

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

**CP(IB) No. 2176/MB/C-IV/2019**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Punjab National Bank**

...Financial Creditor

Versus

**J-Marks Exim (India) Private Limited**  
**[CIN: U51311MH2007PTC168736]**

...Corporate Debtor

**Order Delivered on: 26.05.2020**

***Coram:***

Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

***Appearances:***

For the Financial Creditor : Ms. Savita Nangare i/b M/s Law  
Focus, Advocates

For the Corporate Debtor : Mr. Avinash Krishnan Ravi a/w  
Ms. Nivedita Mullerpattan i/b  
M/s Volant Legal, Advocates

**ORDER**

*Per: Rajasekhar V. K. Member (Judicial)*

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Punjab National Bank** (*Financial Creditor*), a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, duly represented by Mr. Binod Kumar Sharma, Chief Manager, on the basis of a Power of Attorney dated 02.06.1986 (**Exhibit 'A'** to the petition at pp.16-21), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **J-Marks Exim (India) Private Limited** [CIN: U51311MH2007PTC168736] (*Corporate Debtor*).
2. The Corporate Debtor is a Private Company limited by shares and incorporated on 14.03.2007 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U51311MH2007PTC168736. Its registered office is at Nos. 58 & 59, 1st Floor, Nakshatra Cine Shoppe, Ranade Road, Dadar (W), Mumbai- 400028 within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 10.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹1,45,42,74,724.16 (Rupees one hundred and forty-five crore forty-two lakh seventy-four thousand seven hundred and twenty-four and paise sixteen only) as the total claim amount, comprising *inter alia* of a sum of ₹35,44,50,688.47 (Rupees thirty-five

crore forty-four lakh fifty thousand six hundred and eighty-eight and paise forty seven only) as principal, ₹68,61,49,468.06 (Rupees sixty eight crore sixty-one lakh forty-nine thousand four hundred and sixty-eight and paise six only) as interest and ₹9,31,58,997.52 (Rupees nine crore thirty-one lakh fifty-eight thousand nine hundred and ninety-seven and paise fifty-two only) as penal interest at the rate of 2% p.a., as stated at pp.7-8 of the Petition. The date of default is 30.09.2013, as stated at p.7 of the petition.

4. The Financial Creditor has granted various credit facilities to the Corporate Debtor aggregating to an amount of ₹37,67,28,000/- (Rupees thirty-seven crore sixty-seven lakh and twenty-eight thousand only) (at page 7 of the Petition). Details of claim as per **Exhibit 'V'** at pp.479.481 are as follows:

Sr. No	Nature of Credit Facility	Principal Outstanding as on 31.05.2019 (₹)	Normal Interest from 01.10.2014 to 31.05.2019 p.a. (₹)	Other Debits less Other Credit (₹)	Penal Interest @ 2% simple (₹)	Total Claim amount (₹)
	(1)	(2)	(3)	(4)	(5)	(2+3+4+5)
1.	Cash Credit (A/c No. 0564008701738041)	35,01,06,230.47	68,26,31,758.38	32,09,10,740.11	9,25,60,238.43	1,44,62,08,967.39
2.	Term Loan (Car Loan) (A/c No. 056400NG00053639)	20,96,656.00	18,76,404.40	-	3,19,387.98	42,92,448.38
3.	Term Loan (Car Loan) (A/c No. 056400NG00053648)	22,47,802.00	16,41,305.28	(3,95,170.00)	2,79,371.11	37,73,308.39
	<b>Grand Total</b>	35,44,50,688.00	68,61,49,468.06	32,05,15,030.11	9,31,58,997.52	<b>1,45,42,74,724.16</b>

