COFFEE DAY ENTERPRISES LIMITED

To,

28th February 2025

The National Stock Exchange of India Limited **Manager-Listing** **Exchange Plaza,** **Bandra Kurla Complex, Bandra (East)** **Mumbai – 400 051** **Tel No.: 022-2659 8237/38** **Symbol: COFFEEDAY**	**BSE Limited** **General Manager-DSC** **Phiroze Jeejeebhoy Towers** **Dalal Street, Fort,** **Mumbai – 400 001** **Tel No.: 022-2272 2039** **Scrip Code: 539436**

Dear Sirs,

Sub: Intimation under Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirement) Regulation.

Dear Sir/Madam,

This is in continuation to our disclosure made on 27th February 2025, wherein the Hon'ble National Company Law Appellate Tribunal, Chennai, pronounced the order allowing the appeal filed by the Company and set aside the proceedings of Corporate Insolvency Resolution Process initiated against the Company as per the National Company Law Tribunal, Bangalore dated 08th August 2024.

The Order Copy of the same is enclosed.

Kindly take the same on record.

Thanking you,
Yours Truly,

For Coffee Day Enterprises Limited

SADANANDA THIMMA POOJARY

Sadananda Poojary
Company Secretary & Compliance Officer
F5223

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No. 295/2024
(IA Nos. 774, 775 & 776/2024)

In the matter of:

Malavika Hegde,
Shareholder & Director of
Coffee Day Enterprises Ltd.
No. 165, RV Road Near Minerva Circle,
Bengaluru-560005 **…Appellant**

V

IDBI Trusteeship Services Limited
Ground Floor, Universal Insurance Building Sir
Phirozshah Mehta Road,
Fort, Bazargate Mumbai-400001 **...Respondent No. 1**

Ashish Chhawachharia, Interim Resolution Professional,
Coffee Day Enterprises Limited
Grant Thornton Unit 1603&1604,
Eco Centre, Plot#4, Street V, Bidhannagar,
Kolkata, West Bengal, 700091 **...Respondent No. 2**

Present:

For Appellant : Mr. P.S. Raman &
Mr. P.H. Arvindh Pandian, Senior Advocates
For Ms. Lakshana Viravalli, Mr. Adithya Jain,
Mr. Arun C Mohan, Ms. S.Madhusmitha &
Ms.Vandana Kohli Advocates

For Respondents : Mr. R. Parthasarathy, Senior Advocate &
Mr. T.K. Bhaskar, Advocate
For Mr. Arun Karthik Mohan,
Mr. Suhrith Parathasarathy &
Ms. Amritha Sathyajith, Advocates for R1

JUDGMENT
(Hybrid Mode)

[Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant in the instant Company Appeal, was the shareholder and director, of the Corporate Debtor, has filed this instant company appeal, as against the order rendered in, Company Petition (IB) No. 152/BB/2023, where he subjects the Impugned Order of 08.08.2024, as rendered by the Ld. Adjudicating Authority, NCLT, Bengaluru Bench, the resulting consequence of, which had been that, the Corporate Debtor has been admitted to face the CIRP proceedings under Section 7, of the I & B Code, 2016, as it was sought to be initiated by the Respondent herein who was the Applicant in the Company Petition i.e., IDBI Trusteeship Services Limited (hereinafter to be referred as a Financial Creditor).

2. As a consequence of the judgment of 08.08.2024, the Ld. Adjudicating Authority observed that, since there is an apparent establishment of a debt and default, existing in the petition thus preferred by the Respondent, and has also observed that the petition was held to be within the limitation period, had admitted the petition and declared a moratorium under Section 14 of the I & B Code, 2016, and the necessary consequences to the moratorium under Section 14 of the I & B Code, 2016, was to be followed.

3. Brief facts as it engages consideration, and which has been the subject matter of consideration too before the Ld. Adjudicating Authority, it was to the effect that, Coffee Day Enterprises Limited, is a holding company of Cafe Coffee Day Group, which was incorporated as back as in 1996 by Late Mr. V.G. Siddhartha, the late husband of the present Appellant, Ms. Malavika Hegde. The primary operating company for the Coffee Day Enterprises Limited is Coffee Day Global Limited, that operates various coffee outlets of Cafe Coffee Day in different parts of the country. After their admission of the application filed under Section 7 of the I & B Code, 2016, as instituted by the Respondent herein, i.e., IDBI Trusteeship Services Limited, they contended that in March 2019, the Corporate Debtor proposed to issue an aggregate of 2000 unlisted, unrated, secured, redeemable, and non-convertible debentures of the face value of INR 10 lakhs each, aggregating to INR 200,00,00,000, which was on a private placement basis to the eligible investors.

4. It is not in controversy rather admitted too, between the parties, that on 22.03.2019, a Debenture Trustee Agreement, was entered into between the Corporate Debtor and Respondent No. 1, as the result thereto the Respondent No. 1, was appointed as the Debenture Trustee for the benefit of, all the debenture holders. As per the terms contained under the Debenture Trust Deed, executed between the parties, it contained certain specified terms and conditions regarding the issuance of non-convertible debentures, the right

issues, duties, and powers of the Debenture trustees. The deed further contained the terms and conditions under, which the charged assets were to be held and administered by the Debenture Trustees, for the benefit of the secured parties. The Corporate Debtor issued private placements offer cum-application letter, which was submitted in the form of Form-PAS-4, offering to issue and allot the non-convertible debentures, as an instrument of investment to eligible investors.

5. Pursuant to the aforesaid offer, the investors/debenture holders, i.e., Credit Opportunities II Private Limited, and Indian Special Situation Schemes, have expressed their intent to subscribe to the non-convertible debentures of the Coffee Day Enterprises Limited. Accordingly, they were allotted 1000 non-convertible debentures, each for an aggregate subscription amount of INR 100,00,00,000 each.

6. It is the case of the Appellant, before this Appellate Tribunal that, owing to an untimely death of the husband of the present Appellant, Late Mr. V.G. Siddhartha, on 29.07.2019, who happened to be the Founder, Chairman, and Managing Director and Promoter of the Coffee Day Enterprises Limited, (the Corporate Debtor), this Appellant has taken various steps to ensure the revival and continuous running of Cafe Coffee Day Group. However, owing to an unprecedented *force majeure* that is because of COVID-19 pandemic, the

business of the cafe outlets of Cafe Coffee Day, was either put to a halt or at few places they were running, but not at its fullest capacity resulting in a recurring loss.

7. The Appellant's case was further that, they had made all endeavors to ensure that the aforesaid enterprise and the holding company stayed in an operational capacity, and she kept running. As a result, on 28.07.2020, the Respondent No. 1 alleged to be acting through its power of attorney holder, under the instructions of 100% of the debenture holders had issued a notice of default for the purposes of initiating the CIRP proceedings against the Corporate Debtor.

8. The Appellant contended that, Respondent No. 1 is said to have been acting on behalf of the debenture holder and had issued a notice of sale on 01.03.2021. This notice of sale of 01.03.2021 pertained to the sale of the pledged shares. One of the issues that would be ultimately emerging for consideration would be as to, *"whether, the notice of sale of pledged shares dated 01.03.2021, could at all be treated as to be the date of default*, particularly in an event where the factum of default was an admitted aspect by the Respondent, which is said to have chanced on 30.09.2019, that is much prior to the COVID period.

9. A notice of default too in connection thereto, was said to have been also issued during the COVID period that, is on 28.07.2020. The notice of 01.03.2021, which was exclusively a notice of sale of the pledged shares of the Corporate Debtor, along with the other pledgors for the sale of the pledged shares, and it had also demanded payment of an alleged outstanding amount of Rs. 278,97,07,554.15/-. Respondent No. 1 has already invoked the pledge, of the shares already created in its favor by the Corporate Debtor over the shares of Coffee Day Global Limited, which is said to be holding 21.68 % shares of Coffee Day Global Limited. However, it is contended that instead of realizing the entire shares held by it, Respondent No. 1 on 07.09.2023, filed the application under Section 7 of the I & B Code, 2016, on behalf of the Debenture Holder for seeking to initiate the CIRP proceedings against the Corporate Debtor. There were various contentions raised by the Appellant against the initiation of a proceeding under Section 7 of the I & B Code, 2016, which could be marginally summarized by us in the following manner:

i. Whether clause 10 of the Debenture Trust Deed dated 22.03.2019, would be creating a bar in the initiation of proceedings, under Section 7 of the I & B Code, 2016, owing to the directives contained in ***para 39 to 44 of Schedule II, as contained under the Debenture Trust Deed. As extracted hereunder***: -

"39. A meeting of the Debenture Holders shall have the following powers exercisable by a Unanimous Resolution:

(a) to amend or waive any of following terms of the Debentures and/or the Transaction Documents:

(i) the applicable majority of Debenture Holders required to vote on, or give instructions to the Debenture Trustee on, any matter provided for under this Deed:

(ii) an extension to the date of payment of any amount in respect of the Debentures or under the Transaction Documents;

(iii) a reduction in the amount of any payment of principal, interest, fees or commission payable in respect of the Debentures or under the Transaction Documents;

(iv) a change to any Obligor;

(v) any provision which expressly requires the consent of all the Debenture Holders:

(vi) the manner of sharing of any proceeds of enforcement under Clause 10.3 (Power to apply Proceeds):

(vii) the release of any Security created pursuant to any Transaction Document or of any Charged Assets (except as provided in any Transaction Document); and

(viii) the nature or scope of the Charged Assets except to the extent that it relates to the sale or disposal of a Charged Asset where that sale or disposal is expressly permitted under this Deed or any other Transaction Document; and

(b) to authorise the Debenture Trustee to concur in and execute any supplemental deed embodying any such modification by passing a Unanimous Resolution for this purpose.

40. A meeting of the Debenture Holders shall have the following powers exercisable by an Extraordinary Resolution:

(a) to remove the existing Debenture Trustee and to appoint new Debenture Trustee in respect of the Debentures; or

(b) to give any other direction, sanction, request or approval, which under any provision of this Deed is required to be given by an Extraordinary Resolution.

41. All other resolutions of the Debenture Holders at a meeting shall be by way of a Majority Resolution.

42. A resolution, passed at a general meeting of Debenture Holders duly convened and held in accordance with this Deed, shall be binding upon all the Debenture Holders whether present or not al such meeting and each of the Debenture Holders shall be bound to give effect thereto accordingly, and the passing of any such resolutions shall be conclusive evidence that the circumstances justify the passing thereof, the Intentions being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

43. Notwithstanding anything contained herein, it shall be competent for the Debenture Holders to exercise the rights, powers and authorities of the Debenture Holders in respect of the Debentures by way of written instructions from each Debenture Holder to the Debenture Trustee instead of by voting and passing resolutions at meetings provided that

(a) in respect of matters, which at a meeting would have required a Unanimous Resolution, the Debenture Trustee must be so instructed in writing by Debenture Holders holding 100% of the outstanding aggregate Nominal Value of the Debentures;

(b) in respect of matters, which at a meeting would have required an Extraordinary Resolution, the Debenture

Trustee must be so instructed in writing by Debenture Holders holding at least 75% of the outstanding aggregate Nominal Value of the Debentures; and
(c) In respect of matters, which at a meeting would have required a Majority Resolution, the Debenture Trustee must be so instructed by Debenture Holders holding at least 51% of the outstanding aggregate Nominal Value of the Debentures.

44. In case a meeting of the Debenture Holders is held by way of a telephone conference call, any decision, consent or any other instruction from any Debenture Holder to the Debenture Trustees shall be effective only upon being also communicated by way of written instructions."

ii. Whether the Corporate Insolvency Resolution Process could at all have been initiated, in the absence of there being a prior decision-making process, for resolving to initiate the proceedings of CIRP, due to non-compliance of the provisions contained under clause 10 (1)(b), of the Debenture Trust Deed dated 22.03.2019.

iii. It was the case of the Appellant and consistently harped upon during the course of argument, that the pleading, which was raised by them in para 3 and 4 of the written statement, had not been considered though, the contents of the same were not controverted, by the Respondent in their Rejoinder Affidavit, which was filed before the Ld. Adjudicating Authority.

iv. The Appellant's case was that since, the aspect of default, has to be determined from the date i.e., 30.09.2019, and even if at all the

default period could have been extended owing to the COVID-19 situation then too, the said period would end owing to the expiry of 90 days period which stood granted by virtue of the Hon'ble Apex Court Judgment i.e., with effect from 01.03.2022 as observed in MA. No. 21/2022 in MA 665/2021 in Suo motu Writ Petition (C) No. 3/2020, which would be completing on 30.05.2022, but since, the proceeding under Section 7 of the I & B Code, 2016, was filed on 07.09.2023, it will be barred by limitation.

v. It was further the case of the Appellant, before the Ld. Adjudicating Authority that the notice thus issued on 01.03.2021, for the sale of the pledged shares that cannot be taken as to be the date of default which runs contrary to records as, the default itself was admitted to have chanced on 30.09.2019, if at the most it could be extended due to COVID-19 situation beyond a period of 90 days would be with effect from 01.03.2022 as observed by the judgment of the Hon'ble Apex Court it would be only till 30.05.2022, and beyond that, as concept of limitation has be logically construed.

vi. It was further contended by the Appellant that the manner in which the implication of the notification issued by the Ministry of

Corporate Affairs bearing No. SO/1091(E), dated 27.02.2019, which has been considered to be conferring a power for initiation of the CIRP proceedings on behalf of the Financial Creditor, in fact, the contents of the same are said to have been wrongly attracted by the Respondents. The Respondent relied upon clause 3.3 of the Debenture Trust Deed for the purposes of substantiating the proceedings under Section 7 of the I & B Code, 2016.

vii. It was a specific case developed by the Appellant in the written submissions that, in the absence of satisfying the conditions of Clause 10 (b) of the Debenture Trust Deed, as there ought to have been a prior resolution, ratifying the action by the Debenture Trustees, the entire proceedings would be vitiated.

Based on above the following points would be engaging consideration:

A. What would be the effect of Debenture Trust Deed and Non-compliance of its condition, over the proceedings?

B. Whether there was any validly executed Power of Attorney to initiate Section 7 Proceedings?

C. Whether the proceedings would be barred by limitation?

D. What would be date of default and its determination? and

E. How bar of Section 10A of I & B Code could be read in conjunction to the aspect of limitation?

A. What would be the effect of Debenture Trust Deed and Non-compliance of its condition, over the proceedings?

10. The first and foremost principle, and issue of controversy, which goes to the very genesis of the authority on which basis, the proceedings had been drawn under Section 7 of the I & B Code, 2016, is required to be considered in the context of, what rights would be flowing from, the Debenture Trust Deed which is an admitted document having been executed between the parties. It is not in debate, nor has it ever been argued by any of the counsels about the tenability of the Debenture Trust Deed nor its validation or execution is in dispute. Owing to the fact that, both the counsels agreed, that, there did exists a Debenture Trust Deed, as executed on 22.03.2019, which was laying down the governing principles, that would be monitoring the code of conduct of the members of the Debenture Trust Deed, and the organisation itself for managing the affairs of the company, for the purposes of initiation and conferment of right of initiation of the proceedings under Section 7 of the I & B Code, 2016.

11. The argument of the Ld. Senior Counsel for the Appellant is that, if the Debenture Trust Deed, itself is taken into consideration since there happens to be an apparent failure on the part of the Respondents/Applicant to Section 7

application, they were to comply with, the conditions given therein, to attach an authentication to the proceedings, it is argued that, it would vitiate the very inception of proceedings under Section 7 of the I & B Code, 2016. For the aforesaid purpose, the Ld. Senior Counsel for the Appellant had made reference to the Debenture Trust Deed itself and various covenants as contained therein which were mandatory in nature.

12. For the purposes to deal with, as to how and in what manner, the right would be conferred for the purposes of enabling the deponent to institute Section 7 proceedings. In order to elaborate his argument, the Ld. Senior Counsel for the Appellant had argued, that in accordance with the definition clause as contained in the Debenture Trust Deed, reference has been made to the terms "**the Promoters**" and "**Promoters group**", which has been defined under the trust deed. The word promoter would denote to, Mr. V.G. Siddhartha, the person named therein, who is said to be the promoter. The promoter group was held to be inclusive of, various subsidiaries and non-listed companies, and the promoter group as defined under the Debenture Trust Deed of 22.03.2019, describe the same as under: -.

(a) The **"promoter group"**, means the obligors, CDGL, CDEL and all entities/individuals recognized and disclosed as 'promoter

and/or promoters group' of CDGL, CDEL on the exchange from time-to-time pursuant to the taking over of the units.

13. The subsidiaries as given therein in the definition of 'promoters group' contain both listed and unlisted companies, CDGL is a subsidiary of CDEL and is not a listed company, whereas CDGL since being a subsidiary of the promoter group, the appointment of Debenture Trustee would be regulated as per the terms of the Debenture Trust Deed of 22.03.2019.

14. Primarily, the issue engaging consideration would be, as to whether at all in the absence of their being an authority vested with the Debenture Trustee, as per the conditions of the Debenture Trust Deed of 22.03.2019, whether at all, there could be the proceedings under Section 7 of the I & B Code, 2016, which could have been validly instituted by the so-called attorney holder Mr. Manohar Maddili!

15. The Ld. Senior Counsel for the Appellant submitted that on scrutiny of the Debenture Trust Deed, if the process of appointment of a Debenture Trustee is taken into consideration, which has been contained under Clause 2.1, it provides for that an "**appointment of a Debenture Trustee"**. *Clause 2.1 as provided under Debenture Trust Deed is extracted hereunder: -*

"2.1 Appointment of Debenture Trustee

> *The company hereby appoints the IDBI Trusteeship Services Limited to act as Debenture Trustee for and on behalf of other secured parties, pursuant to the trust created under this deed and IDBI Trusteeship Services Limited agrees to act as a Debenture Trustee for and on behalf of the other secured parties in accordance with the terms and conditions contained in this deed."*

16. The signatories to the Debenture Trust Deed dated 22.03.2019, had agreed upon the terms and conditions as contained in the Debenture Trust Deed would be binding terms and conditions, and for the aforesaid purpose it enforce upon an obligations on the Debenture Trustee as per the terms of the Debenture Trust Deed to act accordingly.

