

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT-III**

**I.A. NO. 679 OF 2021**

**IN**

**C.P./IB/3408/MB/2019**

Filed by

**State Bank of India**

Having its corporate Centre with its Registered office at: State Bank of India, State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai 400021 and having one of their branch office at: "The Arcade", 02<sup>nd</sup> Floor, World Trade Centre, Cuffe Parede, Mumbai- 400005, known as "Stressed Assets Management Branch-I, Mumbai"

**....Applicant/Financial Creditor**

**Vs.**

**M/s Deccan Florabase Ltd.**

Having its Registered office At: A/752, DE JOSS, Ice Factory Road, Off Hill Road, Bandra (West), Mumbai- 400050

And another address at: Village- Jambhul, Taluka- Maval, Pune; and another another office at: 201, The Anchorage, 12A, Boat Club Road, Pune- 411101

**....Respondent/Corporate Debtor**

**Reserved for order on: 14.07.2022**

**Order Pronounced on: 10.08.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearance:**

**For the Applicant:** Mr. Rohit Gupta, Advocate

**For the Respondent:** Mr. Sidharth Samantaray a/w

Shivam Laturiya i/b APS Law Associates

**Per:** *Shri H.V. Subba Rao, Member (Judicial)*

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**ORDER**

1. The above Interlocutory Application is filed by the State Bank of India/Applicant under section 5 of the Limitation Act, 1963 r/w Section 238A and Section 60(5) of the IBC, 2016 for the following reliefs:
  - a. *The delay of 1150 days may be condoned and Petition may be heard on merits.*
  - b. *Any other and/or further relief/s as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

**The submissions of the Applicant are herein below:**

2. This application is filed by the applicant, Mr. Arun Kumar, Asst. General Manger & Case Lead officer states that the, Respondent / Corporate Debtor through its Directors Late Shri Avinash Rangnekar approached the erstwhile State Bank of Patiala with an Application for availing for (i) Term Loan I (Corporate Loan) of Rs.5,00,00,000/-, (ii) Term Loan II of Rs.5,00,00,000/-, (iii) Term Loan III (Crop Loan) of Rs.2,00,00,000/- totaling to Rs. 12,00,00,000/- (iv) Cash Credit Limit of Rs.3,50,00,000/- with a sub limit of FBP/FBD of Rs.2,00,00,000/ (within the overall limit of Rs.3,50,00,000/-) and

(v) Letter of Credit Limit of Rs.50,00,000/- Grand Total of Rs. 16,00,00,000/-. State Bank of India had acquired the business including assets and liabilities of State Bank of Patiala by way of amalgamation vide Gazette Notification No. 128 dated 22.02.2017.

3. The Applicant further states that, erstwhile State Bank of Patiala have considered the above request of Respondent through its Directors and have sanctioned (i) Term Loan – I (Corporate Loan) of Rs.5,00,00,000/ , (ii) Term Loan II of Rs.5,00,00,000/-, (iii) Term Loan III (Crop Loan) of Rs.2,00,00,000/- totaling to Rs. 12,00,00,000/- (iv) Cash Credit Limit of Rs.3,50,00,000/- with a sub limit of FBP/FBD of Rs.2,00,00,000/ (within the overall limit of Rs.3,50,00,000/-) and (v) Letter of Credit Limit of Rs.50,00,000/- Grand Total of Rs.16,00,00,000/- against Hypothecation of Fixed Assets to be created under the Project including equitable mortgage of land under the Project vide Sanction Letter bearing Ref. No. NO/ADV dated 11.08.2007, upon Respondent through its Directors executing necessary security document in favour of erstwhile State Bank of Patiala and have passed necessary Board Resolution dated 11.08.2007 passed by Respondent i.e. M/s. Deccan Florabase Pvt. Ltd.

