

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

C.P.(IB)- 248(MB)/ 2018

Under section 7 of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

Indian Renewable Energy Development Agency Ltd.

...Financial Creditor

V/s

Shri Sai Kripa Sugars and Allied Industries Ltd.

...Corporate Debtor

Order Delivered on :- 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Ashish Pyasi, Advocate

For the Corporate Debtor : Mr. Harsh Moorjani, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Indian Renewable Energy Development Agency Limited ("hereinafter referred to as Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP)

against Shri Sai Kripa Sugars and Allied Industries Ltd ("hereinafter referred to as Respondent").

2. The Corporate Debtor is a Limited company incorporated on 16.12.1998 under Companies Act, 1956 and having its registered office situated at Shop No.6, Annasaheb Magar Bhawan, Gultekdi, Market Yard, Pune-411037. Therefore, this Bench has jurisdiction to deal with this Petition.
3. The present Petition was filed on 16.2.2018 before this Adjudicating Authority on the ground that the Respondent has defaulted in repayment of loan amount of Rs.90,71,78,954 /- (Rupees Ninety Crores Seventy one Lakhs Seventy Eight Thousand Nine hundred and Fifty Four Only) sanctioned by the Petitioner.
4. The total amount claimed to be in default by the Petitioner is Rs.165,73,07,759/- (Rupees One Hundred and Sixty-Five Crores Seventy Three Lakhs Seven Thousand and Seven Hundred and Fifty Nine Only) as on date of filing the Petition. The date of default in the Petition is stated to be 31.12.2012 and the account was classified as NPA on 31.03.2014.
5. It is pertinent to note that the Bombay High Court vide order dated 21.4.2017 was pleased to dispose of the Company Petition No.8 of 2017 presented by Allied Blenders and Distillers Private Limited

against the present Respondent, in terms of the Consent terms dated 18.4.2017. The Hon'ble Court was pleased to pass the order that in case of any default as contemplated in terms of consent terms, the Company Petition shall stand revived and admitted. In that event, the Official Liquidator shall also be appointed as Provisional Liquidator. Since there was a default, the Official Liquidator of the High Court was requested to proceed as per law. The Official Liquidator thus stands appointed and has conducted several meetings and also taken various steps as stated in his report dated 31.05.2022 filed before this Tribunal. It was further stated that he is in the process of filing Official Liquidators report in the Hon'ble High Court seeking appropriate directions and that this Tribunal may pass such other and further directions that this Tribunal deems fit.

6. We heard the learned counsel for the Petitioners and the learned counsel for the Ex-Managing Director of the Respondents on 14.11.2022 and directed both parties to file their written submissions, which have been accordingly filed. None appeared for the Official Liquidator.

Submissions made by the learned Counsel of the Petitioner.

7. The Corporate Debtor had approached the Financial Creditor and was granted loan facility of Rs. 121,03,95,000/- (Term loan of Rs. 93,80,00,000/- and Additional/Bridge Loan against SDF of Rs. 27,23,95,000/-) for the purpose of already set up of 40 MW Congregation Project at Village Hiradgaon, Taluka Shrigonda, District Ahmednagar, Maharashtra. Later, on several dates several amounts were disbursed under the Loan Agreement to the tune of Rs. 93,80,00,000/-
8. The Corporate Debtor failed to fulfil its obligations under the loan agreement and defaulted in repayment with the first default occurring on 31.12.2012 (within few months from the disbursement).
9. For the purpose of debt and default the Petitioner has relied upon;
 - i. The Corporate Debtor signed the Loan Agreement dated 02.12.2011, Trust and Retention Account Agreement dated 15.03.2012, Deed of Hypothecation dated 26.03.2012, Deed of Simple Mortgage dated 18.05.2012, Trust and Retention Account Agreement dated 08.02.2014.

- ii. The charge of the Financial Creditor was duly registered with the ROC as can be seen from the Certificate of Registration dated 25.05.2012 Trust and Retention Account Agreement dated 15.03.2012.
- iii. The Corporate Debtor issued post-dated cheques dated 31.03.2013, 28.03.2013, 30.09.2015, 31.12.2015, 30.06.2017 which were dishonoured. The Financial Creditor had filed criminal cases before the Ld. Patiala House District & Sessions Court, New Delhi which are still pending.
- iv. Upon the request of the Corporate Debtor, the Financial Creditor issued a letter dated 28.03.2014 to the Corporate Debtor rescheduling the deadlines for the repayment of the loan facilities extended the Corporate Debtor.
- v. The account of the Corporate Debtor was declared as NPA by the Consortium Leader Punjab National Bank on 31.03.2014.
- vi. The Financial Creditor sent loan recall notice dated 05.03.2015 to the Corporate Debtor for repayment of the default amount. The Corporate Debtor had paid a sum of Rs. 2 Crore on 14.02.2015 as stated in the said loan recall notice.
- vii. The Financial Creditor issued another loan recall notice dated 15.09.2015 to the Corporate Debtor.