17. The reference may be made to Clause 3.3 of Debenture Trust Deed, which provides for the terms and conditions and their binding nature, **Clause 3.3** provides that, ***"the terms and conditions shall be binding on the company and the Debenture Holders and all persons claiming by, through, or under any of them"***. What would be relevant herein to be considered as the Debenture Trustee is whether they will be entitled to ensure, the compliance of the obligations of the company under or pursuant to the terms and conditions of the Deed, as if the same was set out and contained in the deed. On a simple interpretation of Clause 3.3, it rather only gives the terms of the deed and it makes the document of a nature that would enforce upon and it will be obligatory to the company and all others, who are found to be in the control of

the affairs of the company to be binding under the terms and conditions of the Debenture Trust Deed. What is important is that Clause 3.3, also contemplates that the Debenture Trustee has to enforce its obligation, subject to the terms and conditions, as if the same was set out and contained in the Debenture Trust Deed.

18. For the purposes of carrying out any resolution of the company as under the terms of the Debenture Trust Deed, it could be culled out from the Debenture Trust Deed of 22.03.2019, that all decisions pertaining to the act and actions which were to be taken on behalf of the company, it is provided for, that the majority resolution has to be passed by the Debenture Holders, which has to be based upon the written instructions which are to be given effect by a majority representing not less than 51 percent of the aggregate nominal value of the outstanding debentures. Meaning thereby, the majority resolution of the company was to be carried by the Debenture Trustee as per the terms of the Trust Deed Agreement, on the basis of the same being under the majority representing 51 percent of the aggregate nominal values, of the outstanding debentures. For the purposes of brevity *Clause 3.3 of Debenture Trust Deed dated 22.03.2019 is extracted hereunder: -*

"3.3 Terms and Conditions binding

The Terms and Conditions shall be binding on the Company and the Debenture Holders and all

persons claiming by, through or under any of them. The Debenture Trustee shall be entitled to enforce the obligations of the Company under or pursuant to the Terms and Conditions as if the same were set out and contained in this Deed."

19. For the purposes of the exercise of powers by the Debenture Trustee, as appointed as per Clause 2.1 of Debenture Trust Deed, it was based upon the terms and conditions as given under Clause 3.3 of the Debenture Trust Deed, the powers and duties as envisaged were to be discharged by the Debenture Trustee, are contained under clause 10.1, of classification of the powers and duties of the Debenture Trustee, which is extracted hereunder: -

"10.1 Authority for certain actions

(a) The Debenture Trustee shall;

(i) execute and deliver and/or accept the Transaction Documents and do any other act necessary for the creation and perfection of the Security required to be created pursuant to the Transaction Documents;

(ii) execute and deliver all other documents, Agreements, instruments, certificates, notices and do all other actions as may be necessary or desirable in connection with the protection and preservation of the rights of the Debentures Holders;

(iii) to the extent necessary, hold title deeds and other documents relating to any of the Charged Assets in such manner as it sees fit; and

(iv) upon the occurrence of an Event of Default, exercise its rights as Debenture Trustee for the Debenture Holders under the Transaction Documents and under Applicable Law and Clause 7 (Events of Default and Remedies).

(b) The Debenture Trustee shall, except in respect of matters on which it has been expressly authorised to take action (or omit to act) without reference to the Debenture Holders, seek the consent of the Debenture Holders prior to taking any actions (or omitting to act) under the Transaction Documents. The required majority of Debenture Holders for giving consent to any proposed action (or omission) by the Debenture Trustee shall be in accordance with paragraphs 39 to 44 of Schedule 2 (Provisions for Meetings and Decision Making)".

20. The Ld. Senior Counsel for the Appellant submits that the powers and duties as widely classified under Clause 10.1, for the purposes of the instant company appeal we would be concerned with, Sub-Clause (a) and its Sub-Clause (iv) of Clause 10.1 of the Deed, reads as under, that, *"upon the occurrence of an event of default, exercises the rights as Debenture Trustees for the Debenture Holders under the transaction documents and under applicable law as per Clause 7 (in an event of default and other remedies)*". It is argued by the Ld. Senior Counsel for the Appellant, that the powers of the Debenture Trustee was to exercise its duties, will only accrue when there was an identified event of default. The exercise of powers under Clause (iv) of Clause 10.1 of the Debenture Trustee Agreement, is an exception, its only in relation to the transaction documents and as per the applicable law and Clause 7. It is the case of the Appellant, that under Clause 10.1 (iv), where the exercise of powers by the Debenture Trustees is contemplated, its only in an event of

the establishment of default as described under the Debenture Trustee Agreement. He submits that the Debenture Trustee shall in respect of matters on, which he is specifically authorized to take action (or omit to act), without reference to the Debenture Holder, require seeking consent of the Debenture Holders, prior to taking any action or putting of an act, on the transaction documents required majority of Debenture Holders, giving consent to any proposal/any, action for commission of an act, by the Debenture Trustees, all his actions has to be in accordance with ***Clause 39 to 44 of Schedule II, of the Debenture Trust Deed Agreement***.

21. The stipulations, contained under Sub-Clause (b) of Clause 10.1 of the Debenture Trustee Agreement, restricts the exercise of powers by the Debenture Trustee, who could act upon only by a majority consent of Debenture Holders, for any proposed action which is to be taken by him. It is submitted by the Ld. Senior Counsel for the Appellant, that even the authorization which was to be given by majority debenture holder, to the Debenture Trustee, was required to be tested and considered, in accordance with Para 39 to 44 of Schedule II of the Debenture Trust Deed. The exercise of powers by the Debenture Trustee, under Sub-clause (b) of Clause 10.1 of the Debenture Trust Deed, could have been only, upon express authorization given, to take action (or omission to act). Under the transaction document, required to be issued by majority of Debenture Holders for giving consent to an approved

action, the reference herein with regards to the term "majority action" would be in accordance with the ***"majority resolution"*** contemplated under the Debenture Trust Deed, as provided under Clause (b), of the definition clause of majority resolution, which provides for that any action which is to be taken by the Debenture Trustee, has had to be, ratified and based upon the resolution of a meeting of the Debenture Holders, which should be upon the written instructions, given or by a majority representing not less than 51 percent of the aggregate nominal value of the outstanding debentures. The Ld. Senior Counsel for the Appellant submits that, since there happens to be no dispute with regard to the execution of the Debenture Trust Deed, he referred to Clause 3.3 as already referred to above that, the said clause has to be read into two parts:

(i) that the terms and conditions shall be binding on the company and the Debenture Holders and all persons claiming by or through or under them.

(ii) The expression as given under clause 3.3, which contemplates that the Debenture Trustee shall be entitled to enforce its obligation of the company to the terms and conditions set out and contained in the deed itself.

22. For the aforesaid purpose, the events, which has been made to fall under Clause 3.3 have been contained under Clause 7, which deals with as to, what

would be the events and conditions, which could be taken as to be the default for which the remedies under the Debenture Trust Deed, would be made available for the purposes to enable the applicant to invoke the proceeding under Section 7 of the I & B Code, 2016. *The events of default and the remedies as available for which the Debenture Trust Deed can exercise its powers are extracted hereunder: -*

> ***"7. EVENTS OF DEFAULT AND REMEDIES***
>
> *Each of the events or circumstances set out in this Clause 7 is an Event of Default.*
>
> ***7.1 Non payment***
>
> *Any Obligor does not pay on the due date any amount payable pursuant to any Transaction Document to which it is a party at the place at and in the currency in which it is expressed to be payable.*
>
> ***7.2 Collateral Cover***
>
> *Any Obligor falls to comply with its obligations under paragraph 9 (Minimum Collateral Cover) of Schedule 1 (Terms and Conditions) of this Deed.*
>
> ***7.3 Financial Covenant***
>
> *Any financial covenant set out in paragraph 3 (Financial Covenants) of Schedule 4 (Covenants and Undertakings) to this Deed is not complied with.*
>
> ***7.4 Other obligations***
>
> *An Obligor does not comply with any of Its obligations under any Transaction Documents to which it is a party (other than those referred to in Clause 7.1 (Non*

payment), Clause 7.2 (Collateral Cover) and Clause 7.3 (Financial Covenant).

7.5 Misrepresentation

Any representation, information or statement made or deemed to be made or provided by an Obligor in any Transaction Document to which it is a party or any other document delivered by or on behalf of an Obligor under or in connection with any Transaction Document is or proves to have been Incorrect or misleading in any respect when made or deemed to be made.

7.6 Cross default

(a) Any Financial Indebtedness of any member of the Promoter Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any member of the Promoter Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of any actual or potential default, event of default, or any similar event (however described).

(c) Any commitment for any Financial Indebtedness of any member of the Promoter Group is cancelled or suspended by a creditor of such member of the Promoter Group as a result of any actual or potential default, event of default, or any similar event (however described).

(d) Any creditor of any member of the Promoter Group becomes entitled to declare any Financial Indebtedness of such member of the Promoter Group due and payable prior to its specified maturity.

7.7 Insolvency

(a) Any member of the Promoter Group is unable to, is presumed or deemed by law to be unable to or admits its

inability to, pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The liabilities of any member of the Promoter Group exceed its assets.

(c) Any member of the Promoter Group commits any act of bankruptcy, insolvency, suspends payment to any of its creditors,

(d) A moratorium is declared in respect of any indebtedness of any member of the Promoter Group.

7.8 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(a) the suspension of payments, a moratorium of any Indebtedness, winding-up. dissolution, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Promoter Group;

(b) the preparation of a resolution plan for any member of the Promoter Group pursuant to "Resolution of the Stressed Assets - Revised Framework" of the RBI;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, provisional supervisor or other similar officer in respect of any member of the Promoter Group or any of their assets;

(d) enforcement of any Security over any assets of any Obligor:

(e) initiation of a fresh start process under the Insolvency and Bankruptcy Code, 2016 in respect of the Promoter, or

(f) initiation of an insolvency resolution process under the (Indian) Insolvency and Bankruptcy Code, 2016 in respect of any member of the Promoter Group (other than the promoter),

or any analogous procedure or step is taken in any jurisdiction in respect of any member of the Promoter Group.

7.9 Judgments, creditors' process

(a) Any member of the Promoter Group falls to comply with or pay any sum due from it under any final judgment or any final order made or given by a court of competent jurisdiction within the time specified under such order or Applicable Law, whichever is earlier.

(b) Any attachment, sequestration, distress or execution affects any asset or assets of any member of the Promoter Group.

7.10 Moratorium

The Government of India or any other relevant Governmental Authority declares a general moratorium or "standstill" (or makes or passes any order or regulation having a similar effect) in respect of the payment or repayment of any Financial Indebtedness (whether in the nature of principal, Interest or otherwise) (or any indebtedness which includes Financial Indebtedness) owed by any Obligor (and whether or not such declaration, order or regulation is of general application, applies to a class of persons which includes any Obligor or to an Obligor alone).

7.11 Expropriation

Any Governmental Authority or other authority (whether de jure or de facto) takes a step with a view to the nationalisation, compulsory acquisition, expropriation or seizure of all or any part of the business or assets or material rights of any member of the Promoter Group.

7.12 Cessation of Business

Any member of the Promoter Group ceases, or threatens to cease, to carry on all or a substantial part of the business it carries on or proposes to carry on as at the date of this Deed.

7.13 Unlawfulness

It is or becomes unlawful for any Obligor to perform its obligations under any Transaction Documents.

7.14 Repudiation

Any Obligor repudiates a Transaction Document to which it is a party or evidences an intention to repudiate any Transaction Document to which it is a party.

7.15 Security and guarantee

(a) Any Security Document is not (once entered into) in full force and effect or any Security Document does not (once entered Into) create in favour of the Debenture Trustee or the Debenture Trustee, as the case may be, the Security which it is expressed to create fully perfected with the ranking and priority if is expressed to have.

(b) The Security for the Debentures is not created or perfected within the timelines set out in this Deed.

(c) The Security purported to be created under any Security Document is jeopardised or endangered in-nay-manner whatsoever or any other obligations purported to be secured or guaranteed thereby or any part thereof is repudiated by or on behalf of any Obligor.

(d) Any guarantee provided under the Deed of Corporate Guarantee or the Deed of Personal Guarantee ceases to be effective.

7.16 Material Adverse Effect

The Debenture Trustee determine(s) that a Material Adverse Effect exists, has occurred or could reasonably be expected to occur.

7.17 Delisting Event

A Delisting Event occurs.

7.18 Audit qualification

Any audit letter relating to any financial statements of any Obligor contains significant reservations.

7.19 Material Litigation

Any litigation, arbitration, investigative or administrative proceeding is current, pending or threatened:

(a) to restrain an Obligor's entry into, the exercise of an Obligor's rights under, or compliance by an Obligor with any of its obligations under, the Transaction Documents; or

(b) which the Debenture Trustee otherwise determines has or if, adversely determined, could reasonably be expected to have a Material Adverse Effect.

7.20 Change of Control

The occurrence of a Change of Control.

7.21 Constitutional Documents

Any amendment to the Memorandum or the Articles.

7.22 Illegality

It is, becomes or will become unlawful or contrary to any regulation in any applicable jurisdiction for a Debenture Holder to fund or maintain its investment in the Debentures.

7.23 Remedies upon an Event of Default

(a) Upon the occurrence of an Event of Default, the Debenture Trustee inay and shall if so directed by the Debenture Holders by a Majority Resolution declare to the Obligors by notice in writing substantially in the form set out in Schedule 8 (Form of Notice of Event of Default) that:

(i) the Debt shall be due and payable forthwith in respect of each Debenture together with all other amounts payable in respect thereof in accordance with the Transaction Documents; and

(ii) the Security created pursuant to the Security Documents has become enforceable.

(b) Upon the Security created pursuant to the Security Documents having become enforceable, the Debenture Trustee shall (if directed by the Debenture Holders by a Majority Resolution):

(i) enforce any Security created or provided pursuant to the Transaction Documents in accordance with the terms thereof;

(ii) operate the Accounts and utilise all funds lying in the Accounts for the discharge of the Debt;

(iii) exercise its rights under the Deed of Corporate Guarantee;

(iv) exercise its rights under the Deed of Personal Guarantee; and/or

(v) exercise such other rights and remedies as may be available to the Debenture Trustee under the Transaction Documents and Applicable Law,

(c) If the Company does not redeem the Debentures on the Scheduled Redemption Date by paying the Final Redemption Amount, the Security created or provided pursuant to the Transaction Documents shall become immediately enforceable and the Debenture Trustee shall (unless directed otherwise by the Debenture Holders by a Majority Resolution):

(i) enforce any Security created or provided pursuant to the Transaction Documents in accordance with the terms thereof:

(ii) operate the Accounts and utilise all funds lying in the Accounts for the discharge of the Debt;

(iii)exercise its rights under the Deed of Corporate Guarantee;

(iv) exercise its rights under the Deed of Personal Guarantee; and/or

(v) exercise such other rights and remedies, as may be available to the Debenture Trustee under the Transaction Documents and Applicable Law, as the Debenture Trustee may deem fit.

7.24 Notification and expenses

(a) If any Default or any Event of Default has occurred, the Company shall promptly give notice thereof to the Debenture Trustee and the Debenture Holders in writing specifying the nature of such Event of Default or of such event (and the steps, if any, being taken to remedy it).

(b) The Company shall, within 3 Business Days of demand, pay to the Debenture Trustee the amount of all costs and expenses (including legal fees) incurred by the

Debenture Trustee or any Debenture Holder in connection with (i) the enforcement of, or the preservation of any rights under, any Debenture or any Transaction Document, or (ii) any action or proceeding instituted or carried on by or against the Debenture Trustee or Debenture Holder in connection with any Transaction Document or the transactions contemplated therein."

23. If this particular Clause 7 of the Debenture Trust Deed as extracted above, is read in accordance with the event of default, it has been as defined under the Debenture Trust Deed, that the event of default means, the event of default, which is set out under Clause 7, and which would be in exclusion of Clause 7.23 and Clause 7.24. In exclusion to Clause 7, which deals with the circumstances under which the default has to be considered and the consequential remedies available therein, Clause 7.23, deals with the remedies upon an event of default, which according to Clause (a), provides that upon the occurrence of an event of default, the Debenture Trustee may, if, so directed by the Debenture Holders by majority resolution declared to, the obligors by the notice in writing, substantially in the form as set out in Schedule 8 of the Debenture Trust Deed, that is in the form of notice in an event of default. The remedies as it has been dealt with under clause 7.23, which provides for the occurrence of an event of default, the Debenture Trustees, will have to act on the basis of the decision to be taken by the majority resolution, which has to be declared by the obligor by a notice, which will be a condition preceded for the

invocation of powers by the Debenture Trustees. In a nutshell, it is the argument of the Ld. Senior Counsel for the Appellant, that for the purposes of exercise of powers to initiate proceedings under Section 7 of the I & B Code, 2016, the power and duties of the Debenture Trustee, under Clause 10.1, could be exercised only when the Debenture Holders, under the transaction documents, falls to be within an ambit of Clause 7 to deal it as the event of default and remedies based on which Section 7 could have been invoked.

24. Since the powers to initiate proceedings under Section 7 of the I & B Code, 2016, as conferred to the Debenture Trustee under the Deed, were not exercised within the powers provided under Clause 10 (1) (b), the same would be bad and the entire proceedings initiated under Section 7 of the I & B Code, 2016, would be vitiated. It is argued that on scrutiny of Clause (b) of Clause 10.1, is taken into consideration, the exception which has been carved out for the purposes of the Debenture Trustee, to exercise its powers with regard to the duties and actions contemplated under Clause 7 of the Deed. It provides for, that for the purposes of exercising powers by the Debenture Trustee, there are two words under Clause 10.1(b) which are very relevant and had been deliberately included under Clause (b) of Clause 10.1, that before he acts upon, there has had to be a **"consent"** of the Debenture Holders, **"prior"** to taking an action or omitting to take an action under the transaction document. Taking of the action is contemplated only after **"prior consent"** as contemplated under

Clause (b) of Clause 10.1, which is yet again attached with yet another rider, that it could be subject to the condition, that the required majority of Debenture holders have given consent, for the action proposed, in accordance with the 'majority resolution' as it has been defined under the terms of the deed, it has been defined as to be, a majority representing not less than 51% of the aggregate nominal value of the outstanding debentures.

