

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No. 352/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.10.2020**

Name of the Company: Punjab National Bank
V/s.
K.G Corporation Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016.

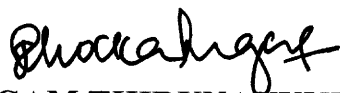
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(Through Video Conferencing)

Advocate, Mr. Mrugesh J Jani is present on behalf of the Petitioner and Advocate, Mr. Harmish K. Shah is present on behalf of the Respondent.

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 16th day of October, 2020

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 352/7/NCLT/AHM/2018

In the matter of:

Punjab National Bank
Asset Recovery Management Branch
Circle Office, 6th Floor
Gujarat Bhavan
Opp. M.J. Library
Ellisbridge
AHMEDABAD 380 009
Gujarat State

:

Petitioner
[Financial Creditor]

Versus

M/s. K.G. Corporation Limited
(formerly known as Tayal Energy Ltd.)
65, Krishna Nagar
Samarvani
SILVASSA
(U.T. of Dadra & Nagar Haveli):

Respondents
[Corporate Debtor]

Order delivered on 16th October, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner : Mr. Mrugesh Jani, Advocate
Respondent : Mr. Harmish K. Shah, Advocate

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Subhash Jha, Chief Manager, being authorised signatory of Punjab National Bank, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking





reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That the applicant/financial creditor Punjab National Bank is a body corporate established under banking companies (Acquisition and Transfer of Undertaking) Act 1970, having its registered office at 7, Bhikhaji Cama Place, New Delhi 110 066 and having circle office at Ellisbridge, Ahmedabad, Gujarat State.
3. The respondent/corporate debtor M/s. K.G. Corporation Limited is a company incorporated under the Companies Act, 1956 on 02.09.2005, having identification No. U40100DN2005PLC000185, having its registered office at Silvass, U.T. of Dadra & Nagar Haveli. That, Authorised share capital of the respondent company is Rs. 65,00,00,000/- and paid up share capital is Rs. 64,90,63,000/-.
4. That, the applicant bank has submitted that, through its Ellisbridge Branch, Dist. Ahmedabad, granted term loan of Rs. 90,00,00,000/- (Rupees ninety crores only), jointly with Bank of India (60 crores) and UCO Bank (50) crores consortium aggregating to Rs. 200.00 crores and working capital loan of Rs. 45,00,00,000/ (Rupees forty-five crores only) jointly with Bank of India (23 crore) and UCO Bank (30 crores) aggregating to Rs. 98.00 crores. That total amount of debt granted by the applicant is Rs. 135,00,00,000/- (Rupees one hundred thirty-five crores only) and the respondent company is in total default of **Rs. 197,63,00,000/- (Rupees one hundred ninety-seven crores sixty-three lacs only)** as per the details given in the computation sheet annexed to the application at **page No. 26-28.**

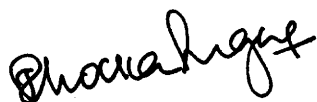
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5. It is stated by the financial creditor that the instant Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the various financial facilities availed through its Ellisbridge Branch, Ahmedabad, Gujarat State.
6. The applicant bank has submitted copy of all the documents in support of its claim like; working of outstanding dues, common loan agreement, joint deed of hypothecation, security agent appointment agreement, letter of deposit of title deeds, letter confirming pari passu arrangement, inter se agreement, letter of continuity etc.
7. The respondent filed reply/objections and during the course of arguments also raised various objections. Learned counsel appearing on behalf of the respondent submitted that the application has not been filed by a person duly authorised to file such application in terms of the provisions of the IB Code. That, the application filed by a person having no authority to file such application, merely relying upon a power of attorney, executed much before the provisions of IBC came into existence is void ab initio, hence required to be dismissed at the threshold.

Findings

8. Heard the counsels and perused the documents annexed to the application/reply and additional documents filed by both the parties.
9. On perusal of the records it is found that along with the application the financial creditor has filed General Power of



Attorney (GPOA) dated 27.11.2011 issued in favour of Mr. Subhash Jha, Chief Manager which has been ratified by the applicant by a ratification letter dated **27.05.2020** issued by Deputy General Manager of the applicant bank. The learned counsel appearing for the respondent submitted that the GPOA executed much before the provisions of IBC came into existence, being a General Power of Attorney does not provide specific power to the power of attorney holder to initiate CIRP against the corporate debtor. Moreover, the post facto confirmation given in the month May, 2020 for the application filed somewhere in July, 2018, establishes that the person who has filed the application was not authorised to do so at the relevant point of time and therefore the said action of filing the application under section 7 of IBC was unauthorised. Provision of IBC clearly provides that the application under Section 7 shall be filed only by the person duly authorised and, therefore, the present application filed without any authority at the relevant time, is illegal and not maintainable.

