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BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH

CP(IB) 379/7/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.05.2020**

Name of the Company: Invent Assets Securitisation &  
Reconstruction Pvt Ltd  
V/s  
Xylon Electrotechnic Pvt Ltd

Section of the Companies Act / I & B Code : Section 7 of insolvency & Bankruptcy Code 2016

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**

1.

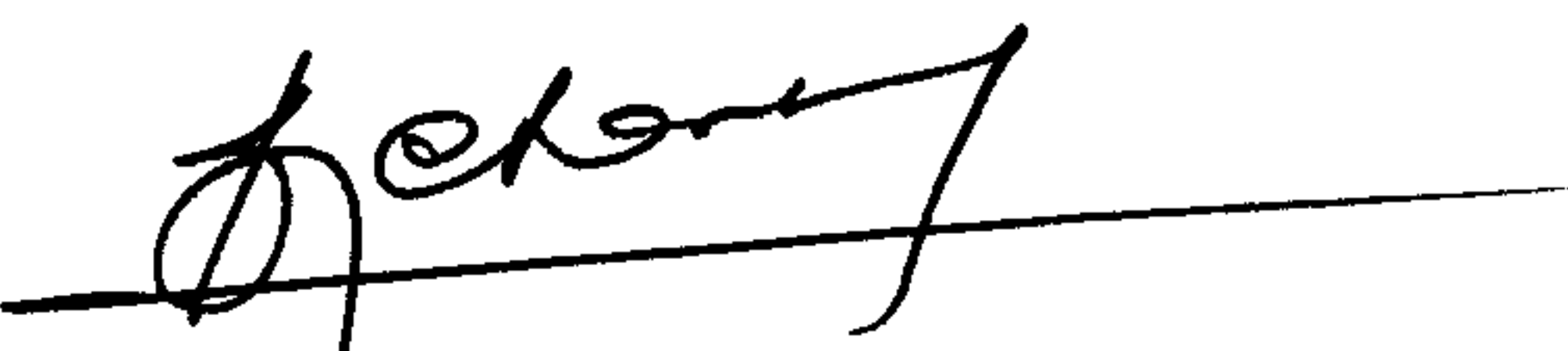
2.


**ORDER**

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 28th day of May, 2020.

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH  
AHMEDABAD**

**I.A. No. 478 of 2018  
&**

**I.A. No. 711 of 2019  
In/with**

**C.P. No. (I.B) 379/7/NCLT/AHM/2018**

**In the matter of:**

**C.P. No. (I.B) 379/7/NCLT/AHM/2018**

Invent Assets Securitisation & Reconstruction Pvt. Ltd.,  
(acting in its capacity as trustee of Invent/1314/P6 Trust)  
Registered Office at  
107, Jolly Maker Chambers – II,  
225, Nariman Point,,  
Mumbai – 400 021

**Corporate Office:**

B, Ground Floor, Block No. III,  
Bakhtawar Commercial Premises Society,  
Nariman Point,  
Mumbai – 400 021

..... Petitioner(Financial Creditor)

**Versus**

Xylon Electrotechnic Pvt. Ltd.,  
Registered Office:  
Arun Complex,  
Flat No. 3, 36, Alkapuri,  
Baroda 390 007

**Administrative office:**

A-491, 3<sup>rd</sup> Pasta Lane,  
Colaba,  
Mumbai 400 005

**Factory:**

Factory at GAT 407,  
Takwe Road,  
Village: Kanhe,  
Taluka: Mava  
Dist: Pune

.....Respondent (Corporate Debtor)

✓

✓

**I.A. No. 478 of 2018**

Xylon Electrotechnic Pvt. Ltd.,  
Registered Office:  
Arun Complex,  
Flat No. 3, 36, Alkapuri,  
Baroda 390 007

**Administrative office:**

A-491, 3<sup>rd</sup> Pasta Lane,  
Colaba,  
Mumbai 400 005

**Factory:**

Factory at GAT 407,  
Takwe Road,  
Village: Kanhe,  
Taluka: Mava  
Dist: Pune

.....Applicant (Corporate Debtor)

**Versus**

Invent Assets Securitisation & Reconstruction Pvt. Ltd.,  
(acting in its capacity as trustee of Invent/1314/P6 Trust)  
Registered Office at  
107, Jolly Maker Chambers – II,  
225, Nariman Point,,  
Mumbai – 400 021

