

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

C.P.No.IB No.397 / KB/ 2017

C O R A M Shri Vijai Pratap Singh
Hon'ble Member(J)

Shri Jinan K.R.
Hon'ble Member(J)

In the matter of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :
The Insolvency and Bankruptcy Code, 2016 (31 of 2016).

And

In the matter of :
M/s Jalan International Hotels Pvt. Ltd., having its registered office at 1930, Rajdanga Main Road, Kolkata-700107.

And

In the matter of :
Edelweiss Reconstruction Company Ltd., having its registered office at Edelweiss House, Off CST Road, Kalina, Santacruz (East) Mumbi - 400098

.....Applicant

Versus

M/s Jalan Intercontinental Hotels Ltd.

..... Respondent.

Judgement/Order delivered on *29th August, 2017*

Counsels on record :

1. Mr. Vikram Trivedi, Advocate.]	
2. Mr. Subhradal Choudhury, Advocate.]	For the Petitioner.
3. Mr. Dipayan Chaudhury, Advocate.]	
4. Mr. Somnath Roy, Advocate.]	

1. Mr. Ratnanko Banerji, Sr. Advocate.]	For the Respondent
2. Mr. Shubhankar Nag, Advocate.]	
3. Ms. Swapna Choubey, Advocate.]	
4. Mr. Rajesh Upadhyaya, Advocate.]	

ORDER

Per Shri Jinan K.R., Hon'ble Member(J)

M/S. Edelweiss Asset Reconstruction (Financial Creditor) filed this petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (In short I& B code, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 for the purpose of initiating corporate insolvency resolution process against the respondent (Corporate Debtor) M/S. Jalan Intercontinental Hotels Pvt.Ltd. The Corporate Debtor originally

availed various credit facilities by way of financial assistance against various assets creating security interests in favour of SBI of India, Commercial Branch, 24, Park Street, Kolkata-700016. The State Bank of India assigned the debt in favour of the petitioner.

Brief facts narrated by the petitioner in the petition is the following

2. The Corporate Debtor has availed various credit facilities from the State Bank of India. SBI granted credit facilities of Term Loan for an overall limit of Rs. 61,000,00,00/- in June 2008. In July 2010, it enhanced credit facility of Rs. 70,4400,000/- and further enhanced credit facility to Rs. 73,63,00000/- in the month of January 2014. The total amount of debt granted by the SBI in favour of the Corporate Debtor is shown in Annexure -C (Pg. 17) The petitioner contends that the corporate debtor failed to repay the loan amount and committed default in repayment as on 31.3.2014. The amount of default according to the petitioner as on 31.3.2014 is Rs.

127,0,368,412/-. A computation statement of the amount in default is shown in Annexure – D at (Pg. 18). Since the Corporate Debtor failed to repay the Loan Amount a demand notice under section 13(2) of the Securitisation Act, 2016 was issued to the respondent by SBI on 1.8.2014. The corporate debtor by availing the credit facilities also executed hypothecation agreements as shown in Annexure F to G (Pg. 19-56) , Memorandum of Deposit of Title Deeds (Annexure H), Supplement Memorandum of Entry of Mortgage of Deposit of Title Deeds (Annexure- I Pg 59,60), Supplement of Memorandum of Entry of Mortgage of Deposit of Title Deeds (Annexure – J Pg. 61-62) , Copy of the Form CHG-I and charge in respect of creation of charge and modification in favour of the applicant. (Annexure-K Pg. 63-68) and Sanction letter dated 14.01.2008 issued by SBI in respect of credit facility (Annexure-K Pg.69-77). The petitioner also produced a statement of account certified by the bank in accordance with Banker's Book Evidence Act. The said statement of account is