25. The argument of the Ld. Senior Counsel for the Appellant is also from the perspective that the aforesaid exercise of powers by the Debenture Trustee under Clause 10.1 (b) that was to be based upon, a prior decision before any action is taken and was to be based upon the majority resolution, all these processes for exercise of powers by the Debenture Trustee has to be in accordance with schedule II, which deals with the provisions for meeting out of the decision-making process, where certain basic elements are necessarily required to be satisfied. Before the Debenture Trustee is made competent to deal with the authority, which is vested to him in relation to the powers, which have been vested to the Debenture Trustees for an act and action as provided under Clause 39 of Schedule II, as appended to the Debenture Trust Deed of 22.03.2019.

26. In fact, what has been intended to be argued by the Ld. Senior Counsel for the Appellant, in support of his contention with regards to the non-

compliance of Clause 10.1(b) that is required to be satisfied, for the purposes of taking an action for drawing the proceeding under Section 7 of the I & B Code, 2016, he submits that, because of Clause 39 as contained under Schedule II, to the Debenture Trustee Agreement, apart from the fact that, there has to be a prior decision before an action is being preceded which is to be taken by the Debenture Trustee and that too in the context of the powers which has been vested by unanimous resolution in the meeting of the Debenture Holders, but for act and action as contained under Clause 39 of Schedule II of the Debenture Trustee Agreement entire proceedings would be procedurally unsustainable. It has been further argued that an exception has been carved out, that all action, which are not contained under the Debenture Trustee Agreement particularly that, as contained under Clause 39, it has to be taken as per Clause 41, which provides for that *"all other resolutions of the Debenture Holders at a meeting shall be by way of majority resolution"*. In a nutshell, which could be summarized is that, for any action, which is to be taken by the Debenture Trustee, it has to be preceded with a prior decision-making process and a conscious applicability of mind in order to show that, it has been taken on the basis of a majority decision for the purposes of arriving at a conclusion as to, whether at all there has chanced a default or an event of default as per the circumstances specified under Clause 7 except for the Clauses 7.23 and 7.24 as contained under the definition of 'default' and 'event of default', as defined

under the Debenture Trustee Agreement. Even the aspects of event of default, which has been described under the Debenture Trust deed, also sets out that it has had to be on the basis of the satisfaction of the stipulations contained under clause 7, which too would be other than the conditions stipulated under Clause 7.23 and 7.24 as already expressed herein above. The Ld. Senior Counsel for the appellant submits that since there happens to be an apparent non-compliance of any of the covenants of the Debenture Trust Deed, the entire proceeding under Section 7 of the I & B Code, 2016, as initiated by the Respondent, would be bad in the eyes of the law and would be in explicit contravention to the Debenture Trust Deed of 22.03.2019, which is an admitted document between the parties for the purposes of drawing the proceeding under Section 7 of the I & B Code, 2016.

27. He further elaborated his argument, from the perspective that, the Schedule II itself carves out an exception and as per Clause 43, which starts with the non-obstante clause, containing thereof that notwithstanding anything contained therein, it shall be competent for the Debenture Holder, to exercise his rights, powers, and authority of being a Debenture Holder in respect of the debentures, by way of written instructions from the Debenture Holder, to the Debenture Trustee. Instead of voting and passing resolutions at the meeting in respect of the matters, which are required to be dealt with, it has had to be in a meeting, but should have been required to be carried by a majority resolution,

where the Debenture Trustee must be so instructed by the Debenture Holders and which has to be carried by at least 51 percent of the outstanding aggregate nominal value of the debentures. From the aforesaid clauses of the Debenture Trust Deed, which have been relied with and referred to by the Ld. Senior Counsel for the Appellant, what he intends to submit is that, in fact in the absence of there being any majority decision taken, under the Debenture Trust Deed and owing to the exceptions which had been carved out for the purposes of taking of the decision by the Debenture Trustee, for any of the exceptions contained under Schedule II, since none of the conditions stood satisfied, the entire proceedings initiated under Section 7 of the I & B Code, 2016, at the behest of the Respondent, would be bad in the eyes of law.

Rejoinder Argument:

28. When the arguments revived at the rejoinder stage, the Ld. Senior Counsel for the Appellant, once again had attempted to reiterate his argument to make reference to the various clauses of the Debenture Trust Deed in order to substantiate their arguments that, the covenants of the Debenture Trust Deed, which were mandatorily required to be followed, were not complied with, which would vitiate the proceedings. In relation, there to while referring to the Debenture Trustee, the Ld. Counsel for the Appellant, had made reference to, the provisions as it is contained under the clauses, and under the definition of

the "***scheduled redemption date***", which has been ascribed in the Debenture Trust Deed, as to be 31.03.2022, which has been determined to be taken as to be the date, for the purposes of meeting out the aspects of default, as it had been defined under, the Debenture Trust Deed itself. He submitted that, if the Debenture Trust Deed, itself is taken into consideration, the transaction documents are self-contained in the Debenture Trust Deed, which has been detailed, to be inclusive of the Debenture Trust Deed, the fee letter, and each security documents and such other documents, which has been contained therein. The Appellant Counsel submits that, when the Debenture Trust Deed itself describes the "**transaction documents**", that includes the deeds consequently it would be followed by the parameters prescribed therein for exercises of the functioning of Debenture Trustee under the Debenture Trust Deed, which was to be done by the majority voting of the Debenture Holders which is to be made in favor of the Debenture Trustee with the majority of 51 percent voting of Debenture Holders, is then only he could exercise the powers given under the Debenture Trust Deed and particularly that as contained in Clause 7, which we have already dealt with herein above, which provides for the circumstances under which the Debenture Trustee, as appointed under Clause 2.1 of the Debenture Trust Deed would exercise its powers.

29. In elaboration to his argument rather by way of repetition too, the Ld. Senior Counsel for the Appellant by way of reiteration had submitted that as

per Clause 3.3 (already dealt with above), which provides for the terms and conditions, which is given in the shape of a binding nature, as it has been observed to be binding on the company and the Debenture Holders and all persons who are claiming under the deed through or under any of the documents as continued under the "transaction documents", dealt with above. The powers, which are supposed to be exercised by the Debenture Trustee, will be inclusive of the exercising its powers in an event of non-payment of debts, as it has been contained under Clause 7.1 or of any of the obligations arising from the transaction documents and other collateral clauses where any obligation is casted upon, to be satisfied under the terms of the clauses collaterally provided under Schedule I of the Debenture Trust Deed.

30. We are of the view that, for the aforesaid reasons, as the Debenture Trust Deed of 22.03.2019, itself contained the form of notice, which was mandatorily required to be given on an identification of an event of default which has to be particularly in the format, which has been given under ***Schedule VIII of the Debenture Trustee Agreement, which is extracted hereunder:*** -

" Coffee Day Enterprises Limited-Debenture Trust Deed
Dated [_____] (the "Deed")

1. *We refer to the Deed and Clause 7.23 (Remedies following an Event of Default). Terms defined in the Deed shall have the same meaning when used in this notice unless given a different meaning in this notice.*

2. We hereby notify you that:

(a) [provide details of event] has occurred on [*];

(b) the event described in paragraph (a) constitutes an Event of Default under Clause 7[*] of the Deed;

(c) the Debt is due and payable forthwith in respect of each Debenture together with all other amounts payable in respect thereof in accordance with the Transaction Documents; and

(d) the Security created pursuant to the Security Documents has become enforcaable and we are entitled to enforce our rights under the Security Documenta (including in relation to the Charged Assets) without any further notice to you.

3. This notice is governed by Indian law."

31. On reading of Schedule VIII, again it stipulates under its Clause 2 (a), that the event described in para (a) that is the details of the default, which would necessitate the issuance of notice, has had to be as per the events of default contemplated under Clause 7 of the deed and that too in pursuance to the security document which is shown to have become enforceable under the eyes of law. In the absence of satisfaction of any of the conditions as given therein, we are of the opinion that, the entire inception of the proceedings, under Section 7 of the I & B Code, 2016, would be bad because there has been a flagrant and intentional disregard to the content and directives contained in the Debenture Trust Deed, which could have otherwise conferred the powers on the Debenture Trustee only to initiate proceedings under Section 7 of the I & B Code, 2016, when there is a proved and established default or an event of default and in the

absence of the same and adoption of procedure under Clause 10.1 (iv) of Debenture Trust Deed, the notices issued on 28.07.2020, alleging that there has chanced a default, that cannot be sustained in the eyes of law, in the absence of established authority.

B. Whether there was any validly executed Power of Attorney

32. Another argument that has been contended by the Ld. Senior Counsel for the Appellant, in continuation to the argument as extended and dealt with above, it had been submitted that, if the application preferred under Section 7 of the I & B Code, 2016, itself is taken into consideration, the same would not be sustainable. Owing to the fact, that the affidavit which was filed in support thereto the application was endorsed one by Mr. Manohar Maddili, who is said, that on the date of the execution of the affidavit filed in support of the application under Section 7 of the I & B Code, 2016, that is on 07.09.2023, would not be holding a valid authority to execute the same. Owing to the fact, that the Board Resolution of 05.03.2019, which is the basis of the conferment of power for execution of the Power of Attorney, is said to have been passed by the Board on 05.03.2019, authorizing Mr. Manohar Maddili to do the act as resolved therein by the Board of Trustees of IDBI Trusteeship Services Limited. The board had ultimately resolved to confer the following rights to Mr. Manohar Maddili, which are extracted hereunder:

> ***"RESOLVED FURTHER THAT*** *approval of the Board be and is hereby given to issue Power of Attorney in favor of the above Constituted Attorneys for execution/discharge of various documents/duties including security documents on behalf of the Company."*
>
> ***"RESOLVED FURTHER THAT*** *Constituted Attorneys can execute the documents in other regions in case of exigencies.*
>
> ***"RESOLVED FURTHER THAT*** *the Managing Director & CEO or the Company Secretary or the Sr. Vice President or any of the Vice Presidents or any of the AVPs are hereby authorized to sign and execute the Power of Attorney on behalf of the Company in favor of the above Constituted Attorneys."*
>
> ***"RESOLVED FURTHER THAT*** *the MD & CEO or the Company Secretary of the Company are hereby authorized to submit a Certified True Copy of this Resolution for the purpose of giving effect to this resolution."*

33. What is being argued by the Ld. Senior Counsel for the Appellant, is that in pursuance to the Resolution which has been passed by the Board on 05.03.2019 and the powers which were thus resolved to be conferred as detailed above, did not anywhere provide or prescribed a right to the named Debenture Trustee, or to the persons whose name is mentioned therein to litigate on behalf of the Applicant, to Section 7 of the I & B Code, 2016, proceedings. It was further contended, in continuation to the argument in relation to the Board Resolution of 05.03.2019, that, on 06.03.2019, a General Power of Attorney was executed by the Respondent in favor of Mr. Manohar Maddili, for doing certain acts and deeds on behalf of the Respondent, limited to the extent as

given in the Power of Attorney, the powers given by Power of Attorney couldn't have been voluntarily extended, to include in itself to litigate on behalf of the Respondent No. 1, unless the power was specifically granted.

34. The Ld. Senior Counsel for the Appellant further elaborated, that the right to perform the duties given under the Power of Attorney had its source of power from the Board's Resolution of 05.03.2019, and under no set of circumstances the powers which has been given by the Board Resolution of 05.03.2019, could be extended in its application by execution of the delegated Power of Attorney on 06.03.2019, by in any manner extending the power to be granting the right to hold the litigation, on behalf of the Applicant to Section 7 application under the I & B Code, 2016. The aforesaid argument is extended by the Ld. Senior Counsel for the Appellant on the ground, that if ***Clause 5*** of the Power of Attorney dated 06.03 2019 is taken into consideration, it reads that the directors by Boards Resolution dated 05.03.2019, had resolved to appoint a constituted attorney with relevant sufficient experience, (a retired employee of IDBI Bank Limited) as its agent for execution of various documents including registration thereof for and on behalf of **"ITSL"** i.e. Respondent No. 1. *Clause 5 of Power of Attorney is extracted hereunder: -*

> *"The Directors by Resolution dates March 5, 2019, decided to appoint Constituted Attorney with relevant experience (Retired employee of IDBI BANK*

Limited) as its Agent for execution of various documents including Registration thereof for an on behalf of ITSL."

35. If this particular Clause 5 of the Power of Attorney is taken into consideration, there are two elements that are quite apparent, ***"first"*** that this Power of Attorney which was executed in favor of Mr. Manohar Maddili, had its genesis and source of power from the Board's Resolution of 05.03.2019 and secondly if Clause 5 which has been extracted above is read, the powers conferred therein was limited for with the purposes of, execution of "various documents", including "registration" thereof by or on behalf of ITSL, meaning thereby even if Clause 5 is taken into consideration it did not include within itself a power to litigate on behalf of the Applicant to an application under Section 7 of the I & B Code, 2016, in a proceeding, which is held before a court of law.

36. There is another logic as extended by the Ld. Senior Counsel for the Appellant, which deserves consideration by us, is that when the Power of Attorney of 06.03.2019, was having its source of power of execution, from the Resolution of the Board dated 05.03.2019, the conferment of power on Mr. Manohar Maddili, can under no set of circumstances, be beyond the power, which has been otherwise principally conferred to Mr. Manohar Maddili, by the Board's Resolution of 05.03.2019, because the creation of authority under

the Board's Resolution cannot be beyond the powers of the Resolution of the Board itself.

37. While considering the aforesaid arguments, we have considered the Resolution of 05.03.2019, upon its reading with Power of Attorney dated 06.03.2019, it is apparent that so far as the powers, which were given to be executed by Mr. Manohar Maddili, pertained to execute and perform or cause to be done, executed and performed and all following acts, deeds, matters, and things or any of them, were made **"subject to specific authorization from the managing director/officials of ITSL"**. What can be derived from the above is, that the powers conferred by the Power of Attorney dated 06.03.2019, were not independent in itself in its operation, rather, for the purposes of exercising the powers by the attorney holder, that is Mr. Manohar Maddili, there has had to be an agreed prior ratification which was to be conferred by the Managing Director or the officials of the ITSL, for the purposes of exercising any of the powers as enumerated in the Power of Attorney, which according to the Appellant, is that its scope was widened much beyond the powers which was actually envisaged in the Board's Resolution of 05.03.2019.

38. If the said power is to be even considered, to be expanded, according to the classification of powers to be exercised by the attorney holder as given in the Power of Attorney, except for Clause 7, which was added therein is to be

read with Clause 9, and there was no other power which was ever given to Mr. Manohar Maddili, to be exercised beyond the scope of the Power of Attorney and that too even beyond the scope of the Boards Resolution and particularly in the context of filing of a Counter Affidavit, Petitions, Written Statement, Rejoinders, etc., that has been annexed in this appeal.

39. In order to elaborately consider the issue particularly reference to Clauses 7 & 9 of the powers conferred to Mr. Manohar Maddili under the Power of Attorney of 06.03.2019, its consideration by us becomes inevitable, which for the purposes of the instant appeal will have only relevance, so far it relates to the activities pertaining to be contained under Clauses 7 & 9 of the Power of Attorney. The relevant powers conferred to the Power of Attorney Holder are extracted hereunder: -

> *"1. To execute, assign, deliver such deeds, declarations, undertakings, securities, indemnities, guarantees etc. in favour of ITSL as may be necessary in connection with the issue of debenture.*
>
> *2. To execute, sign, lodge / admit for registration with the Sub-Registrar of Assurance or any other regulatory / statutory authorities and deliver all the documents on behalf of ITSL, and attend office at the Sub-Registrar of Assurance and admit execution of such deed.*
>
> *3. To sign as Constituted Attorney of ITSL and arrange for filing documents/forms with Registrar of Companies, the particulars of charges, modifications of charges or satisfaction of charge relating to the issues of the*

issuer companies under the provisions of the Companies Act 2013.

4. To execute sign and deliver the Reconveyance deeds / Substitution of Trusteeship Agreement, Release Deed and other documents and present it or cause it to be presented for Registration with the concerned Registrar / Sub Registrar of Assurances, and attend office at the Sub- Registrar of Assurance and admit execution of deed.

5. To execute, assign, deliver and lodge / admit other documents e.g. Deed of Assignments, Security Trustee Agreement, Share Pledge Agreement, Trust Deed, Indenture of Mortgage, Escrow Agreement, documents pertaining to InvITs, REITS, ESOP etc., any other document, undertaking deed etc. on behalf of ITSL.

6. To receive/collect original executed documents and lodge/ deposit in the ITSL designated Safe Custody.

7. To perform any other act other than the acts specified above the same can be done with the specific and express Letter of Authorization signed by Managing Director & CEO of ITSL.

8. To visit and represent ITSL before various authorities including but not limited to office of ROC, Official Liquidator, CBI etc.

9. To file affidavits, Counter affidavits, petitions, written statements, Rejoinders etc. before any tribunal, court etc."

40. Upon a comparative analysis of the expanded powers conferred by the power of attorney to Mr. Manohar Maddili it showed that it could not have been granted, because its source was derived from the Board Resolution of 05.03. 2019, which could not have been extended beyond it under any situations, when

the powers are limited to be exercised by a written document executed by the Applicant. And that too, in the absence of there being any specific or express letter of authorization having being validly executed and signed by the Managing Director and CEO of ITSL, conferring the authority to Mr. Manohar Maddili, the Power of Attorney Holder to institute the proceedings under Section 7 of the I & B Code, 2016, which was instituted on 07.09.2023. Thus this issue answered against the Respondent/Applicant and in favour of the Appellant.

