



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-207**  
IB-46/ND/2023

**IN THE MATTER OF:**

Akasa Finance Ltd (Formely known as Pooja finlease Ltd.)

**....Applicant**

**Vs.**

Sai Precious Traexim Pvt. Ltd.

**.....Respondent**

**SECTION**

U/s 7 IBC

**Order delivered on 29.08.2023**

**CORAM:**

**SHRI P.S.N PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets. IB-46/ND/2023 stands **dismissed**.

Sd/-  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

Sd/-  
**(P.S.N PRASAD)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 46 of 2023**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**Akasa Finance Limited  
(Formerly known as Pooja Finlease Limited)  
70/32A, Rama Road, Shovaji Marg, Najafgarh Road,  
Moti Nagar, New Delhi - 110015**

...Applicant/Financial Creditor

*Versus*

**Sai Precious Traexim Pvt. Ltd  
C/O S-440 Third Floor Greater Kailash II  
New Delhi DL 110048**

...Respondent/Corporate Debtor

**Order pronounced on: 29.08.2023**

**Coram:**

**SHRI P.S. N. PRASAD, HON'BLE MEMBER (JUDICIAL)  
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

For the Applicant : Mr. Rajendra Beniwal, Mr. Aman Singhania, Mr.  
Rajat Kashyap, Advs.

For the Respondent : Ms. Pratiti Rungta, Adv.



## **ORDER**

**PER: P.S. N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

1. This is an Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Akasa Finance Limited (Formerly known as Pooja Finlease Limited) (hereinafter referred to as 'Financial Creditor'), represented by Mr. Brajesh Pandey, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Sai Precious Traexim Pvt. Ltd. [CIN: U51398DL2005PTC139379] ("Corporate Debtor"). The instant application was filed on 22.12.2022.
2. The Corporate Debtor was incorporated on 05.08.2005, having CIN: U51398DL2005PTC139379, under the Companies Act, 1956. Its registered office is at S-440, Third Floor, Greater Kailash- I, New Delhi- 110048. Therefore, this Bench has jurisdiction to deal with this application.
3. The present application was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a financial debt totaling to a sum of Rs. 5,07,55,680/- (Rupees Five Crore Seven Lakhs Fifty-Five Thousand Six Hundred and Eighty Rupees).

**Submissions of learned Counsel appearing for the Financial Creditor are as under: -**

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
  - a) In the present case, the Corporate Debtor had defaulted in repayment of loan to PNB, hence it approached the Financial Creditor for refinancing the loan and grant of financial facility for repayment of its loan to PNB. Accordingly, the 1<sup>st</sup> Loan of Rs. 75 Lakh was granted on 11.06.2018.



- b) Thereafter, the Corporate Debtor availed further financial facilities. Thus, the Financial Creditor had granted and disbursed a total debt of INR 2,15,00,000/- to the Corporate Debtor. As per the Corporate Debtor's own admission, such amount was disbursed after deducting interest in advance by the Financial Creditor in terms of the Loan Agreements. Thus, while a total debt of INR 2,15,00,000/- was granted and disbursed to the Corporate Debtor, the net disbursement received by the Corporate Debtor was INR 1,99,02,450/- as evident from the Account Statements. Furthermore, the financial facilities were secured through Registered Mortgage Deed dated 22.06.2018 and the property was mortgaged by the Corporate Debtor. The Corporate Debtor in its reply has not denied receiving the Loan Amount from the Financial Creditor. Thus, there exists a financial debt of more than INR 1 crore and the Corporate Debtor had admittedly committed default therein.
- c) It is also submitted that it is settled law that once debt and default of more than Rs. 1 crore is proved, the Section 7 Petition is necessarily required to be admitted. The Hon'ble Supreme Court and the Hon'ble Appellate Authority in a number of cases have held that even if a portion of the debt due and payable is tacitly admitted by a 'Corporate Debtor'/company and it comes within the threshold sum of the default of Rs.1 crore, as per Section 4(1) of IBC, then the Adjudicating Authority is duty bound, to admit the Section 7 Application filed by a party under the IBC once the "*Debt and Default*" are proved. Thus, since, as per the Corporate Debtor's own admission and as per the undisputed evidence on records, the Corporate Debtor had committed default, which is more than INR 1 crore, hence the present Application is entitled to be admitted in the eyes of law.
- d) As per the Order dated 14.02.2020 passed by the Hon'ble Adjudicating Authority in the earlier Section 7 Application, the said Section 7 Application was dismissed on the ground that as per the Section 7 Petition, the date of default was mentioned as 30.09.2019, while the Section 7 Application was



