

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 81 of 2018

IN THE MATTER OF:

Skyway RMC Plants Pvt. Ltd.

...Appellant

Vs

Trans Tech Turnkey Pvt. Ltd.

....Respondent

Present:

For Appellant:

**Mr. Rahul Chitnis and Mr. Samrat Krishnarao
Shinde, Advocates.**

O R D E R

25.04.2018: The appellant ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the, "I&B Code") after invoking the provisions of Section 8(1) OF the I & B Code. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 29th January, 2018 rejected the application on the ground that the petition filed on 13th November, 2017 is hit by the law of limitation, as the matter pertains to claim for the year 2014.

2. Notices were issued on respondent. One Mr. Vatsalya Vigya along with Mr. Sandeep S. Deshmukh, advocates appeared on behalf of the respondent and prayed for time to file reply along with Vakalatnama. But in spite of the same, no reply has been filed nor anybody appears on behalf of the respondent. The averments made in the appeal has not been disputed.

3. Similar issue fell for consideration before this Appellate Tribunal in “M/s. Speculum Plast Pvt. Ltd. vs. PTC Techno Pvt. Ltd. – 2017 SCC ONLINE NCLAT 319” wherein this Appellate Tribunal observed and held as follows:

“71. *From Article 137 of the Limitation Act, 1963, it is clear that the period of three years' is to be counted from the date right to apply accrues to a 'Financial Creditor' or 'Operational Creditor' or 'Corporate Debtor'.*

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80. *In view of the settled principle, while we hold that the Limitation Act, 1963 is not applicable for initiation of 'Corporate Insolvency Resolution Process', we further hold that the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim.*

81. *If there is a delay of more than three years from the date of cause of action and no laches on the part of the Applicant, the Applicant can explain the delay. Where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise.*

- 82.** *Therefore, if it comes to the notice of the Adjudicating Authority that the application for initiation of ‘Corporate Insolvency Resolution Process’ under section 7 or Section 9 has been filed after long delay, the Adjudicating Authority may give opportunity to the Applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the Applicant.*
- 83.** *The stale claim of dues without explaining delay, normally should not be entertained for triggering ‘Corporate Insolvency Resolution Process’ under Section 7 and 9 of the ‘I&B Code’.*
- 84.** *However, the aforesaid principle for triggering an application under Section 10 of the ‘I&B Code’ cannot be made applicable as the ‘Corporate Applicant’ does not claim money but prays for initiation of ‘Corporate Insolvency Resolution Process’ against itself, having defaulted to pay the dues of creditors.”*

4. The impugned order dated 29th January, 2018 passed by the Adjudicating Authority being against the decision of this Appellate Tribunal in ‘M/s. Speculum Plast Pvt. Ltd.’ (*Supra*), we set aside the order passed in C.P. No. 1591/I&BP/2017 and remit the case to the Adjudicating Authority, Mumbai Bench for appropriate orders. If the application is complete and

there is no defect, after notice and hearing the parties, it will admit the application. If there is defect, appropriate time be granted to the appellant to remove the defects.

3. It will be open to the respondent to settle the dispute before admission of the application. The appeal is allowed with the aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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