

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) -79(ND)/2022

In the matter of:

Section 7 of the Insolvency and Bankruptcy Code, 2016

AND In the matter of:

Jumbo Chemical and Allied Industries Private Limited

Registered Office At:

D-42, First Floor, Part-I,

South Extension, New Delhi-110049

Also at:

F-296(C), Industrial Area,

Bhiwadi, Rajasthan-301019

...Applicant/Financial Creditor

VERSUS

Arjun Industries Limited

Registered office at:

C-9/9366, Vasant Kunj,

New Delhi-110070

...Corporate Debtor

Order delivered on: 06.06.2022

Coram:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

For the Petitioner : Adv. Saurabh Kalia
Adv. Siddharth Tandon



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of its inability to liquidate its financial debt. The matter was heard on the point of limitation. In the course of hearing, the applicant has also filed the additional affidavit on 01.03.2022, to establish that the application is within time.

2. The Financial Creditor and the Corporate Debtor had entered into a Settlement Agreement dated 27.08.2019 whereby, it was agreed between the parties to sell the mortgaged property and distribute the realized value as per the Settlement Agreement dated 27.08.2019 between the parties. Further, the Corporate Debtor cancelled the Settlement Agreement dated 27.08.2019 vide email dated 26.07.2021 to which the Financial Creditor brought to the notice of the Corporate Debtor that the Financial Creditor is aware of the malafide intention of the Corporate Debtor but not limited to disposing off the assets mortgaged with the Financial Creditor.

3. The Financial statements of the Corporate Debtor acknowledged the debt due and payable to the Financial Creditor. It is submitted that the Corporate Debtor has reduced the amount of debt to Rs. 250.00 Lakhs in the financial statements for the financial year ending on 31.03.2020 on the pretext of one time settlement with Financial Creditor. However, no such settlement has been arrived at between the parties.

4. The default of debt has incurred on account of the following transactions:

- i. That the Corporate Debtor took a Loan from the IDBI for an amount of Rs. 367 Lakhs.



- ii. That the Corporate Debtor took a Foreign Currency Loan from the IDBI for an amount of DM 779,105 (German Deutsche Mark).
 - iii. That the IDBI assigned its claim accrued on account of the aforesaid loan agreements in favour of Kotak Mahindra Bank Limited vide a registered assignment deed dated 31.03.2006 and on the basis of that the present application is filed by the applicant.
5. That the total amount of debt claimed to be in default is Rs. 1438.95 Crores including Principal Amount alongwith pendent lite interest @21% p.a. and liquidated damages @5% compounded quarterly, calculated up till 30.06.2021. The date on which default occurred is 26.07.2021. The scanned copy of the written submissions filed by the applicant is reproduced below:

Written Submissions on Behalf of the Applicant/Financial Creditor

1. That the present written submissions are being filed on behalf of the Jumbo Chemical and Allied Industries Private Limited, the Applicant/ Financial Creditor in the captioned matter. It is submitted that petition for Corporate Insolvency Resolution ("CIRP") of Arjun Industries Limited i.e. the Respondent ("Corporate Debtor/CD") is filed by the Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code"). The amount of default involved is of Rs. 1438.95 Crores (Rupees One Thousand Four Hundred Thirty Eight Crores and Ninety Five Lakhs only). (Refer: Part IV at Page 31 of the Petition)
2. Brief Facts leading up to filing of present petition-
 - I. 11.09.1996- IDBI sanctioned a term loan to the CD for sum of Rs. 367 lakhs for setting up a 100% Export Oriented Unit. It also sanctioned a Foreign Currency Loan of DM 779105 equivalent to Rs. 183 Lakhs at the prevalent rate of exchange. (Refer: List of Dates at Page No. 15 of the Petition). Pursuant to loan sanctioned, a Rupee Term Loan was entered in to between the CD and IDBI. They also entered into Foreign Currency Loan Agreement for an amount of DM 779,105. The CD failed to liquidate the outstanding dues of IDBI service of recall notice, IDBI vide recall notice dated 26.06.1998 called upon guarantors and invoked guarantee clause. As CD failed to liquidate the dues of IDBI, IDBI filed an original application being O.A. No. 445 of 1998 before Hon'ble Debt Recovery Tribunal, Delhi under section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for the recovery of Rs. 6,19,93,815/-.
 - II. 07.01.1999- Hon'ble DRT, restrained CD and its guarantors in respect of the movable and lease hold immovable property. (Refer: List of Dates at Page No. 17 of the Petition)
 - III. 28.05.1999- As the CD and its guarantors were delaying the proceedings by not filing their WS, the Hon'ble DRT vide order dated 28.05.1999 passed final order in favour of IDBI. (Refer: List of Dates at Page No. 17 of the Petition)
 - IV. 01.05.2000- Aggrieved by the order of Hon'ble DRT, CD filed a writ petition being W.P. (C) No. 3656/1999 which was disposed of vide order dated 01.05.2000 and the matter was remanded back to DRT permitting CD and its guarantors to file WS. (Refer: List of Dates at Page No. 17 of the Petition)
 - V. March, 2006- CD approached IDBI with an offer for one time settlement for Rs. 225 lakhs for third time. As the intention of CD was malafide purported OTS could not be materialized. (Refer: List of Dates at Page No. 17 of the Petition)
 - VI. 31.03.2006- IDBI entered into deed of assignment in favour of Kotak Mahindra Bank Limited ("KMBL") and assigned all rights, title and claims in respect of the financial assistance provided by IDBI to CD. (Refer: List of Dates at Page No. 17 of the Petition, Annexure-11 at Pages 260-271)
 - VII. 29.04.2006- 03.08.2006- During this period, CD in its letters admitted KMBL as secured creditor of the said debt. (Refer: List of Dates at Page No. 19 of the Petition)
 - VIII. 06.02.2007- CD filed an appeal in DRAT, wherein Hon'ble DRAT passed blanket stay order on all proceedings before DRT. (Refer: List of Dates at Page No. 19 of the Petition)

