

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

**CP (IB) No.1117/MB-IV/2020**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Bank of India Limited**

[CIN: U99999MH1906PLC000243]

...Financial Creditor/Applicant

V/s

**Rudrani Health Care Services Limited**

[CIN: U85100MH2008PLC188222]

...Corporate Debtor/Respondent

Order Dated: 06.10.2021

*Coram:*

Mr. Rajesh Sharma  
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Ms. Prajakta Menezes, Advocate.

For the Respondent(s) : Mr. Rohit Gupta, Advocate.

ORDER

*Per: Rajesh Sharma, Member (Technical)*

1. This is an application being C.P. (IB) No. 1117/NCLT/MB/C-IV/2020 filed by Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code)

against Rudrani Health Care Services Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor is a bank and a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. The Application is filed by Mr. Prakash Jha, Assistant General Manager of Financial Creditor vide its Board Resolution dated 27.07.2019 and Authority Letter dated 17.03.2020, claiming total default of Rs.89,74,29,507.95/- (Rupees eighty-nine crore seventy-four lakh twenty-nine thousand five hundred seven and ninety-five only).
3. The Date of Default as mentioned in the Petition is 30.04.2016. The Date of NPA as mentioned in the Petition is 30.09.2016. The Petition is filed on 24.04.2020.
4. The case of the Financial Creditor is as under:
  - a) The Financial Creditor has sanctioned the following credit facilities to the Corporate Debtor vide sanctions:
    - i) Term Loan – I of INR 30,00,00,000 (Rupees thirty crore only) vide sanction letter dated 30.08.2012 r/w another sanction letter dated 22.02.2013. Copy of the sanction letter dated 30.08.2012 and 22.02.2013 is annexed as Exhibit '5' at pp 27-39 of the Petition.
    - ii) Term Loan – II of INR 6,00,00,000 (Rupees six crore only) and cash credit of INR 2,50,00,000 (Rupees two crore fifty lakh only) to the Corporate Debtor vide sanction letter dated

- 17.01.2014. The sanction letter dated 17.01.2014 is annexed as Exhibit '6' at pp 40-49 of the Petition.
- iii) Term Loan – I of INR 4,34,00,000 (Rupees four crore thirty-four lakh only) and Funded Interest Term Loan – II of INR 86,00,000 (Rupees eighty-six lakh only) to the Corporate Debtor vide sanction letter dated 17.03.2015. The sanction letter dated 17.03.2015 is annexed as Exhibit '7' at pp 50-62 of the Petition.
- iv) Term Loan – III of INR 14,00,00,000 (Rupees fourteen crore only) and additional cash credit of INR 50,00,000 (Rupees fifty lakh only) to the Corporate Debtor vide sanction letter dated 05.10.2015. The sanction letter dated 05.10.2015 is annexed as Exhibit '8' at pp 63-74 of the Petition.
- b) The Financial Creditor had time and again tried to restructured/reschedule the credit facilities granted by the Financial Creditor. However, in spite to providing several opportunities the Corporate Debtor failed to repay the loan and was classified as NPA as per guidelines of Reserve Bank of India on 30.09.016 w.e.f. 30.03.2015.
- c) The Financial Creditor had sanctioned another Funded Interest Term Loan – III of INR 11,69,00,000 (Rupees eleven crore sixty-nine lakh only) to the Corporate Debtor as a part of restructuring of the existing credit facilities granted to the Corporate Debtor vide sanction letter dated 21.08.2017. The sanction letter dated 21.08.2017 is annexed as Exhibit '9' at pp 75-93 of the Petition.

- d) However, the Corporate Debtor failed to comply certain pre-conditions for implementation of the said restructuring sanctioned vide sanction letter dated 21.08.2017 and debt granted in the above-mentioned table remained the same.
- e) The Financial Creditor sent an intimation to the Corporate Debtor vide letter dated 31.03.2018 as the Corporate Debtor failed to comply certain pre-conditions for implementation of the said restructuring sanctioned vide sanction letter dated 21.08.2017. The letter dated 31.03.2018 is annexed as Exhibit '10' at pp 94-95 of the Petition.
5. The Applicant also submitted Credit Information Report (CIBIL) dated 07.03.2020 for particulars of debt of Corporate Debtor which is attached at pp. 653-672 as Annexure '40' of the Petition.
6. The Financial Creditor issued Loan Recall Notice dated 18.12.2018 to the Director and the Guarantors of the Corporate Debtor which is at pp 691-705 as Exhibit '49' of the Petition.
7. The Corporate Debtor has submitted in the reply as under:
- a) The Financial Creditor has filed the present Petition on 18.03.2020 and the date of default in the Petition is 30.04.2016. Therefore, the present Petition came to be filed after the period of three years in as much as the Petition ought to have been filed on or before 30.04.2019.
- b) Under IBC, 2016, right to file accrues on occurrence of default which is defined under section 3(12) where default means – “*non-payment of debt where the whole or any part of instalment of amount of debt*”

*has become due and payable and is not paid by debtor or the Corporate Debtor as the case may be*". In the present case, the default has occurred on 30.04.2016 and therefore the said Petition is required to be filed on or before 30.04.2016.

