

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
 “CHANDIGARH BENCH, CHANDIGARH”  
 (Exercising powers of Adjudicating Authority  
 under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.383/Chd/HP/2018**

**Under Section 9 of Insolvency and  
 Bankruptcy Code, 2016**

**In the matter of:-**

Aloke Steels Industries Private Limited, Ranchi Road, Opposite Ashok Cinema,  
 P.O. Marar, Ramgarh Cantt. Ramgarh, District Hazaribagh, Jharkhand- 829117  
 (India)

...Petitioners-Operational Creditor

Versus

Atul Castings Limited, Village Dadhi Kania, Nalagarh, District Solan, Himachal  
 Pradesh- 174101 (India)

...Respondent-Corporate Debtor

**Judgment delivered on 06.12.2018**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)  
 HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioners : Ms. Samiya Singh, Advocate

**Per: R.P.Nagrath, Member (Judicial):**

**JUDGMENT (Oral)**

This petition has been filed by M/s Aloke Steels Industries Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (to be referred hereinafter as the '**Code**') for initiating the Insolvency Resolution Process against the respondent-corporate debtor, which has its registered office at Solan in the State of Himachal Pradesh, for invoking the territorial jurisdiction of this Tribunal.

2. The application has been filed in Form 5, as prescribed in Rule 5(1) and Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the '**Rules**').

3. Having heard the learned counsel for the petitioner at the preliminary stage, we are of the considered view that this petition is barred by limitation. We say so for the reason that as per the ledger account for the period from 01.04.2015 to 12.03.2018, Annexure A-1, the transactions of sale were entered from 05.05.2015 to 15.05.2015 only and copy of the ledger account shows that the respondent did not pay any amount to the petitioner for any of these transactions. The petitioner has described the date of default to be 15.05.2015, which is the date of last transaction between the parties.

4. Under Section 238A of the Code, the provisions of Limitation Act, 1963, shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

5. The Hon'ble Supreme Court in ***B.K. Educational Services Private Limited Versus Parag Gupta and Associates, Civil Appeal No.23988 of 2017, MANU/SC/1160/2018***, decided on 11.10.2018, held that the Limitation Act, has in fact been applied from the inception of the Code.

6. We are further of the view that any subsequent correspondence between the parties or the communication sent by the respondent would not extend the period of limitation, once it has commenced. The matter does not fall within any exceptions provided in the Limitation Act for exclusion of any period

nor the same has been claimed in this case. We could have considered, if there was an acknowledgement of debt in writing, signed by the respondent-corporate debtor or any part payments made within a period of three years of the last transaction, but that is not the case of the petitioner. The instant petition was filed before this Tribunal on 30.10.2018. We find the instant petition to be barred by time and the same therefore, is rejected.

A copy of this judgment be communicated to both the parties.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

December 06, 2018  
Mohit Kumar