IBC Section 7, – Default – NPA – 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. *Laxmi Pat Surana v. Union Bank of India & Anr.- (2021) 8 SCC 481*

IBC Section 7, consciously uses the expression "default" – not the date of notifying the loan account of the corporate person as NPA.

"43. 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 IBC. 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. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC." *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another- (2021) 6 SCC 366*

"11. Further, on perusal of Part- IV in the application, we observe that the applicant has treated the date of NPA i.e. 31.03.2021 as the date of default. It is pertinent to mention that Date of NPA is to be treated as date of default in consideration of order of Hon'ble NCLAT in the case of *Jagdish Prasad Sarada v. Allahabad Bank [CA (AT) (Insolvency) No. 183 of 2020*. The relevant extract of the Hon'ble NCLAT's judgment is as under: "10. The Hon'ble Supreme Court has already observed in *Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K. Educational Services Pvt. Ltd v. Parag Gupta and Associates dated 11.10.2019* that the limitation period for application under section 7 of the Code is 3 years as provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extend able only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court

in *'B.K. Educational Services Company Appeal (AT) (Insolvency) No. 183 of 2020 Private Limited v. Parag Gupta and Associates'* that the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condo nation of delay is carved out, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in *'Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No.6347 of 2019) decided on 14th August, 2020*. It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift." *Jagdish Prasad Sarda v. Allahabad Bank- Company Appeal (AT) (Insolvency) No.183 of 2020 (NCLAT)*