

**National Company Law Appellate Tribunal, New Delhi**

**COMPANY APPEAL (AT) (Insolvency) No. 260 of 2020**

(Arising out of Order dated 20<sup>th</sup> December, 2019 passed by National Company Law Tribunal, Mumbai Bench-II in Company Petition IB-434/MB/C-II/2018)

**IN THE MATTER OF:**

Punjab National Bank  
Erstwhile Oriental Bank of Commerce  
Corporate Branch  
14<sup>th</sup> Floor, Maker Tower, F Wing,  
Cuff Parade,  
Mumbai - 400005

.....Appellant

**Versus**

Mittal Corp Litimited  
315, Jolly Bhawan No. 1,  
10 New Marine Line,  
Mumbai - 400020

....Respondent

For Appellant: Mr. Piyush Beriwal and Mr. Ankit Raj, Advocates.  
For Respondent: Ms. Anju Jain and Mr. Hitesh Sachar, Advocates.

**J U D G M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. Aggrieved by the Order dated 20.12.2019, passed by the Adjudicating Authority (NCLT) Mumbai Bench-II C.P. No.434/MB/C-II/2018, Punjab National Bank, the Financial Creditor, has preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC for Short). By the Impugned Order, the Adjudicating Authority has dismissed the Application under Section 7 preferred by the Financial Creditor on the following grounds;

*‘10. Two contradictory arguments of the Bank cannot run side by side that on one hand the action was taken on account of default committed as identified in the impugned RBI Guidelines and*

*now on the other hand saying that the said RBI Guidelines should not be made the basis for quashing of the proceedings because only those cases are to be covered which are having exposure Rs. 20 Billion or above and since in the present case the debt as per Bank of India Petition under section 7 of the I&B Code in the capacity of Financial Creditor is much below therefore, legally not to be quashed. **This plea of the Bank is not sustainable in the eyes of law because if it was so, then why the Banks have asked for a Resolution of the debt under the compliance of impugned guidelines of the RBI.** The evidences on record have explicitly demonstrated that the Consortium of Banks have taken the due steps following the RBI Guidelines.*

*11. We hereby conclude that since the proceedings under section 7 of the Insolvency Code were the consequence of the impugned RBI Guidelines, which stood quashed by the Hon'ble Supreme Court, hence as a result, this Petition is non-est hence dismissed.'*

2. Learned Counsel appearing for the Appellant submitted that the total outstanding debt and dues payable by the Respondent to the erstwhile Oriental Bank of Commerce is to the tune of Rs. 2,44,85,29,569.79/-; that there is no denial of the 'existence of the debt' as defined under Section 3(11) of the Code and that the evidence on record also establishes the 'existence of default'; that the Joint Lenders Forum (JLF) decided to classify the account as 'Special Mention Account' (SMA) in terms of the guidelines issued by the RBI; that JLF sanctioned Restructuring Package pursuant to which Master Restructuring Agreement was entered into between the Appellant and the Corporate Debtor on 30.03.2015; that the Corporate Debtor did not adhere to the financial norms as a result of which Strategic Debt

Restructuring Scheme (SDR) was invoked; that as per the scheme, the entire change of management ought to have been completed within a period of 18 months from the date of reference which was 16.06.2016 and the 18 months expired on 17.12.2017; on account of failure of the SDR, the account was classified as NPA with effect from 30.06.2016; on 20.03.2018, the Appellant preferred Application under Section 7 of the Code before the Adjudicating Authority.

3. Learned Counsel vehemently contended that the Adjudicating Authority wrongly relied on the decision of the Hon'ble Supreme Court in ***Dharani Sugars and Chemical Ltd. V/s. Union of India (UOI) and Ors.*** (2019) 5 SCC 480, as there is nothing suggestive in the Minutes of the JLF Meeting dated 26.02.2018, which would show that the Section 7 Application was preferred pursuant to the said RBI Circular. He submitted that the JLF has discussed the offers of the prospective investors viz. Tri Shakti Power Pvt. Ltd. and that there was concern as the High Court of Bombay expressed time bound decisions to be taken regarding the Corporate Debtor, and Hon'ble High Court had given time till 06.04.2018 to seek necessary directions in the said Company Petitions and the same was deliberated in the Meeting on 13.03.2018.
4. Learned Counsel drew our attention to the Minutes of the Meeting dated 13.03.2018 and submitted that it was only taking into consideration the interest of unsecured creditors, that the

Appellant proposed the filing of the Section 7 Petition under the Code. He further argued that though the Respondent never raised any plea regarding the Section 7 Application being filed pursuant to the RBI Circular, the Adjudicating Authority wrongly relied on the same.