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- IX. 23.05.2007-Agrieved by the order of DRAT, KMBL filed writ petition before Hon'ble High Court, wherein, Hon'ble HC disposed of the appeal filed by the CD and matter was remanded back to DRT for adjudication. (Refer: List of Dates at Page No. 19 of the Petition, Annexure- 17 at Pages 313-315) B
- Assignment of debt to FC and subsequent events
- X. 16.04.2008- KMBL assigned debt in favour of FC in the present case. The Deed of Assignment was registered whereby all rights, title and claims in respect of the said financial assistance were transferred in favour of FC. (Refer: List of Dates at Page No. 20 of the Petition, Annexure-12 at Pages 272-285)
- XI. 23.12.2010- FC issued a statutory notice u/s 434 (1) (a) of the Act calling upon CD to pay a sum of Rs. 28,99,00,000/- as on 31.12.2005. (Refer: List of Dates at Page No. 21 of the Petition, Annexure- 13 at Pages 286-289)
- XII. 14.01.2011- CD in its reply dated 14.01.2011 admitted its liability of debt but took sham defence for not making payment. (Refer: List of Dates at Page No. 21 of the Petition)
- XIII. 02.02.2011 and 19.12.2011- Writ petition W.P. (C) No. 6557/2008 filed by CD for restraining KMBL to assign the debt to any third party was dismissed by the Hon'ble HC. The challenge to the order was also dismissed by the Division Bench of Hon'ble HC. (Refer: List of Dates at Page No. 22 of the Petition, Annexure- 19 and 20 at Pages 317-331)
- XIV. 13.04.2012- The FC filed for CO. PET. 221/2012 for winding up of CD on two grounds- inability to pay debts and CD has lost its substratum due to non-commencement of its business. (Refer: List of Dates at Page No. 22 of the Petition)
- XV. 22.05.2014 and 02.08.2014- The Ld. Single Judge dismissed the petition on ground of pendency before DRT. (Refer: List of Dates at Page No. 23 of the Petition Annexure- 14 at Pages 290-303). Aggrieved by the order, FC filed a Company Appeal No. 41 of 2014 u/s 483 of the Companies Act, 1956 before the Hon'ble HC. Further, OA 445/98 was disposed of by Hon'ble DRT however apart from this OA 445/98 there are other applications that are still pending before DRT and High Court till date.
- XVI. 19.10.2015- During the pendency of the Appeal RIICO, Rajasthan State Industrial Development and Investment Corporation Limited issued show cause notice for violation of the terms of lease deed and allotment letter of two industrial plots to CD for cancellation of the 2 plots allotted on which factory of the CD was to be established. (Refer: List of Dates at Page No. 23 of the Petition)
- XVII. 02.03.2016- FC preferred the company appeal No. 14/2014 against impugned order of 22.05.2014 and CO. APPL. No. 261/13 before the HC and the Hon'ble Division Bench dismissed the Appeal Courts on ground of pendency before DRT. It is submitted that the judgments delivered by the single judge as well as division bench have appreciated different aspects of the case and there is no conformity in the facts considered by the Courts. Thus the impugned judgments cannot be sustained in the eyes of law. (Refer: List of Dates at Page No. 24 of the Petition, Annexure- 15 at Pages 304-310)
- XVIII. 12.10.2018- A meeting was held between the parties for the agreement on divestment of the mortgaged property of the CD and an MOU was signed. (Refer: List of Dates at Page No. 25 of the Petition, Annexure- 16 at Pages 311-312)
- XIX. 27.08.2019- FC and CD entered into a settlement agreement whereby, it was agreed parties to sell the mortgaged property and distribute the realized value. (Refer: List of Dates at Page No. 25 of the Petition, Annexure- 7 (colly) at Pages 141-150)
- XX. 26.07.2021- CD cancelled the Settlement Agreement vide email. (Refer: List of Dates at Page No. 25 of the Petition, Annexure- 7 (colly) at Pages 141-150)
- XXI. 01.10.2021- Present Petition was filed.
- XXII. 02.03.2022- Additional Affidavit filed on 02.03.2022 on behalf of Financial creditor in compliance of order dated 21.02.2022. (Refer: Page 1-44 of the Additional Affidavit) h

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3. Financial Debt Due

That the CD has defaulted in the payment of financial debt. The loan amount disbursed to the CD qualifies as a "financial debt" as per section 5 (8)(a) of the Code. It is submitted that the debt is due and payable to the FC because of the fact of the assignment of debt by the IDBI, otherwise also it stands acknowledged between the parties and in the Balance Sheets of the CD itself which clearly shows that the default has taken place and hence section 7 is maintainable. (Refer: Part-V at Page 40 of the Petition, Annexure- 8 (colly) Balance Sheets of 2017-2018, 2018-2019 and 2019-2020 at pages 151-210, Annexure- 11 Assignment deed at pages 260-271)

4. Present Petition is within limitation

That the present petition filed by FC is well within the limitation.