5. The Financial Creditor submitted the particulars of Financial Debt at pp.8-9 of the Petition as follows:

- i) The Financial Creditor had sanctioned Cash Credit Facilities as Working Capital Limit of ₹35 crore by providing first *pari passu* charge by way of hypothecation of the Corporate Debtor's stocks of imported/indigenous raw materials, consumables, spares, stock in process, finished goods, packing materials, book debts, etc. and term loan of ₹2.20 crore by providing first charge on land and building and plant and machinery created out of the said term loan *vide* sanction letter dated 27.12.2011 which is placed as **Exhibit-B** at pp.22-33. The aforesaid Working Capital Limit was granted under consortium arrangement dated 17.02.2012 with IDBI Bank Limited, a copy of which is placed as **Exhibit E** at pp 67-107. The Term Loan Agreement dated 17.02.2012 sanctioned by the Financial Creditor individually is placed as **Exhibit D** at pp.36-66 of the petition. The undertakings dated 12.01.2012 and 17.02.2012 for the above credit facilities availed by the Corporate Debtor are placed as **Exhibit F (Colly)** at pp.108-114. Further an *Inter Se* Agreement between the Financial Creditor and IDBI Bank Limited was executed on 17.02.2012 and the same is placed as **Exhibit G** at pp.115-134.
- ii) A Deed of Guarantee dated 17.02.2012 between Mr. Dinesh G. Jaiswal, director of Corporate Debtor, Ms. Sunita D. Jaiswal, wife of director of the Corporate Debtor, as Personal Guarantors, D.J. Exim (India) Private Limited as Corporate Guarantor in favour of Punjab National Bank (Lead Bank of the Consortium)

is placed as **Exhibit I** at pp.137-153 of the petition. Further a Deed of Guarantee dated 17.02.2012 between Mr. Dinesh G. Jaiswal, director of Corporate Debtor, Ms. Sunita D. Jaiswal, wife of director of the Corporate Debtor, as Personal Guarantors, D.J. Exim (India) Private Limited as Corporate Guarantor in favour of Punjab National Bank as security for the Term Loan is placed at pp.154-167 of the Petition.

- iii) A Deed of Hypothecation dated 17.02.2012 between the Corporate Debtor and the Financial Creditor and a Joint Deed of Hypothecation between the Corporate Debtor and Financial Creditor and IDBI Bank Limited are placed as **Exhibit J (Colly)** at pp.168-228.
- iv) On 31.07.2012 the Financial Creditor sanctioned two more Term Loan (Car Loan) facilities of ₹24,69,000/- and ₹22,59,000/-. To secure the aforesaid Term Loan (Car Loan) facilities the Corporate Debtor executed Letter of Hypothecation for both Term Loans on 31.07.2012. Further the Directors of the Corporate Debtor namely Mr. Dinesh Jaiswal and Mrs. Sunita Jaiswal also executed Agreement of Guarantee 31.07.2012 for the Term Loans (Car Loan). All of these are placed as **Exhibit R (Colly)** and **Exhibit S (Colly)** at pp.419-439 of the petition.
- v) Further the Corporate Debtor, being in need of additional credit limits, approached Bank of India who sanctioned fresh credit facilities amounting to ₹25 crore and Term Loan of ₹5 crore. In pursuance of sanctioning the aforesaid additional credit limits by

Bank of India, a First Supplement Joint Deed of Hypothecation, a First Supplement Working Capital Consortium Agreement, a First Supplement *Inter Se* Agreement, a First Supplement Deed of Guarantee, a Memorandum of Deposit of the Title Deeds, a letter of Authority to Lead Bank and an undertaking dated 23.11.2012 were executed adding Bank of India as a party, copies of the same are placed as **Exhibit K-Q** at pp.229-418 of the petition.

- vi) Initially the Corporate Debtor was regularly making payment towards the credit facilities. However, around June 2013, it started defaulting in making the payment and according to the guidelines of the Reserve Bank of India, it was considered as a Non-Performing Asset (NPA) on 30.09.2013. The letter declaring NPA is attached at p.482B of the petition.
- vii) On 25.10.2013, the Financial Creditor issued notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. (**Exhibit X** pp.484-489 of the petition)
- viii) On 16.04.2014 the Corporate Debtor submitted Balance and Security Confirmation Letters to the Financial Creditor. (**Exhibit T (Colly)** pp.440-443)
- ix) Commercial Credit Information Report taken from CIBIL as on 03.05.2019 is also attached to the petition stating the credit facilities taken by the Corporate debtor as **Exhibit U** at pp.444-455.