- c) Section 238A of the IBC, 2016 provides that the Limitation Act, 1963 is applicable to the IBC, 2016. Financial Creditor herein, could have initiated the recovery action within 3 years from the date of default i.e. 30.04.2016. Therefore, the present Petition is ex-facie time barred.
- d) The Financial Creditor seeks to place reliance on a letter dated 24.07.2018, a recall notice dated 18.12.2018, a demand notice dated 04.04.2019 and 29.07.2019, notices demanding possession of secured assets dated 20.07.2019 and 25.09.2019, a possession notice dated 19.10.2019, a public announcement of possession notice made on 21.10.2019, notices dated 20.07.2019 and 25.09.2019, a notice of 30 days for sale of secured assets dated 19.11.2019, a copy of the public announcement of e-auction dated 23.12.2019. In relation to the documents as specified herein as all correspondence addressed by the Financial Creditor to the Corporate Debtor and as such, in not operate as an acknowledgement made in writing by the Corporate Debtor. The above-mentioned correspondences are an acknowledgement on behalf of the Corporate Debtor under section 18 of the Limitation Act, 1963 is completely devoid law, as the law is completely clear that any correspondence made by the Creditor to recover an amount, is not an acknowledgement and/or acceptance of the debt or rather it is just the demand made by the Creditor which can be disputed demand as well. The Financial Creditor has failed to show anywhere in the entire Petition that, the Corporate

Debtor has accepted and/or admitted the liability after 24<sup>11.2016</sup> and therefore the entire argument of the Financial Creditor on extension of the limitation period is negated.

- e) In the recall notice itself the date of default is recorded and it shows when the breach occurred. The Corporate Debtor denying that the purported acknowledgement operates as acknowledgement of debt for the purpose of extension of limitation in accordance with provision of Section 18 of the Limitation Act, 1963. The last acknowledgement was on 24.11.2016 and even if in extension in accordance with the provisions of Section 18 of the Limitation Act, 1963, even the same extended period expires on 23.11.2019 i.e. 3 years from the date of acknowledgement in writing.
- f) The Financial Creditor has classified the account of the Corporate Debtor as NPA from 30.09.2016 with effect from 30.03.2016. Therefore, it is apparent that the claim of the Financial Creditor is *ex facie* barred by the law of limitation.
- g) The Petition is filed in relation to a total number of 4 facilities obtained by the Corporate Debtor from Financial Creditor:
  - i) Term Loan – I sanctioned for sum of Rs.30,00,00,000 (Rupees thirty crore only) vide sanction letter dated 30.08.2012 r/w sanction letter dated 22.02.2013.
  - ii) Term Loan – II sanctioned for sum of Rs.6,00,00,000 (Rupees six crore only) to the Corporate Debtor vide sanction letter dated 17.01.2014.

- iii) Funded interest Term Loan – I of Rs.4,34,00,000 (Rupees four crore thirty-four lakh only) and Funded Interest Term Loan – II of INR 86,00,000 (Rupees eighty-six lakh only) sanctioned to the Corporate Debtor vide sanction letter dated 17.03.2015.
- iv) Term Loan – III of Rs.14,00,00,000 (Rupees fourteen crore only) and additional cash credit of Rs.50,00,000 (Rupees fifty lakh only) to the Corporate Debtor vide sanction letter dated 05.10.2015.
- h) The Financial Creditor discloses a Third Funded Interest Term Loan for an amount of Rs.11,69,00,000/- sanctioned vide Sanction Letter 21.08.2017, and the same appears to be only as and by way of addition as the Financial Creditor has not claimed default of this facility featuring in the particular of the financial debt on the basis of which the present Petition has filed.
- i) The Financial Creditor has charged excess of amounts in as much as Rs.5,15,52,531/- (Rupees five crore fifteen lakh fifty-two thousand five hundred thirty-one only). This can be shown by the following calculation:
- Total Payable: Rs.82,16,64,673/-
- Total Demand: Rs.87,32,17,204/-
- Difference: Rs.5,15,52,531/-
- j) Upon perusal of the Interest calculation sheet, it is clear that the Financial Creditor has charged interest on interest i.e. the component interest, which they ought not to have. The Financial

Creditor cannot charge interest on interest for whatsoever reasons. The amount disputed which is the excess amount of Rs.5,15,52,531/-.