Annexure-Y, at Pg. 223-278. The petitioner further contends that the corporate debtor admitting the default of the repayment of the amount made a request to State Bank of India for availing one time settlement scheme expressing its intention to settle the account outstanding in its name at Rs. 66,00,000,00/-and that Letter is produced and marked as Annexure-Z at Pg. 279 and another letter dated 15.9.2014 requesting for settlement under one time settlement scheme and that letter is marked as Annexure-AA at Pg. 280 . To prove that SBI assigned the debt in favour of the Petitioner produced a copy of the assignment deed dated 26.11.2014. The copy of said assignment deed is Annexure-CC at Pg 236-238. The petitioner further contends that the debt due to the applicant is admitted by the corporate debtor in their financial statement for the year ended 31.3.2015 and to prove the same the petitioner produced an extract of Annual Report/Financial Statement as Annexure-DD at Pg. 339-340. The Corporate Debtor also addressed to the petitioner by way of

a letter dated 9.10.2015 expressing its intention to settle the account for an amount of Rs. 85 crores. The letter is produced and marked as Annexure-EE at Pg.341. One another letter dated 28.09.2016 was also send by the corporate debtor to the petitioner expressing their intention to one-time settlement by offering Rs. 86 crores. That letter is produced and marked as Annexure-FF at Pg. 342. Vide letter dated 26.10.2016 the corporate debtor again made a request to the petitioner offering Rs. 89 crores for enabling them to settle the account outstanding in their name. That Letter is produced and marked as Annexure-GG, P. 343. The Petitioner further submits that consent of Interim Resolution Professional was obtained by the Petitioner and it is produced along with the petition. The written communication by the Interim Resolution Professional is also produced by the Petitioner and it is shown at Pg.344-357. Upon the above-said contentions, Petitioner prays for initiating corporate insolvency resolution process against the corporate debtor.

3. In reply to the contentions raised by the petitioner, the respondent corporate debtor raised the following contentions. The petition is not maintainable. The petitioner suppressed material facts. This Tribunal has no jurisdiction to entertain this petition. The Petitioner has no locus standi to file the application since the assignment in favour of the petitioner by the SBI is under challenge before the Debt Recovery Tribunal-III, Kolkata. Mr. Meghraj Deshmukh has no authority to initiate a proceeding under the I & B Code for want of specific authority. By taking steps under section 13 (4) of the SARFAESI Act, 2002 and taking possession of secured assets of the respondent petitioner is barred from initiating proceedings before the Hon'ble Tribunal. Against the order of taking physical possession by District Magistrate, the corporate debtor preferred an appeal as SA. 551 of 2016 before the DRT under section 17(1) of the said Act. The petitioner also not send any demand notice to the respondent Corporate Debtor and therefore there is no default

by the Corporate Debtor. One among the creditors of the respondent that is Dhanlaxmi Bank has filed a petition under Section 433, 434 and 439 of the Companies Act before the Hon'ble High Court, Kolkata and the same has been numbered as C.P No. 588 of 2015. The pendency of the said petition also ousts the jurisdiction of this Hon'ble Tribunal in entertaining the instant petition filed by the petitioner. In one another case No. C.P 803 of 2013, the Hon'ble High Court of Kolkata passed an order of winding up against the respondent and that order was confirmed by Hon'ble Division Bench in appeal No. 480 of 2014. The copies of above-said order are produced by the respondent and marked as Annexure-D. The State Bank of India who has granted credit facilities to the respondent committed serious lacunae and latches at the time of disbursement of credit facilities and therefore the credit facilities granted to the respondent could not be utilised successfully. The respondent further contends that the documents annexed to the petition **is** not

at all proves the existence of the financial debt or any default of the respondent as alleged in the petition. Upon the aforesaid contentions, the respondent prays for rejection of the application with cost.

4. Heard Learned Counsel on both sides. Perused the documents.

5. Upon hearing the arguments and considering the contentions taken by the parties the issues arise for determination are the following: -

1. Whether Mr. Meghraj Deshmukh is having specific authorisation to initiate corporate insolvency process against corporate debtor M/S Jalan Intercontinental Hotels Pvt.Ltd under the I & B Code?
- 2). Whether petitioner can file this petition as an assignee of SBI?
- 3). Whether this Tribunal has got jurisdiction to entertain this petition because of the pendency of parallel proceedings before

Hon'ble High Court of Kolkata and before Hon'ble Debt Recovery
Tribunal, Kolkata?

