

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 3272 OF 2023

IN

C.P. No. (IB) 115 OF 2021

Application under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016
And Rule 11 of NCLT Rules, 2016

Filed by

Gokul Anilkumar Aggarwal

Having his address at 60 1, Khatau
Condominium, J.M. Mehta Road, off
Nepean Sea Road, Malabar Hill, Mumbai
400051

...Applicant

Vs.

Shailesh Bhalchandra Desai

Interim Resolution Professional of
Maharashtra Theatres Private Limited
Having his address at 708, Raheja
Centre, Nariman Point, Mumbai -400 021

...Respondent No. 1

Indian Bank

(Earlier Allahabad Bank)

Having its address at:

Stress Asset Management Branch, Indian
Bank Building, Ground Floor Mumbai
Samachar Marg, Fort, Mumbai - 400 001

...Respondent No. 2

In the matter of:

Axis Bank Limited

Trishul, 3rd Floor Opp. Samartheshwar
Temple, Near Law Garden, Ellisbridge,
Ahmedabad - 380 006

...Financial Creditor

vs.

Maharashtra Theatres Private Limited

RNA Corporate Park, Next to Collector's
office, Kalanagar, Bandra (E), Mumbai -
400051

...Corporate Debtor

Order Dated: 24.04.2024

Coram:

Hon'ble Ms. Madhu Sinha
Member (Technical)

Hon'ble Ms. Reeta Kohli
Member (Judicial)

Appearance (Physical):

For the Applicant: Counsel for the applicant

For the Respondent No. 1/RP: Adv. Mitali Bhatt

ORDER

Per: Reeta Kohli, Member (Judicial)

1. The above application I.A. No. 3272 OF 2023 is filed by Gokul Anilkumar Aggarwal (hereinafter referred to as the "**Applicant**") seeking direction against Shailesh Bhalchandra Desai and Anr. (hereinafter referred to as the "**Respondent**") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 And Rule 11 of NCLT Rules, 2016 (hereinafter called as "**the Code**"), praying for following reliefs:

a. That this Hon'ble Tribunal be pleased to reject the proofs of Claim dated 12.04.2023 filed by the Respondent No.

2 as Financial Creditors of the Corporate Debtor as being ex-facie barred by the laws of limitation;

- b. Pending the hearing and final disposal of the present Application, the Respondent No. 2 be restrained from participating in and/or voting upon any business to be conducted in the Committee of Creditors during the CIRP of the Corporate Debtor;*
- c. For Costs;*
- d. For such other and further reliefs as this Hon,ble Tribunal may deem fit in the nature, facts and circumstances of the present case.*

Brief facts of the application

2. The Present Applicant bearing no. I.A. 3272 of 2023 is filed by Gokul Anilkumar Aggarwal, a member of the suspended board of directors of Maharashtra Theatres Private Limited ("**Corporate Debtor**"), which is currently undergoing a Corporate Insolvency Resolution Process ("**CIRP**"), seeking reliefs that the proof of claim submitted by the Respondent No. 2 with the Respondent No. 1 in respect of an alleged financial debt, be rejected.
3. The Respondent No. 1 is the Interim Resolution Professional appointed by this Hon'ble Tribunal vide order dated 31.03.2023, to carry out the CIRP of the Corporate Debtor. Subsequent thereto, the Applicant came to the knowledge that the Respondent No. 2/ Indian Bank has filed its proof of claim with the Respondent No. 1 as purported Financial Creditor of the Corporate Debtor, claiming huge sums of monies towards alleged financial debt purportedly owed to it by the Corporate Debtor, on or about 12.04.2023 which was disputed by the Corporate Debtor.

4. The Applicant submitted that the Respondent No. 2 had issued a sanction letter dated 22.01.2013 whereby a Term Loan facility of Rs.55 crores (subsequently revised on 19.09.2014), was granted to the Corporate Debtor.
5. The Applicant further submitted that the account of the Corporate debtor was declared as a Non-Performing Asset as on 31.03.2016. On 16.05.2016, the Respondent No. 2 issued a notice under the provisions of Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor alleging that the Corporate Debtor had violated certain terms of the sanction letters.
6. The Applicant submitted that the purported claim of the Respondent No. 2, the date of default, if any, could only be 90 days prior to 31.03.2016 i.e. the date on which the Corporate Debtor's account was classified as a Non-Performing Asset by the Respondent No.2.
7. Therefore, the date of default in respect of the alleged claims of the Respondent No. 2 is prior to 31.03.2016. Hence, any action by the Respondent No. 2 including filing of a proof of claim is ex-facie barred by the laws of limitation and therefore cannot be accepted in the CIRP of the Corporate Debtor.
8. The Applicant submitted that he had made a representation dated 30.05.2023 to the Respondent No. 1 placing on record the facts and requested him to reject any claims that is filed by the Respondent No. 2 in the CIRP of the Corporate Debtor. However, despite receipt of the representation, the Respondent No. 1 did not respond to the same. Making it apparent that the CIRP of the Corporate Debtor was conducted by the Respondent No. 1 in a non-independent manner. Hence, this Application for calling for the records pertaining to the Proof of Claim filed by the Respondent No. 2 and reject the same as being ex-facie barred by the laws of limitation.