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- x) Further statement of accounts along with Certificate under section 2A of Bankers' Books Evidence Act, 1891 is placed as **Exhibit V (Colly)** at pp.456-482F.
- xi) Further, in pursuance of the action initiated by the Financial Creditor under the SARFAESI Act, secured immovable properties were sold between 27.12.2018 and 30.04.2019. Sale Certificates regarding the same are placed as **Exhibit Y (Colly)** at pp.490-494.
6. In its reply dated 17.09.2019, the Corporate Debtor has set up the following defence:
- a) The present Petition is barred by the law of limitation. The cause of action arose on 30.09.2013, the day on which the Corporate Debtor was declared as Non-Performing Asset (NPA). The present petition was filed on 10.06.2019, hence the petition is time barred.
- b) Further the Financial Creditor initiated a recovery action under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 by notice dated 25.10.2013. Pursuant to the initiation of action the Financial Creditor sold a few properties of the Corporate Debtor which were mortgaged as per '**para 1 and 2**' at pp. 1-3 of the reply.
- c) The Corporate Debtor has relied on section 238-A of Insolvency and Bankruptcy Code, 2016 along with the judgment of the Hon'ble Supreme Court in *B. K. Education Services Private Limited V. Parag Gupta and Associates MANU/SC/1160/2018* (**Exhibit A** pp.6-59 of



the reply) which clearly lays down the application of Limitation Act to petition filed under IBC,2016 as follows:

*“27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*

- d) Further the Corporate Debtor also submits that the default cannot be regarded as continuing wrong so as to invite the application of section 23 of the Limitation Act.

7. The Financial Creditor filed a rejoinder to the affidavit in reply on 25.09.2019 stating the following:

- a) Credit facilities and term loans were sanctioned to the Corporate Debtor by the Financial Creditor between 27.11.2011 and 23.11.2012 through consortium arrangements with IDBI Bank Limited and Bank of India and through arrangements between the two parties on various dates. The Corporate Debtor defaulted in paying monthly instalments from June 2013 and hence was declared as a Non-Performing Asset (NPA) on 30.09.2013 as per guidelines of Reserve Bank of India.
- b) After issue of notice under section 13(2) of the SARFAESI Act, 2002 by the Financial Creditor, the Corporate Debtor on 16.04.2014

- submitted balance and security confirmations letters for the credit facilities taken.
- c) Further the Corporate Debtor in its financials for the year FY 2014-15 and FY 2015-16 submitted with the Ministry of Corporate Affairs acknowledged the liability towards the Financial Creditor. (**Exhibit B** pp.14-105 of the rejoinder)
- d) Further the Corporate Debtor in its letter dated 23.02.2017 submitted a proposal for one time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India. Another letter regarding the same with a revised one time settlement value was submitted on 15.09.2018 (**Exhibit C** pp. 106-108 and **Exhibit E** pp. 110-113 of the rejoinder)
- e) The Financial Creditor as a consortium leader informed the Corporate Debtor that the one time settlement was not acceptable by any party to the consortium. (**Exhibit D** p. 109 of the rejoinder). Further a Joint Lenders Meeting was held on 22.10.2018 to discuss about the revised proposal. Minutes of meeting rejecting the revised offer is placed as **Exhibit F** at pp. 114-116 of the rejoinder.
- f) Further in pursuance of the action initiated by the Financial Creditor under the SARFAESI Act, secured immovable properties were sold between 27.12.2018 and 30.04.2019. Three secured assets, one immovable property at Charni Road and two cars are still available with the Financial Creditor against their claims but the claim amount is much greater than the value of these remaining secured assets.