filed August 2019 i.e. before the date of default. Thus, the Section 7 Application was premature and not maintainable, as on the date of filing. Hence, on that ground it was dismissed. That, dismissal of the Section 7 Application on preliminary grounds of filing before the date of default, does not make the said Order dated 14.02.2020 binding as res judicata, for subsequent fresh filing of the present Application against the Corporate Debtor.

- e) It is pertinent to point that after holding the Section 7 Application as premature and not maintainable, the Hon'ble Adjudicating Authority vide the said Order observed that the applicant had failed to disburse the full amount of loan as agreed under the Loan Agreements, thus, it was not a fit case for initiation of insolvency. However, the said observation of the Hon'ble Adjudicating Authority is merely *an obiter dictum* i.e. expression of opinion in the written order, but not essential or relevant to the decision and therefore not legally binding as a precedent. It is humbly submitted that once vide the earlier Order dated 14.02.2022, the earlier Section 7 Application was held as pre-mature and not maintainable, any subsequent observations of the Hon'ble Adjudicating Authority are merely an obiter dicta and not binding as res judicata.
- f) As afore-stated, *vide* dated 14.02.2020, the Hon'ble Adjudicating Authority itself observed and concluded that a sum of INR 1,99,02,450/- was disbursed by the Financial Creditor in favor of the Corporate Debtor. However, the Hon'ble Adjudicating Authority held that the Financial Creditor did not disburse the full loan amount of INR 2.85 crore agreed between the parties, and thus the Section 7 Petition could not be admitted. This decision was based on incorrect interpretation of law. The Hon'ble Appellate Authority in **Company Appeal (AT) (Insolvency) No. 978 of 2022 - State Bank of India vs. N.S. Engineering Projects Pvt. Ltd.** held that:

*"24. Under the Scheme of IBC, when a Corporate Debtor is unable to pay its debt, which becomes payable, it is a warning signal for- Corporate*



*Debtor and when an Application is filed by a Financial Creditor to initiate CIRP under Section 7 and there are ample material that Corporate Debtor is unable to pay its debt and has committed default, the Adjudicating Authority is not required to go into the reasons of default and ignore the real status of the Corporate Debtor and close its eyes to the fact that the Corporate Debtor needs insolvency resolution. Red signal having been flagged by the Applicant, ignoring the precarious financial situation and status of the Corporate Debtor and not taking remedial action to bring back the Corporate Debtor on its track by adopting resolution process as per IBC and reject the Application on the reasons of default, is clearly contrary to the whole Scheme of the IBC'. There being sufficient material before the Adjudicating Authority that consistent defaults have been committed by the Corporate Debtor and it is unable to pay its debt, rejection of Section 7 Application on the ground that for default committed by the Corporate Debtor, the Financial Creditors have also to be blamed is closing the eyes to the Scheme of the insolvency resolution.*

.....

*We, thus, are of the view that both the orders of Adjudicating Authority dated 28.06.2022 and 29.06.2022 are unsustainable and are set aside. The Appellant(s) have made out a case for admission of their Section 7 Application and Adjudicating Authority committed error in rejecting Section 7 Application."*

