

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)- 82 (ND)/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

INTEC CAPITAL LIMITED

APPLICANT/FINANCIAL CREDITOR

Vs.

RATCHET LABORATORIES LIMITED

RESPONDENT/CORPORATE DEBTOR

Judgment delivered on: 14.03.2022

CORAM:

SHRI DHARMINDER SINGH, MEMBER (J)

SHRI NARENDER KUMAR BHOLA, MEMBER (T)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER-JUDICIAL

1. The Intec Capital Limited has filed the instant application 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 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Ratchet Laboratories Limited, referred to as the corporate debtor.
2. As succinctly put, the facts of the present case are that the applicant Intec Capital Limited, is a Non-Banking Financial Company (NBFC) duly registered with Reserve Bank of India, having its Registered Office at 708,


14/3/22

Manjusha Building 57, Nehru Place, New Delhi-110019. Ms. Chandan has been duly authorized on behalf of applicant vide Board Resolution dated 25.04.2020, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the Board Resolution dated 25.04.2020 has been placed on record.

3. The Respondent Company M/s. Ratchet Laboratories Limited (CIN No. U 24239 DL 2004 PLC 124183) against whom, the initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 30.12.2020 having its registered office situated at 8/11, east Patel Nagar, New Delhi-110014. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. The case of the applicant precisely is that loan application was filed by the Corporate Debtor in March 2013 and on 18.03.2013 the loan was sanctioned by applicant vide Sanction letters dated 18.03.2013 for an amount of Rs. 2,32,67,460/-. Thereafter loan agreement was also executed on 30.03.2013 in respect of loan account number 1412-130002268 of corporate debtor and accordingly loan was disbursed.
5. As per the loan agreement the loan was to be repaid in 60 monthly installments of Rs. 3,38,694/- for initial 3 months and Rs. 5,76,374/- onwards in the loan account ending on 16.03.2018. However, the corporate


1/13

debtor has defaulted in making payments of loan, resultantly, the applicant recalled the entire loan amount vide loan recall notice cum Arbitration Notice dated 06.05.2015 in terms of clause 32 of the loan agreement. The Arbitration proceeding was also initiated resulting in Arbitral Award dated 26.02.2016 in favor of the applicant. The last transaction made in the loan account of corporate debtor was cheque no. 830009, reversed on 17.01.2018. Proceedings u/s 138 of Negotiable Instrument Act, 1881 was filed by applicant against corporate debtor. Therefore, as per part IV of the application it is claimed that as on 31.12.2020 a sum of Rs. 14,92,24,164/- is due and payable by the respondent company.

6. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sanjay Chopra, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P-01568/ 2018-19 / 12427 resident of 464-A/24, Jagdish Colony, Rohtak, Haryana, Rohtak, Haryana, 124001 with email - [id casanjaychopra@rediffmail.com](mailto:casanjaychopra@rediffmail.com). Mr. Sanjay Chopra has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sanjay Chopra as per the requirement of the IBBI Regulations. Accordingly, it is

 14/3

seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

7. The applicant has placed following documents on record to prove its claim:
- i. Copy of Form-8 filed with RoC to create charge and certificate of charge on corporate debtor's assets.
 - ii. Copy of inter-corporate deposit agreement dated 30.03.2013.
 - iii. Copy of Arbitral Award dated 26.02.2016.
 - iv. Record of default available with Information utility.
 - v. Copy of Loan Agreements dated 30.03.2013.
 - vi. Copy of Bank Account Statements.
 - vii. Copy of Loan Recall Notice dated 06.05.2015.
 - viii. Copy Sanction letter dated 18.03.2013.
8. The applicant has also placed on record a copy of record of default filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that claim of applicant is '*deemed to be authenticated*'.
9. The respondent corporate debtor was proceeded ex-parte vide order dated 07.04.2021.
10. We have heard Ld. Counsel for the Petitioner and thoroughly perused the case records. The applicant first time recalled the entire loan amount vide Loan Recall Notice dated 06.05.2015 and also initiated Arbitration Proceeding against the Corporate Debtor resulting in Arbitral Award dated 26.02.2016. Therefore, the date of default committed by Corporate Debtor would be the date of loan recall notice i.e. 06.05.2015.



