

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - I, CHENNAI**

**IBA/1178/2019**

*(filed Under Section 7 of the Insolvency and Bankruptcy Code, 2016  
and Rule 4 of the Insolvency and Bankruptcy [Application to  
Adjudicating Authority], Rules, 2016)*

In the matter of ***M/s. Hackbridge Hewittic and Easun Limited***

**M/s. STATE BANK OF INDIA**

Reg. Office at State Bank Bhavan,  
Madame Cama Road, Nariman Point,  
Mumbai – 400 021

.. *Financial Creditor*

– Vs –

**M/s. HACKBRIDGE HEWITTIC AND EASUN LIMITED**

6/1A1 & 6/1B1, Sy. No. 6, Behind Escorts Ltd,  
Ernavur Village,  
Tiruvottiyur,  
Chennai – 600 019

.. *Corporate Debtor*

*Order Pronounced on 6<sup>th</sup> January 2021*

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For the Operational Creditor* : Vipin Warriar, Advocate  
Vidyalakshmi Vipin, Advocate  
For M/s. India Law LLP

*For the Corporate Debtor* : Koteswara Rao, Advocate

**ORDER**

***Per:* R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. This Application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as



IBC, 2016") by **M/s. State Bank of India** (hereinafter called as "*Financial Creditor*") for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **M/s. Hackbridge Hewittic and Easun Limited** (hereinafter called as "*Respondent*")

2. Part – I, of the Application discloses the fact that the Petitioner is State Bank of India. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Public Limited Company with CIN:U27109TN1956PLC000882 which was incorporated on 25.01.1956 and that its Authorized Share Capital and Paid up Capital is ₹3,00,00,000/- and ₹2,91,70,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 6/1A1 & 6/1B1, Sy. No.6, behind Escorts Ltd, Ernavur Village, Tiruvottiyur, Chennai, Tamilnadu, 600019.

3. Part – III of the Application discloses the fact that the Financial Creditor had proposed the name of one Mr. Chinnam Poorna Chandra Rao, as the Interim Resolution Professional, who has also filed his consent in Form 2.



4. From Part-IV of the Application, it is seen that the Financial Creditor has disbursed a sum of Rs.134.88 Crores to one M/s. Victory Electricals Limited (hereinafter referred to as "*Principal Borrower*") comprising of Term Loan and working capital limits. In Part - IV of the Application, it is stated that the Default committed by the Principal Borrower under Term Loan Facilities is 31.05.2012 and that of working capital facilities is 09.03.2012. The present Application is filed before this Tribunal on 06.09.2019 against the Respondent who stood as a Corporate Guarantor in order to severe the repayment of financial assistance availed by Principal borrower by executing a Declaration cum indemnity dated 16.11.2009 in favour of the Financial Creditor / Petitioner.

5. From Part - V of the Application, it is seen that the Financial Creditor has placed the following documents in order to prove the Financial debt;

- Copy of Letter of Arrangement dated 03.09.2005.
- Copy of Agreement of Loan-Cum-Hypothecation dated 06.09.2005.
- Copy of Sanction Letter dated 04.11.2006.
- Copy of Agreement of Loan for Overall Limit dated 07.11.2006.
- Copy of Letter regarding the grant of individual limits dated 07.11.2006.



- Copy of Board Resolution of Corporate Guarantor dated 15.05.2008
- Copy of Board Resolution of Corporate Guarantor dated 30.12.2008.
- Copy of Sanction letter dated 22.04.2008.
- Copy of Letter modifying the terms and conditions dated 30.12.2008
- Copy of Supplemental Agreement of Loan for Overall Limit dated 31.12.2008.
- Copy of Letter regarding the grant of individual limits dated 31.12.2008
- Copy of Sanction Letter dated 07.11.2009.
- Copy of Board Resolution of Corporate Guarantor dated 07.11.2009.
- Copy of Agreement of Hypothecation of Goods and Assets by Principal Borrower and Corporate Guarantor dated 16.11.2009.
- Copy of Supplemental Agreement of Loan for Overall Limit dated 16.11.2009.
- Copy of Letter regarding the grant of individual limits dated 16.11.2009.
- Copy of Sanction Letter dated 15.03.2011.
- Copy of Sanction Letter dated 30.03.2012.
- Copy of Board Resolution of Corporate Guarantor dated 12.04.2012.
- Copy of Letter regarding the grant of individual limits dated 01.06.2012.

