

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

TP 81 of 2019 [CP(IB) 140 of 2019]

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.09.2020

Name of the Company:

United Bank of India
V/s
Krishidhan Seeds Pvt Ltd

Section:

7 of Insolvency and Bankruptcy Code, 2016

ORDER

Learned Counsel Mr. Anip Gandhi appeared for Financial Creditor.

Learned Counsel Mr. Kunal Vaishnav appeared for Respondent.

The case is fixed for pronouncement of order. The order is pronounced in open Court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

Dated this the 16th day of September, 2020


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

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

CP (IB) No.140/7/NCLT/AHM/2019

In the matter of:

M/s. United Bank of India,
Having its' Branch Office at:
Stressed Assets Management Branch,
United Bank of India Building,
Mezzanine Floor,
25, Sir P.M. Road, Fort,
Mumbai – 400001.

... Petitioner/Financial Creditor

V/s.

M/s. Krishidhan Seeds Pvt. Ltd,
302, Royal House,
11/3, Ushaganj,
Indore,
Madhya Pradesh.

... Respondent/Corporate Debtor

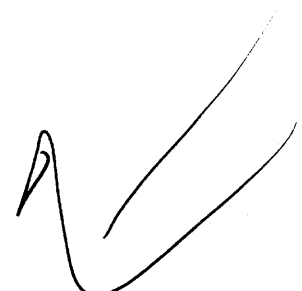

Order delivered on 16th September, 2020

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Learned Counsel Mr. Anip Gandhi along with Mr. Raju Kothari
for the Financial Creditor.

Learned Sr. Counsel, Mr. Saurabh Soparkar along with Learned
Counsel Mr. Kunal Vaishnav appeared for the Corporate Debtor.



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

1. M/s. United Bank of India, the Financial Creditor, filed this application under Section 7 of Insolvency and Bankruptcy code, 2016 against M/s. Krishidhan Seeds Pvt. Ltd. with CIN: U01111MP1996PTC017386, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process ("CIRP") of the corporate debtor on the grounds that corporate debtor committed default in paying financial debt of Rs.45,39,96,106=63 (Rupees Forty-Five Crore Thirty-Nine Lakh Ninety-Six Thousand One Hundred Six and Sixty-Three Paisa only).
2. The following facts are not in dispute.
3. By various sanction letters dated 19.12.2012, the Financial Creditor granted and disbursed in favor of the Corporate Debtor, term loan and cash credit facilities. Terms of repayment of the loan had been extended from time to time. The corporate debtor committed default, and on 30.09.2014, its loan account has declared to be a Non Performing Asset ("NPA") (Para 2, Part IV of the Financial Creditor's application filed under Rule 4 of IBBI (Application to adjudicating authority) rules 2016).
4. The Financial Creditor filed this application to start the Corporate Insolvency Resolution Process of the Corporate Debtor on **29.01.2019**.

5. The notice of this application was duly served to the Corporate Debtor. One of its directors appeared in the proceeding and filed an affidavit in reply. We have gone through the reply affidavit and note his defense in Para 3.3. He contended that the date of default, as stated by the Financial Creditor is 30.09.2014. Since this application was filed on **29.01.2019, being time barred, is not maintainable.**
6. We heard learned Advocate Mr. Anip Gandhi for the Financial Creditor and learned Sr. Counsel Mr. Saurabh Soparkar of the Corporate Debtor.
7. Since the Corporate Debtor did not dispute that the financial debt which was more than Rs.1 Lakh (under Section 4 IBC before its amendment) was due and payable by them, and the Corporate Debtor committed default in paying the same, we have now only to see whether this application under Section 7 of IBC filed by Financial Creditor is time barred.
8. Learned Counsel Mr. Anip Gandhi appearing for the Financial Creditor submitted that the date of NPA of the loan account of the Corporate Debtor is 30.09.2014. The Financial Creditor sent notice to the Corporate Debtor under Section 13(2) of SERFAESI Act on 03.04.2014 and 03.11.2014. The Petitioner filed O.A. No.145/2016 on 19.10.2015 for Recovery Proceeding in DRT, Pune which is said to

be pending. This action of the Financial Creditor saved the period of limitation running out against it. The Learned Counsel also submitted that the Corporate Debtor, in its balance-sheets till March 2018, has acknowledged this debt. Hence under Section 18 of Law of Limitation, the time to file this application stands extended.

