his assets, albeit partially, before the Hon'ble High Court of Bombay.

19. Ld. Sr, Counsel also submitted that the orders of the Hon'ble High Court of Bombay, dated 06.01.2020 and 08.01.2020 would clearly show that not only did the Respondent No.1 stop appearing, even his counsels were not getting any instructions, as such the Applicant evidently faced a deadlock in recovering its amounts and the arbitral award remained unsatisfied. Hence the Applicant got issued notice dated 20.01.2020 demanding payment of the amount under the Award and as the same was not complied with the present Application has been filed for initiation of insolvency resolution process against the personal guarantor, as such the application is well within the prescribed period of limitation and so much so, the contention of the 1st Respondent that the Petition is barred by limitation is only un-sustainable.

20. According to the Ld. Senior Counsel, the ruling in Dena Bank Vs. C. Shivakumar Reddy and Anr, supra, is squarely applicable to the present case, but not *Jignesh Sha*, as Hon'ble Supreme Court of India, while referring to *Jignesh Shah*, at para 130, of the order observed that an

Application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt, *further held that*, "but it would have been a different matter if the Applicant had approached the Adjudicating Authority after obtaining a Final Order/Decree, if the Decree remains unsatisfied".

21. Ld. Senior Counsel would further contend that *Jignesh Shah,* was rendered in the context where a suit for Specific Performance was *pending and not in the context of pending Execution Proceedings (Post Suit)* which is the case herein and as such *Jignesh Shah,* is inapplicable to the present case. Ld. Counsel further submitted that Hon'ble Supreme Court, in ***Dena Bank,*** *supra,* in para 103 it was clearly observed that the decision in *Jignesh Shah,* was rendered on the proposition that the period of limitation for making an application under Section 7 or 9 of IBC was 3 years from the date of accrual of the right to sue, that is, the date of default, hence the decisionin ***Jignesh Shah*** cannot be an authority in the context of an Application under Section 95 of the IBC since ***Jignesh Shah*** only dealt with the aspect of limitation vis-à-vis Sections 7 and 9 of the IBC.

22. According to the Ld. Sr Counsel, Part III of the IBC dealing with Insolvency Resolution and Bankruptcy for Individuals is a separate code in itself, distinct from Part II of the IBC. While the trigger point for filing an application under Sections 7 & 9 of the IBC is an event of default, the trigger points for filing an application under Section 95 of the IBC are a default as well as non-repayment of debt by virtue of Section 95(4)(c) of the IBC. In the present case, there is a clear non-repayment of debt by the Respondent No.1 due to noncompliance of the arbitral award in spite of initiating Execution Proceedings against

him before the Hon'ble High Court of Bombay. The Personal Guarantor is now a 'judgmentdebtor' in the present case.

23. Shri S. Ravi, the Ld. Senior Counsel for the 1st Respondent would contend that even according to the Financial Creditor, the debt payable by the Corporate Debtor became due on 08.06.2012, as such the Financial Creditor having exercised the "call option" under the Facility Agreement and demanded that all the payments be made by 08.06.2012 and the present application having been filed after the prescribed three years period of limitation is explicitly barred by limitation in view of Article 19 and 137 of the Limitation Act, 1963. According to the Ld. Sr. Counsel, the time having already began to run, it can only be extended in the manner provided in the Limitation Act and the earlier proceedings between the parties herein based upon a cause of action that was within limitation, cannot in any manner impact the present separate and independent proceedings, as such the present application is hopelessly barred by limitation.

24. In support of his contentions, the Ld. Senior Counsel also placed reliance on *Jignesh Shah and Anr vs. Union of India & Anr (WP (Civil) No. 455 of 2019, in para 21 wherein* the Hon'ble Supreme Court of India has held as follows:

"*Para 21: The aforesaid judgements correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceedings is to be filed, by somehow keeping the debt alive for the purpose of the winding-up proceeding".*