41. There is yet another important feature, which has been argued by the Ld. Senior Counsel for the Appellant, which had been in context to the powers conferred by, the Power of Attorney of 06.03.2019 to Mr. Manohar Maddili, which is the basis of the institution of Section 7 application, because the affidavit filed in support thereto, was executed by him only on 07.09.2023. The Ld. Senior Counsel for the Appellant submitted that in fact, the power granted to Mr. Manohar Maddili stood exhausted, and as on 07.09.2023, when the section 7 application was instituted for the reason being that, the Boards of Directors of ITSL meeting which was held on 02.02.2021, (**the document which is not on record**) which is prior to the affidavit filed in support of Section 7 application had delegated the powers to MD and CEO to give power of attorney in favor of officers, retainers and constituted attorneys of ITSL, as its agents as deemed fit, inter alia for the purposes of execution of various

documents including production, admission and registration thereof. What is important to be considered at this stage is, that as a matter of fact, owing to the subsequent resolution of the Board dated 02.02.2021, the rights which was conferred by the earlier Board's Resolution of 05.03.2019 and the execution of the subsequent Power of Attorney executed on 06.03.2019, stood overridden by the Board's Resolution of 02.02.2021, which was altogether creating a new right in favour of another individual for the purposes of, performing the activities contained in the Power of Attorney as it was later executed on 22.02.2022. For the aforesaid purpose, a reference is required to be made to the contents of the Power of Attorney dated 22.02.2022, which was executed by the body constituted under Clause 5, in favor of one ***Mr. Kaustubh Sudame, who was the Deputy Manager of the Respondent,*** under the terms and conditions contained in the said attorney, it was rather more elaborative, in the context of the powers conferred for the purposes of prosecuting, the proceedings before the court of law. The aforesaid powers as conferred by the subsequent power of attorney dated 22.02.2022, which had an automatic overriding effect on the attorney of 06.03.2019, had conferred the following powers to the new attorney holder, Mr. Kaustubh Sudame, and the powers thus given are extracted hereunder: -.

> *"1. To open accounts with Banks / or to operate on all existing and future accounts whatsoever.*

2. To demat accounts with Depository Participants

3. To manage and administer any property movable or immovable belonging to or in which ITSL is or be in any way be interested or concerned as an executor, administer, trustee, agent or custodian.

4. To receive 'Will' for execution on behalf of ITSL and to act as its executors.

5. To buy, sale, hypothecate, pledge, mortgage, endorse and transfer Government Securities, shares, securities of bodies corporate, postal cash certificates and other like securities, and to receive principal & interest on the Government Securities subject to provisions of relevant law wherever applicable.

6. To receive and hold in Safe Custody any kind of securities and other movable property whatsoever.

7. To ask, demand, recover and receive of and from all and every person all sums of money, which at any time or times hereafter shall become due or owing or payable to or recoverable by ITSL and to sign receipts and to give effectual discharge in the name of the said Trustee Company.

8. To appear before the Chief or any District or Sub-Registrar of Assurances for the time being for the registration of deeds, production of deeds & admission of deeds, assurances, contracts or other instruments and then and there and there after to present, admit or register or cause to be registered any deeds, assurances, contracts or other instruments in which ITSL may be deemed to be interested or concerned and also these presents and, to, pay such fees as shall be necessary for the registration thereof and to present and / or admit execution of any document/s by ITSL.

9. To commence, prosecute, enforce, defend, answer and oppose any suit or other legal proceedings, Rejoinders, Written Submissions including but not limited to filing

winding up proceedings, filing of Original Applications (OAs)/Recovery Applications before Debt Recovery Tribunals (DRT), initiating action under SARFAESI Act, 2002, initiating actions under Insolvency & Bankruptcy Code, 2016, Filing of Claims before Interim Resolution Professional/Resolution Professionals under Insolvency & Bankruptcy Code, 2016, to file complaints and initiate proceedings in connection with dishonor of cheques under the Negotiable Instruments Act, 1881, to file caveats etc. and demands touching any matters in which ITSL may or may hereafter be interested or concerned and also if the said Attorney shall think fit compromise, refer to arbitration, abandon, submit to judgment or become non - suited in any such suits or proceedings and to appoint Advocate, Solicitors and Pleaders as occasion shall require and to make sign, execute, present and file all applications, plaints, petitions, written statements, Vakalatnamas, or any other papers expedient or necessary in the opinion of the said Attorney to be made signed, executed, presented or filed and to represent any matter before any statutory authority either in person or through a legal representative authorized by him.

10. To sign all documents, deeds & papers related to Debenture trustee business / Security Trustee business, Securitisation Trustee, Venture Capital Trustee, Alternative Investment Fund Trustee, Share Pledge trustee, Warehousing Trustee, Escrow Trustee, NBFC Trustee, Mutual Fund Trustee, SPV Trustee and any type of trusteeship on behalf of ITSL and appoint Investment Manager to open and operate bank account, Demat and custody account for Venture Capital Fund (VCF) / Alternative Investment Fund (AIF).

11. To sign lease agreement and to present it on behalf of ITSL.

12. And generally for the better and more effectually doing and performing the several acts, matters and things aforesaid to do and perform as mentioned above all other

acts, matters and things not herein specifically mentioned which in the course of general business of ITSL may be by the said Attorney be deemed to be requisite or expedient to be done or performed as being incidental to the objects aforesaid.

13. To invest all funds, moneys and estates of trusts in shares, securities, debentures or term deposits with Bank or other financial institutions as per the Covenant of the said trust and from time to time sell, vary and transpose such investments in terms of those trusts and make intercorporate deposits of the trust money as requested by the Lenders/Investors.

14. To create amortization fund and / or reserve fund and / or any other fund of the Trusts and to operate the same and to pay to the debenture - holders or other beneficiaries, as the case may be, out of such funds.

15. To attend, vote at and otherwise take part in any meeting or meetings of or in, relation to any Joint Stock Company or body corporate or financial institution in which the Trustee Company is or may be in any way interested or concerned either as shareholder, stock holder, debenture holder, creditor or trustee or otherwise and to sign and execute any proxy or proxies on behalf of ITSL authorizing any person or persons to represent ITSL on any such occasion or occasions as aforesaid.

16. To attend, preside at or conduct all meetings of the debenture - holders of whom ITSL is appointed as the Agent and / or Trustees.

17. This Power of Attorney is valid till the time Mr. Kaustubh Sudame, is in employment with IDBI Trusteeship Services Ltd."

42. Having considered, we are of the opinion, that however since the powers which were given, under its Clause 9 of the said document i.e., 06.03.2019,

were subjected to a prior authority which was to be conferred by, a specific authorization to be made by the Managing Director, which was not granted in favor of Mr. Manohar Maddili on the date when he filed the affidavit with Section 7 application and that could not have been also for the reason being that, on the date when the application under Section 7 of the I & B Code, 2016, was instituted under the affidavit of Mr. Manohar Maddili, on that day the Power of Attorney of 06.03.2019, became a non-existing document and the authority given therein automatically stood withdrawn and it was never made co-extensive with Power of Attorney of 22.02.2022, due to the subsequent Boards Resolution of 02.02.2021 and its consequential execution of the attorney dated 22.02.2022. Since the proceedings under Section 7 of I & B Code, 2016, itself was instituted on 07.09.2023, at that point of time Mr. Manohar Maddili, who had filed the supporting affidavit was not holding the valid authority to file an affidavit, which will itself vitiate the entire proceedings, since having been instituted by a person who was not competent to initiate the same.

43. Though principally, it may not be out of context to, consider the controversy, from the perspective, so far it relates to, the two Power of Attorneys, that is the power of attorney of 06.03.2019 and 22.02.2022. Owing to what has been observed above, it could be summarized that on the date when the proceeding was instituted, the signatory to the affidavit filed in support of

the Section 7 application was not a valid attorney holder, since the same was superseded by, subsequent Power of Attorney executed in favor of another person, namely Mr. Kaustubh Sudame, hence, for the purposes of filing an application under Section 7 of the I & B Code, 2016, the verification of the pleadings, particularly in a suit by or against the corporations, by or against the companies, the verification of the contents of the application becomes very vital necessary to be strictly adhered to, so as to attach sanctity to the contents of the pleading. If on the date of execution of the Power of Attorney, a person is not authorized and competent to execute the affidavit, since he was representing the cause of an ***"inanimate legal entity"***, the affidavit should have been supported by a person who was legally competent and was authorized to verify the affidavit. Since having not been done so, it could be taken that the very inception of the application preferred under Section 7 of the I & B Code, 2016, on 07.09.2023, after the execution of the subsequent attorney on 22.02.2022, would vitiate the proceedings right from its inception, would not be sustainable.

44. The aforesaid contentions could be further elaborated on the basis of, the judgment of the ***Hon'ble Apex Court as reported in 2005 Volume 2 SCC Page 217 Janki Vashdeo Bhojwani & Another vs. Indusind Bank Ltd. & others, wherein in para 17,*** which deals with as to what would be the ambit of exercise of powers by the power of attorney holder in judicial proceedings, wherein it has been specifically observed, that when judicial proceedings are drawn at the

behest of an attorney holder, he could only exercise the powers, which have been specifically conferred under the terms of the power of attorney validly executed in his favour and nothing beyond it, the relevant para 17 of the said judgment is extracted hereunder:-

> *"17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri v. State of Rajasthan [(1986) 2 WLN 713 (Raj)] it was held that a general power-of-attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff."*

45. Almost a similar view had been taken by the ***Hon'ble High Court of Rajasthan, in its prior judgment rendered as reported in AIR 1998 Rajasthan page 185, Ram Prasad Vs Hari Narain & Others*** in Para 8 and 9 of the said Judgment, the Ld. Single Judge of the Hon'ble Rajasthan High Court has dealt with as to what would be the ambit of exercise of powers by the attorney holder in judicial proceedings, the relevant para 8 and 9 are extracted hereunder: -

> *"8. On the other hand Mr. Kanta Prasad Sharma learned counsel for the defendants placed reliance on Shambhu Dutt Shastri v. State of Rajasthan (2) where this court (Hon'ble Dinker Lal Mehta, J. as he then was) in para No. 23 of the judgment propounded as under: —*

"A general power of attorney holder can appear, plead and act on behalf of the party, but the cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness-box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff."

9. I have given my anxious consideration to the rival contentions and carefully perused the impugned order as well as the authorities cited before me. I am of the considered view that word "acts" used in Rule 2 of Order 3 Code of Civil Procedure does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear onlyas a witness in his personal capacity and whatever he has knowledge about the case, he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court a commission for recording his evidence may be issued under the relevant provisions of the Code of Civil Procedure and if the plaintiff is suffering from disease of deaf-ness, in the event also be may be examined with the help of the provisions contained in Section 119 of the Indian Evidence Act, 1872, which are applicable for the purposes of recording the evidence of a dumb witness. I am of the view that a deaf witness may also he examined in the same manner. Provisions contained in Section 119 of the Indian Evidence Act may be invoked in the instant case which provide thus: —

"A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but

such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.""

46. The aforesaid aspect, further stands fortified, because the Appellant in their objection, which was filed before the Ld. Adjudicating Authority on 24.01.2024, in its Para 7 and 11, had specifically taken a plea, about the maintainability of the proceedings, at the behest of Power of Attorney Holder, holding it to be not sustainable, in view of the fact of, lack of proper authorization. Para 7 and 11 of Counter filed by Appellant before the Ld. Adjudicating Authority are extracted hereunder: -

"7. The IDBITSL has not obtained any authorisation from the Debenture Holders to file the present application, hence on that ground itself, this application is to be treated as unauthorised application, and accordingly dismissed.

11. Without prejudice to the preliminary objections raised in respect of the lack of authorisation in favour of IDBITSL to file this present application, the Corporate Debtor proceeds to place the following for the kind appreciation of this Hon'ble Tribunal., and prays that this application is not eligible to be considered by this Tribunal under the Code 2016, and is liable to be dismissed on merits itself."

47. The Respondent/Applicant had filed their rejoinder to the objection thus filed by the Appellant to Section 7 application. And there had been no specific denial with regards to the fact of holding of a competent authorization to initiate the proceeding under Section 7 of the I & B Code, 2016. It is argued by the Ld.

Counsel for the Appellant, that the aforesaid plea about the competence of the deponent to the Affidavit, was specifically raised by the Appellant, before the Ld. Adjudicating Authority in its Para 3b, and that too in the context of the Power of Attorney of 06.03.2019, being ultra-virus to the Resolution of the Board dated 05.03.2019, the relevant paragraph of Rejoinder of Appellant is extracted hereunder: -

> *"b) Further, the Board Resolution of IDBITSL has resolved that approval of the Board is given to issue Power of Attorney in favour of the Constituted Attorneys for execution/ discharge of various documents/ duties including security documents on behalf of the Company. The Board Resolution nowhere states that the Constituted Attorney is authorised to file an application seeking CIRP against the Corporate Debtor. Nor there is any general power granted to initiate any proceedings before any court. The applicant Mr. Manohar, submits that he has been empowered under the Power of Attorney dated06.03.2019 issued pursuant to the said Board Resolution dated 05.03.2019 to file the present application. However, the said Power of Attorney cannot grant powers more than what is envisaged under the Board Resolution dated 05.03.2019. Hence, the Power of Attorney dated 06.03.2019 relied upon by Shri. M. Manohar is ultra vires the Board Resolution dated 05.03.2019 and accordingly the said application filed by Mr. M. Manohar is beyond his powers and unauthorised."*

48. The Ld. Senior Counsel for the Appellant argues, that the contents of Para 3b which were raised by the Appellant by way of an objection, in relation to the Power of Attorney was denied by the Respondent in the rejoinder

argument before the Ld. Adjudicating Authority and a specific contention in that regard was taken by the Respondent/Appellant in their para 4b which is extracted hereunder: -

> *"b) The Power of Attorney dated 06 March 2019, which is executed in furtherance of the Board Resolution dated 05 March 2019, enumerates the duties that have been referred to in the Board Resolution. The recital to the Power of Attorney shows that, to discharge its obligations (ie., duties), it is required to execute various documents. One of the duties specified at Clause 9 is the power to file affidavits, counter affidavits, petitions, written statements, rejoinders etc., before any tribunal, court etc."*

49. What is submitted by the Ld. Senior Counsel for the Appellant is that, the Ld. Adjudicating Authority has erred at law by not dealing with the implication of the Board's Resolution and the effect of recurring Power of Attorney, as it stood executed between by the Respondent, authorizing the institution of the proceedings under Section 7 of the I & B Code, 2016, and the said plea which was taken and replied by the Respondent, the Ld. Adjudicating Authority has not even, recorded a single finding with regards thereto, and has not dealt with any of the aspect as to what implication would, the Power of Attorney have in drawing the proceeding under Section 7 of the I & B Code, 2016, and thus he contends that, if the plea is specifically taken and was put to debate by the opposite party to the proceedings has been recorded in the judgment, but the same has not been dealt with while drawing the conclusion

an analysis by the Tribunal it would render the judgment to be perverse, and the aforesaid principle has been drawn from the ***judgment reported in 2023 Volume 2 SCC Page 205 in the matter of SVG Fashion Private Limited Vs Ritu Murli Manohar Goyal & Another***, particularly he has referred to para 5, 6 and 7 of the said judgment which is extracted hereunder:-

> *"5. However, NCLT, by an order dated 26-9-2019 [SVG Fashions Ltd. v. Arpita Filaments (P) Ltd., 2019 SCC OnLine NCLT 23532] overruled the objections and held that there was an acknowledgment of liability on the part of the corporate debtor and that therefore, the application was within the period of limitation. Consequently, NCLT ordered the admission of the application under Section 9 of the Code and also declared moratorium in terms of Section 14.*
>
> *6. On an appeal filed by the appellant, Nclat held [Ritu Murli Manohar Goyal v. SVG Fashions Ltd., 2020 SCC OnLine NCLAT 1081] that the debt arose during the period from 11-8-2013 to 2-9-2013 and that the six cheques purportedly issued towards part-payment of the liability having been issued on 5-12-2017, will not save limitation. The Nclat further held that even if the date of default is taken to be 7-10-2013 as pleaded by the operational creditor, the acknowledgment of liability in terms of Section 18 of the Limitation Act ought to have happened on or before 7-10-2016. But the cheques were dated December 2017 and hence Nclat reversed the decision of NCLT and dismissed the application of the operational creditor.*
>
> *7. But we find from the order [Ritu Murli Manohar Goyal v. SVG Fashions Ltd., 2020 SCC OnLine NCLAT 1081] of* ***Nclat that there was no discussion at all about***

the letter dated 28-9-2015. According to the operational creditor, the six cheques in question were handed over *along with the letter dated 28-9-2015. The cheque numbers and the bank on which the cheques were drawn, given in the letter dated 28-9-2015 tallied with the particulars of those six cheques allegedly lost by the corporate debtor in March 2017. Though the first respondent herein clamed in his affidavit-in-reply that the corporate debtor had issued stop payment instructions, he conceded that the acknowledgment issued by the banker contained the date 1-1-2018. The following extract from the affidavit-in-reply/objections of the Director of the corporate debtor makes an interesting reading:*

"... Hereto annexed and marked collectively as Annexure C are copies of the intimation issued by the banker of the corporate debtor duly recording the instruction of stop payment qua the cheques in question taking record that the cheques had been lost. It is submitted that the banker of the corporate debtor has issued such notices acknowledging stop payment instruction on account of loss of the cheques on 4-3-2017, however inadvertently due to the error in the computers of the banker, the date on the top right shows as 1-1-2018. the corporate debtor in the process of obtaining appropriate letter from the banker of the corporate debtor to the effect that the error in the date has occurred due to some problem in the computers of the banker, and the corporate debtor craves leave to produce copy of the same as and when referred to and relied upon and available with the corporate debtor from the banker."

Which ultimately leads to a conclusion that the judgment rendered by the Ld. Adjudicating Authority was without considering the plea taken and without

considering and dealing with the plea that was in debate would be perverse in nature.

50. The Respondents were called upon, to answer the arguments which had been extended by the Ld. Senior Counsel for the Appellant, while putting a challenge to the Impugned Order and the proceedings thereof, particularly in the context of, the interpretation which has been given by the Ld. Senior Counsel for the Appellant that, for taking any action in relation to any act, actions or deeds covered under Clause 7 of the Debenture Trust Deed, it requires a prior concerted decision to be taken as per, the stipulations contained, dealing with the aspect of default. In order to answer to the argument extended by the Ld. Senior Counsel for the Appellant from the perspective, that as per the Debenture Trust Deed which binds the inter-se activities of the Respondents, it became mandatory that any action contemplated and arising out of any of the activities contained under Clause 7, it required a prior decision to be taken by the majority resolution which would attach ratification to the decision, as per its embargoes created, that is by a resolution passed in the meeting of debenture holders with written instructions and by virtue of a mandatory condition of majority representing not less than 51 percent of the aggregate nominal value of outstanding debentures.