- viii. The Financial Creditor issued letter dated 22.05.2017 to all the guarantors of the Corporate Debtor invoking the Guarantee Deeds executed by them and calling upon them for repayment of the default amount of Rs. 150,06,64,294/- due and payable by the Corporate Debtor.
- ix. The Financial Creditor has amongst other documents also relied upon Balance Sheet of the Corporate Debtor for financial year 2013-14.
- x. It was further submitted that the Account Statement and the sheet annexed by the Financial Creditor shows that the Corporate Debtor made several payments of approximately Rs. 2.2 Crores towards the interest overdue from 01.05.2015 to 18.8.2015 which extend the limitation.
- xi. It is further sought to be argued that the Corporate Debtor after the filing of the Company Petition on 12.02.2018, issued a letter dated 17.04.2018 to the Financial Creditor proposing for debt resolution wherein the Corporate Debtor proposed to pay the principal outstanding amount to the Financial Creditor over a period of 8-9 years provided if the repayment of interest overdue was waived by the Financial Creditor.

xii. However, a copy of this letter was neither part of the Petition nor filed by way of any application/affidavit and was argued that it was tendered previously at the time of arguments before the predecessors of this bench.

10. Accordingly it is sought to be argued that the said facts and documents clearly establish an acknowledgement of the debt on behalf of the Corporate Debtor. According to the Petitioner, such actions of the Corporate Debtor clearly establish the existence of the financial debt as defined under section 5(8) of the Code and default.

Submissions made by the Ld. Counsel of the Ex-Managing Director of the Respondent;

11. We had permitted the Ex-Managing Director of the Respondents pursuant to application made, to submit their written arguments and make brief submissions. The primary contention raised by the Ld. Counsel of the Ex-Managing Director of the Respondent is that the debt as sought by the Petitioner in the Company Petition is barred by the Law of Limitation. It is the contention of the Respondents that as per the Petition, the last date of disbursement was 30.05.2012 and the date of default for the debt mentioned is 31.12.2012 and the number of default days stated in the Petition is 1826 days. The said Company

Petition was filed on 12.02.2018. Thus, according to them, time barred debts have been sought by the Financial Creditor in the said Company Petition.

12. It is further contended that, even as per the Financial Creditor, the loan amounts were to be repaid in installments. The date of payment as to the second installment in the loan agreement and the date of default as stated by the Financial Creditor in the said Company Petition is 31.12.2012 as described in Schedule 5, Amortization Schedule, Loan Agreement dated 02.12.2011. Hence according to them, as per the loan agreement read with the date of default stated by the Financial Creditor, admittedly the alleged default took place on 31.12.2012.
13. It is further submitted that that the Financial Creditor has sought to use the IBC machinery to give a new lease of life to its time barred debts and an application under Section 7 of the IBC is governed by Article 137 of the Limitation Act and, is therefore three years from the date when right to apply accrues. However, the present Petition has been filed beyond the stipulated period of limitation. Reliance is placed on "*Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd. (2020) 15 SCC 1*".

14. The Respondent submits that based on a letter dated 28.03.2014, the Financial Creditor contended that the loan amount was rescheduled and canvassed an argument debt being acknowledged by the Respondent and even if that is considered, the same would extend limitation till March 2017. However, the Financial Creditor has filed the present Company Petition in February 2018. Hence, evidently, the said Petition is barred by the law of limitation. Further even as per the alleged loan rescheduling letter, particularly the annexure thereto, repayment schedule was revised and it had to start from 2018 up to 2024, however, the said loan rescheduling letter never fructified, and the same is impliedly admitted by the Financial Creditor in the said Company Petition. It is further submitted that thereafter, the Financial Creditor to extend the limitation relied upon some letter dated 2018, which does not form part of the record and is not an annexure of the said Company Petition and these Respondents never had a chance to deal with it and that the document placed by screen sharing does form part of the record and cannot be relied by the Tribunal at this stage of the hearing.
15. Further it was submitted that limitation is a mixed question of fact and law and the Financial Creditor has not even laid foundation in

the said Petition for suggesting any acknowledgment of any other date of default and that when a party seeks application for extension or enlargement of the period limitation, the relevant facts are required to be pleaded and requisite evidence required to be adduced. Hence it is their contention, that the arguments advanced by the Financial Creditor, as to acknowledgment of debt ought to be rejected by this Hon'ble Tribunal as per law laid down in paragraphs 33, 34, 34.1, 35 and 35.1 of the judgement of the Apex Court in Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd. (2020) 15 SCC 1.

