NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-538(ND)2019

<u>IN THE MATTER OF:</u>

Corporation Bank
AM-10, Shalimar Bagh,
New Delhi-110088 ...**Financial Creditor**

VERSUS

1. **M/s. SJN Energy Infrastructure Pvt. Ltd.**
   A-16, Khasra No. 29/10, Ground Floor
   Near Shiv Mandir, Libaspur Delhi-110042

2. **Sh. Prashant Kumar Mishra**
   S/o Sh. Krushna Chandra Mishra
   Flat No. SNB-502, 5th Floor, East Facing
   Shipra Neo Apartment, Block-B
   Shipra Suncity, Vaibhav Khand
   Indirapuram, Ghaziabad UP-201014

3. **Ms. Nandita Mishra**
   W/o Sh. Prashant Kumar Mishra
   Flat No. SNB-502, 5th Floor, East Facing
   Shipra Neo Apartment, Block-B
   Shipra Suncity, Vaibhav Khand
   Indirapuram, Ghaziabad UP-201014

4. **Sh. Jyotish Chandra Mishra**
S/o. Sh. Krushna Chandra Mishra
Flat No. SNB-502, 5th Floor, East Facing
Shipra Neo Apartment, Block-B
Shipra Suncity, Vaibhav Khand
Indirapuram, Ghaziabad UP-201014

5. **Ms. Satyabhama Mishra**
S/o. Sh. Krushna Chandra Mishra
Om Bhawan, Sabarsahi Lane
Bhubaneshwar, Khurda, Odisha-752055

6. **Sh. Sanjeev Kapoor**
S/o Late Sh. Kuldeep Singh
14/1333, Kishanpura, Saharanpur
Uttar Pradesh **...Respondents**

Section: 7 of IBC, 2016

Order Delivered on: 25.09.2019

Quorum:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner	:	Mr. Ashutosh Kumar Pandey, Advocate
For the Respondent	:	Mr. Vipin Singh, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed on 05.02.2019, under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Corporation Bank (for brevity 'Financial Creditor') through its authorized representative Mr. Murali Tummala, who is duly authorized vide Board Resolution dated 11.12.2017, with a prayer to initiate the Corporate Insolvency process against M/s SJN Energy Infrastructure Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s SJN Energy Infrastructure Pvt. Ltd. is a Company incorporated on 03.12.2009 under the provisions of Companies Act, 1956 with CIN No. U40109DL2009PTC196581, having its registered office at A-16, Khasra No.-29/10, Near Shiv Mandir, Libaspur, Delhi-110042, as per the averments made by the Petitioner.

3. Authorised Share Capital of the Respondent Company is Rs. 4,25,00,000 and Paid-up Share Capital of the Company is Rs. 2,23,36,840 as per the averments made by the Petitioner.

4. It is the Petitioner's case that it had provided :

"Term Loan Facility-I (review) of Rs. 8,77,00,000.00 & Cash Credit Facility of Rs. 10,00,00,000.00 (Enhancement) & Term Loan Facility-II of

Rs. 4,23,00,000.00 (review) & Inland LC of Rs. 7,00,00,000.00 as on CSI dated 29.12.2015 by Financial Creditor.

(Created Charge ID-10404254 - on 28/12/2012 modified on 02/01/2016)

Term Loan Facility-I of Rs 8,77,00,000.00 & Cash Credit Facility of Rs. 2,00,000.00 as per CSI dated 29.11.2012 by Financial Creditor.

Term Loan Facility-I (review) of Rs 8,77,00,000.00 & Cash Credit Facility of Rs. 2,00,00,000.00 (Review) & Term Loan Facility-II of Rs. 4,23,00,000.00 as per CSI dated 27.08.2013 by Financial Creditor.

Term Loan Facility-I (review/rephasement) of Rs. 8,77,00,000.00 & Cash Credit Facility of Rs 5,00,00,000 (Enhancement) & Term Loan Facility-II of Rs. 4,23,00,000.00 (review/rephasement) as per CSI dated 23.05.2014 which was further modified vide letter dated 16.01.2015 by Financial Creditor Term Loan Facility-I (review)".

5. It is submitted by the Petitioner in Part -IV of the Petition that the total outstanding of the Respondents is of Rs. 31,63,29,782.20/- which includes Interest upto 31.12.2018.

6. That the Petitioner has annexed various documents like Agreement regarding Term Loan, Guarantee Agreement, Mortgage Deed, Hypothecation Agreement, Demand Promissory note etc. as a proof of existence of the Financial Debt.

7. It is submitted by the Petitioner that Original Application and Securtisation Applications are pending before the Debt Recovery Tribunal – III Delhi for adjudicating the default made by the Respondent.

