

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 286 of 2022

IN THE MATTER OF:

1. Central Bank of India,
Main Branch, GE Road,
Raipur, Chattisgarh – 492001
Through its Authorized Officer,
Mr. Virendra Tiwari,
Branch Manager, Main Branch,
GE Road, Raipur, Chattisgarh – 492001
Email: cmraip0803@centralbank.co.in
Mobile: 0771-2228800/0771-2537912

...Appellant

Versus

1. Himmat Steel Foundry Limited,
Registered Office:
Shop No.-5, 2nd Floor,
Durga College Complex, K.K. Road,
Moudhapara, Raipur,
Chhattisgarh - 492007

...Respondent

For Appellant: Mr. Abhijeet Sinha, Mr. Akshat Bajpai, Mr. Mohit, Mr. Sharma, Advocates

For Respondent: Mr. Abhrajit Mitra, Sr. Advocate with Ms. Neha Somani, PCS. Mr. Kunal Godhwani, Advocate

J U D G E M E N T

Ashok Bhushan, J:

1. This Appeal by the Financial Creditor-Central Bank of India has been filed challenging the Judgement and Order dated 03rd February, 2022 passed by the National Company Law Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as “The Adjudicating Authority”) rejecting Application

under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “The Code”) filed by the Appellant as barred by time.

2. Brief facts of the case necessary to be noted for deciding this Appeal are:-

- The Appellant-Financial Creditor extended various credit facilities to the Corporate Debtor-Himmat Steel Foundry Ltd. Accounts were declared as Non-Performing Assets by the Appellant on 01.10.1994. Credit Facilities were recalled on 28th July, 1995 and suit was filed by the Appellant for recovery which was transferred to the Debt Recovery Tribunal, Jabalpur (DRT). DRT passed decree dated 10th April, 2000 in favour of the Appellant for recovery of amount of Rs. 8,68,64,184.29/-.
- On an Application O.A. No. 274 of 2001 filed by IDBI Bank, another Financial Creditor of the Corporate Debtor, decree was passed on 26th July, 2004 for recovery of sum of Rs. 8,97,47,340/-.
- On 07th August, 2006, the Corporate Debtor submitted a proposal for ‘One Time Settlement’ offering an amount of Rs. 13.16 Cr. A notice under Section 13(2) of SARFAESI Act, 2002 was served by the Appellant for repayment of outstanding debt along with interest. On 03.09.2009, Appellant served possession notice. On 04.11.2009, the Corporate Debtor again submitted a proposal for One Time Settlement. Revised OTS Proposal was submitted. On 17th June, 2013 and 06th March, 2019, in Financial Statement of the Respondent year 2018-19 there were acknowledgment of the debt by the Corporate Debtor. On 06th March, 2020, the Financial Creditor filed an Application under Section 7 claiming an amount of Rs. 21,85,19,39,325/- which

consisted of principal amount of Rs. 8,68,64,184.29/- rest being interest. The Corporate Debtor did not file any Reply to Section 7 Application. Parties were heard by the Adjudicating Authority on 03rd January, 2022 when the matter was reserved for Orders. Adjudicating Authority passed an Order on 03rd February, 2022 dismissing Section 7 Application as barred by time.

- The Adjudicating Authority in the Impugned Order considered the question “whether the petition under Section 7 of IBC, 2016 filed is in time?”. The Adjudicating Authority took the view that in pursuance of the decree dated 10th April, 2000 passed by the DRT, Financial Creditor had fresh limitation of three years but the Application under Section 7 was filed after expiry of the period of three years on 13th October, 2020 which is hopelessly barred by time. The acknowledgement in the balance-sheet in 2018 and the OTS Proposals in 2019 shall not make Application within time. Acknowledgement of the liability after expiry of limitation is of no consequence and Application was consequently dismissed.

3. Mr. Abhijeet Sinha, Learned Counsel appearing for the Appellant challenging the Order contends that computation of limitation ought not be made with effect from 10th April, 2000 when decree was passed by the DRT in favour of the Financial Creditor rather computation of limitation should be taken with effect from 26th July, 2004 when DRT passed decree in favour of another Financial Creditor i.e. IDBI Bank. Learned Counsel for the Appellant further relies on Section 25(3) of the Indian Contract Act. It is submitted that OTS offer given by the Corporate Debtor amounts to

extension of limitation within Section 18 of the Limitation Act. Balance-sheet of the Corporate Debtor which contains acknowledgement at least from 2008-09 till 2017-18 are acknowledgement within the meaning of Section 18 of the Limitation Act. Learned Counsel for the Appellant has also referred to Section 14 of the Limitation Act and Section 5 of the Limitation Act.