- I. The Proceedings before High Court and Debt Recovery Tribunals are liable to be excluded while calculating the limitation period. The loan was disbursed and proceedings were initiated before DRT. The proceedings are continuing till date before DRT and High Court. (Refer: Annexure 4 (colly) and Annexure 5 (colly) of Additional Affidavit). There was acknowledgment of debt in the balance sheets and email and whatsapp communications from 22.07.2019 to 06.05.2021. (Refer: Annexure 6 (colly) of Additional Affidavit).
The failure of settlement talks in 2019, pendency of proceedings before DRT and High Court and later nationwide lockdown due to Covid-19 caused delay in the filing of the petition under section 7 but that does not dispense the fact that the Applicant is well within limitation. The following judgments of the conspicuously indicate that acknowledgment of liability by the borrower triggers fresh limitation period.
 - a. In *Sesh Nath Singh & Anr. V. Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr. Civil Appeal No. 9198 of 2019*, Hon'ble SC held that 'court' in section 14 (2) of the Limitation Act would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under SARFAESI Act. That there is no necessity to file application in writing before relief can be granted under Section 5 of the Limitation Act. (Para- 99 to 102 at Pages 46-47 of this written submission)
 - b. In *Laxmi Pat Surana v. Union Bank of India and Anr. Civil Appeal No. 2734 of 2020*, the Hon'ble SC held that section 18 of the Limitation Act would come into play every time when the principal borrower/ corporate guarantor acknowledges their liability to pay the debt. In the present case as well, there is acknowledgement of debt in the settlement agreement executed between the parties and later email correspondences of cancellation of settlement agreement. (Para- 40 and 41 at Pages 87-93 of this written submissions; Annexure- 7 (colly) at pages 141-150 of the petition)
- II. Further, there is acknowledgement of debt in the balance sheets. The entry in balance sheets also amount to acknowledgement of debt thus bringing it under the purview of section 18.
 - a. The judgment of Hon'ble SC in *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr. Civil Appeal No. 323 of 2021*. (Para- 22 and 33- 35 at Pages- 133 and 147-148 respectively of this written submissions; Annexure- 8 (colly) at pages 151-210 of the petition)
 - b. The judgment of Hon'ble NCLAT in *G.S. Buildtech Pvt. Ltd v. Ardee Infrastructure Venture Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 388 of 2021*. (Para- 5,6,9 and 10 at Pages 161-169 of this written submissions; Annexure- 8 (colly) at pages 151-210 of the petition)

5. Petition under IBC is maintainable

It is submitted that the present petition is maintainable under the Code. The Corporate debtor has committed default of amount of Rs. 1438.95 Crores which falls under the category of financial debt as per section 5 (8)(a). As established above it is well within

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limitation and the time involved in the proceedings before DRT and High Court ought to be excluded. The ultimate object of IBC is the realization of 'debt' by invocation of the Insolvency Resolution Process gets defeated if the said petition is not admitted.

PRAYER

In premise of the above stated facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may kindly be pleased to:

A. Admit this present petition filed under section 7 of the Code and issue notice to the Corporate Debtor;

6. We have heard the Ld. Counsel appearing for the Applicant and perused the averments made in application.

7. Ld. Counsel for the applicant submitted that earlier the loan was granted by IDBI Bank on 07.10.1996, thereafter on 26.06.1998, the IDBI vide recall notice dated 26.06.1998 recalled the loan and on 01.12.1998, the IDBI has filed an original application being O.A No. 445 of 1998 before the Debt Recovery Tribunal under section 19 of recovery of debt due to Banks and Financial Institutions Act, 1993.

8. He further submitted that the matter is still pending before the Debt Recovery Tribunal and during the pendency of the said application several applications have been filed by the respective parties. The Respondent Company has filed W.P.(C) No. 3656 of 1999, before the Hon'ble High Court which was disposed of on 01.05.2019 and the matter was remanded to the DRT.

9. He further submitted that during the pendency of the matter before the DRT, one time settlement was also offered in the month of March, 2006 but did not materialise . In the meantime, on 31.03.2006, the IDBI Bank has entered into a deed of assignment in favour of Kotak Mahindra Bank Limited and assigned all the rights in such of the financial assistance provided by the IDBI to the Respondent Company.

10. He further contended that thereafter, the Respondent Company has made efforts to sell the above immovable properties to settle the loan amount.

11. He further submitted that the Kotak Mahindra Bank Limited has also filed a writ W.P.(C) No. 3535 of 2007 before the Hon'ble High Court which was disposed of vide order dated 23.05.2007.

12. He further submitted that the Respondent Company has also filed a writ petition being W.P.(C) No. 5258 of 2008 for restraining the assignment of IDBI in favour of Kotak Mahindra Bank Limited but the said writ was withdrawn by the Respondent on 24.02.2009.

13. He further submitted that thereafter the Petitioner Company had issued a statutory notice dated 23.12.2010 under Section 434(1)(a) of the Act calling upon the Respondent Company to pay a sum of Rs. 28,99,00,000/- as on 31.12.2005 along with the future interest thereon at contractual rate with effect from 01.01.2006 till the date of settlement. The Respondent Company in its reply dated 14.01.2011 to the legal notice admitted its liability of debt.