**Corporate Office:**

B, Ground Floor, Block No. III,  
Bakhtawar Commercial Premises Society,  
Nariman Point,  
Mumbai – 400 021

.....Respondent (Financial Creditor)

✓



I.A. No. 478 of 2018  
&  
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In/with  
C.P. No. (I.B) 379/7/NCLT/AHM/2018

I.A. No. 711 of 2019

The Candle Light Company Private Limited  
Having its office at:  
A-491, 3<sup>rd</sup> Pasta Lane,  
Colaba,  
Mumbai – 400 005

.....Applicant

**Versus**

Invent Assets Securitisation & Reconstruction Pvt. Ltd.,  
(acting in its capacity as trustee of Invent/1314/P6 Trust)  
Registered Office at  
107, Jolly Maker Chambers – II,  
225, Nariman Point,,  
Mumbai – 400 021

.....Respondent No. 1

Xylon Electrotechnic Pvt. Ltd.,  
Registered Office:  
Arun Complex,  
Flat No. 3, 36, Alkapuri,  
Baroda 390 007

.....Respondent No. 2

**Order delivered on 28<sup>th</sup> May, 2020**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance: CP(IB) No. 379 of 2018**

Mr. Anip A Gandhi, Mr. Raju Kothari, and Mr. Rohit Gupta, Advocates for the Applicant. Mr. Priyam Shah, i/b Wadia Ghandy & Co. Advocate for the Respondent. Advocate Mr. Chirag Sancheti, Advocate for the Respondent. Mr. Ayaan Patel, Advocate for the Respondent.



**I.A. No. 478 of 2018**

Mr. Anip A Gandhi, Mr. Raju Kothari, and Mr. Rohit Gupta, Advocates for the Respondent. Mr. Priyam Shah, i/b Wadia Ghandy & Co. Advocate for the Applicant. Advocate Mr. Chirag Sancheti, Advocate for the Corporate Debtor. Mr. Ayaan Patel, Advocate for the Applicant.

**I.A. No. 711 of 2019**

Mr. Anmol A Mehta, Advocate for the Applicant. Mr. Anip A Gandhi and Mr. Raju Kothari, Advocates for the Respondent.

**COMMON ORDER**

**[Per: Mr. Prasanta Kumar Mohanty, Member (T)]**

1. The present Application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as Code) by Invent Assets Securitisation and Reconstruction Private Limited for the purpose of initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against XYLON ELECTROTECHNIC PVT. LTD., since it has lost its substratum and is unable to repay the outstanding amount of Rs. 54,49,40,510.35 (Rupees Fifty-Four Crores Forty-nine lacs Forty Thousand Five Hundred Ten and paisa Thirty Five only) including interest till 30.06.2018 plus further interest till the date of payment which is owed to Invent Asset Securitisation & Reconstruction Pvt. Ltd., acting in its capacity as Trustee of Invent/1314/P6 Trust. It is stated that Union Bank of India, the original Financial Creditor, has assigned its debt and securities sanctioned to the Corporate Debtor to Invent Asset Securitisation & Reconstruction Pvt. Ltd., acting in its capacity as Trustee of Invent/1314/P6 Trust

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**In/with**  
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2. The Application is signed by Ms. Ritika Jain, Assistant Vice President, Invent Assets Securitisation & Reconstruction Pvt. Ltd., having their corporate office at B, Ground Floor, Block No. III, Bakhtawar Commercial Premises Society, Nariman Point, Mumbai – 400 021 and registered office at 107, Jolly Maker Chambers No. 2, 225, Nariman Point, Mumbai – 400 021. Certified copy of the board resolution dated 19<sup>th</sup> April, 2018 is annexed with the Petition as **Annexure “A”**.

3. M/s. Xylon Electrotechnic Pvt. Ltd., Respondent/Corporate Debtor is a Company incorporated under the Companies Act, 1956 having its Registered Office situated at Arun Complex, Flat No. 3, 36, Alkapuri, Vadodara – 390 007, Gujarat.

4. The Authorised Share Capital of the Corporate Debtor is Rs. 100,000,000/- and the Paid up Capital is Rs. 51,000,000/-.

