NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.224/2022
(IA Nos.481 & 766/2022)

(Arising out of the `Impugned Order' dated 11.04.2022 in CP (IB) No. 153/7/HDB/2021, passed by the `Adjudicating Authority', (`National Company Law Tribunal' Hyderabad Bench)

In the matter of:

Virigineni Anjaiah
Suspended Director,
M/s. Sri Pavana Keerthi Hotels
India Private Limited,
R/o. 3-182, Mainroad, Nidamanur
Mandal, Nidamanur,
Nalgonda – 508 287. …. Appellant

v.

Pridhvi Asset Reconstruction
and Securitization Company Ltd.
having its Registered Office at
Door No.1-55, 4th Floor Wing I,
Rajaprasadamu, Masjid Banda
Road, Kondapur, Hyderabad – 500 084.
Rep. by its Power of Attorney
K.V. Ramakrishna Prasad … 1st Respondent / Financial Creditor

Shri Guntur Raghu Babu,
Interim Resolution Professional,
M/s. Sri Pavana Keerthi Hotels
India Private Limited,
No.402B, Technopolis, Chikoti
Gardens, Begumpet, Hyderabad,
Telangana – 500 016. … 2nd Respondent / IRP

Present:

For Appellant : Mr. E. Om Prakash, Senior Advocate
For Mr. K. Ravindranath, Advocate

For Respondent No.1 : Mr. Srinath Sridevan, Senior Advocate
For Mr. Surya Teja Nalla, Advocate

JUDGMENT
(Hybrid Mode)

[Per : Jatindranath Swain, Member (Technical)]

1. The present Appeal has been filed under section 61 of the Insolvency and Bankruptcy Code, 2016 against the Order passed by the Adjudicating Authority (AA) / (National Company Law Tribunal (NCLT), Hyderabad) on 11.04.2022 in Company Petition CP(IB)153/7/HDB/2021 under section 61 of Insolvency and Bankruptcy Code, 2016. In its order the Adjudicating Authority held that the Financial Creditor (FC) in the present case, M/s. Prithvi Asset Reconstruction and Securitization Company Pvt. Ltd. comes within the definition of 'Financial Creditor', for the purpose of the Code and that the application made by the said Financial Creditor is not barred by limitation laid down in section 238A of the Insolvency and Bankruptcy Code, 2016 r/w Article 137 of the Limitation Act, 1963 and accordingly admitted the Corporate Debtor (CD) into Corporate Resolution Process (CIRP) under section 7 of the said code and declared moratorium for the purpose referred to in section 14 of the said Code Aggrieved by the order of AA, the Appellant has filed this Appeal before this Tribunal, praying that the orders of AA be set aside.

2. The brief facts of the case and the sequence of events necessary to be noted for the purpose of deciding the case are narrated below:

i) The Appellant Mr. Virigineni Anjaiah is the Suspended Director of the Corporate Debtor (CD), namely, M/s. Sri Pavana Keerthi Hotels India Pvt. Ltd. The said Corporate Debtor is a corporate body registered under the Provisions of the Companies Act, 1956 and is mainly into the business of hospitality. It was granted a term loan of Rs.19.28 crore from the erstwhile Andhra Bank, payable in 94 instalments commencing from June 2015 to March 2023. The said was secured by personal guarantee of the Directors and other collateral securities. The Corporate Debtor (CD) and the guarantors executed necessary loan documents and mortgaged various properties as security for the said term loan.

ii) The Corporate Debtor allegedly could not complete the project and as a result, defaulted on repayment of loan and on servicing of the interest and instalments. Consequently, the loan was classified as NPA on 31.10.2015.