8. On entering appearance, the Respondent Company has filed its reply on 05.02.2019 and has raised the following :

"171. Without prejudice to the foregoing it is pertinent to mention here that the Applicant Bank has also filed one Original Application being OA No. 496 of 2018 before the Ld. Debt Recovery Tribunal-III, Delhi and the same is pending adjudication. It is specifically submitted that since the Original Application filed on behalf of the Applicant Bank is still pending before the Ld. DRT-III, Delhi, therefore, as on date there is no adjudicated debt against the Answering Respondent. Hence, the Answering Respondent is not liable to pay any amount whatsoever to the Applicant Bank as on date".

173. Without Prejudice to the foregoing it is further pertinent to mention here that the Answering Respondent has also filed his Written Statement in aforesaid OA alongwith Counter Claim for an amount of Rs.177 Crore against the Applicant Bank and the same is also pending adjudication. Therefore, in view of pendency of counter claim against the applicant Bank and in favour of the Answering Respondent, as such no debt is due and payable on behalf of the Answering Respondents as on date.

174. Without Prejudice to the foregoing it is further pertinent to mention here that the during the proceedings of S.A.NO. 185 of 2018 before Ld. DRT-III, Delhi, the Applicant Bank had made statement that the Applicant Bank has withdrawn the Demand Notice dated 16.07.2016 issued under Section 13(2) of SARFAESI Act, and accordingly the Answering Respondent withdrew the aforementioned SA. Therefore, as such as on this date there exists no legal and valid demand of alleged dues against the Answering Respondents.

175. Without prejudice to the foregoing it is further submitted that the present Application filed on behalf of the Applicant Bank is further not maintainable since alleged debt as claimed by the Applicant Bank is clearly *barred by time. Without admitting anything, however, for the sake of arguments it is submitted that as per the Applicant Bank the account of the answering Respondents was classified as NPA on 23.05.2014. Whereas, the present Application has been filed in the month of January 2019, therefore the present Application is clearly barred by limitation.*

176. Without Prejudice to the foregoing it is submitted that Sh. Murali Tummala claiming to be the Chief Manager is not duly authorized person to file the present Application on behalf of the Applicant Bank. The Applicant Bank has failed to produce any document that Sh. Murali Tummala is the "Authorised Person" to file present Application and therefore, the present Application is bad in law and is liable to be dismissed on this short ground alone."

9. That the Petitioner had filed its Rejoinder on 07.06.2019 and had given the following rebuttal to the objections made by the Respondent. The Para-wise reply to the objections made by the Respondent are reproduced below :

"171. That the contents of this para are matter of record. It is however submitted that Respondents presented the false and cooked story...

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175. That the contents of this para are wrong and denied...

176. That the contents of this para are wrong and denied..."

10. As per the particulars of Financial Debt provided in Part-IV of the Application and Para -11 of the rejoinder submitted by the Applicant Corporation Bank, Account of the Respondent No. 1 was classified as non-performing asset on 23.05.2014 as per the prudential norms of the Reserve Bank of India. Further, the Applicant Corporation Bank has filed the present application on 05.02.2019.

11. Hence, the facts which are material in respect of the Limitation for maintainability of the application need to be considered first. The date of default as averred by the Petitioner in the Part-IV of the application is 23.05.2014. That Section 238A of the Insolvency and Bankruptcy Code 2016, makes the Limitation Act, 1963 applicable to the Code, reads as follows:

> *"238A. The provisions of the Limitation Act, 1963 (36 of 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."*

12. Here, it is worthwhile to refer to the Judgement of Hon'ble Supreme Court in the matter of **"B.K. Educational Services Private Limited vs. Parag Gupta and Associates - Civil Appeal No. 23988 Of 2017"**, in which the Hon'ble Court held the following :

> *"27. 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".*

13. That the Petitioner has placed two Letters dated 08.09.2015 showing 'Acknowledgement of Debt/Liability by the Borrowers' made by the Respondent. Even if one takes into account the abovementioned acknowledgement letters, the limitation gets extended till 07.09.2018 only. However, the Petition in the instant case by the Financial Creditor is filed only on 05.02.2019. Further, the Respondent Company has raised a specific objection in its reply regarding maintainability of the application on the ground of limitation. The Petitioner has failed to rebut the objection even in its rejoinder.

14. As a sequel to the above discussion, this Bench is of the view that the Petition has not been filed within the Limitation period. Hence, this Petition fails on the ground of limitation and the same is rejected.

15. It is, however, made clear that any of the observations made in this Order shall not be construed as an expression of opinion on merits of the claim and rights of the Petitioner to agitate before any other forum shall not be prejudiced on account of rejection of the instant Petition.

-Sd-
(L. N. Gupta)
Member (T)

-Sd-
(Ina Malhotra)
Member (J)