IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

C.P. NO. (IB) 462 OF 2023

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

IN THE MATTER OF:

Punjab & Sind Bank

...Financial Creditor/Applicant

Versus

Supertech Township Projects Limited

...Corporate Debtor/Respondent

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 12.07.2024

PRESENT:

For the Applicant	**:**	Mr. Sanjay Bajaj, Mr. Rajat Prakash, Mr. Sarthak Sehgal, Advs.
For the Respondent	**:**	Mr. Lokesh Malik, Mr. Akhand Pratap Singh, Advs

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The Instant Application is filed on behalf of the Punjab & Sind Bank (hereinafter referred to as "Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against Supertech Township Projects Limited ("Respondent/ Corporate Debtor") having CIN U70200DL2010PLC204121 on the ground that the Corporate Debtor had committed a default in payment for an amount aggregating to Rs.216,92,87,046.00(Rupees Two Hundred Sixteen Crores Ninety Two Lacs Eighty Seven Thousand Forty-Six only) upto 30.06.2023.

2. The Corporate Debtor i.e., Supertech Township Project Limited having CIN: U70200DL2010PLC204121 is incorporated dated 15.06.2010 under the provisions of the Companies Act, 1956 having its registered office situated at 1114, Hemkunt Chambers, 11th Floor 89, Nehru Place, New Delhi 110019. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

a. The applicant submits that the Corporate Debtor i.e. Supertech Township Project Limited had proposed to develop a Group Housing Project - **Golf Country** at Plot No. TS-05, Sector-22- D, Yamuna Expressway, Greater Noida, UP. The Cost of the project was estimated around Rs.1499.97 Crores, proposed to be financed by Term Loan of Rs.340 Crores, promoter's contribution of Rs.453.04 Crores and advance booking from customer of Rs. 706.93 Crores.

b. In view of the representation on behalf of the Corporate Debtor, the Financial Creditor, vide its sanction bearing Reference No. PSB/IFS /ND/SGC/2012-13 dated 28.06.2012 read with PSB/IFS/ND/ SGC/ 2012-13 dated 30.11.2012 read with Ref. No. PSB/SCFB/ND/ SL/2012-13 dated 18.03.2013 sanctioned a **Term Loan of Rs.140 Crores (Rupees One Hundred Forty Crores only)** for part financing of the Project.

c. The Applicant has submitted that in pursuance of the said term Sanction Letter other documents i.e. security/ loaning documents on 18.04.2013. An Inter-se Agreement was entered into between the Lenders i.e. Financial Creditor herein, Oriental Bank of Commerce and Bank of Maharashtra were executed between the parties in order to provide the Credit facilities. Further, the member of the consortium also authorized the Financial Creditor to act on their behalf (being the Leader of Consortium).

d. The Applicant has submitted that The Corporate Debtor created first pari-passu charge in respect of all movable asses, tangible/ intangible assets (both present and future) and all current assets including all

types of receivables originating from the Project, inventories, book debts in favour of the Financial Creditor and other consortium members on the basis of Joint Deed of Hypothecation dated 18.04.2013.

e. Also, the Corporate Debtor also created First pari passu charge over the leasehold rights, title, benefits and claims that accrues to the Corporate Debtor from the Project. The Corporate Debtor also created First pari passu charge on the Escrow Account and escrow of receivable from the customer and any other Bank account.

f. Further, The Corporate Debtor also created second pari passu charge over the Project Land i.e. (leasehold rights) measuring 401401 square meters and building to be constructed (both present and future) at Plot No. TS-05, Sector 22-D, Yamuna Expressway, Greater Noida, UP; (the first charge is with the Yamuna Expressway Authority for the unpaid amount of land installments due to it and the charge of consortium to be increased upon payment of installment thereof in favour of the consortium led by Financial Creditor on the basis of Letter of Intent for creation of Mortgage dated 18.04.2013. That along with the same, the Corporate Debtor also deposited the original Lease Deed dated 13.12.2011 registered as document No. 23795 in the office of Sub-Registrar Sadar, Gautam Budh Nagar, UP in respect of the Project Land with the Consortium.

