

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL  
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.04.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No. 4/7/AMR/2021	IA(IBC)/32/2022	7 of IBC	Indian Renewable Energy Development Agency Ltd Vs Saradambika Power Plant Pvt Ltd

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

CP (IB) No. 4/7/AMR/2021 is admitted, vide separate orders.

**IA(IBC)/32/2022:**

Since, the main CP is admitted consequently this I.A(IBC) No.32/2022 is closed as infructuous.

*Telaprolu Rajani*

**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

**CP (IB) No. 04/7/AMR/2021**

**Petition 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  
AND**

**In the matter of  
M/s. SARADAMBIKA POWER PLANT PRIVATE LIMITED**

**BETWEEN:**

Indian Renewable Energy Development Agency Limited (IREDA),  
Core-4A, East Court,  
1<sup>st</sup> Floor, Indian Habitat Centre,  
Lodhi Road, New Delhi - 110003

**... Financial Creditor**

**AND**

M/s. Saradambika Power Plant Private Limited,  
Plot No.15, Radha Krishna Nagar Colony,  
Near Konna Street, Opposite, PSNMH School,  
Srikakulam, Andhra Pradesh – 532001.

**... Corporate Debtor**

**Date of pronouncement of orders: 18.04.2022**

**CORAM:**

**Justice Telaprolu Rajani, Member Judicial.**

**Appearance:**

For Financial Creditor : Mr.Amir Bavani, Advocate.

For Corporate Debtor : Mr.M.Maharshi Viswaraj, Advocate

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**ORDER**

1. This Application is filed by Indian Renewable Energy Development Agency Limited (IREDA) (“hereinafter referred to as Financial Creditor”) seeking this Tribunal to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Saradambika Power Plant Private Limited (“hereinafter referred to as Corporate Debtor”) on the ground that the Corporate Debtor has failed to discharge the debt which is due to the Financial Creditor.
2. The facts briefly, as per the synopsis submitted by the Financial Creditor, are as follows:
  - a) The Corporate Debtor and Financial Creditor entered into a loan agreement dated 28.02.2006, wherein, the Financial Creditor agreed to lend the Corporate Debtor an amount of Rs.2223 Lakhs reduced to Rs.2190 Lakhs for setting up of 10 MW Biomass Power Project at Chimur, Maharashtra. The Corporate Debtor as per the said loan agreement, covenanted to repay the Financial Creditor the said loan amount in quarterly instalments and also agreed to pay the interest on the principal amount as per the Amended Loan Agreement dated 11.04.2007. Thereafter, the Corporate Debtor was not able to pay the instalments of principal and interest and thus on default in the payment of dues, the Financial Creditor,

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considering the request from Corporate Debtor has rescheduled the loan vide letter dated 30.12.2009.

- b) The Corporate Debtor on several occasions failed to make payment of the due instalments. The account of the Corporate Debtor was then classified as Non-Performing Asset (NPA) on 01.07.2013. Thereafter, in the year 2014 the Corporate Debtor has acknowledged its debt vide several letters and requested the Financial Creditor to abstain from initiating recovery proceedings. The Corporate Debtor failed to adhere to the repayment schedule and defaulted in servicing the dues.
- c) The Financial Creditor issued a notice under Section 13 (2) of SARFAESI Act, 2002 dated 10.11.2015 and requested the Corporate Debtor to pay the outstanding amount as on 30.06.2015 which is Rs.27,98,77,567/-, along with further interest. The Corporate Debtor replied to the said notice on 03.12.2015 seeking an opportunity to mend things up, to which the Financial Creditor addressed a letter dated 04.12.2015 to maintain the Trust and Retention Account (TRA) opened with the Andhra Bank vide agreement dated 07.09.2006 and to regularise the account or else the action under SARFAESI Act will be proceeded with.
- d) Thereafter, from the year 2015 to 2018 there have been series of communications between the Financial Creditor, Corporate

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Debtor and Andhra Bank, wherein either Financial Creditor has requested Andhra Bank to co-operate and maintain the TRA or the Corporate Debtor has acknowledged his debt or else the Financial Creditor has requested the Corporate Debtor to clear off the dues.

- e) The Financial Creditor vide letter dated 06.08.2018, informed the Corporate Debtor about a sale notice under SARFAESI Act for auction of project assets. Finally, on 19.08.2019, a special meeting was held to review the status of projects. The Corporate Debtor failed to repay the debt. Hence this Petition.
3. The Corporate Debtor filed preliminary counter, denying the contents of the Petition and further contending that the Petition is barred by limitation and that Article 137 of Limitation Act applies to the proceedings under IBC. It is further submitted that the account of the Corporate Debtor became NPA on 01.07.2013 and the present Petition is filed in November, 2020 which is beyond more than 7 years after the occurrence of the default. The right to sue emanates when the default occurs i.e., on 01.07.2013 and the Petition need to be filed within three years from the said date, but the present petition being filed after more than 7 years, is liable to be rejected. It is further contended that the limitation does not get extended by virtue of the OTS proposal emanating from the Corporate Debtor. The Corporate Debtor also seeks this Tribunal to invoke Section 65 of the IBC which provides for imposition of

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penalty of not less than One Lakh Rupees in case of a malicious prosecution.

4. The Financial Creditor filed rejoinder, reiterating the contents of the Petition and further contending that the Corporate Debtor has acknowledged the debt after the account was declared as NPA and a letter was addressed to reschedule the loan and vide several emails the debt was acknowledged by the Corporate Debtor. Hence as per Section 18 of Limitation Act, the period of limitation gets extended and the period of three years commences from the date of acknowledgement by the Corporate Debtor. The Corporate Debtor was declared as NPA in the year 2013 and within three years from the said date i.e., 2015 there is an acknowledgement from which date a fresh period of limitation would start. Based on the above, the Financial Creditor seeks to declare the Corporate Debtor as insolvent and initiate CIRP.
5. Heard both sides and perused the written submissions. From the pleadings and the arguments, the points that emerge for consideration of this Tribunal are as follows:
  - I. Whether the Petition is filed within the limitation period.
  - II. Whether the Corporate Debtor has committed default in repaying the debt due to the Financial Creditor.
  - III. To what result.

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**I. Whether the Petition is filed within the limitation period.**

The Corporate Debtor has taken the plea of limitation as the primary objection to the application filed by the Financial Creditor. The ground on which such plea is taken is that the Corporate Debtor was declared as NPA on 01.07.2013. This application is filed on 23.11.2020 which is beyond period of three years. There is no quarrel on the aspect of the application of the Limitation Act to the proceedings under IBC. The law is too well settled. Section 238-A of IBC provides for the application of the Limitation Act, 1963, as far as may be, to the proceedings before the NCLT and there is no quarrel with regard to the application of Article 137 of the Limitation Act to the proceedings under IBC. Since, Article 137 applies to those case where the period of limitation is not provided, the Limitation for filing an application under Section 7 of IBC would be three years from the date when the right to apply accrues, which is the date of default. The Supreme Court in *B.K Educational Services Pvt Ltd vs Parag Gupta And Associates* in Civil Appeal No.23988 of 2017 held that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted; the right to sue, therefore, accrues when a default occurs and 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; the said principle was reiterated in several cases and it stands settled. But the contention of the Counsel for the Financial Creditor is that the fresh period of limitation starts from the date of acknowledgment of debt by the Corporate Debtor if before the lapse of three years from the date of default. The Counsel for the Financial Creditor has filed several judgments, relevant of which is rendered by the Supreme Court in *Civil Appeal No. 2734 of 2020 between Laxmi Pat Surana Vs. Union Bank of India & Another*. The main issue which was decided in the said judgment was whether an application under Section 7 of the Code filed after three years from the date of declaration of the loan account as Non-performing Asset, being the date of default, is not barred by limitation. The Court held that ordinarily upon declaration of loan account as NPA that date can be reckoned as the date of default to enable the Financial Creditor to initiate action under Section 7 of the Code; 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

7/10/21

Debtor, as the case may be. It further held that if the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years there from, 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 of the Code 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 of the Code; further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.

In the light of the above binding precedent, which is not disputed by the Counsel for the Corporate Debtor, what now has to be seen is whether there is any acknowledgement by the

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Corporate Debtor within three years from the date of the account of the Corporate Debtor being declared as NPA, which is 01.07.2013. Before proceeding with the said aspect, a reading of Section 18 of the Limitation Act would be beneficial. The same is extracted hereunder for ready reference;

***“18. Effect of acknowledgment in writing.—***

- (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
  
- (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.— For the purposes of this section,—*
  - (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a*

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*person other than a person entitled to the property or right;*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

An application was filed by the Financial Creditor under SARFAESI Act and a reply was issued by the Corporate Debtor to the notice issued under Section 13(2) dated 03.12.2015. The contention of the Counsel for the Financial Creditor is that a fresh period of limitation would start from 03.12.2015, which would end by 03.12.2018. There is no dispute that the debt was admitted by virtue of the reply issued under Section 13(2) of SARFAESI Act.

The Corporate Debtor admittedly made a part payment on 31.07.2017 which would amount to acknowledgement of debt. Hence, the limitation would stand extended for another three years commencing from 31.05.2017 which would end by 31.05.2020. But even thereafter the Corporate Debtor acknowledged the debt in the letters addressed to the Financial Creditor. On 19.08.2019 the Corporate Debtor acknowledged the debt of Rs.40,09,52,795/- in the minutes of special meeting



for review of status of projects and including settlement of over dues. In the letter dated 14.12.2017 addressed by the Corporate Debtor to the Financial Creditor, the Corporate Debtor acknowledges the debt and informed about the proposal of change of management without asking for any principal loan sacrifices. The request to accept the personal guarantee of the New Directors is made while promising to adhere to the terms of the Financial Creditor by continuing the Managing Director of the Corporate Debtor on the Board.

A letter dated 29.12.2017 is also addressed to the Financial Creditor informing that an MoU was executed between the then Management and the proposed Management of the Corporate Debtor. By virtue of letter dated 18.04.2018 the Corporate Debtor informed the Financial Creditor that the Buyer has agreed to pay certain amounts. By virtue of all the above documents which evidence the acknowledgment of debt by the Corporate Debtor last of which is on 19.08.2019 in the meeting for review of status of projects of the Corporate Debtor, there is a clear acknowledgement of the loan and the amount defaulted. Hence, in view of the above it can be held that the application is well within the period of limitation.



**II. Whether the Corporate Debtor has committed default in repay the debt due to the Financial Creditor.**

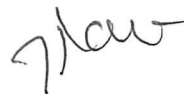
Except on the question of limitation there is absolutely no defence offered by the Corporate Debtor with regard to the amount of debt due to the Financial Creditor and the default committed by it. Hence, this point is answered in favour of the Financial Creditor.

**III. To what result:**

In view of the findings under the point No. I to II the Petition is admitted. The Financial Creditor suggested one Mr. Charudutt Pandhrinath Marathe as Insolvency Resolution Professional (IRP). Hence, Mr. Charudutt Pandhrinath Marathe as Insolvency Resolution Professional (IRP). The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

**ORDER**

- i. Mr. Charudutt Pandhrinath Marathe, (**Registration No. IBBI/IPA-001/IP-P00350/2017-2018/10651**); having office at Gomed, 915, Khare Town, Dharampeth, Nagpur, Maharashtra-440010; e-mail: **charuduttm@yahoo.co.in**; Mobile: +91 9371432369 is appointed as the Interim



Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Financial Creditor and the Corporate Debtor forthwith.
- vi. The Financial Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.



**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

*Swamy Naidu*