**Findings:**

8. We have heard the arguments of both sides and perused the records.
9. The objection of the Ld. Counsel for the Corporate Debtor is on the ground of Limitation and defences raised can be classified as follows on the subject of limitation:
  - (a) Continuing wrong;
  - (b) Balance confirmation and acknowledgement of liability in the Balance Sheet;
  - (c) Settlement offers made.
10. The date of default is taken to be 30.09.2013, the day on which the Corporate Debtor was declared as a Non-Performing Asset (NPA) by the Financial Creditor as per the guidelines of Reserve Bank of India.
11. The Corporate Debtor on the point of limitation has relied on the judgment of the Hon'ble Supreme Court in case of ***Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India) Limited & Anr (2019) 10 SCC 572*** which reads as follows:

*“6) Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being “an application” which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee’s reliance on para 7 of B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already*

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*time-barred.... It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.”*

12. This principle of law was reinforced by the Hon’ble Supreme Court in the case of ***Jignesh Shah & Anr vs Union of India & Anr (2019) 10 SCC 750*** which reads as follows:

*“10.... With the introduction of Section 238A into the Code, the provisions of the Limitation Act apply to applications made under the Code. Winding up petitions filed before the Code came into force are now converted into petitions filed under the Code. What has, therefore, to be decided is whether the Winding up Petition, on the date that it was filed, is barred by lapse of time. If such petition is found to be time-barred, then Section 238A of the Code will not give a new lease of life to such a time-barred petition....”*

13. The Corporate Debtor further relied on the judgment of the Hon’ble Supreme Court in the case of ***Sagar Sharma & Anr vs Phoenix Arc Pvt. Ltd. & Anr (2019) 10 SCC 353*** which reiterated the same principle.
14. There is no quarrel with reference to the applicability of the Limitation Act to IBC proceedings. In considering this aspect, the defences raised by the Corporate Debtor are answered as follows:

***On the matter of ‘default’ not being a continuing wrong***

15. The Corporate Debtor submits a default cannot be regarded as continuing wrong so as to invite the application of section 23 of the Limitation Act.
16. The Corporate Debtor has relied on the judgment of the Hon’ble Supreme Court in the case of ***Vashdeo R. Bhojwani V. Abhudaya Co-***

*operative Bank Limited & Anr. 79(IBC)10/2019 (Exhibit 'B' pp. 61-63 of the reply) by which it was clarified that a default cannot be regarded as a continuing wrong in para 4 as follows:*

*“4. .... If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s.23 can be invoked....”*

*Following this judgment, it is clear that when the Recovery Certificate dated 24.12.2001 was issued, this Certificate injured effectively and completely the appellant's rights as a result of which limitation would have begun ticking.”*

17. However, this exposition of law in regard to section 23 of the Limitation Act, 1963, has no applicability in so far as the case of the Corporate Debtor is concerned, *inter alia* for the reason that there is acknowledgement of liability, as discussed in the subsequent paragraphs.

***On the matter of Balance confirmation and acknowledgement of liability in the Balance Sheet***

18. The Financial Creditor further submitted that the Hon'ble High Court of Andhra Pradesh in the matter of ***Vijaya Kumar Machinery & Electrical Stores Vs. Alaparthy Lakshmi Kanthamma MANU/AP/0150/1968*** has clearly laid down in para 50 as follows:

“50. *The Punjab High Court also took a similar view in Lahore Enamelling and Stamping Co. Ltd. v. A.K. Bhalla. In paragraph 37 it was laid down as follows:*

*"Debts due to creditors not mentioned by name but included in the item relating to 'loans (unsecured)' or as due to 'sundry creditors' mentioned in the balance-sheet amount to an acknowledgment within the provisions of Section 19 of the Indian Limitation Act, so as to extend the period of limitation with effect from the date of the signing of the acknowledgment."*

*(emphasis added)*

19. The Hon’ble High Court of Delhi in the matter of ***Bhajan Singh Samra Vs. Wimpy International Limited MANU/DE/6688/2011*** reinforced the same view.
20. Further the Financial Creditor submits that the Hon’ble High Court of Kerala in the matter of ***Al-Ameen Limited Vs. K. P. Sethumadhavan MANU/KE/1189/2017*** decided upon the date on which the acknowledgement in the Balance Sheet should be considered and the same reads as follows:

*“7. The complex question is as to whether Ext.A1 balance sheet and the profit and loss account is an acknowledgment of liability for the period ending 31.3.1995 to which it relates or on 26.3.1997 when it was signed. This assumes significance since the suit for money was filed on 3.1.2000 which is well beyond three years from 31.3.1995 though within three years from 26.3.1997. The period of limitation for filing a suit of the nature is three years from the acknowledgment and there is a cleavage in judicial opinion as to from which date the period will run...*

8. ...\*\*\*

9. *Will not the signing of the balance sheet and the profit and loss account at best be an acknowledgment made by a director of a debt due to himself is the further question posed by the defendant. Reliance is placed on P. S. Thirumalai Iyengar v. Official Liquidator [AIR 1962 Madras 253(DB)] and A. C. K. Krishnaswami v. M/s. Stressed Concrete Constructions Pvt. Ltd. [AIR 1964 Madras 191]. But the precise question has been answered in Re Gee & Co's case (supra) as follows:*

*'It seems to me plain that an acknowledgment signed by the directors in relation to their own debt would be fully effective if sanctioned by every member of the company.....The general meeting of the company at which the accounts were adopted and the state of the Eccles account confirmed was in fact a meeting attended by, or by the representative of, every member of the company.....In these circumstances, it seems to me plain that all the corporators must be taken to have agreed to the directors' written acknowledgment of the debt.'*

*Nobody has a case that Ext.A1 balance sheet and the profit and loss account was not placed in the annual general body meeting of the defendant and got approved by the board of directors as mandated by the Company Law. The irresistible conclusion therefore is that Ext.A1 balance sheet and the profit and loss account operates as an acknowledgment on 26.3.1997 of the liability on 31.3.1995.”*

21. The Corporate Debtor *per contra*, relied on a judgment of Hon’ble Calcutta High Court in case of ***Darjeeling Commercial Co. Ltd. vs Pandam Tea Co. Ltd*** MANU/WB/0117/1981 which reads as follows:

*“16. Reference may also be made to a latest decision of the English court In Gee & Co. (Woolwich Ltd.), re [1974] 1 All ER 1149; 2 WLR 515(Ch.D), where the acknowledgment of the liability, of a company in its balance-sheet came up for consideration and after reviewing the relevant decisions including some of the decisions cited by Mr. S. B. Mukherjee on behalf of the company*

*and summarising the relevant facts of the case which, in my view, are very similar to the present one, Brightman J. observed at page 1160 (p. 527 of 2 WLR) as follows:*

*"I shall accordingly decide this case on the footing that a balance sheet, if duly signed by the directors, is capable of being an effective acknowledgment of the state of indebtedness as at the date of the balance-sheet; and that, in an appropriate case, the cause of action will be deemed to have accrued at the date of the balance-sheet, being the date to which the signature of the directors relates. It's my judgment the balance-sheet of the company as at 31st December 1965, signed by the directors on 25th November, 1966, would have been an effective acknowledgment as at 31st December, 1965, of the liability of the company so as to take the matter out of the statute, if the acknowledgment had not been made by the directors in favour of one of themselves."*

22. In view of the above enunciation of law by the Hon'ble High Courts of Andhra Pradesh, Delhi and Kerala, it is clear that an acknowledgement of liability in the balance sheet of the company constitutes an acknowledgment of liability within the meaning of section 18 of the Limitation Act, 1963, with attendant consequences. In the present case, there is acknowledgement in the balance sheet of the corporate debtor as at 31.03.2015 and 31.03.2016, and therefore, a fresh period of limitation began to run from that date. Further, the judgment of the Hon'ble Calcutta High Court recognises the fact that *"in an appropriate case, the cause of action will be deemed to have accrued at the date of the balance-sheet, being the date to which the signature of the directors relates."* In view of the above judgments, it appears to us that the date of signatures of the directors be construed as the date of



effective acknowledgement of the state of indebtedness of the company.