- k) The Financial Creditor has continued to charge interest on the amounts advanced to the Corporate Debtor, even after the same has been classified as NPA. The Financial Creditor is not bound to charge any interest whatsoever after declaring the Corporate Debtor as the NPA. In spite, the Financial Creditor has charged not only the interest but have also charged interest on interest i.e. the compounded interest.
- l) The Corporate Debtor serves in the rural part of Maharashtra at Udgir to the needy patients. The hospital was built in the year 2013-14 with 200 beds, and since then has treated more than 39,000 inpatients and over 3,00,000 outpatients. It has a wide range of specialist doctors out of which the Ophthalmology has been the top performing speciality since commencement and general medicine has been the second top specialty of the hospital.
- m) The said hospital is been managed and operated by the Doctors. It is pertinent to note that the states of art health care facilities provided by the Corporate Debtor is a single such facility within the vicinity and if such health care facility is forced to CIRP, it would be unjust to the poor and needy rural population, who are in dire need of the best quality healthcare.
- n) The said service provided by the Corporate Debtor is primarily to the poor segment residing in the rural Maharashtra on the process comfortable to them with a intent to make better health care services



available to the majority of needy and poor people at an affordable rates. It is therefore, since inception of the hospital and the health care services, the Corporate Debtor was only able to achieve only basic means which would cover the cost of operation of said facility. In 2016, severe draught impacted the Latur district to such a level that water was supplied through train. In this ongoing crisis the Management of Rudrani Healthcare adopted 29,000 Farmer facilities in Udgir Tahsil area and gave them free OPD consultation and 50% discount in surgery and critical care. This was an effort to comfort the distressed and grieving farmer who had no financial provision for medical emergency but to take loan from local Sahukar.

- o) The documents being executed after the date of default were never acted upon. The Financial Creditor cannot seek to rely on the documents. Subsequent contracts were for conversion of interest portion to the loan, which were subject to fulfilment of certain condition. Those conditions as per Financial Creditor were not fulfilled and therefore the restructuring though proceeded with was reversed by the Financial Creditor. In these circumstances, the Financial Creditor declared the account of Corporate Debtor as NPA prior to the date of execution of the agreement.
- p) In view of this the present Petition is barred by limitation and the limitation has expired on 23.11.2019.
- q) The Petition is also incomplete as the statement of account is not produced. The Financial Creditor cannot proceed with the matter unless entire statement of account is produced. These documents are deliberately avoided so as to hide the aspect of reversal of

restructuring. The Financial Creditor having declared that the restructuring having failed cannot now contend that there were documents executed at later date as they have on their own negated the effect of document being executed.

8. The Financial Creditor has further submitted in its Re-joinder as under:
- a) The Corporate Debtor in his reply has clearly admitted to the fact that the Financial Creditor has sanctioned different credit facilities to the Corporate Debtor and the Corporate Debtor has readily used the proceeds of these credit facilities. However, the Corporate Debtor in his reply has falsely stated that he has only obtained four credit facilities. But to the contrary, the Corporate Debtor has obtained 6 different credit facilities from Financial Creditor total amounting to Rs.58,20,00,000/-.
  - b) Further, even after the classification of different accounts of the Corporate Debtor as NPA, the Financial Creditor with a view to make the Corporate Debtor a viable unit, proposed to restructure the said credit facilities by way of conversion of overdue interest over existing Term Loans and Funded Interest Term Loan limits as sanctioned another Funded Interest Term Loan-III of INR 11,69,00,000/- (Rupees one crore sixty nine lakh only) to the Corporate Debtor as a part of restructuring of the existing credit facilities granted to the Corporate Debtor vide sanction letter dated 21.08.2017.
  - c) Pursuant to the Sanction letter dated 21.08.2017, the Board of Directors of the Corporate Debtor passed a Board Resolution dated 30.09.2017 agreeing to the restructuring/rescheduling the existing

credit facilities granted by the Financial Creditor by way of conversion of overdue interest over the existing Term Loans and FITL Limits to the Corporate Debtor.

- d) Pursuant to Board Resolution passed by the Corporate Debtor for rescheduling/restructuring the existing credit facilities, the Financial Creditor and the Corporate Debtor inter alia executed the following Agreements mentioned herein below to reschedule all the said credit facilities availed by the Corporate Debtor prior to classification of the loan account as NPA:
- i) Term Loan Agreement for FITL-III dated 11.10.2017. (pp 565-576 of the Petition)
  - ii) Supplemental Term Loan Agreement dated 11.10.2017. (pp 577-591 of the Petition)
  - iii) Deed of Guarantee for FITL-III executed by the Financial Creditor and the Guarantors dated 11.10.2017. (pp 592-603 of the Petition)
  - iv) Composite Declaration cum Undertaking dated 11.10.2017 provided by the Corporate Debtor in favour of the Financial Creditor with respect to FITL-III availed by the Corporate Debtor. (pp 604-618 of the Petition)
  - v) Deed of further charge (without possession) with additional security executed between the Financial Creditor, Corporate Debtor and the Director and Guarantors of the Corporate Debtor in respect to additional FITL-III dated 11.10.2017. (pp 619-652 of the Petition)

- e) Further, as per the Sanction Letter dated 21.08.2017, there were some terms and conditions put up by the Financial Creditor that the Corporate Debtor failed to comply with, which are as following:
- i) Latest CBD-23 and asset-liabilities statement of all the guarantors, duly certified by a CA to be submitted.
  - ii) Promotor Margin of INR 1.75 crore to be infused upfront.
  - iii) CA certificate regarding infusion of funds by promoter towards repayment of creditors.
  - iv) Submission of Final fire NOC up to 30.09.2017.
  - v) Certificate from MPCB (Maharashtra Pollution Control Board).
  - vi) Latest tax receipt in respect of mortgaged properties to be submitted.