iii) The original Financial Creditor (FC), the Andhra Bank filed OA No.403 of 2017 before the Debt Recovery Tribunal (DRT), Hyderabad-I on 06.06.2017 for an amount of Rs.32,19,88,213.00 being the principal and the interest thereon against the Corporate Debtor and the Guarantors. DRT, Hyderabad-I in its order dated 19.02.2019 allowed the application of applicant bank for recovery of Rs.25,71,79,268.00 and interest thereon @ 12% simple interest with cost against the Corporate Debtor and the guarantors

and issued the Debt Recovery Certificate on 09.07.2019. Consequent to this order, the Recovery officer of DRT-I, Hyderabad issued the Demand Notice dated 22.07.2020 to the Corporate Debtor for payment of the said sum.

iv) While the case was going on before Debt Recovery Tribunal-I, Hyderabad, Andhra Bank assigned debt portfolio of Corporate Debtor in favour of M/s. Pridhvi Asset Reconstruction and Securitisation Company Limited (PARAS) (Respondent No.1 in the present case) vide a Registered Assignment Agreement dated 27.09.2017. Based on such, M/s. PARAS took over the role of applicant in the above OA before DRT, Hyderabad-I and consequently became the decree holder.

v) Subsequently, M/s. PARAS, being the Financial Creditor filed an application under section 7 of Insolvency and Bankruptcy Code (IBC), 2016 on 24.10.2021 before National Company Law Tribunal, Hyderabad with a prayer to admit the same, to order initiation of CIRP and to pass such other orders that may be deemed fit. NCLT, Hyderabad after hearing both sides pronounced its order on 11.04.2022 allowing the application and ordering CIRP against the Corporate Debtor as prayed for.

vi) Aggrieved by this order the Appellant being the Suspended Director of the Corporate Debtor has filed this Appeal Petition before this forum to set aside the said order of NCLT, Hyderabad.

Contentions of the Appellant:

3. The Appellant contends that NCLT, Hyderabad has passed the Impugned Order without considering the submissions made before it by the CD on the points of maintainability of the Application / Company Petition based on the limitation and the submissions that the Respondent / Financial Creditor cannot assume the character of Financial Creditor under Insolvency and Bankruptcy Code, (IBC) 2016 merely on basis of an Assignment Agreement and a Recovery Certificate issued by Debt Recovery Tribunal, Hyderabad and hence the Impugned Order as above should be set aside. The averments of the Appellant are narrated in brief in underlying paragraphs.

4. It is the contention of the Appellant that the loan taken by CD from Original FC, that is, Andhra Bank was classified as NPA on 31.10.2015 and as per section 238A of Insolvency and Bankruptcy Code, 2016 read with Article 137 of Limitation Act, 1963 (Act 36/63), the limitation period of 3 years expired on 31.10.2018. In between, the CD has never acknowledged the debt. Therefore, as per the principles laid down by the decisions of Hon'ble Supreme Court in the matter of Gaurav Hargovind-Bhai Dave Vs Asset Reconstruction Company (India) Ltd. & Anr. (Civil Appeal No.4952 of 2019) and in the matter of B.K. Educational Services Private Limited Vs Parag Gupta & Associates (2019) 11 SCC 633 and by the decision of National Company Law Appellate Tribunal (NCLAT) in CA(AT) (Insolvency) 57/2020 in the matter of V. Padmakumar Vs Stressed Asset Stabilisation Fund

(SASF) & Anr., the petition / application filed by Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 on 11.04.2022 is completely barred by limitation.

5. The Appellant has stated that the Respondent / FC has relied upon the decision of Hon'ble Supreme Court in the matter of Dena Bank (now Bank of Baroda) Vs C. Sivakumar Reddy & Anr., in Civil Appeal No.1650/2020 to support his contention that the debt due is not barred by limitation. However, in the said case, it is held that "an application under section 7 of Insolvency and Bankruptcy Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of 3 years from the date of declaration of the loan of the Corporate Debtor as NPA, if there were an acknowledgement of debt by the Corporate Debtor before the expiry of the period of limitation, in which case the period of limitation would get extended by a further period of 3 years". However, the Respondent has relied upon Balance Sheet entries of 31.03.2019 and 31.03.2020 of the CD to contend that the Limitation Period has extended. It is the contention of the Appellant that these dates fall beyond 31.10.2018 and that the CD has never acknowledged the existence of debt in any form since its declaration as NPA and therefore the petition of the Respondent is not maintainable.

