

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

TP/MP/ 31 of 2019 [CP(IB) 562 of 2018]

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 11.08.2020

Name of the Company:

Dena Bank
V/s
Maya Spinners Ltd

Section:

7 of the Insolvency and Bankruptcy Code

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 11th day of August, 2020.

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

CP (IB) No.562/7/NCLT/AHM/2018

In the matter of:

M/s. Dena Bank,
Now Known as Bank of Baroda,
Having its registered office at:
Dena Corporate Centre,
C-10, G-Block, Bandra Kurla Complex, Bandra (E),
Mumbai - 400051.

... Applicant/Financial Creditor

V/s.

M/s. Maya Spinners Ltd.
21, Industrial Area,
Sector 3rd, Pitampur,
Dhar, Madhya Pradesh.

... Respondent/Corporate Debtor

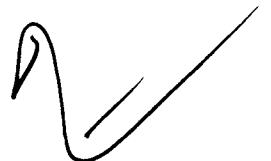
Order delivered on 11th August 2020

**Coram: Hon'ble Mr. Madan B. Gosavi, Member(J)
Hon'ble Mr. Virendra Kumar Gupta, Member (T)**

Appearance:

Learned Counsel Mr. R. K. Trivedi, Advocate, for the Financial
Creditor.

Ld. Counsel, Mr. Kurven K. Desai, Advocate, for the Corporate Debtor.



ORDER

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

1. Financial Creditor, M/s. Dena Bank (now Bank of Baroda), filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against M/s. Maya Spinners Limited, Corporate Debtor, to start the Corporate Insolvency Resolution Process ("CIRP") on the ground that the Corporate Debtor committed default in paying financial debt of Rs.128.32 Crores.
2. The following facts are not in dispute.
3. On 29.11.1996, the Bank granted/ disbursed in favour of the Corporate Debtor, a term loan of Rs.655.80 Lakh. The terms of repayment of the loan were renewed from time to time.
4. As the Corporate Debtor failed to pay the loan as agreed, on 01.10.1999, its loan account was declared as Non-Performing Asset ("NPA"). In the year 2002, the Bank filed the recovery proceedings against the Corporate Debtor in Debts Recovery Tribunal ("DRT"), Jabalpur. While that proceeding was pending, the Bank filed this application for the initiation of CIRP of the Corporate Debtor.
5. The Corporate Debtor was served a notice of this application. It appeared through one Mr. Shyam Sundar

Choudhary, one of the Directors who filed affidavit in reply. He raised some contention to resist this application but mainly contended that it is a time barred claim.

6. We have gone through the pleadings and material on record. We heard the Learned Counsel appearing for the parties.
7. The Learned Counsel for the Bank submitted that although the loan account became NPA in the year 1999, the Bank has already initiated proceedings in DRT, Jabalpur. Hence, upon bank's filing proceedings against the Corporate Debtor, well in time, time clock stopped running against the Bank. He submitted that in above facts it may be held that the claim is not time barred.
8. As against the Learned Counsel for the Corporate Debtor submitted that the pendency of recovery proceedings against the Corporate Debtor does not **ipso-facto** condone delay of twenty (20) years because filing of this application does time barred claim, the application may be rejected.
9. In view of the above, at the outset, we have to see whether the claim is a time barred or not?
10. It is not in dispute that the loan account of the Corporate Debtor was declared to be NPA in the year 1999. Apparently, it appears is it is a time barred claim.

However, the Learned Counsel for the Bank submitted that since the Bank had filed proceedings in DRT, Jabalpur for the recovery of loan amount within the limitation, the time had stopped running against the Bank.

11. We are unable to accept the above submission for the Learned Counsel for the Bank, In the case of **Gaurav H. Dave Vs. Asset Reconstruction Co. (India) Limited (Civil Appeal No. 4952 of 2019)** the Hon'ble Apex Court considered this situation and set controversy at the rest as to how the law of limitation is applicable to the proceedings under the I. B. Code.

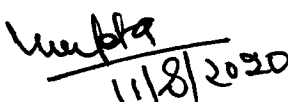
12. It has been held in Para-6 that:

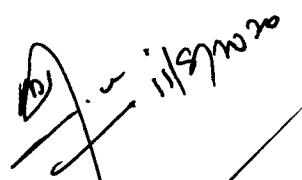
“6) Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being “an application” which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee’s reliance on para 7 of B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.”

13. In this case also, the loan account of the Corporate Debtor declared to be NPA in the year 1999. So, default took place in 1999. This Application is filed in the year 2018, i.e. almost eighteen (18) years from the date on which right to sue accrued to the Bank. In view of the facts of the case, we hold that it is a time barred claim, hence, we pass the following order:

ORDER

14. The application is rejected.
15. Urgent certified copy of this order may be issued to all concerned parties, if applied for, upon compliance with all requisite formalities.
16. Consequently, the present Petition CP(IB) No.562/7/NCLT/AHM/2018 stands dispose of. No order as to costs.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

AT