NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV

2. C.P. (IB)/166(MB)2022

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

RDER SHEET OF THE HEARING HELD ON **29.11.2022**

Name of the Party: State Bank of India
Vs.
Dharmraj Aluminium Industries Private Limited

Section 7 of Insolvency and Bankruptcy Code, 2016

ORDER

The Court is convened through Video Conference.

1. Mr. Drupad S. Patil, Ld. Counsel for the Financial Creditor present. No representation on the part of the Corporate Debtor.
2. This is a Company petition filed by State Bank of India (Petitioner) filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 to initiate CIRP against Dharmraj Aluminium Industries Pvt. Ltd. (Corporate Debtor). The Petition is filed by Mr. Santosh Kumar Mahapatra, Authorized Signatory of the Financial Creditor claiming an amount of Rs. 22,52,02,115.61 (Rupees Twenty-Two Crores, Fifty-Two Lakhs, Two Thousand, One Hundred Fifteen and Sixty-One Paisa) as on 31.12.2021.
3. The Financial Creditor submits that the date of default accrues on 30.04.2016 and the Petition was filed on 13.01.2022.
4. The Corporate Debtor approach the Financial Creditor vide application dated 17.08.2012 for grant/sanction of various credit facilities. The Financial Creditor considered the request of the Corporate Debtor and by its letter of arrangement dated 01.02.2013 granted/sanctioned Cash Credit facility of Rs.7.00 Crore and forward contract facility of Rs.0.20 Lakh, total aggregating facility to the extent of Rs.7.20 Crore.

The aforesaid credit facilities were further renewed/sanctioned/enhanced from time i.e. on 23.01.2014 and 02.12.2014 respectively.

5. To secure the aforesaid credit facility, the Corporate Debtor through its Directors/Guarantors executed various loan and security documents. The list of documents are reproduced hereunder:-

   Supplemental Agreement of Loan-cum hypothecation;

   Memorandum of recording extension of Mortgage;

   Letter of confirmation for creation of mortgage;

   Letter of Guarantee

6. The Corporate Debtor availed and enjoyed the credit facilities but failed to repay the outstanding dues as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Assets on 29.04.2016. The Financial Creditor issued Demand Notice u/s 13 (2) of the SARFAESI Act, 2002 on 02.05.2016, thereby demanding and recalling for outstanding dues. The Corporate Debtor replied to the said Demand Notice on 31.07.2016. Despite, Notice, the Corporate Debtor had not repaid the outstanding dues. Therefore, Financial Creditor on 26.07.2016, invoked the guarantee executed by the guarantors in favour of the Financial Creditors thereby called upon the guarantors to forthwith make the payments.

7. The Financial Creditor also filed O.A. 762/2017 before Debts Recovery Tribunal-II, Mumbai. The Financial Creditor further submits that one M/s Oswal Minerals Limited has filed Company Petition 678/2015 u/s 433, 434 and 439 of Companies Act before the Hon'ble High Court. The Hon'ble High Court vide order dated 25.01.2018 passed a winding up order and appointed Official Liquidator and also directed the OL to take steps as per law.

8. The matter was first taken up for hearing on 21.02.2022, wherein the Court Notice was issued. Despite court Notice, the Corporate Debtor neither appeared nor filed reply on rebuttal.

9. Heard the Ld. Counsel for the Applicant.

10. During the course of Arguments on 22.11.2022, this Bench has pointed out that the date of default is 30.04.2016 and the Petition was filed on 13.01.2022 after the lapse of more than six years. This Bench has categorically pointed out the Petition is barred under the law of Limitation i.e. 3 years.

11. Ld. Counsel for the Petitioner relied on ***Sesh Nath Singh Vs. Baidyabati Sheoraphuli Co-op. Bank Limited***, wherein its was held that:-

> *84.In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.*
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> *85. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.*

12. As per the facts and circumstances of the Apex Court judgment, the principal borrower obtained stay against SARFAESI proceedings initiated by the Financial Creditor, therefore, the Apex Court excluded pending period of the stay for the limitation period for filing section 7 of IBC.

13. However, in this particular case, the third-party M/s Oswal Minerals Limited, filed a Petition for winding up of the Company against the Corporate Debtor. Hence, the Applicant cannot be entitled for exclusion pending period of Company Petition filed by the third party.

Further, even after excluding the period from 02.05.2016 to 25.01.2018, The Financial Creditor filed the Company Petition after barred by limitation.

14. The Financial Creditor is not filed any Balance-Sheet/Ledger statement of the Corporate Debtor acknowledge or establishing the debt admitted by the Corporate Debtor or even not filed any NeSL Certificate/information utility which is proof of the debt, default by the Corporate Debtor.
15. Further, the Financial Creditor also not filed any Application for condoning the delay along the main Company Petition, without filing any condonation of delay Application, the Tribunal has no power to condone the delay.
16. It is evident from the facts and circumstances of the case, the Company Petition is filed beyond the prescribed period of limitation i.e. 3 years as covered under Section 18 of Limitation Act, 1963. The filing of Company Petition is inordinate delay, hence, the Company Petition is barred by limitation.
17. Thus, this Bench is of the considered view that the Petition is not maintainable and hence, C.P. (IB)/166(MB)2022 is **dismissed** with no costs.
18. However, the petitioner is at liberty to approach proper forum as per law.

Sd/-	Sd/-
MANOJ KUMAR DUBEY	**KISHORE VEMULAPALLI**
Member (Technical)	**Member (Judicial)**

/Dubey/