**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 28 of 2019**

[Arising out of order dated 27th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P. (IB) No. 1886/MB/2018]

**IN THE MATTER OF:**

**Mr. Gouri Prasad Goenka**
**Ex-Chairman of NRC Limited**
Residing at Devanaman, 17D,
Alipore Road,
Kolkata - 700027.

**....Appellant**

**Vs**

**1. Punjab National Bank**
Registered Office at:
ARMB, PNB Pragati Towers,
1st Floor, C-9, G Block,
BKC Bandra (E), Mumbai – 400 051.

**2. Mr. Vikas Prakash Gupta**
Interim Resolution Professional of NRC Ltd.,
G-100, Fantasia Multiplex and ENT Complex,
Plot No. 47, Sector 30A, Vashi,
Navi Mumbai – 400 703.

**....Respondents**

**Present:**

**For Appellant:** Mr. Aayush Agarwala, Advocate.

**For Respondents:** Mr. R. K. Gautam and Mr. Sorabh Dahiya, Advocates for Respondent N. 1.

Mr. Vikram Hegde, Advocate for Respondent No. 2.

# J U D G M E N T

**BANSI LAL BHAT, J.**

Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by the Financial Creditor – 'Punjab National Bank' came to be admitted at the hands of the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by virtue of order dated 27th November, 2018 with appointment of Interim Resolution Professional and slapping of directions in the nature of moratorium against 'NRC Limited' (Corporate Debtor) as a necessary sequel to the order of admission of the application. Aggrieved thereof, the Appellant – 'Gouri Prasad Goenka' - Ex-Chairman of the Corporate Debtor, who also appears to have filed I.A. No.1277/MB/2018 seeking intervention in the Company Petition (IB) 1886/MB/2018 filed by the Financial Creditor, has assailed the impugned order of admission on several grounds incorporated in the Memo of Appeal, relevant whereof may be described as relating to existence of default, quantification of debt and default, rectification of defects, competence of the person triggering the Corporate Insolvency Resolution Process and the claim being barred by limitation.

2. The genesis of initiation of Corporate Insolvency Resolution Process at the instance of Financial Creditor lies in advancement of loan by the Financial Creditor in favour of the Corporate Debtor in the form of working capital fund based limit of Rs.13.75 Crores, non-fund based limit of Rs.11.75 Crores and Corporate Term Loan of Rs.20 Crores on 23rd February,

2005 coupled with Short Term Loan of Rs.10 Crores on 2nd February, 2006. The facilities extended were further renewed on 2nd May, 2006 with Short Term Loan enhanced to Rs.40 Crores while other components except the Corporate Term Loan were kept intact. The loan facilities were restructured on 10th March, 2008 with working capital fund based limit at Rs.8.19 Crores, Working Capital Non-fund based limit at Rs.3.09 Crores, Working Capital Term Loan of Rs.14,22,21,000/-, Corporate Loan of Rs.15 Crores, Funded Interest Term Loan-I of Rs.4.57 Crores and Short Term Loan of Rs.40 Crores. Further on 30th December, 2008, Funded Interest Term Loan-III for Rs.3.12 Crores was sanctioned. The Financial Creditor issued notice under Section 13(2) of SARFAESI Act on 31st December, 2016 claiming a sum of Rs.78,31,57,403/- as on 11th February, 2010 with further interest. As on 31st March, 2018, an amount of Rs.273,09,68,793/- was claimed to be lying outstanding against the Corporate Debtor in respect whereof default was alleged by the Financial Creditor culminating in passing of impugned order of admission of application under Section 7 of the I&B Code at the instance of Financial Creditor.

3. The Corporate Debtor raised manifold objections and resisted the initiation of Corporate Insolvency Resolution Process on certain grounds which were repelled by the Adjudicating Authority, who found the objections raised being devoid of merit. The objections raised primarily related to some inadequacies like the Financial Creditor having failed to appoint Interim Resolution Professional and the application not being signed by the person authorised. Adjudicating Authority found Form 2 filed by the Financial

Creditor and Form 1 signed by Chief Manager of the Financial Creditor in order. Thus, the objections raised were overruled. The Corporate Debtor also appears to have raised the plea of the debt being barred by limitation. However, it emanates from the impugned order that the plea was not pressed at the hearing of the application at the admission stage.

4. Heard learned counsel for the parties and perused the record.

5. It is contended on behalf of Appellant that the impugned order has been passed overlooking the fact that the Corporate Debtor had been operating as a going concern for almost six decades with approximately 5000 employees on its rolls. It is submitted that the Financial Creditor – Punjab National Bank had been appointed as the operating agency under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) for revival of the Corporate Debtor and negotiations with respect to rehabilitation scheme/ revival proposal/ OTS were in fact pending when the Financial Creditor filed application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. It is further submitted that the Financial Creditor enjoys a sum of Rs.41.21 Crores in a non-lien account held by it for the benefit of Corporate Debtor and its stakeholders which was not even disclosed before the Adjudicating Authority. It is submitted further that the Financial Creditor failed to quantify either the debt or its default. It is further submitted that the application lacked material information in regard to occurrence of default. It is further submitted that despite directions by the Adjudicating Authority, the Financial Creditor failed to rectify the defects pointed out. Per contra,

learned counsel for the Financial Creditor submitted that the application was complete in all respects and the impugned order came to be passed on application of mind by the Adjudicating Authority who found the objections raised being factually incorrect. It is submitted that there was no dispute in regard to status of parties, advancement of loan and allied facilities and acknowledgement of outstanding in 2013, 2018 and even before the Adjudicating Authority as the Corporate Debtor expressed its willingness to settle the matter for a sum of Rs.31 Crores which was not acceptable to the Financial Creditor as the previous OTS proposal (Rs.51 Crores approximately) was higher than the proposal made before the Adjudicating Authority had already been rejected by the Financial Creditor.

6. In view of there being no controversy as regards facts qua advancement of loan and allied financial facilities to the Corporate Debtor falling within the purview of 'financial debt', the status of parties before the Adjudicating Authority as 'Financial Creditor' and 'Corporate Debtor' besides the admitted position as regards default in clearing the outstanding amount of debt which according to Financial Creditor stood at Rs.273,09,68,793/- as on 31st March, 2018, the only issue requiring consideration in the instant appeal relates to limitation, notwithstanding the fact that the issue appears not to have been pressed before the Adjudicating Authority. We say so as the issue of limitation bars legal remedy which may otherwise be available under law qua an enforceable legal right. Section 3 of the Limitation Act, 1963 renders it obligatory upon the Tribunal to address the issue of limitation notwithstanding the fact that the same has not been raised as a

ground of defence by the Respondent. Section 3 of Limitation Act, 1963 is reproduced hereunder:-

> *"**3. Bar of limitation**.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."*

7. The dictum of law enshrined in Section 3 of the Limitation Act is loud and clear and speaks of no exception other than the situations covered under Sections 4 to 24 thereof. This is a mandatory provision of law barring a remedy qua an enforceable right and the effect is that the Creditor's remedy to recover an outstanding debt gets eclipsed though the right itself does not get extinguished. Therefore, notwithstanding the fact that the Corporate Debtor has not raised the issue of limitation and in effect abandoned the plea before the Adjudicating Authority, it is obligatory upon this Appellate Tribunal to examine the issue of limitation, determination whereof has a bearing on the claim itself. If the claim is barred by limitation, the debt will cease to be recoverable and it will not be payable in law or in fact. In such an eventuality, the Corporate Debtor cannot be held to have committed default in respect of the outstanding debt.

8. The legal proposition that the exceptions to the issue of limitation include the legal exceptions, exemptions, legal disabilities, exclusion of time of proceeding bonafide before a wrong forum, cases of continuing breach

and cases covered under different eventualities as embodied in Sections 4 to 24 (Supra) cannot be disputed. Besides an acknowledgment of liability made in writing by the Debtor before the expiration of period of limitation has the consequence of infusing a fresh lease of life to the outstanding debt and a fresh period of limitation has to be computed from the date of signing of such acknowledgement by the Debtor. This proposition of law is specifically embodied in Section 18(1) of the Limitation Act which reads as under:-

> *"**18. Effect of acknowledgment in writing.** - (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. "*

It is manifestly clear that unless the case of a Creditor falls within the exceptions, exemptions or exclusions as noticed hereinabove or there is no acknowledgment of liability in writing on the part of the Debtor at a time when the claim was enforceable i.e. within limitation period, the claim of the Creditor shall be barred by limitation unless preferred (whether in the form of a suit or such other form as may be prescribed) within the period of limitation prescribed under law. Admittedly, initiation of Insolvency

Resolution Process at the instance of a Financial Creditor rests upon filing of an application under Section 7 of the I&B Code by the Financial Creditor and in terms of the authoritative pronouncement of Hon'ble Apex Court in *'Gaurav Hargovindbhai Dave' vs. 'Asset Reconstruction Company (India) Ltd. & Anr.', Civil Appeal No. 4952 of 2019 decided on 18th September, 2019*, application filed under Section 7 would fall within the residuary article 137 of Limitation Act prescribing a limitation of three years from the date the right to sue accrues. It is therefore necessary to wade through the record to find out as to when the right to sue accrued and whether the application filed by the Financial Creditor was within limitation.