g. The Applicant submitted that The Corporate Debtor had agreed to repay the Term Loans as per respective sanction letters of the Lenders read with financing documents. But, contrary to the terms and conditions of the said sanction, the Corporate Debtor failed to maintain financial

discipline and defaulted in properly maintaining the said accounts in addition to various other breaches and violations of the sanction of said Credit Limit and consequently, a huge outstanding became due and payable by the Corporate Debtor to the Financial Creditor in respect of the said Credit Limit.

h. The Applicant submitted that the Corporate Debtor had executed Revival Letter dated 31.03.2016 and 26.07.2016 and dated 28.02.2019 and in favour of the Financial Creditor thereby acknowledging and confirming their liability against the said Term Loan Account of the Financial Creditor.

i. That due to continuous default on the part of the Corporate Debtor, its account was classified as a "Non-Performing Assets" on 30.06.2018 and the Applicant further submitted that despite repeated reminders and requests, no further payments of the dues or compliance of the undertakings and representations, were forthcoming, Thereby Financial Creditor for itself and for and on behalf of other member of consortium issued notice dated 10.07.2018 under Section 13(2) of the SARFAESI Act upon the Corporate Debtor and other related parties.

j. On lapse of the statutory period of Notice of 60 days, the Corporate Debtor failed to clear the liability towards the Financial Creditor. Therefore, Financial Creditor for itself and for and on behalf of other member of consortium issued notice dated 18.09.2018 under Section 13(4) of the SARFAESI Act upon the Corporate Debtor and other related parties.

4. **Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:**

a) Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. The Respondent contended that the instant petition has been filed without proper authority. The Application is filed by the Financial Creditor through an officer/employee, namely Simarjit Singh Khokar and that he is not authorized to file such petition. It is pertinent to outline herein is that the Board Resolution put on record on behalf of the Applicant herein is defective as the same has been signed by the Assistant General Manager for which no authority has been provided or put on record.

b) The Respondent submitted has filed the present application which is time barred and stated that the Applicant has declared the accounts of the Corporate Debtor as Non-Performing Assets way back in June, 2018. Accordingly, the Petitioner also issued recovery notices under the provisions of SARFAESI Act, 2002 on 10.07.2018 and 18.09.2018 respectively.

c) That in December, 2022, the Corporate Debtor, with a clean and bona-fide intent, proposed the Financial Creditor a viable and lucrative settlement offer of 75% payment towards all the dues, which was rejected by the Financial Creditor and almost 5 years later, the Financial Creditor has filed the present petition, which is time-barred as per the provisions of the Code and Limitation laws.

d) The Applicant has further submitted that the Petitioner in Part IV of the instant Application has mentioned total outstanding amount due towards the Petitioner as Rs.216,92,87,046.00/- beginning from 01.07.2023 and interest thereon. It is submitted that the Petitioner has failed to furnish a detailed calculation chart and thereby the claim of the Petitioner is unsubstantiated, exorbitant and thus, the same is liable to be rejected at the outset.

e) The Respondent submitted that the Financial Creditor had entered into an Inter-Creditor/Inter se Agreement dated 18.04.2013 and were required to abide by the mutually agreed terms and conditions. It pointed out that several clauses of the Inter Creditor Agreement stated pertaining to co-ordinated approach amongst the Lenders while taking any other action in the nature of recovery, enforcement including filing of a Section 7 Petition. Further it stated that it is a settled proposition that in case of the consortium loans, the coordinated approach is mandatory in nature and not directory. The Respondent accordingly alleged that the instant Application under Section 7 of the IBC for initiating Corporate Insolvency Resolution Process before following the procedure as prescribed under the Inter Creditor Agreement is premature and thereby, liable to be dismissed

f) The respondent alleged the Corporate Debtor had approached the Applicant herein for the settlement of the dues however, adamantly the Applicant, on one pretext or the other had ignored the same. Consequently, the instant Application has been filed seeking recovery of its monies. Subsequently, it submitted that no evidence on record

has been put forth which would show that the Corporate Debtor is not a going concern and is insolvent.

g) The Corporate Debtor further submitted that it is willing to safeguard the interest of the lenders, all other stakeholders and employees of the Corporate Debtor. There are numerous homebuyers who are the stakeholders of the Corporate Debtor and whose interests are to be protected with utmost care.