10. Learned counsel appearing for the respondent further submitted that it is well settled law that the date of NPA classification shall be the date of default which cannot be extended further. The Hon'ble Apex Court in **B.K. Educational Services, Gaurav Hargovindbhai Dave and Veer Gurjar Aluminium Industries (supra)** held that the right to apply under the IB Code accrues on the date of default, which is the date of actual non-payment by the corporate debtor when the debt has become due and payable. That, in cases under Section 7 of the IB Code initiated by Banks/Financial Institutions, the said date of default is the date of NPA classification. In the instant case, the date of default being the date of NPA classification claimed by the applicant in its application is admittedly **30.06.2014**, the three years' limitation period under Article 137 of the Limitation Act, 1963 is applicable to proceedings under Section 7 of the IB Code, **expired on 29.06.2017** and




the instant application came to be **filed only on 05.07.2018**. Thus, the instant application is time barred. Further, the Hon'ble Apex Court in its recent landmark judgement in ***Veer Gurjar Aluminium Industries (supra)*** has reiterated the above view in Civil Appeal No. 6347 of 2019 dated 14.08.2020.

11. On perusal of the record it is also found that in part – IV column No. 2 of the application (Form 1) the applicant has admitted that default occurred on **30.06.2014**. It is found that the instant petition is filed on **16.07.2018** i.e. after lapse of more than four years, therefore, the application is not tenable in the eyes of law as it is barred by limitation.
12. On perusal of the record it is found that the applicant bank has filed additional affidavit submitting copy of the communication exchanged between the applicant bank and the corporate debtor regarding one-time settlement (OTS). The applicant bank has contended that continuous offer for OTS proposal received from the corporate debtor clearly shows that the debt has been acknowledged by the corporate debtor and there has been a continuous cause of action which gives rise to the claim of debt by the applicant against the corporate debtor.
13. At this juncture it is necessary to refer to the observations made by Hon'ble NCLAT in ***Bimalkumar Manubhai Savalia vs. Bank of India***, wherein, it is held that various interesting integrities and aspects relating to applicability of law of Limitation under Insolvency Bankruptcy Code, 2016 of India like in which circumstances Section 18 of the Limitation Act, 1963 (Limitation Act) would be applicable under IBC, whether acknowledgement of debt would extend the limitation period under IBC, whether part payment will extend the limitation under IBC, and also discussed whether

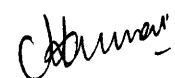
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admission made in proceedings under SARFAESI and DRT would extend the limitation for IBC. Hon'ble NCLAT declined to accept the stand of the financial creditor that OTS would extend the time of limitation as the same were not accepted by the financial creditor and considered it as no acknowledgement was issued by the corporate debtor before expiry of 3 years of limitation. Hon'ble NCLAT further held that the Code is complete in itself, thus proceedings initiated or to be initiated under DRT or SARFAESI Act will not extend the limitation period. Hon'ble Supreme Court has extensively dealt with the point of limitation while passing landmark judgement in **Babulal Vardharji Gurjar v/s. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr**, wherein, the Hon'ble Apex Court categorically reiterated that in **B.K. Educational Services** case it is clarified that the offer of OTS cannot be deemed to be an acknowledgement. It has been clarified that the limitation period for application under section 7 of the Code is three years as provided by Article 137 of the Limitation Act and the limitation period to run from the date of NPA.

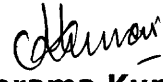
14. In **Gaurav Hargovindbai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952/2019]** It is held that "Article 62 is out of the way on the ground that it would only apply suits. The present case being "an application" which is filed under Section 7, would fall only within the **residuary Article 137**. Therefore, the application filed under Section 7 is clearly time barred."

15. Hon'ble Supreme Court in the recent judgement "**Vashdeo R Bhojwani vs Abhyudaya Co-operative Bank Ltd. & Anr. in Civil Appeal No. 11020 of 2018 decided on 2nd September, 2019**" again held that Article 137 of the Limitation Act is applicable to Section 7 of the I & B Code and the intent of the I & B Code is not to give a new lease of life to debts which are already time barred.

16. As regards the contention raised by the learned lawyer for the applicant that the corporate debtor has acknowledged the debt on 27.11.2017, it is desirable to refer **Section 18** of the Limitation Act, 1963 which stipulates that "where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement 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 denies his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was signed."
17. In the case on hand the cause of action arose on 30.06.2014 when the last payment was made by the corporate debtor, but, thereafter, no acknowledgement was made by the corporate debtor and/or obtained by the applicant before expiration of three years as required in Section 18 of the Limitation Act; therefore, the application is barred by limitation as it fall under article 137 of the Limitation Act which is a residuary article.
18. In view of the aforesaid discussions, the Adjudicating Authority is of the considered view that the instant application being CP (IB) No. 352 of 2018 is not maintainable as the same is barred by Limitation Act as also the signatory who has signed the application has/had no authority to initiate CIRP at the relevant point of time.
19. Accordingly the petition is dismissed with no cost.
20. Communicate a copy of this order to the Applicant/ Financial Creditor and respondent/Corporate Debtor.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)