16. The ld. Counsel further submitted that in the Financial Creditor's further quest to extend limitation of its time barred debt, it relied upon some tabulated list of cheques and part payments made by the Corporate Debtor, and contended that the same would further extend limitation. However according to them, the said argument is misplaced for the following reasons:

- (a) None of the cheques issued by the Corporate Debtor are placed on record neither the part payment cheque values tantamount to the aggregate debt sought by the Financial Creditor.
- (b) The account of the Corporate Debtor was classified as NPA on 31.03.2014 and continued to remain irregular. Hence, after the

account was irregular, any part payment would not shift the date of default, as contended by the Financial Creditor.

- (c) It was submitted that when a similar argument was made as to part-payment extending the period of limitation the Hon'ble NCLAT relying on Babulal Vardharji Gurjar (supra) in Jagdish Prasad Sarada v. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020 held that *'10...the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condonation of delay is carved out....11. We are of the firm view that the determining factor is the three years period from date of default/NPA. This Appellate Tribunal has also observed in Rajendra Kumar Tekriwal Vs. Bank of Baroda in Company Appeal(AT) (Ins) No.225 of 2020 dated 13.08.2020 that the period of three years from the date of the Account of Corporate Debtor is classified as NPA then it becomes impermissible to proceed with Section 7 Application as observed in the para 11 of the Judgment... 12. All these leads to reiterate that the provisions of The Limitation Act, 1963 vide Section 238A of the I&B Code, 2016 will be applicable to all NPA cases provided they meet the criteria of Article 137 of the Schedule*

to The Limitation Act, 1963. The extension for the period of Limitation can only be done by way of application of Section 5 of The Limitation Act, 1963, if any case for the condonation of delay is made out.'

17. It is accordingly submitted that the debt is time barred and this Hon'ble Tribunal ought to reject the Company Petition filed under Section 7 of IBC by the Financial Creditor.
18. An alternate submission was also canvassed by the Ld Counsel whereby was submitted that Liquidated Damages and Penal Interest are being sought by the Financial Creditor which does not fall within the definition of Financial Debt. To substantiate this, it was submitted that the Loan Agreement dated 02.12.2011 stipulated various clauses qua penal interest, incidental charges and liquidated damages. Clauses 2.5,2.6 and 2.7 were highlighted and submitted that the debt claimed by the Financial Creditor viz. liquidated damages and penal interest, does not fall within the definition of Financial Debt i.e. Section 5(8) of IBC. The law is well settled that a claim for unliquidated damages/penal interest does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a civil court or other adjudicatory authority.

Submissions made by the Ld. Counsel of the Petitioner

by way of Rejoinder;

19. As regards the Debt being barred by Limitation, it is submitted that, for the purpose of establishing that the company petition has been filed within limitation (3 years and then reasons for extension of limitation) following may be noted:

A. Payments made by the Corporate Debtor which extends limitation u/s 19 of the Limitation Act:

Date	Particulars	Limitation or the extended limitation
31.12.2012	Date of Default	31.12.2015
14.02.2015	Payment of Rs. 2 Crores made by the Corporate debtor (Letter dated 05.3.2015 at	Extended upto 14.02.2018

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	Pg. 339)	
01.06.2015 To 19.08.2015	Several payments received (pg. 381)	19.08.201 8

B. Cheques issued :

Date	Particulars	Limitati on or the extended Limitati on
31.03.201 3	Cheques for an amount of Rs. 6, 65,61,411/-	31.3.201 6
30.09.201 5	Cheques for an amount of Rs. 5,78,53,169/-	30.9.201 8
31.12.201 5	Cheques for an amount of Rs. 5,69,01,675/-	31.12.2018
30.6.2017	Cheques for	30.06.2020

	an amount of Rs. 5, 09,65,181/-	
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20. Therefore, it is contended that the petition filed on 12.02.2018 is well within limitation. It was also sought to be argued that the Corporate Debtor made part payments of Rs. 2 Crore on 14.02.2015 and several other payments towards interest overdue for the period of 01.06.2015 to 18.08.2015 which extends the limitation period till August, 2018 for filing the present company petition.