6. The Learned Counsel for the Financial Creditor submitted that the Respondent herein stood as a Corporate Guarantor in



order to secure the repayment of Financial Assistance availed by the Principal borrower and the Respondent herein has mortgaged its property in favour of the Financial Creditor and has also executed a Memorandum of Deposit of Title Deeds dated 31.12.2008. It was further submitted that the Respondent vide Declaration cum indemnity dated 16.11.2009 executed in favour of Financial Creditor, stood as a guarantor for repayment of loans availed by the Principal Borrower / Corporate Debtor. Thus, it was submitted that the Respondent undertook to repay all the loan limits with interest accrued thereon to the Financial Creditor and further declared that it along with the Principal Borrower are jointly and severally responsible for the discharge of all such monies and dues payable to the Financial Creditor.

7. It was submitted by the Learned Counsel for the Financial Creditor that the Respondent executed a revival letter dated 01.06.2012 under section 18 of the Limitation Act, 1963 acknowledging the liability for the payment of all outstanding with interest cost, charges and expenses and other monies due and payable by the Respondent / Corporate Guarantor. It was further submitted that by the Counsel for the Financial Creditor that from the Financial Statement for the year 2015 of Respondent, it is seen that the Respondent has declared that it



has given guarantee to the Financial Creditor for the Financial Assistance availed by the Principal borrower.

8. The Learned Counsel for the Financial Creditor submitted that the Principal Borrower has offered One Time Settlement vide its letter dated 18.05.2016 and the Financial Creditor has also approved the OTS of Rs.68 Crores vide its letter dated 06.10.2016 and subsequently, the Financial Creditor by its another letter dated 06.10.2016 approved the OTS with a condition to increase the amount to Rs.69.50 Crores, which was accepted by the Principal Borrower and Corporate Guarantor.

9. It was submitted that the Financial Creditor by their letter dated 03.05.2018 has cancelled the proposed OTS due to the failure on the part of the Principal Borrower to pay the amount as per the agreed terms. Further, it was submitted that the principal borrower and the Respondent / Corporate Guarantor have been admitting their liability towards the Financial Creditor from time to time, which goes on to show that the cause of action against the Principal borrower and the Respondent / Corporate Guarantor is a continuous cause of action and hence, it was submitted that the present Company Petition is within the period of Limitation.



10. In relation to the Principal Borrower, it is seen that the said petition was admitted by this Tribunal vide order dated 10.04.2019 based on an Application filed under Section 9 of IBC, 2016 by an Operational Creditor and it is brought to the notice of this Tribunal that the Principal Borrower is currently under Liquidation by order of this Tribunal dated 19.11.2019.

11. The Respondent / Corporate Guarantor has filed a two line reply wherein it is stated that they have no objection in admitting the above petition and also prayed for the admission of the present petition.

12. Heard both sides and perused the records including the pleadings placed before this Tribunal. It was submitted by the Learned Counsel for the Financial Creditor, that the CIRP in relation to the Principal Borrower was initiated by this Tribunal on 10.04.2019 and the Financial Creditor herein has submitted its claim before the Insolvency Resolution Professional to the tune of Rs.275.01 Crores and the said claim was admitted. However, since there was no Resolution Plan, the Principal borrower, was ordered into liquidation. Hence, it was contended that the debt due from the borrower and the liability of the guarantor do not stand extinguished.