4. The Applicant further states that in order to secure the above Credit Facilities, Respondent through its Director Late Shri. Avinash C. Rangnekar have deposited the original Title Deeds and documents on behalf of the Respondent in respect of their Property viz. I charge on the Fixed Assets, all that piece and parcel of Land situated at: Village Jambhul, Taluka Maval, Dist. Pune, at Gat No. 405, 442, 443, 444, 445, 446, 447, 450, 451, 452, 453; standing in the name of M/s. Deccan Florabase Ltd, as collateral security, with an intention to create equitable mortgage in favour of erstwhile State Bank of Patiala. Accordingly, the equitable

mortgage has been created. The creation of mortgage of deposit of title deed has been recorded by Memorandum of Entry dated 13.08.2007 and Letter of Confirmation dated 14.08.2007 for confirming the creation of Equitable Mortgage by the M/s. Deccan Florabase Ltd., was recorded.

5. The Applicant further states that, Respondent through its Directors have requested to erstwhile State Bank of Patiala for Renewal/Enhancement. Applicant have again considered the request of Respondent and have Enhanced Renewed the said Fresh Term Loan Facility of Rs.2,65,00,000/-, Cash Credit Facility of Rs.3,65,00,000/ (Enhanced from Existing Limit of Rs.3,50,00,000/-) and Letter of Credit of Rs.50,00,000/- vide Sanction Letter bearing Ref. No. AMT-III dated 25.03.2010, upon Respondent executing necessary security documents in favour of erstwhile State Bank of Patiala.
6. The Applicant further states that charges by way of hypothecation and. Mortgage created by the respondent on 13.08.2007 in favour of erstwhile State Bank of Patiala was duly registered with the Registrar of Companies, Mumbai, Maharashtra on 13.08.2007 and renewed on 06.03.2012 for an overall credit limit of Rs.76.50 Crores including its group companies charges. The Applicant further states that the said charges has been noted in the Revenue Records.
7. The Applicant further states that Respondent have failed and neglected to regularize the account, and service interest in the said Account, Hence the account is out of order since long time. The Applicant states that the account of Respondent declared as NPA on 28.02.2013 w.e.f. 30.06.2013 in accordance with the RBI guidelines.

8. The Applicant further states that, since the Respondent have failed to pay the outstanding dues of the erstwhile State Bank of Patiala by their Notice dated 05.11.2014 to the Respondent issued u/s. 13(2) of the SARFAESI, Act 2002 to pay a sum of Rs.19,81,52,019.43 (Rupees Nineteen Crores Eighty One Lakh Fifty Two Thousand Nineteen and Paise Forty Three Only). However, Respondent have failed and Neglected to repay the outstanding dues.
9. The Respondent is liable to pay to the Applicants the outstanding amounts of Rs.50,23,75,899.89 as on 15.09.2019 along with further Interest/charges as on date. 9. In view of the above the circumstances and events leading to the filing Of the present Application are substantiated in detail, which make out A clear case for initiation of Corporate Insolvency Resolution process against the Respondent Company by this Hon'ble Tribunal are mentioned in list of dates and events.
10. The Applicant further states that the Respondent has admitted their liability in the last Balance Sheet dated 31.03.2011 and further submits that the Respondent has not paid the admitted liabilities which is in continuing matter. The Applicant further states that they have filed an Original Application (O.A.) bearing O. A. No. 1514 of 2016 for recovery of the outstanding dues before DRT-I Mumbai in the year 2014. The Respondents have mortgaged their properties in or about 2007, if the mortgage is legally executable under the Limitation Act, the limitation period for filing the Suit is 12 years, Article 62/63 of the Limitation Act, 1963.
11. The Applicant further states that the erstwhile State Bank of Patiala have filed an Original Application [O. A.] before the Hon'ble

DRT-1, Mumbai for recovery of the outstanding dues, which is pending for hearing.