5. **Rejoinder on behalf of the Applicant/ Financial Creditor**

a) It was submitted by Applicant in its Rejoinder that the Corporate Debtor ignored the General Power of Attorney dated 22.12.2014 ("GPA") in favour of Mr. Simarjit Singh Khokhar ("Signatory"), Chief manager. That the said Petition under Section 7 of the Code was signed by Sh. Simarjit Singh Khokhar, Chief Manager by virtue of the, which specifically and categorically authorizes him to institute suits, to file appeals, revisions, writs, petition for review, legal proceedings and application and defend the same. To support its contention, it relied upon ***Rajendra Narottamdas Sheth & Anr. vs. Chandra Prakash Jain & Anr*** wherein Hon'ble Supreme Court of India held that-

> *"12. In the present case, Mr. Praveen Kumar Gupta has been given general authorization by the bank with respect to all the business and affairs of the bank, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorization, having been granted by way of a power if attorney pursuant to a resolution passed by the bank's board of*

directors on 06.12. 2008, does not impair Mr. Gupta's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorized person on behalf of the Financial Creditor and the objections of the Appellants on the maintainability of the application on this ground is untenable. "

b) In pursuance, it stated that in present case Mr Simarjit Singh has been appointed as attorney of the Bank on the basis of General Power of Attorney dated 22.12.2014, executed in his favour by a Deputy General Manager of the Bank in pursuance to powers granted in terms of Board Resolution no. 6046 dated 27. 7.1989 passed by the Board of directors of the Bank as is evident from Annexure Al and particularly page 16 of the petition. Thus, Mr. Simarjit Singh is competent to file the present Petition under Section 7 of IBC and objections qua the same are not maintainable.

c) The Applicant has submitted that the Financial Creditor has filed an affidavit vide filing No. 0710102061202023 on 12.09.2023, wherein the Financial Creditor has attached consolidated balance sheets of the Corporate Debtor for the financial years (FY) 2018-2019, 2019-2020, 2020-2021 and additional notes for the consolidated financial statement for the FY 2020- 2021.

d) Further pertaining to the issue of Inter-se Agreement it has been submitted by the Applicant that the Inter-se Agreement contains a clause which specifically provides that any lender may institute any

legal action against the Corporate Debtor. The relevant clause is being reproduce herein below:

> *"6.5 Suits against Borrower: Subject to the provisions of this Agreement, all or any one of the Lenders shall be entitled to bring a suit or other legal proceeding or to instruct the Lead Bank to take any steps for enforcement of the Security created in its or their respective favour or otherwise for realization of its respective Security created under the Documents or in respect of recovery of the outstandings owed to the Lenders by the other legal proceedings, the Lender so institution shall join the other or other of them as are or is willing to join as party plaintiffs or Plaintiff or as are or is not willing to join as party defendants or defendant in such suit or other legal proceedings."*

e) The Applicant has further relied on the Judgement of the Hon'ble NCLAT passed in the matter of Amitabh Kumar Jha vs. Bank of India & Anr. [Company Appeal (AT) (Ins.) No. 1392 of 2019] wherein it was observed that the Corporate Debtor cannot meddle with the internal arrangement and affairs of the creditors and cannot get out of the rigors of its liability on the basis of the Inter-Creditor Agreement.

The relevant extracts of the Judgement are reproduced below:

"10. The statutory right across the ambit of Section 7 of the 'I&B Code' cannot be curtailed or made subservient to any 'Inter- Creditor Agreement'. The contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

……..

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

f) It is submitted that the objection relating to the Inter-se Agreement, if any, at best be taken by other participant lenders and the Corporate Debtor has no right to take such objections. Admittedly, the other lenders to Corporate Debtor, who are party to Inter-se Agreement have not taken any such objection. Moreover, the Applicant stated that it is evident from the Letter of Authority dated 18.04.2013, where other participating lenders i.e. erstwhile Oriental Bank of India and now Punjab National Bank as well as the Bank of Maharashtra have authorized Financial Creditor to take action in terms of Intercreditor Agreement and thus, objection taken by the Corporate Debtor is not maintainable.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, rejoinder and written submission presented by Financial Creditor and Corporate Debtor.

7. The issue of consideration before this bench is whether the present application has been filed by authorized representative. That in present matter, Mr. Simarjit Singh has been appointed as attorney of the Bank on

the basis of General Power of Attorney dated 22.12.2014, executed in his favour by a Deputy General Manager of the Bank in pursuance to powers granted in terms of Board Resolution no. 6046 dated 27.7.1989 passed by the Board of directors of the Bank.

8. We are inclined to refer to **Hon'ble Supreme Court** in the matter of **Rajendra Narottamdas Sheth & Anr. vs. Chandra Prakash Jain & Anr ((2022) 5 SCC 600). The relevant paragraph are reproduxced below-**

> *"12.In the present case, Mr. Praveen Kumar Gupta has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorisation, having been granted by way of a power of attorney pursuant to a resolution passed by the Bank's board of directors on 06.12.2008, does not impair Mr. Gupta's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorised person on behalf of the Financial Creditor and the objection of the Appellants on the maintainability of the application on this ground is untenable."*

9. Thus, on perusal of documents, Mr. Simarjit Singh is competent to file the present Petition under Section 7 of IBC and objections qua the same are not maintainable. Therefore, the provided Power of Attorney constitutes a valid and sufficient authorization and therefore the contention of the Respondent is rejected.

10. The next issue for consideration is whether the present application is filed within the limitation period. The Corporate Debtor failed to maintain its financial discipline and started making defaults on repayments of

outstanding dues. Due to which, the account of the Corporate Debtor was classified as Non-Performing Asset with effect from 30.06.2018 with the Financial Creditor. The Applicant was then constrained to issue a notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 10.07.2018 followed by a notice under Section 13 (4) of SARFAESI Act dated 18.09.2018.

11. The Corporate Debtor time and again acknowledged its debt towards the Lenders in the balance sheet of Financial Years 2018-19, 2019-20 and 2020-21. The Corporate Debtor issued an OTS proposal dated 17.01.2022, which was not accepted by the lenders. Thereafter, further negotiation took place and again a combined OTS was submitted by the Corporate Debtor on 04.04.2022 which was also rejected by the lender in Consortium Meeting which was held on 12.05.2022. Further, the Corporate Debtor further issued a One Time Settlement proposal on 06.12.2022, thereby acknowledging its debt. The said OTS was subsequently rejected by the Financial Creditors.

12. The **Hon'ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 of 2020** has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. Therefore, by no stretch of imagination, the application is barred by the law of limitation.

13. In Part IV of the Form-1, the Financial Creditor mentions the Date of NPA as the Date of Default. However, the CD on the other hand submits that

the Financial Creditor has not mentioned the Date of Default and thus the Section 7 application is liable to be dismissed.

14. Before delving into the issue, it is noteworthy to mention the relevant provision of law mentioned under The Code:

> **"Section 6**. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.
>
> **Section 7.** (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.
>
> Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
>
> (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.
>
> (3) The financial creditor shall, along with the application furnish—
>
> (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;
>
> (b) the name of the resolution professional proposed to act as an interim resolution professional; and
>
> (c) any other information as may be specified by the Board.
>
> (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)
>
> (5) Where the Adjudicating Authority is satisfied that—

(a)a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

15. The question which arises before us is whether the date of NPA can be considered as Date of Default. In this backdrop, it is relevant to understand that the adjudicating authority under the present legislation has a very limited role to play while admitting or rejecting an application filed under section 7 of The Code. One of the important factor to be considered in an application under section 7 is the existence of debt and thereby non-payment of debt i.e. default **(Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1)**. This is also evident from the bare language mentioned under Section 6 and 7 of The Code.

16. As it has been settled by the Hon'ble Supreme Court in catena of judgments that the Limitation Act, 1963 is applicable to the proceedings under the Code, 2016 **(B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633)**. The basic idea behind the application of the Limitation Act, 1963 is not to give life to time barred debts **(Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1)**. The mentioning of Date of Default in the Form-1 under Part IV is only for the purposes of reckoning of the Limitation Period within which a Financial Creditor has to exercise his rights, so that a financial creditor does not sleep over his right. Section 238 A of the Code provides for the

provision of the Limitation Act, 1963 to apply to proceedings before the Adjudicating Authority. Accordingly, the time period for filing the application u/s 7 of the Code is governed by Article 137 of the Schedule to the Limitation Act, 1963 which provides for exercising the right within period of 3 years, from the date when the right to apply accrues. Hence, the Financial Creditor has to file the application within 3 years from the date when the right to apply accrue i.e. the date of default (**Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330)**. Relevant paragraphs are extracted below:

> *"99. There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 IBC is three years from the date of accrual of the right to sue, that is, the date of default. In Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd. [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572 : (2020) 1 SCC (Civ) 1] authored by Nariman, J. this Court held : (SCC p. 574, para 6)*
>
> > *"6. … The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137."*
>
> *131. It is not in dispute that Respondent 2 is a corporate debtor and the appellant Bank, a financial creditor. The question is, whether the petition under Section 7 IBC has been instituted within 3 years from the date of default. "Default" is defined in Section 3(12) to mean "non-payment of a debt which has become due and payable whether in whole or any part and is not paid by the corporate debtor".*
>
> *132. It is true that, when the petition under Section 7 IBC was filed, the date of default was mentioned as 30-9-2013 and 31-12-2013 was stated to be the date of declaration of the account of the corporate debtor as NPA. However, it is not correct to say that there was no averment in the petition of any acknowledgment of debt. Such*

averments were duly incorporated by way of amendment, and the adjudicating authority rightly looked into the amended pleadings.

133. As observed above, the appellant Bank filed the petition under Section 7 IBC on 12-10-2018. Within three months, the appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decree dated 27-3-2017 in OA No. 16 of 2015 and the recovery certificate dated 25-5-2017, enabling the appellant Bank to recover Rs 52 crores odd. The judgment and order/decree of the DRT and the recovery certificate gave a fresh cause of action to the appellant Bank to initiate a petition under Section 7 IBC.

134. On or about 5-3-2019, the appellant Bank filed another application for permission to place on record additional documents including inter alia financial statements, annual report, etc. of the period from 1-4-2016 to 31-3- 2017, and again, from 1-4-2017 to 31-3-2018 and a letter dated 3-3-2017 proposing a one-time settlement. This application was also allowed on 6-3- 2021. The adjudicating authority, took into consideration the new documents and admitted the petition under Section 7 IBC. 135. Even assuming that documents were brought on record at a later stage, as argued by Mr. Shivshankar, the adjudicating authority was not precluded from considering the same. The documents were brought on record before any final decision was taken in the petition under Section 7 IBC. 136. A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the recovery certificate.

137. The appellant Bank was thus entitled to initiate proceedings under Section 7 IBC within three years from the date of issuance of the recovery certificate. The petition of the appellant Bank, would not be barred by limitation at least till 24-5-2020.

138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

17. Further the dictum laid down in **Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330)** has also been followed by Hon'ble National Company Law Appellate Tribunal in **Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622**. The relevant paragraphs are extracted below:

"4. The brief point, which falls for consideration in this Appeal is whether the Adjudicating Authority was justified in dismissing the Application filed under Section 7 of the Code as 'barred by Limitation' and also holding that there was no 'default'.

5. We are of the considered view that the issue of Limitation is to be tested on the touchstone of the ratio of the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy' wherein the Hon'ble Apex Court has clearly laid down that Judgment/decree for money or Certificate of Recovery or Arbitral Award in favour of the 'Financial Creditor', constitutes an 'acknowledgement of debt' and gives rise to a fresh cause of action, provided it is within three years of the default:

The Hon'ble Apex Court in 'Laxmi Pat Surana v. Union Bank of India'7 has observed as follows:

"43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to nonpayment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal

borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the Financial creditor can initiate action under Section 7 IBC."

7. In the aforenoted Judgment, the Hon'ble Apex Court has clearly laid down the principle that the 'date of default' does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of default' defined under Section 3(12) of the Code is to mean 'non-payment of a debt which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'.

8. It is also seen from the Balance Sheets that there has been an 'acknowledgement of liability' upto the years 2018-2019. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is 'barred by Limitation' is untenable as at the cost of repetition we hold that as per the ratio of the Hon'ble Apex Court in 'Laxmi Pat Surana' (Supra) the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication

the Appellant/ Financial Creditor for Restructuring, apart from the liability being shown in the Balance Sheets."

18. Taking note of the decision in **Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622**, we are of the view, that ordinarily the Date of NPA can be considered as Date of Default but the right to apply under the Code accrues once there is a default (which is three months prior to Date of NPA). Hence, in the present case, even if we consider the Date of Default to be three months prior to the Date of NPA i.e. from 30.03.2018 the right to file the application was to be exercised within 3 years. It is noteworthy to mention herein that there has been acknowledgment by the Corporate Debtor acknowledging the debt through various Revival letter dated 31.03.2016, 26.07.2016, 28.02.2019, OTS Proposal dated 17.01.2022, OTS Proposal dated 04.04.2022 and OTS dated 06.12.2022. It has been settled by the catena of judgments that Section 18 of the Limitation Act is applicable to IBC proceeding. The Code does not exclude the application of Section 6, 14 or 18 or any other provision of Limitation Act to proceeding under IBC provided that the said acknowledgments are made before the expiry of 3 years. Once an acknowledgment is done, a fresh cause of action arises, thereby extending the limitation period.

19. Thus, the stand taken by the CD, that the applicant has not mentioned the Date of Default, is wholly misconceived as the Adjudicating authority is hardly left with any discretion to refuse the admission of the application under Section 7 once it is satisfied that the default has occurred **(M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387):**

"*11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.*

"Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

***

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;" Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

20. In our considered view, even if we consider the Date of Default for the purposes of reckoning limitation period (prior to Date of NPA), there being subsequent acknowledgment by the Corporate Debtor, the Application is within the limitation period and the Financial Creditor cannot be debarred from exercising his rights.

21. The next issue for consideration is whether the Application filed is premature as per the contentions of the Corporate Debtor pertaining to the issue of Inter-se Agreement. That it has been submitted by Applicant Bank that Original Application before Debt Recovery Tribunal has been filed

jointly by all the lenders, which envisages the coordinate approach in accordance with the Inter-se Agreement dated 18.04.2013 and all the lenders have agreed to take enforcement action and therefore, no further consent is required.

22. Further we are inclined to rely on orders passed by **Hon'ble NCLAT** in the matter of **Amitabh Kumar Jha vs. Bank of India & Anr.** [Company Appeal (AT) (Ins.) No. 1392 of 2019] wherein it was observed that the Corporate Debtor cannot meddle with the internal arrangement and affairs of the creditors and cannot get out of the rigors of its liability on the basis of the Inter-Creditor Agreement.

The relevant extracts of the Judgement are reproduced below:

> *"9. Having heard learned counsel for the parties including the Intervenors, we find that existence of financial debt and its default on the part of the 'Corporate Debtor' is not the issue in controversy as the same has admitted. The factum of the 'Corporate Debtor' having obtained financial facility from consortium of lenders including the 'Bank of India', the 'Financial Creditor' and default on the part of the 'Corporate Debtor' in discharging its liability do not form issue for consideration. It is also not in controversy that the financial debt in respect whereof the 'Financial Creditor' herein sought triggering of 'Corporate Insolvency Resolution Process' is payable both in law as also in fact. The 'Corporate Debtor' is merely banking upon the Financing Documents including CLA, STA and ICA to assail the impugned order notwithstanding the fact that neither the claim is barred by law nor do such Financing Documents clothe the 'Corporate Debtor' with a right to disentitle the 'Financial Creditor' from enforcing its claim, in its individual capacity, despite being a member of the consortium of lenders. It is queer that the 'Corporate Debtor' is making a vain bid to get out of*

