IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

C.P. (I.B)/196(KB)2023

Date of Order: 06.11.2026

Application under Section 9 of The Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Anvil Investments Private Limited, having its registered office at 29 A Sir Hariram Goenka Street, Kolkata - 700 007, West Bengal.

...Applicant

VERSUS

Jharkhand Bijli Vitran Nigam Ltd. (Previously known as Jharkhand State Electricity Board) having its registered office at Engineering Building. H.E.C. Dhurwa P.S. Hatia Ranchi - 834004, Jharkhand.

...Respondent

CORAM:

Mr. Labh Singh, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

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Counsel appeared through physically or virtually

For the applicant/ Operational Creditor	**Mr. Joy Saha, Ld. Sr. Advocate** **Mr. Ishaan Saha, Ld. Advocate** **Mr. Debayan Ghosh, Ld. Advocate** **Mr. Satyam Bhimsaria, Ld. Advocate**
For the respondent/ Corporate Debtor	**Mr. Sachin Kumar, Ld. Advocate** **Mr. Surendra kumar, Ld. Advocate** **Mr. Akash Sharma, Ld. Advocate**

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, MEMBER (JUDICIAL)

1. This application is filed by the Operational Creditor, Anvil Investment Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”), for initiation of the Corporate Insolvency Resolution Process (for short “CIRP”) against the Corporate Debtor, Jharkhand Bijli Vitran Nigam Ltd for alleged default Rs. 8,39,88,802.76/- for the supply of ACSR Conductors and G.I. Wires.

2. Briefly stated, the facts of the applicant case is that the Applicant/Operational Creditor was incorporated as a private company limited by shares on 17th November 1987 under the

provisions of the Companies Act, 1956. Thereafter, the Operational Creditor took over the partnership firm M/s Gillooram Gaurishanker in the year 1993. The Operational Creditor is a registered MSME under the Directorate of Industries of the State Government.

2.1 The Operational Creditor was carrying on business under the name and style of Gillooram Gaurishanker as a unit of Anvil Investments Private Limited. The Corporate Debtor approached the Operational Creditor for the supply of ACSR Conductors and G.I. Wire of different sizes. The Operational Creditor agreed to supply the same for which the following eight Purchase Orders were received from the Corporate Debtor on different dates and made full supply thereunder:

a) First Purchase Order No. No. 39/Ranchi dated 25.09.2001 for G.I. Wire No. 7/14 SWG (Earth Wire), against which supply was made to different consignees as directed by the Corporate Debtor, and sixteen invoices were raised from No. GG/9A dated 21.10.2001 to No. GG/61A dated 27.02.2002.

b) Second Purchase Order No. 40 Fourty/Ranchi dated 25.09.2001 for G.I. Wire No. 7/16 SWG (Earth Wire), against which supply was made to different consignees as directed by the Corporate Debtor, and nineteen invoices were raised from No. GG/10A dated 21.10.2001 to No. GG/62A dated 27.02.2002.

c) Third Purchase Order No. 10 (T)/Ranchi dated 22.02.2002 for G.I. Wire No. 7/12 SWG (Stay Wire), against which supply was made to different consignees as directed by the Corporate Debtor, and ten invoices were raised from No. GG/S0A dated 21.02.2002 to No. GG/63A dated 05.03.2002.

d) Fourth Purchase Order No. 84 (M) dated 15.07.2002 for ACSR Dog Conductor, against which supply was made to different consignees as directed by the Corporate Debtor, and two invoices were raised, namely No. GG/6A dated 25.07.2002 and No. GG/32A dated 27.12.2002.

e) Fifth Purchase Order No. 88 (M) dated 09.08.2002 for AAAC Squirrel Conductor, against which supply was made to different consignees as directed by the Corporate Debtor, and five invoices were raised from No. GG/8A dated 02.08.2002 to No. GG/t dated 31.05.2003.