- g) The decision of the Hon'ble Appellate Tribunal was also upheld by the Hon'ble Supreme Court of India in Civil Appeal No. 1257 of 2023 **Abhijeet Integrated Steel Limited versus IDBI Bank Ltd.**
- h) In light of the same, it is humbly submitted that it is noteworthy that the Order dated 14.02.2020 dismissing the Section 7 Application on ground of incomplete disbursement; fault of Financial Creditor, is incorrect interpretation of law under the scheme of Section 7 as has been laid down



by the Hon'ble Appellate Authority in *State Bank of India Vs. N.S. Engineering Projects Pvt. Ltd.* and the Hon'ble Supreme Court in *Abhijeet Integrated Steel Limited versus IDBI Bank Ltd.*

- i) It is further submitted that the present Section 7 Application is filed within the period of limitation from the date of default. In terms of the Loan Agreement dated 11.06.2018, the Corporate Debtor defaulted upon non-payment within 3 months from the date of agreement. Thus, default occurred on 11.09.2018. Subsequently, the Corporate Debtor went under CIRP from 08.06.2020 to 22.08.2022 when the CIRP was finally closed. In terms of Section 60(6) of the IBC, this period of CIRP from 08.06.2020 to 22.08.2022 stands excluded for the purpose of determination of limitation in filing the present Section 7 Application. Section 60 (6) states that:

*"Section 60 (6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."*

- j) Thus, the present Application filed on 22.12.2022, has been filed within the period of limitation of 3 years after exclusion of period of CIRP from 08.06.2020 to 22.08.2022 (exclusion of CIRP period of around 2 years 2 months and 14 days). In view of the above, it is evident that the Corporate Debtor has grossly defaulted in repayment of Financial Creditor's dues despite admitted to the disbursement made by the Financial Creditor. A conjoint reading of the Financial Creditor's Application and Rejoinder and the Corporate Debtor's Reply, makes it quite evident that the Corporate Debtor has committed default, which is more than Rupees One Crore and thus the present Application is a fit case for triggering of corporate insolvency resolution process of the Corporate Debtor.



5. The Financial Creditor has placed the following documents on record:
  - a) Copy of loan agreement dated 11.06.2018, 13.07.2018, 01.08.2018 and bank statement.
  - b) Computation sheets of outstanding debt inclusive of penalty and interest to be paid to the Applicants.
  - c) Copy of registered Mortgage Deed dated 22.06.2018.
  - d) Copy of Demand cum Loan Recall Notice dated 12.10.2022.
6. The Financial Creditor has proposed the name of Mr. Navdeep Gupta, registration number IBBI/IPA-001/IP-P-01791/2019-2020/12814, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate with IBBI.

**Submissions of learned Counsel appearing for the Corporate Debtor are as under:**

7. The details of the submissions made by the Corporate Debtor are as follows:
  - a) It is submitted that the applicant Financial Creditor had earlier filed petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 being Company Petition No. IB-2037 of 2019 praying therein for initiation of corporate insolvency Resolution process against the corporate debtor. That after hearing both the parties the said Section 7 petition being IB2037 of 2019 was dismissed on merits on following two grounds:

*" Para (10)- In view of the above facts and circumstances, this tribunal is of the considered view that the present application is not maintainable as the date of default averred in the application is 30/09/2019 whereas the present case was filed in August, 2019. The applicant cannot come before this Hon'ble Tribunal before the date of default i.e. 30/09/2019. Also the full amount as reflect in the*



*annexure attached has not been disbursed by the applicant to the corporate debtor thereby breaching the terms of the loan agreements and since the petitioners have failed to satisfy this tribunal about the requirements of section 7 of IBC, 2016 to claim any relief.*

*Para (11) - Also, we have perused the application and the subsequent responses filed by the applicant and the respondent. The respondent relying on Section 52 and 54 of the Indian Contract Act and submits that the financial creditor was to disburse the loan amount as per the loan agreements and only pursuant to that was the corporate debtor duty bound to pay the amounts as per the agreements. The financial creditor failed to disburse the amounts as per the agreements. And the corporate debtor has further relied on the Judgment of the Hon'ble Andhra Pradesh High Court in Vegi Venkateshwara Raov. Vegi Venkataram Rao, AIR 1998 A.P. 6 wherein performance of reciprocal promise by the opposite party was sought by the petitioner. Also relied upon the judgment of Hon'ble Patna High Court M/s Suraj Kana Pharmaceutical v Bihar State Financial Corporation, AIR 2009 Pat. 91 on the "Principle of Fundamental Breach". It is seen in the present case that the applicant has failed to disburse the full amount to the respondent. The petitioners have also failed to disclose as to how the amount of financial debt claimed is "due" from the respondent and correct calculation of the amount disbursed by the financial creditor. For the reasons stated, this tribunal is of the opinion that it is not a fit case to initiate insolvency process as prayed for by the petitioner/applicant. Hence, the application is dismissed, however without costs."*

- b) That the said fact that the earlier Section 7 petition was dismissed on merits on two grounds and that it is an admitted fact that the earlier Section 7 petition was between the same parties, qua the same cause of action and the order dated 14/02/2020 dismissing the said petition on merits has attained finality as not challenged by the applicant financial creditor. That as the earlier Section (7) petition being IB-2037 of 2019 was dismissed on merits vide order



dated 14/02/2020 and has attained finality, the present Section 7 filed by the applicant financial creditor is *barred by principles of res judicata*.

- c) The applicant in its rejoinder has taken a stand that order dated 14/02/2020 is on an erroneous interpretation of law and as also that since the passing of the said order the interpretation of law is altered and therefore, the principles of res judicata would not apply. Further, the applicant contends that the order dated 14/02/2020 dismissing Section 7 petition is no longer good relying on the judgment of Hon'ble NCLAT in *State Bank of India v N.S. Engineering Projects Pvt Ltd* and of Hon'ble Apex Court in *Abhijeet Integrated Steel Limited v IDBI Bank Ltd*. It is submitted that this contention of the appellant is misconceived as under the scheme of IBC it was always the law that if there is a debt and default occurs, the adjudicating authority is not to look into anything else and admit the section 7 petition. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter titled as *Innoventive Industries Ltd. Vs. ICICI Bank & Ors.* wherein the Apex Court at Para (30) has held that "*On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.*"
- d) It is submitted that on the date of passing of the order dated 14/02/2020 dismissing the Section 7 petition law was the same as the law is today and therefore, it is not open to the applicant to say that after passing of the said order there is a change in interpretation of law. In fact, today the appellant by placing wrong reliance on *State Bank of India v N.S. Engineering Projects Pvt Ltd* and *Abhijeet Integrated Steel Limited v IDBI Bank Ltd*. is in effect seeking



review of order dated 14/02/2020 which is not permissible under law as the said order has attained finality being not challenged by the applicant.

- e) It is further submitted that as the earlier Section 7 petition being IB-2037 of 2019 was between the same parties, for the same cause of action and dismissed on merits vide order dated 14/02/2020, which order has attained finality being not challenged by the applicant, the present Section 7 petition is barred by principles of res judicata and therefore, is liable to be dismissed especially when the Hon'ble Apex Court in *S Ramachandra Rao v S Nagabhushana Rao & Ors.* (decided on 19/10/2022) held that doctrine of res judicata would apply even if the earlier decision is 'erroneous' but is between the same parties to the litigation & concerning the same issue. That in view of the submissions and the legal propositions, the present Section 7 petition is non-maintainable and is liable to be dismissed being barred by the principles of res judicata.

### **Analysis and Findings**

8. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
9. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
10. In the present case, the Corporate Debtor defaulted in repayment of a loan of sum of Rs. 75,00,000/- to Punjab National Bank, and then the Corporate Debtor approached the Financial Creditor to avail the credit facilities to repay the loan of PNB, and accordingly a loan agreement was executed on 11.06.2018

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to provide the financial facility of Rs. 75,00,000/-. The loan amount was disbursed by the Financial Creditor to the Corporate Debtor. Thereafter, the Corporate Debtor sought to obtain a total loan for sum of Rs. 2,00,00,000/- (inclusive of the Rs. 75,00,000/- loan facility obtained earlier) and mortgaged its immovable property vide the registered mortgage deed dated 22.06.2018 having registered no. 4579, Book No.1. Thereafter, another Loan Agreement dated 13.07.2018 was executed by and between the Corporate Debtor and the Financial Creditor. The Financial Creditor has disbursed total gross principal sum of Rs. 2,15,00,000/- to the Corporate Debtor up to 05.09.2018. Therefore, there is a debt provided by the Financial Creditor to the Corporate Debtor, and one essential ingredient with respect to Section 7, that there has been a debt, stands substantiated.

