

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No.113/7/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.01.2021

Name of the Company: Stressed Assets Stabilization Fund
V/s
Skylead Chemicals Ltd

Section: 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 12th day of January, 2021.

40

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No.113/7/NCLT/AHM/2019

*[An application filed under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of:

M/s. Stressed Assets Stabilization Fund,
IDBI Tower, 3rd Floor,
WTC Complex,
Cuff Parade,
Mumbai – 400005.

... Petitioner/Financial Creditor

V/s.

M/s. Skylead Chemicals Ltd.
CIN: L24110GJ1985PLC008225
Mangalsinhji Mahal,
Mangalsinhji Road,
Dist. Bhavnagar,
Gujarat – 364001.

... Respondent/Corporate Debtor


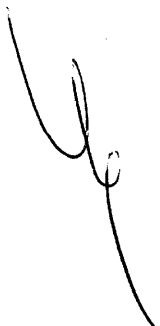
**Date of Hearing: 5th January, 2021
Date of Pronouncement: 12th January, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

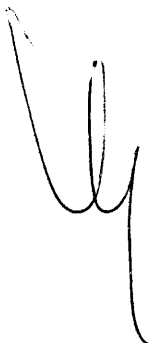
Learned Counsel Mr. Akshat Khare for the Petitioner/
Financial Creditor.

Learned Counsel Mr. Aditya J. Pandya appeared for the
Respondent/ Corporate Debtor.



[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)

1. M/s. Stressed Assets Stabilization Fund, the Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against M/s. Skylead Chemicals Ltd, the Corporate Debtor to initiate Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor on the allegations that the Corporate Debtor committed default in paying the financial debt of Rs.90,60,22,736/-.
2. We have gone through the application filed under Section 7 of the I.B. Code, 2016, as per the Rule 4 (Application to the Adjudicating Authority) Rules. In Part 4 of the application, the date of default is noted as 19.04.2004. This application is filed on 25.01.2019, i.e. after a period of fifteen years from the date on which the right to sue accrue to the Financial Creditor. It is now settled that provision of Article 137 of the Law of Limitation applies to this proceeding. The application under Section 7 or Section 9 has to be file within three years from the date on which right to apply accrue.
3. In this case, the application is filed almost after fourteen years from the date of which the default is said to be occurred. This proceeding is hopelessly barred by the Law of Limitation and, hence, not maintainable.



4. Hon'ble Supreme Court, firstly, in the case of **"B.K. Education Services Private Limited Vs. Parag Gupta and Associates – MANU/SC/1160/2018"** has held that:

"42. 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."

This view has been reiterated by the Hon'ble Supreme Court in all subsequent Rulings so as, in case of **Jignesh Shah**, in case of **Gaurav Hargovindbhai Dave**, in case of **Sagar Sharma** and in case of **Vashdeo R. Bhojwani** etc.

5. So, in view of facts on record and considering the principles of Law of Limitations as stated above, we are of the view that the instant application is barred by Law of Limitation and not maintainable.
6. The Financial Creditor has produced on record letter of acknowledgement by way of rejoinder. That acknowledgement was even beyond the period of three years from the date on which the default had occurred



and, hence, the Financial Creditor does not get any benefit of provisions of Section 18 of Law of Limitation. We pass following order.

ORDER

The application is rejected. The proceedings stand disposed of.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

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