Due to non-fulfilment of above-mentioned pre-conditions by the Corporate Debtor the proposal of additional credit facilities sanctioned by the Financial Creditor vide sanction letter dated 21.08.2017 lapsed on 27.01.2018 and the same was intimated to Corporate Debtor vide letter dated 31.03.2018. As a result, the debt granted in the prior credit facilities remained unchanged and the loan account remained classified as NPA.

- f) The Corporate Debtor has also executed acknowledgement of outstanding debt in different credit facilities vide acknowledgment dated 01.03.2014, 24.03.2015, 25.03.2015, 23.11.2016, 24.11.2016

for the purpose of section 18 of the Limitation Act, 1963. Further, the Corporate Debtor in its Board Resolution dated 30.09.2017 clearly acknowledged the default and in writing given to the Financial Creditor pursuant to which the Financial Creditor and Corporate Debtor has also executed different Agreement dated 11.10.2017.

- g) Further, in reply to the notice of the Financial Creditor, the Corporate Debtor vide letter dated 05.02.2020 once again acknowledged the debt of INR 50.20 crore which was availed by the Corporate Debtor and also acknowledged that the account had become irregular due to financial hardship faced the Corporate Debtor. A copy letter dated 05.02.2020 is annexed as Annexure 'H' of the Re-joinder filed by the Financial Creditor.
- h) Further, vide email dated 20.02.2020 the Corporate Debtor while referring to their account being NPA offered an OTS amount of INR 36 crore. In reply the Financial Creditor vide email dated 20.02.2020 informed the Corporate Debtor that as per Bank's policy guidelines for settlement/resolution in NPA accounts, the amount offered was very low and hence requested to increase the offer. However, there was no reply from the Corporate Debtor. The Financial Creditor vide email dated 15.07.2020 once again requested to the Corporate Debtor to improve the offer along with 10% amount as token which would be kept in lien and appropriated once OTS sanctioned and assured to look into settlement as per Bank Policy. Thereafter several follow ups were done by the Financial Creditor, however no response with concrete offer or token amount has been received from the Corporate Debtor till date. A copy the trial mails sent by the Corporate Debtor and Financial

Creditor regarding the OTS is annexed as Annexure 'I' of the Rejoinder filed by the Financial Creditor.

- i) The date of classification of account as NPA being 30.09.2016, the Corporate Debtor has executed various Agreements and Documents dated 11.10.2017 (which is within 3 years from the default date) wherein the Corporate Debtor has clearly acknowledged the financial debt default which was owed by the Corporate Debtor and hence the fresh period of limitation for purpose of section 18 of the Limitation Act, 1963 to be considered from 11.11.2017 and the present Petition was filed on 24.04.2020 thereby the present Petition is well within the period of limitation.
- j) The Corporate Debtor has clearly admitted in his reply that default occurred on 30.04.2016 and has also admitted to his various acknowledgements of debt. However, he has grossly erred in stating that there is no acknowledgement of debt after 24.11.2016.
- k) In the Board Resolution dated 30.09.2017 it is clearly admitted by the Corporate Debtor that the FITL-III is towards the overdue interest in respect of existing Term Loans. Further in Funded Interest Term Loan Agreement dated 11.10.2017, the Corporate Debtor has once again admitted that his business has become unviable and the Bank at request of Corporate Debtor has agreed to restructure the outstanding liability/dues in respect of existing term loan facilities by giving some reliefs and concessions and agreeing to convert the outstanding interest into FITL-III facility. He has further admitted that such accrued interest is in respect of existing term loans. Hence, there is a clear acknowledgement of outstanding dues on 11.10.2017 and this the period of limitation stands extended.

- l) Further, even before expiration of three years from 11.10.2017, there is another acknowledgement of debt dated 20.02.2020 by the Corporate Debtor hence the cause of action continues and period of limitation stands extended from 20.02.2020 for another three years.
- m) In support of the contention, the Financial Creditor relied on the NCLAT ruling in *Vivek Jha v. Financial Services India Private Ltd. & Anr. (Company Appeal (AT) Insolvency no. 756 of 2018)*, wherein inter alia the Tribunal observed that:

*“In law, an ‘Acknowledgement’ in writing within expiration of prescribed period will mark a new commencement period for limitation to base a claim and the same will not create a new contract. In fact, it only extends the limitation period. Suffice it for this Tribunal to make a pertinent mention that if a suit is filed within three years from the last acknowledgment the same is not barred by limitation as per decisions Union of India vs. M.C. Pandey AIR 2009 NOC page 494 (UTR). Further, an ‘Acknowledgment’ must be made before the expiration of limitation period as per section 18 of the Limitation Act, 1963. An ‘Acknowledgment’ of Liability not only saves limitation period but also offers on an individual a cause of action’ to him, to lay his Claim”.*

- n) The Financial Creditor has charged interest as per Sanction letters granted to the Corporate Debtor and there is no discrepancy in regards to the Amount of INR 89,74,29,507 (Rupees eighty nine crore seventy four lakh twenty nine thousand five hundred seven only) claimed by the Financial Creditor vide different sanction letters and the same is evident from the Summary of Principal, Uncharged Interest and Penal Interest outstanding as on 05.09.2020 submitted by the Financial Creditor in the Petition. Furtherance, the

Financial Creditor has also annexed the Account Statement of each and every credit facility with all the details of charging of Interest and Penal Interest right from the date of disbursement of the loan to the Corporate Debtor to substantiate the amount of INR 89,74,29,507 claimed by the Financial Creditor. A copy of the Summary of Principal, Uncharged Interest and Penal Interest outstanding as on 05.09.2020 and Statement of Account is annexed as Annexure 'B & C' of the Re-joinder filed by the Financial Creditor.