4. Mr. Abhrajit Mitra, Sr. Advocate appearing for the Respondent refuting the submissions of Learned Counsel for the Appellant contends that Application filed under Section 7 by the Appellant was hopelessly barred by time. The Account was declared NPA on 01.10.1994 and after passing the decree by the DRT dated 10th April, 2000, Appellant could have availed the limitation of three years till 09th April, 2003. The decree by DRT in favour of IDBI Bank-another Financial Creditor of the Corporate Debtor is not relevant for purposes of computation of the Limitation for filing the Section 7 Application. The period of limitation for taking the action on basis of decree dated 10th April, 2000 came to end and any subsequent acknowledgement shall not save the limitation for the Appellant. Appellant cannot be permitted to take a case for explaining the limitation which was not mentioned in Form-A and the enclosures thereto. With regard to argument based on Section 25(3) of the Contract Act, Learned Sr. Counsel submits that no plea was taken before the Adjudicating Authority and for the first time in the Rejoinder-Affidavit filed in this Appeal, Section 25(3) has been referred to. The IBC is a complete Code in itself and has overriding effect on provisions inconsistent with IBC. The provisions of Section 25(3) is inconsistent with Section 238-A even after Order passed by the Adjudicating Authority

rejecting Section 7 Application, the Appellant is proceeding under SARFAESI Act.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. The issue needs to be answered in this Appeal is as to whether the Application filed by the Appellant under Section 7 on 16.03.2020 was barred by time. The law is well settled that limitation for filing the Section 7 Application is limitation as prescribed under Article 137 of the Limitation Act, 1963. Article 137 of the Limitation Act, 1963 is as follows:

Description of application	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.

7. Brief facts which have been brought on record are that the Account of the Corporate Debtor was declared NPA on 01.10.1994, suit was filed by the Financial Creditor for recovery of the defaulted amount which was transferred to the DRT and was decided by the Judgement and Decree dated 10th April, 2000 decreeing the claim of Rs. 8,68,64,184.29/- against the Corporate Debtor and its personal guarantors. In view of the Judgment of the Hon'ble Supreme Court in **“Dena Bank Vs. C. Shivakumar Reddy, [(2021) 10 SCC 330]**, Decree passed by the DRT gave a fresh period of limitation of three years which came to an end on 09th April, 2003. This Tribunal while entertaining this Appeal on 21st March, 2022, passed following order:

“21.03.2022: *Heard Learned Counsel for the Appellant. Learned Counsel for the Appellant submits that although three years period of limitation taking from Judgment and Decree of the DRT dated 10th April, 2000 has come to an end but in event the Judgment of the DRT dated 26th July, 2004 passed in O.A. No. 274/2001 filed by the Industrial Development Bank of India is taken for purpose of extending the limitation of the Appellant, the application is to be treated within time. It is fairly submitted that said Order was not before the Adjudicating Authority. Learned Counsel has also referred to Section 7(1) Explanation and submits that a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditors of the corporate debtor.*

2. Issue Notice to the Respondent through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within three days. Reply Affidavit may be filed within two weeks. Rejoinder, if any, may be filed within two weeks, thereafter.

*List this Appeal ‘For Admission (After Notice)’ on **22nd April, 2022**. Looking to the nature of the issues raised in the Appeal, Appeal may itself be decided on the next date.”*

8. The principal submission which has been placed by Mr. Abhijeet Sinha is that computation for period of limitation should be on the basis of decree passed by DRT in the suit filed by IDBI Bank dated 26th July, 2004. Learned Counsel for the Appellant has relied on Section 7(1) proviso and the Explanation. Section 7(1) is as follows:

“7. (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such

application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.”

9. The Explanation to Section 7 is also to the following effect:

“Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

10. Section 7(1) enables a Financial Creditor to file an Application for initiating ‘Corporate Insolvency Resolution Process’ against the Corporate Debtor when a default has occurred. By virtue of Explanation, the default referred to in sub-section 1 includes a default in respect of Financial Debt owed not only to the Applicant Financial Creditor but to any other Financial Creditor of the Corporate Debtor.

