NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 345 of 2021

[Arising out of orders dated 22.03.2021 in C.P.(IB) No. 300/NCLT/AHM/2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad.]

IN THE MATTER OF:

M/s. Vrundavan Residency Pvt. Ltd.
Registered office at:
Nr. Polytechnic College
Mota Bazar V.V. Nagar
Gujarat-388120 ..... **Appellant.**
(Financial Creditor)

Versus

M/s. Mars Remedies Pvt. Ltd.
Registered office at:
635 G.I.D.C. Estate,
Waghodia-391760 Gujrat. .... **Respondent.**
(Corporate Debtor)

Present:
For Appellant: Ms. Aastha Mehta, Mr. Ravi Pahwa and Ms. Prerana Mohapatra, Advocates.
For Respondents: None.

J U D G M E N T
(04th March, 2022)

Justice Anant Bijay Singh;

The Appellant has preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ***(for short IBC)*** being aggrieved and dissatisfied by the order dated 22.03.2021 in C.P.(IB) No. 300/NCLT/AHM/2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad whereby and where under the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 filed by the Appellant herein – Shri. Vishal Jitendra Patel, M/s. Vrundavan Residency Pvt. Ltd. was dismissed.

2. The facts giving rise to this Appeal are as follows:

i) The Appellant is in the business of Hostel services including the residential rooms, hostel, lodging and boarding of students. The Appellant provided an unsecured loan to the Corporate Debtor vide Board Resolution dated 19.04.2011 sanctioning an amount not exceeding Rs. 70,00,000/-. The Appellant is a Financial Creditor and it disbursed total amount of Rs. 68,10,000/- on various dates which are hereunder:

Date	Amount disbursed
30.06.2011	Rs. 5,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. 2060CP3006110001.
31.08.2012	Rs. 24,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. 2060CP3108120002.
18.06.2013	Rs. 6,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor

	through RTGS bearing reference no. CORPH13169002269.
31.07.2013	Rs. 3,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. CORPH1321004374.
18.11.2013	Rs. 2,50,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. 2060061BB130004.
29.01.2014	Rs. 3,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. CORPH14029001189.
30.01.2014	Rs. 3,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. COPH14030002932.
31.03.2014	Rs. 1,10,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. 206006313140002.
26.08.2014	Rs. 4,50,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. CORPR92014082820600.
20.02.2015	Rs. 10,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate

	Debtor through RTGS bearing reference no. CORPR92015022020600.
27.02.2015	Rs. 6,00,000/- from the Account of the Appellant with the Corporation Bank to that of the Corporate Debtor through RTGS bearing reference no. CORP9201502272060000.

ii) The Corporate Debtor defaulted in repaying the loan and the calculation sheet from 2017-2019 shows a default of Rs. 89,24,630/- (principal amount plus interest). The default has continued since then i.e. 31.03.2017 to 31.12.2019. Thereafter, on 20.02.2020, the Appellant filed an Application under Section 7 of the IBC before the Ld. Adjudicating Authority and after hearing the parties the said Application was rejected holding that the petition is not maintainable as time barred. Hence this Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellant during the course of argument and in his Written Submissions submitted that Ld. Adjudicating Authority while rejecting the Application filed under Section 7 of the IBC has given finding that the debt is barred by limitation. The Application under Section 7 of the IBC was filed on 20.03.2020 by the Appellant herein was for a default of Rs. 89,24,630/- (Rs. 62,77,763/- as principal amount and Rs. 26,54,867/- as interest amount) which was advanced to the Respondent as an unsecured loan.

4. It is further submitted that the Ld. Adjudicating Authority has failed to consider that the provisions of the Limitation Act 1963 are applicable to the Insolvency and Bankruptcy Code. It is equally well-settled that Section 18 of the Limitation Act 1963 which is titled “Effect of acknowledgment in writing” is also applicable to Section 7 of the Code and relied on Judgment in the case of *“Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr., 2021 SCC OnLine SC 244*.

5. It is further Submitted that at the time of adjudicating a Section 7 petition, the Ld. NCLT is required to see the following essential elements enshrined in the provisions,

a) A default should have occurred for initiating CIRP.

b) As per Section 7(3)(a), the financial creditor has to furnish a record of the default recorded with the information utility “or” such other record or evidence of default.

In this present case, the Appellant has fulfilled both the conditions required for admission of Section 7 petition, and the finding of the Ld. Adjudicating Authority that the debt is time-barred is erroneous.

6. It is further submitted that the default by the Respondent is a continuing default as mentioned in the Section 7 Application (at page 71, Vol.-I of the Appeal). The Respondent’s last payment was made on 29.09.2015 and thereafter, an amount of Rs. 54,71,783/- remained unpaid. The Ld. Adjudicating Authority has considered 29.09.2015 as the date to compute the period of limitation, without considering that the default continued from

31.03.2017 to 31.12.2019 owing to acknowledgements made by the Respondent. Based on these grounds the impugned order cannot be sustained and fit to be set aside and the Appeal be allowed.

7. Despite several opportunities to the sole Respondent - M/s. Mars Remedies Pvt. Ltd. (Corporate Debtor), failed to appear and thereafter, the order dated 29.11.2021 passed by this Bench, the matter was proceeded *ex-parte* and after hearing the Learned Counsel for the Appellant at length on 21.01.2022, the matter was reserved.

FINDINGS

8. After hearing the Learned Counsel for the Appellant and having gone through the pleadings, we are of the considered view that the following facts are admitted in the instant Appeal.

- From the perusal of the page 150, Vol.-I of the Appeal which is the Financial Statement of the Respondent ending on 31.03.2017 for amount of Rs. 54,71,783/- is shown under the heading of "Long Term Borrowing".
- Further, page 165, Vol.-I of the Appeal which is the Financial Statement of the Respondent ending on 31.03.2016 for amount of Rs. 54,71,783/- is shown under the heading of "Long Term Borrowing".
- Further, page 178 and 185, Vol.-I of the Appeal which is the Annual Tax Statement of the Appellant under Section 203AA of the Income Tax Act 1961 in form 26AS known as TDS certificate shows that the Respondent has deducted the TDS amount in the year 2016-17.

- Further, page 208, Vol.-I of the Appeal which is the Account Ledger Confirmation of the Appellant duly signed by the Respondent's authorized signatory starting from 01st April 2015 to 31st March 2016 shows that the amount of Rs. 54,71,783/- as a "Long Term Borrowing". Similarly, certificate given by B.C. Patel & Co., Chartered Accountants (at page 209, Vol.-I of the Appeal) after verified from the ledger account and other relevant documents shows that the Respondent had an outstanding of Rs. 89,24,630/- till 31st December 2019.
- We are of the considered view that the Ld. Adjudicating Authority while passing the impugned order did not peruse the aforesaid documents.

ORDER

9. Taking all these facts and circumstances of the case, we are of the considered view that the impugned order cannot be sustained in the eyes of law, therefore, the impugned order dated 22.03.2021 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P.(IB) No. 300/NCLT/AHM/2020 is hereby set aside and the matter is remitted back to the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad with a request to hear the parties and after perusing the aforesaid documents whereby the Respondent categorically acknowledged the debt, pass fresh orders within twelve weeks from the date of receipt of this judgment.

The instant Appeal is disposed of accordingly. No costs.

10. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi
04th March, 2022
R. Nath.