the rigours of its liability in terms of loan documents sanctioning the loan and giving rise to contractual liability as against it on the basis of an 'Inter-Creditor Agreement', to which admittedly it is not a party. It would be a travesty of justice to raise a plea that since the Creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the Creditor, an individual Creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the Creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the Creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the Creditors in regard to their joint or individual interests, more so when in the instant case the Intervenors who are the consortium of lenders have supported the action taken by the 'Bank of India' in triggering 'Corporate Insolvency Resolution Process'. None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the 'Bank of India' in regard to the financial debt payable to it and to the extent of its interest.

10. The statutory right across the ambit of Section 7 of the 'I&B Code' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

……..

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in

regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

23. In view of the Judgement (supra), we agree with the contention raised by the Applicant Bank that the Respondent cannot take benefit of the inter-se agreement entered by and between the consortium of banks. Further, we do not find any objection raised by the other bank, who are signatories to the Inter-se Agreement. Moreover, there has been a separate Section 7 application filled by the Bank of Maharashtra against Corporate Debtor bearing CP (IB) 53 OF 2024.

24. Further, it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -

> 5. Definitions: - (7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;

25. The Respondent has submitted that the Applicant has utterly failed to substantiate the amount of debt in any way. The Financial Creditor has failed to furnish any detailed calculation or statement in support of its contention proving the default. On perusal of the record, it is found that as far as the amount claimed by the Applicant is concerned, the same is mentioned in Part - IV, column 2 of the Petition. The claimed amount has duly been calculated and is supported by the certified copy of the Statement of Account. The Statement of Account is filed along with the original certificate under Section 2A(b) of the Banker Books' Evidence Act, 1891.

26. This Adjudicating Authority is of the considered view that Section 7 of the Code, 2016 read with the CIRP Regulations, 2016 empowers the Financial Creditor to file record of the default recorded in the information utility or "such other record and default as may be specified". This Adjudicating Authority is further persuaded by the decision of Hon'ble NCLAT in the matter of **Vijay Kumar Singhania Vs. Bank of Baroda and Anr. Company Appeal (AT) (Insolvency) No.1058 of 2023; Order dated 13.12.2023**, had adjudicated on the question, "Whether filing of Record of Default (RoD) of Information Utility is mandatory? and without obtaining an Authentication of Default (AoD) as per IU Regulation 21, no application under Sec. 7 can be filed by Financial Creditor?" and held as follows:-

> *"30. Before the Adjudicating Authority, submission on the basis of the argument which has been advanced by the Appellant before us that no information of default from the information utility have been filed, application deserves to be rejected was raised and dealt with by the Adjudicating Authority. It is useful to extract the following observations in paragraph 11 of the judgment of the Adjudicating Authority:-*
>
> *"…….As far as the plea of default being not recorded with the information utility is concerned, as can be seen from Section 7 (3)(a) of the IBC, 2016, along with the application, the Financial Creditor may furnish the record of default recorded with the information utility or such other or record or evidence of default as may be specified. Besides, as can be seen from Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons Regulations), 2016, for the purpose of Clause (a) of sub-section 3 of Section 7 of the Code (ibid), the Financial Creditor may furnish a certified copy of entries in the relevant account in Banker's Book as evidence of default. In the present case, the Petitioner has enclosed the copies*

of the statement of account in respect of Account Nos. 05860600004851 and 05860500000127 along with the interest calculation sheet and Certificate under Section 2(A) of Banker's Book Evidence Act, 1891, as Annexure-7 to the Petition, which is valid evidence in terms of the provisions of Regulation 2A(a) of IBBI (CIRP) Regulations, 2016. As far as the plea of Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 is concerned, in terms of the said provision, before filing an application to initiate CIRP the creditor should file the information of default with the Information Utility and the IU shall process the information for the purpose of issuing record of default in accordance with Regulation 21 of the

Regulations. The Regulation nowhere provides that the information of default recorded by IU can be the only evidence to be relied on while taking a decision regarding the admission of a Petition under Section 7 of IBC, 2016. Even otherwise also, neither the IBBI (IU) Regulations, 2017 nor the order issued by the Registrar, NCLT can have overriding effect qua the provisions of Regulation 7(3)(a) of the IBC, 2016. In the wake, we are unable to countenance the plea raised by the Respondent i.e., in the absence of a record of default recorded by IU, an application filed under Section 7 of IBC, 2016 may not be admitted."