5. Learned Counsel further contended that as per the Circular dated 12.02.2018, the timelines for large accounts to be referred under IBC was with respect to accounts with an aggregate exposure of Rs. 20/- billion on or after March 1<sup>st</sup>, 2018 and that for other accounts with aggregate exposure of the lenders below Rs. 20/- billion and above Rs. 1/-billion, RBI intended to announce over a two-year period, reference date for implementing the RP to ensure calibrated, time bound resolution of all such accounts to default. He submitted that the last offer was received on 22.02.2018, after RBI Circular dated 12.02.2018 and vehemently denied that the Application was pursuant to the RBI Circular.
6. Learned Counsel appearing for the Respondent submitted that the Circular of RBI dated 12.02.2018, has been declared as non-est in the eyes of law by the Hon'ble Supreme Court in ***Dharani Sugars (Supra)*** that the consortium of lenders approved the restructuring package on 30.03.2015, two-year moratorium was given for payment of the term loan installments; the Company incurred losses and faced several cash flow issues which was discussed in the JLF Meeting on 04.06.2016; the consortium of

lenders acquired 51% stake through conversion of debt; pursuant to 10.11.2017, three investors approached the consortium of lenders and submitted their offers which was also discussed in the JLF Meeting held on 11.12.2017; on 26.02.2018 the JLF was considering the offers of these investors and decided to examine the same in the light of the new Circular dated 12.02.2018; as there was no scheme available for restructuring after RBI Circular dated 12.02.2018, in the JLF Meeting dated 13.03.2018, the finalization of the offers for change of management was deferred; the lead Bank informed the Board that the Hon'ble High Court had deferred the matter to 06.04.2018 as a last chance and 'as the finalization of the Resolution Plan before 06.04.2018 was difficult', the consortium of lenders took a decision to file Section 7 Application under the IBC Code 2016 and hence it is clear that the Appellant had initiated the said proceedings pursuant to the RBI Circular dated 12.02.2018.

7. It is also the case of the Learned Counsel for the Respondent that despite being mandated under the revised framework contemplated by RBI vide the said Circulars, no such 'Resolution Plan' has been put in place by the Appellant, that after the expiry of the period of 18 months, JLF continued to look for potential investors to take over their 51% stake and vehemently denied that after the expiry of the HDR scheme, no new proposal was received by the JLF, as the last offer was

received on 22.02.2018, subsequent to the RBI Circular. He further submitted that a perusal of the Circular makes it evident that it is not applicable in cases where a Restructuring Scheme has been implemented.

8. The brief point that falls for consideration is whether Section 7 Application is maintainable, whether it is pursuant to the RBI Circular dated 12.02.2018, and if the ratio of ***Dharani Sugars (Supra)*** is applicable.
9. On 07.02.2019, the Respondent Company filed WP (Civil) 169 of 2019 Mittal Corp. Ltd. V/s. Reserve Bank of India & Or. and the Hon'ble Apex Court on 13.02.2019 ordered the parties to maintain 'status quo'. Thereafter, 02.04.2019 in ***Dharani Sugars (Supra)***, the Hon'ble Supreme Court held that the Circular dated 12.02.2018 issued by the RBI was ultra vires to Section 35AA of the Banking Regulation Act, 1949. Subsequently the Writ Petition filed by the Respondent Company was disposed of vide Order dated 19.04.2019 with the following observations;

*'7.2 The National Company Law Tribunal is free to consider as to whether insolvency proceedings were initiated pursuant to the Reserve Bank of India-respondent No. 1's Circular dated 12/02/2018.*

*With these observations, the writ petitions stand disposed of.'*

10. The Minutes of the Meeting held on **a) 26.02.2018** and on **b) 13.03.2018**, relied upon by the Respondent Counsel to prove his case, is being re-produced as hereunder;

**a) Minutes of the Core Committee Meeting held on February 26, 2018 at Oriental Bank of Commerce, 14<sup>th</sup> Floor, Maker Tower F, Cuffe Parade, Mumbai-05**

Representatives of Oriental Bank of Commerce, Punjab National Bank. Canara Bank Central Bank of India, Allahabad Bank, Bank of Maharashtra, Exim Bank, Corporation Bank and Indian Bank were present Representative of IDBI Bank and United Bank of India were present through conference call. Attendance sheet is enclosed in Annexure – III.

Mr. Sunil Chugh, Deputy General Manager, Oriental Bank of Commerce welcomed the participants in the meeting.

Summary of discussions is as under:

- 1) Mr. Chugh informed the house that IDBI Caps (Process advisor) had been negotiating with prospective investors to get improved offer since last JLF meeting held on 11.12.2017. He further informed that pursuant to negotiation, one of the prospective investors viz. Trishakti Power Private Limited had submitted revised offer on 18.12.2017 (copy of which was shared with every lender), which was not found acceptable. Again on 22.02.2018. Trishakti has submitted further improved offer.

Comparison of various revised offers submitted by Trishakti is as under:

Terms	Trishakti Power Private Limited			
	Original offer dated Oct 17	1 <sup>st</sup> Revised offer dated 16.11.17	2 <sup>nd</sup> Revised offer dated 18.12.17	3 <sup>rd</sup> Revised offer dated 22.02.18
Sustainable Debt	Not specified	50%	51%	60%
Value of equity	Rs. 8.00 Crores for 26% stake	Rs. 8.60 Crores for 26% stake	Rs. 8.60 Crores for 26% stake	Rs. 8.60 Crores for 26% stake

<i>Priority Debt</i>	<i>Rs. 150 Crores @ ROI of 18% p.a.</i>	<i>Rs. 150 Crores @ ROI of 18% p.a.</i>	<i>Rs. 150 Crores @ ROI of 14% p.a.</i>	<i>Rs. 150 Crores @ ROI of 14% p.a.</i>
<i>Repayment of sustainable debt in first 7 years</i>	<i>1.80%</i>	<i>1.80%</i>	<i>18.00%</i>	<i>19.00%</i>
<i>Charge on fixed assets for priority debt of Rs. 150.00 Crores</i>	<i>Priority charge over fixed assets</i>	<i>Pari-passu charge over fixed assets</i>	<i>Pari-passu charge over fixed assets</i>	<i>Pari-passu charge over fixed assets</i>
<i>FITL for next 2 years</i>	<i>Conversion of FITL into CRPS with coupon of 0.01% PA</i>	<i>No interest on FITL and principal shall be repaid during 16-20 years.</i>	<i>Interest on FITL shall be paid @ 8.50%.</i>	<i>Interest on FITL shall be paid @ 8.50%.</i>
<i>Cut off date</i>	<i>01.11.2017</i>	<i>01.11.2017</i>	<i>01.04.2018</i>	<i>01.04.2018</i>

*All other terms of original offer are proposed to remain the same.*

*The committee also discussed the latest RBI Circular no. DBR. No. BP.BC.101/21-04.048/2017-18 dated 12.02.2018, which withdraws the existing guidelines of change in management and other existing Circulars. As per said Circular, all banks will put in place Board approved policies for resolution of stressed assets under new framework, including the timelines for resolution.*

*The committee discussed the revised offer from Trishakti and decided to examine the proposal in light with new guidelines issued by RBI on 12.02.2018 and take views of respective competent authorities.*



2) Mr. Chugh informed the house that last hearing in regard to liquidation petition filed by three applicants viz. Morgardshammar AB, Nordea Bank and Banco Di Brescia SPA was held on 20.02.2018 before the Hon'ble High Court of Bombay and order of that hearing has been received on Friday evening (23.02.2018). Next date of hearing is scheduled on 27.02.2018. The Hon'ble High Court has desired to have concrete instructions as to how the petitioners interest will be taken care.

The Committer discussed the order of the Hon'ble High Court. The committee was of the view that since RBI has recently issued a Circular on 12.02.2018 and lenders have to re-examine the proposal under new guidelines after putting up Board approved policies by every Bank, a request can be made to Hon'ble High Court for seeking some time to arrive at any decision resolution for the company.

The meeting ended with vote of thanks to the chair.'

