BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 221/I&BP/NCLT/MAH/2017

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

Labdhi Enterprises ... Applicant/ Operational Creditor

Vs.

Baramati Agro Limited ... Corporate Debtor

Counsel for Applicant/Operational Creditor: Mr. Sahil Mahajan, Mr. Utsav Salunke and Mr. Tanmay Kelkar, Advocates

Counsel for Corporate Debtor:Mr. Mahesh Athavale and Ms. Anagha Anaangaraju, Practising Company Secretary.

ORDER
(Heard and pronounced on 30.06.2017)

Per B. S. V. Prakash Kumar, Member (Judicial)

1. It is a Company Petition initially filed before the Hon'ble High Court of Bombay under Section 433, 434(e) and 439 of the Companies Act, 1956, for winding up of the Company called Baramati Agro Ltd on the ground that this Debtor Company defaulted in making payment of ₹27,97,696 to the Petitioner.

Brief facts of the Case:

2. It is the case of the Petitioner that it supplied goods to the Corporate Debtor from time to time and the same was received by the Corporate Debtor Company without raising any dispute, when the Debtor failed to repay the amount of ₹27,97,696.16 towards the invoices raised by the

Petitioner against the Debtor company, the Petitioner issued statutory notice under Section 434 of Companies Act, 1956 but in vain.

3. To prove the claim made by the Petitioner, the Petitioner hereby relied upon a letter dated 10.3.2016 received from the Income Tax Authorities, showing that a reply has been received from the Debtor along with a copy of the printed ledger from 1.4.2012 to till that date, showing NIL balance, henceforth, the Income Tax Authorities asked explanation from the Petitioner Company to explain the difference immediately along with documentary evidence. The Income Tax Authorities wrote this letter on the letter dated 4.3.2016 came from the Petitioner stating that the debtor company owed to pay ₹27,97,696.16, towards the goods supplied to the Debtor and no objection was raised by them about the quality and quantity supplied by them.

4. On receipt of such letter from the Income Tax Authorities, the Petitioner Advocate sent winding up notice u/s 434 of the Companies Act, 1956 calling upon the debtor company to pay the said amount within a period of three weeks from the date of receipt of the said notice to which the debtor Company sent an interim reply stating that for the contents and allegations in the winding up notice are not true, thereby not to proceed with until a detailed reply has been given by the debtor company. For there being no further detailed reply from the debtor company, the petitioner filed this Company Petition before the Hon'ble High Court of Bombay on 7.5.2016, thereafter owing to transfer of Jurisdiction from the Hon'ble High Court to NCLT after advent of Insolvency and Bankruptcy Code, 2016, this case, in pursuance to the GSR 1119(E), dated 7.12.2016 passed by the Central Government of India, was transferred to NCLT. Since the Company has been directed to file Form u/s 9 of the IB Code to proceed further on the Petition transferred from the Hon'ble High Court to this NCLT, it has been filed by the petitioner.

6. When this matter has come up for hearing, the professional appearing on behalf of the Debtor raised an objection for admission of this Company petition on the ground that the claim made by this Petitioner is barred by limitation because these goods were supplied from 9.7.2008 to 27.4.2010. Thereafter the Debtor company has not acknowledged this debt at any point of time till date, since already seven years are gone from the last date of supply of goods and for there being no further acknowledgement of this debt, he says that this petition is barred by limitation, to which, the Petitioner Counsel has relied upon a letter given by the debtor company to the Income tax Authorities on 4.3.2016 to say that the debtor company has acknowledged the impugned debt, therefore, this claim is saved by limitation.

7. On perusal of the letter dated 4.3.2016 written by the debtor company to the Income Tax Authorities, we have noticed that this debtor company has mentioned to the Income Tax Authorities that nil balance was outstanding against the debtor company since 1.4.2012 until 4.3.2016, to prove the same, the debtor has submitted a copy of the ledger of this petitioner in the books of the debtor company for the period from 1.4.2012 until 4.3.2016. Looking at the creditor ledger from 1.4.2012 to 4.3.2016 in the books of the debtor Company, it appears that no amount is payable to the Petitioner as per the Books of Accounts, it is evident that it is showing zero balance as on 4.3.2016. Since this letter is nowhere reflected that this debtor acknowledging the debt shown in the Company petition, we are of the view that this Petitioner made a claim on a time barred debt, because the Petition itself showing that the date of last supply of goods to the Debtor Company was 27.4.2010 and there being no further correspondence until before 4.3.2016, it can't be said that this petition is saved by limitation as prescribed by the Limitation Act.

8. The Petitioner having failed to show that the debtor company acknowledged this debt within three years from 27.4.2010, we hereby hold

that this debt is time barred, therefore we don't find any merit in this Petition, henceforth, this Petition is hereby dismissed.

Sd/-
V. NALLASENAPATHY
Member(Technical)

Sd/-
B. S. V. PRAKASH KUMAR
Member (Judicial)