11. Subsequently, an application was filed by Deepraj Investment Ltd. against the Corporate Debtor under Section 7 of the Code and the CIRP was initiated against the Corporate Debtor by the Ld. Adjudicating Authority vide Order dated 08.06.2020 in CP (IB) No. 2845/ND/2019. The Insolvency Resolution Professional appointed for the Corporate Debtor issued the public notice for inviting claims. The Financial Creditor came to know about the initiation of CIRP of the Corporate Debtor and subsequently submitted its claims before the IRP. The claim was acknowledged by the IRP, however, no communication was sent regarding acceptance or rejection of the Financial Creditor's claim.
12. On 03.02.2022 the IRP filed an Application before the Ld. Adjudicating Authority under Section 12A of IBC, seeking withdrawal of the CIRP of the Corporate Debtor. The Hon'ble Adjudicating Authority vide order dated 22.08.2022 allowed the application filed by the IRP Under Section 12A and the CIRP of the Corporate Debtor was closed. Thereafter, the Financial Creditor sent a Demand cum Loan Recall Notice to the Corporate Debtor recalling and demanding the entire due amount. However, no response to the same was received from the Corporate Debtor. Since, the loan amount provided to the Corporate Debtor remains unpaid by the Corporate Debtor to the Financial



Creditor, therefore, another major essential ingredient of Section 7 i.e. 'default' with respect to the debt stands substantiated.

13. The Corporate Debtor has not disputed the facts relating to disbursement of loans and default, but has mainly taken a defense under the Principle of res judicata. Therefore, we need to examine the same in the light of this Adjudicating Authority's earlier order dated 14.02.2020 in CP IB No. 2037/ND/2019 between the parties.
14. As per the Order dated 14.02.2020 passed by this Adjudicating Authority in the earlier Section 7 Application, the said Section 7 Application was dismissed on the ground that as per the Section 7 Petition, the date of default was mentioned as 30.09.2019, while the Section 7 Application was filed in August 2019 i.e. before the date of default. On perusal of the records and arguments of both the Parties, on the issue of res-judicata, this Adjudicating Authority has come to a conclusion that res-judicata will not apply to the present Section 7 application. One of the major ingredients of res judicata is that the issue must be decided on merits, therefore the dismissal of Section 7 application on preliminary grounds of premature filing before the date of default, does not make the said Order dated 14.02.2020 binding as res judicata, for subsequent fresh filing of the present Application against the Corporate Debtor. The observation of the Adjudicating Authority in earlier Section 7 application, that since the applicant had failed to disburse the full amount of loan as agreed under the Loan Agreement, is not a fit case for initiation of CIRP, is merely an obiter dictum i.e. expression of opinion in the written order, but not essential or relevant to the decision and therefore not legally binding as precedent. In fact, once the Section 7 application was dismissed being premature and therefore non-maintainable, this Adjudicating Authority could not assume jurisdiction to pass any order on merits and any observation in the order is to be considered as an obiter only. In this context, The Bombay High Court in case of *Laxman Shivashankar Vs. Saraswati and Ors. (08.09.1960)* have held as follows:



*"Now I must refer to a recent judgment of a Division Bench of this Court in MANU/MH/0051/1961: AIR1961Bom218. This judgment is strongly relied upon by both the parties and as the discussion of the Division Bench it is binding on me. After considering the various rulings of the High Court and the Division Bench laid down certain broad propositions which would be helpful while resolving the point of res judicata, which arises under similar circumstances. In the previous suit when a number of findings are recorded and the suit is finally decided one way or the other, it is important to find out whether the decision of the suit was based on some or all the findings recorded in the suit. The legal position summed up by the Division Bench of this Court is to the following effect: -*

*"It appears from the decisions mentioned above that it cannot be laid down as a general proposition that where a previous decision is supported on two or more findings, all the findings will necessarily operate as res judicata. Where the previous suit was dismissed on a technical ground which made the suit untenable, findings recorded on the merits would normally be obiter dicta. Similarly, if the Court which decided the prior suit has itself based the decision on only some of the findings recorded by it, or if under the circumstances of the case its decision can be fairly attributed to only some of the findings so recorded, the other findings so recorded, the other findings would not operate as res judicata."*

15. Therefore, in light of the above observation, we are of the considered view that res judicata will not be applicable in the present case. Furthermore, since the Corporate Debtor was under CIRP from 08.06.2020 to 22.08.2022, the period during which the Corporate Debtor was under CIRP is excluded in accordance with Section 60(6) of IBC, 2016 and so, the present case falls within the limitation period. Therefore, we are inclined to adjudicate the instant application on merits.

16. Adverting to the facts of the instant application, we observe that the Date of Default mentioned in Form I of the application, is as follows:

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**Date of Default:**

The date of default as per the Loan Agreements dated 11.06.2018, 13.07.2018 and 01.08.2018 and the disbursements made is 27.09.2018, 14.10.2018, 16.11.2018 and 21.12.2018 i.e. after 3 months and 15 days grace period from the disbursement of each of the facilities. Thus, it is evident that the default has happened on multiple dates and was continuing. Further, the Financial Creditor declared the account of the Corporate Debtor as NPA on 31.03.2020. Thus, default has also occurred on 31.03.2020.

Working computation of outstanding debt is marked and annexed as **Annexure-A/4.**

17. On perusal of Part- IV in the application, we observe that the applicant has treated the date of NPA i.e. 31.03.2020 as the date of default. It is pertinent to mention that Date of NPA is to be treated as date of default in consideration of order of Hon'ble NCLAT in the case of **Jagdish Prasad Sarada Vs. Allahabad Bank [CA (AT) (Insolvency) No. 183 of 2020]**. The relevant extract of the Hon'ble NCLAT's judgment is as under:

*10. The Hon'ble Supreme Court has already observed in Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K. Educational Services Pvt. Ltd Vs. Parag Gupta and Associates dated 11.10.2019 that the limitation period for application under section 7 of the Code is 3 years as*



*provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extendable only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court in 'B.K. Educational Services Company Appeal (AT) (Insolvency) No. 183 of 2020 Private Limited Vs. Parag Gupta and Associates' that 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, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in 'Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No.6347 of 2019) decided on 14th August, 2020. **It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.***

*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.*

18. In the present application, the applicant itself has acknowledged the date of NPA as the date of default being 31.03.2020. Admittedly, therefore, this default dated 31.03.2020 has occurred during the period excluded under Section 10A to initiate CIRP against the Corporate Debtor i.e. from 25.03.2020 to 24.03.2021. We further observe that in view of the provisions under Section 10A, in case of a default, which occurred during the period excluded under Section 10A, then the entire claim is liable to be discarded for the purpose of initiation of CIRP, and no



application under Section 7, 9 or 10 could be filed. Section 10A of the Code reads as:

*“10A. Notwithstanding anything contained in Sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25<sup>th</sup> March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25<sup>th</sup> March, 2020.”*

19. In the light of the above observation, the instant application filed on the basis of a default committed, which occurred during the period excluded by virtue of provisions of Section 10A of the Code is not maintainable and is liable to be dismissed as such. Accordingly, it is hereby ordered that the instant **COMPANY PETITION IB (IBC)/46(ND) 2023** filed by Akasa Finance Limited, the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Sai Precious Traexim Pvt. Ltd, the Corporate Debtor, stands **dismissed without costs.**

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**DR. BINOD KUMAR SINHA**  
**Member (Technical)**

**Sd/-**  
**SHRI P.S. N. PRASAD**  
**Member (Judicial)**