**b) 'Minutes of the Lenders Meeting held on March 13, 2018 at the Oriental Bank of Commerce, 14<sup>th</sup> Floor, Marker Tower F, Cuffe Parade, Mumbai – 05**

Representatives of Oriental Bank of Commerce, Punjab National Bank. Canara Bank Central Bank of India, Allahabad Bank, Bank of Maharashtra, Exim Bank, Corporation Bank and Indian Bank were present Representative of IDBI Bank and United Bank of India were present through conference call. Attendance sheet is enclosed in Annexure – III.

Summary of discussions is as under:

1. OBC informed the house that last hearing in regard to liquidation petition filed by three applicants viz Morgardshammar AB, Nordea Bank and Banco Di Brescia

*SPA was held on 05.03.2018 before the Hon'ble High Court of Bombay. As directed by the Hon'ble Court, Executive Director of OBC was present in the Court on hearing held on 05.03.2018, Hon'ble court has deferred the matter to 06.04.2018 for directions as last chance.*

*Lenders deliberated that finalization of any resolution plan before 06.04.2018 is very difficult in the light of recent RBI guidelines dated 12.02.2018, as all the Banks are required to put in place Board approved policies for resolution under said Circular.*

*Lenders appreciated the concern of Hon'ble Court that there has to be a time bound resolution and the interest of unsecured creditors, who are petitioner before the Court, should be taken care of*

*In view of the same OBC proposed that filing the petition with NCLT under IBC 2016 would be the most appropriate course of action, as the same would duly take care concern of Hon'ble Court. All the lenders concurred with the opinion of OBC. Thus, it was decided that OBC would file petition with NCLT at the earliest.*

*OBC also informed that to save the time, they have already invited bids from eleven empaneled Resolution professionals (who are on panel of OBC). It was decided that Core Committee shall select IRP out of bids received. Accordingly, it was decided to hold Core Committee meeting on 14.03.2018*

*OBC further informed that they have selected legal firm namely M/s. MDP & Partners for filing application u/s & of IBC with NCLT and for other legal assistance.*

- 2. Lenders deliberated on other issues viz issuing recall notice 'SARFAESI' notice invocation of guarantees and suit filing*

*It was decided that*

- a) Recall notice/SARFAESI notice may be issued individually by lenders.*
- b) Guarantee invocation notice may be issued individually by lenders.*
- c) OA shall be filed jointly by the Lead Bank on behalf of all the lenders. It was decided that all the lenders will submit the required papers/information in a time bound manner to enable filing of Joint OA. Lenders who will not provide required information in prescribed time will be made respondent and may file separate OA.*

*It was discussed that draft of above notices shall be prepared by M/s MDP & Partners and draft shall be circulated to lenders. The legal cost shall be met from cutback proceeds in TRA.*

- 3. In response to red flagging of account, IDBI Bank informed that they have done RFA mainly due to following reasons;*
  - a) ESW MB - delay in payment of outstanding dues.*
  - b) The change in management of MCL could not be completed within the standstill period, SDR package failed and account was downgraded to NPA category.*

*Corporation Bank informed that they are also in process of red flagging the account.*

*In last consortium meeting held on 01.03.2018, lenders deliberated on the need to conduct Investigate audit/forensic audit. It was decided in that meeting that a final decision in this regard may be taken in next meeting.*

*Lenders deliberated on this matter and decided that OBC shall invite bids from a few forensic auditors on their panel*

4. Minutes of last consortium meeting held on March 01, 2018 were confirmed by participants

*The meeting ended with vote of thanks'*

11. Learned Counsel for the Respondent drew our attention to the observation made by the Hon'ble Supreme Court in **Dharani Sugars** (Supra) which is detailed as hereunder;

*'There is nothing to show that the provisions of Section 45L(3) have been satisfied in issuing the impugned Circular. The impugned Circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned Circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned Circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the Circular applicable to them even if it is ultra vires insofar as banks are concerned. For these reasons also, the impugned Circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said Circular, including actions by which the Insolvency Code has been triggered must fall along with the said Circular. As a result, all cases in which debtors have been proceeded against by financial creditors Under Section 7 of the Insolvency Code, only because of the operation of the impugned Circular will be proceedings which, being faulted at the very inception, are declared to be non-est.*

46. In view of the declaration by this Court that the impugned Circular is ultra vires Section 35AA of the Banking Regulation Act, it is unnecessary to

go into any of the other contentions that have been raised in the transferred cases and petitions. The transferred cases and petitions are disposed of accordingly.'