6. The Appellant further contends that the Financial Creditor in terms of IBC, 2016 does not include a Decree Holder based on the decision of National Company Law Appellate Tribunal (NCLAT) dated 05.02.2021 in the matter

of Ashok Agarwal Vs Amitex Polymers Pvt. Ltd. in CA (AT) (Ins) No.608/2020 where NCLAT has determined that the Financial Creditor does not include the Decree Holder and allowed the Appeal, setting aside the orders of NCLT, admitting the CIRP. He further states that in a similar case, that is, in the matter of Akram Khan Vs Bank of India & Anr., in CA(AT) (Ins) No.1092/2019, NCLAT has set aside the orders of NCLT in its order dated 19.12.2019 on the grounds that the application under section 7 of Insolvency and Bankruptcy Code, 2016 was filed for the purpose of execution of Decree passed by Debt Recovery Tribunal in favour of Financial Creditor, that is, for a purpose other than Resolution of Insolvency. The Appellant contends that the Respondent in the case does not qualify to be a Financial Creditor within the definition as per section 5(7) of the Insolvency and Bankruptcy Code and that he is a decree holder only and that the claimed amount is an adjudicated amount under a decree and not against a debt disbursed as per the principles laid down in the judgment dated 14.08.2020 of NCLAT in the matter of Sushil Ansal Vs Ashok Tripathy & Ors., in CA (AT) (Ins) No.452/2020. He has also cited the decision of NCLAT dated 12.03.2020 in Ishrat Ali Vs Cosmos Cooperative Bank Ltd. & Anr., in CA(AT) (Ins) No.1121 of 2019 to state that a judgment or a decree passed for recovery of money (PTO) by a Civil Court of DRT cannot extend the limitation period for the purpose of filing application under IBC, 2016. In light of the above, the petition of the Respondent under section 7 of the Insolvency and Bankruptcy Code, 2016 is

not maintainable which has not been taken into consideration by National Company Law Tribunal, Hyderabad.

7. The Appellant further submits that the Decree dated 19.02.2019 awarded by Debt Recovery Tribunal-I, Hyderabad has not reached finality and the proceedings before it are still pending as on date because of pendency of MAIR 104/2021 in OA No.403/2017 wherein two guarantors of Corporate Debtor have filed petition under section 22(2)G of RDMFI Act to set aside the orders dated 19.02.2019 in OA No.403/2017 and therefore admitting the petition of Respondent under section 7 of the IBC, 2016 by AA/ NCLT, Hyderabad is not correct in law. Further, NCLT failed to see that the Respondent has used the said Decree for recovery of the dues and abused the provisions of the IBC, 2016 by seeking to execute the Recovery Certificate through IBC Proceedings and that it amounts to violation of Provisions of section 65 of the Insolvency and Bankruptcy Code, 2016 for not being in the nature of Resolution of Insolvency.

8. The Appellant also alleges that FC has committed a serious irregularity is suppressing the fact that, the Officer of the Originator Bank i.e., Andhra Bank, which assigned that debt to the FC, was represented by an officer called Mr. R. Mallikarjuna, who has dealt with the CD loan account in his capacity as Assistant General Manager, and thereafter, he passed the decree dated 19.02.2019 as the presiding Officer of DRT, Hyderabad in favour of FC and currently, the said Mr. R. Mallikarjuna is holding the position as Vice-

President in the FC company and therefore, the decree based on which CIRP has been ordered by AA is of a fraudulent nature which ought to be quashed and accordingly prays that the Impugned Order of AA / NCLT, Hyderabad be set aside.

