

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT)(INSOLVENCY) NO.655 OF 2018**

(Arising out of Order dated 15.10.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP 1882/I&BP/NCLT/MAH/2018.

In the matter of:

Gaurav Hargovindbhai Dave,
(Shareholder) Male Age:57 years,
A/G/1, Parshwa Padmavati Apartment,
Dr. Jivraj Mehta Hospital Road,
Vasna,Ahmedabad-380007

Appellant

Versus

1. Asset Reconstruction Company (I) Ltd
Acting in its capacity as Trustees of
Arcil-AST IV Trust,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (W), Mumbai -40028
2. Shivam Water Treaters P Ltd,
Through IRP, Ms Hema Shah,
Purshottam Khandelwal & Co,
Chartered Accountants,
216, Madhupura Vyapar Bhawan,
Nr. Gunj Bazaar, Madhupura,
Ahmedabad-380004

Respondents

Present:

For Appellant: Mr. Vishwas K. Shah with Ms Bhavna V. Shah, Ms Aastha Mehta, Mr. Divyang Chandiramani, Advocates.

For Respondents: Mr. Ramji Srinivasan, Senior Advocate with Ms Neha Naik and Ms Sylona Mohapatra, Advocates. Mr. Mudit Sharma, CRP.

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

Asset Reconstruction Company (India) Limited (hereinafter referred to as 'ARCIL'), Financial Creditor, filed an application under Section 7 of

Insolvency & Bankruptcy Code, 2016 (IBC) against Shivam Water Treaters Private Limited (Corporate Debtor), which has been admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai vide order dated 15th October, 2018.

2. Learned counsel appearing on behalf of the appellant submitted that the Debt Recovery Tribunal, Ahmedabad has already held that the assignment deed in favour of Respondent, ARCIL (Financial Creditor), was invalid, therefore, the application under Section 7 of I&B Code was not maintainable.

3. Further according to the counsel for the appellant, the money claim being barred by limitation, there is no debt payable in the eyes of law and, therefore, application under Section 7 of the I&B Code was not maintainable.

Learned counsel for the appellant referred to the decision of Debt Recovery Tribunal, Ahmedabad dated 10.6.2016 passed in SA No.24/2016 under Section 17 of the Securitisation and reconstruction and Enforcement of Security Interest Act, 2002 whereby assignment deed dated 28.3.2014 in favour of Respondent, ARCIL, has been declared to be invalid. Learned counsel submitted that the Respondent, ARCIL, has moved before the Hon'ble Gujarat High Court in SCA No.1550 of 2016 but the case has been admitted without any order of stay.

4. Further it was stated that the deed of assignment dated 28.3.2014 was assigned prior to Board Resolution which was taken in July, 2014, and assignment deed having inked without power and without authority being also insufficiently stamped was declared to be invalid. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***B.K. Educational Services Private Limited Vs. Parag Gupta and Associates***

to suggest that the Limitation Act is applicable to applications filed under Sections 7 and 9 of the I&B Code from the inception of the Code, Article 137 of the Limitation Act gets attracted.

5. Learned counsel appearing on behalf of the Respondent, ARCIL submitted that there is no denial of debt and default by Corporate Debtor or the appellant. It is submitted that the order passed by the Debt Recovery Tribunal, Ahmedabad as relied by the appellant has already been set aside and quashed by the Hon'ble Gujarat High Court which fact has been suppressed by the appellant. It was further submitted that for the purpose of assignment there is no requirement of Board Resolution. The Power of Attorney of the relevant officer of ARCIL is on record filed with the petition. In so far debt is concerned it was submitted that the debt is not barred by limitation as the Corporate Debtor offered three settlement proposals to ARCIL dated 24.2.2015, 29.4.2015 and 26.6.2015 to clear the debts. Further it has been brought to our notice that the petition under Section 7 was filed by ARCIL in October, 2017. This Appellate Tribunal in the case of **Pushpa Shah & Anr Vs IL&FS Financial Services & Anr** in Company Appeal (AT) No.521 of 2018 dealt with the provisions of Article 137 of Part II of the 'Limitation Act' 1963 which reads as follows:

Part II-Other Applications

Description of application	Period of limitation	Time from which Period begins to run
137. Any other application For which no period of Limitation is provided Elsewhere in this Division.	Three years	When the right to apply accrues

In the said case the Appellate Tribunal has held that I&B Code having come into force on 1st December, 2016, the right to file application under Section 7 accrues on or after 1st December, 2016 and therefore, the application under Section 7 cannot be held to be barred by limitation.

6. The question whether the claim is barred by limitation to see that there is no debt payable in law, we hold that the claim of ARCIL is not barred by limitation, as the assignment deed was made in favour of ARCIL on 28.3.2014 which was declared invalid by DRT, Ahmedabad by an order dated 10.6.2016 and thereafter having revived pursuant to Hon'ble Gujarat High Court order. Apart from the above fact, we find that the Corporate Debtor offered three settlement proposals for payment of debt on 24.2.2015, 29.4.2015 and 26.6.2015 to ARCIL.

7. In view of the aforesaid finding no relief can be granted to the appellant. The appeal is accordingly dismissed. No order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

Dated: 02-5-2019

New Delhi

Bm