

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- II**

CP No. (IB) 4314/ MB/ 2018

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

In the matter of

Mrs. Arohi V. Shah

Having Registered Office at: 404,
Commerce House, 140, N M Road,
Fort, Mumbai- 400 023

..... **Financial Creditor**

Vs.

Pinnacle Nexus Limited

(CIN: U45400MH2007PLC171335)

Having its Registered Office at: Dolphin
Building, Plot No. 269, Shop No. 01,
Sector No. 26, Nerul, Navi Mumbai-
400 706

..... **Corporate Debtor**

Order delivered on:- 02.12.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : Advocate Gautami Bada
For the Corporate Debtor : None

ORDER

Per: Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by *Mrs. Arohi V. Shah* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Pinnacle Nexus Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “IBC”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 1,52,72,225/-** (Rupees One Crore Fifty-Two Lakhs Seventy-Two Thousand Two Hundred and Twenty-Five only) including the outstanding **Principal amount of Rs. 93,75,000/-** (Rupees Ninety-Three Lakhs Seventy-Five Thousand Only) and **interest @12%** amounting to **Rs. 61,78,134/-** (Rupees Sixty-One Lakhs Seventy-Eight Thousand One Hundred and Thirty-Four Only) as on 31st May 2018 forming part of the Financial Debt.
3. The Directors of the Corporate Debtor approached the Financial Creditor, with whom they enjoyed cordial relations, for availing a certain amount of Loan on the payment of interest

pursuant to which the Financial Creditor advanced a Loan of Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs Only) at the rate of interest of 12% per annum on mutual understanding between the parties. The Corporate Debtor paid the following amounts in part- payment of the Principal amount due:

Date	Amount (in Rs.)
16 th January 2015	18,25,000/-
20 th January 2015	13,00,000/-

Further, the Financial Creditor addressed a **Letter dated 11th December 2017** calling upon the Corporate Debtor to repay the outstanding Principal amount and the interest pending on it thereon within seven days but no payment was received. The said Letter has been duly attached to the Petition.

4. The Corporate Debtor has neither replied to the Letters addressed by the Financial Creditor nor has filed a Reply to this Petition. The Corporate Debtor was subsequently set *ex-parte* by this Bench vide Order dated 28th September 2022.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Financial Creditor. Having perused various records and Order sheets, we note that the Corporate Debtor failed to appear before this Tribunal on multiple occasions despite notice.

However, it is seen that the said Financial debt was disbursed on 12th March 2014 and the last repayment was made by the Corporate Debtor on **20th January 2015**. Additionally, we have perused the copy of **Statement of Confirmation of Accounts dated 1st April 2015** addressed to the Financial Creditor by the Corporate Debtor confirming the balance amount including interest due and payable. This implies that a fresh period of Limitation started operating from 1st April 2015, the date of acknowledgement of the debt and liability to repay the debt and ended on **1st April 2018**. Since this Petition was filed on **13th November 2018**, we observe that this Petition is barred by Limitation.

6. The Financial Creditor relies on the Letter dated **11th December 2017** to prove the existence of default. The Corporate Debtor did not issue any reply to the said Letter and hence this cannot be considered as evidence of admission of the debt and the liability to repay the same by the Corporate Debtor. Moreover, no Agreement or any other form of document underlining the date on which the debt had fallen due is placed before us. The Financial Creditor is mistaken in considering this date as the date of default as there is no material to prove the acknowledgement of the debt or any default by the Corporate Debtor on this date. Therefore, the implication of the Financial Creditor that a fresh period of Limitation had commenced from this date is flawed and cannot be sustained.

7. In view of the above, we conclude that this Petition is barred by Limitation and is liable to be dismissed.

Accordingly, this Petition is dismissed.

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-
SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-
JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

AN
02.12.2022