

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.231/Chd/Pb/2021**

**Under Section 7 of the IBC 2016**

**In the matter of:**

**Intec Capital Ltd.**

having its Regd. address at  
708, Manjusha Building,  
57, Nehru Place, New Delhi- 110019  
CIN No. : L74899DL1994PLC057410

....Petitioner-Financial Creditor

Vs.

**Guava Softs Pvt. Ltd.**

having its Regd. Office at  
2nd Floor, Sohan Palace, Opp BSNL Telephone  
Exchange, Mall Road Ludhiana PB 141001 IN  
CIN No. : U72200PB2006PTC030226

....Respondent-Corporate Debtor

**Judgment delivered on: 08 .01.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Petitioner/Financial Creditor : None for the petitioner/financial creditor

For the Respondent/Corporate Debtor : Mr. Iqbal Ratta, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**JUDGMENT**

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Intec Capital Ltd. (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against Guava Softs Pvt. Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Chandan authorized by the Financial Creditor and the affidavit verifying the contents of the application is on pages 33 to 35 of the petition. A copy of the Authority Letter along with notification is attached as Annexure 3 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-2 of the petition. The Corporate Debtor is stated to be incorporated on 12.05.2006. The company has its registered address at 2nd Floor, Sohan Palace, Opp BSNL Telephone Exchange, Mall Road Ludhiana PB 141001 IN. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are narrated hereunder:

3.1 M/s Intec Capital Limited (**'Intec'/Financial Creditor'/ Applicant'**) is a Non-Banking Financial Company duly registered with Reserve Bank of India, engaged *inter-alia* in the business of providing financial facility.

3.2 M/s Guava Softs Pvt. Ltd. (**'Corporate Debtor'/ 'Respondent'**) is a company engaged in the business of providing information technology-based services including developing websites and dealing in domains. Its promoters/ directors/ shareholders approached the Financial Creditor for availing financial facilities, by making an application to the Financial Creditor.

3.3 Based on the documents and information given to the Financial Creditor and the confidence shown to repay the loan amount, the Financial Creditor approved the loan application of Corporate Debtor and issued the sanction letter dated 17.04.2013 for loan facility of Rs. 94,00,000 (ninety four lakhs only). Thereafter, the Corporate Debtor entered into Loan Agreement dated 25.04.2013 and various other transitional documents with the Financial Creditor.

3.4 That as per the Loan Agreement, the Financial Creditor had financed the loan on the terms i.e. Interest 14.24% Reducing ; Amount (INR) Rs 2,58,030 each in 48 installments ; First EMI & Last EMI - 16.05.2013 & 16.05.2017 ; Collateral Amount (INR) 28,20,000 ; Finance Charges Amount (INR) 1,16,180. Pursuant to the loan agreement and towards performance of the loan agreement, the Corporate Debtor duly handed over post dated cheques to the financial creditor towards the repayment of loan. As per the Loan Agreement certain assets were hypothecated to Financial Creditor; on which first and exclusive charges by way of hypothecation was created in the favour of Financial Creditor, which is as follows : -

<b>Sr.No.</b>	<b>Particulars</b>	<b>Amount</b>
1	Raised Floor Model No. 40NAL	76,146
2	2.84 Tr (Actual Capacity) Amico Model	6, 15,268
3	Poer Backup System, with all accessories.	5,66,943
4	26 AH Battery	1,49,962
5	UTM hardware Appliance	12,88,813

6	Cisco 3925	3,09,750
7	IBM Flex System	64,57,500
8	25 KVA Solent DG Set	3,15,000

3.5 As per the Loan Agreement and the letter executed by the Corporate Debtor for the Disbursement Instruction of the Loan Amount of Rs. 94,00,000/-, the loan was disbursed by the Financial Creditor vide cheque on different dates to various vendors of the Corporate Debtor and the Corporate Debtor itself. Details of Disbursement for Loan Account LNLUD00I13140002314 is as follows :-

