IBC Case Laws

Supreme Court of India

E S Krishnamurthy & Ors. Vs. M/S Bharath Hitech Builders Pvt. Ltd. Civil Appeal No 3325 of 2020, Date of Judgment: December 14, 2021

Facts of the Case

The present appeal has been filed under Section 62 of the IBC 2016, which arose from the judgment of the National Company Law Appellate Tribunal, which upheld the order of the National Company Law Tribunal, Bengaluru Bench (Adjudicating Authority 'AA'). The facts of the case are that a petition under Section 7 of IBC was instituted by the appellants for initiating the CIRP in respect of the respondent, the NCLT declined to admit the petition and instead directed the respondent to settle the claims within three months, which was upheld by NCLAT. The AA had decided to dispose the petition based on following, Firstly, the respondent's efforts to settle the dispute were bona fide, as they had already settled with majority investors, including few petitioners, Secondly, the settlement process was underway with other petitioners, Thirdly the procedure under the IBC was summary in nature, and could not be used to individually manage the case of each of the petitioners before it and Fourthly, initiation of CIRP in respect of the respondent would put in jeopardy the interests of home buyers and creditors, who have invested in the respondent's project, which was in advanced stages of completion. The NCLAT upheld the AA's order based on the following facts, Firstly, the AA decided to dismiss the petition at the 'pre-admission stage' as the settlement process was underway, Secondly, the AA protected the rights of petitioners by setting a time-frame for settlement and leaving the option of approaching it in case their claims remained unsettled, Thirdly, the respondent was shown leniency even if the timeframe had passed due to the effects of pandemic and Fourthly, in disputes of this nature, the claims of the home buyers are priority and liquidation should be last resort.

The Apex Court stated that the main issue of the case was whether in terms of the provisions of the IBC, the AA can without applying its mind to the merits of the petition under Section 7, simply dismiss the petition on the basis that the corporate debtor has initiated the process of settlement with the financial creditors.

Supreme Court's Observations

The Apex Court stated that in the present case, the AA noted that it had listed the petition for admission on diverse dates and had adjourned it, to allow the parties to explore the possibility of a settlement and no settlement was arrived. Further, AA did not entertain the petition on the ground that the procedure under the IBC is summary, and it cannot manage or decide upon each claim of the individual home buyers. Further, the AA held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it disposed of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time frame and the same was upheld by NCLAT. The Apex court stated the AA has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The AA is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the AA must then either admit or reject an application respectively. These are the only two courses of action

which are open to the AA in accordance with Section 7(5). The AA cannot compel a party to the proceedings before it to settle a dispute. The Court further referred its Judgment in Pratap Technocrats and Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. stating that the IBC is a complete code in itself. The AA and Appellate are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes and circumscribes the ambit of such jurisdiction. Thus, while they can encourage settlements, they cannot direct them by acting as courts of equity.

Order

The Apex Court keeping the above in view allowed the present appeal and set aside the impugned judgment of the NCLAT and NCLT and the petition under Section 7 of the IBC was accordingly restored to the NCLT for disposal afresh.

Case Review: *Appeal Allowed.*

Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Dinkar T. Venkatsubramanian and Ors. Civil Appeal No 6707 of 2019, Date of Judgment: December 01, 2021.

Background of Case

The present appeal by the Committee of Creditors 'CoC' of Amtek Auto Limited through Corporation Bank arises from the impugned judgment and order passed by the National Company Law Appellate Tribunal, New Delhi 'NCLAT' in Company Appeal (AT) (Insolvency) No. 219 of 2019.

The facts of the case are that in the CIRP of Amtek Auto Limited – Corporate Debtor (CD), RP had invited prospective resolution applicants to submit a Resolution Plan whereby Deccan Value Investor LP 'DVI' and M/s Liberty House Group Private Limited "Liberty" were considered by the COC. However, DVI withdrew, and revised plan of Liberty was considered and approved by the COC and NCLT, Chandigarh Bench 'AA'. Later, Liberty did not act as per the approved Resolution Plan. Subsequently, the CoC filed an application under Section 60(5) and 74(3) of the IBC before AA informing about Liberty and prayed to reinstate the COC and RP to ensure that CD remain as a going concern. Further, CoC prayed to grant 90 days to the RP to make another attempt for a fresh process rather than forcing CD into liquidation on account of fraud committed by Liberty.