13. Further it is contended that the liability of the Principal Debtor and the Guarantor are co-extensive and the very object of the guarantee will be defeated, if the Financial Creditor is asked to postpone his remedies against the guarantor. In order to buttress the submissions, the Ld. Counsel for the Financial Creditor relied upon the judgement of the Hon'ble Supreme Court in the matter of **State Bank of India -Vs- Indexport Registered And Ors (1992 AIR 1740)** and also **Cannanore Spinning & Weaving Mills Ltd and Ors ((2002) 5 SCC 54)**.

14. It was submitted by the Learned Counsel for the Financial Creditor that the liquidation value of the Principal borrower is only a sum of Rs.27.95 Crores as against the claim of the Applicant amounting to a sum of Rs. 275.01 Crores and if the CIRP in relation to the Respondent / Corporate Guarantor is initiated by this Tribunal, the Financial Creditor does not stand to unjustly enrich or get double dividend by proceeding separately against the Corporate Guarantor. Further, it was submitted that the instant Application satisfies the requirements of the IBC, 2016 and more particularly Section 7(5)(a) of IBC, 2016 and as such the present Application is required to be admitted by this Tribunal.



15. It is seen from the record of proceedings, that this Tribunal vide Order dated 20.02.2020 has directed the Petitioner to file the Written Submissions in relation to the maintainability of this Petition in view of the judgement rendered by the Hon'ble NCLAT in the matter of **Dr. Vishnu Kumar Agarwal -vs- Piramal Enterprises Ltd.** However, when the matter came up for hearing on 09.12.2020 it was submitted by the Learned Counsel for the Financial Creditor that the interpretation of law as made in the judgement of the Hon'ble NCLAT in the matter of **Dr. Vishnu Kumar Agarwal -vs- Piramal Enterprises Ltd** was not followed by a concordant bench of the Hon'ble NCLAT in the matter of **State Bank of India -Vs- Athena Energy Ventures Private Limited** dated 24.11.2020, for detailed reasoning given in the said Judgment by taking note *inter alia* of the amendment made to Section 60(2) and 60(3) of IBC, 2016 by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Act 26 of 2018) and also of the subsequent decision of the Hon'ble NCLAT in the matter of **Edelweiss Asset Reconstruction Company Ltd. -Vs- Sachet Infrastructure Ltd. & Ors** in *Company Appeal (AT)(Insolvency) No. 377 of 2019* dated 29.09.2019 along with the Report of the Insolvency Law Committee (ILC) dated February 2020. In the circumstances, the issue as to whether CIRP can be initiated simultaneously against two



Corporate Guarantors or for that matter in relation to the Principal Borrower and Corporate Guarantor as in the present instance has been put to rest by the Hon'ble NCLAT, the decisions of which we are bound to follow. Under such circumstances, it was prayed by the Ld. Counsel for the Financial Creditor to admit the present Application and to initiate the CIRP in relation to the Respondent/Corporate Guarantor.

16. However, before venturing into the merits of the present case there is another issue this Adjudicating Authority is duty bound to examine the Application filed by the Financial Creditor from the angle of limitation, whether it is pleaded or not by the Respondent. The Hon'ble Supreme Court in the matter of **Babulal Vardharji Gurjar -Vs- Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.** in Civil Appeal No. 6347 of 2019 dated 14.08.2020, while dealing with the aspect of limitation in relation to Applications filed under Section 7 and 9 of IBC, 2016 has held as follows;

"When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave and Sagar Sharma respectively, the following basics undoubtedly come to the fore: (a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;



(b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor; (c) that intention of the Code is not to give a new lease of life to debts which are time-barred; (d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs; (f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and (g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application."

