

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.301
C.P.(IB)/41(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Raj Radhe Finance Ltd
V/s
SPGV Petrochem (India) Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 16/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP (IB) No.41/AHM/2023

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of: M/s. SPGV Petrochem (India) Pvt. Ltd.

**M/s. Raj Radhe Finance Ltd.
(CIN: U67120GJ1985PLC007576)**

Registered office at:
47, Shyamal Row House 3/B,
Nr. Shyamal Cross Roads, Satellite,
Ahmedabad, Gujarat-380015.

...Applicant / Financial Creditor

VERSUS

**M/s. SPGV Petrochem (India) Private Limited,
(CIN: U24100GJ2012PTC070496)**

Having its registered office at:
201, Ushadeep Complex,
Opp. Reliance Super,
Nr. Navrangpura Railway Crossing,
Navrangpura, Ahmedabad – 380009.

...Respondent/ Corporate Debtor

Order Pronounced On: 16.04.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant/FC : Mr. Monal Davawala, Ld. Advocate
For the Respondent/CD : Mr. Yuvraj Thakore, Ld. Advocate

**CP (IB) No.41/7/AHM/2023
Raj Radhe Finance Pvt. Ltd. Vs
M/s. SPGV Petrochem (I) Pvt. Ltd.**

O R D E R

1. The Present Application was filed on **09.02.2023** by M/s. Raj Radhe Finance Limited (hereinafter referred to as “**the Applicant/Financial Creditor**”) against the Respondent, M/s. SPGV Petrochem (India) Private Limited (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 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 the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.25,09,03,489.29ps.** including interest. The first date of default has been stated as 27.02.2017 and second date of default has been stated as 27.05.2017 being **Date of NPA.**

2. Perusal of Part-I of the Form-1 reveals that the Applicant is a company incorporated under the provisions of the Companies Act, 1956 with CIN No. U67120GJ1985PLC007576. The registered office of the Applicant is situated at 47, Shyamal Row House 3/B, Nr. Shyamal Cross Roads, Satellite, Ahmedabad, Gujarat-380015.
3. Perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is one M/s. SPGV Petrochem (India) Private Limited having CIN No. U24100GJ2012PTC070496. The Respondent/Corporate Debtor was incorporated on 28.05.2012. As submitted, the authorised share capital of the Corporate Debtor is 7,75,00,000/- and the paid up share capital is Rs.7,25,00,000/-. The registered office of the Respondent/Corporate Debtor is situated at: 201, Ushadeep Complex, Opp. Reliance Super, Near Navrangpura Railway Crossing, Navrangpura, Ahmedabad, Gujarat-380009.
4. The perusal of the Part-III of the petition shows that the Applicant/ Financial Creditor has also suggested the name

of the proposed Interim Resolution Professional, Mr. Vinod Tarachand Agrawal, Address: 204, Wall Street - 1, Opp. Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad - 380006 Email: ca.vinod@gmail.com Registration No: IBBIIPA-001 /IPP00641/2017-18/11090. He has filed his written communication annexed with the Application as Annexure-K as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant/Financial Creditor is **Rs.25,09,03,489.29ps** along-with interest up-to 29.05.2017.
6. The brief facts as contended by the Applicant/Financial Creditor are as under:-
 - a) Initially, on 10.08.2012 the Respondent/Corporate Debtor through its Directors approached erstwhile State Bank of India for grant of total financial assistance of Rs.7,35,00,000/- in the shape of Cash Credit Limit of Rs.6,75,00,000/- for Working Capital & Bank Guarantee of Rs.60,00,000/- and submitted loan application. The erstwhile State Bank of India after

considering the loan application on 01.10.2012 sanctioned a Cash Credit Limit of Rs.6,75,00,000/- for Working Capital & Bank Guarantee of Rs.60,00,000/- against primary security of hypothecation of entire stocks, Book Debts, Plant & Machinery, third party / personal guarantees and collateral security by way of equitable mortgage of immovable properties in favour of erstwhile State Bank of India. The Respondent/Corporate Debtor and others executed and signed various loan and security documents in favour of erstwhile State Bank of India. The aforesaid credit facilities were renewed and enhanced from time to time for which various loan/security documents were executed on 07.02.2013, 19.02.2015, 31.03.2016 and 11.07.2016 by the Respondent/Corporate Debtor and others by acknowledging the debt liabilities.