***On the matter of Settlement Offers made:***

23. The Financial Creditor has argued by relying on the judgment of the Hon'ble Supreme Court in the case of *ITC Limited Vs Blue Coast Hotels Ltd. & Ors 2018 SCC OnLine SC 237* which reads as follows:

*“Letter of Undertaking ‘Without Prejudice’*

*35. Much was sought to be made of the words “without prejudice” in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. The submission on behalf of the debtor that the letter of undertaking was given in course of negotiations and cannot be held to be an evidence of the acknowledgement of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in Spencer’s case as pointed out by Mr. Harish Salve, “as a rule the debtor who writes such letters has no intention to bind himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure.” It was argued in a subsequent case that an acknowledgment made “without prejudice” in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows:*

*“But when a statement is used as acknowledgement for the purpose of s. 29 (5), it is not being used as evidence of anything. The statement is not an evidence of an acknowledgement. It is the acknowledgement.” Therefore, the without prejudice rule could have no application.”*

24. In response to this, the Corporate Debtor has submitted the judgment of *Shibcharan Das vs Firm Gulabchand Chhotey Lal AIR 1936 All 157* which states as follows:

*“4. The defendant also called a Vakil, Pandit Behari Lal Sharma, who gave evidence corroborating that given by the defendant himself. In our judgment this witness's evidence was not admissible. Negotiations were being conducted with a view to settlement, and that being so, we are bound to hold that these negotiations were being conducted without prejudice.” In such circumstances it is not open for one of the parties to give evidence of an admission made by another. If negotiations are to result in a settlement each side must give away a certain amount. If one of the parties offers to take something less than what he later claims he is legally entitled, such must not be used against him; otherwise persons could not make offers during negotiations with a view to a settlement.”*

25. The Financial Creditor has further submitted an order of the National Company Law Appellate Tribunal (NCLAT) in the case of *Babulal Vardhaji Gurjar vs Veer Gurjar Aluminium & Anr CP (IB)-488/I&BP/MB/2018* which reads as follows:

*“12. The ‘Financial Creditor’ has also brought on record a letter dated 31st July 2018 issued by the appellant to the respondent - ‘Financial Creditor’ for one-time settlement. The aforesaid fact shows that there is a continuous cause of action under Section 19 filed by the respondent - ‘Financial Creditor’ which is pending before the DRT....*

*29. Part V (First Division) of Limitation Act relates to ‘Suits relating to immovable property’ to recover possession of the property mortgaged and afterwards transferred by the mortgagee for a valuable consideration. The period of limitation is 12 years since the transfer becomes known to the plaintiff [Article 61(b)].*

*30. In view of the aforesaid position of law, the property having mortgaged, we also hold that the claim is not barred by limitation as the period of limitation is 12 years with regard to mortgaged property and in terms of Section 5 (7) read with Section 5(8) as the property is mortgaged, Respondent No. 2 also comes within the meaning of 'Financial Creditor'."*

26. In view of the law laid down by the Hon'ble Supreme Court in *ITC Limited* (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in *Shibcharan Das* (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in *ITC Limited*. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well.

27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-15 and F.Y. 2015-16 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also in its letter dated 23.02.2017 submitted a proposal for one time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.

28. Therefore, we hold that the petition filed by the Financial Creditor is within limitation.

29. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC. Therefore, the Petition made by the Financial Creditor is complete in

all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

30. The Financial Creditor has proposed Mr. Mukesh Verma as Interim Resolution Professional (IRP) in the matter.

31. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB) 2176/MB/C-IV/2019** filed by Punjab National Bank, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against J- Marks Exim (India) Private Limited [CIN: U51311MH2007PTC168736], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, regarding the following:

(i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Mukesh Verma, Registration No. IBBI/IPA-001/IPP01665/ 2019-20/12522, residing at A 504, Manish Garden Cooperative Housing Society, Manish Nagar, J.P. Road, Andheri West, Mumbai-400058, is appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The IRP/RP shall submit periodical reports to this Adjudicating Authority indicating the progress of the CIRP.
- (j) The Registry is directed to communicate this Order to the IRP, Financial Creditor, IRP and the Corporate Debtor by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-  
**Ravikumar Duraisamy**  
Member (Technical)  
26.05.2020

Sd/-  
**Rajasekhar V. K**  
Member (Judicial)