**Submission of Respondent No. 1/ Shailesh Bhalchandra Desai/
Interim Resolution Professional**

9. The Respondent No. 1 in its reply had denied each and every averment contained in the Application.
10. It is submitted that the Applicant has no locus to file the present application since the Applicant is a suspended board of director of the Corporate debtor who is also a personal guarantor to the Indian Bank i.e. the Respondent No. 2.
11. It is further submitted that the Respondent No. 1/ Resolution Professional has already filed an application under Section 19(2) of the code against the Applicant which was listed on several occasions however, the Applicant chose not to appear or file a reply. The Respondent No. 1/ Resolution Professional sought copies of audited balance sheets under the said application from the Applicant in the Present case since the Applicant failed to file the same with the ROC for the past 4 years shows that the Applicant do not want to co-operate in the CIRP process. Therefore, the Respondent No. 1/ Resolution Professional had to proceed to verify and admit the claims after considering the information available and documents submitted along with the claim form.
12. The Indian Bank i.e. Respondent No. 2 had filed their claim as Secured Financial Creditor in Form C dated 12.04.2023 for an amount of Rs. 75,16,33,261/- having 33.22% voting share in COC along with supporting financing documents. The details of sanction and financing documents are as under:-

Sanction details:

Sl No	Date	Facility details	Amount
1	22.01.2013	Vide Sanction Letter Term Loan Sanctioned	Rs. 55.00 Crore
2		Statement of account showing the outstanding in account along with interest calculation sheet.	

Details of the Financing Documents

Sl No	Description of Documents and executed by	Date of Document
1	Term Loan Agreement	30.01.2013
2	Amendatory & Restated Agreement to TL	19.09.2014
3	Indenture of Mortgage	31.01.2013
4	Collateral Security deed	09.03.2013
5	Demand Notice u/s 13(2) of SARFAESI Act.	16.05.2016

13. The Ld. Counsel for the Respondent no. 1 has relied on the Judgement of the Hon'ble Supreme Court in ***Swiss Ribbons Private Limited vs. Union of India, (2019) 4 Supreme Court Cases 17***, as a Resolution Professional does not have any power to adjudicate a claim. Hence based on the said supporting documents provided by them, Respondent No. 1/ Resolution Professional has admitted the claim submitted by Indian Bank / Respondent No. 2.
14. Hence, in view of the above facts and applicable law the present petition deserves to be dismissed.

Submission of Respondent No. 2/ Indian Bank

15. The Ld. counsel for the Respondent submitted that the Company Petition was filed in the year 2021 and was admitted by this Hon'ble Tribunal vide order dated 31.03.2023. Pursuant to the above order, the then IRP issued public announcement under Rule 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 thereby calling upon the creditors of the Corporate Debtors

to submit their proof of claims on or before 17.04.2023 and pursuant to the above public announcement this Respondent i.e. Indian Bank has filed its proof of claim in Form C dated 12.04.2023 for Rs. 75.16 crores

16. It is further submitted that the Respondent No. 1 admitted the claim of the Respondent No. 2 of Rs 74.24 crore after being satisfied of the existence of debt due to the Respondent no. 2 from the documents provided to him with the Form C. Moreover, the Applicant himself admits in its application that a term loan was granted to the Corporate Debtor and due to default in the repayment the account of the Corporate Debtor was classified as NPA.
17. In addition it is further submitted that In response to the above submission of the Applicant that the fallacious attempt was made to revive a time barred debt., the Ld. Counsel for the Respondent No. 2 submitted that the time period for filing a suit for money recovery is 3 years from the date when the cause of action arises or 3 years from the date on which there is an acknowledgement of debt. It is further submitted the Applicant himself has acknowledged the debt of the Corporate Debtor by way of One Time Settlement (OTS) proposal dated 02.06.2023, which is signed by the Applicant in his capacity as the member of suspended Board of Directors and therefore, such debt is not time barred as contemplated by the Applicant since the Applicant has himself signed the OTS proposal which itself is a deemed acknowledgement of its liability. The Ld. Counsel for the Respondent No. 2 has relied on the Judgement of The Hon'ble NCLAT passed in ***Company Appeal (AT) (Insolvency) No. 371 of 2020 Tejas Khandahar Vs. Bank of Baroda***, holding that OTS proposals fall within definition

of the ambit of 'acknowledgement of Debt' as envisaged under Section 18 of the Limitation Act, 1963.

