

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No. 122 of 2017

IN THE MATTER OF:

Ellora Paper Mills Limited & Anr

.. Appellants

Versus

Ajithnath Steels Pvt. Ltd.

.. Respondent

Present:

For Appellants:

Shri Rahul Chitnis, Shri V. Mulay and Shri Aaditya Pande Advocates

For Respondent:

Shri Sandeep Bajaj, Shri Soayib Quereshi, Ms Aakanksha Nenca and Ms. Shourya Mittal Advocates

ORDER

15.11.2017 Corporate Debtor has preferred this appeal against the order dated 19th July, 2017 passed by Adjudicating Authority (National Company Law Tribunal) Mumbai in C.P. No. 716/I&BP/2017 whereby and wherunder an application preferred by the Respondent- Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code (hereinafter referred to as '**I & B Code**') read with Rule-4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been admitted, order of

moratorium has been passed and Interim Resolution Professional has been appointed.

2. The main plea taken by the learned Counsel for the Appellants is that the Application under Section 7 of the I & B Code was barred by limitation. However, such submission cannot be accepted in view of the decision of this Appellate Tribunal in **'M/s Speculum Plast Pvt. Ltd. Vs. PTC Techno Private Ltd.'** – Company Appeal (AT)(Insolvency) No. 47/2017 wherein this Appellate Tribunal 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.”

3. Learned Counsel for the Respondent submits that as per the understanding the amount was required to be paid back by Appellants within specified period and in case of default, interest was payable. As the interest accrued every month and there being continuous cause of action there is no laches on the part of the Respondent.

4. In this context it is also relevant to rely on observation of this Appellate Tribunal in **'M/s Speculum Plast Pvt. Ltd.** as quoted below:-

“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. 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</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.”

5. In view of the aforesaid position of law and decision of this Appellant Tribunal, we find no infirmity in the impugned order. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/akc/gc