5. It is stated that the Respondent Corporate Debtor is a Principal Borrower with regard to various loans/credit facilities granted by the Applicant's Assignor.

5.1 It is further stated that the Respondent Corporate Debtor applied for the following financial facilities viz.

<b>Facility</b>	<b>Sanctioned Amount in Lakhs as per Sanction Letter dated 03.01.2008</b>
Cash Credit w/w Packing Credit	300.00
FDBP/FUDBP	900.00
PACKING CREDIT	600.00

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TERM LOAN	350.00
IMPORT INLAND LC	250.00
L.G.	0.50
<b>TOTAL</b>	<b>2450.00</b>

5.2 It is further stated that aforesaid credit facilities were restructured on 12.06.2009 as under:

Facility	Amount in Lakhs
Cash Credit	100.00
WCTL	225.00
Imp/Inl DP/DA	75.00
Letter of Guarantee	25.00
SOD (DRC)	90.00
FDBP w/w Packing Credit	800.00
Term Loan	275.00
<b>TOTAL</b>	<b>1590.00</b>

5.3 It is submitted that pursuant to the said facilities, necessary securities were furnished by the Respondent Corporate Debtor, its Directors/Guarantors/Mortgagors.

6. It is further submitted that the Respondent Corporate Debtor and its Directors/Guarantors/Mortgagors also executed various documents in favour of the Applicant's Assignor i.e. Union Bank of India and now assigned to the Applicant. The details of various documents are as under:

Date	Document
03.01.2008	Copy of the Sanction Letter

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21.01.2008	Copy of the Board Resolution
07.02.2008	Demand Promissory Note for Rs. 3.00 Crores
07.02.2008	Letter of Continuity
07.02.2008	Hypothecation Agreement
07.02.2008	Letter of undertaking
07.02.2008	Demand promissory Note for Rs. 9.00 Crores
07.02.2008	Letter of Hypothecation of Bills
07.02.2008	Demand promissory Note for Rs. 6.00 Crores
07.02.2008	Letter of Continuity
07.02.2008	Packing Credit Agreement
07.02.2008	Letter of Undertaking
07.02.2008	Demand Promissory Note for Rs. 3.50 Crores
07.02.2008	General Term Loan Agreement
07.02.2008	Demand Promissory Note for Rs. 2.60 Crores
07.02.2008	Demand Promissory Note for Rs. 2.50 Crores
07.02.2008	Hypothecation Agreement of Goods and Debts
07.02.2008	Composite Deed of Hypothecation
07.02.2008	Letter of Guarantee
21.01.2008	Resolution of Corporate Debtor
21.01.2008	Resolution of the Candle Light Company Pvt. Ltd.,
08.02.2008	Memorandum of Deposit of Title Deeds

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07.02.2008	Declaration
27.02.2008	Certificates issued by the Registrar of Companies <b>registering charge on immovable property of the Corporate Debtor in favour of Assignor Bank i.e. Union Bank of India</b>
27.02.2008	Certificates issued by the Registrar of Companies registering charge on the immovable <b>property of sister concern i.e. The Candle Light Company Pvt. Ltd. in favour of the Assignor Bank i.e. Union Bank of India</b>
10.03.2009	Letter addressed by the Corporate Debtor
12.06.2009	Letter addressed by the Assignor Bank i.e. Union Bank of India – Sanction letter for restructuring / renewal of limits
30.06.2009	Demand Promissory Note for Rs. 225.00 Crores
30.06.2009	Composite Deed of hypothecation
30.06.2009	Letter of Guarantee executed by the Director Shekhar Shah
20.07.2009	Letter by Assignor Bank i.e. Union Bank of India to Corporate Debtor

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22.07.2009	Demand Promissory Note for Rs. 2.75 Crores
22.07.2009	Composite Deed of Hypothecation
20.07.2009	Board Resolution of Xylon Exlectrotechnic Pvt. Ltd.
21.04.2009	DBC of PC Facility
21.04.2009	DBC of FUDBP Facility
22.04.2009	DBC of Cash Credit Facility
22.04.2009	DBC of WCTL Facility
22.04.2009	DBC of Term Loan Facility

6.1 It is further submitted that the Respondent Corporate Debtor i.e. the Borrower and other Guarantors **failed to honour their** terms and conditions of the credit facilities granted by the Union Bank of India and hence the Applicant's Assignor Bank i.e. the Union Bank of India classified the account of the Respondent Corporate Debtor as **"Non Performing Account" (NPA) on 20.02.2010.**

6.2 It is further submitted that the Applicant's Assignor Bank filed O.A. No. 64 of 2011 originally filed by Union Bank of India and now substituted by the present Applicant for recovery of its aggregate dues of Rs. 16,64,18,988.03 (Rupees Sixteen Crores Sixty-Four lacs Eighteen Thousand Nine Hundred Eighty Eight and Paisa Three only) with further interest before the Hon'ble Debts Recovery Tribunal-II at Mumbai. The said matter is pending.