9. The Learned Counsel for the Financial Creditor has filed its written submissions and submitted as under:
  - a) The Financial Creditor has sanctioned 3 (Three) Terms Loans, 2 (Two) funded Interest Term Loan and (1) Cash Credit facility in aggregate of INR. 58.20 Crore (Indian Rupees Fifty-Eight Crore Twenty Lakhs only) to the Corporate Debtor vide different sanctions letters dated 30 August 2012, 22 February 2013, 17 January 2014, 17 March 2015 and 5 October 2015.
  - b) The Financial Creditor has time and again tried to restructure/reschedule the credit facilities granted to the Corporate Debtor, however, the Corporate Debtor defaulted and said accounts were classified as NPA on 30 September 2016.
  - c) Further, even after the classification of different accounts of the Corporate Debtor as NPA, the Financial Creditor with a view to make the Corporate Debtor a viable unit, proposed to restructure the said credit facilities by way of conversion of overdue interest over existing Term Loans and Funded Interest Term Loan limits as



sanctioned another Funded Interest term Loan-III vide sanction letter dated 21 August 2017.

- d) Pursuant to this, the Board of Directors of the Corporate Debtor passed Board Resolution dated 30 September 2017 admitting overdues and agreeing to the restructuring/rescheduling the existing credit facilities granted by the Financial Creditor and executed loan agreements dated 11 October 2017. Due to non-fulfilment of the preconditions by the Corporate Debtor the restructuring vide FITL-III lapsed on 27 January 2018 and the same was intimated to Corporate Debtor vide letter dated 31 March 2018.
- e) After giving adequate opportunities to the Corporate Debtor, the Financial Creditor thereafter filed petition under section 7 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on 24 April 2020. Further during the course of hearing, the Petitioner filed Rejoinder affidavit dated 31.12.2020 and Additional affidavit dated 25.01.2021.
- f) Corporate Debtor vide his board resolution and under FITL III agreements (sr. no. 2 and 3 above) has admitted to debt and default and further in letter dated 19 July, 2018 (sr. no. 4 in above table) has clearly acknowledged the debts in writing and admitted its liability of outstanding amount INR 56,27,27,313/- payable as on 30 June 2018 and. The Corporate Debtor in the same letter tried to make a compromise and settle the outstanding dues by offering INR 30 Crore as OTS proposal. However, the Applicant vide letter dated 24.07.2018 rejected the offer and requested the Corporate Debtor to explore the possibility of increasing the OTS amount and to come up with a revised offer.

- g) The Corporate Debtor vide letter dated 05.02.2020 acknowledged the debt of INR 58.20/- Crore which was availed by Corporate Debtor and in the same letter itself admitted that the accounts became irregular due to financial hardships faced by the Corporate Debtor and vide email dated 20.02.2020 offered another OTS proposal to the Financial Creditor to which the petitioner replied requesting to improve the offer.
- h) It is well settled principle that date of NPA is considered as date of Default. Given the above facts, it is submitted that the Corporate Debtor within three years from NPA date of 30.09.2016 has clearly acknowledged its liability in writing from time to time and hence period of limitation stands extended in terms of section 18 of the Limitation act, 1963. That reliance is placed by the Petitioner on the NCLAT Ruling in case of *MM Ramchandran Vs. South Indian Bank Ltd* in *Company Appeal (AT) (Insolvency) No. 1509 of 2019* whereby order dated 22. 01.2020 The NCLAT upheld the decision of the National Company Law Tribunal (NCLT), Kochi Bench, initiating the Corporate Debtor/Atlas) under the Insolvency and Bankruptcy Code, 2016 (IBC). The question that arose before the NCLAT was whether the said application under section 7 was barred by limitation. NCLAT, on the basis of e-mails and the letters issued by the Corporate Debtor same clearly acknowledged the debt due within the limitation period of the subsisting three years held that Section 18 of Limitation Act was applicable and hence the application under Section 7 is within the limitation of three-year duration. The said order was challenged before the Supreme Court, wherein the full bench of Supreme Court vide order dated

17.11.2020 in Civil Appeal No 2951/2020 affirmed and upheld the afore stated NCLAT order.

- i) Further, NCLAT in the case of *Rajendra Norottamdas Sheth & Ors Vs Union Bank of India & Ors in CA 621 OF 2020* has clearly held that section 18 and section 19 of the Limitation Act 1963 applies to the applications filed under IBC. The relevant paragraphs are reproduced below:

*“24 Section 18 applies to not merely suits but also applications and where before expiry of the prescribed period for an application an acknowledgment is made, the Section provides for computing fresh period of Limitation from the time when acknowledgment was so signed. Perusal of Section 19 shows that where payment is made on account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made. The date of NPA will not shift. It will remain the foundational date and period of Limitation gets triggered from that date. But when prescribed period is computed in accordance with the Limitation Act and facts of this matter, Section 18 and 19 do appear to be attracted.*

- j) Further, NCLAT in the case of *Yogeshkumar Jaswantlal Thakker Vs. Indian Overseas Bank & Others in CA 236 of 2020* has discussed in depth the applicability of section 18 of Limitation Act to the petition filed under IBC, relevant para as follows:

*“para 38 ...at this stage, this Tribunal, had perused the various confirmation letters as stated supra which are legally valid and binding between the inter se parties and the same cannot be repudiated on one pretext or other. Therefore, this Tribunal comes to an inevitable and*

*irresistible conclusion that the date of default i.e. 01.01.2016 gets extended by the debit confirmation letters secured by the 1<sup>st</sup> Respondent/Bank from the Corporate Debtor (for making a new period run from the date of debit confirmation letters) towards the outstanding debt in 'Loan Account'. Indeed, the Application under Section 7 of the I & B Code, 2016 was filed by the 1<sup>st</sup> Respondent/Bank on 01.04.2019 before the adjudicating authority within the period of Limitation. Furthermore, in view of the fact, that ingredients of Section 18 of the Limitation Act, 1963 are quite applicable both for "Suit and Application" and the debit confirmation letters in the instance case were duly acknowledged in accordance and accordingly the same is dismissed, since there being no legal infirmities found in the impugned order passed by adjudicating authority in admitting CP. No. (IB)..."*

- k) The Financial Creditor reliance on the judgement of *Babulal Vardhaji Gurjar Vs. Veer Gurjar Aluminium Industries Ltd & Anr Civil Appeal No. 6347 of 2019* has not dealt with the issue of application of Section 18 of Limitation Act to the Insolvency and Bankruptcy Code but has restricted its decision to the facts of that case. On the other hand, the NCLAT judgment in *MM Ramchandran*, having been affirmed by the full Bench of Supreme Court and NCLAT (*supra*), are binding precedents on the issue of application of section 18 of the Limitation Act on proceedings under the code.
- l) Further, the Corporate Debtor in its letter dated 19.07.2018 also admitted in writing to the fact that the last re-payment made to a loan account FITL-I is of 22 January 2018 (page 9 of Additional Affidavit). In this regard section 19 of the Limitation Act, 1963 provides that where a party, on account of an outstanding debt, makes payment prior to the expiration of the prescribed period of

limitation, a fresh period shall be computed from the time when the payment was made. In this regard, reliance is also place on the judgment as follows:

- NCLT, Chandigarh Bench, in the case of *M/s. RPG Industrial product Private Limited Vs. M/s. Sahil International Private Limited*, CP.(IB) No.121/CHD/PB/2018 (para 20),
- NCLT Hyderabad Bench in case of *Smart Card IT Solutions Limited V. M/s. Hippocampus Infotech Pvt. Ltd.*, CP (IB) No. 185/HDB/2018 (para 15) and
- NCLT Mumbai this Bench in the matter of *CT Technologies ApS Vs B.Y Agro & Infra Ltd.* In CP 4270/MB/C-IV/2018 vide order dated 26.05.2020 (para 13-16)

m) Therefore, in the view of the above placed facts and ruling of the Apex Court, NCLAT and the NCLT read with the provisions of India Limitation Act 1963, it is crystal clear that not only the date of default but also the date of last acknowledgement given and the date of last payment made by the Corporate Debtor is taken into the consideration while admitting the CIRP Petition in light of Limitation. Hence, in this present case the date of NPA is of 30 September 2016, the date of last payment made in the loan account is of 22 January 2018, the date of acknowledgment debts given by the Corporate Debtor are 11 October 2017, 19 July 2018, 5 February 2020 and 20 February 2020 are clearly within 3 years from the date of default and filing of this present petition and hence the period of Limitation stood extended from time to time.

10. The Learned Counsel for the Corporate Debtor has filed its written submissions and submitted as under:

- a) That the Financial Creditor approached this Hon'ble Court for initiating a CIRP for the Corporate Debtor and filed an CP against the Corporate Debtor on 24 April 2020, wherein the principal debt amount claimed is INR 58, 20,00,000 and aggregate amount including interest claimed by the Applicant is INR 89,74,29,507 (Rupees eighty-nine crore seventy-four lakh twenty-nine thousand five hundred seven Only).
- b) That reliance is placed by the Petitioner on the NCLAT Ruling in case of *MM Ramchandran Vs South Indian Bank Ltd* in Company Appeal (AT) (Insolvency). No. 1509 of 2019 where by order dated 22.01.2020 the Hon'ble NCLAT upheld the decision of the National Company Law Tribunal (NCLT), Kochi Bench, initiating the corporate insolvency resolution process against Atlas Gold Townships India Pvt Ltd (Corporate Debtor/Atlas) under the Insolvency and Bankruptcy Code, 2016 (IBC). The question that arose before the NCLAT was whether the said application under Section 7 was barred by limitation. It was argued by the Bank that besides other acknowledgments, the corporate debtor through its promoter and director had also issued an email dated May 2, 2016 and a letter dated May 30, 2016 within the limitation period of the subsisting three years and that the same clearly acknowledged the debt due to the bank. The Bank, basis the foretasted email and letter, sought the benefit of Section 18 of the Limitation Act and claimed that the said application under Section 7 is within the limitation of three-year duration. The NCLAT, basis the email and the letter, accepted the argument of application of section 18 of the

Limitation act to the facts and circumstances of the case and dismissed the appeal of the Corporate Debtor. The said order was challenged by MM Ramchandran before the Supreme Court as well, wherein the full bench of Supreme Court vide order dated 17.11.2020 in Civil Appeal No 2951/2020 affirmed and upheld the foretasted NCLAT order.

- c) It is humbly submitted that the Apex Court in the matter of *Babulal Vardhaji Gujar Vs Veer Gurjar Aluminium Industries Ltd & Anr* Civil Appeal No. 6347 of 2019 has not dealt with the issue of application of section 18 of the Limitation Act to the Insolvency and Bankruptcy Code. On the other hand, the NCLAT judgment in MM Ramchandran, having been affirmed by the full Bench of Supreme Court, is a binding precedent on the issue of application of section 18 of the Limitation Act on proceedings under the code.
- d) Further, in the letter dated 19.07.2018, the Respondent apart from acknowledging the debt liability has also admitted to repayment of INR 17 Crore to the Bank wherein the latest repayment date is 22 January 2018 in FITL1 as per annexure 1 attached by them to the said letter.

***Findings:***

- a) We have heard the submissions of the counsels on both the sides and observed as under:
- b) On 08.03.2021 the specific query raised by the Bench to the Financial Creditor to clearly mention the date of default as learned Counsel for the Corporate Debtor has shown to the Bench recall notice served by the Financial Creditor upon the Corporate Debtor stating that the date of default is w.e.f. 30.03.2015. The Learned

Counsel for the Financial Creditor couldn't answer the question of the Bench whether the date of default is 30.09.2016 or 30.03.2015 as stated by the Financial Creditor in its recall notice.

- c) The Financial Creditor vide its Additional Affidavit confirmed that the default occurred on 30.04.2016 and the Account of the Corporate Debtor was classified as NPA on 30.09.2016. to support the above-mentioned statement the Financial Creditor has given the Tabular format in its Additional Affidavit:

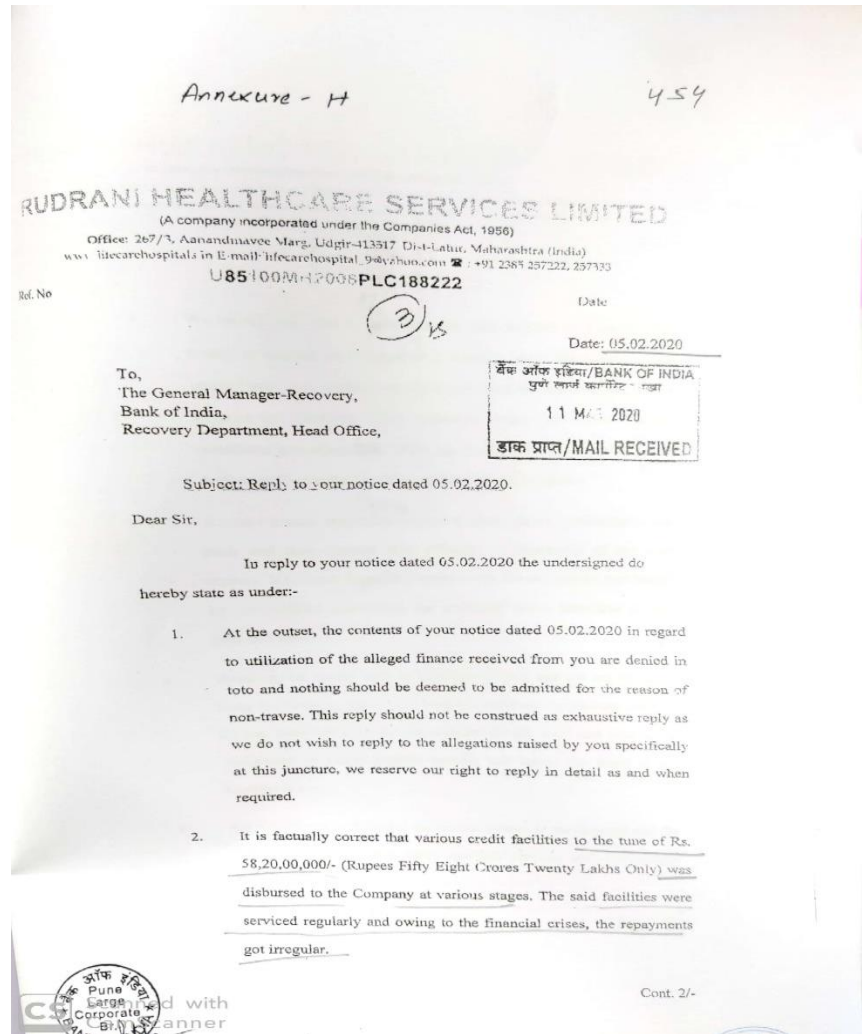
Date	Interest debit (Normal+Penal)	Cumulative dues w.r.t. interest	Recovery	Cumulative Recovery	Received on
April-2016	33,68,113	33,68,113		--	
May-2016	32,93,491	66,61,604		---	
June-2016	41,82,613	1,08,44,217	29,85,775	29,85,775	June-2016
July-2016	35,88,995	1,44,33,212	28,79,800	58,65,575	July-2016
August- 2016	37,32,314	1,81,65,526	44,88,224	1,03,53,799	August-2016
September- 2016	37,03,645	2,18,69,171	34,70,000	1,38,23,799	September- 2016