11. The submissions of Learned Counsel for the Appellant is that although when limitation is computed taking the decree passed by DRT in favour of the Appellant dated 10th April, 2000, the Application is barred by time but in event the decree dated 26th July, 2004 in O.A. No. 274/2021 filed by the IDBI Bank is taken into consideration, the Application is within time. Copy of the Application filed under Section 7 is part of the record of this Appeal as Annexure BB.

12. We need to look into the Application under Section 7 to find out as to for what “default” the Application under Section 7 has been filed. Part-IV of

the Application deals with particulars of financial debt. Entire Part-IV of the Application is as follows:

“Part-IV

		Particulars of Financial Debt																																					
1.	Total amount of debt granted and Date of disbursement of loan	<p>The total amount granted by the Applicant Financial Creditor to the Corporate Debtor under the respective facility is as under:</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Date of Sanction</th> <th>Nature of Facility</th> <th>Total Amount (In Rs.)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>*02-11-1989</td> <td>Overdraft against Book Debts</td> <td>1,25,00,000</td> </tr> <tr> <td>2.</td> <td>*02-11-1989</td> <td>Working Capital Loan</td> <td>2,00,00,000</td> </tr> <tr> <td>3.</td> <td>02-01-1990</td> <td>Term Loan</td> <td>55,00,000</td> </tr> <tr> <td>4.</td> <td>02-11-1989</td> <td>Working Capital Term Loan</td> <td>1,24,00,000</td> </tr> <tr> <td>5.</td> <td>18-11-1989</td> <td>In Land Letter of Credit</td> <td>30,00,000</td> </tr> <tr> <td rowspan="3">6.</td> <td>20-08-1985</td> <td>Deferred payment</td> <td>16,31,752</td> </tr> <tr> <td>21-08-1985</td> <td rowspan="2">Guarantee Limit</td> <td>35,69,200</td> </tr> <tr> <td>19-12-1987</td> <td>63,92,400</td> </tr> <tr> <td></td> <td>Total</td> <td></td> <td>6,49,93,352</td> </tr> </tbody> </table> <p>Note: 1. *The above specified dates are the date on which aforesaid loan/facilities were last sanctioned/extended.</p>	Sr. No.	Date of Sanction	Nature of Facility	Total Amount (In Rs.)	1.	*02-11-1989	Overdraft against Book Debts	1,25,00,000	2.	*02-11-1989	Working Capital Loan	2,00,00,000	3.	02-01-1990	Term Loan	55,00,000	4.	02-11-1989	Working Capital Term Loan	1,24,00,000	5.	18-11-1989	In Land Letter of Credit	30,00,000	6.	20-08-1985	Deferred payment	16,31,752	21-08-1985	Guarantee Limit	35,69,200	19-12-1987	63,92,400		Total		6,49,93,352
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2.	Amount claimed to be in default and the date on which the default occurred.	<p>The Applicant Financial Creditor claims an amount of Rs. 21,85,19,39,325/- (Rupees Two Thousand One Hundred and Eighty Five Crores Nineteen Lakhs Thirty Nine Thousand Three Hundred and Twenty Five Only) comprising of Rs. 8,68,64,184.29/- as the total principal</p>																																					

	<p>amount towards the loan facility provided by the Applicant Financial Creditor to Corporate Debtor and interest charged by the Applicant Financial Creditor as per the terms and condition of the loan agreement till 23rd August, 1995 and Rs. 21,76,50,75,140.71 (Rupees Two Thousand One Hundred Seventy Six Crore Fifty Lacs Seventy Five Thousand One Hundred Forty) towards the interest @23.25% pursuant to the decree dated 10th April, 2000 passed by the Hon'ble Debt Recovery Tribunal, Jabalpur. Further, following is the bifurcation of Rs. 8,68,64,184.29/- (amount in default till 23rd August, 1995):</p> <table border="1"><thead><tr><th>Sr. No.</th><th>Nature of Facility</th><th>Outstanding Amount</th></tr></thead><tbody><tr><td>1</td><td>Overdraft against Book Debts</td><td>6,18,728.60</td></tr><tr><td>2</td><td>Working Capital Loan</td><td>3,48,86,089.77</td></tr><tr><td>3</td><td>Term Loan</td><td>1,47,48,163.82</td></tr><tr><td>4</td><td>Working Capital Term Loan</td><td>3,30,06,250.60</td></tr><tr><td>5</td><td>Deferred payment Guarantee Limit</td><td>36,04,951.50</td></tr><tr><td></td><td>Total</td><td>8,68,64,184.29</td></tr></tbody></table> <p>Date of NPA is 1st October, 1994 Copy of workings for computation of amount due and number of days of default is annexed hereto and marked as Exhibit-Z.</p>	Sr. No.	Nature of Facility	Outstanding Amount	1	Overdraft against Book Debts	6,18,728.60	2	Working Capital Loan	3,48,86,089.77	3	Term Loan	1,47,48,163.82	4	Working Capital Term Loan	3,30,06,250.60	5	Deferred payment Guarantee Limit	36,04,951.50		Total	8,68,64,184.29
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13. When we look into the Part-IV, the default on basis of which, the Application has been filed is default committed by the Corporate Debtor in payment of the financial facilities extended by the Appellant. The basis of the Application is not the default committed qua IDBI Bank another Financial Creditor. When the Application is not founded on the default of the another Financial Creditor-IDBI Bank although under Section 7 Sub-Section 1 read with Explanation it is permissible for a Financial Creditor to file Section 7

Application on default committed by the Corporate Debtor of any other Financial Creditor and when factually the Application under Section 7 filed not for the default of IDBI Bank rather the Application is specifically filed confined to the default of the Corporate Debtor of the Financial Facilities extended by the Appellant, we do not find any substance in the submission of Learned Counsel for the Appellant that limitation for filing Section 7 Application be computed on the basis of decree of the IDBI Bank passed in favour of IDBI Bank dated 26th July, 2004. The Decree passed by the DRT dated 26th July, 2004 on the Application filed by the IDBI was not even filed before the Adjudicating Authority and for the first time the decree has been filed along with this Appeal. Mere filing decree in this Appeal shall not entitle the Appellant to compute the limitation for filing Section 7 Application in question on the basis of decree dated 26th July, 2004. We thus are of the view that the decree dated 26th July, 2004 passed in the O.A. of IDBI is irrelevant for the purposes of computation of limitation for filing Section 7 Application by the Appellant. The Adjudicating Authority has rightly come to the conclusion that Section 7 Application which was filed on 16th March, 2020 is barred by time. Limitation which was available to the Appellant on the basis of decree of DRT dated 10th April, 2000 came to an end on 09th April, 2003. It is also relevant to notice that acknowledgement claimed by the Appellant by virtue of OTS or any acknowledgement in the Financial Statement are all acknowledgement which are subsequent to expiry of limitation i.e. subsequent to 09th April, 2003. Acknowledgement under Section 18 can be relied on only when acknowledgement is within time and

limitation. Section 18(1) of the Limitation Act is clear in this regard which is as follows:

*“18. Effect of acknowledgement in writing-(1)
Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.”*

14. We thus are of the view that Application filed by the Appellant was clearly barred by time and has rightly been rejected by the Adjudicating Authority.

15. Now coming to the submission of Learned Counsel for the Appellant based on Section 25(3) of the Contract Act which has been raised during the course of the submission, we find force in the submission of Learned Sr. Counsel for the Respondent that the said submission needs no consideration since the said submission was never raised either before the Adjudicating Authority or in this Appeal or in the grounds of the Appeal. Reference of Section 25(3) is made only in the Rejoinder-Affidavit filed by the Appellant and has been reiterated during the course of the submission.

16. We thus are of the view that submission for which there was no foundation in the Application filed under Section 7 or any document filed before the Adjudicating Authority nor any such of submissions was even raised in the grounds of the Appeal, raising submission in Rejoinder-Affidavit

and during the course of the submission is not sufficient for consideration in this Appeal. Submission based on Section 25(3) of the Contract Act are submissions which are submissions requiring consideration of facts and evidence and is not a submission which is based on a pure question of law hence we are of the view that such submission of the Appellant based on Section 25(3) needs no consideration in this Appeal.

17. In view of the foregoing discussion, we do not find any merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

**NEW DELHI
14th November, 2022**

Basant