



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP(IB)/160(CHE)/2024**

*(Filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 4 of the
Insolvency and Bankruptcy Rules, 2016)*

*In the matter of M/s Pesco Beam Environmental Solutions Private
Limited*

PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED,
A Lender incorporated in England and Wales

Registered office at:

1 Moorgate, London, United Kingdom – EC2R 6JH.

... Applicant/ Financial Creditor

V/s

**M/s PESCO BEAM ENVIRONMENTAL SOLUTIONS
PRIVATE LIMITED,**

Rep. by its Board of Directors

Registered office at: -

136, Thodukadu Village, Sriperumbudur – 602 105.

... Respondent/ Corporate Debtor

Order pronounced on 26.09.2025

CORAM:

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant: Mr. Mithilesh Kumar Pandey, Advocate

For Respondent: Mr. Sathish Parasaran & Mr. Sarath Babu, Advocates

ORDER

(Heard through Hybrid Mode)

Under consideration is a petition under Section 7 of IBC filed by

Punjab National Bank (International) Limited, Applicant/ Financial



Creditor herein against **M/s Pesco Beam Environmental Solutions Private Limited**, Respondent/ Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. SUBMISSIONS OF THE APPLICANT

2.1. Part I of the Application contains the particulars of the Applicant Punjab National Bank (International) Limited. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 21.05.1993 with paid up share capital of Rs. 45,75,00,000/- and address at 136, Thodugadu Village, Sri Perumbudur, TN – 602 105, within the jurisdiction of this Tribunal. In Part III of the application, the Financial Creditor has proposed Mr. Ananthachari Mahesh, Reg No. IBBI/1PA-001/1P-P01723/2019-2020/12673 as the IRP. Part IV of the application sets out the details of the debt being Rs.132,85,58,796.00/- (Rupees One Hundred Thirty-Two Crore Eighty-Five Lakhs Fifty-Eight Thousand Seven Hundred Ninety-Six Only) as on 25.05.2020 including a running interest at the rate of 15% p.a. applicable from 23.06.2016, with date of default as 30.06.2015. This application has been filed on 02.07.2024.

2.2. The Applicant/ Financial Creditor submits that it had sanctioned an On-Demand Overdraft Facility of USD 10 Million (Rs.75,00,00,000 – 1USD



= Rs.75) on 12.03.2012 (renewed on 31.03.2014) and a short-term loan facility of USD 2 Million (Rs.15,00,00,000) on 01.12.2014 to M/s Pesco Beam Environmental Solutions Inc., USA (the Principal Borrower), a wholly owned subsidiary of the Respondent Corporate Debtor.

2.3. It is submitted that to secure these facilities, the Respondent Corporate Debtor/ Guarantor along with its directors executed an unconditional and irrevocable corporate guarantee dated 24.03.2012, supported by board resolutions dated 19.03.2012, and also created a charge over its assets. Personal guarantees were also furnished by the directors.

2.4. It is further submitted that the Principal Borrower defaulted in repayment, and its account was classified as NPA on 30.09.2015. Demand notices were issued on 23.06.2016 and again on 10.06.2020, but the dues remained unpaid. As on 25.05.2020, the outstanding amount stood at USD 17,714,117.29 (Rs.132.85 crores), inclusive of interest at 15% p.a. from 23.06.2016.

2.5. It is also submitted that the Applicant had initially pursued proceedings in the High Court of Justice, London, which were dismissed on jurisdictional grounds by the Sir Geoffery Vos, Chancellor of High



Court, London (orders dated 24.01.2019 and 17.12.2019). Exclusion of this period is sought under Section 14(2) of the Limitation Act, 1963.

2.6. Thereafter, the Applicant filed C.P. (IB) No. 609/2020 before this Tribunal under Section 7 of IBC. However, the matter was closed in view of parallel insolvency admission in IBA/630/2020, subject to liberty to revive. Subsequently, the NCLAT set aside the admission order in IBA/630/2020 (order dated 11.10.2023), and revival sought by the Applicant in I.A. (IBC)/2194(CHE)/2023 was dismissed on 06.05.2024, with liberty to file a fresh petition, clarifying that limitation would not bar such filing.

2.7. The Applicant accordingly submits that the Respondent Corporate Debtor, being guarantor, is in default of its financial debt within the meaning of Section 5(8) of IBC.

3. SUBMISSIONS OF THE RESPONDENT

3.1. The Respondent/ Corporate Debtor submits that the petition filed under Section 7 of the IBC is misconceived, not maintainable, and liable to be rejected in limine.

3.2. It is contended that the petition has been filed on the basis of a Power of Attorney executed in London, which is neither duly stamped under Indian law nor apostilled in terms of the Hague Convention of 1961. The



verifying affidavit dated 19.06.2024 precedes the date of the petition (26.06.2024), rendering the filing defective and violative of Rule 34 of the NCLT Rules, 2016.

3.3. It is further contended that the alleged default is admitted by the Petitioner itself as having occurred on 30.06.2015. The first demand was issued on 23.06.2016 and a legal notice on 10.06.2020. The guarantee was never invoked within three years, nor were proceedings initiated within the limitation period. The present application, filed after nearly nine years from default, is hopelessly barred under Section 238A of IBC read with Article 137 of the Limitation Act. The attempt to exclude time spent in proceedings before the English Court under Section 14 of the Limitation Act is misplaced, as those proceedings involved different parties, claims (USD 45 million over multiple loans), and reliefs, and were dismissed for suppression of material facts.

3.4. It is also contended about the non-invocation of Guarantee. The Corporate Guarantee dated 24.03.2012 was never invoked as per its terms. The claim against the Corporate Debtor without proper invocation is not maintainable.



3.5. It is contended that the alleged acknowledgments of debt in 2019 and 2022 are specifically denied. The Respondent never admitted liability, and the entries relied upon by the Applicant are merely expenses/payments to law firms wrongly shown as part payments by the borrower.

3.6. It is finally contended that there is no debt or default in law. The Respondent stated that it is only a guarantor, not the borrower, and no valid invocation of guarantee has been made. Since the claim is barred by limitation and no enforceable debt exists, there can be no “default” within the meaning of Section 3(12) of IBC.

4. SUBMISSIONS OF THE APPLICANT IN REJOINDER

4.1. The Applicant/ Financial Creditor refutes all submissions of the Respondent/ Corporate Debtor and submits that the counter is factually and legally untenable, misconceived, and based on hyper-technical objections.

4.2. It is contended that in the counter filed by the Respondent/ Corporate Debtor, they have admitted certain facts. The Respondent has not disputed:

- Sanction and disbursement of the loan facilities.



- Execution of the Facility Agreement by the borrower.
- Execution of a valid, continuing, irrevocable, and unconditional Corporate Guarantee by the Respondent, as primary obligor and principal debtor.
- Occurrence of default.
- Record of debt with Information Utility.
- Payments made by the borrower on 21.09.2018 (USD 4,736) and 09.04.2019 (USD 4,628.69).
- Proceedings initiated by the Applicant before the High Court of Justice, London, in which the Respondent was also a party.
- Issuance of demand notice dated 23.06.2016 and legal notice dated 10.06.2020 invoking the Guarantee.

These admitted facts, according to the Applicant, clearly establish existence of debt and default.

4.3. It is further submitted that the objection regarding non-filing of apostilled documents is unfounded. The Applicant has an office in New Delhi and documents have been executed and notarised in India by its authorised representative, making apostille unnecessary. Even otherwise, absence of apostille is at best a curable defect. Further, an apostilled



affidavit had already been filed in earlier proceedings (IBA/609/2020), and the same is produced as proof.

4.4. It is also submitted that the borrower made payments in 2018 and 2019, extending limitation under Section 19 of the Limitation Act. The Corporate Guarantee being continuing and irrevocable, the Respondent is liable as a principal debtor. The demand notice of 23.06.2016 and the invocation notice of 10.06.2020 shift the date of default, which must be reckoned from the 10th day of the latter notice, as per Clause 5 of the Guarantee Deed.

4.5. It is submitted that the Applicant pursued proceedings in the British Court from 29.06.2017 to 17.11.2019, where the Respondent was also a party, and hence such time is excludable under Section 14(2) of the Limitation Act. The period of COVID-19 (15.03.2020 to 02.10.2021) is also excluded in view of Supreme Court's suo motu orders.

4.6. Additionally, this Tribunal by order dated 06.05.2024 in I.A.(IBC)/2194(CHE)/2023 has already clarified that limitation will not be a bar, as the Applicant had filed an earlier petition in time.

4.7. It is also submitted that the Respondent's reliance on the default date of 30.06.2015 in isolation is misplaced, as Form-1 and annexures must be



read as a whole, including subsequent payments and notices. The objections raised are contradictory, vague, and intended to mislead the Tribunal.

4.8. It is finally submitted that the proceedings before the British Court were bona fide and involved the same loan account, borrower, and guarantor. Hence, exclusion of such time is justified under Section 14(2).

