

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN, -MEMBER (J)

CORAM: HON'BLE DR. BINOD KUMAR SINHA -MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 28.04.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.104/7/HDB/2020
NAME OF THE COMPANY	Sri Mata Infratech Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Sri Mata Infratech Ltd
UNDER SECTION	7 of IBC

ORDER

CP (IB) No.104/7/HDB/2020 filed under Section 7 of IBC is admitted. Orders pronounced vide separate sheets.


MEMBER (T)

Syamala


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.104/7/HDB/2020
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s. SRI MATA INFRATECH LIMITED

Between:

M/s. State Bank of India,
Stressed Assets Management Branch,
Secunderabad, Door No.6-2-915.
5th floor, Rear Block, HMWSSB Compound,
Khairthabad, Hyderabad – 500 004.
Represented by Mr. C. Ravi Sankar,
Assistant General Manager.

...Petitioner/
Financial Creditor

And

M/s. Sri Mata Infratech Limited,
Registered Office: 503, TOPAZ Building,
Panjagutta, Hyderabad – 500082.

...Respondent/
Corporate Debtor

Date of Order: 28.04.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. G.P.Yash Vardhan, Advocate

For the Corporate Debtor: Mr. Vinit Trehan, Advocate

Per: Bench



ORDER

1. Under consideration is an Application filed by M/s. State Bank of India (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Sri Mata Infratech Limited. (In short, "*Respondent/Corporate Debtor*").
2. Brief facts of the case as submitted by the Financial Creditor are as follows:
 - a) That the Corporate Debtor has obtained various Term Loans and Cash Credit (hypothecation) limits from the Financial Creditor and an amount of Rs. 54.87 Crore was disbursed to the Financial Creditor herein during the period from 11.08.2010 to 18.01.2011.
 - b) That after obtaining sizeable amounts by way of Financial Assistance from the Financial Creditor, the Corporate Debtor herein has failed to pay the outstanding loan amounts and the account of the Corporate Debtor was declared NPA on 29.08.2012.
 - c) The Financial Creditor has exercised rights and remedies available to it at that point in time against the Corporate Debtor under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act") and also filed an Original Application No. O.A. No.2339 of 2017 (Old OA No.1388of 2014) ("**O.A.**") before Hon'ble Debt Recovery Tribunal-II Hyderabad ("**Hon'ble DRT**"), against the Corporate Debtor and other Defendants therein, for recovering an amount of Rs.65,89,85,331.70/- (Rupees Sixty Five Crores Eighty Nine Lakhs Eighty Five Thousand three



Hundred Thirty One and Seventy Paise only) inclusive of the principal amount with interest and cost.

- d) That the Hon'ble DRT has passed an Order in the above mentioned O.A. on 22.04.2017 directing the Corporate Debtor and other Defendants therein, to pay an amount of Rs.65,89,85,331.70/- (Rupees Sixty Five Crores Eighty Nine Lakhs Eighty Five Thousand three Hundred Thirty One and Seventy Paise only) to the Financial Creditor / the Applicant herein.
- e) That thereafter, the Hon'ble DRT, vide its Orders dated 16.12.2017 in RC No.2829 of 2017 has issued a Recovery Certificate ("**RC**") in the O.A. in favour of the Financial Creditor for recovering an amount of Rs.90,81,57,660.70/- (Rupees Ninety Crores Eighty One Lakhs Fifty Seven Thousand Six Hundred and Sixty and Seventy Paise Only) along with Interest at the rate mentioned therein from date of O.A. till its realization.
- f) That meanwhile, the Financial Creditor had issued notice under Section 13 of the SARFAESI Act to the Corporate Debtor on 24.04.2014 and thereafter Symbolic Possession of the assets of the Corporate Debtor was taken on 31.07.2014 and on 01.08.2014. Subsequently, the Corporate Debtor has filed three (3) Writ Petitions bearing No. W.P.No.26450 of 2017, W.P. No.27180 of 2017 and W.P. 32037 of 2017 before the Hon'ble High Court challenging the E-auctions of the assets conducted by the Financial Creditor. W.P. No.27180 of 2017 was dismissed by the Hon'ble High Court on 16.08.2017 as infructuous and the W.P. 32037 of 2017 was dismissed on 07.11.2017. The W.P. No.26450 of 2017 is still pending disposal.



g) That on the basis of the Order and Recovery Certificate issued by Hon'ble DRT, the Financial Creditor has claimed an amount of Rs. 126,45,96,913.75/- to be in default.

Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

3. Learned counsel for the Respondent filed counter, *inter-alia*, levelling various allegations against the Financial Creditor and has also advanced the following contentions:

a) The first contention of the Corporate Debtor is that the instant petition is barred by limitation as the Loan Account was declared NPA way back on 29.08.2012 itself and the instant Application was filed much after three years of that date. To support this contention, reliance has been placed on the judgement of Hon'ble Supreme Court in the matter of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd and Anr. [Civil Appeal No. 4952 of 2019], wherein it is held as follows:-

"1) In the present case, the Respondent No. 2 was declared NPA on 21.07.2011. At that point of time, the State Bank of India filed two O.As in the Debt Recovery Tribunal in 2021 in order to recover a total debt of Rs. 50 Crores of rupees. In the meanwhile, by an assignment dated 28.03.2014, the State Bank of India assigned the aforesaid debt to Respondent No.1. The Debt Recovery Tribunal proceedings reached judgment on 10.06.2016, the Tribunal holding that the O.As filed before it were not maintainable for reasons give therein.