21. It was also submitted that the part payments made by the Corporate Debtor automatically extended the limitation period for filing the present company petition under section 19 of the Act of 1963. It was sought to be argued that Sec. 19 of the Act of 1963 shows that the use of the word "*shall*" automatically extends the limitation period by application of law when any payment is made towards any debt due and payable and the period shall be computed from the date of making the said payments. Furthermore, Sec. 19 does not provide for making of an application before the Court for extension of limitation period.

22. Without prejudice to the above, it was also sought to be submitted that an application under Section 5 of the Act of 1963 can only be made where the limitation period for filing the application/petition/suit has expired, however, the part payments made by the Corporate Debtor extended the limitation period for filing the present company petition from time to time and the same was filed well within limitation period. Therefore, there is no requirement of making of application under section 5 of the Act of 1963. Furthermore, the **Hon'ble Supreme Court** in the judgment of **Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli** Co-operative Bank Ltd and Anr. (2021) 7 SCC 313 has held that section 5 of the Act of 1963 does not make it mandatory to file an application for condonation of delay in writing before granting such a relief.
23. As regards liquidated damages and penal interest being sought as financial debt, it was contended that the corporate debtor has ignored the fact that without interest and other claims, the loan amount is approximately Rs. 90 crores.
24. As regards documents being letter dated 17.04.2018, tendered across the bar to the predecessors of this Bench, it is contended that, the same forms part and parcel of the record of this Hon'ble Tribunal in the present company petition. Reliance is also placed on judgment

of Dena Bank vs. C. Shivkumar Reddy & Another (2021) 10 SCC 330 where the Supreme Court has held that the parties can file additional documents in an application under Section 7 of the Code before the pronouncement of the judgment. In light of the said judgment, the Financial Creditor was not barred to tender letter dated 17.04.2018 before this Hon'ble Tribunal merely because the same was not annexed with the present company petition. Moreover, the present company petition was filed on 12.02.2018 whereas the said letter was authored by the Corporate Debtor after filing of the present company petition.

FINDINGS

25. Heard the Ld. Counsel for the parties and perused the records.
26. The Petitioners in the Petition have categorically stated that as on 31.12.2017 total principal amount of debt was Rs.90,71,78,954/- plus interest thereon at contractual date. The date of disbursements were from 04.04.2012 to 30.05.2012. Further the petition states that the amount claimed to be in default on which the default occurred is Rs.165,73,07,759/- and the date of default is mentioned as 31.12.2012. Further reliance is on post dated cheques issued by the Respondent dated 31.03.2013, 28.03.2013, 30.09.2015, 31.12.2015, 30.06.2017 which were dishonoured and also on loan recall notice

dated 05.03.2015 to the Corporate Debtor for repayment of the default amount and that the Corporate Debtor had paid a sum of Rs. 2 Crore on 14.02.2015 as stated in the said loan recall notice. Reliance is also placed on a letter dated 17.04.2018 to the Financial Creditor proposing for debt resolution wherein the Corporate Debtor proposed to pay the principal outstanding amount to the Financial Creditor over a period of 8-9 years provided if the repayment of interest overdue was waived by the Financial Creditor.

27. Pertinently even after objections raised by the Respondent that this did not form part of the record, no attempt was made by the Petitioners to make an application or file the same with an affidavit so the Respondents could deal with it. Only argument was that a copy of this letter was tendered previously at the time of arguments before the predecessors of this bench.
28. Reliance is placed by the Petitioners on the judgements of **Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli** Co-operative Bank Ltd and Anr. (2021) 7 SCC 313 for the proposition that section 5 of the Act of 1963 does not make it mandatory to file an application for condonation of delay in writing before granting such a relief and also reliance on *Dena Bank vs. C. Shivkumar Reddy & Another* (2021) 10 SCC 330 where the Supreme Court has held that the parties can file

additional documents in an application under Section 7 of the Code before the pronouncement of the judgment.

29. As regards the judgement of **Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli** Co-operative Bank Ltd and Anr. (2021) 7 SCC 313 it can be seen that there has to be sufficient cause and the same has to be placed on record by application or affidavit unless the facts are so compelling that oral application has to be made. Some of the relevant paragraphs of the judgement are as under;

50. There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 IBC is three years from the date of accrual of the right to sue, that is, the date of default.

“6. ... The present case being “an application” which is filed under Section 7, would fall only within the residuary Article 137.”

59. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute “sufficient cause” or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the appellant applicant for the delay in taking steps. Acceptance of explanation furnished

should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

62. *A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the court is satisfied that the appellant applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.*

100. *In any case, Sections 5 and 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles*

of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing "sufficient cause". It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

30. Thus what has to be seen is that if there is sufficient cause made out and if the said reasons have been explained on affidavit or by application. In the instant case the Petition is filed in 2018 and documents sought to be relied for extending limitation are of 2018, however no application or any affidavit is filed placing them on record, which would have given opportunity to the Respondents to respond. Hence this judgement would be of no avail to the Petitioners.

31. In **Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli** Co-operative Bank Ltd and Anr. (2021) 7 SCC 313 similarly also mandate that some application placing such documents on record by way of amendment or otherwise ought to be made which is absolutely lacking in the instant case. Some of the relevant paragraphs are as under;

52. There can be no dispute with the proposition that, to be a question of law involved in the case, there must be first a foundation laid in the pleadings, and the question should emerge from the sustainable findings of

fact, arrived at by courts of facts.....rendered in the context of a second appeal under Section 100 CPC.

69. Under Section 7(2) IBC, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, made in exercise of powers conferred, inter alia, by clauses (c), (d), (e) and (f) of sub-section (2) of Section 239 read with Sections 7, 8, 9 and 10 IBC, a financial creditor is required to apply in the prescribed Form 1 for initiation of the corporate insolvency resolution process, against a corporate debtor under Section 7 IBC, accompanied with documents and records required therein, and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, hereinafter referred to as “the 2016 IB Board of India Regulations”.

*132. It is true that, when the petition under Section 7 IBC was filed, the date of default was mentioned as 30-9-2013 and 31-12-2013 was stated to be the date of declaration of the account of the corporate debtor as NPA. However, it is not correct to say that there was no averment in the petition of any acknowledgment of debt. **Such averments were duly incorporated by way of amendment, and the adjudicating authority rightly looked into the amended pleadings.***

133. As observed above, the appellant Bank filed the petition under Section 7 IBC on 12-10-2018. Within three months, the appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decree dated 27-3-2017 in OA No. 16 of 2015 and the recovery certificate dated 25-5-2017, enabling the appellant Bank to recover Rs 52 crores odd. The judgment and

order/decree of the DRT and the recovery certificate gave a fresh cause of action to the appellant Bank to initiate a petition under Section 7 IBC.

134. *On or about 5-3-2019, the appellant Bank filed another application for permission to place on record additional documents including inter alia financial statements, annual report, etc. of the period from 1-4-2016 to 31-3-2017, and again, from 1-4-2017 to 31-3-2018 and a letter dated 3-3-2017 proposing a one-time settlement. This application was also allowed on 6-3-2021. The adjudicating authority, took into consideration the new documents and admitted the petition under Section 7 IBC.*

142. *There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.*

32. Thus, it can be seen that to condone delay or take judicial notice of additional documents, the same ought to be placed on record by way of application or amendment or affidavit. Simply by screen sharing, the same cannot be taken on record as the other side has no opportunity to deal with the same.

33. In this background it is relevant to note the ratio laid down by Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd. (2020) 15 SCC 1 in paragraph;

40. The discussion foregoing leads to the inescapable conclusion that the application made by Respondent 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 8-7-2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. NCLT having not examined the question of limitation; NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders [Babulal Vardhaji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., 2019 SCC OnLine NCLAT 295] [JM Asset Financial Reconstruction Co. Ltd. v. Veer Gurjar Aluminium Industries (P) Ltd., 2018 SCC OnLine NCLT 8539] deserve to be set

aside and the application filed by Respondent 2 deserves to be rejected as being barred by limitation.

34. The said ration has been followed by the NCLAT in Jagdish Prasad Sarada v. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020 held that '*10...the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condonation of delay is carved out....11.We are of the firm view that the determining factor is the three years period from date of default/NPA. This Appellate Tribunal has also observed in Rajendra Kumar Tekriwal Vs. Bank of Baroda in Company Appeal(AT) (Ins) No.225 of 2020 dated 13.08.2020 that the period of three years from the date of the Account of Corporate Debtor is classified as NPA then it becomes impermissible to proceed with Section 7 Application as observed in the para 11 of the Judgment... 12. All these leads to reiterate that the provisions of The Limitation Act, 1963 vide Section 238A of the I&B Code, 2016 will be applicable to all NPA cases provided they meet the criteria of Article 137 of the Schedule to The Limitation Act, 1963. The extension for the period of Limitation can only be done by way of application of Section 5 of The Limitation Act, 1963, if any case for the condonation of delay is made out.'*

35. Thus, for the reasons aforesaid the Petition is barred by limitation and is **dismissed**.
36. Registry is hereby directed to communicate the Order to the concerned Registrar of Companies and to both the parties.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)**