The AA held that Liberty has defaulted in its obligation under the approved Resolution Plan and granted COC and RP to approach the appropriate authority under the IBC for the determination of default. Further, AA denied the request for carrying out a fresh process by inviting the plans again and directed the reconstitution of the COC for re-consideration of the Resolution Plan submitted by DVI and disposed of the appeal. The CoC then approached NCALT feeling aggrieved and dissatisfied with the order passed by AA. Thereafter, RP invited fresh applications from prospective resolution applicants to submit resolution plans. An interest was received from DVI and two others. The same was rejected and DVI was declared as an ineligible resolution applicant. Against the said rejection, DVI filed an appeal before the appellate authority. The NCLAT in its order held that considering the earlier order of AA, the COC was required to consider all resolution plans subject to the pending appeal. The DVI submitted the revised resolution plan. However subsequently, the NCLAT by the impugned judgment and order disposed of the appeal filed by the COC and rejected the prayer for exclusion of time and ordered the liquidation of the CD, resulting in present appeal.

Supreme Court's Observations

The Supreme Court while issuing notice in the present appeal, had stayed the liquidation proceedings, and permitted RP to invite fresh offers. Thereafter DVI submitted fresh offer which was approved by CoC. Subsequently DVI tried to withdraw, which was rejected by the Apex Court. The Court was of the view that the approved resolution plan has to be implemented at the earliest and that is the mandate under the IBC. Further, the time limit has been condoned in view of the various

litigations pending between the parties and in the peculiar facts and circumstances of the case. Therefore, any further delay in implementation of the approved resolution plan submitted by DVI and approved by AA, would defeat the very object and purpose of providing specific time limit for completion of the insolvency resolution process, as mandated under Section 12 of the IBC. The Apex Court directed implementation of the approved resolution plan and an amount of Rs. 500 crores deposited by DVI as per the approved resolution plan be transferred to the respective lenders/financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan with the time stipulated here in a bove shall be viewed very seriously.

Order

The Supreme Court in view of the above disposed of the Present Appeal.

Case Review: *Appeal Disposed*

Tata Consultancy Services Limited Vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited. Civil Appeal No 3045 of 2020, Date of Judgment: November 23, 2021

Background of Case

The present appeal arises from judgment of the National Company Law Appellate Tribunal 'NCLAT' which upheld the interim order of the National Company Law Tribunal 'NCLT or AA' which stayed the termination by the Appellant of its Facilities Agreement with SK Wheels Private Limited (Corporate Debtor 'CD').

The facts of the case are that Appellant and CD entered into a Facilities Agreement which obligated the CD to provide premises with certain specifications and facilities to the Appellant for conducting examinations for educational institutions and whereby the Agreement stated that either party can terminate the agreement immediately by written notice to the other party provided that a material breach committed by the latter is not cured within thirty days of the receipt of the notice. Subsequently, the Appellant issued a termination notice and thereafter the parties contested the facts leading up to the issuance of the notice. The Appellant stated that there were multiple lapses by the Corporate Debtor in fulfilling its contractual obligations, which it failed to remedy satisfactorily including issues of power supply and shortage of housekeeping staff, among other deficiencies. Whereas CD submitted that certain routine operational requirements were highlighted by the appellant from time to time, which were rectified within a reasonable duration and the termination notice wasn't issued on the ground that material breaches had occurred, and a thirty days' period was to be given to cure the defects before the agreement was terminated.

Supreme Court's Observations

The Supreme Court considered two issues arising in the appeal, Firstly, whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties and secondly, whether in the exercise of such a residuary jurisdiction, it can impose an ad-interim stay on the termination of the Facilities Agreement. The Apex Court stated that it is evident that the appellant had time and again informed CD that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the CD and the alleged breaches noted in the termination notice were not a smokescreen to terminate the agreement because of the insolvency of CD. Thus, the Apex Court was of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the CD. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice and the NCLAT has incorrectly upheld the interim order of the NCLT. The Apex Court issued a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP and the termination of the contract should result in the corporate death of CD. Further, the narrow exception crafted in the

matter Gujarat Urja must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief.

Order

The Supreme Court in view of the above disposed of the Appeal and set aside the judgment of the NCLAT and the proceedings initiated against the Appellant were dismissed for absence of jurisdiction.

Case Review: *Appeal Disposed*

V Nagarajan Vs. SKS ISPAT and Power Ltd. & Ors. Civil Appeal No. 3327 of 2020, Date of Judgment: October 22, 2021

Background of Case

The present appeal arises under Section 62 of the IBC 2016 from the judgement of the NCLAT, Delhi Bench which was dismissed as barred by limitation. The appellant had filed an appeal against the NCLT order which had dismissed the appellant's application in a liquidation proceeding, seeking interim relief against the invocation of a bank guarantee by SKS Power Generation Chhattisgarh Ltd (Respondent no. 10) against Cethar Ltd. (Corporate Debtor 'CD').

The facts of the case are that the appellant (IRP, RP, and Liquidator of CD) after an unsuccessful attempt at resolution, instituted proceedings under Sections 43 and 45 of the IBC to avoid preferential and undervalued transactions of the CD in favor of Respondents. The appellant claimed to have discovered that SKS Ispat and Power Ltd (Respondent No 1) and its subsidiary had colluded with the promoters of the CD and defrauded the latter of over INR 400 crores by entering a fraudulent settlement of only INR 4.58 crores. Further, Respondent No 10, allegedly at the behest of Respondent No 1, sought to invoke certain bank guarantees issued by the CD for its failure to perform its services. Hence, the appellant filed a Miscellaneous Application to resist the invocation of performance guarantee until the liquidation proceedings concluded, which was refused by NCLT. Further, the Appellant stated that, the free copy of the NCLT order was not issued and on account of the lockdown, the appeal before the NCLAT was delayed and was filed with an application for exemption from filing a certified copy of the order as it was not issued. The NCLAT in its order stated that the appeal filed was barred by limitation as the statutory time limit of thirty days had expired and an application for condonation of delay had not been filed. Further, Rule 22 of the NCLAT Rules provides that every appeal must be accompanied with a certified copy of the impugned order, which had not been annexed and no proof that the same had not been issued, provided by appellant. Further, there were no grounds for interference since a performance guarantee is explicitly excluded from the ambit of a 'Security interest' which is subject to a moratorium under Section 14 of the IBC.

Supreme Court's Observations

The Apex Court regarding the issue of when will the clock for calculating the limitation period run for proceedings under the IBC stated that owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of the NCLAT Rules. Further Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation. On the second question of "Is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC?". The Apex court stated that Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While the tribunals, and even Apex Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.

Order

The Apex Court dismissed the appeal stating that the appellant was present before the NCLT when interim relief was denied and no effort on his part was demonstrated to secure a certified copy of the said order and relied on the date of the uploading of the order on the website. The lockdown on account of pandemic and the suo motu order of Apex Court had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT had correctly dismissed the appeal on limitation.

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Case Review: *Appeal Dismissed.*

National Company Law Appellate Tribunal (NCLAT)

Bimalesh Bhardwaj & Ors. Vs. Value Infratech India Pvt Ltd & Ors. Company Appeal (At) (Ins) No. 112 of 2021, Date of NCLAT Judgment: November 29, 2021

Background of Case

The present appeal has been filed by the Appellants aggrieved by the order of the Adjudicating Authority 'AA' (NCLT, New Delhi) for liquidation of the Corporate Debtor 'CD' (Value Infratech India Pvt. Ltd. 'Respondent No. 1') under Section 61 of the IBC, 2016. (P.1) The facts of the case are that Appellants are homebuyers in the project 'SKYWALK RNE' being developed by CD have stated that the Resolution Professional 'RP' has clubbed the claims of Respondent No.1 to 3 amounting to Rs.30.70 crores along with compound interest @ 24%, thereby giving Respondent No. 4 (Capri Global Capital Limited) undue advantage of much higher voting share than was permissible, in the constitution of CoC. Further, the CoC in its second meeting had decided for liquidation of CD, despite objection put forth by Authorized Representative 'AR' of the homebuyers. Further, the RP showed undue favor to Respondent No. 4 by adding up all the loans provided by Respondent No. 4 to Respondent No. 1 to 3, thereby giving advantage of inflated voting share. (P. 2) The Appellants further claimed that RP did not follow the procedure prescribed in the IBC for inviting Expression of Interest for submission of Resolution Plan. In accordance with the wish of Respondent No. 4, and in undue haste, the RP submitted a proposal for liquidation of CD before the CoC in its second meeting and as it was given highly inflated voting rights, the resolution for liquidation of the CD was approved in the COC meeting. Hence, the Appellants have claimed this decision illegal on two pertinent issues, Firstly Whether the CoC was constituted by the Resolution Professional in accordance with IBC provisions? and Secondly, Whether the recommendation for liquidation of CD was taken by the CoC in contravention of IBC provisions?

NCLAT's Observations

The Appellate Tribunal was of the view in the present case, that the information memorandum was not prepared with full and correct details of assets and liabilities of the CD. The RP also did not pursue the application filed u/s 19(2). As a result, the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the CD. The decisions of CoC were a blotted one, since it was taken in the CoC, in which Respondent No. 4 was given voting right much in excess of its real and correct share. Further it found surprising as to how RP could prepare an information memorandum without getting access to the records and documents of the CD. It found that the CoC was not constituted in accordance with the provisions of IBC and the CIRP was not pursued with fairness and due diligence by the RP and the resolution for liquidation of the CD was taken in a meeting with an improper voting share and taken in unseemly haste.

Order

The NCLAT in view of the above directed as follows in the Present Appeal: -

- The CoC as constituted in the CIRP of the CD was not

in accordance with provisions of IBC, therefore its constitution is quashed.

- The claims of various FCs including home buyers should be appropriately fixed, keeping in view the order of this Tribunal in CA (AT) (Ins) 29 of 2020.
- The IA for exclusion of time spent in pursuing the application before the AA under sections 19(2) and 21-A of the IBC should be preferred before the AA for appropriate order.

Further, it directed AA to replace the RP with a suitable one, as the action of the RP in this matter caused prejudice to homebuyers and directed IBBI to investigate the conduct of the RP in observing various provisions of IBC and take appropriate action.

Case Review: *Appeal Disposed.*

Hemanshu Jamnadas Domadia Vs. Central Bank of India & Ors. Company Appeal (At) (Insolvency) No. 623 of 2020 Arising Out of Order Passed in CP (IB) No. 554/7/NCLT/AHM/2018 Date of NCLAT Judgment: November 10, 2021

Background of Case

The present appeal results from the impugned order passed by the National Company Law Tribunal, Ahmedabad bench (Adjudicating Authority 'AA') whereby the AA admitted the Application filed under Section 7 of the IBC, 2016. The facts of the case are that the Appellant is the Ex-Director and Shareholder of Silver Proteins Pvt Ltd (Corporate Debtor 'CD'), aggrieved by the Impugned Order passed by the AA against the order of admission of an Application filed under Section 7 of the IBC 2016. The CD had availed credit facilities worth Rs. 19,12,50,000/- from the Respondent Bank. However, as the CD was facing a liquidity crunch and had defaulted to repay the loan amount. Consequently, the Respondent Bank classified the account of the CD as 'Non-Performing Asset'. The CD resisted the Application on two grounds, Firstly, the Application filed by the Respondent Bank was barred by limitation as the Application was filed after the prescribed limitation period, i.e., three years, under Article 137 of the Limitation Act, 1963, and secondly, the Application was not filed by a duly authorized person of the Respondent Bank hence not maintainable. Hence this instant appeal.

NCLAT's Observations

The Appellate Tribunal regarding the issues of Whether the Application/Petition is filed by an Authorised Person? referred the judgement of Hon'ble Supreme Court in the case of Rajendra Narottam Das Sheth and Another stating that in the present case, the Application under section 7 of the Code was filed by the Assistant General Manager of the Respondent, who also happens to be the principal officer. Hence, authorised through a General Power of Attorney in his favour, under which he is authorised to grant loan, execute documents for and on behalf of the bank, recover loans, if necessary and further, entitled to initiate proceedings under the IBC. Additionally, Respondent Bank has filed a copy of the permission letter, which categorically allows the bank to file the present Application. Hence, the signatory to the Application is well authorised to sign the Application. Further, regarding the Whether the Application/Petition filed u/s 7 of the I& B Code is barred by limitation? it stated that the burden of prima facie proving occurrence of the default and that the Application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor 'FC' and the decision to admit an application is made on the basis of material furnished by the FC, the AA is not barred from examining the material that is placed on record by the CD to determine that such Application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the AA before admitting the Application. The plea of Section 18 of the Limitation Act not having been raised by the FC in the Application cannot come to the rescue of the Appellants in the facts of this case. In the present case, if the documents constituting acknowledgement of the debt had not been brought on record by the CD, the Application would have been fit for dismissal on the ground of lack of any plea by the FC before the AA with respect to extension of the limitation period.

Order

The Appellate Tribunal in view of the above dismissed the appeal and stated that AA had rightly admitted the Application and the Appeal filed by the Appellant has no merit and deserves to be dismissed.

Case Review: *Appeal Dismissed.*

Intec Capital Limited Vs. Eastern Embroidery Collections Private Limited Company Appeal (At) (Insolvency) No. 428 of 2021 Arising Out of Order Passed in CP (IB) No. 161(ND)/2021, Date of NCLAT Judgment: October 26, 2021

Background of Case

The present appeal results from the impugned order passed by the National Company Law Tribunal, New Delhi bench (Adjudicating Authority 'AA') whereby the AA rejected the Application filed under Section 7 of the IBC, 2016. The facts of the case are that Intec Capital Ltd (Appellant) filed application under Section 7 of the IBC, 2016 for initiation of CIRP against the Eastern Embroidery Collections Private Limited 'EECPL' (Corporate Debtor 'CD' and Corporate Guarantor) for the sum borrowed by the partnership firm M/s Eastern Overseas 'EO'. Appellant had issued two loans to a total tune of Rs. 1,16,85,000/- and the payments of which were not made even after repeated requests as per the agreed repayment schedule. After that, an Arbitration proceeding was also initiated, resulting in an award in favour of the Appellant.

The AA had rejected the prayer for initiation of CIRP against the CD on two grounds. Firstly, the Appellant had applied under Section 7 of the IBC and not under Section 95 of IBC, 2016. Secondly, the Appellant had filed the Application for Initiation of CIRP against the Personal Guarantor and not followed the applicable Rules. As, the Appellant was required to submit the Application under Section 95 (4) of the IBC, after service of demand notice as required under Section 95 (4) (a) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor's) Rules, 2019, if the debt was not paid within 14 days from the date of service of demand notice. The present appeal results from the impugned order passed by the National Company Law Tribunal, New Delhi bench (Adjudicating Authority 'AA') whereby the AA rejected the Application filed under Section 7 of the IBC, 2016. The facts of the case are that Intec Capital Ltd (Appellant) filed application under Section 7 of the IBC, 2016 for initiation of CIRP against the Eastern Embroidery Collections Private Limited 'EECPL' (Corporate Debtor 'CD' and Corporate Guarantor) for the sum borrowed by the partnership firm M/s Eastern Overseas 'EO'. Appellant had issued two loans to a total tune of Rs. 1,16,85,000/- and the payments of which were not made even after repeated requests as per the agreed repayment schedule. After that, an Arbitration proceeding was also initiated, resulting in an award in favor of the Appellant. The AA had rejected the prayer for initiation of CIRP against the CD on two grounds. Firstly, the Appellant had applied under Section 7 of the IBC and not under Section 95 of IBC, 2016. Secondly, the Appellant had filed the Application for Initiation of CIRP against the Personal Guarantor and not followed the applicable Rules. As, the Appellant was required to submit the Application under Section 95 (4) of the IBC, after service of demand notice as required under Section 95 (4) (a) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor's) Rules, 2019, if the debt was not paid within 14 days from the date of service of demand notice.

NCLAT's Observations

The Appellate Tribunal was of the view that there were two points for consideration, Firstly, is the CD personal guarantor of the EO? and Secondly, Whether EECPL is the corporate guarantor and therefore CD of the EO, in terms of Subsection (7) and (8) of Sec 3 of IBC, 2016 and will the applicable Rules be Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016? The Appellant contended that AA curtailed the remedies available of making an application for resolution of Insolvency of the CD, who qualifies under the definition of 'Corporate Person' and 'Corporate Debtor' as stated under Section 3 (7) and (8) of the IBC, 2016 and that the findings of the AA that Section 5 (22) of the IBC, which defines

'Personal Guarantor' comes into play, was against the law. It further stated that the AA under the wrong apprehension considered CD to be a Personal Guarantor while it is Corporate Guarantor. The Appellate Tribunal stated that the AA failed to notice that EO had taken Personal Guarantee of Mr. Mahendra Singh Narang and Mrs Manjit Kaur in addition to the Corporate Guarantee given by the CD. Therefore, on the occurrence of default, it was the sole prerogative of the EO to initiate action against the Principal Borrower or the Personal Guarantor of the Corporate Guarantor and since the Appellant had initiated action under IBC, 2016 against the Corporate Guarantor, the Application could not have been dismissed on the erroneous assumption that the Application should have been filed against the Personal Guarantor under Section 95 of the Code. The Appellate Tribunal further referred the Judgement of Hon'ble Supreme Court in Laxmi Pat Surana V Union Bank of India and Another 2021 SCC Online SC 267 wherein, Apex Court rejected the contention of the Appellant that since the loan was offered to the proprietary firm (not a corporate person), action under Section 7 of the Code cannot be initiated against the Corporate Person even though it had offered Guarantee in respect of the transaction. In this case, Principal Borrower is a proprietary firm, and CD had given the Corporate Guarantee for the said loan. The law laid down in the abovementioned case is fully applicable in the present case.

Order

The Appellate Tribunal in view of the above was of the considered view that CD was the Corporate Guarantor of the EO and not a Personal Guarantor. Therefore, in terms of Sub-section (7) and (8) of Sec 3 of IBC, 2016 it is a CD. Further, the applicable Rules would be 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016'. Further, the Appellate stated that the AA committed an error in holding that action should have been initiated against the Personal Guarantor of the CD under Section 95 of the Code instead of proceeding against the CD. Hence, the appeal was allowed, and the impugned order passed by the AA was set aside.

***Case Review*:** *Appeals Allowed.*

Gundeep Gurdeep Singh Sood & Ors. Vs. Corporation Bank & Ors. Company Appeal (At) (Insolvency) No. 1099 of 2020 Date of NCLAT Judgment: 29 October 2021

Background of Case

This Appeal has been preferred by the Suspended Board of Directors of Kromme Glass Private Limited (Corporate Debtor 'CD') aggrieved and dissatisfied by the order passed by National Company Law Tribunal, Kolkata Bench (Adjudicating Authority 'AA'). The application filed before AA by the Respondent No. 1 (Corporation Bank) under Section 7 of the IBC, 2016 was admitted, commencing CIRP of the CD. The facts of the case are that for the purpose of diversifying business, CD approached Respondent No. 1 to obtain credit facilities and the same was agreed. The CD received credit facility in Credit Facility, Term Loan, Working Capital and Bank Guarantees to the tune of Rs. 7,20,00,000/-, 2,22,00,000/-, 17,40,00,000/- and 1,50,00,000/- respectively. The credit facilities were made by the consortium of Respondent No. 1 and Union Bank of India. Further, to diversify its business, the CD requested for revision of the credit facilities and after negotiations, the Respondent No. 1 agreed to revise the credit facilities to the extent of Rs. 11,50,00,000/-. Subsequently, as the CD was facing financial difficulties, which resulted in default in repayment of the credit facilities resulting in its account being declared as Non-Performing Asset. Thereafter, the Respondent No. l made over a consolidated notice under Section 13(2) and 13(3) of the SARFAESI Act, 2002 to the CD, as the CD failed to make payment of the dues of the Respondent No. 1, a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was initiated in the Debts Recovery Tribunal –II, Ahmadabad. The Respondent No. 1 did not proceed with appeal filed before the DRT any further and initiated a proceeding under Section 7 of the IBC, 2016. The AA vide its impugned order admitted the application filed under Section 7 of the IBC resulting in this Appeal.

NCLAT's Observations

The Appellate Tribunal in view of the above facts and financial statements placed by Respondent No. 01 duly signed by the Appellants wherein the Appellants took plea

in the Rejoinder that the signature of the Appellants in the financial statements and in the audit report of the CD, cannot be an acknowledgement to be made within the limitation period and the Respondent No. 1 would not be entitled for fresh period of limitation. Further, Respondent No. 1 placed a letter signed by the Appellant Offer for One Time Settlement (OTS) in NPA A/c, of CD, in which the Appellants proposed to settle the account with both the Banks at a total offer value of Rs. 8.75 Crores which also amounted to acknowledgment of debt. Although, the Appellant in the Rejoinder tried to dispute these documents on the above-mentioned ground. Therefore, Respondent No. 1 will not be entitled to a fresh period of limitation. Further, the Appellate Tribunal took note of the fact that no interim order was passed by it as per the status report of the Respondents. Further, the CIRP has been completed and resolution plan has been submitted before the AA for approval. It is admitted fact that in the letter the Appellants stated that they are ready to settle the amount with both the Banks at the total value of 8.75 Crores, this OTS amounts to acceptance of the debt and in view of the law laid down in the judgment passed by Hon'ble Supreme Court in 'Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. reported in 2021 (6) SCC 366 the application under Section 7 of the IBC is not barred by limitation.

Order

The Appellate Tribunal in view of the above was of the considered view that there was no illegality in the impugned order, and it affirmed the impugned order passed by the AA. It found no merit in the instant Appeal and dismissed the same.

***Case Review*:** *Appeal Dismissed.*