Sr. No.	Particulars	Date	Cheque No.	Amount Disbursed (INR)
1	Targus Technologies Pvt Ltd	11/05/13	333802	15,00,000
2	Targus Technologies Pvt Ltd	05/05/13	333803	15,00,000
3	Targus Technologies Pvt Ltd	03/05/13	333804	10,00,000
4	Guava Softs Pvt. Ltd.	29/04/13	333805	20,42,070
5	Balaji Gensets	17/05/13	83237	3,15,000
6	Guava Softs Pvt. Ltd.	17/05/13	83238	1,02,000
7	TOTAL			64,59,070

3.6 It is stated that the Corporate Debtor started making defaults in the repayment schedule in the Loan Account even after repeated requests by the financial creditor the instalments were not paid. Thereafter, the Financial Creditor vide Loan recall cum Arbitration Notice recalled the loan, following is the details :-

Sr.No.	Account No.	LRN Date	Loan Agreement Clause
1.	LNLUD0011314-0002314	14.10.2015	14.1, 15.1.1 &32

3.7 But the Corporate Debtor even defaulted after receiving the loan recall cum arbitration notice. Thus, Arbitration proceedings were initiated which resulted in Arbitral Award dated 30.04.2016 in Loan Account, in favour of Financial Creditor but Corporate Debtor failed to comply and continued to default. Thus, the Corporate Debtor wrongfully withheld the legitimate money and failed to make repayment as per the repayment schedule. This act of the Corporate Debtor constituted the "Events of Default" as defined under clause no 14 of loan agreement and further clause no. 15 of loan agreement provides for the "Consequences of Default and Rights available to the Intec", in case of commission of "Events of Default" by the Corporate Debtor, including termination of Loan Agreement and enforce all or any of the security(ies) provided/furnished by the Corporate Debtor. Under the Loan Account No. LNLUD00113140002314, the details of last transaction is as follows:-

S. No	Particular	Date	Cheque No.	Amount
1.	Cheque Bounced	24.04.2017	321800	2,58,030

The total outstanding financial debt after adjusting collateral security & amount paid, stands at Rs. 7,02,70,698/ (Rupees Seven Crore Two Lakh Seventy

Thousand Six Hundred and Ninety Eight Only) as on 30.06.2021, is due & payable by Corporate Debtor in respect of the loan account.

3.8 It is submitted by the petitioner that it is evident that the Corporate Debtor has committed default in the repayment of the Debt owed to the Financial Creditor and the Corporate Debtor is also concealing the financial by not filing its audited financial records with ROC since 31.03.2016 which makes it very evident that the corporate debtor has become commercially insolvent and is unable to pay his debt. Therefore, submitted that this is a fit case for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.

4. It is stated in Part-IV of Form No.1 that the total outstanding dues of the corporate debtor towards the financial creditor amounting to Rs. 7,02,70,698/- date of default is 14.10.2015. The date of default can also be taken as 24.04.2017 when the cheque instrument no. 321800 got bounced i.e. when the corporate debtor account was classified as Non-Performing Asset. Copy of Bank Account Statement maintained by the applicant evidencing disbursement to the respondent (Annexure-5), Copy of the statement of dues till 30.06.2021 (Annexure-6), Copy of recall notice dated 14.10.2015 (Annexure-7), Copy of loan transaction details maintained by the applicant for the loan account of the respondent (Annexure-8), copies of the order dated 23.03.2020, 08.03.2021 & 27.04.2021 of the Hon'ble Supreme court of India in suo motu writ petition (civil) no.3 of 2020 (Annexure-9), copy of loan agreement for loan account LNLUD00113140002314 along with other transitional documents (Annexure- 10), copy of form-8 filed with ROC to create charge along with certificate of charge (Annexure 11), copy of arbitral award in respect of loan account LNLUD00113140002314 dated 30.04.2016 (Annexure 12)

, record of default available with information utility in respect of loan account of the corporate debtor (Annexure 13) are attached with the main petition.

