

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 620/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.10.2020**

Name of the Company: Small Industries Development Bank of
India
V/s
Eagle Autoparl Pvt Ltd
Section 7 of the Insolvency and Bankruptcy Code,
2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

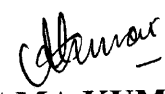
ORDER

(Through Video Conferencing)

Advocate, Ms. Rashmi Jain appeared on behalf of Mr. Vishal J. Dave Advocate for the applicant.

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 16th day of October, 2020

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court-2**

C.P. (IB) No. 620/7/NCLT/AHM/2019

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Small Industries Development
Bank of India (SIDBI)
Navjeevan Amrit Jayanti Bhavan
1st Floor, Behind Gujarat Vidyapeeth
Navjeevan P.O.
Ahmedabad-380 014

...Petitioner
(Financial Creditor)

Versus

Eagle Autopearl Pvt. Ltd.
CIN: U50300GJ2012PTC070606
Having registered office at:
"Eagle Ford", Near Bypass Circle
Plot No.4B, 5,6,7 S. No.42
Gondal Road, Village Vavdi
Rajkot, Gujarat-360 004.

... Respondent
(Corporate Debtor)

Order delivered on 16th October, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:

Advocate, Mr. Vishal J. Dave, for the Petitioner.
None appeared for the Respondent/Corporate Debtor.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. This Petition is filed by Smt. Sudha Padmanabhan, Deputy General Manager of Small Industries Development Bank of India,





(hereinafter referred to as "petitioner"), under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as I&B Code] read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for the purpose of initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against M/s. Eagle Autopearl Pvt. Ltd., (hereinafter referred to as "corporate debtor").

2. M/s. Eagle Autopearl Pvt. Ltd, the corporate debtor, is a company registered under the provisions of the Companies Act, 1956 and having its registered office at Eagle Ford, Near Bypass Circle, Plot No.4B, 5,6,7, S. No.42, Gondal Road, Village Vavdi, Rajkot, Gujarat.
3. The Authorised Share Capital of the corporate debtor is Rs.3,00,00,000 and the Paid Up Share Capital is Rs.3,00,00,000. The Respondent is having its CIN: U50300GJ2012PTC070606.
4. As per Part IV of the application, the petitioner has submitted that they have sanctioned a Term Loan of Rs.700 lakhs (Rupees Seven Hundred Lakhs only) and the amount claimed to be in default is Rs.408.02 Lakhs. It is further stated that date of default is 10.12.2014 and the date of NPA is 11.03.2015.
5. The Petitioner submitted the following documents in support of its claim against the corporate debtor.

- i) Copy of Loan Agreement dated 22.03.2013



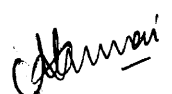


- ii) Copy of the Letter of Intent dated 22.03.2013
- iii) Copy of security documents executed by the corporate debtor;
 - (a) Deed of Guarantee dated 22.02.2013
 - (b) Deed of Hypothecation dated 22.03.2013
 - (c) Certificate of Registration of Charge with ROC
 - (d) Deed of Corporate Guarantee dated 17.04.2013
 - (e) Memorandum of Deposit of Title Deeds with Declaration & Undertaking
 - (f) ROC-Charge Registration Record and CERSI record of Mortgage
 - (g) Joint undertakings and agreements
 - (h) Board Resolution of Corporate Debtor dated 22.03.2013
 - (i) Board Resolution of Corporate Guarantor dated 17.04.2013
- vi) Copy of Letter of Authorization dated 05.08.2019
- vii) Copy of Original Application filed before DRT-II, Ahmedabad.
- viii) Copy of order dated 26.10.2016 of the Hon'ble High Court.
- ix) Copy of Sale Certificate dated 24.11.2016
- x) Copy of Sale Letters dated 06.03.2018 and 20.06.2019
- xi) Banker's Evidence Certificate dated 23.07.2019
- xii) Calculation Sheet
- xiii) Copy of statement of amounts due

6. Thus, on the basis of aforesaid reasons, the petitioner has prayed for initiation of Corporate Insolvency Resolution Process, as the corporate debtor company has committed default in making payment of its outstanding debts.

7. After filing of the present IB Petition a paper publication was made, by the petitioner on 09.11.2019, as notice sent has not been





delivered. However, none appeared on behalf of the corporate debtor.

8. Gone through the application as well as documents submitted by the petitioner and heard the arguments of learned counsel for the petitioner.
9. Before going into other issues, it is noticed that the petition is filed on 19.08.2019 and the date of default is 10.12.2014 and date of NPA is 11.03.2015 and the last payment made by the Corporate Debtor is on 07.02.2015. As per Section 238A of the I&B Code the Limitation Act, 1963 is applicable to the proceedings before the Adjudicating Authority. The Hon'ble Supreme Court, in the matter of ***B.K. Educational Services Private Limited v/s. Parag Gupta and Associates***, has held that the law of limitation is applicable to the petition filed under Section 7 and 9 of the Code.
10. It is submitted by the petitioner that they have received Rs.550 Lakh towards the sale of property on 24.11.2016 and Rs.35 Lakh towards sale of assets on 06.03.2018, based on this contended that the petition is filed within the period of limitation. Since the payment received on 24.11.2016 is on sale of property and on 06.03.2018 is on sale of asset and no documentary evidence has been submitted by the petitioner to show that it is paid by the borrower to the petitioner. Thus, the amount received on sale of the secured assets cannot be considered for reckoning the limitation period.

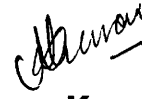
Sharma Gupta

Chakraborty

11. Since the petition is filed on 19.08.2019, which is beyond three years from the date of receipt of the last payment from the borrower by the petitioner on 07.02.2015, the present IB Petition is barred by limitation. Hence, it is rejected.
12. Accordingly, the present IB Petition, i.e. CP (IB) 620 of 2019 is dismissed as time barred.
13. No order as to costs.
14. Communicate a copy of this order to the Petitioner and Respondent.



Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)

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