2) As against the aforesaid judgment, Special Civil Application Nos. 10621-10622 were filed before the Gujarat High Court which resulted in the High Court remanding the aforesaid matter. From this order, a Special Leave Petition was dismissed on 25.03.2017.

3) An independent proceeding was then begun by Respondent No.1 on 03.10.2017 being in the form of a Section 7 application filed under the Insolvency and Bankruptcy Code in order to recover the original debt together with interest which now amounted to about 124 Crores of rupees. In the Form-I that has statutorily to be annexed to the Section

7 application in Column II which was the date on which default occurred, the date of the NPA i.e. 21.07.2011 was filled up. The NCLT applied Article 62 of the Limitation Act which reads as follows:-

Description of suit	Period of limitation	Time from which period begins to run
To enforce payment of money secured by a mortgage or otherwise charged upon immovable property	Twelve years	When the money sued for becomes due

Applying the aforesaid Article, the NCLT reached the conclusion that since the limitation period was 12 years from the date on which the money suit has become due, the aforesaid claim was filed within limitation and hence admitted the Section 7 application. The NCLAT vide the impugned judgment held, following its earlier judgments, that the time of limitation would begin running for the purposes of limitation only on and from 01.12.2016 which is the date on which the Insolvency and Bankruptcy Code was brought into force. Consequently, it dismissed the appeal.

4) Mr. Aditya Parolia, learned counsel appearing on behalf of the appellant has argued that Article 137 being a residuary article would apply on the facts of this case, and as right to sue accrued only on and from 21.07.2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in B.K. Educational Services Private Limited vs. Parag Gupta and Associates, 2018 SCC OnLine SC 1921 in order to buttress his argument that it is Article 137 of the Limitation Act which will apply to the facts of this case.

5) Mr. Debal Banerjee, learned Senior Counsel, appearing on behalf of the respondents, countered this by stressing, in particular, para 7 of the B.K. Educational Services Private Limited (supra) and reiterated the finding of the NCLT that it would be Article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that,

being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.

6) Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee's reliance on para 7 of B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

7) This being the case, we fail to see how this para could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.

8) This being the case, the appeal is allowed and the judgments of the NCLT and NCLAT are set aside.

- b. It is contended by the Respondent that the aforestated position of law had been reiterated by the Hon'ble Supreme Court in the matter of "*Jignesh Shah and Anr. Versus IL&FS*", whereby the Apex Court categorically held the view that Article 137 of the Limitation Act is applicable for an Application made U/s 7 under the Insolvency Code.
- c. The Corporate Debtor has also contended that the Applicant illegally classified Respondent's account as NPA with malafide intention to put them in the category of willful defaulters and to take benefit of Section 29A(b) of the I&B Code, 2016 by debarring promoters of the Respondents Company to submit Resolution Plan.
- d. It is also contended that as per RBI master circular on prudential norms on Income Recognition, Assets Classification



and Provisioning pertaining to advances dated 01.07.2015, it is clear that Assets Classification & Provisioning cannot be the basis to decline the restructuring request of Company. If unit is prima facie viable then in the first instance the possibility of Restructuring is to be considered and recovery to be resorted only if the first two options are not feasible. That the RBI guidelines also provides that possibility of revival of account should be explored either by rectification or restructuring and if both are not feasible then they should resort for recovery.

Reiterating above, counsel for the Corporate Debtor prayed to dismiss the Application.

4. Counsel for the Financial Creditor filed rejoinder, inter-alia denying the allegations made in counter and has further stated as under:-
- a. In relation to the limitation, the Financial Creditor has stated that the date of default for the instant Application is as under:-

Particulars of Default	Date of Default
Date of Order	22.04.2017
Date of Recovery Certificate	16.12.2017

- b. It is contended on behalf of the Applicant that the Hon'ble Supreme Court vide its order dated 04.08.2021, in the matter of *Dena Bank & Ors. Vs C. Shiva Kumar Reddy* has held that judgement and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor to initiate proceedings U/s. 7 of IBC.
- c. That in the light of the judgment of Hon'ble Supreme Court, the instant petition is well within limitation. It is further stated that



the Corporate Debtor has also acknowledged the debt in their Financial Statement/Balance Sheet for the year 2015-2016, 2016-2017 and 2017-2018, which extends the period of limitation.

- d. Further, the Applicant argued that the Corporate Debtor has been submitting OTS proposal with no intention of the actually paying or clearing the outstanding amounts and these OTS proposals should also be considered as acknowledgement of debt , which extends limitation.

Reiterating above, counsel for the Financial Creditor prayed to admit the instant Application.

5. Heard and perused the record.
6. It is the case of the Applicant that it has accorded various Term Loans and Cash Credit limits to the Corporate Debtor, which the Corporate Debtor was liable to repay along with interest, however it has failed to repay the same. The instant Application is filed claiming an amount of Rs. 126,45,96,913.75/- to be in default, as per the decree of DRT given in favour of the Applicant vide their order dated 22.04.2017, and Recovery Certificate dated 16.12.2017.
7. The main contention raised by the Corporate Debtor is that the instant application is barred by Limitation as the Corporate Debtor's Loan Account was declared as NPA on 29.08.2012 and the instant Application was filed much after the 3 years' period of Limitation available under Article 137 of the Limitation Act.
8. The Applicant, on the other hand, has contended that the instant Application has been filed on the basis of Decree and Recovery Certificate issued by Hon'ble DRT on 22.04.2017 and 16.12.2017 and therefore the instant Application is very much under limitation. The Applicant has also relied on the acknowledgement of debt by the Corporate Debtor in their respective Balance Sheets for FYs 2015-16, 2016-17 and 2017-18.



9. Therefore, the most pertinent question falling for consideration before this Adjudicating Authority is: Whether in the given facts and circumstances of the case, the instant Application is barred by Limitation or not?
10. It is pertinent to observe here that after the introduction of Section 238A in the IBC 2016, it is no longer in dispute that the provisions of Limitation Act are applicable to proceedings under the IB Code 2016. Again, by their judgement in the case of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd and Anr (*supra*), Hon'ble Supreme Court have categorically laid down that the period of limitation in respect of an application filed u/s 7 of the IBC, 2016 will be governed by Article 137 of the Schedule to the Arbitration Act, which stipulates a period of 3 years from the cause of action as period of limitation. However, such period of limitation can be extended on the basis of Acknowledgement of Debt by the Debtor in terms of provisions of Section 18 of the Limitation Act. The issue of extension of Limitation in respect of Applications under IBC, 2016 has been settled by the Hon'ble Supreme Court in their recent judgment in *Dena Bank vs. C. Shivakumar Reddy*, (Civil Appeal No.1650 of 2020) as relied upon by the Financial Creditor, wherein it has been laid down as under:

"142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution



Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

In the instant case, the Applicant has filed the Application u/s 7 of the Code on the basis of the Decree/Recovery Certificate issued by Hon'ble DRT which gave a fresh cause of action to initiate proceedings u/s 7 of the Code, as the dues under the said Decree/Certificate of Recovery remained unpaid by the Corporate Debtor. Further, it has been settled by various judicial pronouncements including the Hon'ble Supreme Court's judgement in *Dena Bank vs. C. Shivakumar Reddy, (Supra)* that an 'acknowledgment of debt' in the audited Balance Sheet of a Company shall be deemed as acknowledgement of debt in writing for the purposes of Section 18 of the Limitation Act, 1963. From a perusal of record, it is observed that the Corporate Debtor has been acknowledging its debt from time to time, by filing various OTS proposals with the Applicant herein and the impugned debt has also been reflected in the Balance Sheet of the Corporate Debtor year after year, the last such published Balance sheet placed on record being as at 31st March, 2018. Therefore the Limitation gets extended as per the provisions of Section 18 r/w Article 137 of the Limitation Act for a fresh period of 3 years w.e.f., 1st April, 2018. The instant Application was filed with this Adjudicating Authority on 26.12.2019. Therefore, we observe that the instant Application has been filed well within the period of limitation and the challenge to the instant Application on the ground of Limitation fails.

11. Further, the other contention of Corporate Debtor, that Applicant had initiated recovery proceedings before restructuring of the Corporate Debtor's debt as per the Master Circular of RBI cannot be adjudicated upon in the instant proceeding before this Adjudicating



Authority as it has no relevance to the admission or rejection of the Application u/s 7 of the Code, which is to be decided on the basis of our findings as to the existence of a 'financial debt' exceeding the pecuniary threshold as prescribed in Section 4 of the IB Code, 2016 and evidence of 'default' as committed by the Corporate Debtor.

12. In view of the above discussion, we are of the view that in the instant case there is a financial debt and there has been a default committed by the Corporate Debtor in repayment of the same. This Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. As observed above, the instant Application is also filed well within the period of Limitation. Hence, the contentions raised by the Corporate Debtor are overruled.
13. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

".....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."
14. The Financial Creditor has also fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, this Adjudicating Authority is inclined to admit the instant Application.
15. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate



Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

16. The Financial Creditor proposed the name of Mr. B. Naga Bhushan, as Interim Resolution Professional and he has filed his written consent in Form 2. Accordingly, this Tribunal appoints Mr. B. Naga Bhushan, as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00032/2016-2017/10085, as Interim Resolution Professional. IRP is directed to file Authorization for Assignment within three days from the date of this order.
17. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
18. We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
19. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
 - i. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*
 - ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
 - iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of*



Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
 - v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
20. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
21. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.



22. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
23. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
24. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
25. Accordingly, this Petition is admitted.

Dr. Binod Kumar Sinha
Member Technical

Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi