NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.12.2021 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP (IB) No.82/7/AMR/2020	IA(IBC)/119/2021	7 of IBC	ASREC (India) Ltd Vs Visakha Prime Properties Constructions Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/119/2021 is allowed and CP (IB) No.82/7/AMR/2020 is dismissed, vide separate orders.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

I.A.No.119 of 2021
IN
CP (IB) No.82/7/AMR/2020

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016
In the matter of
M/s. VISAKHA PRIME PROPERTIES CONSTRUCTIONS LIMITED

BETWEEN:

M/s.Visakha Prime Properties Construction Limited,
Flat No.17, Lakshmi Apartments,
Bearing D.No.7-1-44/17,
Kirlampudi Layout, Visakhapatnam - 17,
.... Applicant/Corporate Debtor

AND

M/s. ASREC (India) Limited,
Unit No.201, 200A & 202 & 200B,
Ground Floor, Solitaire Corporate Park,
Andheri (E), Andheri Kurla Road,
Mumbai - 4000059
...Respondent/Financial Creditor

Orders pronounced on: 06.12.2021

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr. A.Raghuram, Advocate
For the Respondent : Mr.P.V.Markendeyulu, Advocate

ORDER

1. This application is filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, by the Applicant/Corporate Debtor seeking to dismiss the Petition moved by the Financial Creditor for Initiation of Corporate Insolvency Resolution Process (CIRP).

2. The Grounds on the basis of which the said prayer is made or that the Company Petition is barred by the limitation are as follows:

   i. The Company Petition is barred by the limitation as, admittedly the Corporate Debtor was declared as NPA by the Financial Creditor on 30.06.2002. As per Article 137 of Limitation Act, the limitation period is three years from the date when the right to apply accrues i.e., date of declaration of NPA.

   ii. The Financial Creditor filed the present Company Petition vide CP (IB) No.82/7/AMR/2020 after the expiry of 18 years 28 days i.e. on 02.06.2020. Hence, the Petition is barred by limitation.

3. The Respondent filed counter denying the contention of the Petition being barred by the limitation and further contended that:

   i. Originally Rs.75 Lakhs was sanctioned by the UCO Bank, as a loan to the Applicant/Corporate Debtor. As the Corporate committed default, it was declared as NPA on 30.06.2002. Although the demand was made by the Bank, the amount due was not paid, hence the O.A.No.36/2003 was filed before the Debts Recovery Tribunal (DRT). Hence, necessary action was taken by the Bank within the period of limitation and still the O.A.No.36/2003 is pending before the DRT, Visakhapatnam for adjudication.

   ii. Meanwhile the UCO Bank assigned the debt, along with the Securities, in favour of the Respondent/Financial Creditor i.e., M/s.ASRED (India) Limited, and the matte is being dealt with by the DRT, Visakhapatnam.

   iii. The O.A.No.36/2003 is posted for trial and meanwhile the Applicant/Corporate Debtor filed Writ Petition before the Hon'ble High Court challenging the orders of the DRT, and the same was disposed of by the orders dated 20.11.2019 remanding the same to DRT and the matter was posted to 01.06.2020. But the matter could not be taken up due to the pandemic of Covid-19.

iv. The Original Application, which is in the nature of Suit is already filed and pending. The Original Application was filed well within the period of limitation. Once suit is filed limitation stops to run and claim is kept alive till decision of the suit, Original Application. In the present case the assignor of the Petitioner has by filing of the Original Application kept the claim alive and therefore, it would not be proper on the part of the Corporate Debtor to contend that the claim is barred by limitation.

v. The Corporate Debtor is a running Company, filing balance sheets of the Company, each and every year showing the entry regarding the above loan in the column of liabilities, which amounts to acknowledgement of debt. A copy of the Balance Sheet for the year 2020 along with Extract of Annual Returns is filed to show the same. Hence the acknowledgement of liability extends the limitation. Hence, the IA.No.119/2021 is liable to be dismiss.

4. Heard arguments of Counsel for the Applicant and Counsel for the Respondent. The Admitted fact is that the Applicant/Corporate Debtor was declared as NPA on 30.06.2002. The present Company Petition CP(IB) No.87/7/AMR/2020 is filed on 05.06.2020. According to the contention of the Counsel for the Applicant it is Article 137 of the Limitation Act that is applicable to the Petition under Section 7 of IBC, 2016 for the purpose of limitation.

5. The Counsel for the Applicant relies on the judgment of Hon'ble Supreme Court reported ***in 2019 (10) Supreme Court Cases 572 between Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Limited and Another*** wherein it was held that

Article 62 applies only to Suits. For an Application under Section 7 of IBC, it is article 137 of the Limitation Act, which applies and hence the time begins to run from the date on which the Applicant/Corporate Debtor is declared as NPA. In that case 21.07.2011. It was held that since it is beyond three years, the Application under Section 7 of IBC would be time barred.

6. In this case, since there is no denial of the fact that, the Corporate Debtor was declared as NPA on 30.06.2002, the time for the purpose of limitation, starts from the said date which long expires by the date of filing this Application i.e., 05.06.2020.

7. The Counsel for the Respondent/Financial Creditor submits that as per the judgment of Hon'ble Supreme Court in ***Civil Appel No.1650/2020 between Dena Bank (now Bank of Baroda) vs. C.Shivakumar Reddy and Anr.***, decided on 04.08.2021, the Company Petition filed under Section 7 of IBC, 2016 would be well within limitation, since it is held in the above cited judgment that a judgement or a decree for money in favour of the Financial Creditor passed by the DRT or any other Tribunal or Court or the issuance of the certificate of recovery in favour of the Financial Creditor would give rise to a fresh cause of action for the Financial Creditor to initiate proceedings under Section 7 of the IBC, 2016 for the initiation of Corporate Insolvency Resolution Process within three years from the date of judgment or decree or within three years the date of issuance of certificate of recovery if the dues of the Corporate Debtor to the Financial Creditor under a judgement and decree /or in terms of certificate of recovery or any part there of remaining unpaid.

8. The said argument turns futile in the light of the admitted fact that the matter is still pending before the DRT and that it is awaiting trial. The purport of the judgement of Hon'ble Supreme Court cited above is very clear that the limitation would start from the date of the judgement or decree passed by the DRT or any other Tribunal on from the date of issuance of certificate of recovery in favour of the Financial Creditor. Since, the matter is still pending before the DRT, the said judgement does not support that the contention that the application is within limitation.

9. The Counsel for the Respondent relies on the same judgement of the Hon'ble Supreme Court, wherein it was held that an Application under Section 7 of IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years for the date of declaration of loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before the expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

10. In order to prove that the debt due to the Financial Creditor is acknowledged by the Corporate Debtor, the Counsel draws the attention of this Tribunal to the Balance Sheet filed by the Corporate Debtor on 31.03.2020 wherein the debt due to the Financial Creditor is shown. He draws the attention of this Tribunal to the head non-current liabilities in the said balance sheet and submits that since the Respondent alone is the Bank it has to be understood that the said debt is the debt which is due to the Financial Creditor i.e., the petitioner bank. The Counsel for the Applicant/Corporate Debtor contends that the said entry in the balance sheet cannot at any stretch of interpretation be considered as acknowledgement of the debt. Since, it is shown under non-current liabilities.

11. The Contention of the Counsel is that since, the dispute is pending before the DRT, the same is shown as non-current liability and unless the DRT adjudicates the liability of the Petitioner it would not become a debt. This Tribunal finds good amount of force in the said argument. Apart from that, the amount shown is Rs.62,05,337/-which is well below the pecuniary jurisdiction of the Tribunal, which is Rs.1 Crore as on the date of fling the Petition.

12. Hence, I consider that the Company petition is filed beyond the period of limitation specified under Article 137 and cannot be entertained. The CP (IB) No.82/7/AMR/2020 is consequently dismissed, however, with liberty to file a fresh application if the Respondent so chooses, after the decree or judgement of the DRT in the case pending between the parties if such right accrues to the Applicant.

Accordingly, I.A.No.119/2021 is allowed and CP (IB) No.82/7/AMR/2020 is dismissed.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu