

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 276 of 2017

IN THE MATTER OF:

Machhar Polymer Private Limited **...Appellant**

Vs.

Sabre Helmets Private Limited **...Respondent**

Present: For Appellant: - Mr. Rohit Rathi, Advocate.

O R D E R

27.03.2018 – This appeal has been preferred by the Appellant-‘Operational Creditor’ against the order dated 28th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, whereby and whereunder the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) has been rejected on the ground that the application is barred by limitation with following observations:

*“25. Another interesting feature in section 3 of Limitation Act is the proceeding instituted basing on time barred claim **shall be dismissed although limitation has not been set up as defense.** Here, the corporate debtor is not present; going by section 3, this Bench hereby can decide limitation issue without any averment from the corporate debtor.*

26. *There is a situation where Limitation Act could not reach, that is Constitution, there whenever any writ wither under Article 226 or on fundamental rights is filed, since constitution governs every other statute, the Limitation Act will remain application to other statutes, for this reason only, delay and laches doctrine has been carved out to meet the situation in constitutional matters.*

27. *In view of the reasons mentioned above, in whatever line so far limitation is applied to winding up cases, in the same line, prescription of limitation is applicable to the Code as well. As long as limitation is not prescribed under any specific enactment, it goes without saying Limitation Act, 1963 is automatically applicable to the Code as well.*

28. *Therefore, for the reasons above mentioned, this Company Petition is **dismissed** with liberty to the petitioner to proceed in respect to the claim within limitation by invoking section 14 of Limitation Act 1963.”*

2. In spite of service of notice and notice published in English newspaper “Times of India”, Mumbai Edition and Gujarati newspaper “Sandesh”, Mumbai Edition, the Respondent has not appeared.

3. Learned counsel for the Appellant rightly pointed out that the impugned order is against the decision of 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 judgment dated 7th November, 2017 observed and 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.”

4. For the reasons aforesaid, the impugned order dated 28th September, 2017 passed in Company Petition No. 1333/I&BP/2017 is set aside. The case is remitted to the Adjudicating Authority, Mumbai Bench to consider the application under Section 9 of the 'I&B Code' preferred by the Appellant after notice to the 'Corporate Debtor'. If the application is complete, the Adjudicating Authority will admit it. On the other hand, if there is any defect, the Appellant may be allowed time to remove the defects.

5. The appeal is allowed with aforesaid observations and directions.
No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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