f) Sixth Purchase Order No. 92 M(T) dated 19.08.2002 for AAAC Weasel Conductor, against which supply was made to different consignees as directed by the Corporate Debtor, and four invoices were raised from No. GG/10A dated 09.08.2002 to No. GG/13A dated 13.08.2002.

g) Seventh Purchase Order No. 124 M(T) dated 12.11.2002 for ACSR Rabbit Conductor, against which supply was made to different consignees as directed by the Corporate Debtor,

and three invoices were raised, namely No. GG/24A dated 21.11.2002, No. GG/33A dated 03.03.2003, and No. GG/2 dated 27.06.2003.

h) Eighth Purchase Order No. 67 (S&P) dated 31.12.2003 for ACSR Dog Conductor, against which supply was made to different consignees as directed by the Corporate Debtor, and three invoices were raised, namely No. GG/3 dated 17.01.2004, No. GG/4 dated 17.01.2004, and No. GG/5 dated 17.01.2004.

2.2 The Operational Creditor delivered all materials under the aforementioned Purchase Orders to various consignees of the Corporate Debtor, and corresponding invoices were issued periodically by the Operational Creditor to the Corporate Debtor.

2.3 The applicant/Operational Creditor, being aggrieved by long delays in payment of invoices, illegal deductions from supply bills as penalty under Purchase Order dated 12.11.2002, and non-payment of interest on security deposits for more than 12/18 months, filed an application before the Jharkhand Micro and Small Enterprises Facilitation Council (JHMSEFC) under the MSMED Act, 2006. The Facilitation Council passed an arbitration award dated 02.02.2013.

2.4 The Operational Creditor served a copy of the arbitration award dated 02.02.2013 upon the Corporate Debtor vide letter

dated 11.03.2013 though Speed Post requesting compliance and urgent remittance of the award amount. The Corporate Debtor did not pay the award amount and instead filed Writ Petition (C) No. 3987 of 2013 before the Hon'ble Ranchi High Court against the arbitration award dated 02.02.2013. The Hon'ble High Court dismissed the Writ Petition vide order dated 20.10.2022 granting liberty to the Corporate Debtor to avail alternative remedies under the MSMED Act, 2006.

2.5 The Corporate Debtor did not challenge the award dated 02.02.2013 under Section 34 of the Arbitration and Conciliation Act, 1996 in any court of law, as a result of which the award attained finality. The Corporate Debtor also did not prefer any appeal in any court of law, and no stay order regarding these transactions is in force.

2.6 The Corporate Debtor delayed payment of invoices raised by the Operational Creditor and failed to clear the invoices as per the agreed terms of the Purchase Orders. As on 30.04.2023, the total amount realizable by the Operational Creditor from the Corporate Debtor under the arbitration award is Rs. 8,39,88,802.76 as certified by Chartered Accountant calculation sheets (pages **225-328** of the application) for each of the eight Purchase Orders as detailed in para no. 2.1 above. Thus as on 30.04.2023, the

total amount payable by the Corporate Debtor is Rs. 8,39,88,802.76/- along with further interest as per the MSMED Act, 2006 until final payment.

2.7 Thus, the debt due to the Operational Creditor remains unpaid together with interest as detailed in the Award dated 02.02.2013. The date of default occurred on 04.03.2013, following the expiry of 30 days from the passing of the arbitration award.

2.8 The Operational Creditor, being a small-scale enterprise, repeatedly approached the Corporate Debtor for clearance of long-pending dues indicating that non-clearance would compel legal action. Despite oral communications, written reminders, and notices served by the Operational Creditor to the Corporate Debtor from time to time, no payment has been made towards the award amount.

2.9 The Operational Creditor issued a Demand Notice under Section 8 of the Code on 15.05.2023, which was duly served on the Corporate Debtor on 19.05.2023 demanding payment of Rs. 8,39,88,802.76 along with interest within a period of ten days. Upon receipt of the Demand Notice on 19.05.2023, the Corporate Debtor neither issued a reply nor cleared the outstanding dues within the statutory period. The Operational Creditor executed an affidavit under Section

9(3)(b) of the Insolvency and Bankruptcy Code, 2016 confirming non-receipt of payment and non-receipt of any notice of dispute from the Corporate Debtor.