- b) However, after availing the aforesaid Loan/Credit Facilities, the Respondent/Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular. Consequently, the said account of the Respondent/Corporate Debtor was classified as NPA on 27.05.2017 and recalled by Applicant Bank.
- c) Thereafter, in view of default committed by Corporate Debtor the erstwhile State Bank of India issued Legal

Notice Legal Notice dated 19.05.2017 (**Annexure R2**) wherein mention the date of default 27.02.2017, recalling and demanding outstanding entire amount.

- d) On 30.05.2017 erstwhile State Bank of India served Demand Notice U/s 13(2) of under the S.A.R.F.A.E.S.I. Act, 2002 to the Respondent/Corporate Debtor to repay the outstanding dues. But the Respondent/Corporate Debtor failed to make the payment of outstanding dues. The erstwhile State Bank of India had taken physical possession of the property of the respondent/Corporate Debtor on 06.08.2018.
- e) Thereafter, erstwhile State Bank of India assigned the debt to the Applicant/Financial creditor vide assignment Agreement dated 28.01.2022.
- f) On 08.03.2022 Respondent/Corporate Debtor submitted OTS Proposal of Rs.4,75,00,000/- and for release of mortgaged properties and consequent letter dated 14.03.2022 of the Financial Creditor.
- g) The Applicant/Financial Creditor has filed Form-D issued by National E-Governance Services Limited ("**NeSL**") being record debt and default with status "Deemed to be Authenticated". The date of default is recorded as 27.05.2017.

7. The Applicant/Financial Creditor has relied upon the following documents which are as under:-

A	Sanction Letter and Agreement of Loan cum Hypothecation dated 1.10.2012 alongwith Letter of Confirmation for Creation of Mortgage by Deposit of Title Deeds dated 5.11.2012	11 TO 29
B	Letter and Agreement of Loan cum Hypothecation alongwith Letter of Confirmation for Creation of Mortgage by Deposit of Title Deeds all dated 7.2.2013	30 TO 33
C	Letter dated 16.2.2015 and Agreement of Loan cum Hypothecation dated 19.2.2015 alongwith Letter of Confirmation for Creation of Mortgage by Deposit of Title Deeds dated 20.2.2015	34 TO 48
D	Sanction Letter dated 31.3.2016 duly acknowledged by the Corporate Debtor	49 TO 65
E	Letter for Renewal of Credit Facilities dated 11.7.2016 duly acknowledged by the Corporate Debtor	66 TO 90
F	Notice under Section 13(2) of the SARFAESI Act, 2002 dated 30.5.2017 for Enforcement of Security Interest by the State Bank of India and letter dated 6.8.2018 intimating taking physical possession of secured assets	91 TO 103
G	Assignment Agreement dated 28.1.2022 entered into between State Bank of India and Raj Radhe Finance Limited	104 TO 132
H	OTS Proposal dated 8.3.2022 of the Corporate Debtor and consequent letter dated 14.3.2022 of the Financial Creditor	133 TO 134
I	Certificate of Registration for Modification of Charge issued by Registrar of Companies	135 TO 137
J	Copy of NeSL Report dated 25.1.2023	138 TO 145
K	Copy of the written communication by the proposed interim resolution professional as set out in Form – 2	146 TO 149

8. Therefore, the present application is preferred by the Applicant/Financial Creditor on 09.02.2023 for initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor.
9. A reply affidavit was filed by the Respondent/Corporate Debtor on 11.07.2023 vide Diary No.D2556 by one of the Director Mr. Sanjeev Pravinchandra Shah prima-facie denying all the allegations made in the petition.
 - (i) In the said reply, the Respondent/Corporate Debtor questioned the maintainability of the present petition by questioning the status of the Applicant as a Financial Creditor. The Respondent further denied to owe any debt from the present Applicant.
 - (ii) Further, the Respondent also averred on the maintainability of the petition on the ground of limitation. The Respondent / Corporate Debtor, by admitting the validity of the NeSL report stated that the said date of default falls on 27.05.2017. Hence, on the ground of the limitation, the present petition is not maintainable.

10. A compliance affidavit was filed by the Applicant/ Financial Creditor on 03.11.2023 vide Diary No.D4385 by one Ms. Virati D. Shah, the authorized officer of the Applicant firm to place on record the Form-D of NeSL pertaining to the record of default of the Respondent/Corporate Debtor.
11. Further, in the present affidavit of compliance, the Applicant drew our attention to a decision of Hon'ble **Supreme Court** in the RE: Cognizance for Extension of Limitation being Miscellaneous Application No.21 of 2022 as below:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II.

III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. ...”*

12. The Applicant further on 13.12.2023 filed an Affidavit-in-Compliance, vide Diary No. D5066, filed by the authorized officer of the Applicant to file proof of default in the loan account of the Respondent/ Corporate Debtor. The Applicant annexed the copy of loan account details for the period of 30.12.2016 to 30.06.2017 and averred as below:-

(i) Loan account entries were classified as Non-Performing Asset (“NPA”) by the original assigner bank, i.e. the State Bank of India and hence, the date of NPA is taken as the date of default by the Applicant. The Applicant thus relied on the decision of Hon’ble Supreme Court in the matter of **Laxmi Pat Surana V/s. Union Bank of India & Ors.** in Civil Appeal No.2734 of 2020.

(ii) An OTS proposal was made by the Respondent/Corporate Debtor on 08.03.2022 which will further extend the limitation period.

13. An Affidavit-in-Compliance was filed by the Applicant /Financial Creditor on 22.01.2024 vide Diary No.D543 to place on record the revised Form-A in which date of default recorded as 27.02.2017 along with certain documents evidencing the proof of default in the loan account of the Respondent/ Corporate Debtor.

(i) The Applicant submitted a revised Form-A mention date of default 27.02.2017 along with affidavit and in support of establishing the default, also filed copy of Legal Notice dated 19.05.2017 (**Annexure R2**) wherein mentioned the date of default 27.02.2017 The Applicant pointed out certain entries in the account of the Corporate Debtor until the account of the Respondent was classified as Non-Performing Asset on 27.05.2017.

(ii) It is further averred that there are acknowledgements up until 16.05.2017.

(iii) The Applicant further repeated the judgment of Hon'ble Supreme Court with regard to extension of limitation.

14. Mr. Sanjeev Pravinchandra Shah, the director of the Respondent/ Corporate Debtor also filed a “Further-Affidavit on behalf of the Corporate Debtor” on 15.02.2024 vide Diary No.D1324, stating following facts:

- (i) It is contended that the present petition is barred by the law of limitation. As stated by the Respondent, the claimed date of default, i.e. 27.05.2017, no document was produced by the Applicant acknowledging the debt.
- (ii) The Respondent further contended that the computation of fresh period of limitation also does not revive the debt recovery, being a time barred debt.
- (iii) It is further contended that the Applicants could not establish any acknowledgement of debt after the year 2017.

15. One Mr. Meet F. Shah, the authorized officer of the Applicant firm filed a “Further Affidavit” in support of the earlier affidavit dated 20.01.2024 on 16.02.2024 vide Diary No. D1339 and averred as below:-

- (i) The Applicant place on record further documents evidencing the proof of default of the loan account of the Respondent/ Corporate Debtor.

- (ii) The Applicant, in Para-3 of the affidavit, requested this Bench not to consider the date of default to be 27.05.2017 and requested to consider the dates mentioned in Para-5 of the legal notice as the acknowledgement of debt on 17.04.2017, **26.04.2017** and 16.05.2017.
- (iii) It is averred that there is no denial from the Respondent, which may be considered as the affirmation of the meetings took place.
- (iv) The Applicant further referred the decision of Hon'ble Supreme Court with **regard to Covid-19 exemption** dates.

16. We heard the Learned Counsels from both the sides, we perused the materials available on record.

17. On 06.11.2023, Learned Counsels from both the sides were present and the Counsel for the Respondent/Corporate Debtor argued for primary defense of this matter being a time barred debt, he placed on record the proof of default in the loan accounts. This Bench directed the Ld. Counsel for the Applicant to file the rectified form-1. Thus one week of further time was granted. Thus, after two subsequent adjournments, the revised form-A was filed by the Counsel

for the Applicant vide inward Diary no. 583 dated 22.01.2024.