7. The Financial Creditor i.e. Union Bank of India in Part IV of the Form I (under sub-rule (1) of rule 4), the application by Financial Creditor to initiate corporate insolvency resolution process

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**In/with**  
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under the IBC, has mentioned the amount claimed to be in default and the date on which the default has occurred. The details are reproduced hereunder:

**Details of Total amount of Debt granted:**

<b>Facility</b>	<b>Sanctioned Amount in Lakhs as per Sanction Letter dated 03.01.2008</b>
Cash Credit w/w Packing Credit	300.00
FDBP/FUDBP	900.00
PACKING CREDIT	600.00
TERM LOAN	350.00
IMPORT INLAND LC	250.00
L.G.	0.50
<b>TOTAL</b>	<b>2450.00</b>

7.1 It is further stated that aforesaid credit facilities were restructured on 12.06.2009 as under:

<b>Facility</b>	<b>Amount in Lakhs</b>
Cash Credit	100.00
WCTL	225.00
Imp/Inl DP/DA	75.00
Letter of Guarantee	25.00
SOD (DRC)	90.00
FDBP w/w Packing Credit	800.00
Term Loan	275.00
<b>TOTAL</b>	<b>1590.00</b>

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**I.A. No. 711 of 2019**  
**In/with**  
**C.P. No. (I.B) 379/7/NCLT/AHM/2018**

It is stated that Invent Assets Securitisation & Reconstruction Pvt. Ltd., is a company incorporated under the provisions of Companies Act, 1956 and registered with the Reserve Bank of India as an Asset Reconstruction Company u/s 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 had acquired the financial assets of Xylon Electrotechnic Pvt. Ltd., from Union Bank of India vide Assignment Agreement dated 4<sup>th</sup> December, 2014 duly registered on 22<sup>nd</sup> January, 2015 annexed with the Petition as **Annexure "B"**.

**Details of Amount claimed to be in default and the default on which the default occurred:**

<b>Facility</b>	<b>Principal Outstanding</b>	<b>Total Outstanding as on 30.06.2018</b>
Packing Credit	4,78,71,490.00	180,453,802.35
FUDP/FDBP	2,68,38,777.00	99,248,404.32
Cash Credit Hypothecation Facility	1,72,35,431.63	64,996,032.55
Term Loan	241,73,931.00	98,938,507.56
WCTL	2,44,53,248.40	101,303,763.57
<b>Total:</b>	<b>14,05,72,878.03</b>	<b>54,49,40,510.35</b>

**Date of Default – 20.02.2010 as per Union Bank of India.**

Ledger of the Assignor Bank i.e. Union Bank of India along with Interest Calculation Sheet by INVENT is annexed with the Petition as **Annexure "C"**.

8. The Financial Creditor has proposed the name of Mr. Vipul K. Choksi, Regn. No. IBBI/IPA-001/IP-P00927/2017-18/11534 for his appointment as an Interim Resolution Professional and has enclosed with the Petition his consent in Form 2 and the same is annexed with the Petition.

9. The present application is filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 (hereinafter referred to as "Rules") before this Adjudicating Authority to initiate the Corporate Insolvency Resolution process against the Respondent Corporate Debtor.

10. In the present matter, this Adjudicating Authority, vide its order dated 10.08.2018 directed the Petitioner Company and the Registry to serve the notice of date of hearing upon the Respondent Corporate Debtor and file the proof of service. Thereafter, the Corporate Debtor appeared before this Adjudicating Authority on 17.09.2018 and sought time to file reply within two weeks.

11. In response to the present Insolvency and Bankruptcy Petition filed by the Petitioner Bank, the Respondent Corporate Debtor filed his Preliminary Objections only on **one ground that the Petition is barred by limitation as the default occurred on the part of the Respondent Corporate Debtor on 20<sup>th</sup> February, 2010** and the Petitioner Bank filed the captioned Petition only in or around **July, 2018** i.e. after a gross inordinate delay of more 8 (eight) years.

12. Thereafter, the Petitioner bank filed its **Rebuttal on 01.02.2019** stating that Respondent has **not denied their liability**. However, they have filed an opposition/objection merely on the ground of limitation in filing the present CP (Insolvency and Bankruptcy) No. 379 of 2018, which the Petitioner Bank **vehemently denies that the application is barred by Law of Limitation**.

12.1 It is submitted by the Applicant that Union Bank of India has assigned their debts of the Respondent Corporate Debtor along with all the underlying securities, rights, title and interest thereon vide

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registered Assignment Agreement dated **4<sup>th</sup> December, 2014** to the present Petitioner.

12.2 It is further submitted that the account of the Respondent Corporate Debtor was declared as Non-Performing Asset on 20.02.2010 by the Assignor Bank i.e. Union Bank of India. Further, the Demand Notice was issued on 01.07.2010 by the Assignor Bank. Thereafter, the Original Application (OA) had been filed by the Assignor Bank i.e. Union Bank of India on 08.02.2011 before the Hon'ble DRT – II, Mumbai and in the meantime, the debts of the Respondent Corporate Debtor were assigned to the Petitioner i.e. Invent Assets Securitisation & Reconstruction Pvt. Ltd., acting in its capacity as Trustee of Invent/1314/P6 Trust. In pursuance to the Assignment, the Petitioner substituted in place and instead of the Union Bank of India, in the said Original Application.

12.3 It is further submitted that Original Application before the DRT – II Mumbai is in the **nature of suit and is already filed and pending**. This Original Application was filed well within the period of limitation and once the suit is filed, limitation stops to run and claim is kept alive till decision of the Suit. Therefore, it would not be proper on the part of the Corporate Debtor to contend that the **claim is barred by Law of Limitation**, more further, when the liabilities towards the petitioner herein have been shown in the Balance Sheets of the Respondent Corporate Debtor year after year i.e. **01.04.2016 to 31.03.2017 along with Form AOC 4**.

13. The Respondent Corporate Debtor, filed Affidavit in Reply on 05.07.2019 purely on the ground that the matter is barred by limitation.

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14. During the pendency of the aforesaid Petitioner, I.A. No. 478 of 2018 and I.A. No. 711 pf 2019 were filed before this Adjudicating Authority

**I.A. No. 478 of 2018**

14.1 The I.A. No. 478 of 2018 is filed by the Respondent Corporate Debtor with the prayers that CP (Insolvency and Bankruptcy) No. 379 of 2018 is barred by the provisions of the Limitation Act, 1963 praying this Adjudicating **to dismiss the Petition** No. CP (Insolvency and Bankruptcy) No. 379 of 2018 as **barred** by the Law of Limitation.

**I.A. No. 711 of 2019**

14.2 The I.A. No. 711 of 2019 is filed by the The Candle Light Company Private Limited, the Applicant who is exclusive owner of movable machineries, possession of which has been taken by the Respondent No. 1 ARC, the orig. Applicant in the main Petition CP (Insolvency and Bankruptcy) No. 379 of 2018 and the said machineries are presently lying at the immovable property being land at Gut 407, Takwe Road, Village Kanhe, Taluka Maval, Pune-412 106 India. It is further stated that out of the aforesaid land, an area admeasuring 0-80 HR (2 acres) is owned by the Respondent No. 2 i.e. Xylon Electrotechnic Private Limited and a separate area admeasuring)-80 HR (2 acres) is **owned by the Applicant.**

14.3 It is stated that in the year 1999, the Applicant has entered into various joint venture agreements with different parties for business purposes. Subsequently, a termination agreement dated 31.07.2006 was executed between the Applicant and Xylon Electrotechnic Private Limited. Thereafter, asset termination agreement dated 31.08.2006

was executed between the Applicant and Xylon Electrotechnic Private Limited. Since the assets **could not be sold out, the Applicant rented the same to the** Respondent No. 2 Company i.e. Xylon Electrotechnic Private Limited.

14.4 It is further stated that aforesaid assets, though at no point of time, were hypothecated to Union Bank of India or any other bank and/or financial institutions, the Authorised Officer of Union Bank of India took physical possession of the movables belonging to the Applicant lying at Gut 407, Takwe Road, Village Kanhe, Taluka Maval, Pune-412 106 in response to their OA No. 64 of 2011 filed under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before the Hon'ble DRT-II Mumbai. The Applicant vehemently objected to the aforesaid illegal and forcible possession by Union Bank of India. However, the Applicant's claim for receiving machineries back, did not survive as the Union Bank of India vide their letter dated 15.10.2012 informed the Applicant **that all the machineries in the Unit of the Respondent No. 2 Company had been charged and hypothecated to Union Bank of India.**

14.5 Aggrieved by the actions and reply of Union Bank of India, the Applicant filed Securitisation Application No. 64 of 2012 before Hon'ble DRT-II Mumbai and the said SA was disposed of by order dated 03.07.2013 **in favour of the Applicant.** However, the Union Bank of India kept avoiding **such requests** from the Applicant for return of the machineries and continuously committed breach of the order dated 03.07.2013 of the Hon'ble DRT-II, Mumbai. It is stated that again the Applicant vide IA No. 801 of 2013 approached Hon'ble DRT-II Mumbai and once again DRT-II Mumbai vide its order dated 17.01.2014 gave judgment in favour of the **Applicant.** And at this stage, the Union Bank of India preferred **Appeal No. 24 of 2014**

before the Hon'ble Debt Recovery Appellate Tribunal, Mumbai and **the matter is still pending there.**

14.6 Hence this IA is before this Adjudicating Authority.

**Observations:**

15. The above matters were taken up for hearing and both sides were heard by this Adjudicating Authority on 10.08.2018, 17.09.2018, 30.10.2018, 12.12.2018, 31.01.2019, 18.03.2019, 02.05.2019, 05.07.2019, 23.08.2019, 26.09.2019, 14.10.2019, 19.11.2019, 09.12.2019, 07.01.2020 and 11.02.2020 and both the sides were given ample opportunities to submit their objections/replies etc.

15.1 The only objection raised by the Respondent/Corporate Debtor is that the alleged debt as claimed by the Applicant Bank is a time barred debt and is barred by the law of limitation.

15.2 This Adjudicating Authority while going the main petition, has observed that Union Bank of India, the Applicant's Assignor has filed OA No. 64 of 2011 and now substituted by the Applicant, the Invent Assets Securitisation & Reconstruction Pvt. Ltd., before the Hon'ble Debt Recovery Tribunal – III Mumbai on 08.02.2011 for default committed by the Respondent Corporate Debtor on **20.02.2010** and thereafter filed Petition No. CP(IB) No. 379 of 2018 on 02.08.2018 on the ground that since the Applicant was pursuing the same matter **before the Hon'ble Debt** Recovery Tribunal – III Mumbai, the period **consumed during the proceedings before the Hon'ble Debt Recovery Tribunal – III Mumbai kept the debt alive** and submitted that it is a continuous cause of action since then till

date and hence the application under Section 7 of Insolvency and Bankruptcy Code is well within the limitation.