17. From Part – IV of the Application, it is seen that the Financial Creditor has stated the date of default as 09.03.2012 and 31.05.2012 on the part of the Principal Borrower. However, in order to prove that the present Application falls within the period of limitation the Financial Creditor has stated that the Principal borrower has given One Time Settlement (OTS) proposal on 18.05.2016 which was approved by the Financial Creditor on 06.10.2016 and finally the said OTS proposal was cancelled by the Financial Creditor on 03.05.2018, and thereby sought to reckon the period of limitation from 06.10.2016



onwards and contended that hence there is a continuous cause of action. As regards the said contention, it is relevant to refer to the Judgment of the Supreme Court in this regard in **Babulal (supra)** at para 32.1

"32.1. Even in the later decisions, this Court has consistently applied the declaration of law in B.K. Educational Services (supra). As noticed, in the case of Vashdeo R. Bhojwani (supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7 of the Code while holding that the limitation started ticking from the date of issuance of recovery certificate dated 24.12.2001. Again, in the case of Gaurav Hargovindbhai Dave (supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA i.e., 21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on 03.10.2017 was barred by limitation".

18. The present Application is filed before this Tribunal on 06.09.2019. The Financial Creditor has obtained a copy of the revival letter dated 01.06.2012 as per Section 18 of the Limitation Act in and by which the period of limitation is being extended for the further period of three (3) years from 01.06.2012. For the purpose of bringing the present Application within the period of limitation it is submitted that the Principal Borrower has given an OTS proposal on 06.10.2016. It is now well settled from the judgments of the Hon'ble Supreme Court and Hon'ble NCLAT that the OTS letter does not extend the



period of limitation. Even for the sake of argument if the said OTS letter is taken into consideration, the same was obtained only on 06.10.2016 which is much after the expiry of 3 years from the date of default i.e. 31.05.2012. Therefore, in all respects, it is seen that the claim of the Financial Creditor is against a time barred debt. As regards the contention of the Financial Creditor that it is a continuous cause of action, the Supreme Court in the matter of **Vashdeo R Bhojwani -Vs- Abhyudaya Co-operative Bank Ltd. & Anr** in *Civil Appeal No. 11020 of 2018*, has rejected the said contention and held that for filing an Application under Section 7 of IBC, 2016, the time starts ticking when the default occurs. Further, it is to be noted here that Section 18 of the Limitation Act, only extends the period of limitation and it does not shift the date of default. In the present case, the Financial Creditor has not placed on record any Revival Letter obtained from the Respondent after 01.06.2012. From the records, it is also to be noted that the Account of the Principal Borrower had been declared as Non - Performing Asset (NPA) on 06.06.2012 as evident from the Demand Notice issued to the Principal Borrower which is presently under Liquidation before this Tribunal, the CIRP of which was initiated by this Tribunal based on an Application filed by its Operational Creditor in the matter of M/s. Cortica



Manufacturing (India) Private Limited -Vs- M/s. Victory Electricals Limited in CP/872/IB/2018 dated 10.04.2019.

19. Thus, it is to be noted here that the CIRP in relation to the principal borrower was triggered not at the instance of the present Financial Creditor but by an Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016. Even though the liability of the Principal borrower is co-extensive to that of the Guarantor, in an Application filed under Section 7 of IBC, 2016, the Applicant is required to satisfy the debt and default on the part of the Respondent independently and also it is a statutory duty of this Tribunal to ascertain as to whether the debt is a time barred debt or not, eventhough a defence to such an effect is not raised by the Respondent. The Demand Notice to the Respondent / Corporate Guarantor annexed at Page 335 and issued by the Applicant is to be noted is of the year 2013.

20. Thus, from the very documents filed by the Financial Creditor, we are of the considered view that the debt as claimed by the Financial Creditor is time barred and the Financial Creditor has failed to place on record any iota of document recognized under the law to substantiate that the debt falls well within the period of limitation. Hence this Adjudicating Authority, based on the documents filed by the Financial Creditor, comes to



an irresistible conclusion that the debt on the part of the Respondent/Corporate Guarantor is time barred and as such the Application filed by the Financial Creditor is liable to be dismissed and accordingly, the Application stands **dismissed** as barred by limitation. No costs.

-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Raymond*