

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT)(INSOLVENCY) NO.193 OF 2017

IN THE MATTER OF:

Sanjay Bagrodia

Appellant

Vs

Sathyam Green Power Pvt Ltd

Respondent

Present:

For Appellant:-Mr Anush Raajan, Advocate.

For Respondents: - None.

ORDER

15.11.2017 - The Registry raised the question of delay in preferring this appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code"). Learned counsel appearing on behalf of the appellant submits that there is no delay as the copy of the order was made available to appellant on 28th June, 2017 whereinafter the appeal was preferred on 28th July, 2017. In spite of the same the Registry of the Appellate Tribunal had not registered the matter on the ground of delay and after an order passed by the Registrar of this Appellate Tribunal, the case was registered. In the facts and circumstances aforesaid we hold that there is no delay in preferring the appeal.

2. This appeal has been preferred by the appellant against the order dated 25th May, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi (hereinafter referred as the "Tribunal") in C.P. No.(IB)(108)(PB)/2017. By the impugned order the Tribunal rejected the

application under Section 9 preferred by the appellant on one of the grounds that the application is barred by limitation.

3. We have heard the learned counsel for the appellant and learned counsel for the respondent.

4. The question as to whether Limitation Act, 1963 is applicable for triggering ‘Corporate Insolvency Process’ under I&B Code came for consideration before this Appellate Tribunal in ***M/s Speculum Plast Pvt Ltd Vs PTC Techno Pvt Ltd- Company Appeal (AT) (Insolvency) No.47 of 2017***. In the said case this Appellate Tribunal by its judgement dated 7.11.2017 has held as follows:

“68. 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.

69. 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.

70. 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.

71. 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'.

72. 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.

In so far it relates to filing of claim before the 'Insolvency Resolution Professional', in case of stale claim, long delay and in absence of any continuous cause of action, it is open to resolution applicant to decide whether such claim is to be accepted or not, and on submission of resolution plan, the Committee of Creditors may decide such question. If any adverse decision is taken in regard to any creditor disputing the claim on ground of delay and laches, it will be open to the aggrieved creditor to file objection before the Adjudicating Authority against resolution plan and for

its necessary correction who may decide the same in accordance with the observations as made above.”

5. This Appellate Tribunal also notice the provisions of Article 137 (Part II) of the Limitation Act and observed

“58. Even if it is accepted that the Limitation Act, 1963 is applicable, though we have held otherwise, in that case also application under Section 7 or 9 or 10 cannot be rejected on the ground that the application is barred by limitation for being filed beyond three years for following reasons.

Except Article 137 of Part II i.e. ‘other applications’, as quoted below, no other provisions of Limitation is applicable in the matter of filing application under Sections 7 or 9 or 10: -

Part II-OTHER APPLICATION

	<i>Description of application</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>137.</i>	<i>Any other application for which no period of limitation is provided elsewhere in this division.</i>	<i>Three years</i>	<i>When the right to apply accrues</i>

59. 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’.

60. For initiation of ‘Corporate Insolvency Resolution Process’, the right to apply accrues under Section 7 or Section 9 or Section 10 only with effect from 1st December, 2016 when ‘I&B Code’ has come into force, therefore, the right to apply under Section 7 or Section 9 or Section 10 in all present cases having accrued after 1st December 2016, such applications cannot be rejected on the ground that the application is barred by limitation.”

6. As the case of the appellant is covered under the decision in ***M/s Speculum Plast Pvt Ltd Vs PTC Techno Pvt Ltd-Company Appeal (AT) (Insolvency) No.47 of 2017***, we have no option but to set aside the impugned order. We, accordingly, set aside the impugned order dated 25th May, 2017 and remit C.P. No.(IB)(108)(PB)/2017 back to the Adjudicating Authority, Principal Bench, New Delhi to consider the matter in accordance with law. The appeal is allowed with the aforesaid observations. However, in the facts and circumstances of the case there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)