51. The majority decision as provided under the Debenture Trust Deed, was a condition necessarily preceded to confer authority upon the debenture trustee to take a decision with regards to the actions to be taken under Clause 7 of the Deed, in exception to Clause 7.23 & Clause 7.24. For the purposes of arriving at a conclusion as to what would be the pre-analysed default as per the events as circumscribed under Clause 7 of the Deed. For the purposes of taking a decision, for meeting the authority of drawing the proceedings under Section 7 of the I & B Code, 2016, there has to be a majority decision, because of the fact that the action and analysis of default, which is contained under the Debenture Trust Deed, requires an action of determination, at the behest of the Debenture Trustee, which is to be covered under clause 7, which intrudes within it a non-payment of any obligation on the due date of default or any amount payable in pursuance to any of the transaction documents or financial covenants. Clause 7 of the Deed, it was wide enough to include any obligations contained under Clause 7.1, 7.2, and 7.3.

52. In order to chronologically place the matter, it becomes necessary for us to extract, what the ‘default’ would actually be, and thereafter what would be the ‘majority decision’, which is required to be taken before a Debenture Trustee was empowered to act upon majority decision, for taking any action or inactions contemplated under Clause 7. The terms ‘default’, ‘Event of

Defaults', and 'Majority Resolution' as contained in Debenture Trust Deed are extracted hereunder: -

> *"***"Default"** *means an Event of Default or any event or circumstance specified in Clause 7 (Events of Default and Remedies) other than Clause 7.23 (Remedies upon an Event of Default) and Clause 7.24 (Notification and expenses) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Transaction Documents or any combination of any of the foregoing) be an Event of Default"*
>
> *"***Event of Default***" means an event of default as set out in Clause 7 (Events of Default and Remedies) other than Clause 7.23 (Remedies upon an Event of Default) and Clause 7.24 (Notification and expenses).*
>
> *"***Majority Resolution***" means:*
>
> *(a) a resolution passed at a Meeting of the Debenture Holders; or*
>
> *(b) written instructions given,*
>
> *by a majority representing not less than 51% of the aggregate nominal value of the outstanding Debentures."*

53. On the contrary, the Ld. Senior Counsel for the Respondent for the purposes of disowning the argument extended by the Ld. Senior Counsel for the Appellant and so as to divert the issue of default, has referred to the definition of "**coupons**", as given under the Debenture Trust Deed, what he intends to contend that, the amount due for the purposes of default has to be construed, from and on the basis of the Coupon Payments and the stipulations

which have been given under the head of Coupon has contained under the definition clause of the Debenture Trust Deed. He has referred to the term "Coupon", by reading, the same as given, which is extracted hereunder: -

> *"**Coupon**" means, in respect of a Debenture for a Coupon Period, the amount of cash interest payable on the outstanding Nominal Value at the Coupon Rate."*

54. In fact, what he intended is to divert the argument is that instead of dealing with the argument in the context of debt and default which would be the governing factor, and event of default has already been dealt with herein above as argued by the Ld. Senior Counsel for the Appellant, for the purposes of giving a color of default as to be a Coupon, that means, it was limited to an amount accruing on interest, accruing on the debentures for a Coupon period for an amount of cash interest payable on a nominal value of the Coupon rates. But then we cannot be obliviance and ignorant of the fact that, the Coupon period is a period determined in accordance with Clause 4.4 of the Deed. If the aforesaid provision contained under Clause 4.4, which the Ld. Senior Counsel for the Appellant has attempted to read it, as a substitute to the default and also to the provisions contained under Clause 7 enshrining the stipulations for exercise of powers by the Debenture Trustees, in the context of default which would be the predominant factor to be determined. He submitted that, in fact, the term coupon which has been extracted herein above has to be determined to be a default, and for that purpose the covenants to pay the coupon amount

have had to be restricted in its application from Clause 4.2 on, which he has relied upon, the relevant part of Clause 4.2 is extracted hereunder: -

> ***"4.2 Covenant to pay Coupon***
>
> *(a) The Company shall, on each Coupon Payment Date, unconditionally pay to, or to the order of, each Debenture Holder in INR, the accrued aggregate Coupon for the Coupon Period ending on such Coupon Payment Date. Such Coupon shall accrue from (and including) the first day of that Coupon Period to (but excluding) that Coupon Payment Date in accordance with the Terms and Conditions and the Transaction Documents in respect of the Debentures held by such Debenture Holder.*
>
> (b) *The Coupon on each Debenture will be calculated by reference to its outstanding Nominal Value at the Coupon Rate compounded on a quarterly basis."*

55. During the course of the argument, we have called upon the Ld. Senior Counsel for the Respondent to answer as to how the term Coupon given under the Debenture Trust Deed, could be read as to be synonymous to the term 'default' which has been independently defined under the Debenture Trust Deed and that too, when the stipulations for the exercise of powers in relation to the Coupons is provided under Clause 4.2, and for the purposes of default it is provided under Clause 7. How can both the terms be harmoniously read, to determine as to whether their chanced an actual default or not, which could be made to be recovered by the Debenture Trustees, after a decision being taken

by the process prescribed for by a majority decision by the Debenture Holders as mentioned under the Debenture Trust Deed itself.

56. The term "default", as it has been sought to be alternatively argued by the Ld. Senior Counsel for the Respondent, by drawing our attention to the term Coupon as explained in the Debenture Trust Deed, we feel that the said argument cannot be accepted to be applied as per Clause 4.2, that is the nature of functionary for the purposes of determining, the coupon which has been read by the Ld. Senior Counsel for the Respondent as to be a default, because of the fact that the definition of "**default**" as given in the Debenture Trustee Agreement, as extracted above runs in consonance to, the statutory definition of 'debt' and 'default' as it has been given under the statute under Section 3(11) & 3(12). The relevant Section 3(11) & 3(12) are extracted hereunder: -.

> *"(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;*
>
> *(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 1[paid] by the debtor or the corporate debtor, as the case may be;"*

57. We are of the opinion, that when the nature of default as given under the Debenture Trust Deed and the debt too as defined therein are almost akin in its reflection. An intention of the legislature as that given under the statutory definition, the term 'coupon' which has been sought to be argued by the Ld.

Senior Counsel for the Respondent otherwise cannot be read as to be an alternative to determine a debt or a default, so as to exclude the applicability of Clause 7, which would be the act falling under the domain of exercise of powers by the Debenture Trustee.

58. We are of the view that, once it comes to determining an aspect of a procedure for the purposes of initiation of proceedings under Section 7 of the I & B Code, 2016, we have had to analyze judicially, as the sanctity of the source of power that, should have been normally exercised based on the Debenture Trust Deed, which would be binding inter-se amongst the parties, owing to the binding effect of the Debenture Trustee, as given under the Debenture Trust Deed itself, which provides for, that the Debenture Trustee though its functions has to be regulated upon by majority resolution passed by the Debenture Holder, but the contents of the same would have a binding effect on the parties whose act or actions are likely to be affected by the Debenture Trustee Agreement.

59. The enforceability of the terms and conditions of the Debenture Trust Deed has been contained under Clause 3.3 of the Debenture Trustee Agreement itself which is extracted hereunder: -

"3.3 Terms and Conditions binding

The Terms and Conditions shall be binding on the Company and the Debenture Holders and all

persons claiming by, through or under any of them. The Debenture Trustee shall be entitled to enforce the obligations of the Company under or pursuant to the Terms and Conditions as if the same were set out and contained in this Deed."

60. Particularly we would be more concerned with the second expression given under the terms and conditions under Clause 3.3, where it confers a liability and responsibility under the Debenture Trust Deed, to enforce the obligation of the company or pursue the terms and conditions, as if, it was the same as it had been set out and contained in this deed, meaning thereby the action of the Debenture Trustee has a binding effect in the light of the contents of Clause 3.3 for the purposes of regulating the default, by taking an action on the basis of the majority decision which was to be taken as per the procedure prescribed under the Debenture Trust Deed, for the purposes of taking any action prescribed under Clause 7 of the Deed, and the arguments which has been extended by the Ld. Senior Counsel for the Respondent by alternative reading, the expression "Coupon" as to be a substitute to "default" in order to attract Clause 4.2 is not acceptable by this Tribunal, and the said argument is turned down.

61. The question that, ultimately emerges to be considered and analyzed by this Appellate Tribunal is with regards to the liability or performance of duty by the Debenture Trustee under the Debenture Trust Deed, which overridden

on the basis of a, power of attorney, which though was executed, but did not have its enforceability on the date when the proceeding itself was drawn owing to the fact that the signatory to the proceedings at that point of time was not competent to execute a document particularly when his authority itself stood withdrawn by the subsequent power of attorney executed in favor of, Mr. Kaustubh Sudame. In that eventuality, when the proceedings are in the absence of there being a right or an authority legally vested to the Debenture Trustees to function under Clause-7, coupled with the fact that since the proceeding under Section 7, of the I & B Code, 2016, has been drawn by Mr. Manohar Maddili, who was at the relevant point of time not authorized owing to the supersession of the 'power of attorney' executed in his favor, the inception of the proceedings, at the behest of Mr. Manohar Maddili, would be bad and would be express violation of the Debenture Trust Deed, as well as the authority which was vested under the power of attorney, in its literal connotation, it provides, that the Central Government may by notification issued from time to time may, confer authority for filing of an application for initiation of the CIRP proceedings. Section 7 (1) of I & B Code, 2016, which is extracted hereunder: -

> ***"7 Initiation of corporate insolvency resolution process by financial creditor.***
>
> *(1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on*

behalf of the financial creditor, ***as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process*** *against a corporate debtor before the Adjudicating Authority when a default has occurred.*

2[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation. -- For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor."

62. Section 7(1) as extracted above, which is the source making power for, the issuance of the notification, which has been considered, by the Government of India while issuing a notification being **Notification No. SO 1091 (e) dated 27.02.2019**, which has permitted the Debenture Trustee to file an applications under Section 7 (1) of I & B Code, 2016, that means, even the notification of 27.02.2019, goes in league with, the terms of the Debenture Trust Deed, where the Respondents have admittedly agreed upon vesting of the authority on the Debenture Trustee for the purpose of initiation of the proceedings under Section 7 of the I & B Code, 2016, which has been permitted to be authorized to be granted by the Government of India, under the notification to be issued by it, which has chanced in the instant case owing to the notification dated 27.02.2019.

63. Hence, the above question is answered against the Respondent/Applicant, that since the Debenture Trust Deed, is binding on the Respondents, and the procedure for its recovery under Clause 7 of the Deed, it ought to have been initiated, by a grant of authorization to the Debenture Trustee by a majority resolution, as contemplated under the Debenture Trust

Deed, and more particularly when the Debenture Trustee itself has been authorized by the Government of India under the notification referred to herein above, which happens to derive source of issuance of notification is, vested under Section 7(1) of the I & B Code, 2016. In the absence of the proceedings being drawn by the Debenture Trustee after its valid procedural authorization, the entire proceedings under Section 7 of the I & B Code, 2016, would be vitiated in the eyes of law, which deserves interference by this Appellant Tribunal.

C. Whether the proceedings were barred by limitation?

64. Another question that has been argued, is with regards to the proceedings under Section 7 of the I & B Code, 2016, whether it would be barred by limitation? During the course of argument, it is an admitted case of the Respondent/Applicant, in the application preferred under Section 7 proceedings, ***that the date of default, which has been reckoned, did chanced on 30.09.2019***. That is the date, which is much prior to the imposition of restrictions due to the COVID-19 situation, and as the restrictions of the COVID-19 situation were imposed with effect from 15.03.2020. If that be the situation, it is argued by the Ld. Senior Counsel for the Appellant that, from the date of the default that is 30.09.2019, till the restrictions were imposed because of the COVID-19 situation and the exemption granted by the Hon'ble Apex

Court for determination of limitation with effect from 15.03.2020. In that eventuality, the period of limitation for the Applicant/Respondent has had to be construed after the expiry of the aforesaid restriction period which stood extended to be applied up to 28.02.2022. Para 5.3 of the said judgment as rendered by the Hon'ble Apex Court in M.A. No. 21/2022 in Misc. A No. 665/2021 in Suo motu Writ Petition No. 3 of 2020, if both the orders of Hon'ble Apex Court are taken together the question that would emerge would be, that when the period of limitation in the instant case, it was expiring after the extended period of 90 days, which was to be construed to be made effective with effect from 01.03.2022, whether at all the Respondent/Applicant would be entitled to, for a grant of exoneration of limitation due to the COVID-19 situation for the entire period from 15.03.2020 till 28.02.2022, that too when default was admittedly reckoned prior to imposition of Covid-19 restrictions i.e., 30.09.2019 and the restrictions having being imposed with effect from 15.03.2020.

65. The judgment rendered by the Hon'ble Apex Court has not to be tested on an equitable pedestal, because, the applicability of the same has to be determined based upon the facts and circumstances of each case. ***The exclusion of the entire period, in its entirety from 15.03.2020 to 28.02.2022 may not be universally granted in all cases, if the period of default is before imposition of restriction by the Hon'ble Apex Court, and the limitation expires between***

the extended period i.e., from 01.03.2022 for 90 days thereafter, which would end on 30.05.2022.

66. The logic we feel is that, it is an admitted case of the Appellant, that if the limitation is construed from 30.09.2019, i.e., the date of the default, which is an admitted fact, that three-year period of limitation under Article 137 of Limitation Act would be expiring after the extended period of 90 days, i.e., 30.09.2022, if that be the situation where the limitation was expiring after the period i.e., from 01.03.2022 to 30.05.2022, which in the instant case would be 30.09.2022, in that eventuality there was a sufficient breathing time, available for the Respondent/Applicant to file the application under Section 7 of the I & B Code, 2016, atleast between 01.03.2022 to 30.09.2022, when the restrictions were over, and hence the entire period from 15.03.2020 to 28.02.2022, would not be en bloc excluded for determining the limitation, when the embargoes of limitation stood eradicated even after the extended period of limitation from 01.03.2022 to 30.05.2022 and more particularly when the Respondent/Applicant, has preferred the application under Section 7 of the I & B Code, 2016, only on 07.09.2023, we are of the view that it would expressly be barred by limitation and the en bloc period of 15.03.2020 to 28.05.2022, would not be excluded in determining the aspect of limitation, in those cases where the default chanced prior to restrictions i.e., prior to 01.03.2020 and the limitation was expiring even after the extended period, as the latitude granted

for determination of limitation by the Hon'ble Apex Court, has not to be negatively applied to deceive the object of code, more particularly, when the special statute is governing the entire proceedings based upon a strict aspect of limitation.

67. The concept of limitation is a methodology, which has been framed under law, for granting leverage to the affected litigant to do an act or to revive a procedural right which might have otherwise lost, its significance owing to, because of an inaction on the part of the affected party, by not drawing an appropriate action or taking an appropriate step within the prescribed period of limitation, as contemplated under the provisions contained under Section 238A of the I & B Code, 2016 or even under the Limitation Act for that purpose. The object of limitation, under the Act, was to safeguard the right, or benefit which might have judicially accrued to, a person who is the beneficiary of adjudication, and maturing of right due to an inaction on the part of the person who seeks to, invoke a remedy for a redressal of his any legal rights created under an Act or law, which has been adversely effected by an adjudication made by the courts, which remains unchallenged, is matured for the winning party due to non-initiation of proceedings before a superior forum, within limitation.

68. A rational interpretation has to be given, and the said extension should not be preposterously extended without rationality to deprive the very object of limitation. The limitation should not be extended at the cost of deprivation of a right which had accrued to the beneficiary. As far as the instant case is concerned, the Respondent intends to take the benefit of limitation, under the garb, of the directives issued by the Hon'ble Apex Court in Suo motu Writ Petition No. 3 of 2020 (Supra). We cannot be oblivious to the fact and it is in common knowledge that during the COVID-19 period and even after passing of the order of the Hon'ble Apex Court extending the period of limitation, the courts in the country were not closed. Institution or filing of proceedings was still being carried out on, an online basis and the cases were heard and decided. This particular process of e-filing, which continued persistently during the COVID-19 period, was just to protect the right to recourses to judicial remedies and to athwart the deprivation to judicial remedies which a litigant may suffer, due to the lack of mobility of a citizen of a country as defined under Article 5 of the Constitution of India, in order to resort to his recourses to judicial remedies as protected under Article 21 of the constitution. The Respondents herein are persons who belong to an elite class, they cannot be equated with those people who are residents of a remote area or are illiterate, whose mobility could have been jeopardized or hampered due to the COVID-19 situation where

there could have been a deprivation, at their hands for approaching the court for the institution of the proceedings.

69. The rationale for the extension of limitation has not to be disproportionately extended in the manner it has been construed, by the Ld. Counsels for the Respondent, while interpreting the clauses relating to the default and the implications of Article 137 of the Limitation Act. In its harmonious study in context with, the provisions of Limitation contemplated under Article 137 of the Limitation Act.

Sl.No	**Description**	**Date**
1	Admittedly Date of Default	30.09.2019
2	Article 137 – Limitation of 3 years	3 years from Date of Default would be 30.09.2022
3.	Period Expired prior to Covid-19 Restriction	(i.e., from 30.09.2019 to 15.03.2020) 167 days
4	When 3 years would be ending	On 30.09.2022 i.e., after the lifting of restrictions, and even after expiry of extended period i.e., till 30.05.2022 as per the judgment of the Hon'ble Apex Court.

5	When would the limitation end under 90 days extension as per Hon'ble Apex Court Judgment from 01.03.2022	(01.03.2022 Plus 90 days) would expiry on 30.05.2022. The proceedings were not filed.
6	Section 7 of the I & B Code, 2016 - Initiation	08.09.2023 i.e., after more than one year of the extended period granted by Hon'ble Apex Court ending on 30.05.2022.
7	No explanation of delay	From 30.05.2022 till 08.09.2023 i.e., for about 464 days i.e., after lifting of restriction on 30.05.2022 till filing of application.