Respondent's Submissions:

9. The Respondent No.1 / PARAS states that it is an Asset Reconstruction Company and became the Financial Creditor of the CD by virtue of the Assignment Agreement dated 27.09.2017 entered with Andhra Bank (Assignor). Because CD's account slipped into the category of NPA, the Assignor recalled the term loan of Rs.19.28 crores and filed OA No.403/2017 before DRT, Hyderabad-I for recovery of Rs.32,19,88.213/- (inclusive of interest as on date) against the CD and its Guarantors under SARFAESI Act 2002. During the pendency of proceedings before DRT-I, Hyderabad, Respondent –1 became FC of the CD vide Assignment Agreement under section 5 of SARFAESI Act 2002 and initiated steps to enforce the security interests.

10. Respondent No.1 contends that the CD purposefully filed litigations to stall recovery which include WP No.25330/2017 before Hon'ble Telegana High Court challenging taking over of possession and WP No.1658/2021 in the same court challenging the sale notice, both of which were dismissed. Meanwhile DRT Hyderabad-I allowed OA No.403/2017 vide Order dated 19.02.2019 for a sum of Rs.25,71,79,268/- and issued a Debt Recovery

Certificate vide DRC No.176/2019 dated 09.07.2019. The Recovery Officer of DRT also issued a Demand Notice dated 22.07.2020 to CD / Judgment Debtors for payment of the said sum. In between the CD did acknowledge the debt owed to the FC by giving a 'One-time Settlement Offer' vide a letter dated 16.01.2020 and also vide its financial statements between 31.03.2019 to 31.03.2020. However, as no payments were forthcoming and 2 of the guarantors filed MAIR No.104/2021 to set aside the decree, the Respondents moved to file application under section 7 of IBC, 2016 against the CD.

11. It is the contention of the Respondent that the present Appeal has been filed an untenable ground with an intention to frustrate the objection of IBC, 2016 and to delay the CIRP and that the entire Appeal is pinned on (a) Certain Judgments of NCLAT regarding limitation and (b) Allegations about the merits of the decree obtained before DRT-I, Hyderabad.

He had contended that regarding the Judgments of NCLAT relied upon by the Appellant, the issue is squarely covered by the Hon'ble Supreme Court judgments in Dena Bank (Now Bank of Baroda v C. Shivakumar Reddy [(2021) 10 SCC 330] and ARCIL vs. Bishal Jaiswal & Anr. [(2021) 6 SCC 366]. It is pertinent to note that the three-judge bench of the Hon'ble Supreme Court in the case of Kotak Mahindra Bank Limited Vs A. Balakrishna (Reported in 2022 9 SCC 186) upheld the judgment of the two-judge bench of the Hon'ble Supreme Court in Dena Bank (Supra) and held that the Recovery Certificate gives rise to fresh cause of action, and the certificate

holder is a Financial Creditor under Section 5(7) of the Code. Hence, the said issue of limitation is no longer res integra.

He has further contended that regarding the allegations on Judgment of DRT, the matters being escalated before this forum ought to be raised in the Set Aside Petition and that the pendency of Set Aside Petition will not take away the finality of the Decree.

12. It is the contention of the Respondent that the Appellant even while admitting his liability to the 1st Respondent, has appealed on the grounds that the Section 7 Application is barred by limitation as the date of DRC (Debt Recovery Certificate) cannot be the cause of action and that acknowledgment of debt in the balance sheet does not give rise to a fresh cause of action. The Respondent refutes the same by stating that neither of these issues with respect to limitation are res integra and the law has been laid down by the Hon'ble Supreme Court in the case of Dena Bank (Now Bank of Baroda) V C. Shivakumar Reddy [(2021) 10 SCC 330]. ARCIL vs. Bishal Jaiswal & Anr [(2021) 6 SCC 366]. It is pertinent to note that the three-judge bench of the Hon'ble Supreme Court in the case of Kotak Mahindra Bank Limited Vs A. Balakrishnan (Reported in 2022 9 SCC 186) upheld the judgment of the two-judge bench of the Hon'ble Supreme Court in Dena Bank (Supra) and held that the Recovery Certificate gives rise to fresh cause of action, and the certificate holder is a Financial Creditor under Section 5(7) of the Code.

