

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

**Company Appeal (AT) (Ins) No.461 of 2020**

**IN THE MATTER OF:**

**Corporation Bank**

**...Appellant**

**Versus**

**Uluberia Metaliks Pvt. Ltd.**

**...Respondent**

**For Appellant:                    Shri Alok Kumar, Advocate**

**For Respondent:                None**

**O R D E R**

**02.06.2020**            Heard Advocate - Shri Alok Kumar for the Appellant – Corporation Bank. This Appeal has been filed against dismissal of Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) which was filed by the Appellant as Financial Creditor against the Respondent – Corporate Debtor. The account had become NPA on 14.08.2012 and Application under Section 7 of IBC was filed on 20.12.2018. The Application came to be dismissed on the basis that the claim is time barred.

2.     We have heard the learned Counsel for Appellant. he is relying on Judgement in the matter of **“Mr. Basab Biraja Paul Versus Edelweiss Asset Reconstruction Company Limited”** in Company Appeal (AT) (Ins) No.772 of 2019 decided on 6<sup>th</sup> September, 2019. It is stated that in this Judgement, the first Court of this Tribunal had found that the claim of the bank in that matter was not time barred because the bank had a mortgage in its favour which gave limitation of 12 years. The Counsel states that against that Judgement in the matter of “Mr. Basab Biraja Paul” (referred supra), Appeal was filed and that the Appeal is pending in Supreme Court

and thus according to him, the question whether the execution of mortgage will help in extending the period of limitation on the basis of mortgage is sub judice. It is stated that for this reason, the Appeal should be admitted and the Appeal has got merits.

3. We have gone through the mater and heard the learned Counsel for the Appellant. The Adjudicating Authority observed in para -18 of the Impugned Order as under:-

“18. The Hon’ble Supreme Court in **B.K. Educational Services Private Limited Vs. Parag Gupta and Associates 2018 SCC Online SC 1921** has held that the law of limitation is applicable, in the cases coming under the purview of Insolvency and Bankruptcy Codes. It has been held that the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, and Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, occurs when a default occurs. If the default has occurred over 3 years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act. Similarly, in **“Gaurav Hargovindbhai Dave Vs Asset Reconstruction Company (India) Ltd & Anr, Civil Appeal No.4952 of 2019** decided on 13<sup>th</sup> September, 2019”, the Hon’ble Supreme Court has again held that *Article 137 of the Limitation Act is applicable to Section 7 of the Insolvency and Bankruptcy Code and the intent of the I&B Code is not to give a new lease of life to debts which are already time barred.*”

4. Considering the Judgements referred by the Adjudicating Authority, specially Judgement in the matter of **“Gaurav Hargovindbhai Dave Vs Asset Reconstruction Company (India) Ltd & Anr”** - Civil Appeal No.4952 of 2019 in which reliance of Article 62 of the Limitation Act  
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relating to mortgage was not accepted, we do not find that there is any reason to entertain this Appeal. In Judgement in the matter of “Gaurav Hargovindbhai” (referred supra) in para – 7, Hon’ble Supreme Court observed as under:-

“7) Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being “an application” which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee’s reliance on para 7 of *B.K. Educational Services Private Limited* (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.”

5. Clearly the provisions relating to mortgage would apply to only Suits and not to Application like the present one. In view of clear Judgement of Hon’ble Supreme Court, there is no reason to admit the Appeal. We decline to admit the Appeal and dispose the same accordingly.

No Orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Alok Srivastava]  
Member (Technical)

/rs/md