11. The applicant in order to justify the point of limitation in its Part-IV has submitted that the debt is duly acknowledged by the corporate debtor in terms of Section 18 of the Limitation Act and further since the corporate debtor has continued the non-payment of further EMIs then the default is continuing in terms of Section 22 of the Limitation Act. The applicant also submitted that since the last cheque for installment was bounced on 17.01.2018, a fresh cause of action shall be started from 17.01.2018.
12. Ld. Counsel for the applicant while relying upon *the Raj Kamal Misra vs. Anil Khanna, order dated 23.05.2018 passed by Hon'ble High Court of Delhi in RFA No. 119/2017 and Jiwanlal Achariya v. Rameshwar Lal Agarwalla, AIR 1967 SC 1118* has argued that in the case of postdated cheques, the cause of action shall start running from the date of said cheque. Accordingly, on dishonoring of the last cheque, the period of limitation shall start running from that date. However, the present matter in hand, there is nothing on the record that there was any acknowledgement in writing given by the respondent quo the admission of debt and promise to make the said payment. Therefore, the benefit of Section 18 of Limitation Act cannot be extended to applicant because of the reason that the cheque which has been presented was postdated cheque and were kept by the applicant long back, perhaps at the time of sanctioning of the loan. Accordingly, the judgments relied upon are not helpful to the applicant. Whereas, Hon'ble NCLAT in the matter of **Mr. Sagar Sharma & Anr. Vs. Phoenix ARC Private Limited & Ors. Company Appeal (AT) (Insolvency) No. 177 of 2019, vide its order dated 07.02.2020** has held as follows:



“23. Section 22 of the Limitation Act, 1963 relates to ‘breaches and torts’, for the purpose of counting the fresh period of limitation. The said Section 22 of the Limitation Act, 1963 may be applicable to find out whether the claim is barred by limitation or not, but cannot be made applicable for counting the period of limitation for Application under Section 7 of the I&B Code, which is to be counted from the date of default/ NPA as held by the Hon’ble Supreme Court in terms of Section 7(5) of the I&B Code.”

13. On perusal of the aforementioned judgment it is clear that in the present matter the date of default for filing of petition under Section 7 of the Code would be the date of recalling of entire loan amount i.e. 06.05.2015, The applicant also initiated Arbitral Proceeding for recovery of its loan amount and the Arbitral Award was passed on 26.02.2016. The present application has been filed in the year 2021 that is much later than 3 years from the date default committed by the Corporate Debtor. Additionally, it is seen from the Record of Default filed before Information Utility that the applicant itself has mentioned the date of default as 30.09.2015, which also makes the present application time barred. It is pertinent to mention here that there is no written acknowledgment on record filed by the applicant, whereby it had ever admitted and committed to payment. The contention that the limitation commenced from the date, when the last cheque bounced is not acceptable as the loan was already recalled. The post-dated cheque bounced could not be treated as acknowledgment and would not enhance the period of limitation, which

[Handwritten signature]
14/3

had already started running from 06.05.2015. Accordingly, the limitation has to be counted from 06.05.2015. Moreover, the arbitral award was passed on 26.02.2016. Even if the period of limitation is to be counted from that day, it is time barred as the present petition was filed on 16.01.2021. Therefore, the present application is hopelessly time barred.

14. Resultantly, the present application is hereby rejected being barred by limitation with no order as to costs.

Let the copy of the order be served to the parties.

Consign the case records to the record room.

-Sd-

(NARENDER KUMAR BHOLA)

MEMBER (T)

-Sd-

(DHARMINDER SINGH)

MEMBER (J)