70. Particularly when the default occurred was on 30.09.2019 i.e., prior to imposition of COVID-19 restriction. However, filing of Section 7 application was on 08.09.2023 i.e., after 464 days of lifting of restrictions even after exhaustion of 90 days of extended period as provided under Suo motu W.P. No. 3/2020 (Supra).

71. In elaboration to his argument, the Ld. Senior Counsel for the Appellant for the purposes of, governing the aspects of extending the period to initiate the proceedings under Section 7 of the I & B Code, 2016, has referred to a

Judgment reported in ***2021 Volume 6 SCC page 366, Asset Reconstruction Company (India) Limited versus Bishal Jaiswal and Another***, particularly the Ld. Senior Counsel for the Appellant has drawn the attention of this Appellate Tribunal to Para 10 of the said judgment. Para 10 of the said judgment is extracted hereunder: -

> *"10. From the above, it is clear that the principle of Section 9 of the Limitation Act is to be strictly adhered to, namely, that when time begins to run, it cannot be halted, except by a process known to law. One question that arises before this Court is whether Section 18 of the Limitation Act, which extends the period of limitation depending upon an acknowledgment of debt made in writing and signed by the corporate debtor, is also applicable under Section 238-A, given the expression "as far as may be" governing the applicability of the Limitation Act to the IBC."*

72. If Para 10 of the said judgment Asset Reconstruction Company India Limited (Supra) is taken into consideration, which is extracted herein above, it prescribes for that the principles of limitation for the purposes of initiation of an application under Section 9 of the I & B Code, 2016, has to be rigidly followed as per the provisions contained under the I & B Code, 2016. And the same cannot be hindered in any manner except, with the "***process known to law***". The issue, which was under consideration of the said judgment was, as to, whether at all Section 18 of the Limitation Act, which extends the period of

limitation, depending upon the acknowledgment of debt made in writing and signed by the Corporate Debtor is also applicable to the provisions contained under Section 238A, which uses the term as far as may be, for the purposes of applying the provisions of the Limitation Act. Use of term "as far as possible", has to be extended to be attached with reasonableness and prudence, it cannot be uniformly applied under all circumstances.

73. The facts and circumstances, which were subject matter in consideration in the matters of Asset Reconstruction Company (India) Limited (Supra) and particularly, that as contained under para 10, which has been relied upon by the Ld. Senior Counsel for the Respondent/Applicant to the proceedings under Section 9 of the I & B Code, 2016, was in the context of reading the principles enunciated under Section 18 of the Limitation Act, in league with the provisions contained under Section 238A of the I & B Code, 2016. Those principles, will not be applicable in the instant appeal. Because here, in the present circumstances, which are quite distinct in nature as that of Asset Reconstruction Company India Limited (Supra) the question of limitation came into play, not because of the implication of Section 18 of the Limitation Act, but because of the implications of the ***force majeure due to unforeseen circumstances due to COVID-19.***

74. The question of acknowledgment of default, being 30.09.2019 in the instant case, is not in controversy, as Section 18 only deals with the aspect of effect of acknowledgment, which had never been the disputed case of the Respondent, at any stage of the proceedings, because they had persistently argued, that the default stood acknowledged as back as on 30.09.2019. Acknowledgment is not a controversial aspect, which had ever been in debate, because the entire argument has been extended, on that basis as to how the Hon'ble Apex Court Judgment could be brought within the ambit to determine limitation in the present case. Once the date of default is not in dispute, the implication of Section 18 of the Limitation Act will have no relevance for the purposes of determining the debt and the date of default and its conjoint reading with Section 238A of I & B Code, 2016.

75. The Ld. Senior Counsel for the Respondent had further referred to yet another judgment in order to answer the question of limitation, as reported in ***2021 Volume 10 SCC Page 330, Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy & Another***, where he has referred to Para 111 and 116 of the said judgment. Para 111 and 116 are extracted hereunder: -

> *"111. As per Section 18 of the Limitation Act, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of*

limitation from the date on which the acknowledgment is signed. Such acknowledgment need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgment must be made before the relevant period of limitation has expired.

116. It is well settled that entries in books of accounts and/or balance sheets of a corporate debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal [Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366 : (2021) 3 SCC (Civ) 605 : (2021) 3 SCC (Cri) 23] authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , ["Bengal Silk Mills"] and in Pandam Tea Co. Ltd., In re [Pandam Tea Co. Ltd., In re, 1973 SCC OnLine Cal 93 : AIR 1974 Cal 170] , the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. Krishna Shamsher Jung Bahadur Rana [South Asia Industries (P) Ltd. v. Krishna Shamsher Jung Bahadur Rana, 1972 SCC OnLine Del 185 : ILR (1972) 2 Del 712] and the judgment of the Karnataka High Court in Hegde & Golay Ltd. v. SBI [Hegde & Golay Ltd. v. SBI, 1985 SCC OnLine Kar 428 : ILR 1987 Kar 2673] and held that an acknowledgment of liability that is made in a balance sheet can amount to an acknowledgment of debt [Ed. : See in detail Shortnote B and paras 19 to 35 and 65 to 68 of Asset Reconstruction v. Bishal Jaiswal, (2021) 6 SCC 366 : (2021) 3 SCC (Civ) 605 : (2021) 3 SCC (Cri) 23 as to when entries in books of accounts and/or balance sheets may amount to an acknowledgment.]."

76. The controversy which was the subject matter of consideration, in the judgment of the Dena Bank (now Bank of Baroda) (Supra) was factually based upon altogether a different conditions altogether, where the aspect of Section 62, that is the provision for Appeal was under consideration, before the Hon'ble Apex Court, it was yet again being considered in the context of Section 18 of the Limitation Act. Para 111 of the said judgment, if it is elaborately read, for the purposes of answering the aspect of acknowledgment contained under Section 18 of the Limitation Act, in the case of Dena Bank (now Bank of Baroda) (Supra), there was a specific controversy which was agitated pertaining to when the actual default/acknowledgement or when it was promised to be paid expressly or even by implications. The acknowledgment of default, or an assurance to pay by a written conduct or by way of an implication, in said case has been derived as to be an acknowledgment for the purposes of Section 18 of the Limitation Act. Apart from it, the said judgment was based upon, the consideration made in the matters of ***Sesh Nath Singh & Anr Vs. Baidyabati Sheoraphuli*** **Cooperative Bank Limited**, in which there was a very minor issue which was considered as to, whether the IBC excludes the application of Section 14 or 18 or any other provisions of the Limitation Act, which in fact, has been answered that Section 14 and 18 of the Limitation Act, will have its applicability to the procedure contemplated under Section 7 and Section 9 of the IBC Code.

77. Similar question, which was considered in the matter of ***Laxmi Pat Surana Vs Union Bank of India & Another, as reported in 2021 8 SCC 481***. Since in the instant case the Respondent had never argued the controversy nor it was there case ever from the context, that there has been a disagreement between the parties with regard to, what would be the actual date of default, which may ultimately result into determining and affecting the question, as to what would be the date of acknowledgment? Since the entire argument has been extended on the basis of the admitted date of default as to be 30.09.2019 which was not in dispute between the parties. The aspect of acknowledgement which is the subject matter of Section 18 of the Limitation Act becomes irrelevant in its applicability to the circumstances of the instant appeal.

78. The Ld. Senior Counsel for the Respondent had also, made reference to Para 116 which has been extracted above, which is dealing with altogether a different complexion, as to what implications would the entries would have, which occur in the books of accounts and the balance sheets of the Corporate Debtor, whether it will amount to be an acknowledgment of debt, for the purposes under Section 18 of the Limitation Act. For the aforesaid purposes, the Hon'ble Apex Court in the said judgment of Dena Bank (now Bank of Baroda) (Supra) has recorded its reasoning based upon the judgment of Asset Reconstruction Company (India) Limited (Supra). We are of the view that the

entries in the books of accounts, no doubt, could be taken as to be the acknowledgment of a debt.

79. But that in itself will not suffice for the purposes of deciding the controversy herein, because primarily, the argument, which was centered around by the Appellant was on a different perspective, that is the validity of authority for initiation of proceedings under the Debenture Trust Deed and about the authority vested under the power of attorney. Aspect of default, which could have at all been attracted, the aspect of acknowledgment under Section 18 of the Limitation Act, since has not been ever debated, we feel that Para 116, of the said judgment where the acknowledgment of debt was an aspect, which has been determined to be on the basis of the entries made in the books of account, may not be a controversy akin to the instant company appeal, when the proceedings itself, stands vitiated right from its genesis. Having been preferred on the basis of an application which was otherwise not tenable, under the terms of the Debenture Trust Deed, and under the terms of the power of attorney, besides being barred by limitation as no valid right was conferred, upon the person who had instituted the proceedings before the Ld. Adjudicating Authority. When the question of an authority to institute the proceedings, itself is doubted and is under cloud, as already dealt with herein above, the aspect of limitation herein is based upon a different pedestal altogether, as to how it would be computed owing to the peculiar circumstances because of COVID-

19 situation, which we have already dealt with above, and since the aspect of acknowledgment of debt is not such a wider issue, even as answered by the Appellant, the reference to the judgment of Dena Bank (now Bank of Baroda) (Supra), would be determination in futility to its application, under the actual controversy involved in the instant appeal.

80. It is almost under an akin circumstance that the Ld. Senior Counsels for the parties refers to, the judgment of ***Laxmi Pat Surana Vs Union Bank of India & Another, as reported in 2021 Volume 8 SCC Page 481*** and relies upon Para 43 of the said judgment, Para 43 which is extracted hereunder: -

> *"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 IBC. 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 IBC 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 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC."

81. Thus, for the reasons aforesaid, the proceedings drawn under Section 7 of the I & B Code, 2016, by Respondent/Applicant was barred by limitation, this question too is answered against the Respondent and in favour of the Appellant.

D. Date of Default and its determination.

82. It was to be determined as to how the aspect of default would be considered, on the basis of the expression of default given under Section 3 (12)

of the I & B Code, 2016, on account of the aspect of non-payment of a debt due to be paid, in those cases where the account of the Corporate Debtor has been determined as NPA. It could be determined as basis that when the principal borrower or the Corporate Guarantor, when he admits the acknowledgment of their liability itself or after the declaration of the account as NPA. But does not institute the proceedings before the expiry of 3 years period as it has to be contemplated under Article 137 of the Limitation Act or if he does not institute the proceedings owing to the successive acknowledgments, whether the successive acknowledgments itself could exclusively be determined as to be a period from where the limitation could be construed treating it to be an acknowledgment of debt and default for the purposes of Section 18 of the Limitation Act. In fact, Para 43 of the judgment of Laxmi Pat Surana (Supra), while determining the question of Section 18 of the Limitation Act, it only refers to that, the Limitation Act gets attracted the moment acknowledgment of default is made in writing is signed by the party, as against whom such rights to initiate the Insolvency Process under Section 7 begins. It would be always the date where default is admitted or recognized as per laws, by the defaulter, which could be reckoned on the following basis: -

A. Where there is self-admission of default by Corporate Debtor!

B. Where the default would be treated to be admitted, upon analysing the books of accounts of the Corporate Debtor!

C. Where default stands admitted by the Corporate Debtor by any other correspondences made by the Corporate Debtor!

D. Where the default could be treated to be admitted on the account of the Corporate Debtor being declared as to be Non-Performing Asset and henceforth.

83. Once again, the answer to this particular issue would be by way of reiteration only, that the Applicant/Respondent, since at any stage has not disputed the so-called date of default to be 30.09.2019, if that be the situation, there could not be a situation which would alternatively require to consider a successive reckoning of, default, based on above classified parameters, which could be treated as to be the acknowledgment, so as to give a new lease of life, for initiation of proceedings under Section 7 or 9 of the I & B Code, 2016, by extension of the benefit of Section 18 of the Limitation Act. This issue too will have no implication, as far as the present controversy is concerned, regards determination of date of default.

84. The Ld. Senior Counsel for the Respondent has referred to a judgment as reported in ***1991 Supp (1) SCC Page 402 M/s. Mahabir Cold Storage Vs Commissioner of Income Tax, Patna*** and while referring to Para 12, it is only a reiteration of what has been already observed in the earlier judgments, that entries in the books of account of the Appellant would amount to be an

acknowledgment of the liability and that could be read for the purposes of determining the term 'acknowledgement' and 'date of default', under Section 18 of the Limitation Act for determination of period of limitation. Para 12 of the said judgment is extracted hereunder: -

> *"12. The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to M/s Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt. Section 2(47) of the Act defines 'transfer' in relation to a capital asset under clause (i) the sale, exchange or relinquishment of the asset or (ii) the extinguishment of any right thereof or — [clauses (iii) to (vi) are not relevant hence omitted]. Unfortunately the assessee did not bring on record the necessary material facts to establish that he became owner by any non-testamentary instrument acquiring right, title and interest in the plant and machinery nor the point was argued before the High Court and we do not have the benefit in this regard either of the Tribunal or of the High Court. In this view we decline to go into the question but confine to the first question and agree with the High Court answering the reference in favour of the revenue and against the assessee that the appellant is not entitled to the development rebate under Section 33(1) of the Act. The appeal is accordingly dismissed with costs quantified at Rs 5000."*

85. While reverting back and partially reiterating what we have already considered, an aspect of acknowledgment of debt in the instant company appeal was a continuous process, ever since, 30.09.2019 which remained

uncontroverted till date. But an artificial grafted inability to initiate the proceedings owing to COVID-19, doesn't in any manner repose confidence to have disrupted the act of acknowledgment of default, in order to enable to take it outside the ambit of Section 18 of the Limitation Act. The only consideration which was required to be dealt by us and as we have already considered is, how the limitation is to be construed when an acknowledgment of date of default is not in the debate rather admitted, which could at all call for, us to consider the implication of Section 18 of the Limitation Act to be applied in the instant company appeal, in relation to the entries made in the books of accounts.

86. Though without admission, even at this stage if we admit that the entries made in the books of accounts, that could be exclusively treated as to be an acknowledgment of the date of defaulted debt, for the purposes of Section 18 of the Limitation Act, then too, when the initiation of the proceedings under Section 7 of the I & B Code, 2016, was filed only on 07.09.2023, whether an expansion of the time could be granted to the Respondents from the date of admission of default, for an institution of the proceedings, the 'answer' by this Appellate Tribunal would be '**No'**. It is a rampant case and not in aspect of debate, that the date of default is on 30.09.2019, and it is not in debate rather admitted by Respondent/Applicant, that the limitation has to be determined as per Article 137 of the Limitation Act from the date of admission of default i.e., 30.09.2019 in the instant appeal. If the limitation is construed under Article 137

of Limitation Act, as per the admitted date of default, it will be ending on 30.09.2022, but if it is determined from the date of the imposition of the restrictions because of COVID-19 and even if the same is permitted to be extended, to the period of 90 days as per Hon'ble Apex Court Suo motu case irrespective of which that would be falling on 29.09.2022. After the extended date of 90 days of limitation as granted by the judgment of the order of the Hon'ble Apex Court, with effect from 01.03.2022, if that be so, there was no legal or factual obstruction for the Applicant/Respondent nor there is any express pleadings for inability to file proceedings between 01.03.2022 till 29.09.2022 and thereafter till 08.09.2023. In that eventuality, they would not be entitled to any benefit of limitations determined on the basis of admitted date of default, even based upon the Suo motu judgment (Supra) particularly, that has contained under Para 5.3 of the said judgment. The en block exclusion, of the period from 15.03.2020 to 28.02.2022, would not be available to the Appellant, when the Section 7 application was filed after 464 days even after the extended period of 90 days.

(a) His limitation would start commencing from 30.09.2019, date of admitted default prior to COVID-19 restrictions and it would end after the expiry of the extended period of granted days in pursuance to the Supreme Court judgment. But still filing is after

464 days only on 08.09.2023, would be barred from the date of default.

87. Hence at the most, the appeal ought to have been filed, prior to 29.09.2022, and since there happens to be no valid explanation, by the Respondent for the inability to file, the application between 29.09.2022 and 07.09.2023. The limitation, could not be extended as argued by the Ld.Senior Counsel for the Respondent; which would be reckoned from the date of admitted default i.e., 30.09.2019, which was prior the restrictions of COVID-19 situation i.e., prior to 15.03.2020.

E Limitation and effect of Section 10A of the I & B Code, 2016.

88. The issue of limitation, and impact of Section 10A of I & B Code, 2016, had been vehemently contested by the counsels for both the parties. Certain undisputed dates, which would be relevant are hereunder: -

(i) The admitted date of default according to the notice admittedly happens to be 30.09.2019.

(ii) According to the Respondent/Applicant, the period of limitation, which if it is determined from 30.09.2019, till the restriction was imposed for initiation of proceedings due to the COVID-19 situation i.e., 15.03.2020, they have exhausted only 166 days of

limitation period as possible of three years, under Article 137 of Limitation Act.

(iii) Initially the Hon'ble Apex Court had granted an exemption from limitation due to the COVID-2019 situation from 15.03.2020, which stood extended till 28.02.2022.

(iv) It is argued by the Ld. Senior Counsel for the Appellant, that the Respondent would not be entitled for an en-bloc from 15.03.2020 to 28.02.2022, particularly when they themselves have triggered the proceedings, having issued the notices on 28.07.2020, i.e., after the restrictions being imposed by the Hon'ble Apex Court with effect from 15.03.2020, during the period of COVID exemption.

(v) They further submitted that even if the exclusion from 15.03.2020 to 28.02.2022 is granted, then too, the institution of the Section 7 proceedings since was only on 07.09.2023, which would be barred by limitation. Because, the period of limitation, if determined from 30.09.2019 is calculated for a period of 3 years which is under Article 137 of the Limitation Act, it will be ending on 29.09.2022. The date of 29.09.2022, would be after the expiry of even the extended period of limitation as under Suo

motu W.P. No. 3/2020 (Supra) i.e., 30.05.2022, thus the proceedings would be barred by limitation.

(vi) The argument of the Ld. Senior Counsel for the Appellant is, that when the notices under Section 8 of the I & B Code, 2016, itself was chosen to be issued on 28.07.2020, which falls during the restricted period of limitation because of the Hon'ble Apex Court judgment, (Supra). At the most, the proceedings if at all could have been initiated, it should have been in between the extended period of 90 days from 01.03.2020 to 30.05.2022 or by 30.09.2022 but not after 464 days on 07.09.2023.

(vii) The period of limitation in addition to, 166 days, which has expired as on to 15.03.2020, cannot be permitted to continue and stretched even after 28.02.2022, to extend it in a fashion that the limitation, may be extended for a further period of 929 days, by determining it from 28.02.2022, because it will be an irrational extension of the time period, particularly when the Respondent was conscious of its intention to initiate the proceedings after having issued the notice on 28.07.2020 during the exempted COVID-19 period. At the most, the Appellant could have taken advantage of limitation having instituted the proceedings in between 01.03.2022 to 30.05.2022 or at the

most, till the actual period of expiry of limitation i.e. 30.09.2022, but not atleast till 07.09.2023 when the application filed after 464 days, after extended 90 days period.

(viii) Under no set of circumstances, the remaining period of 929 days which will be part and parcel of the remaining 3 years period, be extended to benefit the aspect of limitation for the Appellant after determining the same from 30.05.2022. In either of the manner, it runs contrary to the very intention of the aspect of limitation, which plays a very pivotal role, in institution of the proceedings, under Section 7 of the I & B Code, 2016.

(ix) Thus, for the Appellant when default is admitted to be of 30.09.2019, prior to COVID-19 period, and notice has been issued on 28.07.2020, the period of limitation since was expiring on 30.09.2022, that is even after the extended period granted by the Hon'ble Apex Court with effect from 01.03.2022 till 31.05.2022. It cannot be extended for the period from 30.09.2022 to 07.09.2023, the date when actual proceedings under Section 7 of the I & B Code, 2016, were initiated.

89. The provisions of Section 10 A, which has been argued by the Ld. Counsel for the Respondent seeking its extension, is from the perspective that the en bloc period of limitation from 15.03.2020 to 28.02.2022, should be

excluded in determination of 3 years period as per Article 137 of Limitation Act, owing to the language used under Section 10 A, which stood inserted by Act No. 17 of 2020, with effect from 05.06.2020 which was brought into effect on 05.06.2020 and was made applicable retrospectively with effect was 25.03.2020. The extension of limitation under Section 10A, would not be applicable, in the case at hand for the Respondent/Applicant for the reason being that, default was prior to COVID-19 period, they themselves have issued a notice under Section 8 of the I & B Code, 2016, after the insertion of Section 10 A by the Amendment Act No. 17 of 2020, which was inserted on 05.06.2020, and the notice for initiation of the proceedings was issued by the Respondent/Applicant, thereafter 28.07.2020 that is, in between the period when Section 10A was inserted for the purposes of exemption of the period for limitation for drawing the proceedings under Section 7, 9 and 10. ***Section 10 A of I & B Code, 2016,*** is extracted hereunder:-

> *"[10-A. Suspension of initiation of corporate insolvency resolution process.—Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*
>
> *Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of*

a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]"

90. On a simpliciter reading, of the provisions contained under Section 10A it provides for, ***that the bar which was created for initiation for proceeding, was in relation to the default which was committed on or after 25.03.2020, it not apply to admitted defaults prior subsequent to the insertion of Section 10A***. Since there being a specific incorporation of a cut-off date of 25.03.2020 and here in the instant case admittedly the default has been committed on 30.09.2019, Section 10A will have no applicability for the purposes of extension of the period of limitation for initiation of CIRP proceedings owing to COVID-19 situation and more particularly, when the Respondent/Applicant, himself has issued notices for initiation of proceedings on 28.07.2020 after the insertion made by the Act No. 17/2020 with effect from 05.06.2020, that is one month after the insertion. ***The explanation of Section 10A, has abundantly made quite clear, that the provision under Section 10A would only be applicable when the default is expressly shown to have been committed after 25.03.2020 and it will not be inclusive of any defaults which are committed prior to it***.

91. In view of, the language used in the Explanation given to Section 10A, on its simpliciter interpretation, it only intends to provide a leverage of non-initiation of proceedings under Sections 7, 9, & 10 of the I & B Code, 2016. Only in relation to those cases, where the default was occurring in between the cut-off provided given under Section 10A itself. It doesn't include within itself for defaults either prior or after Section 10A, these cases are expressly excluded in those cases. The aforesaid contention could also be taken into consideration in the light of the judgment rendered by the principal bench in the matters of ***CA (AT) (Ins) No.1016/2022, Mr. Vishal Agarwal (Erstwhile Director Of Gagan I-Land Township Private Limited) Vs ICICI Prudential Real Estate Aif-I and Another,*** wherein in the said judgment of the principal bench in its Para 7, had specifically observed, that the extension of benefit of limitation or an exemption contemplated in it will not be applicable in those cases where, the default has been reckoned prior to, the period prescribed under Section 10 A. Para 7 of the said judgment is extracted hereunder:-

> *"7. The submission of the learned counsel for the Appellant that as per Annexure-3 clause 6, the date of repayment of instalment is 31.08.2020 only is not acceptable. There being clear admission on behalf of the Appellant in default in payment of interest for the quarters ending September 2019 and December 2019, Appellant cannot be permitted to contend that default was committed only on 31.08.2020.* ***Insofar as application being barred by 10A, benefit under***

> ***Section 10A can be claimed by the application only when there is clear default during the prohibited period. The said benefit cannot be claimed by the Appellant by ignoring the admission of default which was prior to 25.03.2020.*** *There being clear admission in the present case, in letter dated September 9, 2021 where the Corporate Debtor itself has admitted that he has failed to pay interest for the quarters ending September 2019 and December 2019 thus acknowledging that it has defaulted in servicing its obligations under the DSA."*

92. A similar view has been taken in yet another judgment rendered by the principal bench of NCLAT in ***Company Appeal (AT) (INS) No. 294/2023 in the matters of Narayan Mangal versus Vatsalya Builders & Developers Pvt. Ltd.*** The principal bench in the said judgment in its para 11 and 12 have considered the aforesaid aspect and based upon that the earlier ratio as rendered in the matters of ***Company Appeal (AT) (INS) No. 914/2023, Raghavendra Joshi versus Axis Bank Limited & Another***, had clearly provided that Section 10A will not be made applicable, in those cases where default have chanced prior to, the insertion of Section 10A in the I & B Code, 2016. The relevant para 11, which also extracts the ratio laid down in the matters of Raghavendra Joshi (Supra). The relevant para 11 & 12 are extracted hereunder: -

> *"11. In the Judgment of this Tribunal delivered in "Raghavendra Joshi Vs. Axis Bank Limited" we have already held that if default was committed prior to Section 10 A period, Section 10 A shall not be applicable. Following has been held by us in paragraph 15 & 16:*

"15. The submission that since default was also committed by the Corporate Debtor during the Section 10A period of the OTS amount which ultimately withdrawn on 25th January, 2021, the Application should be barred by Section 10A does not commend us. There being categorical default by the Corporate Debtor prior to Section 10A period, the Appellant was not clearly entitled for the benefit of Section 10A Period.

16. Learned Counsel for the Respondent has rightly relied on Judgment in "Company Appeal (AT) Ins. No. 1016 of 2022, Vishal Agarwal Vs. ICICI Prudential Real Estate AIR-I & Anr." where this Tribunal has held that when default was committed prior, application shall not be barred. In paragraph 7 and 8, following have been held:

> *"7. The submission of the learned counsel for the Appellant that as per Annexure-3 clause 6, the date of repayment of installment is 31.08.2020 only is not acceptable. There being clear admission on behalf of the Appellant in default in payment of interest for the quarters ending September 2019 and December 2019, Appellant cannot be permitted to contend that default was committed only on 31.08.2020. In so far as application being barred by 10A, benefit under Section 10A can be claimed by the application only when there is clear default during the prohibited period. The said benefit cannot be claimed by the Appellant by ignoring the admission of default which was prior to 25.03.2020. There being clear admission in the present case, in letter dated September 9, 2021 where the Corporate Debtor itself has admitted that he has failed to pay interest for the quarters ending September 2019 and December 2019*

thus acknowledging that it has defaulted in servicing its obligations under the DSA.

8. We, thus, are of the view that the Adjudicating Authority has after considering all relevant facts and after finding debt and default has admitted the application. The fact that before this Tribunal, the Appellant has taken four adjournments for proposing OTS and get settle with the Bank itself indicate that debt and default is not disputed. We, thus, are of the view that there is no merit in the Appeal. Appeal is dismissed."

12. If the default is committed prior to Section 10 A period and default continues there is no prohibition in initiating proceedings under Section 7 and we are not persuaded to accept the submission of the counsel for the respondent that the liability of interest which accrued during Section 10 A period should be ignored or should not be computed in the amount while finding the threshold. Liability to pay interest which default committed prior to Section 10 A period continues and is not obliviated by Section 10 A."

93. In Para 12 of the judgment of Narayan Mangal versus Vatsalya Builders & Developers Pvt. Ltd. (Supra) provides that, if a default is committed prior to Section 10A and the default continues, there is no prohibition of initiation of proceedings under Section 7 of the I & B Code, 2016.

94. Yet another judgment rendered by the principal bench in ***Company Appeal (AT) (Ins) No. 1459/2022 in the matter of Beetel Teletech Limited versus Arcelia IT Services Private Limited***, in its para 11 has almost laid down the identical principles that Section 10A will not create any embargo for

initiation of the proceedings, in relation to those cases where the default has chanced, prior to the cut-off provided under Section 10A i.e., 25.03.2020. In the instant case, since it is an admitted case and not in dispute too that the default has chanced on 30.09.2019, this would be taken as to be a default prior in time and it would be covered by the judgment by the ratio laid down by the aforesaid judgments. *Relevant Para 11 of Beetel Teletech Limited (Supra) is extracted hereunder:-*

> *"11. The law of Section 10A is well settled. The object and purpose of Section 10A has been explained in the ordinance by which Section 10A was brought into operation. Further, the object and intent underlying the insertion of Section 10A has also been propounded by the Hon'ble Supreme Court in its judgment of "Ramesh Kymal vs. M/s Siemens Gamesa Renewable [Civil Appeal No. 4050 of 2020]". In consonance with the tenor and spirit of the above-mentioned judgment of the Hon'ble Supreme Court, this Tribunal on 18.08.2023 in Company Appeal (AT) (Ins.) No. 914 of 2023 in the matter of Raghavendra Joshi v. Axis Bank Limited & Anr ("Raghavendra" in short) had the occasion to notice the object of Section 10A of IBC and observed as follows:*
>
> > *"8. In Ramesh Kymal's Case, the Appellant had filed an Application under Section 9 on 11th May, 2020 on the ground of default. The ordinance No. 09/2020 was promulgated by the President of India on 05th June, 2020 by which Section 10A was inserted into the I&B Code, 2016. An Application was filed by the Corporate Debtor for dismissal of Section 9 Application, the Section 9 Application was dismissed on the ground of Section 10A. Challenging the order of the Adjudicating Authority as well as Appellate Tribunal, Appeal was filed in the Supreme Court. Argument which was*

advanced before the Hon'ble Supreme Court was that Section 10A having been inserted in the statute book with effect from 05th June, 2020, it shall not apply on the Applications filed prior to the said date, which argument was rejected by the Hon'ble Supreme Court and relevant observations have been made in Paragraphs 22, 23 and 24 as has been noted above. The Hon'ble Supreme Court affirmed the Order of the Adjudicating Authority holding that default in Section 9 Application being on 30th April, 2020 it being covered by Section 10A, Application was rightly rejected. The above judgment of the Hon'ble Supreme Court has laid down that if the default is after 25th March, 2020, the Application is hit by Section 10A. The object as was indicated in the ordinance for bringing Section 10A in the statute book is relevant to notice which is to the following effect:

> *"AND WHEREAS a nationwide lockdown is in force since 25th March, 2020 to combat the spread of COVID-19 which has added to disruption of normal business operations: AND WHEREAS it is considered expedient to suspend under Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons which are experiencing distress on account of unprecedented situation, being pushed into insolvency proceedings under the said Code for some time; AND WHEREAS it is considered expedient to exclude the defaults arising on account of unprecedented situation for the purposes of insolvency proceeding under this Code."*

95. This judgment too, while drawing the aforesaid analogy about the implications of, the exemption of period under Section 10A has laid down that it will not attract exclusion in relation to those admitted defaults, which has chanced prior to, the cut-off date as contemplated under Section 10A, this judgment is yet again been based upon the principles of Raghavendra Joshi versus Axis Bank Limited & Another, and Narayan Mangal versus Vatsalya Builders & Developers Pvt. Ltd, which has been considered in Para 10 of the said judgment are extracted hereunder:-

> *"10. The Section 10 A provides that no application/proceedings under Section 7,9 & 10 is to be initiated for a default which is committed during Section 10A period. What is bar is initiation of proceedings when Corporate Debtor commits default in Section 10 A period. If the default is committed prior to Section 10A period and continues in the Section 10 A period the initiation of proceeding is not barred.*

96. The principal bench of the NCLAT in ***Company Appeal (AT) (Ins) No. 1198/2023 in Pratik Jiyani vs. Pirmal Capital & Housing Finance Limited & Another***, has almost laid down an akin principle as provided in Para 16 and 17 of the said judgment which is extracted hereunder: -

> *"16.* ***The bar under Section 10A, does not apply when the default is committed prior to 10A period****. The learned Counsel for the Respondent has rightly placed reliance on the judgment of this Tribunal in Narayan Manga vs. Vatsalya Builders & Developers Pvt. Ltd. – Company Appeal (AT) (Ins.) No.294 of 2023 decided on 18.08.2023 where after noticing the Section 10A and the judgment*

of the Hon'ble Supreme Court in Ramesh Kymal v. siemens Gamesa Renewable – Civil Appeal No.4050 of 2020, following has been observed in paragraph 8, 9 and 10:

> *"**8**. The object and purpose of Section 10A has been explained in the ordinance by which Section 10A was brought on record as well as the Hon'ble Supreme Court in the Judgment of "Ramesh Kymal vs. M/s Siemens Gamesa Renewable [Civil Appeal No. 4050 of 2020]". In the Judgment delivered today by this Tribunal on 18.08.2023 in Company Appeal (AT) (Ins.) No. 914 of 2023, we have occasion to notice the object of Section 10A. We have referred to the objects and reason as given in the ordinance in paragraph 8 of the Judgment which is as follows:*
>
> > *"8. In Ramesh Kymal's Case, the Appellant had filed an Application under Section 9 on 11th May, 2020 on the ground of default. The ordinance No. 09/2020 was promulgated by the President of India on 05th June, 2020 by which Section 10A was inserted into the I&B Code, 2016. An Application was filed by the Corporate Debtor for dismissal of Section 9 Application, the Section 9 Application was dismissed on the ground of Section 10A. Challenging the order of the Adjudicating Authority as well as Appellate Tribunal, Appeal was filed in the Supreme Court. Argument which was advanced before the **Hon'ble Supreme Court was that Section 10A having been inserted in the statute book with effect from 05th June, 2020, it shall not apply on the Applications filed prior to the said date, which argument was rejected by the Hon'ble Supreme Court** and relevant observations have been made in Paragraphs 22,23 and 24 as has been noted above. The Hon'ble Supreme Court*

affirmed the Order of the Adjudicating Authority holding that default in Section 9 Application being on 30th April, 2020 it being covered by Section 10A, Application was rightly rejected. ***The above judgment of the Hon'ble Supreme Court has laid down that if the default is after 25th March, 2020, the Application is hit by Section 10A. The object as was indicated in the ordinance for bringing Section 10A in the statute book is relevant to notice which is to the following effect:***

> *"AND WHEREAS a nationwide lockdown is in force since 25th March, 2020 to combat the spread of COVID-19 which has added to disruption of normal business operations: AND WHEREAS it is considered expedient to suspend under Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons which are experiencing distress on account of unprecedented situation, being pushed into insolvency proceedings under the said Code for some time;* ***AND WHEREAS it is considered expedient to exclude the defaults arising on account of unprecedented situation for the purposes of insolvency proceeding under this Code."***

9*. In the present case the question which has to be answered is as to whether if the interest payments accrued during the Section 10A period whether the said interest amount is to be deducted while computing the threshold. Present is not a case where bar of Section 10 A has been pressed rather present is the case where submission is that the interest amount*

which is occurring during the Section 10 A period should be excluded from computation of threshold.

10. The Section 10 A provides that no application/proceedings under Section 7,9 & 10 is to be initiated for a default which is committed during Section 10A period. What is bar is initiation of proceedings when Corporate Debtor commits default in Section 10 A period. If the default is committed prior to Section 10A period and continues in the Section 10 A period the initiation of proceeding is not barred."

17. We, thus, are of the view that Application filed by the Financial Creditor under Section 7 was not hit by Section 10A. Furthermore, it is admitted case of the parties that prior to commencement of 10A period, the default upto February 2020 was approximately Rs.10,51,94,998/-, which is much beyond the threshold provided for Section 7 Application. We, thus, do not find any good ground to interfere with the impugned order of the Adjudicating Authority admitting Section 7 Application. There are no merits in both the Appeals, both Appeals are dismissed. No order as to costs."