31. Thus, we are of the view that the Adjudicating Authority has correctly repelled the contention of the Appellant that in absence of a record of default recorded by information utility, the application filed under Section 7 may not be admitted."

27. Therefore, taking into the account of judicial precedent and provisions in the Code, 2016 and its accompanying regulations it is settled proposition that the record of default recorded with the Information Utility cannot be the sole document to be furnished in a Section 7 Application and the financial creditor is at liberty to submit such other record of default as may

be specified which proves the existence of debt and default. The Applicant has placed on record Certificates under the Bankers Books Evidence Act 1981 issued by Punjab and Sind Bank and true copy of Credit Information Report of Corporate Debtor dated 30.06.2017, reflecting the statement of accounts of the Applicant in relation to the facilities granted by the Applicant to the Corporate Debtor to prove the existence of debt and its default. Therefore, the contention of the Corporate Debtor regarding the non-maintainability of the present application in absence of record of default cannot be sustained.

28. Adverting to the facts of the present case, it is undisputed the Corporate Debtor approached the Financial Creditor seeking financial assistance to the tune of Rs. 140 crores. for partial financing of development, Group Housing Project - **Golf Country** at Plot No. TS-05, Sector-22- D, Yamuna Expressway, Greater Noida, UP.

29. With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.

30. Further the Corporate Debtor in its Written Submission has stated that it is a Solvent Company and is in a position to complete its project. It has submitted that Hon'ble Supreme Court as well as Ld. NCLAT in several of its judgments has categorically allowed reverse CIRP of the Corporate Debtor for the benefit of the stakeholders if the Corporate Debtor is interested in infusing the funds to the said project and has accordingly

relied on **Mr. Vijay Kumar Pasricha v. Mr. Manish Kumar Gupta, IRP Company Appeal (AT) (ins) No. 926 of 2019, India bulls Asset Reconstruction Company Limited v. Ram Kishore Arora & Anr (Civil Appeal No. 5941 Of 2022)** passed by the **Hon'ble Supreme Court** and **Ram Kishor Arora Suspended Director of M/s. Supertech Ltd. vs. Union Bank of India & Anr. bearing CA (AT) (Ins.) No. 406 of 2022** passed by **Hon'ble NCLAT**. But we are of the view that the existence of debt and default is sufficient to maintain the application under Section 7 of the code. Furthermore, it has been observed that despite declaring the account as a Non-Performing Asset (NPA) in 2018, 6 (Six) years have elapsed without any proactive efforts from the Corporate Debtor to complete the project. Therefore, the plea of the corporate debtor cannot be considered. The debt and default have been established in this case, thus the rulings cited by the Corporate Debtor do not support its contention at this stage.

31. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company application **(C.P. No. (IB)- 462/(ND)/2022)** stands admitted and the CIRP is hereby initiated against **Supertech Township Projects Limited.**

32. The applicant in Part -III of the application has proposed the name of IRP, Vivek Raheja, but on perusal of the records, it is found that his registration is suspended w.e.f 11.02.2024 and accordingly this Adjudicating Authority is inclined to appoint **Mr. Umesh Singhal** as the Insolvency Resolution Professional of the corporate debtor as provided by IBBI from its panel of IRP's. The registration number of the IRP being **IBBI/IPA-002/IP-N00124/2017-18/10293** and email id **singhaluk@hotmail.com** Accordingly, **Mr. Umesh Singhal** is appointed as Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against her, within three (3) days of pronouncement of this order.

33. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

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

any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period."

34. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

35. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

36. We direct the Applicant/Financial Creditor to deposit a sum of Rs. Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Umesh Singhal to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

37. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

38. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

39. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his

obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

40. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

41. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./462/2023 stands admitted.**

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)