18. Therefore, the prayer in the present I.A merits no consideration.

Findings:

19. Heard the Ld. counsels for the parties and perused the record with their able assistance.

20. The present Petition reveals that the Respondent No. 2 i.e. Indian Bank has granted a term loan of Rs. 55 crores to M/s. RNA Corp Pvt. Ltd. along with the Corporate Debtor as a Co-borrower vide sanction letter dated 22.01.2013. However due to non-payment of dues the account of the Corporate Debtor was declared NPA on 31.03.2016 and the Company Petition No. 115 of 2021 was admitted by this Hon'ble Tribunal on 31.03.2023. However, the contention of the Applicant is that the date of default could only be 90 days prior to the date when the Corporate Debtor was classified as a Non-Performing Asset by the Respondent No.2 i.e. on 31.03.2016 and therefore, filing of a proof of claim by the Respondent No. 2 on 12.04.2023 is ex-facie barred by the laws of limitation.

21. The issue that needs to be resolved in this Application is :

“Whether the submission of claim by the Respondent No. 2 i.e. Indian Bank to the Respondent No. 1 i.e. Resolution Professional is valid or barred by law of limitation?”

22. In view of the above issue, this bench observes that in pursuance of the admission order dated 31.03.2023, the IRP issued public

announcement under Rule 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, thereby calling upon the creditors of the Corporate Debtors to submit their proof of claims on or before 17.04.2023. The Respondent No. 2 i.e. Indian Bank on receipt of public announcement has submitted its proof of claim to the Respondent No. 1 in Form C dated 12.04.2023 for Rs. 75.16 crores.

23. This Bench relies on the Judgement of Hon'ble Supreme Court of India (20.04.1992) **Punjab National Bank And Ors vs Surendra Prasad Sinha (Criminal Appeal No. 254 of 1992.)** wherein it has been held that,

"The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is the right is destroyed. Though the right to enforce the debt by judicial process is barred, the right to debt remains. The time barred debt does not cease to exist by reason of s.3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What SC.3. refers only to the remedy but not to the right of the creditors. Such debt continues to subsists so long as it is not paid. It is not obligatory to file a suit to recover the debt."

Therefore, the **Claim under CIRP, cannot be rejected on the grounds that it is time barred.**

NCLAT (31.07.2019) in Sunil Kumar Aggarwal Vs. New Okhla Industrial Development Authority & Ors.[Company Appeal (AT) (Insolvency) No. 775 of 2019] held that the Interim Resolution Professional will examine the claim submitted by the Applicant and the same will not be rejected on the basis that it is time barred or filed by an entity other than Financial Creditor. The Adjudicating Authority had already made it crystal clear that “the claim can’t be rejected because it is time barred or it is claimed by an entity other than financial creditor.”

24. Moreover, the suit can be filed within 3 years from the date when the cause of action arises or 3 years from the date on which there is an acknowledgement of debt. In the present case the Applicant himself has acknowledged the debt of the Corporate Debtor by way of **One Time Settlement (OTS) proposal dated 02.06.2023**, which is signed by the Applicant in his capacity as the member of suspended Board of Directors and therefore, such a debt is not barred by time as contemplated by the Applicant. Additionally, this bench has observed that the Applicant himself has admitted in its application that a term loan was granted to the Corporate Debtor and due to default in the repayment the account of the Corporate Debtor was classified as NPA.
25. Therefore, in view of the above facts and circumstances, this bench further relied on the Judgement Hon'ble NCLAT passed in ***Company Appeal (AT) (Insolvency) No. 371 of 2020 Tejas Khandahar Vs. Bank of Baroda***, wherein it was held that OTS proposals fall within definition of the ambit of ‘**acknowledgement of Debt**’ as envisaged under Section 18 of the Limitation Act, 1963.

Therefore, filing of a proof of claim by the Respondent No. 2 on 12.04.2023 is well within the period of Limitation.

26. That though the prayer in present IA on the strength of above stated facts and circumstance merits no consideration but it also needs to be kept in mind that the Applicant is a suspended director and also a personal guarantor who has no locus at all. The attempt to file such frivolous application on the part of the Suspended director/personal guarantor deserves to be strongly deprecated as the acceptance or rejection of the claims fall within the ambit of the Respondent No. 1 / RP. RP has acted in term of IBC and regulations made thereunder. Therefore, with these observations Interlocutory Application Number 3272 of 2023 is **dismissed**.

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)