12. The Applicant further states that inspite of the above legal actions initiated by the Applicant the Respondent failed and neglected to pay the outstanding dues.
13. The Applicant further submits that considering the fact that is continuing cause of action arised in the matter. It is pertinent to note that after the account was declared as NPA, the Applicant have initiated SARFAESI actions and have also filed Original Application in Hon'ble DRT, Mumbai under Recovery of Debts and Bankruptcy Act. It is therefore submitted that the delay is not intentional.
14. That after exploring all the avenues of recovery, the Applicant filed a Original Application 10.A.] on 27.01.2014 against the Respondent before this Hon'ble Tribunal under section 7 of the Insolvency and Bankruptcy Code, 2016 claiming an amount of Rs. 19,81,52,019.43 as on 27.01.2014.
15. It is submitted that as per section 238A of IBC, provisions of Limitation Act, 1963 (36 of 1963) shall apply to the proceedings before National Company Law Tribunal and the Hon'ble Apex Court then in case of Gaurav Hargovindbhai Dave categorically held that Article 137 would apply to cases u/s. 7 of IBC since it was an application. Therefore as per Article 137 of the schedule of the Limitation Act, 1963, the limitation for initiation of proceedings under IBC is three years from the date of default.
16. It is submitted that as the date of default in present case is 14.03.2013, three years period expired on 13.03.2016 and the Company Petition (IB) was filed by the Applicant against Respondent on 18.09.2019 with a delay of 1150 days. It is further

submitted that the Insolvency and Bankruptcy Code, 2016 was passed by the parliament in May, 2016 and became effective only from December, 2016. It is pertinent to note that section 238A of IBC was inserted vide Insolvency & Bankruptcy Code (Second Amendment) Act, 2018 with effect from 06.06.2018. Therefore, the delay from 13.03.2016 to 18.09.2019 was beyond the control of the Applicant although the Applicant as enumerated hereinabove had very diligently and timely initiated various other proceedings against the Respondent for recovery of its dues.

17. It is submitted during the period from 13.03.2016 till date of filing CIRP application, the Applicant on one hand was exploring all the options available under law for recovery of its legitimate dues and on other hand was also negotiating for settlement. The Applicant submits that the Respondent is not in a financial position to pay off its debts and the securities are deteriorating day by day and there is no prospect of receiving any payment from the Respondent even after giving sufficient reminders and considerable time. The Applicant is a secured creditor and its securities is in danger. The Applicant submits that there is no dispute with regards to liability and as such the Applicant has excellent chances of succeeding in the Company Petition (IB) in case the delay of 1150 days is condoned by this Hon'ble Tribunal.

18. It is submitted that the Hon'ble Supreme Court in case of B.K Educational Services Pvt. Ltd. V. Parag Gupta & Associates have observed as under:

*27. It is thus clear that since the Limitation Act is applicable to Applications filed under Sections 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.*

19. The Hon'ble Supreme Court in the matter of BABULAL VARDHARJI GURJAR V. VEER GURJAR ALUMINUM INDUSTRIES PVT. LTD. & ANR., has reiterated the above observation in Para 32 of the Judgment. Therefore, in view of the said Judgment the delay of 1150 days in filing Company Petition which is neither intentional nor deliberate but due to unavoidable circumstances beyond the control of the Applicant as detailed in the present application be condoned.

20. It is further submitted that the object of the Insolvency & Bankruptcy Code, 2016 is as under:

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time. Bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto”*

The Applicant therefore submits that it is not just and convenient but absolutely necessary that the delay of 1150 days in filing the Company Petition (IB) be condoned in the interest of both the parties as well as other stakeholders

21. The Applicant submits that this Hon'ble Tribunal have powers to condone the delay under Section 5 of Limitation Act, 1963 read as under:

*Section 5: Extension of prescribed period in certain cases Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

22. That there are sufficient and plausible reasons for acceptance of the present application and to condone the delay in filing the Company Petition.
23. The present Interlocutory Application for Condonation of Delay is made bonafide. The Applicant further submits that if this Interlocutory Application is not allowed serious harm, loss and injury will be caused to the Applicant. No prejudice will be caused to the Respondents if the present Application is allowed.