25. Having heard Ld. Senior Counsels at length and on perusal of the rulings, *supra*, relied by the Ld. Senior Counsels for both sides, we may at the outset state that the ruling in *Dena Bank,* relied on by the Applicant, besides the ruling, *in re, Kotak Mahindra Bank Limited Vs a. Balakrishna & Anr,* (Livelaw SC 534), provide suitable answer to the contentions raised by the Ld. Sr. Counsel Shri. S.Ravi, that in the case on hand since time having already began to run, it can only be extended in the manner provided in the Limitation Act and the earlier proceedings between the parties herein based upon a cause of action though was within limitation, the same cannot in any manner impact the present separate and independent proceedings, as such the present application is hopelessly barred by limitation. In this regard, we refer to *Dena Bank,* it would be clear that Hon'ble Supreme Court of India, while referring to the finding in *Jignesh Shah*, that *"an application under Section 7 or 9 of IBC may be time-barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt"* in unambiguous terms stated that " however, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if the decree remained unsatisfied. This court held that a decree and/ or final adjudication would give rise to a fresh period of limitation for initiation of Corporate Insolvency Resolution Process". (Emphasis Supplied).

26. Admittedly, the present application against the personal guarantor has been initiated in *backdrop* of the Arbitration Award dated 15.03.2013 directing the Respondents to pay jointly and severely, the Applicant a sum of Rs. 25,02,61,350/- with interest @ 15% per annum from

27.01.2012 till payment besides a sum of Rs. 1,50,000/- towards the costs of Arbitration which has attained finality and the execution application No.1434 of 2015 before the Hon'ble High Court of Judicature at Bombay *Vide* affidavits dated December, 2016 and 13.02.2017, the Respondent No.1 disclosed his assets, albeit partially, before the Hon'ble High Court of Bombay, which remained unsatisfied by the Respondent despite the notice dated 20.01.2020.

27. More over the ruling in re, *Jignesh Shah, supra,* has dealt with the a pending suit for recovery based upon a cause of action that was within limitation, on the separate and independent remedy of a winding up proceeding and held that the same cannot impact limitation which was already set in motion. In so far as the case on hand is concerned no suit was pending and infect the current status of the personal guarantor is that of a *Judgement debtor* in view of the pendency of the execution proceedings against the personal guarantor. Therefore, on facts the ruling in *Jignesh Shah, supra, is not applicable to the case on hand.*

28. The other submission of the Ld. Sr. Counsel, Shri. S.Ravi, that the decision in *Dena Bank, supra,* being a decision of a bench comprising of two judges, whereas the ruling in re, Jignesh Shah, since delivered by 3 judge bench, and in view of the ruling of Hon'ble Supreme Court in *Central Board Of Dawoodi Bohra Community vs State Of Maharashtra & Anr (December 17, 2004) wherein it was held that* the judgement of larger Bench shall prevail over, the ruling in Dena Bank cannot be relied on, in our considered view does not fit in here, in as much as, *firstly,* we do not have any issue on the binding nature of a ruling rendered by the larger bench *over a ruling rendered by a* smaller Bench, we are unable to apply the ruling in re, *Jignesh Shah,* for the only reason that

having examined the facts, we found that *Jignesh Shah* is distinguishable.

29. Moreover, that a similar argument that the judgement in *Dena Bank* is contrary to the judgement of the three Bench judgement in Jignesh Shah or Gaurav Hargovind bhai Dave, hence *per in curium*, fell for consideration before a three Member Bench of Hon'ble Supreme Court of India, in *Kotak Mahindra Bank Limited Vs a. Balakrishna & Anr,* (Livelaw SC 534) wherein Hon'ble Supreme of India had held as follows:

56. In the case of Jignesh Shah (supra), the cause of action arose in the month of August, 2012. The winding-up petition, which was transferred to the learned NCLT, was filed on 21stOctober, 2016, i.e., after a period of three years from the date on which cause of action arose. This Court in the said case was considering a question that, if a winding up petition was barred by limitation on the date it was filed, whether Section 238A of the IBC will give a new lease of life to such a timebarred petition. This Court held that Section 238A of the IBC would not extend the period of limitation for filing winding-up petition. On the facts of the said case, it was found that on the date on which the winding-up petition was filed, it was barred by lapse of time and Section 238A of the IBC would not give a new lease of life to such a time-barred petition. The question that falls for consideration in the present case is, as to whether a claim which is fructified in a decree would give a 16 fresh cause of action to file an application under Section 7 of the IBC within a period of three years from such decree or not. This issue did not fall for consideration before this Court in the case of Jignesh Shah (supra).