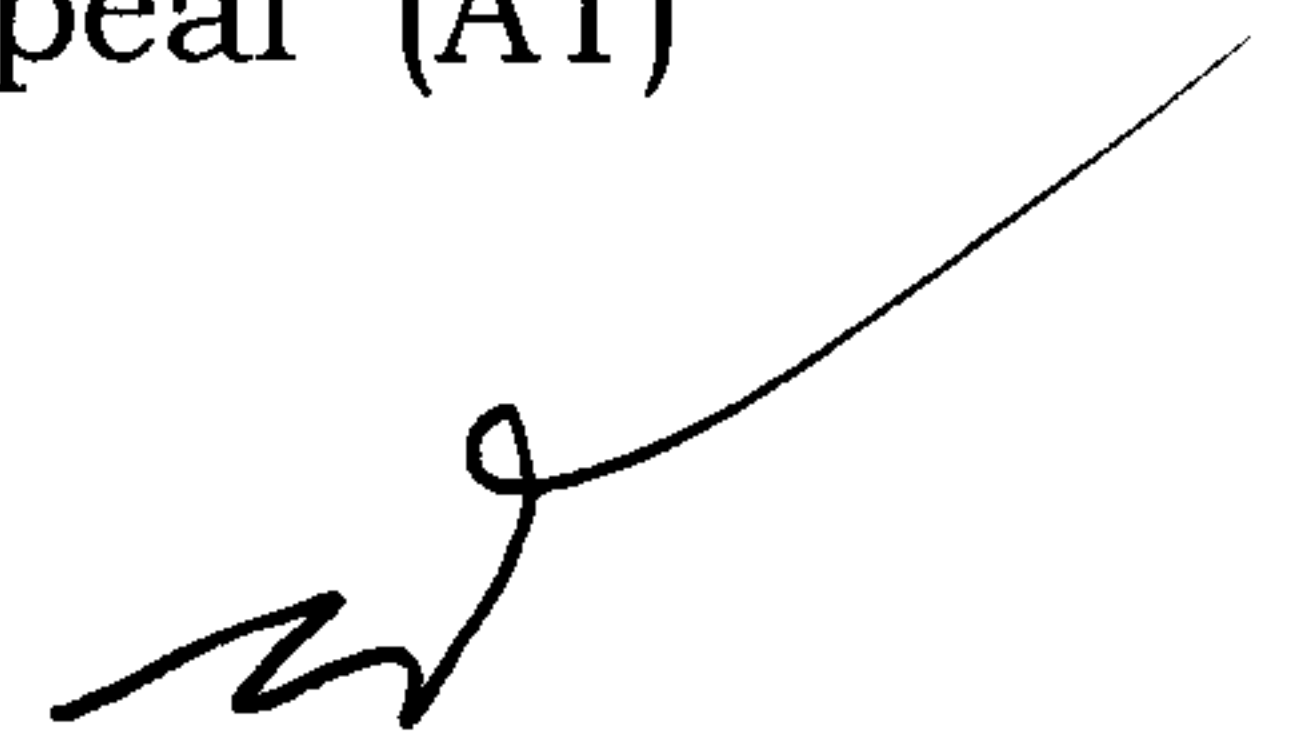
15.3 The Applicant has not submitted any proof of acknowledgement of debt from the Respondent after the Account is declared as NPA.

15.4 Before deciding the present matter, this Adjudicating Authority would like to rely upon the Judgment of the NCLAT in the matter of Gaurav Hargovindbhai Dave Vs Asset Reconstruction Company (India)Ltd.& Anr. (Supreme Court of India) wherein it was held:

***“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”***

15.5 In another Judgment, NCLAT in the case of Ishrat Ali Vs. Cosmos Cooperative Bank Ltd., & Anr. In Company appeal (AT) (Insolvency) No. 1121 of 2019 it was held that

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**Action taken under Section 13(2) of the SARFAESI Act, 2002 cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963:** Under the SARFAESI Act, 2002, once the account is declared as NPA, the Financial Creditor can exercise its power under Section 13 of the SARFAESI Act, 2002 which is required to issue Demand Notice under Section 13(2). An action taken by the Financial Creditor under Section 13(2) or Section 13(4) of the SARFAESI Act, 2002 cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision before an Appellate Court and the other forum. Therefore, action taken under Section 13(2) of the SARFAESI Act, 2002 cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.

### **Order**


16. In the case on hand, from the material placed on record by the Applicant Bank, this Tribunal is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. However, the present matter is barred by limitation and the Applicant has not submitted any proof of continuous acknowledgement of debts by the Corporate Debtor. Hence the application is rejected.


17. However, we make it clear that any observations made in this order shall not be construed as an expression of **opinion on the merit of the dispute/controversy and the right of the applicant before any other forum shall not be prejudiced on account of dismissal of instant application.**

18. This Application is rejected. No order as to costs.

19. Since the main petition is not admitted, the Interlocutory Applications No. IA No. 478 of 2018 and IA No. 711 of 2019 have become infructuous.

20. The Registry to communicate a copy of this order to the Applicant Financial Creditor, and other related papers including the Respondent Corporate Debtor at an early date.

  
**(Prasanta Kumar Mohanty)**  
**Adjudicating Authority &**  
**Member(T)**

  
**(Harihar Prakash Chaturvedi)**  
**Adjudicating Authority &**  
**Member(J)**

LCT