**The submissions of the Respondent are as follows**

24. Mr. Anirudh Rangnekar, Director of the Corporate Debtor filed affidavit in Reply for the limited purpose of bringing to the notice of this Hon'ble Court that the said Application is totally misconceived and that the contentions and submissions raised in the said Application are liable to be rejected. The company's board resolution authorising Aniruddh to execute this affidavit on behalf of the company has already been filed.
25. The Respondent deny each and every allegation, averment, insinuation, contention and/or submission raised in the said Application, which is inconsistent with and/ or contrary to what is

stated herein in the said Reply as if the same is set out and nothing Contained in the said Application shall be deemed to have been admitted by me for want of specific denial unless expressly done so herein. I crave leave of this Hon'ble Court to file a further Affidavit, if necessary, at a later stage if the circumstance so require.

26. The Respondent further submit that on a plain reading it can be seen that the said Application is as vague as it can be as the said Application lacks details. Further, Respondent says that the reasons and submissions pleaded in the said Application for seeking condonation of delay in Bling the captioned Arbitration Petition are untenable and not maintainable in law and does not by any stretch of imagination NOTARY LOCHANDE OF INDIA Constitute sufficient cause. Law of limitation being a substantive law, an application filed under section 7 of the Code has to be filed within the prescribed time limit. The Respondent Further submit that that an application filed under section 7 of the Code within the period of limitation is the rule, which the Applicant has miserably failed to adhere to and the Applicant has no cogent reason to justify the same.
27. The Respondent further submit that the filing of the said Application is belated and is a complete afterthought. It is a matter of record, that subsequent to the filing of the Corporate Debtor's Affidavit in Reply dated 15<sup>th</sup> January, 2020 to the sister concerned company's Company Petition No. 3449 of 2019, the Applicant have realised that the captioned proceedings are barred by limitation and have then filed the said Application belatedly on 24<sup>th</sup> February 2021.
28. The Respondent further submit that the applicant has approached this Hon'ble Tribunal with unclean hands as the

several incorrect facts as well as submissions have been pleaded in the said Application which are completely contrary to the contents of the Applicant's application under section 7 of the Code.

29. The Respondent is unaware as to whether the deponent of the said Application has the requisite authority to file the said Application and put the deponent to strict proof thereof. On perusing the said Application, it is quite clear that no Board Resolution/ Power of Attorney/ Authority Letter issued by the Applicant in favour of the deponent is annexed. Further, the gazette mentioned therein is also not annexed to the said Application. On this ground alone, the said Application deserves to be dismissed with compensatory costs.
30. The Respondent deal with reference to paragraph 14 of the said Application, the contents contained therein are denied in toto and the deponent is put to strict proof thereof. It is pertinent to know that the Applicant has pleaded in the OA filed before the Hon'ble DRT that the NPA date was in the year 2013. On this ground alone, the said Application ought to be dismissed. Assuming without admitting that there was a continuing cause of action ensuing to the Applicant's favour then there is no reason as to why the Applicant has filed the said Application as the same would be unnecessary. Knowing fully well that the captioned Company Petition is barred by the law of limitation, the Applicant as a last-ditch effort has filed the said Application even though the same is contrary to settled law. With reference to paragraph 19 of the said Application, the contents contained therein are true and correct. It is settled law that the limitation for initiation of proceedings under the IBC Code is three years from the date of default.

31. The Respondent further submit that as the NPA date was way back in the year 2010, the calculation of the days for delay computation cannot be 1150 days as pleaded by the Applicant and put the Deponent to strict proof thereof. Further, Respondent deny that there is a delay 13/03/2016 to 18/09/2019 as averred in the said Application and deny that the said delay was beyond the control of the Applicant as the Applicant had allegedly been diligent in pursuing various proceedings against the Respondent.
32. The Respondent further submit that the Applicant has mischievously tried to misconstrue the Hon'ble Supreme Court judgement passed in the case of B.K. Educational Services Pvt. Ltd. V. Parag Gupta & Associates as well as in the matter of Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. The Respondent crave leave of this Hon'ble Tribunal to refer on the aforementioned two judgements for its true meaning IN and interpretation at the time of hearing. As per the said judgements, the said petition is barred by the law of limitation. The Respondent deny that as per the said judgements, the alleged delay of 1150 days in filing the petition is neither intentional nor deliberate. The delay in filing the said petition was due to unavoidable circumstances beyond the control of the Applicant. The Applicant has not made out the case for seeking condonation of delay and there are absolutely no satisfactory explanation in the condonation of delay herein which warrants condonation of delay.
33. In view of what is stated in the said Reply, the Respondent prays that the said Application and the said petition deserve to be dismissed.

**FINDINGS**

1. Heard the submissions of both sides and perused the record. The above application is filed by the Petitioner for condonation of delay of 1150 days from 13.03.2016 to 18.09.2019 in filing the above C.P. bearing No. 3408/2019. It is appropriate to mention here that, the above delay condonation petition was filed on 01.03.2021 and whereas the main Company Petition in which the Interlocutory Application was filed on 19.09.2019. Thus, admittedly the present I.A. is not filed along with the Main Company Petition and therefore the Petitioner has to explain the delay in not filing the above I.A. from 19.09.2019 till the filing date on i.e. 01.03.2021 since there is already a delay in filing the main Company Petition and therefore the delay is more than 1150 days.
2. The only reason assigned in Para 18 of the Petition is that the Petitioner is exploring all the options available under law for recovery of its legitimate dues and on the other hand was also negotiating for settlement. The Petitioner except devoting more space in pleading various facts with regard to initiating various proceedings against the Corporate Debtor for recovery before the DRT etc. did not explain even a single day's delay.
3. Even according to the Petitioner, the loan facilities were availed by the Corporate Debtor from the original lender State Bank of Patiala way back in 2007 and the State Bank of Patiala already initiated measures under SARFAESI Act as well as RDDB Act against the Corporate Debtor for recovery way back in 2014. Similarly, the State Bank of Patiala was merged with the present Financial Creditor namely, State Bank of India by way of amalgamation through gazette notification dated 22.02.2017. Under these circumstances, this Bench is unable to understand, as to how the Petitioner can seek condonation of delay caused by State Bank of

Patiala prior to its merger. Similarly, no reasons were assigned by the Petitioner anywhere in the application with regard to the delay from 22.02.2017 till the date of filing the above I.A. In addition to the above, as mentioned earlier, the Main Company Petition and the Delay Condonation Petition were not filed on the same date which itself shows the callous and Mechanical approach of the Applicant.

4. Condonation of delay is the discretionary jurisdiction conferred on the Courts and Tribunals and the Courts and Tribunals while dealing with the applications of condonation of delay have to liberally condone the delay in order to meet the ends of justice. At the same time, a duty is cast upon the Applicant to broadly and properly explain the overall delay. When once the Petitioner properly explains the delay, the number of days delay to be condoned is immaterial as per the settled proposition of law laid down by various judgments of the Hon'ble Apex Court. Applying the above test to the present facts of the case as stated above, the Petitioner miserably failed even to plead in the application the overall delay and the compelling circumstances to condone the overall delay. The only explanation offered by the Petitioner that they could not file the above case due to exploring various recovery options cannot be accepted from a premier bank like the Petitioner which is having distinct departments supported by number of legal experts on their panel to handle them.
5. It is the admitted case of the Petitioner that the default in this case was occurred way back in 2013 and the State Bank of Patiala initiated recovery measures by filing various proceedings in 2014 itself and the present Company Petition is filed in 2019. Since this Tribunal is conscious of the fact that the Courts and Tribunals while dealing with delay condonation application shall

not look into the merits of the main case, this Bench is not making any comments as to whether the Main Company Petition is within limitation or not.

6. For the aforesaid reasons this Bench is of the considered view that there is an inordinate delay of more than 1150 days in this case and the Petitioner has miserably failed to calculate the exact number of days delay apart from broadly explaining the delay and such an inordinate delay cannot be condoned for mere asking simply because the petitioner is a premier public sector bank. Hence, there is no merit in the above I.A and the same is liable to be rejected. Accordingly, the above I.A. is **rejected**.
7. In view of dismissing the above I.A. consequently, the above Company Petition also stand dismissed.

Sd/-  
ANURADHA SANJAY BHATIA  
Member (Technical)  
//RKS//

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)