

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P. (I.B) No.347/7/NCLT/AHM/2018

**Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.01.2021**

Name of the Company: Goyal and Co.(Constructions) pvt. Ltd
V/s
Supernova Polyfab Pvt. Ltd

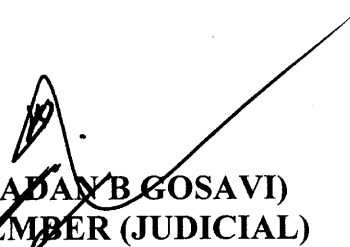
Section: 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


**(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)**


**(MADAN B GOSAVI)
MEMBER (JUDICIAL)**

Dated this the 28th day of January, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

CP (IB) No.347/7/NCLT/AHM/2018

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

Goyal And Co. (Constructions) Private Limited.
Having Registered office at
10th Floor, Commerce House-4,
Besides Reliance Petrol Pump,
100 ft Road, Prahladnagar,
Satellite, Ahmedabad
Gujarat-380015

... Financial Creditor

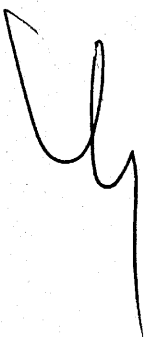
Versus

M/s Supernova Polyfab Private Limited.,
CIN:U17119GJ2002PTC040498
Registered Office at :
Plot No. 107 / 108, GIDC Kerala,
Sarkhej Bavla Highway,
Nr. Bavla, Tal-Dholka,
Ahmedabad, Gujarat-382220

.... Corporate Debtor

Date of Hearing: 25th January, 2021

Date of Pronouncement of Order 28th January, 2021



Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Ms. Natasha Shah appeared for the Financial Creditor.

ORDER

[Per: Madan B. Gosavi, Member (Judicial)]

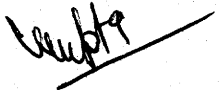
1. Goyal And Co.(Constructions) Private Ltd. – Financial Creditor filed this application under Section 7 of IB Code, 2016 to initiate CIRP of the Corporate Debtor M/s. Supernova Polyfab Private Limited having CIN No. U17119GJ2002PTC040498 on a ground that Corporate Debtor committed default in paying financial debt of Rs.1,75,74,917/-.
2. It is seen from the record that notice of this application was served on the Corporate Debtor by way of paper publication in widely circulated daily newspaper but no one appeared for the Corporate Debtor. Hence, on 19.08.2019, this Adjudicating Authority passed order to hear the matter ex-parte against the Corporate Debtor.
3. We perused the evidence on record produced by the Financial Creditor. Annexure-C, the Financial Creditor produced an extract of entries in its bank account maintained in Kotak Mahindra Bank Ltd. Perusal of its shows that on 31.10.2010,

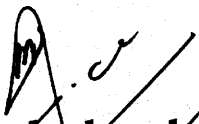
amount of Rs.75,00,000/- was transferred in favour of the Corporate Debtor by way of RTGS. According to the Financial Creditor, it was in form of the corporate deposit. Corporate Debtor did not pay back the debt.

4. Upon our query, Learned Counsel for the Financial Creditor submitted that there is no loan agreement in writing specifying the terms of repayment. There is no acknowledgement of the debt on the part of the Corporate Debtor.
5. On the basis of whatever evidence produced by the Financial Creditor, we hold that debt is hopelessly time barred. Although, Financial Creditor stated the date of default as 01.01.2016, but it did not produce the evidence to establish its claim. In this case, amount was disbursed in the year 2010. Financial Creditor ought to have claimed repayment in the year 2013. Right to apply for such recovery have accrued in the year 2013. Any proceedings for recovery or otherwise ought to have been filed on or before 2016. This proceeding is filed in the year 2018. It is filed beyond period of limitation.
6. Hon'ble NCLAT in the case of V. Padmakumar Vs. Stressed Assets Stabilization Fund (SASF) & Anr. (Company Appeal (AT) (Insolvency) No. 57 of 2020) and thereafter in case of Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. & Anr. (Company Appeal (AT) (Insolvency) No. 385 of 2020) has held after noting number of rulings of the Hon'ble

Supreme Court right from B.K. Educational Services till Babulal Gurjar, has ultimately held that *"If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing of such application"*.

7. In view of above, we hold that this application is not maintainable being time barred, same stands rejected.
8. This CP(IB) 347 of 2019 stands disposed-off.
9. Urgent certified copy of this order may be issued to all concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (Technical)


(Madan Bhalachandra Gosavi)
Member (Judicial)

Signed on this, the 28th day of January, 2021.

Prakash