2.10 The Operational Creditor obtained a Bank Certificate under Section 9(3)(c) of the Insolvency and Bankruptcy Code, 2016 from Punjab National Bank, Deoghar Branch from which it is confirmed that no payment was received from the Corporate Debtor into the Operational Creditor's account following the service of the Demand Notice. Therefore, a prayer has been made to allow the present company petition and admit the Corporate Debtor in the CIRP process.

3. Respondent, in pursuance to the notice issued by this Tribunal, appeared and filed its affidavit of reply stating therein that the applicant has wrongfully arrayed JBVNL with the nomenclature of 'Corporate Debtor'. In the application filed before the MSMED Council on 3rd May 2008 by M/s. Gilloram Gaurishanker, there is no mention that M/s. Gilloram Gaurishanker was taken over by M/s. Anvil Investment Private Limited, nor has any document been annexed to establish any such takeover in 1993; and thus, M/s. Anvil Investment private Limited has no locus to file the present application. The applicant/Operational

Creditor has mentioned several untrue, incorrect, and misleading facts and suppressed material facts.

3.1 The present petition has been filed to coerce the respondent and the same is neither maintainable in law nor on facts. The applicant was having remedy to execute the alleged award dated 02.02.2013 passed by the Jharkhand Micro, Small and Medium Enterprises Council under Section 36 of the Arbitration & Conciliation Act, 1996, before the Learned Executing Court. The Operational Creditor never filed any execution proceedings till date. The provisions of the Limitation Act 1963 apply to proceedings under the MSMED Act. The alleged award was not put to execution for more than three years and is now completely barred by limitation.

3.2 M/s. Gilloram Gaurishanker Ltd. has filed Misc. Case No. 06/2013 in the Court of Learned Sub Judge No.1, Deoghar challenging part of the alleged award dated 02.02.2013, wherein in paragraph 29 it has specifically been stated that the petitioner therein is not aggrieved against para no. 19 to 22 of the award. It has specifically been pleaded therein that the petitioner is taking steps for realisation of amount, to which the petitioner is entitled according to para 19, 20, 21 & 22 of the decree/award dated 02.02.2013.

3.3 Respondent appeared in the said misc. case and filed its written statement raising objections regarding the non-applicability of the MSMED Act. The said Misc. Case is still pending hearing of the Learned Civil Court. The Operational Creditor, having failed to file an execution case within the prescribed limitation period of three years on the alleged award, cannot be permitted to execute the same by filing the present petition.

3.4 The alleged award dated 02.02.2013 was passed under the seal and signatures of the members of the JHMSEFC constituted under Section 20 of the MSMED Act, 2006, in proceedings alleged to have been initiated against the Chief Engineer (Electrical), Jharkhand State Electricity Board.

3.5 In accordance with Section 172 of the Electricity Act, 2003, which came into force on 10th June 2003, JSEB ceased to exist due to the repeal of the Electric Supply Act, 1948, under which the Electricity Board was created; and in its place, the JSEB, Transmission Utility came into existence. The alleged award was passed on 02.02.2013 prior to the creation of JBVNL, a company incorporated only on 23.10.2013. Under the statutory transfer scheme, the distribution assets of the erstwhile JSEB were transferred to JBVNL, and in lieu of the said transfer, equity shares

were issued by JBVNL. Consequently, the Petitioner has wrongly impleaded JBVNL as the opposite party in the instant proceeding, as evidenced by the Certificate of Incorporation.