97. Under Section 10A of the I & B Code, 2016, will not be attracted in the instant case and in those cases where the default has chanced prior to cut-off as ascribed under Section 10A of the I & B Code, 2016. This Appellate Tribunal too, had an occasion to deal with almost a similar issue in the matter of ***Company Appeal (AT) (CH) (Ins) No. 95/2024, Mr. Sudhir Bobba versus M/s. TVN Enterprises & Another,*** the Judgment rendered by this Tribunal is based upon the ratio of Raghavendra Joshi (Supra) as well as that of, Narayan Mangal (Supra) had to propound to the same principles that Section10A will

not apply in those cases where the default has occurred, prior to the insertion of Section 10A in I & B Code, 2016, and period prescribed therein. Relevant Para is extracted hereunder: -

> *"Thus the basic issue of contention which boils down is as to whether the dues arising out of invoices raised within the Section 10 A period, that is between 25.03.2020 to 16.09.2020, are to be included in the total debt, due and in default, for the purpose of initiating CIRP proceedings under Section 9 of the Code. This has been dealt with by the Ld. Adjudicating Authority in para 27-31 of the impugned order, wherein the Ld. Adjudicating Authority has held that even though the application states the date of default to be 15.12.2020, as per records of NeSL the date of default is 14.03.2020, the same has to be taken as the date of default and hence the default in the instant case is a default committed prior to the Section 10 A period which is continuing during Section 10A period and therefore it will not attract the provisions of Section 10 A of the Code."*

98. Section 10A will have no applicability for the purposes of extension of the period of limitation in the instant case, as it has been argued by the Ld. Counsel for the Respondent/Applicant to the proceedings. Because of the fact, that the Respondent/Appellant themselves have chosen to issue notice on 28.07.2020, i.e., one month after the exemption contemplated under Section 10A, as made effective by the amending act with effect from 05.06.2020. The Respondent/Applicant will not be entitled to any benefit under Section 10A of the I & B Code, 2016, which would not be applicable. Hence in these eventuality and particularly owing to the reasons already given above, we are

of the view that, when the default since admittedly has been committed on 30.09.2019, and the period of limitation of 3 years was expiring on 30.09.2022, the en bloc exclusion of period from 15.03.2020 to 28.02.2022, would not be available to the Respondent/Applicant even under Section 10A of the I & B Code, 2016, so as to derive the benefit of limitation. Even otherwise also and as we have already observed above, that we have to bare in mind that, even after the insertion of Section 10A for the purposes of exclusion of period for institution of the proceedings, there had been no bar as such, because even during the COVID-19 period the courts were functioning and institution of the proceedings were not restricted. And that too, when in the instant case the proceeding has been instituted belatedly on 07.09.2023, that is even much after the expiry of period of limitation on 30.09.2022, which either way falls outside the extended period of limitation, with effect from 01.03.2022 to 30.05.2022. Thus, from the conduct of Respondent/Applicant, they have attempted to blow hot and cold simultaneously and take the benefit of the extended period of limitation under Section 10A of the I & B Code, 2016, by knowing the fact that they had issued the notice under Section 8, after almost one month from the date of the insertion of Section 10A of the I & B Code, 2016, and then sitting over the issue and instituting the proceedings, even after the taking off the period of limitation by the Hon'ble Apex Court, with effect from 28.02.2022 to 30.05.2022 and waiting till 07.09.2023, the proceedings drawn by the

Respondent would be barred by limitation and Article 137 of the Limitation Act will come into play. Thus, this question is answered, against the Respondent thereby the Section 7 proceedings were barred by limitation.

F. What implications would Section 65 of the I & B Code, 2016, would have on the proceedings: -

99. Both the Counsels have addressed to this Appellate Tribunal, on the question of Section 65 of the I & B Code, 2016, which provides for dealing with the contingency, when proceedings were found to be fraudulent or malicious. ***Section 65 reads as under: -***

> *"65. Fraudulent or malicious initiation of proceedings. — (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
>
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*
>
> *[(3) If any person initiates the pre-packaged insolvency resolution process—*

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]"

100. It provides that, if any of the parties to the proceedings, have ultimately on conclusion of the proceedings has been found to be based on material on record, that the proceedings drawn were fraudulent or malicious, for the purposes to defeat the interests of the rival parties, they have had to be dealt with, in accordance with the stipulations contained under Section 65(2) of the I & B code, 2016. It has been argued by the Ld. Senior Counsel for the Respondent/Applicant, is that the plea of Section 65 of the I & B code, 2016, as raised by the Appellants now, was not a plea, which was ever raised by the Appellant before the Ld. Tribunal before the Ld. Adjudicating Authority. This stand of the Ld. Counsel for the Appellant about the plea of malicious prosecution under Section 65 of the I & B code, 2016, has been taken for the first time, is being vehemently opposed by the Respondent/Applicant, on the ground, that the plea was not agitated by the Appellant earlier in the proceedings which were held before the Ld. Adjudicating Authority.

101. In answer to which the Ld. Senior Counsel for the Appellant submits, that the plea of Section 65 of the I & B code, 2016, was raised in the written

submissions, which was filed by them on 14.06.2024, after seeking a prior leave from the court, when the plea has been raised in the written submissions thus filed, in pursuance to the order of 29.05.2024, after seeking leave from the court. He submits that one's plea has been traced in the written submissions, thus filed in perseverance to the order dated 29.05.2024, that was bound to have been considered by the Ld. Adjudicating Authority with regards to the plea of malicious proceedings, according to the Appellant which is statutorily completed under Section 65 of the I & B Code, 2016.

102. In the absence of there being any findings recorded on the plea of malicious prosecution, the Appellant submits that the same would rendered the judgment, to be perverse and not non-sustainable. He submits that once the written submission is filed with the leave of the court, it forms to be part of the pleading, if that be so, the Ld. Adjudicating Authority was bound to considered the implications of the plea of Section 65 of the I & B Code, 2016, and if the same is not considered it would vitiate the proceedings, this argument of Appellant it is based upon the principles which has been laid down by the Hon'ble Apex Court in the ***judgment reported in 2023 Volume 2 SCC Page 205 in the matter of SVG Fashion Private Limited Vs Ritu Murli Manohar Goyal & Another*** and particularly the reference has been made to Para 7 and 11 of the said judgment. In a nutshell, if the observations which had been made therein by the Hon'ble Apex Court is taken into consideration, it has primarily

held that judgment rendered without considering the plea would amount to be a perverse and with a non-applicability of mind. ***The relevant Para 11 is extracted herein above.***

> *11. The law as it has developed on the applicability of Section 18 of the Limitation Act and the circumstances in which it would apply, have also not been examined by Nclat. Therefore, the order [Ritu Murli Manohar Goyal v. SVG Fashions Ltd., 2020 SCC OnLine NCLAT 1081] of Nclat is liable to be set aside and the matter liable to be remanded back for a fresh consideration. Accordingly, the appeal is allowed, the impugned order [Ritu Murli Manohar Goyal v. SVG Fashions Ltd., 2020 SCC OnLine NCLAT 1081] of Nclat is set aside and the matter remanded back to Nclat for a fresh consideration in the light of the observations and the principles of law indicated above. There will be no order as to costs."*

103. During the course of argument, the Ld. Counsel for the Respondent/Applicant too had submitted that in the judgment reported *in ILR 2007, KAR 1127* in the matter of ***Shanthaveerappa Vs K.N. Janardhanachari***, though it was in the context of the civil proceedings, particularly in relation to the implications of Order XLI Rule 23 and 24, he submits that normally a remark excluded should not be deprecated and the Appellate Court while considering the appeal can also consider the plea, which was raised which has not considered by the Tribunal, and for the aforesaid purpose he has made reference to ***para 11*** of the judgment which is extracted hereunder*:-*

"11. An appeal is a continuation of the original proceedings. In effect the entire proceedings are before the Appellate Court and it has power to re-appreciate the evidence. It has the power to amend the pleadings, frame issues, resettle issues, delete issues, receive evidence by way of additional evidence, record evidence, summon witnesses and documents, order for commission, pass interim orders. It can also take note of subsequent events. In addition to the power of Trial Court, it has been vested with the power of remand. Power to set aside, modify, reverse and affirm the judgment of the Trial Court. It also has the power to entertain Cross Appeal and power to grant relief to a party to the proceedings who has not preferred appeal and set aside the findings recorded against the respondent in the appellant's appeal. Thus, the power of the first Appellate Court is unlimited. The reason being that it should be able to meet any contingency or situation and pronounce judgment finally in order to do complete justice between the parties. ***It cannot plead or feel helpless to meet any situation arisging in a case to resolve the dispute between the parties.*** *That is the ambit and scope of the jurisdiction of the first Appellate Court.* ***Therefore, the legislature has entrusted a very important duty to the first Appellate Court, and it is for that Court to decide finally all questions of fact on which the disposal of the suit might depend. To order retrial of a case is a serious matter and may mean considerable waste of public time****. An order of remand should not be taken to be a matter of course. The power of remand should be sparingly exercised.* ***The endeavor should be to dispose of the case finally by the first Appeallate Court itself****. When the Trial Court after considering the evidence, has come to a conclusion, the Appellate Court should not ordinarily remand the case, it should see first whether it can dispose of the case itself*

under order 41 Rules 24 to 27 CPC. Only if it is not possible to do so and it is necessary in the interests of justice to remit the suit, remand should be resorted to. When additional evidence is tendered in appeal, the Court should act under rule 28 and not remand the whole case under this rule. Such an order can be passed only in exceptional cases as, for example, where there had been no real Trial of the dispute and no complete or effectual adjudication of the proceeding and the party complaining has suffered material prejudice on that account. Remand is not meant to provide fresh oportunity to a party to litigate. An order of remand could be made only if the finding of the lower Court is reversed in appeal. Where there is no reversal of the finding, the Appellate Court cannot proceed under this rule and remand the case for a fresh inquiry on the ground that a finding is necessary on a point not dealt with in the judgment or that the inquiry has been inadequate. Aremand for the purpose of adducing fresh evidence to explain the evidence on record, where it was unambiguous or to cover up deficiencies or to fill in gaps is not warranted by this rule. If an issue can be decided by the Appellate Court on admitted facts, the empty formality of remand must be eschewed to advance the cause of justice."

this could rather be read in support of the argument extended by the Appellant, that since the plea was specifically taken in the written submissions with regards to Sections 65 of the I & B Code, 2016, and the same was not considered. It would render the judgment to be bad in the light of the judgment of SVG Fashion Private Limited (Supra) and Shanthaveerappa (Supra).

104. Owing to what has been observed above, the entire controversy could be summarized in the following manner:

(i) Because of the fact that the default is an aspect not disputed, and its limitation for the purpose of initiation of proceedings, under Section 7 of the I & B Code, 2016, will be expiring on 30.09.2022, after the gracious period granted by the Hon'ble Apex Court, since the Respondent having filed the same on 07.09.2023 would be barred by limitation. Since being in violation to Article 137 of the Limitation Act.

(ii) Because of the fact that, the Debenture Trust Deed dated 22.03.2019, it was a self-contained provision, which provided for conferring of a right for initiation of proceedings for insolvency, after a majority decision of the Debenture Holders, which was to be exercised by the Debenture Trustee and since the same was not done in accordance with the covenants of the inter-se binding implications of the Debenture Trust Deed. The entire proceedings would be vitiated, since there being a contravention to the agreed terms of the deed, which is not in dispute.

(iii) Because of the fact that, as per the affidavit which was filed in support of the application preferred under Section 7 for initiation of I & B proceedings was by an individual, who on the

relevant date was not even holding a valid authority, owing to the cessation of his authority which was vested to him by the Boards Resolution of 05.03.2019. On the date of filing of the proceeding, since the said Boards Resolution stood superseded by the subsequent Boards Resolution of 02.02.2021, where the right set in subsequently conferred an authority to initiate proceedings to Mr. Kaustubh Sudame, by an attorney executed in his favour on 22.02.2022, thus on the date of filing of the proceedings, Mr. Manohar Maddili as he was not holding a valid authority. The proceedings would be vitiated since, having not been instituted under the valid authority.

(iv) Since, the entire proceeding was maliciously oriented, as having been instituted on the basis of the notice issued on 28.07.2020, which was falling during the COVID-19 period.

(v) Operation of Section 10A will not in any way impact the limitation period in this case since the limitation would start running from the date of the default being 30.09.2019, which was prior to the COVID-19 period and the limitation thereto of three years will be expiring on 30.09.2022 even after taking into account the implication of Suo motu judgment of Hon'ble Apex Court due to COVID-19 situation.

(vi) it would be a malicious proceeding and would be barred by Section 65 of the I & B Code, 2016. The plea of Section 65 of the I & B Code, 2016, since having been taken by the Appellant after the leave of the Tribunal and has not been considered, it would vitiate the proceedings.

105. More importantly, we are of the opinion that, the issue with which we will be more concerned herein would be, pertaining to the event of default and admission of default, and the remedies which has been contained under Clause 7.1 of Debenture Trust Deed, which was supposed to be exercised by the Debenture Trustee. We are of the view that it would be inclusive of taking of an action, when there occurs a 'default', as per the default described under the I & B Code, 2016, as well as under the Debenture Trust Deed itself, which stands affirmed, where exercise of powers for initiation of the insolvency proceedings becomes necessary, in view of the provisions contained under Clause 7.8 of the Debenture Trust Deed which prescribes that, any corporate or legal action or legal proceedings or other procedure, which has to be taken in relation to, thereto various contingencies as contemplated under Clause 7.8(f), which provides for a redetermined action in relation to, the initiation of the Insolvency Resolution Process, under the Indian Insolvency Bankruptcy Code, in respect of any members of the promoter group, (other than the promoter) or any analogous procedure or steps to be taken, has had to be done by the

Debenture Trustee, owing to the extension of its powers granted under Clause 7.1 of the Debenture Trust Deed. On a conjoint reading of Clause 7, 7.3, it could be said that, for the purposes of initiation of any insolvency process, it is only the Debenture Trustee who could exercise the powers under Clause 7, subject to the vesting of authority, with the Debenture Trustee for acting on behalf of the Debenture Holders after having being appointed so, as per Clause 2.1 of the Debenture Trust Deed.

106. In order to facilitate it to understand that, the Debenture Trust Deed included within itself a mechanism, for initiation of the CIRP proceedings, but for that could have been initiated by the Debenture Trustee who has been holding a majority by authority to exercise the powers under Clause 7.1 of the Deed, which deals with the actions to be taken with regards to the non-payment and in the absence of there being a valid authority vested Act under Clause 7, for the purposes of an action contemplated under Clause 7.8 (f). The action taken by the Debenture Trustee would be contrary to the provisions contained under the Debenture Trust Deed, itself particularly when, it is agreed between the parties that terms and conditions as contained under the Debenture Trust Deed is a binding *inter se* between the Debenture Holders and all persons claiming by or through under or any of them as contained under Clause 3.3, which has been extracted and dealt with above.

107. We fed it to consider also as to what would be the remedies available, on an identification or admission of a commission of a default and for an action to be taken as per Clause 7 by the Debenture Trust Deed. Particularly having referred to Clause 7.23, which provides for the mechanism for the remedies upon an event of reckoning of default and particularly, having reference to Clause 7.23 (a), which prescribes for ***"upon occurrence of event of default"*** which is an admission of default nor, the Debenture Trustee '*may' and 'shall*' if so directed by the Debenture Holders by a majority resolution declared to the obligor by notice in writing substantially in the form set out in Schedule 8 (form of notice of event of default) Clause 7.23(a) particularly, it contains an exception that the powers, which are to be exercised by the Debenture Trustees, to take the remedial measures upon an identification of a default, which in the instant case happens to be on 30.09.2019, by way of admission the word "occurrence" of default as used under Clause (a) has to be taken with effect from 30.09.2019 and thereafter the use of the word 'and' in between the word 'may' and 'shall', it still stipulates that, it is an exclusive exercise of functioning by Debenture Trustee who holds their authority, he may and shall, so directed by the Debenture Holders by majority resolution can only issue a notice under Schedule 8, when the above conditions stood stand satisfied. The use of word 'and' between 'may' and 'shall' as used under Clause 7.3(a) of the Debenture Trustee, in fact it makes its mandatory for the Debenture Trustee, that when,

the Debenture Holder by majority resolution, identifies the commission of a default, it would have to take an action by issuance of a notice under Schedule 8 as provided under the Debenture Trust Deed itself.

108. The Notification No. SO 1091 (e) dated 27.02.2019, where it has permitted the Debenture Trustee, to exercise its powers for initiation of an application under Section 7 1. It has to be read in a limited sense, so far it relates to the powers carved out in the exception for the remedies contemplated under Clause 7.23 as that it is contained under Clause 7.23(c)(v). The issuance of a notification would be in an exception to the powers, which has been otherwise specifically vested with the Debenture Trustee under Clause 7.1 to be read with Clause 7.23. Thus, the implications of the notification will be falling within the ambit of Clause 7.23(c)(v) of Debenture Trust Deed, itself which provides that any other remedial measures, which do not fall for consideration under the principle remedial Clause 7.3 (a)(b)(c) would stand covered by virtue of a savings clause to contemplated under Clause 7.23(c)(v).

109. At this place the notification dated 27.02.2019 will not come into play, which ought not to have been attracted at this stage in this case particularly when, the Debenture Trustee as per the terms of the Debenture Trust Deed itself, was held to be competent to take an action for drawing of insolvency proceedings, in the light of the provisions contained under Clause 7.8(f) of the

Debenture Trust Deed. ***Clause 7.8 (f) of the Debenture Trust Deed is extracted hereunder: -***

> *"**7.8 (f)** initiation of an insolvency resolution process under the (Indian) Insolvency and Bankruptcy Code, 2016 in respect of any member of the Promoter Group (other than the promoter),*
>
> *or any analogous procedure or step is taken in any jurisdiction in respect of any member of the Promoter Group."*

110. Since all the actions which has been taken, in the instant case, will be falling well within the ambit of exercise of powers under Clause 7.8, the effect of the notification which falls to be under Clause 7.23 (c)(v) ought not to have been attracted for the purposes of initiation of the insolvency proceedings at the behest of the Debenture Holders based on Debenture Trust Deed. Since according to Clause 13.5, it reads as "*the Debenture Trustee undertakes for the benefit of the Debenture Holders, that it shall, upon receipt of instructions from the applicable majority of Debenture Holders, initiate and represent the Debenture Holders in any legal or other proceedings necessary to enforce the right of Debenture Holders and the Debenture Trustees in connection with the Debentures/or, under the transaction documents".* The inference which could be drawn from Clause 13.5, as it has been argued by the Ld. Senior Counsel for the Appellant, would be that owing to Clause 13.5, it falls to be the other duties only which are required to be performed by the Debenture Trustee exclusively

for the interest of the Debenture Holders and particularly when the decision is taken by the majority of the Debenture Holders for initiation of the proceedings for representing the cause of the Debenture Holders.

111. For the aforesaid reasons, the 'appeal' would stand 'allowed', the 'Impugned Order' dated 08.08.2024, would hereby stand 'quashed', and consequentially the application preferred under 'Section 7' of the I & B Code, 2016, would hereby stand 'rejected'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

27.02.2025
SN/TM/MS