5. The notice of this petition was issued to the respondent-corporate debtor on 01.12.2021 as to why this petition may be not admitted. The Affidavit of service was filed vide Diary No. 01096/2 dated 17.02.2022. Reply has been filed by learned counsel for the respondent-corporate debtor vide diary No.01096/3 dated 28.10.2022. As per the reply, it is submitted that the Company Petition is time barred. It is submitted that as per the facts averred in the Company Petition, the same is time barred as on 8.9.2021 i.e. when the Company Petition was prepared to be filed or on 24.9.2021 when Affidavits in support of the Company Petition/Application were attested, It is submitted that Clock of Limitation had started running much prior to 14.10.2015 but deeming that the same had started clicking on 14.10.2015 even then Company Petition could be filed on or before 13.10.2018. However, by pleading that Respondent Company had issued the PDCs and that the limitation stood extended is wrong in terms of Sections 18 and 19 of Limitation Act commemorating the dates of dishonor of said PDCs. Further submitted that Loan of Rs.94.00 Lacs was extended on 17.4.2013. Loan Agreement dated 17.4.2013 (part of Annexure 10 at pages 101 to 111 of the Company Petition) was executed. LOAN was payable through 48 monthly installments of Rs.2,58,030/- each. First of such instalment was to be payable on 16.5.2013 and the last being payable on 16.5.2017. Out of the sanctioned Loan of Rs.94,00,000/- a sum of Rs.64,59,070/- only was disbursed. When Corporate Debtor failed to pay the installments the Company "terminated and recalled the said Loan Agreement" vide Loan Recall Notice dated 14.10.2015. With purpose, the Financial Creditor has not mentioned when the last instalment was paid.

Though the clock of limitation shall start tickling when there was first breach of the terms of the Loan Agreement yet in any case ticking of clock must begin on the date of issuance of the Recall Notice dated 14.10.2015. It is submitted that in pursuance of order dated 11.11.21, financial Creditor had submitted its Additional Affidavit of said one Ms. CHANDAN having been signed on (date not mentioned) but having been verified on (date not mentioned) and attested before Notary Public, Delhi on 27.11.2021. Such an Affidavit is no affidavit in the eyes of law. Be that as it may, through this Affidavit Financial Creditor has attempted to show that the Company Petition was within time. As per the same though Loan Recall Notice dated 14.10.2015 had been issued (word termination of Loan Agreement has been kept concealed) yet Financial Creditor had continued presenting the Post Dated Cheques (PDCs) which were bounced. Last of such Cheque for Rs.2,58,030/- dated 25.4.2017 bounced on (date not mentioned). As such, as per the Financial Creditor clock of limitation was to start running on 24.4.2017 and that in terms of Section 18 and 19 of the Limitation Act, 1963 the limitation stood extended 23.4.2020. It was pleaded that the period of Limitation stood excluded from 15.3.2020 to 2.10.2021 and that Company Petition could legally be filed upto 01.01.2022, which is absolutely wrong.

5.1 Lastly submitted that the person filing the application was not through a person competent to file the same. Above titled Company Petition on behalf of Financial Creditor INTEC CAPITAL LIMITED has been filed through one Ms. CHANDAN daughter of CHOUDHARY VIRPAL SINGH who has claimed herself to be a Manager/Authorized signatory of INTEC CAPITAL LIMITED. In support of her competency, reliance has been placed on two documents viz. **Annexure-3** at pages 40-41. At page 41 is a certified copy of Board Resolution passed by the