- d) As to the period of limitation, the Bench has observed as follows:

- i) The default occurred on 30.04.2016. The Account of the Corporate Debtor was classified as NPA on 30.09.2016.
- ii) The Corporate Debtor has issued a Letter dated 23.11.2016 at p.684 of the Petition acknowledging the debt. Since the Financial Creditor Bank has not considered the OTS proposal sent by the Corporate Debtor, the same is not in force as on today's date.



- iii) There is Board Resolution dated 30.09.2017 passed by the Corporate Debtor which is at pp 565-568 of the Petition resolving to borrow restructured facilities.
- iv) The Corporate Debtor has issued letter dated 05.02.2020 to the Financial Creditor wherein the Corporate Debtor has admitted the amount of Rs.58,20,00,00/- was disbursed by the Financial Creditor to the Corporate Debtor and due to financial crises, the repayment got irregular by the Corporate Debtor. The said letter is as under:



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**SHORANI HEALTHCARE SERVICES LIMITED**  
(A company incorporated under the Companies Act, 1956)  
Office: 267/3, Anandmayee Marg, Udgir-413517, Dist-Latur, Maharashtra (India)  
www.lifecarehospitals.in E-mail: lifecarehospital\_9@yahoo.com ☎ +91 2385 257222, 257333  
UB5100MH2008PLC188222

Ref. No. \_\_\_\_\_ Date \_\_\_\_\_

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3. We would also like to state that the said hospital and health care center is located in Udgir, district Latur, i.e. rural Maharashtra and undoubtedly the medical services provided in our hospital is far superior but however due to economic crises and severe drought conditions prevailing since 2016, the profits from the hospital are at decline and hence the servicing of the loan got irregular.

4. We have always communicated the hardship faced by hospital to the bank and have assured bank officials of repayment of the loan amount. It is to our shock and surprise that the said notice was issued by you without considering the economic crises described to you time and again.

5. However, we would wish to highlight to you that we are trying to bring the funds to repay your loan but however the amount claimed by you does not consider the amount already paid and also has a component of compoundable interest and hence the same is not acceptable to us.

6. We request you to consider the factual matrix of the hospital and the class of people availing these medical services and accordingly withdraw your notice.

Cont...3/-

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7. We also propose to have a meeting with you and the other concerned bank officials to amicably resolve the issue in hand possibly through a one-time settlement.

In view of the above, facts and circumstances stated hereinabove, it is requested to drop the proceedings to declare undersigned as a willful defaulter.

Hence, this reply.  
Thanking you,

Yours faithfully,  
*Dr. Archana Shailesh Patil*  
Dr. Archana Shailesh Patil  
R/o. Deoghar-Sadbhavna Nagar, Latur.

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- n) It is clear from the records that the Corporate Debtor has time and again acknowledged the debt which is due and payable to the Financial Creditor. Relying on the Judgment of Justice Indira Banerjee, in *Dena Bank (now Bank of Baroda) V. C. Shivakumar Reddy and Anr*, this Bench is of the clear view that Section 18 of the Limitation Act, 1963 is applicable to the present case as the Corporate Debtor has acknowledged its liability on various occasions.
- o) We have heard the arguments of the Learned Counsel for both the parties and perused the records.
- p) On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is hereby admitted.
- q) The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
- r) The Applicant has proposed the name of Mr. Sachin Shrinivas Bhattad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00680/2017-2018/11159] as Interim Resolution Professional, to carry out the functions as mentioned under

I&B Code and has also given his declaration that no disciplinary proceedings are pending against him

**ORDER**

This Application being **C.P. (IB) No. 1117/NCLT/MB/C-IV/2020** filed under Section 7 of I&B Code, 2016, presented by Bank of India, Financial Creditor/ Applicant against **Rudrani Health Care Services Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

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

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
  - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints MR. Sachin Shrinivas Bhattad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-P00680/2017-2018/11159] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Rajesh Sharma  
Member (Technical)

06.10.2021

Sd/-

Suchitra Kanuparthi  
Member (Judicial)