5. WRITTEN SUBMISSIONS OF THE APPLICANT

5.1. The Applicant/ Financial Creditor has submitted that the Applicant had sanctioned a loan facility of USD 10 Million by way of an on-demand overdraft facility to M/s Pesco Beam Environmental Solutions Inc., USA, the Principal Borrower, vide sanction letter dated 14.03.2012, which was followed by the Facility Agreement dated 02.04.2012. Subsequently, a short-term facility of USD 2 Million was also sanctioned, though the same is not the subject matter of the present proceedings.

5.2. It is stated that the said facility of USD 10 Million was secured by an unconditional, irrevocable, and continuing Corporate Guarantee dated 24.03.2012 executed by the Respondent/Corporate Debtor, which is the holding company of the Principal Borrower. The said guarantee was duly authorized by Board Resolution dated 19.03.2012 and also accompanied by



creation of charge in favour of the Financial Creditor. By virtue of the said guarantee, the Respondent stood as a primary obligor and principal debtor in respect of the financial facility.

5.3. It is further submitted that the Principal Borrower committed default in repayment and accordingly, demand notice dated 23.06.2016 was issued to the borrower, guarantors and the Corporate Debtor, followed by a legal demand notice dated 10.06.2020 invoking the guarantee. Despite such notices, the dues were not repaid. It is further submitted that the Corporate Debtor has, on earlier occasions, admitted the liability. The Respondent had appeared as a party before the High Court of Justice, Chancery Division, London, in Claim No. HC-2017-001895, filed by the Applicant in respect of the same debt, wherein the Corporate Debtor acknowledged the liability though the proceedings came to be dismissed on the ground of jurisdiction. The Respondent also offered a settlement proposal before this Tribunal in IBA/609/2020, which was recorded in order dated 02.05.2022, thereby amounting to an admission of debt and default.

5.4. It is also submitted that during the subsistence of the facility, part payments were made by the borrower on 21.09.2018 and 09.09.2019, which revived the period of limitation. The Applicant submits that the period



spent in pursuing proceedings before the Courts in London is liable to be excluded under Section 14(2) of the Limitation Act, 1963. Additionally, the Hon'ble Supreme Court had extended the limitation period during the COVID-19 pandemic. Thus, the present petition filed on 02.07.2024 is well within limitation.

5.5. The Applicant submits that the debt is a financial debt within the meaning of Section 5(8) of the Code and that the Respondent, having furnished a corporate guarantee, falls within the definition of Corporate Debtor. The occurrence of default stands established from the records produced, including the facility agreements, guarantee deed, demand notices, and other documents. The liability of the Respondent being joint and several, the Financial Creditor is entitled to proceed against the Corporate Debtor as guarantor.

5.6. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in *Innovative Industries Ltd. v. ICICI Bank, E.S. Krishnamurthy v. Bharat High Tech Builders, Laxmi Pat Surana v. Union Bank of India, Dena Bank v. C. Shivakumar Reddy, Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd. and others* to contend that



once debt and default are established, admission of the petition under Section 7 of the Code is mandatory.

5.7. In view of the above, the Applicant submits that the debt and default are undisputed, the petition satisfies all requirements under Section 7 of the Code.

6. WRITTEN SUBMISSIONS OF THE RESPONDENT

6.1. The Respondent/ Corporate Debtor has filed detailed written submissions opposing the present petition. As a preliminary objection, it is contended that the application is not maintainable as it has been filed in violation of the provisions of the Hague Convention, 1961, to which both India and the United Kingdom are signatories.

6.2. It is submitted that the proceedings are sought to be initiated on the basis of a Power of Attorney executed in favour of the signatory; however, the same has not been duly apostilled or authenticated as required under law. In the absence of proper authorization, the present application is liable to be rejected at the threshold.

6.3. The Respondent further submits that the present claim is hopelessly barred by limitation. Admittedly, the date of default is 30.06.2015, when the account of the principal borrower was declared NPA. The liability of



the guarantor being co-extensive with that of the principal borrower, the Financial Creditor was required to invoke the guarantee or file proceedings within a period of three years from the said date. However, the guarantee was invoked for the first time only on 10.06.2020, which is nearly five years later, and therefore the application filed under Section 7 is barred by time.

6.4. Reliance is placed upon the judgments of the Hon'ble Supreme Court in *B.K. Educational Services v. Parag Gupta, Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd., and Jignesh Shah v. Union of India*. It is contended that there is no fresh cause of action, and no acknowledgment or part payment attributable to the Respondent so as to extend limitation under Section 18 of the Limitation Act. The alleged payments in 2018 and 2019 are denied as repayments and are asserted to be mere entries relating to fees of the Applicant's counsel in foreign proceedings.