13. The Respondent further states that the set aside petition in MAIR No.104/2021 has been filed in DRT-I, Hyderabad by 2 guarantors of the CD as an after thought after filing of the Application under section 7 of IBC, 2016 to raise a frivolous defence and with a malafide intent to prolong the proceedings and to escape clutches of law, that too with an enormous delay. However, his contention is that such a challenge to the Decree will not take away the merits of the Decree and he refers to the judgment of the Hon'ble Madras High Court in the case of Pravin Kumar (Minor) Vs R Sivagnanam & Ors. [Reported in 1988 2 Mad LJ 43] wherein the Hon'ble Court while dealing with insolvency proceedings initiated by a Decree Holder under the Presidency Towns Insolvency Act, 1909, has categorically held that the pendency of appeal against the Decree before the Hon'ble Supreme Court won't have a bearing on the finality of the Decree.

Points of Determination:

14. In view of the discussions above following points arise for our consideration:

a. Whether the NCLT has erred in holding that the liability arising out of the decree obtained in DRT-I, Hyderabad on 19.02.2019 and the consequent Recovery Certificate issued on 09.07.2019 is a financial debt within the meaning of section 5(8) of IBC, 2016?

b. Whether the FC / Respondent being the holder of such a decree and such Recovery Certificate, is entitled to initiate CIRP under section 7 of IBC,

2016 as on 24.10.2021 the date on which he filed the Application under section 7 of IBC, 2016 before NCLT, Hyderabad?

c. Whether such Application is barred by limitation as laid down under section 238 of IBC r/w Article 137 of Limitation Act, 1963?

d. Whether pendency of an appeal to the decree render the decree and the consequent Recovery Certificate devoid of merits?

e. Whether the AA / NCLT failed to see that the FC / decree holder abused the provisions of IBC for recovery of its dues and not for resolution of insolvency which is the objective of the code?

Analysis:

15. With regard to point in 12(a) (b), the appellant has cited 3 Judgments of NCLAT, namely Judgment dated 05.02.2021 in the matter of Ashok Agarwal Vs Amitex Polymers in CA(AT) (Ins) No.608/2020, Judgment dated 12.03.2020 in the matter of Ishrat Ali Vs Cosmos Cooperative Bank Ltd. in CA (AT) (Ins) 1121 of 2019 and Judgment dated 14.08.2020. In the matter of Sushil Ansal Vs Ashok Tripathy & Ors. in CA(AT) (Ins) No.452/2020. In all these Judgments, NCLAT has taken the view that a Financial Creditor does not include the Decree holder within the definition of section 5(7) of IBC, 2016 and that the claimed amount is an adjudicated amount under a decree and not against a debt disbursed. The Respondent has countered the same by stating that matter has reached a finality with the decision of the 3-Judge

bench the Hon'ble Supreme Court in the case of Kotak Mahindra Bank Limited Vs A. Balakrishnan (2022) 9 SCC 186. In the said Judgment Hon'ble Supreme Court has held that

Kotak Mahindra Bank Limited (Supra):

> *"84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate the CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.*
>
> *85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."*

With this ruling it is crystal clear that a liability in respect of a claim arising out of a Recovery Certificate would be a financial debt within the meaning of section 5(8) of IBC and that the holder of such Recovery Certificate would be a financial creditor as per section 5(7) of IBC and would be entitled to initiate CIRP.