Board of Directors of Intec Capital Limited dated 24.05.2019. Through the said resolution Shri SANJEEV GOEL, Managing Director of the Company has been vested with the powers to "with further powers to delegate in the ordinary course of business" such as 1.1. To appoint Advocates, sign Vakalatnama, sign and verify Complaints/plaints/ applications/replies etc., file, institute and or defend Civil/Criminal proceedings by or against the Company. At page 40 of the Company Petition is Authority Letter dated 9.11.2020 whereby said Shri SANJEEV GOEL is shown to have delegated his authority as above unto Ms. CHANDAN daughter of CHAUDHRY VEERPAL SINGH, Manager-NCLT to represent the Company before NCLT/NCLAT, to sign, file, verify applications or other documents etc. It is submitted that delegation of powers as above is not permissible under the law. Further, such an Authority Letter has not been accepted by the Courts in the matter of representation of the Company before Courts etc. and above Board Resolution and the said Letter of Authorization in favour of Ms. CHANDAN shall not be enough so to empower and authorize her to file and institute the extant Company Petition. In reply the respondent corporate debtor has placed reliance upon some judgements i.e. University of **Kashmir vs Ghulam Nabir Mir** reported as AIR 1978 (NOC) 114. In this Judgment the Hon'ble Jammu and Kashmir High Court held that Order 29 Rule 1 does not authorise the person to institute a Suit on behalf of the Corporation. It merely authorises the person to sign and verify the plaint on behalf of the Corporation ; **Swadharna Swarajya Sangha vs Indian Commerce And Industries** reported as (1998) IMLJ 724 the Hon'ble Madras High Court held that "the directors have passed no resolution deciding to institute a suit binding the institution with the result of the suit. The suit having been filed without there being any resolution and as the corporation can only file a suit if there is a

resolution for the same, the suit was not filed by an authorised person under Order 29, Rule I of the Code of Civil Procedure" ; **Seth Kirpal Chand Vs The Traders Bank Ltd** reported as AIR 1954 J&K 45 the High Court of Jammu and Kashmir held that while dealing with the question that though there is no original authorisation, a subsequent ratification could render it legitimate. It was held:-

"Here the initiative to institute the suit could be properly transferred to the manager under article 105 of the articles of association, and, therefore, the subsequent ratification of the act of the agent by the principal could cure the original defect."

6. The learned counsel for the petitioner did not file the rejoinder as observed in order dated 24.01.23 of this Adjudicating Authority .

7. The written submissions have been filed by the petitioner vide Diary No.1096/4 dated 19.01.2023 and by the respondent/corporate debtor vide diary No.1096/6 dated 17.05.2023. Wherein the similar facts are stated in the application have been mentioned. Therefore, for the sake of brevity the same are not repeated herein.

8. Further reliance has been placed by the financial creditor on the judgements i.e. **Company Appeal (AT) (Ins) No.441 of 2019 titled 'Mr. Vineet Khosla v. M/s. Edelweiss Applicant Asset Reconstruction Company Ltd.'** ; **Hon'ble Supreme Court Judgment Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr Civil Appeal No. 323 of 2021.** ; **Hon'ble Supreme Court of India in Misc Application no. 21 of 2022 under Suo Motu Writ Petition (Civil) No.3 of 2020 dated 10-01-2022 excluding the period 15-03-2020 to 28-02-2022 for the purposes of computing the limitation.** ;

***Innoventive Industries Ltd Versus ICICI Bank & Anr., CIVIL APPEAL Nos. 8337-8338 OF 2017 dated 31st August 2017.***

8.1 The learned counsel for respondent corporate debtor also placed reliance upon the judgements i.e. ***Jignesh Shah and another v. Union of India 2019 AIR SC 4758 ; Rajendra Narottamdas Sheth Vs. Chandra Prakash Jain, Civil Appeal No.4222 of 2020 ; N.C. Goel & Maya Goel Vs. Piyush Infrastructure India P Ltd ; Indian Renewable Energy Development Agency Ltd. Vs. Shri Sai Kripa Sugars and Allied Industries Ltd. decided on 9.2.2023. ; M/S. Sundaram Finance Ltd Vs. Noorjahan Beevi & Anr, Civil Appeal No.7245 of 2008 ; Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphulu Co-operative Bank Ltd passed by Hon'ble Supreme Court ; Babulal Rukmanand Vs Official Liquidator Bharatpur Oil Mills P Ltd.***

9. We have heard the learned counsel of the respondent-corporate debtor but none appeared on behalf of the petitioner and have also perused the written submissions and records available of both parties carefully.

10. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—  
(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

11. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is mentioned as 14.10.2015 i.e. when the corporate debtor account was classified as Non-Performing Asset. The present petition is filed vide Diary No. 01096 dated 16.09.2021 and was refiled vide diary No. 01096 dated 30.09.2021. It is contended by the respondent that the present petition is beyond the limitation and

time-barred. It is submitted by the petitioner that the last date of default under the Loan Account which was the last transaction reflecting under the LTD (Loan Transaction Details) as PDC (Post-dated Cheque) having Cheque Instrument no. 321800 for amount Rs. 2,58,030/- dated 24.04.2017 which got bounced which was pursuant to the agreed terms and conditions for the repayment of the EMI by the Respondent. The Financial Creditor exercised its right under the relevant Clause 5.2 of the Loan Agreement dated 25-04-2013. Reliance is placed on ***Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr., Civil Appeal No. 323 of 2021 passed by the Hon'ble Supreme Court (Relevant Para 33, 34 & 35)*** a three-judge Bench of the Hon'ble Supreme Court has held that for the purposes of Insolvency and Bankruptcy Code, 2016 (IBC), balance sheet entries could constitute an acknowledgment of debt under Section 18 of the Limitation Act, 1963. (Annexed as Annexure-3). Further submitted that considering the said Balance Sheet and pursuant to the dishonouring of PDC (Post-dated Cheque) having Cheque Instrument no. 321800 for amount Rs. 2,58,030/- dated 24.04.2017, the limitation for filing a Petition before this Adjudicating Authority for the above mentioned default ended on 24.04.2020 i.e. 3 years from 24-04-2017 as per Article 137 of the Limitation Act 1963.

It is further stated by learned counsel for the petitioner that the date of default can be taken as 24.04.2017 i.e. when the cheque got bounced, the present petition is to be filed within 3 years till 24.04.2020. The period from 15.03.2020 till 28.02.2022 stands excluded by virtue of order dated 27.04.2021 passed by Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020.

However, this contention of Ld. Counsel for the petitioner that petition is within limitation is devoid of the legal force as no supporting documents including the PDC (Post-dated Cheque) having Cheque Instrument no. 321800 for amount Rs. 2,58,030/- dated 24.04.2017 on the basis of which the limitation is claimed within the period for three years have been placed on record by the petitioner in support of this plea.

12. Moreover, no date of the cheque bouncing is mentioned and no memo of the bank regarding dishonoring of the cheque is placed on record. Even no date of last payment by the Corporate debtor has been mentioned. The date of default is also claimed as 14.10.2015 when the loan recall notice was issued. Taking this date of default into consideration, then application u/s 7 should have been filed before 14.10.2018 i.e. without three years of limitation. Thus, taking from any angle the application is badly time-barred. The authority (supra) **Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr.**, relied upon by learned counsel for the applicant is not applicable to the facts and circumstances of the case in hand, thus, distinguishable.

13. Further, it is seen from the records that the petition is not filed by the competent/authorized person i.e. Ms. Chandan daughter of Choudhary Virpal Singh as the Board Resolution dated 24.05.2019 passed by the Board of Directors of Intec Capital Limited has authorized Shri Sanjeev Goel, Managing Director of the Company to sign Vakalatnama, sign and verify Complaints/plaints/applications/replies etc., file, institute and or defend Civil/Criminal proceedings by or against the Company. The Authority Letter dated 9.11.2020 whereby Shri Sanjeev Goel has delegated his authority to Ms. Chandan to represent the

Company before NCLT/NCLAT, to sign, file, verify applications or other documents etc cannot be considered on the principle of maxim "*Delegatus non potest delegare*" i.e. the rule that a person to whom a power, trust, or authority is given to act on behalf, or for the benefit of another, cannot delegate this obligation unless expressly authorized to do so. In these circumstances, Sh. Sanjeev Goel could not have further delegated his power of an authorized representative of the company vide board resolution dated 24.05.2019 to sign/ file/ verify the complaints/ plaints/ pleadings/ applications/ replies/ replications/ affidavits/cross objection/other allied documents to said Ms. Chandan d/o Choudhary Virpal Singh.

14. In the light of the discussion foregoing, since, the petition u/s 7 of the Code is not filed by an authorized person thus is incomplete. Moreover, this petition u/s 7 is badly barred by limitation, hence not maintainable, consequently dismissed without any order as to costs.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

January 08 ,2024  
J.S.W.