3.6 The award on the basis of which the present case has been filed is not an award in the eyes of law nor executable in a court of law. The underlying dispute relates to the period from 25.09.2001 to 12.11.2002 and lastly 31.12.2003 in respect of eight purchase orders issued by the erstwhile JSEB. Although the Petitioner claims that M/s. Gillooram Gaurishanker is a small-scale industry registered with the Director of Industries of the State under Registration No.03/37/00118/PMT/SSI dated 07.09.1987 and under a single-point registration scheme with NSIC, however the MSMED Act, 2006 came into force only on 2nd October 2006. Since the supplies were completed prior to the coming into force of the MSMED Act, 2006, the provisions of the said Act have no application.

3.7 The Hon'ble Supreme Court in ***Shanti Conductors (P) Ltd. v. Assam State Electricity Board (2019) 19 SCC 529)*** held that the date of supply is the relevant date to decide the applicability of the Act, and here the supplies were completed in 2003/2004, much prior to the enforcement of the

MSMED Act, 2006. The stringent interest provisions under the Act of 2006 are penal in nature and cannot be applied with retrospective effect. Moreover, the alleged award dated 02.02.2013 was signed by seven members of the Council, whereas Section 21 of the MSMED Act, 2006 mandates that the Council shall consist of not less than three but not more than five members.

3.8 The writ petition challenging the alleged award was dismissed with liberty to avail the alternative remedy of appeal under Section 19 of the MSMED Act. However, since the MSMED Act itself is inapplicable, the respondent has been advised to file an intra-court appeal against the order dated 20.10.2022 passed in W.P.(C) No. 3987/2013, for which necessary steps have been taken. The calculation chart certified by a Chartered Accountant claiming interest till 20th April 2023 was sent in May 2023 after about 10 years and 3 months from the date of award, representing a unilateral claim without adjudication by the MSMED Council.

3.9 The instant proceeding is neither a recovery proceeding nor an execution proceeding, but an arm-twisting method adopted by the Petitioner to compel acceptance of an unadjudicated illegal demand. The Applicant had already initiated proceedings under Section 18(1) of the MSMED Act, 2006,

before a Statutory Tribunal which determines the disputes between the parties. Therefore, this Tribunal has no jurisdiction to re-determine the disputes once again.

3.10 The Adjudicating Authority must ascertain whether there is a pre-existing dispute or lack of essential conditions under Section 9 of the Code. If any condition is lacking, the application must be rejected. Having already availed the special statute under the MSMED Act, 2006, no dispute remains to be decided by this Tribunal between the parties. The alleged notice under Section 8 of the Code was an empty formality because bona fide disputes had been existing between the parties.

3.11 It is settled proposition of law that where a power is required to be exercised by a certain authority in a certain manner, it must be exercised in that manner or not at all. The power to execute an award as a decree is specially provided under Section 36 of the Arbitration & Conciliation Act, 1996, and such power is required to be exercised by a Civil Court in accordance with Order 21 of the Code of Civil Procedure, 1908. This Tribunal is neither a Civil Court nor an Executing Authority, and cannot treat the application under Section 9 as an original proceeding or exercise appellate power over the MSME Council’s award.

3.12 The Applicant has knowingly avoided invoking Section 36 of the Arbitration & Conciliation Act, 1996 to bypass legal impediments and has instead filed this application purporting to be an Operational Creditor rather than a decree holder. The claim of over Rs. 8 Crore on account of interest based on the certificate of the Chartered Accountant of applicant's choice is completely unjustified does not constitute an amount of 'loan' or 'default' as defined under the Code. Therefore, the present company petition requires to be dismissed.

4. The applicant filed rejoinder to reply filed by the respondent denying averment made in the reply affidavit and reiterating the facts pleaded in the present company petition which are not reproduced here in entirety for sake of brevity.

5. It has been submitted that the reply affidavit filed by the Corporate Debtor has not been properly verified and not supported by any documentary proof, Board Resolution, or Letter of Authority to establish the competence of the person to depose on behalf of the Corporate Debtor Company. The reply is a mere bluster, full of falsehoods, misconceived, frivolous, and vexatious, submitted with mala

fide intention to misguide the Tribunal from the core issue of non-payment of outstanding operational dues.

5.1 It is denied that the takeover of M/s. Gillooram Gaurishanker by M/s. Anvil Investment Private Limited went unmentioned, rather, as shown from the letterheads and invoices issued to the Corporate Debtor, Gillooram Gaurishanker is an operational unit of the Operational Creditor. Furthermore, regarding the impleadment of JBVNL, the primary object of the Corporate Debtor was to acquire Jharkhand State Electricity Board along with all its assets and liabilities pursuant to the Transfer Scheme.

5.2 The Operational Creditor initiated proceedings for outstanding dues along with interest before the JHMSEFC. Following a hearing of both parties, the Facilitation Council issued an Arbitration Award/Decision dated 02.02.2013 pursuant to the MSMED Act, 2006. It is submitted that the Corporate Debtor appeared before the Council without challenging its jurisdiction, thereby submitting to and acknowledging the Council’s authority.

5.3 The Corporate Debtor challenged the aforementioned proceedings by filing Writ Petition (C) No. 3987 of 2013 before the Hon’ble Jharkhand High Court. The Hon’ble High Court dismissed the petition on 20.10.2022 in favour of the

Operational Creditor, granting the Corporate Debtor liberty to seek alternate remedies under the MSMED Act, 2006. It is submitted that the Arbitration Award have attained finality.

5.4 The period of limitation stood extended due to the pendency of Writ Petition (C) No. 3987 of 2013 filed by the Corporate Debtor before the Hon'ble Ranchi High Court. The Award dated 02.02.2013 is neither a nullity nor void ab initio, and the argument that the MSMED Act, 2006 is inapplicable to contracts entered prior to its enactment is untenable, as the Respondent's challenge regarding the constitution of the MSMED Council was dismissed by the Hon'ble High Court and attained finality. The claim is covered under the award and decree.

6. Respondent filed its sur-rejoinder to rejoinder with the permission of the Adjudicating Authority denying the averment of the rejoinder of the petitioner which are not reproduced in entirety for sake of brevity.

6.1 There are pre-existing disputes between the parties and the same cannot be a subject matter of the present proceeding under the Insolvency and Bankruptcy Code, 2016. By taking resort to the provisions of the IBC, the Applicant cannot take away the right of the Respondent to raise disputes regarding the nullity of the award in execution proceedings,

and an award which cannot be legally executed cannot form the basis of the present proceeding.

6.2 Regarding deponent authorization, the Corporate Debtor maintained that the alleged defect is curable. The Respondent annexed Memo No. 850 dated 22/07/2022 (**page 6** of the sur-rejoinder) from the Director (HR), Jharkhand Urja Vikas Nigam Limited authorizing the General Manager (with sub-delegation powers) to swear affidavits. Furthermore, vide letter no. 450 dated 05/12/2023, the General Manager (HR) expressly authorized Sri Ajeet Kumar, General Manager (S&P), JBVNL, to file the counter affidavit in C.P. (I.B) No. 196/KB/2023.

6.3 Against the order/judgment passed by the Hon'ble Single Judge in W.P.(C) No. 3987/2013, the Respondent has preferred an intra-court appeal being L.P.A. No. 684/2023 (JBVNL v. The State of Jharkhand and Ors.) along with a petition for condonation of delay, which is pending before the Hon'ble High Court of Jharkhand. The status report has been annexed at **pages 13 -14** of the sur-rejoinder.

7. The Operational Creditor filed a Supplementary Affidavit submitting that Gillooram Gaurishankar was originally constituted as a partnership firm by a Deed of Partnership dated 29th September 1965. Thereafter, by an Indenture of

Partnership dated 24th March 1993, Anvil Investment Private Limited was duly inducted as a partner of the said firm by the then partners, namely Mrs. Kapuri Devi Dalmia (since deceased) and Mr. Govind Prasad Dalmia.

7.1 By an Indenture of Dissolution of Partnership dated 7th September 1993, Mrs. Kapuri Devi Dalmia (since deceased) and Mr. Govind Prasad Dalmia retired from the partnership, and Anvil Investment Private Limited, being the sole remaining partner, took over the business of the said firm as a going concern, together with all assets and liabilities appertaining thereto.

7.2 Accordingly, on and from 7th September 1993, Anvil Investment Private Limited has carried on, and continues to carry on, the business hitherto carried on in the name and style of Gillooram Gaurishanker. Upon such dissolution and takeover, the erstwhile partnership firm ceased to exist, and the business, assets, liabilities, and operations of the erstwhile firm vested entirely in Anvil Investment Private Limited.

7.3 Since the takeover of the business of the erstwhile partnership firm, various statutory and Governmental Authorities have issued registrations, licenses, certificates, and other documents recognizing Anvil

Investment Private Limited as the proprietor of "Gillooram Gaurishankar" or that "Gillooram Gaurishankar" is a unit of Anvil Investment Private Limited.

7.4 With effect from 7th September 1993, the partnership firm ceased to exist, but because there was goodwill associated with and market recognition in the name Gillooram Gaurishanker, Anvil Investment Private Limited, which took over the business, assets, and liabilities of the partnership firm, has continued to carry on business under the name and style of "Gillooram Gaurishanker" and adopted "Gillooram Gaurishanker" as its trade name and trade mark. All rights, obligations, and liabilities arising from the business carried on using the name "Gillooram Gaurishanker" accrue solely to Anvil Investment Private Limited, and any contention to the contrary is without basis and liable to be rejected.

7.5 The original partnership deed dated 29.09.1965 is irrelevant to the resolution of the present dispute, as it was completely superseded and substituted by the subsequent partnership deed dated 24.03.1993, which exclusively governs the constitution, rights, liabilities, and inter se relationship of the partners.

7.6 It is denied that the name of the firm and the petitioner were used as per convenience, asserting that the Corporate Debtor is estopped from contending that Anvil Investment Private Limited and "Gillooram Gaurishanker" are distinct or separate entities. The predecessor-in-interest of the Corporate Debtor, namely Jharkhand State Electricity Board, had itself executed a contract dated 19.10.2002 with full knowledge and explicit acknowledgment that Gillooram Gaurishanker was merely a unit of Anvil Investment Private Limited.

7.7 The Corporate Debtor and its predecessor continuously recognized and dealt with "Gillooram Gaurishanker" as a trade name and unit of Anvil Investment Private Limited, making any contrary stand raised at this stage untenable, self-contradictory, and a mere afterthought.

8. Respondent filed counter affidavit to Supplementary affidavit and submitted that on 16.07.2024, the Bench directed the Corporate Debtor's counsel to place on record the current status of the Letters Patent Appeal pending before the Hon'ble High Court of Jharkhand, noting its direct relevance to this Company Petition. In this regard, the Corporate Debtor filed a true copy of Letters Patent Appeal No. 684 of 2023 (Annexure "A" – Counter Affidavit).

9. Based on pleading of the parties and after hearing Learned Counsel for the parties, the following issues emerged for consideration and decision thereon:

(i) Whether the present company petition is barred by law of limitation?

(ii) Whether there is operational debt as defined in Section 5(21) and default as defined in Section 3(12) of the Code?

(iii) Whether there is a pre-existing dispute as mandated by the provision of Section 9 of the Code?

(iv) Relief, if any, to which the applicant is entitled?

10. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties.

Issue No.(i) & (ii)

11. We have taken both the issues together for consideration and decision thereon.

12. The question arises whether there is debt and default in the facts and circumstances of the present application. The answer to this question depends on outcome of decision on issue no. (ii) as to whether the debt is legal recoverable or barred by law of limitation.

13. The Corporate Debtor has taken a specific plea that the alleged debt claimed in barred by law of limitation. Mr. Joy Saha, Learned Sr. Advocate appearing for the Corporate Debtor vehemently argued that the present company petition is barred by law of limitation under Section 238A of the Code read with Article 137 of the Schedule to the Limitation Act, 1963. He argued that the alleged operation debt is claimed on the basis of an award dated 02.02.2013.