16. With regards to point 13 (c) the Appellant vehemently argues that the debt was classified as NPA on 31.10.2015 and 3 year limitation period expired on

31.10.2018 and during this period he has not acknowledged the debt and that as per decisions of Hon'ble Supreme Court in the matter of Hargovind Bhai Dave Vs Asset Reconstruction Company (India) Ltd. (Civil Appeal No.4952/2019) and in the matter of BK Educational Services Pvt. Ltd. Vs Parag Gupta & Associates (2019) 11 SCC 6333, the filing of application under section 7 of IBC on 24.10.2021 is clearly barred by limitation of 3 years. The Respondent does not dispute these proceedings: he merely states that the position with respect to limitation has evolved over time and has reached a finality with the Judgment rendered by Hon'ble Supreme Court in the matter of Dena Bank (now Bank of Baroda) Vs C. Sivakumar Reddy and Anr. and Kotak Mahindra Bank Ltd. Vs A. Balakrishnan. It is seen that AA / NCLT has also relied on the Judgment in respect of Dena Bank Vs C. Sivakumar Reddy to come to the conclusion that the section 7 application in the instant case is not barred by limitation. Hon'ble Supreme Court in the said Judgment (Dena Bank Vs C. Sivakumar Reddy & Anr.) Civil Appeal No.1650/2020 has categorically held that;

> *"135. .. .. The judgment and order/decree of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC."*
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> *"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a 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 for initiation of the Corporate Insolvency Resolution Process, within*

three years form the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

This has been affirmed by the decision of 3-member Bench of Hon'ble Supreme Court in the case of Kotak Mahindra Bank Ltd. Vs A. Balakrishnan in following words:

Kotak Mahindra Bank Limited (Supra):

"84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (B) of section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate the CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."

This being the correct position in law, the section 7 application of FC / Respondent is clearly not barred by limitation as date of filing is 24.10.2021 which is within the 3 years of the date of decree (19.02.2019) and of date of issue of Recovery Certificate (19.07.2019).

17. As regards point 13(d), the Appellant's contention in that the Decree has not reached the finality as it has been challenged and the set aside petition are pending and therefore it cannot be taken as a basis to file section 7 Application. The respondent contends that the Set Aside Petition has been filed to prolong the litigation after the filing of section 7 Application before NCLT, Hyderabad and that the law is very clear that pendency of appeal against a Decree will not have any bearing on the finality of the Decree. He has also cited the Judgment of Hon'ble Madras High Court in the case of Pravin Kumar (Minor) Vs R. Sivagnanam & Ors. (Reported in 1988 2 MLJ 43). On the basis of the same it is held that AA / NCLT has not erred in admitting the section 7 application and passing the Impugned Order based on the said decree.

18. With regard to point 13(e) the Appellant avers that the FC / Decree holder used the provisions of IBC for recovery of its dues and not for resolution of insolvency and cites the Judgment dated 19.12.2019 of NCLAT in the matter of Akram Khan Vs Bank of India & Anr., in CA (AT) (Ins) No.1092/2019. This argument comes to rest with the ruling of the Hon'ble Supreme Court where it is laid down that;

Kotak Mahindra Bank Limited (Supra):

> *"84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a*

financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate the CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation."

Further, that fact that a decree holder, has moved an application under section 7 of IBC will not lead to a conclusion that the CIRP, if ordered, will only result in recovery of the FC's dues at the cost of CD. IBC prescribes an elaborate procedure for 'Resolution of Insolvency', including revival of CD, if possible, with the help of 'Resolution Professionals'. Seen this way, it will not be correct to say that AA / NCLT failed to see that the FC / Respondent abused the provisions of IBC, for 'recovery of its dues', at the cost of the avowed objective of the Insolvency & Bankruptcy Code, 2016.

Findings:

19. Based on the discussions in para 14 to 18 above, it is held that the Adjudicating Authority / NCLT has been correct in allowing the application filed by the FC / Respondent under section 7 of Insolvency &

Bankruptcy Code, 2016 and that the Impugned Order dated 11.04.2022 in CP(IB) No.153/7/HDB/2021 does not suffer from any legal infirmities and that the present Appeal deserves to be dismissed. Accordingly, the Comp App (AT) (CH) (Ins) No.224/2022 is dismissed. Further, the connected IAs, if any, pending are also closed. No costs.

[Justice M. Venugopal]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

02.05.2024
VG/TM