*(Emphasis Supplied)*

12. It is the main case of the Appellant that the total outstanding amount due and payable by the Corporate Debtor to the consortium is around Rs. 1,077/- Crs, out of which the Appellant's claim is Rs. 2,44,85,29,569.79/-. It is seen from the material on record that though the Appellant forms part of the Joint Lenders Forum (JLF), only the Appellant had filed the Application under Section 7 qua the debts owed by the Respondent Company to the Appellant and not on behalf of the JLF. The relevant portion of the RBI Circular dated 12.02.2018 is reproduced as hereunder to ascertain whether the instant case is covered by the said Circular, which was declared non-est by the Hon'ble Supreme Court in ***Dharani Sugars (Supra)***;

*'Guidelines dated 12.02.2018 (RBI/2017-18/131 DBR. No. BP.BC.101/21.04.048/2017-18) :-*

*"D. Timelines for Large Accounts to be Referred under IBC*

*8. In respect of accounts with aggregate exposure of the lenders at Rs. 20 Billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:*

- i) If in default as on the reference date, then 180 days from the reference date.*
- ii) If in default after the reference date, then 180 days from the date of first such default.*

9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code (IBC) within 15 days from the expiry of the said timeline.

10. In respect of such large accounts, where the RP involving restructuring/change in ownership is implemented within the 180-day period, the account shall not be in default at any point of time during the “specified period”, failing which, the lenders shall file an insolvency application, singly or jointly under the IBC within 15 days from the date of such default.

‘Specified period’ means the period from the date of implementation of RP upto the date by which at least 20 per cent of the outstanding principal debt as per the RP and interest capitalization sanctioned as part of the restructuring, if any, is rapid.

Provided that the specified period cannot end before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.

11. Any default in payment after the expiry of the specified period shall be reckoned as a fresh default for the purpose of this framework.

12. For other accounts with aggregate exposure of the lenders below Rs. 20 Billion and, at or above Rs. 1 Billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default.

13. It is, however, clarified that the said transition arrangement shall not be available for borrower entities in respect of which specific instructions have already been issued by the Reserve Bank of the banks for reference under IBC. Lenders shall continue to pursue such cases as per the earlier instructions”

(Emphasis Supplied)

13. From the aforementioned provisions it is clear that the pre-requisite for the invocation of the said Circular is that there should be an aggregate exposure of the lender above Rs. 2,000 Crs. and in the instant case the total outstanding claimed debt amounts to Rs. 1,007/- Crs. out of which the amount claimed by the Appellant Bank is to the tune of Rs. 2,44,85,29,569.79/- Crs;. Additionally, it is seen, that for other accounts with aggregate exposure of the lender below Rs. 2,000/- Crs. and at or above Rs. 100/- Crs., the Reserve Bank intended to announce over a two-year period, reference date for implementing the RP to ensure time-bound resolution of all such accounts in default. Further, the documentary evidence filed before us does not evidence any such announcement made with respect to the subject matter. We are of the considered view that there is force in the contention of the Learned Counsel appearing for the Appellant that the said Circular is not applicable to the instant case and as a consequence the decision of **Dharani Sugars** (*Supra*) is also not applicable, more so taking into consideration what the Hon'ble Supreme Court has observed in Para 2 of the Judgment;

*'2. It will be noticed that the salient features of this circular are that restructuring in respect of borrowers entities de hors the Insolvency & Bankruptcy Code, 2016 ["Insolvency Code"] can only occur if the resolution plan that involves restructuring is agreed to by all lenders, i.e., 100 per cent concurrence. Secondly, what has been chosen to be the subject matter of the circular is debts with an aggregate exposure of INR 2000 crore and over on or after 01.03.2018. With*

respect to such debts, if default persists for 180 days from 01.03.2018, or if the date of first default is after 01.03.2018, then 180 days calculated with effect from that date, lenders shall file applications singly or jointly under the Insolvency Code within 15 days from the expiry of the aforesaid 180 days. In short, unless a restructuring process in respect of debts with an aggregate exposure of over INR 2000 crore is fully implemented on or before 195 days from the reference date or date of first default, the lenders will have to file applications as financial creditors under the Insolvency Code. It will be noticed that the sources of power for issuance of the aforesaid circular have been stated to be Section 35A of the Banking Regulation Act read with the Central Government's circular dated 05.05.2017, Sections 35AA and 35AB of the said Act, and Section 45L of the Reserve Bank of India Act, 1934 [**RBI Act**]. It may be stated here that by an order dated 11.09.2018, this Court allowed various transfer petitions and made orders in Writ Petition No. 1086 of 2018, by which it was ordered that status quo as of today shall be maintained in the meantime. As a result, insofar as the petitions and transferred cases in this Court are concerned, the circular has, in effect, been stayed on and from 11.09.2018.

*(Emphasis Supplied)*

14. From the aforesaid, it is clear that the subject matter of the Circular was with respect to debts greater than Rs. 2,000/- Crs. and over on or after 01.03.2018, therefore, the contention of the Learned Counsel for the Respondent Company that the Minutes of the Meeting on 26.02.2018 read together with the Minutes dated 13.03.2018 establishes that Application under Section 7 is not maintainable as it is pursuant to the RBI Circular dated 12.02.2018, is untenable as we are of the considered opinion that the Circular itself is not applicable since the amount claimed as debt due and payable is less than Rs. 2,000/- Crs.



and the process was initiated by JLF prior to the issuance of the Circular. Merely because the JLF Committee discussed the various offers and also the revised Plan from 'Tri Shakti' and decided to examine the Proposals in light of the new guidelines issued by the RBI on 12.02.2018 and found that finalization of any 'Resolution Plan' prior to 06.04.2018, as directed by the Hon'ble High Court, would be difficult and decided to file an Application under Section 7 of IBC 2016, it cannot be construed that the decision to file the Application was initiated only pursuant to the RBI Circular. Additionally, a mere discussion in the Minutes of the Meetings cannot be construed as substantial evidence to establish that the decision to file Section 7 Application was pursuant to the RBI Circular. A perusal of the Order of the Hon'ble High Court dated 05.03.2018 shows that time was given till 06.04.2018 to the JLF to complete the process and the same was discussed by the JLF in their Meeting dated 13.03.2018 and appreciating the concern of the Hon'ble High Court and taking into consideration that a time-bound resolution could not be achieved within such a short period of time, a decision was taken to file Section 7 Petition under the Code. It is pertinent to mention that the Respondent Company in their Reply dated 06.06.2018 did not mention or whisper that the Application was filed pursuant to the RBI Circular. In their Additional Affidavit dated 17.09.2019, the Respondent submitted that the Appellant had filed a Section 7 Application

pursuant to and in implementation of the said Circular though in their sur-rejoinder dated 27.07.2018, the Respondent has submitted that the Application was filed in violation of the said RBI Circular. Be that as it may, at the cost of repetition, we observe that the Circular itself was not applicable to the instant case, therefore, the ratio of ***Dharani Sugar (Supra)*** also does not apply.

15. Further, it is an admitted fact that the subject account was declared as NPA in December 2017, with effect from June 2016, after the expiry of 18 months-time period under Strategic Debt Restructuring and Section 7 Application was filed before the lapse of the time-period of 180 days, for a default in existence much before the reference date i.e. 01.03.2018. It is an admitted fact that the Appellant filed an Application under Section 7, on 20.03.2018, much before the deadline of 180 days.
16. To reiterate, in the absence of any cogent evidence to show that the Appellant has filed the Application only pursuant to the 'Circular' issued by Reserve Bank of India, which we hold at the outset, was not applicable to the facts of the instant case, it was not open to the Adjudicating Authority to reject the Application on this ground. The Petition under Section 7 of the I&B Code is to be considered by the Adjudicating Authority on its own merits taking into consideration the records.
17. For the reasons aforesaid, we set-aside the Impugned Order dated 20th December, 2019 and remit the case to the

Adjudicating Authority (National Company Law Tribunal),  
Mumbai Bench, with a direction to decide the Admission of the  
Application on merits as expeditiously as practicable.

**[Justice Jarat Kumar Jain  
Member (Judicial)]**

**[Mr. Balvinder Singh]  
Member (Technical)]**

**[Ms. Shreesha Merla]  
Member (Technical)]**

**NEW DELHI  
7<sup>th</sup> September, 2020**

*ha*