59. No doubt that Shri Viswanathan is justified in referring to paragraph 21 of the judgment in the case of Jignesh Shah (supra) to the extent that this Court observed that the suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding-up would, in no manner, impact the limitation within which the winding-up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding-up proceeding. However, the question, as to whether such a suit or an application which has been culminated into a decree or a Recovery Certificate would give a fresh cause of action to file an application under Section 7 of the IBC did not arise for consideration in the said judgment/ case. The said judgment cannot be held to be a ratio decidendi for a proposition that even after

the suit is decreed, or Recovery Certificate is issued, it could not give fresh cause of action to initiate CIRP within a period of three years. 60. As to what is ratio decidendi has been succinctly observed by this Court in the case of Union of India and others vs. Dhanwanti Devi and others , which is as under:

"9. …… It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

66. It can thus be seen that this Court observed that the issuance of Recovery Certificate injured effectively and completely the appellant's rights and therefore the limitation would begin from the said date. In effect, this Court observed that the issuance of Recovery Certificate could trigger the limitation. As such, in our view, this Court in the case of Dena Bank (supra) has rightly relied on Vashdeo R. Bhojwani (supra), which, in turn, relied on the earlier three-Judge Bench judgment of this Court in the case of Balakrishna Savalram Pujari Waghmare (supra).

67. Shri Viswanathan, learned Senior Counsel relied on various judgments of this Court to fortify his submission that the judgment of two-Judge Bench of this Court in the case of Dena Bank (supra) is per incuriam. Recently, a two-judge Bench of this Court (consisting of L.N. Rao and B.R. Gavai, JJ.) had an occasion to consider this doctrine in the case of James Varghese (supra). It is a settled law that "Incuria" literally means "carelessness". A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. It can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench.

68. A perusal of the judgment of this Court in the case of Dena Bank (supra) would reveal that this Court considered all the relevant provisions of the IBC and the earlier judgments of this court. As already discussed hereinabove, we do not find any inconsistency in the judgment of this Court in the case of Dena Bank (supra) with the earlier judgments of this Court on which reliance is placed by Shri Viswanathan. We find that the contention that the judgment of this Court in the case of Dena Bank (supra) being per incuriam to the statutory provisions and earlier judgments of this Court, is wholly unsustainable.

30. We therefore, in view of our discussion as above hold that the Application as filed is well within the prescribed period of limitation. Point is answered accordingly.

31. No other point worth has been urged before us. Therefore, in exercising our powers under Section 100 of the Code, we pass the following orders:

(1) The petition i.e. **CP (IB) No.88/95 of IBC/HDB/2021 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted.**

(2) Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor Tikkavarapu Venkataramireddy and the moratorium is declared, which begins with effect from the date of admission of the petition and shall

cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period;

(a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;

(d) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(3) The Resolution Professional i.e. Ms Renuka Devi having IBBI registration no. IBBI/IPA-001/IP-P01863/2019/2020/12871#R/o ARTHI ILLAM 9 JOTHI NAGAR 3RD STREET UPPILIPALAYAM POST, COIMBATORE, Tamil Nadu 641015 email id. jrassociatescbe@gmail.com who was appointed vide order dated 23.07.2021 is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, Hyderabad, inviting claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the

Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.

(4) The Resolution Professional in exercise of the powers conferred under 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

(5) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned, he shall specify the details as provided under Section 106 (3). The date of meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

(6) The meeting of the creditors shall be conducted in accordance with the provisions sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

(7) The Registry is directed to communicate this order to IBBI, Registrar of Companies (Hyderabad), the Resolution Professional and the Financial Creditor immediately,

(8) The Financial creditor is also directed to communicate this order to the Resolution Professional appointed in this case immediately.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Dr. N.Venkata Ramakrishna Badarinath)
Member (Judicial)

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