6.5. It is further submitted that the Applicant cannot claim exclusion of the period spent in pursuing proceedings before the courts in the United Kingdom. The protection under Section 14(2) of the Limitation Act is not available, as the foreign proceedings were not before a court of competent



jurisdiction in India, were not for the same relief, and were in any case governed by English law under the loan agreement. The Letter of Guarantee executed by the Respondent is governed by Indian law and is an independent contract. Moreover, the UK court itself recorded that the Applicant had suppressed material facts, and therefore the proceedings cannot be said to have been prosecuted bona fide.

6.6. Reliance is further placed on the decisions in *Palla Pattabhiramayya v. Velaga Narayana Rao*, *Jignesh Shah v. Union of India*, *Ajab Enterprises v. Jayant Vegoiles and Chemicals Pvt. Ltd.*, *Chembolaparambu General Engineers Pvt. Ltd. v. Lakshadweep Development Corporation Ltd.*, and *Reliance ARC v. Hotel Poonja International*.

6.7. The Respondent has also contended that the invocation of the corporate guarantee is itself bad in law. The notice dated 23.06.2016 is only in the nature of an intimation and cannot be construed as invocation of the guarantee. The guarantee was in fact invoked only by notice dated 10.06.2020, which is ex facie barred by limitation. Further, the requirements prescribed in Clause 14 of the Guarantee Deed regarding the mode of



service have not been complied with, and therefore the invocation itself is invalid.

6.8. The Respondent submits that the law of limitation must be construed strictly and that there can be no equitable grounds to save a time-barred claim in summary proceedings under the Code. Reliance is placed on *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd.* to contend that the present application, being filed well beyond the period of limitation, is liable to be rejected.

7. FINDINGS OF THE TRIBUNAL

7.1. We have heard the learned counsel appearing for the Applicant/ Financial Creditor as well as the Respondent/ Corporate Debtor and perused the material placed on record. The rival submissions have been carefully considered.

7.2. At the outset, it is not in dispute that the Applicant/ Financial Creditor had sanctioned a financial facility of USD 10 million to the principal borrower, M/s Pesco Beam Environmental Solutions Inc., USA, and that the Respondent/ Corporate Debtor had executed a corporate guarantee dated 24.03.2012, which was unconditional, irrevocable and



continuing in nature. The Respondent/ Corporate Debtor therefore stood as guarantor and primary obligor in respect of the said financial debt.

7.3. The Respondent has raised two principal objections. Firstly, it is contended that the application is not properly instituted, as the authorization relied upon by the Applicant has not been duly apostilled in accordance with the Hague Convention, 1961, which both India and the United Kingdom are signatories to. In the absence of such compliance, the authorization is said to be defective and the petition is liable to be dismissed on this ground alone. Secondly, it is submitted that the petition is hopelessly barred by limitation, the date of default being 30.06.2015, whereas the guarantee was invoked only on 10.06.2020 and the present petition filed in July 2024.

7.4. The Applicant has submitted that the principal borrower committed default in repayment, and that the Respondent as guarantor is liable to make good the dues. It is further submitted that demand notices were issued, and that the Corporate Debtor itself has on earlier occasions acknowledged its liability, including during proceedings before this Tribunal in IBA/609/2020 where a settlement proposal was recorded in the order dated 02.05.2022. The Applicant has further contended that the



petition is within limitation by virtue of part-payments made in 2018 and 2019, exclusion of time spent in bona fide prosecution of proceedings before the UK Courts, and the benefit of extension of limitation granted by the Hon'ble Supreme Court during the COVID-19 pandemic. Reliance has been placed upon various judgments of the Hon'ble Supreme Court including *Innovative Industries Ltd. v. ICICI Bank*, *E.S. Krishnamurthy v. Bharat High Tech Builders*, *Dena Bank v. C. Shivakumar Reddy*, and *Laxmi Pat Surana v. Union Bank of India*.

7.5. The Respondent/ Corporate Debtor, on the other hand, has raised a preliminary objection regarding maintainability, contending that the application is not properly instituted as the authorization relied upon by the Applicant has not been duly apostilled in terms of the Hague Convention, 1961. It is further contended that the petition is hopelessly barred by limitation. The admitted date of default is 30.06.2015, when the account of the principal borrower was declared NPA. The guarantee was invoked only on 10.06.2020, nearly five years later much beyond the period of three years prescribed under Article 137 of the Limitation Act. It is submitted that limitation for proceedings under Section 7 of the Code is governed by Article 137 of the Limitation Act, 1963, and is to be reckoned strictly from the date of default. Reliance is placed upon *B.K. Educational*



Services v. Parag Gupta, Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd., Jignesh Shah v. Union of India and Gaurav Hargovindbhai Dave v. ARC (India) Ltd.