14. He further submitted thereafter lastly on 27.08.2019 a settlement agreement dated 27.08.2019 was entered, and it was agreed between the parties to sell the mortgaged property and distribute the realized value as per the settlement agreement but the said agreement was cancelled by the Corporate Debtor vide email dated 26.07.2021 therefore, the contention of the Applicant is that the date of default is 26.07.2021.

15. In terms of the submissions made on behalf of the Applicant, we perused the averments made in the Part IV as well as the additional affidavit filed on 01.03.2022 by the Applicant.

16. For better appreciation of the facts, the dates and events, we would like to refer to the various dates and events as stated by the Applicant in annexure A of the additional affidavit, placed at page no. 6 onwards. The scanned copy of the same is reproduced below:

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ANNEXURE-1A. LIST OF DATES & EVENTS

Statement of list of dates and events of many rounds of litigation at Hon'ble DRT, Delhi, Hon'ble DRAT, Delhi and Hon'ble High Court of Delhi with regard to challenging DRT recovery certificate /assignment to Kotak Mahindra Bank/ assignment to JCAIPL/unlawful sale of the mortgaged property to KCB Finance limited,etc. in support of limitation period in terms of Hon'ble NCLT order dated 21.02.2022

11.09.1996	Industrial Development Bank of India (herein after referred as IDBI), the creditor sanctioned a rupee term loan to the Respondent Company for sum of Rs. 367 lakhs for processing various spices at SP3-11 (B)-1 AND SP 3-11 (B)-2 admeasuring 38973.90 Sq. Mtrs and 41771.6 Sq. Mtrs respectively situated at Khushkhera Industrial Area, Bhiwadi, District Alwar, Rajasthan. IDBI also sanctioned a Foreign Currency Loan of DM 779105 equivalent to Rs. 183 lakhs at the rate of exchange prevalent to the Respondent Company.
07.10.1996	A Rupee Term Loan Agreement was entered into between the Respondent Company and IDBI setting out the terms and conditions of the said loan and further pursuant to the execution of loan and security documents, IDBI disbursed sum of

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	Rs. 451.8 lakhs under both the loan agreements.
06.11.1996	IDBI and Respondent Company also entered into another Foreign Currency Loan Agreement setting out the terms and conditions of the said Foreign Currency Loan Agreement.
10.06.1998	After availing the above credit facilities from IDBI, the Respondent Company failed to repay a single penny of the loan amount and neglected to maintain the financial discipline and IDBI vide recall notice dated 10.06.1998 called upon the Respondent Company to the amounts due to it under both the loan agreements along with interest @ 21% and 5% liquidated damages at the contractual rate.
26.06.1998	Since the Respondent Company failed to liquidate the outstanding dues of IDBI despite service of recall notice, IDBI vide recall notice dated 26.06.1998 called upon the guarantors and invoked the guarantee clause and called upon the guarantors to liquidate the dues.
01.12.1998	As the Respondent Company and its guarantors failed to liquidate the dues of IDBI, IDBI filed an original Application being O.A. No. 445 of 1998 before the Hon'ble Debt Recovery Tribunal, Delhi under Section 19 of the Recovery of debts

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	due to banks and financial institutions Act, 1993 for the recovery of Rs. 6,19,93,815/- together with pendente lite and future interest at the contractual rate of interest.
07.01.1999	Hon'ble Debt Recovery Tribunal, Delhi restrained the Respondent Company and its guarantors/mortgagors in respect of the movable and lease hold immovable property 2 plots SP3-11 (B)-1 AND SP 3-11 (B)-2 admeasuring 38973.90 Sq. Mtrs and 41771.6 Sq. Mtrs respectively situated at Khushkhera Industrial Area, Bhiwadi, District Alwar, Rajasthan.
28.05.1999	The Respondent Company and its guarantors were delaying the proceedings by not filing their Written Statement, the Hon'ble DRT, Delhi vide order dated 28.05.1999 was pleased to pass a final order and decree in favour of IDBI.
01.05.2000	Feeling aggrieved by the final order and decree dated 28.05.1999, the Respondent Company approached the High Court by filing a writ petition being W.P.(C) No. 3656/1999 which was disposed of vide order dated 01.05.2000 and the matter was remanded back to DRT permitting