4). Whether this petition is liable to be admitted?

Issue No.1.

6. In a case of this nature, this Tribunal is bound to inquire into the existence of default on the side of the corporate debtor, whether the application is otherwise complete and as to whether any disciplinary proceeding is pending against the proposed Interim Resolution Professional. However, in the instant case, the respondent raised certain questions about the maintainability as well as the jurisdiction of this Tribunal to entertain this petition. The first ground the respondent raised is that Mr. Meghraj Deshmukh has no valid authority to initiate proceedings under the Insolvency and Bankruptcy Code, 2016. The learned counsel for the respondent submits that the Board Resolution annexed to the petition does not

reflect authority to Mr. Meghraj Deshmukh to initiate proceedings before this Tribunal and that the affidavit Mr. Meghraj Deshmukh verified is for filing an application before NCLT, Bengaluru Bench. Truly, the affidavit of verification filed by the petitioner along with the petition shows that it was prepared for filing before NCLT, Bengaluru Bench. The petitioner was permitted to file supplementary affidavit curing the defect and petitioner has filed the supplementary affidavit on 10th August 2017 showing the correct cause title in which Tribunal he is filing the affidavit. Therefore, the contention that there is no valid affidavit filed by the petitioner is found devoid of any merit.

7. Respondent contends that the Board Resolution produced along with the petition does not reflect any authority to initiate any proceedings before this Tribunal. This petition was filed on 1.8.2017. Copy of Board Resolution is dated 08.02.2017. A careful scrutiny of Annexure -A at Pg. 12 of the petition (Extract of Minutes) it is understood that Mr. Meghraj Deshmukh along with some other

members was given authority severally 'to sign for and on the behalf of the company inclusive of the authority to appear and represent the company before company Law Board and quasi-judicial bodies, Courts in India and other authorities in India, to sign, execute to affirm and file such documents included but not limited to filing winding up petitions etc'. At a time when the Board passed the resolution, the National Company Law Tribunal was not in existence. A reading of the above referred Minutes shows that Shri. Meghraj Deshmukh has been given authority to appear and represent on behalf of the petitioner's company inclusive of his authority to appear before company law board, quasi -judicial authorities and to file winding up applications.

8. In a case of this nature the Hon'ble NCLT, Chandigarh Bench in *Macquarie Bank Ltd. Vs. Uttam Galva Metallics Ltd* [2017] 139 CLA 216 (NCLT) has held that “ **Creditor authorizing him to file winding up petition etc, would fully cover the authority to file**

the insolvency resolution process under the Code.” At this juncture, it is also good to read para 29 in the above-cited judgment. It read as follows: -

Para.29. *“In Deutsche Forfait AG Vs. Uttam Galva Steel Ltd. [2017] 139 CLA 185 (NCLT)/CP No. 45/ I&BP/ NCLT/ MAH/2017 decided on 10th April 2017, it has similarly been observed that nature of insolvency proceedings under the code cannot be seen as something different from the winding up proceedings and the petition thus, was found to be instituted through a duly constituted attorney. In view of the above, the issue is held in favour of the petitioner and against the respondent”.*

9. The above-referred principle is squarely applicable in the case in hand. Mr. Meghraj Deshmukh has been given authority to file winding up petition before any court in India. That authority includes his authority to file insolvency resolution process under the

code. Therefore, it appears to us that Mr. Meghraj Deshmukh is a duly constituted attorney to appear and file insolvency resolution process before this Tribunal. Accordingly, we hold that petitioner has got the authority to file a petition of this nature and that this petition is maintainable under law. This issue is answered accordingly.