7.6. It is further argued that the part-payments relied upon by the Applicant are not attributable to the Respondent, and that Section 14 of the Limitation Act cannot be invoked to exclude proceedings before foreign courts. It is also contended that invocation of the guarantee is itself defective and not in compliance with Clause 14 of the deed.

7.7. On consideration of the above rival contentions, the following issues arise for determination:

- (i) whether the petition is within limitation;
- (ii) whether the invocation of guarantee is valid and proper; and
- (iii) whether the petition can be admitted on the basis of the record produced.

7.8. As regards limitation, it is not in dispute that the date of default is 30.06.2015, being the date on which the account of the principal borrower was classified as NPA. The liability of the guarantor being co-extensive, the period of limitation for invoking the guarantee and initiating proceedings against the Respondent commenced from the said date. Admittedly, the



guarantee was first invoked only by notice dated 10.06.2020, and the present petition has been filed in July 2024. Even reckoning the notice of 23.06.2016, the application is beyond the prescribed period of three years. The claim of exclusion under Section 14 of the Limitation Act, 1963 for proceedings before the courts in the United Kingdom is untenable, as such proceedings were not before a competent forum in India and were not for the same relief as contemplated under Section 14(2).

7.9. The contention of the Applicant that part-payments made in 2018 and 2019 extend limitation under Section 18 of the Limitation Act is not acceptable. The entries relied upon have not been demonstrated to be repayments towards the debt by the borrower or the guarantor, and the Respondent has specifically denied the same, pointing out that the entries relate to adjustments of fees to the Applicant's legal representatives in the UK proceedings. There is no acknowledgment in writing by the Respondent/ Corporate Debtor so as to extend limitation.

7.10. The reliance placed on Section 14 of the Limitation Act by the Applicant to exclude the time spent in proceedings before the UK Courts is equally misconceived. Section 14(2) applies to proceedings in a court of competent jurisdiction in India, prosecuted in good faith for the same relief.



7.11. The proceedings before the UK Courts were not for the same relief, were governed by English law, and were dismissed on account of jurisdictional defects. In any case, the guarantee deed is governed by Indian law, and the UK proceedings cannot ensure to the benefit of the Applicant in the present petition.

7.12. It is well settled that the provisions of limitation apply with full force to proceedings under the Code, as held by the Hon'ble Supreme Court in *B.K. Educational Services v. Parag Gupta and Gaurav Hargovindbhai Dave v. ARC (India) Ltd.* The law of limitation has to be applied strictly, and no equitable considerations can be imported to save a time-barred claim.

7.13. In the present case, the debt may be established, but the petition is filed well beyond the prescribed period of limitation. The Applicant has not made out any valid grounds for extension or exclusion of limitation. The invocation of the guarantee being belated and defective, the petition cannot be admitted.

7.14. Before parting, we deem it appropriate to observe that while the existence of financial debt and the execution of an unconditional corporate guarantee by the Respondent are matters beyond dispute, the statutory



mandate of limitation cannot be diluted by equitable considerations or commercial expediency. The objection as to want of apostille in respect of the authorization relied upon by the Applicant, though not without force, is a curable defect and cannot by itself defeat the proceedings. However, what strikes at the very root of the petition is the admitted date of default being 30.06.2015, coupled with the belated invocation of the corporate guarantee on 10.06.2020 and the filing of the present petition in July 2024. The law is well settled that limitation under the Code runs strictly from the date of default and is to be construed in terms of Article 137 of the Limitation Act, 1963. The reliance on alleged part-payments and foreign proceedings before the courts of the United Kingdom does not ensure to the benefit of the Applicant, as neither satisfies the statutory requirements of Sections 14 or 18 of the Limitation Act. In insolvency proceedings, as this Court has repeatedly held, the existence of debt is only one limb; the timeliness of the claim is the other. In the absence of both, admission of the petition would be contrary to law and legislative intent. Accordingly, while the debt may be real, the remedy is lost, and the petition under Section 7 of the IBC, 2016, stands dismissed as being barred by limitation.



7.15. In light of the above findings, this Tribunal holds that the present petition under Section 7 of the IBC, 2016, though establishing the existence of a financial debt, fails on the ground of limitation.

8. Accordingly, **CP(IBC)/160/(CHE)/2024** is **dismissed**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)