18. On 05.04.2024, this Bench instructed both the parties to file written synopsis with a calculation indicating the authenticity of limitation period and was reserved for order. However, no documents received from either of the parties within the permitted period of three days.
19. It is submitted that an OTS Proposal dated 08.03.2022 was sent by the Corporate Debtor and consequent letter dated 14.03.2022 of the Financial Creditor which are annexed as Annexure-H to the present petition at page nos.133-134.
20. Present application was filed by the Applicant/ Financial Creditor on 09.02.2023. The first date of default has been stated as 27.02.2017 and second date of default has been stated as 27.05.2017 being Date of **NPA**.
21. The Hon'ble Supreme Court in Civil Appeal No. 2734 OF 2020 titled as ***Laxmi Pat Surana v. Union Bank of India***, (2021) 8 SCC 481 has observed as follows:-

“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.....”

22. In the matter of Company Appeal (AT) (Insolvency) No. 840 of 2021 **Edelweiss Asset Reconstruction Company Ltd Vs. Perfect Engine Components Pvt. Ltd. – NCLAT New Delhi** on 22.12.202 also held that Date of default does not mean a strict interpretation that it has to be the date of NPA.
23. In the matter of Company Appeal (AT) (Ins) No. 1285 of 2022 **Ramdas Dutta Vs. IDBI Bank Ltd. – NCLAT New Delhi** on 26.04.2023 also held that the date of default cannot be changed by Bank and the date of NPA cannot be taken to be the date of default for filing CIRP application under IBC.

24. It is observed that the date of default mentioned in the Application is 27.05.2017, this date is in fact, the date of the loan declared as an NPA by SBI, which is not the same as the date of default. However, it can be said that the date of default would, in any case, pre-date this date which is 27.02.2017. Hence, the right to apply would occur with effect from 27.02.2017 and this right should have been exercised till 26.02.2020 (well before exempted Covid Period) in accordance with Section 137 of the Limitation act 1963. The OTS Proposal of Rs.4,75,00,000/- was submitted by the Respondent/Corporate Debtor on 08.03.2022 which was beyond the expiry of limitation period of three years.

25. The Hon'ble Supreme Court in the matter of, **B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates**, (2019) 11 SCC 633: (2018) 5 SCC (Civ) 528: 2018 SCC Online SC 1921 on page 664, held which reads as under:-

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.”

26. Hon'ble Principal Bench, NCLT New Delhi, in the matter of **State Bank of India V/s. Raebareilly Allahabad Highway Private Limited**, decided on **01.02.2024** stated that:

“19. The question which arises before us is whether the date of NPA can be considered as Date of Default. In this backdrop, it is relevant to understand that the adjudicating authority under the present legislation has a very limited role to play while admitting or rejecting an application filed under section 7 of the Code. One of the important factor to be considered in an application under section 7 is the existence of debt and thereby ‘non-payment of debt’ i.e. default (Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P) Ltd., (2020) 15 SCC 1). This is also evident from the bare language mentioned under Section 6 and 7 of The Code.”

27. In the present case, no such condonation has been sought by the Applicant in filing the present application. The application has been filed on 09.02.2023 which is much

beyond the period of limitation and thus hopelessly barred by the statute of Limitation. Reliance placed by the Applicant on the judgement in the matter of **Laxmi Pat Surana Vs. Union Bank of India & Anr.** is also misplaced as it does not support the contention of date of default to be considered as date of NPA neither does it hold that pendency or initiation of proceedings before the DRT can be considered for extension of limitation.

28. The import of the judgment, the interpretation, and the reasoning adopted by Hon'ble Supreme Court are indicative of the intent behind the introduction of Section 238A of IBC and so the same should be followed in its letter and spirit. Another argument for extension of the limitation that was advanced in such matters is the effect of acknowledgment of the liability in writing as provided in Section 18 of the Limitation Act, 1963 before expiration of the prescribed period.
29. However, in the present case there is nothing on record to suggest that the Respondent/Corporate debtor has accepted or acknowledged the debt liability on 17.04.2017,

26.04.2017 or on 16.05.2017 i.e. within 3 years from the date of default as referred in Paragraph 5 of the Legal Notice dated 19.05.2017. Further, the letter of acknowledgement of debt dated 08.03.2022 is beyond 3 years from the date of default and not in consonance with Section 18 of the Limitation Act, 1963. Hence, *prima-facie*, the date of default is ***res-ipsa-loquitur*** and the present matter itself is barred by the limitation period.

30. In view of the above, it is concluded that the **C.P.(IB) No.41/7/(AHM)2023** is not maintainable being barred by limitation and is therefore, rejected and dismissed.
31. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities. File be consigned to record.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

AT