9. It is not in controversy that the Corporate Debtor – 'NRC Limited' was brought under the purview of SICA and declared as Sick Industrial Unit as reflected in BIFR Order dated 16th July, 2009 which passed direction under Section 22(1) of SICA to Secured Creditors not to take any coercive action against the Corporate Debtor without prior permission of BIFR. Section 22(1), inter alia, provides that no suit for the recovery of money or for the enforcement of any security against the Industrial Company or any guarantee in respect of any loans or advance granted to the Industrial Company shall lie or be proceeded with further except with the consent of the Board or, as the case may be, the Appellate Authority. Section 22(5) of SICA providing for suspension of legal proceedings which is attracted to the case of a company declared as Sick Industrial Unit, is reproduced hereunder:-

> ***"5.*** *In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded"*

On a plain reading of these provisions it is manifestly clear that the remedy for the enforcement of right by the Creditor to recover the outstanding debt from the Debtor through the medium of a suit for recovery of money remains suspended for the period during the pendency of inquiry under Section 16, 17 or appeal under Section 25 of SICA. Admittedly, in the instant case the Corporate Debtor was declared as a Sick Industrial Unit by BIFR vide order dated 16th July, 2009 which passed direction under Section 22(1) of SICA to Secured Creditors not to take any coercive action against it without prior permission of BIFR. While SICA came to be repealed, Section 7 of I&B Code was enforced w.e.f. 1st December, 2016. It is therefore crystal clear that on account of statutory bar the period commencing from 16th July, 2009 to 1st December, 2016 stood excluded under the aforesaid provisions rendering the Financial Creditor ineligible to file for recovery of outstanding debt through the ordinary mode i.e. by way of filing of suit etc. Even Corporate Insolvency Resolution Process could not be triggered before 1st December, 2016. Therefore, for purposes of limitation such period has to be excluded. Admittedly, application under Section 7 of I&B Code has been filed by the Financial Creditor in May, 2018 i.e. within three years from the date of enforcement of Section 7 of I&B Code. Viewed in this context the

contention put forward on behalf of Appellant in regard to plea of limitation has to be repelled as being devoid of merit.

10. That apart, there is acknowledgment of the outstanding debt on the part of the Corporate Debtor, a fact not disputed by the Corporate Debtor. This comes to fore from the letter dated 4th August, 2018 emanating from the Corporate Debtor and addressed to the Financial Creditor wherein the Corporate Debtor agreed to settle all outstanding dues of the Financial Creditor on One Time Settlement (OTS) basis (refer pages 692-693 Vol. III of the Appeal Paper Book). This is a clear acknowledgment of the outstanding debt in writing and the Corporate Debtor cannot wriggle out of the liability so acknowledged. It is not in controversy that on the date of such acknowledgement the debt was not time barred and the Insolvency Resolution Process was triggered within the period of limitation in terms of Article 137 of the Limitation Act, computed from such date. Admittedly, the OTS proposal was rejected by the Financial Creditor on 30th October, 2018. Superadded to it is the fact emerging from the impugned order that the Corporate Debtor was ready to settle the dispute for a sum of Rs.31 Crores on the basis of value of the security held by the Financial Creditor. This offer, reflected in para 15 of the impugned order, was not entertained having regard for the fact that the previous OTS proposal approximately to the tune of Rs.51 Crores had already been rejected by the Financial Creditor. Viewed in this context, it is manifestly clear that the 'financial debt' in respect whereof default was committed by the Corporate Debtor, was not barred by limitation. Contention raised on this score is accordingly rejected.

11. Some feeble attempt was made by learned counsel for the Appellant to impress upon this Appellate Tribunal that the application under Section 7 was incomplete and despite orders of Adjudicating Authority same was not completed/ amended/ rectified. Learned counsel for Appellant also tried to emphasise that the application was not filed by duly authorized person. Some more technical issues were raised. We have considered these aspects and it is noticed that the Adjudicating Authority has taken every relevant factor into consideration. It found that the Form 1 was signed by the Chief Manager of the Financial Creditor who was the duly authorized person to file the same. Contention raised by Appellant that the power of attorney was executed prior to enactment of I&B Code and could not extend the authority to file application under Section 7 of I&B Code is bereft of merit both in technique as also in substance. Once the authority was given, inter alia, to file litigation pertaining to recovery of the outstanding debt of the Financial Creditor, it becomes irrelevant whether the law governing such recovery or providing for a mechanism like the resolution process contemplated under I&B Code was or was not in force on the date when the authority was given. Any interpretation to the contrary would be absurd. In so far as the contention regarding the application being incomplete is concerned, suffice it to say that the Adjudicating Authority has shown its awareness in regard to the particulars required to be furnished in Form 1. It noticed that the Financial Creditor had provided details of loan sanctioned, Statement of accounts, interest debited and charges debited, etc. in Part 4 of Form 1. It also found that the certificates under Banker's Books Evidence Act and the Information Technology Act had been filed by the Financial Creditor and

after recording its satisfaction in regard to the application being complete and there being debt and default and the debt being payable, the Adjudicating Authority passed the impugned order admitting the application with all consequential directions. In so far as joining of issue by the Corporate Debtor qua the quantum of payable debt is concerned, same does not fall for consideration of the Adjudicating Authority at the stage of admission of the application under Section 7 of the I&B Code. The only requirement is that the minimum outstanding debt should be to the tune of Rupees One Lakh. The actual amount of claim is to be ascertained by the Resolution Professional after collating the claims and their verification which comes at a later stage. The contention raised on this score also fails.

11. For the foregoing reasons, we find no merit in this appeal. It is accordingly dismissed. There shall be no orders as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Mr. Balvinder Singh]
Member (Technical)

**NEW DELHI**
**8th November, 2019**

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