Issue No. 2

10. The next contention on the side of the respondent is that the petitioner is not an assignee of the original creditor and that he is challenging the assignment deed in favour of the petitioner and therefore petitioner is not entitled to file petition under section 7 of I & B Code, 2016 as an assignee of the original creditor. The petitioner filed the petition under section 7 as a financial creditor on the strength of an Assignment Deed dated 26/11/2014 executed by the original creditor, the State Bank of India by transferring the debt owed by the respondent in favour of the petitioner. Petitioner

contents that on the strength of the assignment deed he can very well file an application under the I & B Code, 2016. As per S.7 of I&B Code,2016 a financial creditor can file a petition of this nature. So, the question is whether an assignee of a Creditor comes under the purview of S.7 of I&B Code. To understand who is a financial creditor it is good to read S.5 (7) of I&B Code,2016. •

S.5(7) read as follows: - “**financial creditor**” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

11. A bare reading of the above-referred definition of financial creditor it is certain that it includes an assignee to whom debt has been legally transferred. Admittedly SBI from whom the respondent availed loan had assigned the debt in favour of the petitioner. What is under challenge is that the assignment deed in favour of the petitioner executed by SBI is under challenge before DRT, Kolkata

and therefore petitioner cannot claim the debt transferred to it using the assignment deed. So, no doubt the petitioner is an assignee comes under the purview of S.7 of I&B code,2016. In the above cited Macquarie Ltd case the Hon'ble NCLT, Chandigarh Bench has held that ***"Petitioner is entitled to file a petition under S. 7 as an assignee of the original supplier"***. In the said case petitioner is an Operational Creditor to whom an operational debt has been legally assigned. In this case, the petitioner is not an operational creditor but is a financial creditor comes under the purview of S.7 read with 5(7) of I&B Code,2016. Petitioner being found is an assignee to whom the debt has been legally transferred the question is because the assignment deed is under challenge before DRT whether the petitioner can initiate proceedings in this Tribunal based on the disputed assignment deed?

12. Learned Counsel for the respondent referring to an order of Hon'ble Debt Recovery Tribunal-III, Kolkata in SA 551 Of 2016

stressed an argument that he is challenging the validity of assignment deed and therefore unless and until its validity is determined by a competent court the petitioner cannot initiate insolvency resolution process on the strength of the Assignment Deed in dispute. A reading of the order referred by the Learned counsel does not strengthen his argument. The Learned DRT observed that respondent waived by their conduct regarding the challenge against the assignment deed based on a finding that respondent entered into a settlement with the petitioner. Learned DRT rejected the plea of the respondent that the assignment deed is invalid.

13. The petitioner, in this case, produced three letters addressed to the petitioner by the respondent expressing respondent's willingness to settle the liability owed by the respondent to the petitioner. Those letters are Annexures EE, FF, and GG. The above-said letters indicate that the respondent never disputes the transfer of debt in favour of the petitioner and showed his willingness to settle it. Therefore, we

found no merits in the contention of the respondent that the assignment deed does not confer any right on the petitioner to file a petition of this nature.

14. At this juncture, it is also good to refer certain citation and unreported judgments brought to our notice on the side of the petitioner. **Punjab National Bank and Ors.**

CP(IB)No.15/Chd/CHD/2017 (MANU/NC/0366/2017) NCLT,

Chandigarh; **Alchemist Asset Reconstruction Company Ltd Vs.**

M/s Hotel Gaudavan Pvt.Ltd (CP No.(IB)/23/PB/2017 NCLT

Principal Bench, New Delhi; **SBI Vs. M/S Garg Inox Ltd** (IB.No.(IB)

194/(ND)/2017 and **Union Bank Of India Vs. Guruashish**

Construction Pvt.Ltd. (CP No 1061/I&BP/2017 NCLT Mumbai are

the decisions referred by the Learned Counsel for the petitioner.

15. In Panjab, National Bank case the Bank before approaching the Tribunal initiated proceedings for declaring the corporate debtor as

wilful defaulter before DRT. The debtor objected the proceedings before the Tribunal because of the pendency of proceedings before DRT. The Hon'ble Tribunal held that *"the provisions of the Code have overriding effect over other laws and being the latest law on the subject, the proceedings before the DRT will not debar the right of the financial creditor to file application under S.7 of the Code"*

16. In Alchemist Asset Reconstruction Company Ltd., the financial creditor initiated proceedings before DRT under SARFAESI Act and took possession of the secured asset. The corporate debtor filed a civil suit in the court of Senior Civil Judge Jodhpur challenging the Assignment deed and filed Writ petition before the Hon'ble High Court of Delhi. Hon'ble Tribunal overruled the objections of the corporate debtor and held that *"Proceedings pending before the Hon'ble High Court of Delhi will not be a bar for this Tribunal in considering the instant petition"*.

17. In Union Bank of India case, the Bank issued notice under S.13(2) of the SARFAESI Act, 2002 demanding the amount due from the debtor and issued notice for taking possession of the assets of the corporate debtor. The objection of the debtor against initiating action under SARFAESI Act by the Bank was ignored by the Hon'ble Tribunal and petition filed by the Bank Under S.7 of I&B, Code was admitted.

18. In view of the above-said discussion we are of the considered view is that petitioner as an assignee of the original creditor can file a petition of this nature and therefore this petition is maintainable. This issue is answered accordingly.

Issue No. 3

19. The Learned counsel for the respondent on the strength of an order passed by the Hon'ble DRT-III, Kolkata in **SA. 5 of 2015**, and judgments of the Hon'ble High Court of Kolkata in **Company**

Petition No. 588 of 2015 and in **C.P 803 of 2013** and one another judgment in **APO No. 480 of 2014** in **C.P No 803 of 2013** passed by a Division Bench of Hon'ble High Court of Kolkata stressed an argument that since proceedings related to the debts in dispute being pending before DRT as well as before the Hon'ble High Court at Kolkata this Tribunal cannot entertain a petition of this nature for want of jurisdiction and therefore liable to be dismissed with cost.

20. In answering issue no 2 we hold that pendency of proceedings under SARFAESI Act before a DRT will not debar the right of a financial creditor to file an application under S.7 of I7B Code.

21. Company petition No.588 of 2015 seems to have filed by Dhanlaxmi Bank Ltd. against the respondent herein under the Original Jurisdiction of Hon'ble High Court of Kolkata for the realisation of money lent and advanced to the respondent. The Hon'ble High Court of Kolkata observed prima facie that the Bank is

entitled to the amount claimed in that petition and adjourned the proceedings for further orders to 13th April 2017.

22. Company Petition 803 of 2013 seems to have filed by one another Operational Creditor, Ensemble Infraction Pvt.Ltd as against the respondent before the Hon'ble High Court of Calcutta under S. 433,434 and 439 of the Companies Act,1956 alleging default in repayment of a sum of Rs. 1,16,67,100/-. That petition was challenged by the respondent. The petitioner in the said case seems to be the supplier of furniture to the respondent. The Hon'ble High Court doubted the bona fide of the defence taken by the respondent and directed to deposit a sum of Rs.1,02,11,720/- within four weeks from the date of the order and further directed that in case of deposit is not made winding up petition shall stand admitted. Aggrieved by the direction in the said petition the respondent filed an appeal before Hon'ble Division Bench of the High court of Calcutta as APO No. 480 of 2014. The Hon'ble Division Bench dismissed the appeal.

23. From a reading of the above said decisions cited by the Learned Counsel for the respondent it is understood that a winding up petition filed by an Operational Creditor is pending for consideration before the Hon'ble High court of Calcutta and that winding up order not yet passed and an Official liquidator was not appointed. Therefore, the question is pendency of a winding up petition filed by an Operational Creditor against very same respondent before the Hon'ble High Court of Calcutta bar the jurisdiction of this Tribunal in entreating a petition of this nature?

24. At the outset, we would say that pendency of a winding up petition before a High Court, not at all debar filing a petition for insolvency resolution process by a financial creditor before this Tribunal. Sub Section (1) of Section 14 of the Code itself safeguard the right of a creditor for invoking provisions of the Code irrespective of the pendency of any cases elsewhere. A reading of Sub section (1) of Section 14 of the Code is good. It read as follows: -

25. 14(1) Subject to provisions of Sub S. (2) and (3) on the insolvency commencement date, the Adjudication Authority shall by order declare the moratorium for prohibiting all of the following, namely: -

- (a) the institution of suit continuation of pending suit or proceedings against the corporate debtor including execution of any judgment decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and

Reconstruction of Financial Assets and Enforcement of
Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where
such property is occupied by or in the possession of the
corporate debtor.

26. A reading of the above-referred section it is understood that
continuation of pending suits or proceedings against the corporate
debtor including execution of any judgment, decree or order in any
court of Law would stand stayed.

27. At this juncture, it is also good to read the relevant portion of
Notification S.O 3676 (E), dated 07-12-2016 issued by the Central
Government. It read as follows: -

S.O.3676(E), dated 07-12-2016

1. This order may be called the Companies (Removal of Difficulties)
Fourth Order, 2016.

2. It shall come into force with effect from the 15th December 2016
3. In the Companies Act, 2013, in S.434, in Sub. S(1), in clause (c), after the proviso, the following proviso shall be inserted, namely:

“Provided further that only such proceedings relating to cases other than winding up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Court’s shall be transferred to the Tribunal:

Provided further that-

- (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or
- (ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

Shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959".

28. A reading of the above-referred notification it is understood that in a case, winding up orders are not passed by a High Court it shall transfer the case to the Tribunals. Here in the instant case the Hon'ble High Court of Calcutta not at all passed winding up orders nor transferred it to this Tribunal but proceedings for winding up is pending before it. The Hon'ble High Court passed a conditional order to deposit some amount to test the bona fide of the respondent herein and failing to deposit the amount as directed the winding up petition shall stand admitted. No data furnished on either side to see that respondent in compliance with the direction deposited the amount. What we gathered from the records is that no winding up orders passed nor official liquidator was appointed. So, we are of the view that pendency of winding up petition stressed by

the respondent is not a bar to entertain a petition of this nature in view of Sub Section (1) 14 read with S.238 of the Code.

S.238 of I&B Code read as follows: -

238. The provisions of this code shall have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such Law.

29. In view of the above-said discussion and in the absence of passing any winding up order by the Hon'ble High Court of Calcutta, this Tribunal is of the considered view that this petition is perfectly maintainable in this Tribunal.

30. In support of the above-said view, the Learned counsel for the petitioner cited an unreported decision rendered by Hon'ble NCLT, Ahmedabad Bench in **ICICI Bank Ltd Vs. ABG Shipyard Ltd.** (C.P. (IB) No. 53/7/NCLT/AHM/2017. The said case was initiated at the

instances of ICICI Bank under S.7 of I&B Code. When the said case was under consideration of the Hon'ble NCLT a winding up petition was pending before the High Court of Gujarat. The said case was admitted by the Hon'ble High court ordering advertisement. No winding up order has been passed and no provisional Liquidator has been appointed. The Hon'ble NCLT on the strength of sub section (1) of S.14 read with S. 238 of the Code viewed that "**provisions of insolvency code shall have overriding effect over any other law which is inconsistent with the provisions of this Code**". Upon the above-said view, the Hon'ble Tribunal admitted the petition.

31. However, the Learned counsel for the respondent at this juncture cited the following decisions stressing an argument that this Tribunal cannot proceed with this petition in view of the pendency of winding up petition before the Hon'ble High Court Kolkata. The decisions are the following: - **Nowfloats Technologies (p) Ltd.** [2017]

84 taxmann.com 26 (NCLT- New Delhi) (SB); **M/s.Vasan Health Care**

Private Ltd (CP.No.267 of 2015) of Hon'ble High Court of Madras and **Vasan Health Care Pvt. Ltd** (Company Appeal(AT) (Insol) No.41 of 2017 of National Company Appellate Tribunal, New Delhi.

32. The facts in the above-referred decisions are not like the facts in issue in the case in hand. In the above-said case winding up petition was admitted and Official Liquidator was appointed. Being found that the winding up petition was admitted and Official Liquidator was appointed Hon'ble NCLT Special Bench New Delhi dismissed the petition filed by Nowfloats Technologies Pvt.Ltd case. On the other hand, in M/s. Vasan Health Care Pvt. Ltd case the Hon'ble High Court of Madras passed an interim stay of the operation of the order passed by NCLT in CA No 1(IB) CB/2017 and referred the question of law raised by it to a Division Bench. Similarly, the corporate debtor in the M/s/ Vasan Health Care Pvt. Ltd case preferred an appeal against the very same order of Hon'ble NCLT, Madras Bench before the Hon'ble National Company Law Appellate

Tribunal, New Delhi. In the said decision cited above the Hon'ble Appellate Tribunal observing the applicability of S.238 of the Code in the said case declined to entertain it because the corporate debtor already availed another remedy and with that observation, appellant is permitted to withdraw the appeal. In view of the above-said discussion, it appears to us that this Tribunal has got jurisdiction to entertain this petition under S.7 of the I&B code, 2016. This issue is answered accordingly.

Issue No. 4

33. We have considered all the rival contentions raised by the Learned Counsel on either side. Respondent failed to convince us that this Tribunal has no jurisdiction to entertain this petition. Being found that the grounds taken by the respondent are not sustainable under law, the next question is whether this petition is liable to be admitted or rejected.

34. This petition has been filed in the required format. Mr. Meghraj Deshmukh is a duly authorized person to file this petition. The total amount claimed in default come to Rs. 127,03,68,411/-. Admittedly the accounts stand in the name of the respondent has been declared as NPA. The respondent who has been availed various financial facilities has not been in regular in repayment of the debt either to the original creditor or to the petitioner. On the other hand, vide letter dated 2.9.2014, 15th September 2014, the respondent admitted it's liability and expressed their willingness to avail one-time settlement scheme to the State Bank of India. The above-referred letters are Annexure – Z at P. 279 and Annexure-AA at P. 280. Similarly, the respondent admitted its liability to pay the debt to the petitioner herein vide letter (Annexure-EE, P.341) dated 28th September 2016 (Annexure-F Fat P. 342) offering to settle the liability for an amount of Rs. 85 crores and 86 crores respectively. In one another letter, the respondent (Annexure-GG at P. 343) requested for one-time

settlement of the dues for an amount of Rs. 89 crores. What is revealed from the above-referred documents is that the respondent did not raise any dispute regarding the assignment of debt in favour of the petitioner herein by State Bank of India and showed its willingness to settle the liability. The petitioner succeeded in establishing its entitlement to recover the debt from the respondent. It has come out in evidence that respondent defaulted in repayment of the debt due to the petitioner. Therefore, the existence of default in repayment of loan amount received by the Respondent stand proved in the instant case. The application is found otherwise complete. The petitioner has proposed the name of Mr. Kuldeep Verma, an Insolvency Professional registered with the Indian Institution of Insolvency Professional of ICAI having registration no. IBBI/IPA-00/IP-P00014/2016-17/10038, 3, Jagabandhu Modak Road, Kolkata-700005 as interim resolution professional. His consent letter and written communication are produced along with

the petition (344-350). The Insolvency Professional has certified that there are no disciplinary proceedings pending against him. Therefore, this petition is liable to be admitted, accordingly we hereby admit this petition with the directions mentioned below:

35. The proposal of appointment of IRP is approved and appointed to proceed as per the provisions to finalize the insolvency resolution process within the prescribed period.

36. Moratorium in terms of section 14 of the Code comes into effect.

37. The Interim Resolution Professional is directed to take necessary steps as per the Sections 15, 17 and 18 and file his report within the statutory period.

38. Necessary Public announcement as per section 15 of the IBC, 2016 may be made.

39. let the copy of the order be sent to both the parties and IRP

Petition stands disposed of in terms of the above.

sdf

(Vijai Pratap Singh)
Member(J)

sdf

(Jinan K.R.)
Member(J)

Signed this *29th* day of August, 2017