9. As against this, the Learned Sr. Counsel for the Corporate Debtor submitted that there is no dispute relating to the fact that 30.09.2014 is the date of default. Since this application has been filed on 19.01.2019, it is filed beyond the period of three years as stated in Article 137 of Law of Limitation. The Learned Sr. Counsel further submitted that the statement of the Corporate Debtor relating to the debts stated in its balance sheets cannot be said to be an acknowledgement of the debt within meaning of Section 18 of the Law of Limitation for the purpose of computing period of limitation for filing application under Section 7 IBC. To buttress his argument, the Learned Sr. Counsel relied on the judgment of the Hon. NCLAT in Company Appeal no. 57 of 2020 (V. Padmakumar v/s Stressed Assets Stabilization Fund & Anr.).
10. The Learned Sr. Counsel also relied on the judgment of Hon'ble Supreme Court in case of Babulal Gurjar v/s Veer Gurjar Aluminum Industries Pvt. Ltd (Civil Appeal no. 6314/2019). He further submitted that Insolvency Proceedings cannot be initialed on the

basis of time barred debts. This application being time barred is not maintainable.

11. We have perused the evidence on record. We have considered submissions of both Learned Counsels.

12. It is not in dispute that in this case the loan account was declared to be an NPA on 30.09.2014. This proceeding was filed on 29.01.2019. So it appears that it was filed beyond the period of three years from the date on which the right to apply was accrued to the Bank. Having noted so, we have to consider whether the period of Limitation said to be extended because the corporate debtor's balance sheets show that the debt is still to be payable.

13. In case of 'V. Padmakumar', Hon. NCLAT dealt with this aspect and held that:

"(i) As the filing of Balance Sheet/ Annual Return being mandatory under Section 92(4) of the Companies Act, 2013, failing of which attracts penal action under Section 92(5) & (6), the Balance Sheet / Annual Return of the 'Corporate Debtor' cannot be treated to be an acknowledgement under Section 18 of the Limitation Act, 1963.

(ii) If the argument is accepted that the Balance Sheet / Annual Return of the 'Corporate Debtor' amounts to acknowledgement under Section 18 of the Limitation Act, 1963 then in such case, it is to be held that no limitation would be applicable because every year, it is mandatory for the 'Corporate Debtor' to file Balance Sheet/ Annual Return, which is not the law."

14. In view of the above rulings, we hold that the acknowledgement of the debt in the balance sheets of the corporate debtor does not help the financial creditors to maintain this time barred application.
15. In case of Babulal Gurjar (cited supra) Hon. Apex Court while considering similar dispute relating to the applicability of the provisions of the Law of Limitation vis-à-vis IBC proceedings, stated with approval.

It's finding in case of "B. K. Educational Service" in following words:

"42. It is thus clear that since the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue," therefore, accrues when a default occurs. 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 such application."

16. Hon'ble Apex Court, by taking note of facts in that case and while rejecting application under Section 7 of I.B. Code, further held that:

"33. Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application

under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they enure to the benefit of 62 respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as '8.7.2011 being the date of NPA'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No. 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part V of the application and even in residuary Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgment or any other date of default."

17. In this case also the debt of default is 30.09.2014 (i.e., the date of NPA). This application under Section 7 IBC is filed on 29.01.2019. Hence it is filed beyond the period of Limitation. Hence we reject the application by the following order:

ORDER

18. The application is rejected. The proceedings stands disposed of.

Virendra
16/9/2020

(Virendra Kumar Gupta)
Member (Technical)

Madan B. Gosavi
16/9/2020

(Madan B. Gosavi)
Member (Judicial)