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	the Respondent Company and its guarantors to file their Written Statement by 22.05.2000.
2000- Feb 2006	Matter was pending before the Hon'ble DRT-1, Delhi and the same was going on from time to time in want of filing of written statement,etc.
March 2006	During the pendency of the O.A No.445/ 1998 before the Hon'ble DRT-1, Delhi, the Respondent Company approached IDBI with an offer for One Time Settlement for a sum of Rs. 225 lakhs as full and final settlement of the dues of IDBI for the 3 rd time. As the intention of Respondent Company was malafide, the purported OTS could not be materialized.
31.03.2006	IDBI entered into a deed of assignment in favour of Kotak Mahindra Bank Limited (herein after referred as KMBL) and assigned all rights, title and claims in respect of the financial assistance provided by IDBI to the Respondent Company.
20.04.2006	The Respondent Company made efforts to sell the above referred immovable properties to settle the loan amount and executed an agreement to sell with M/s Sun Gold Metal Pvt. Ltd. to sell the assets of the company for a sum of Rs. 6.00 crores only, despite Status Quo order of


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	Hon'ble Debt Recovery Tribunal (DRT).
07.06.2006	After that the Respondent Company Suo Motto cancelled the agreement to sell executed with M/s Sun Gold Metal Pvt. Ltd. and went ahead to sell the assets to get a higher price to a new buyer M/s KCB Finance and Leasing Ltd. which invited a separate litigation with respect to earlier buyer.
10.06.2006	Respondent Company executed an agreement to sell with M/s KCB Finance and Leasing Ltd. to sell the assets and liabilities of the Corporate Debtor for a sum of Rs. 8.75 crores.
29.04.2006- 03.08.2006	During this period the Respondent Company in its letters admitted Kotak Mahindra Bank Limited as secured creditor of the said debt and tried to negotiate for settlement with KMBL also.
06.02.2007	Feeling aggrieved by the order dated 12.12.2006, the Respondent Company filed an appeal before the Debt Recovery Appellate Tribunal, DRAT, Delhi wherein the Hon'ble DRAT vide order dated 06.02.2007 passed a blanket stay order on all the proceedings pending before DRT.
23.05.2007	Feeling aggrieved by the order dated 06.02.2007, Kotak Mahindra Bank Limited filed a writ

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	<p>petition being W.P. (C) No. 3535 of 2007 before the Hon'ble High Court which was allowed by the High Court vide order dated 23.05.2007. Pursuant to the Hon'ble Delhi High Court order the Hon'ble DRAT, Delhi also disposed off the said appeal filed by the Respondent Company and the matter was remanded back to DRT for adjudication.</p>
29.08.2007	<p>Kotak Mahindra Bank Limited filed an application being I.A No. 286/2007 before learned DRT for passing a judgment on admission as the Respondent Company in its audited balance sheets for the year 1998-1999, 2001-2002, 2002-2003 and 2004-2005 has admitted the liability as a secured loan. The above said I.A was disposed of by DRT vide order dated 29.08.2007 with the observation that "it would be appropriate to decide this I.A along with the final judgment itself."</p>
16.04.2008	<p>Kotak Mahindra Bank Limited assigned the debt in favour of the petitioner company vide duly registered Deed of Assignment dated 16.4.2008 whereby all rights, title and claims in respect of the said financial assistance were transferred in favour of the present Petitioner Company.</p>

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24.02.2009	<p>Respondent Company filed a Writ petition (C) No. 5258/2008 for restraining the assignment of debt by IDBI in favour of Kotak Mahindra Bank Limited where interim stay on assignment was granted and in view of the fact that the debt was already assigned in favour of Kotak Mahindra Bank Limited, the said writ petition became infructuous and was withdrawn by the Respondent Company vide order dated 14/47 24.02.2009 in view of the fact that the Respondent Company had filed another writ Petition No. 6557/2008.</p>
23.12.2010	<p>The Petitioner company issued a statutory notice dated 23.12.2010 under Section 434(1) (a) of the Act calling upon the Respondent Company to pay a sum of 28,99,00,000/- as on 31.12.2005 along with future interest thereon at contractual rate with effect from 01.01.2006 till the date of actual payment and liquidated damages.</p>
14.01.2011	<p>The Respondent Company in its reply dated 14.01.2011 to the legal notice admitted its liability of Debt but took sham defence for not making payment towards admitted acknowledged debt.</p>
02.02.2011	<p>Respondent Company filed another W.P.(C)</p>

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	<p>No.6557/2008 as stated earlier also for restraining Kotak Mahindra Bank from assigning the debt to any third party and sought relief of mandamus in the nature of directions to Kotak Mahindra Bank to accept One Time Settlement i.e. OTS. Which was dismissed by the Hon'ble High Court vide order dated 02.02.2011.</p>
19.12.2011	<p>The said order dated 02.02.2011 was also challenged by the Respondent Company before a Division Bench of the High Court in a Letter Patent Appeal No. 380/2011 which was also dismissed by the Division Bench by an order dated 19.12.2011.</p>
13.04.2012	<p>The Petitioner filed CO.PET.221/2012 for winding up of the Respondent Company on two grounds firstly, inability of the Respondent Company to pay its acknowledged debts as it had become commercially insolvent and secondly, on just and equitable ground as the Respondent Company has completely lost its substratum due to non- commencement of its business since its incorporation in 1996.</p>
12.02.2014	<p>The Petitioner filed additional affidavit and brought vital facts on record to substantiate that</p>

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	<p>the substratum of the company has completely been eroded and it is impossible for the company to carry on the business except at a loss which means that the existing and probable assets are insufficient to meet the existing liabilities and there is no reasonable hope that the object of carrying business at a profit can be attained and it is no longer viable to revive the company as it has become commercially insolvent and therefore the Respondent Company, deserves to be wound up. The Respondent Company in its reply to the petition took sham defence that it had no liability to make the payment to the petitioner and the Respondent Company made admission of the fact that it had commercially become insolvent as the company has lost its substratum and it would not be possible to run the company in present circumstances simultaneously. The Respondent Company had also admitted that it had never commenced its business since its incorporation and it has lost its substratum.</p>
22.05.2014	<p>The Ld. Single Judge failed to appreciate the aforesaid facts and dismissed the petition vide its judgment dated 22nd May 2014 on the ground of pendency of O.A. 445/19981 with Hon'ble DRT.</p>

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02.08.2014	The petitioner being aggrieved by the dismissal of its winding up petition CO.PET.221/2012, filed Company Appeal No.41 of 2014 under section 483 of the Companies Act 1956 in Hon'ble High Court against the impugned judgment dated 22 nd May 2014 passed by the Learned Single Judge.
19-10-2015	During the pendency of the said appeal RIICO, Rajasthan State Industrial Development and Investment Corporation Limited issued show cause notice bearing no. 4868 and 4888 dated 19.10.2015 to the Respondent Company for the violation of the terms of the lease deed and allotment letter of 2 industrial plots to the Respondent Company for cancellation of the 2 plots allotted to the Respondent Company in Industrial Area Khuskheda, Alwar, Rajasthan, on which the factory of the Respondent Company was to be established. Which has not been responded by the Respondent Company and this fact has been concealed from the court.
08.02.2016	The Respondent Company filed a fresh application in OA-445/1998 for deciding of the counter claim of the Respondent Company in OA-445/1998.
15-2-2016	KMBL the assigner inquired about the status of

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	<p>the dues of the Respondent Company, and then RIICO informed KMBL vide letter no.6864 and 6865 dated 15.02.2016 about the show cause notice sent to the Respondent Company for cancellation of the 2 plots bearing no.SP3-11 B-1 & SP3-11 B-2 respectively on the ground of non-commencement of commercial production.</p>
02.03.2016	<p>That the petitioner preferred the company appeal against the impugned order dated 22.5.2014 passed in CO. PET 221/2012 and CO. APPL. No. 261/13 before the High Court which was registered as company appeal No. 41/2014 and the Hon'ble Division Bench after hearing the parties dismissed the Appeal vide impugned order dated 02.03.2016 on the ground of pendency of O.A 445/1998 before Hon'ble DRT.</p>
17.03.2017	<p>As per order dated 17.03.2017 of the Learned DRT-1, Delhi the Respondent Company here again filed a fresh application in OA-445/1998 with regard its counter claim, etc.</p>
12.10.2018	<p>On having delay in getting justice and to buy peace of mind, a meeting was held at the office of global consultants i.e. JLL, Gurgaon between the Corporate Debtor and the Financial Creditor for settlement of loan amount and minutes were</p>

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	recorded for the agreement on disinvestment of the mortgaged property of the Corporate Debtor for the distribution of sales proceeds as agreed and recorded in the Minutes of meeting.
27.08.2019	The Financial Creditor and the Corporate Debtor entered into a Settlement Agreement dated 27.08.2019 whereby, it was agreed between the parties to sell the mortgaged property and distribute the realized value as per the Settlement Agreement between the parties.
06.05.2021	Emails exchanges and Whatsapp messages between the parties from 03.10.18 to 06.05.2021.
26.07.2021	The Corporate Debtor cancelled the Settlement Agreement dated 27.08.2019 vide email dated 26.07.2021.
04.08.2021	The Financial Creditor replied to the email of the Corporate Debtor dated 26.07.2021 vide reply email dated 04.08.2021.
01.10.2021	Hence the present Petition.

B. ENTRIES IN THE BALANCE SHEET OF THE CORPORATE DEBTOR SINCE BEGINNING.

Copy of the Balance Sheet for the FY-2019-20, 2018-19, 2017-18(including 2016-17) already annexed with the main application.

17. On perusal of the dates and events referred to *supra*, we observe that it is not the case of the Applicant that the Applicant has filed this application after the disposal of the first application filed by the IDBI being O.A. No. 445 of 1998 before the Debt Recovery Tribunal as that application is still pending. The claim of the Applicant is that it had entered into a settlement agreement with the Corporate Debtor on 27.08.2019 and that settlement agreement was cancelled by the Corporate Debtor vide email dated 26.07.2021 and therefore, the cause of action arose on the date, when the settlement agreement was cancelled by the Corporate Debtor.

18. Before considering these submissions, we would like to refer to another date as referred by the Applicant by filing additional affidavit. On perusal of that, we observe that on 23.12.2010, the Petitioner had issued a statutory notice under Section 434 (1)(a) of the Companies Act 1956 and according to the Petitioner, the Respondent Company vide its reply dated 14.01.2011 had admitted its liability, therefore, a cause of action for this Applicant, who stepped into the shoes of the IDBI on the basis of assignment, arose on 23.12.2010 or 14.01.2011, when the liability was admitted by the Corporate Debtor.

19. We further observe that after 14.01.2011 and before the date of settlement arrived between the parties on 27.08.2019, there was no acknowledgement of debt on the part of the Corporate Debtor, therefore, the settlement agreement was made much after the expiry of period of 3 years, when the acknowledgement of debt was made by the Respondent. Therefore, we are unable to accept the contention of the Applicant that cause of action arose only when the deed of settlement was cancelled on 25.07.2021 because that deed of settlement was made much after the period of expiry of the limitation.

20. Apart, from that, we also notice that the loan was recalled by the IDBI on 26.08.1998, whereas the deed of assignment was executed on 31.03.2006, much after the period of limitation, therefore, we are unable to accept the

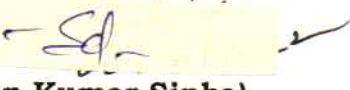


contention of the Applicant that cause of action arose on 26.07.2021. Hence, we are of the considered view the present application is barred by limitation.

21. Accordingly, the same is Dismissed.


(L. N. Gupta)

Member (Technical)


(Abni Ranjan Kumar Sinha)

Member (Judicial)