14. The provision of Section 238A provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be. The alleged Operational Creditor served a copy of the award upon the Corporate Debtor vide letter dated 11.03.2013, demanding payment. Thereafter, no steps were taken by the applicant to execute the award despite the fact that there was no stay for execution of the award by any competent court of law. Therefore, the present petition deserves to be dismissed being time barred.

15. It is undisputed fact that the claim of the Operational Creditor is founded upon an arbitral award/decision dated

02.02.2013 passed by the JHMSEFC. Consequent upon the passing of the award, the Operational Creditor served a copy of the award upon the Corporate Debtor vide letter dated 11.03.2013, demanding payment.

16. It is own case of the Operational Creditors that the date on which default occurred was 04.03.2013; however, the statutory Demand Notice under Section 8 of the Code was issued only on 17.05.2023, and the instant petition under Section 9 was instituted before this Tribunal in the year 2023, after an expiry of more than ten years from the date of default.

17. As noted above, the provision of Section 238A of the Code explicitly makes the provisions of the Limitation Act, 1963 applicable to proceedings before the NCLT. It is a well-settled principle of law, that applications under Sections 7 and 9 of the Code are governed by the Limitation Act, 1963. The provision of Article 137 of the Limitation Act 1963 provides for limitation of three years for applications for which no provision is made therein from the date when the right to apply accrues. Thus, as per provision of Section 238A read with Article 137 of the Limitation Act 1963, the period of limitation is three years for filing application under Section 7 or 9 or 10 of the IBC Code. The

period of limitation starts running from the date of default. Therefore, the petition has to be filed within a period of three years from the date of default after excluding the period permissible at law.

18. In the instant case, the default occurred in March 2013 upon non-payment of the arbitral award dated 02.02.2013. The applicant/Operational Creditor issued a demand notice vide letter dated 11.03.2013 for payment under the award. Consequently, the three-year period of limitation under Article 137 started running from 11.03.2023 and completed in the month of March 2016.

19. It is undisputed fact that there is no stay on the execution of the award dated 02.02.2013. Therefore, in the absence of any order staying recovery or execution, a mere challenge to an award does not stop running the period of limitation. Furthermore, the Operational Creditor has failed to establish any written acknowledgment of liability executed by the Corporate Debtor under Section 18 of the Limitation Act within the prescribed period of three years.

20. An arbitral award is enforceable as a decree under Section 36 of the Arbitration and Conciliation Act, 1996, for which execution proceedings ought to have been filed within the statutory period of limitation before a competent Civil

Court. The Operational Creditor, having failed to put the arbitral award dated 02.02.2013 into execution within the prescribed period of limitation, cannot be permitted to avail the remedy under Section 9 of the Code for recovery of its dues under the award.

21. Since the Operational Creditor failed to initiate execution proceedings within three years of the award dated 02.02.2013 and filed this petition after an inordinate delay of more than 10 years, the claim is barred by limitation in view of provision of Section 238A of the Code read with Article 137 of the Limitation Act 1963.

22. The operational debt as defined in Section 5(21) of the Code means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. The operational debt as defined in Section 5(21) of the Code should be in respect of payment of dues arising under any law for the time being in force. The debt should be legally recoverable and should not be time barred to come within definition of Section 5(21) of the Code.

23. The alleged operational debt is barred by law of limitation as it was not claimed within three years from the date of default as per Article 137 of the Code. Since there is not such legally recoverable debt as defined in Section 5(21) of the Code, and hence, the question of any default as defined in Section 3(12) of the Code does not arise at all.

24. Since we have held that the present petition is barred by law of limitation and hence, the decision on the issues no. (iii) is relieved.

Issue No.(iv)

25. Accordingly, the present petition, C.P. (I.B)/196(KB)2023 deserves to be dismissed being barred by law of limitation and accordingly, the same is hereby dismissed being barred by law limitation.

26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR.R(LRA)