

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1125 of 2024
& I.A. No. 4037, 4038, 4039 of 2024

(Arising out of the Order dated 17.05.2024 passed by the National Company Law Tribunal, Jaipur Bench in MA (IB) No. 06/JPR/2024 IA No. 655/JPR/2023 & CP No. (IB) - 83/7/JPR/2021)

IN THE MATTER OF:

Rohit Suri

(suspended director of corporate debtor)

Aged about 50 years, presently residing at :

484, Nemi Sagar Colony, Vaishali Marg, Jaipur-302021 (Rajasthan)

...Appellant

Versus

1. Rajasthan Financial Corporation,

An entity corporate under the provisions of the State Finance Corporation Act, 1951

Situates its office at Udyog Bhawan, Tilak Marg, Jaipur-302005 (Rajasthan)

[plverma@rfc.rajasthan.gov.in]

...Respondent No. 1

2. Ms. Garima Diggiwal,

Interim Resolution Professional of the corporate debtor, situates its office at 91, Moji Colony, Malviya Nagar, Jaipur-302017 (Rajasthan)

[garima286@gmail.com]

...Respondent No. 2

Present

For Appellants:

Mr. Naresh Kumar Sejvani, Advocate.

For Respondents:

Mr. Manit Moorjani & Ms. Manjeet Kaur,
Advocates for R-1

Mr. Ashwani Kumar Singla, Ms. Garima Diggiwal
(IRP), for R-2.

J U D G E M E N T

(03.04.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) by the Appellant i.e., Mr. Rohit Suri, Suspended Director of Ruby Buildestates Limited (the Corporate Debtor herein), against the Impugned Order 17.05.2024 passed by the National Company Law Tribunal, Jaipur Bench (**‘Adjudicating Authority’**) in Company Petition bearing CP (IB) No. 83/7/JPR/2021.

2. The Rajasthan Financial Corporation (Financial Creditor) is the Respondent No. 1 herein.

3. Ms. Garima Diggiwala, the Interim Resolution Professional (IRP), is the Respondent No. 2 herein.

4. The Appellant submitted that the Respondent No. 1, registered under the State Financial Corporation Act, 1951, sanctioned a loan of ₹3.50 Crores to the Corporate Debtor in July 2009 and signed loan agreement, disbursing ₹2.40 Crores on 17.07.2009. The loan was repayable in 19 Equal Quarterly Instalments (EQIs) of ₹18.67 Lakhs each, after a six-month moratorium, with the first EQI due on or after 16.01.2010. However, during the moratorium period itself, on 13.01.2010, the Respondent No. 1 issued a demand notice under Section 30 of the State Financial Corporation Act, 1951 claiming that the first EQI had become due

and defaulted, and subsequently recalled the entire loan amount along with interest of ₹15.32 Lakhs.

5. The Appellant further submitted that on 23.02.2010, the Respondent No. 1 took physical possession of the mortgaged property under Section 29 of the State Financial Corporation Act, 1951 and later issued an auction notice for 16.06.2010. This auction notice was challenged by several homebuyers/allottees before the Hon'ble Rajasthan High Court via Writ Petition No. 7116/2010, resulting in an ex-parte stay order on auction proceedings dated 26.05.2010. Despite directions from the Hon'ble High Court to consider settlement proposals submitted by the Corporate Debtor on multiple occasions, the Respondent No. 1 rejected these proposals outright without consideration and failed to initiate any recovery proceedings within the limitation period under applicable laws, leading to the present dispute regarding limitation in initiating Corporate Insolvency Resolution Process (CIRP).

6. The Appellant submitted that the Respondent No. 1 filed Company Petition CP (IB) No. 83/7/JPR/2021 on 12.08.2021, which is barred by limitation as per its own pleadings. The Appellant stated that despite repeated directions from the Adjudicating Authority to address the issue of limitation, the Respondent No. 1 failed to comply. The Respondent No. 1 sought multiple extensions to file a rejoinder on 01.06.2023, 17.07.2023, and 25.09.2023 but did not submit any rejoinder. At the final stage of the hearing on 19.01.2024, after arguments were completed, the Respondent No. 1 belatedly sought time to file an application

under Section 5 of the Limitation Act, 1963, which was allowed, and subsequently filed Miscellaneous Application No. 06/2024 seeking condonation of delay.

7. The Appellant further submitted that the Respondent No. 1 acknowledged in its application under Section 5 of the Limitation Act, 1963 that the petition was barred by limitation. The Adjudicating Authority, however, condoned the delay and excluded time under Section 14 of the Limitation Act, without being satisfied of the essential criteria of due diligence and continuity of proceedings against the same party for similar reliefs. The Appellant stated that reliance by Adjudicating Authority and Respondent No. 1 on COVID-19-related extensions by the Hon'ble Supreme Court of India was misplaced as the limitation had expired well before the relevant period (15.03.2020 to 28.02.2022).

8. The Appellant contended that the Adjudicating Authority condoned the delay in filing the Company Petition (CP (IB) No. 83/7/JPR/2021, which was filed on 12.08.2021 for a default that occurred on 13.01.2010, making it barred by limitation. Despite repeated directions from the Adjudicating Authority, the Respondent No. 1 failed to justify the delay adequately and later sought condonation under Section 5 of the Limitation Act, 1963. The Adjudicating Authority considered pending litigations as a statutory prevention despite the Respondent No. 1's ability to initiate CIRP, and incorrectly applied Section 14 of the Limitation Act, 1963.

9. The Appellant submitted that the Adjudicating Authority overlooked the Respondent No. 1's own admission in Form I (Particulars of Financial Debt) that a legal notice under Section 30 of the State Financial Corporations Act, 1951 was issued on 13.01.2010, and possession of the unit was taken under Section 29 of the Act on 23.03.2010. Further, there was no documentary evidence on record to suggest that the limitation period was extended or that the Corporate Debtor acknowledged its liability.

10. The Appellant submitted that the Adjudicating Authority, in its judgment, failed to appreciate the critical absence of a specific date of default in the Respondent No. 1's pleadings. The Respondent No. 1 merely stated that a notice of demand was issued on 13.01.2010 and physical possession of the mortgaged property was taken on 23.02.2010, without providing any documentary evidence or reference to substantiate the claim or address the issue of limitation, i.e. unexplained delay exceeding 12 years, rendering it time-barred.

11. The Appellant submitted that the Adjudicating Authority committed an error in law while adjudicating the application for condonation of delay, by erroneously computing the limitation period from the date of notification of the Code provisions, contrary to established legal principles and judgments placed on record. It is contended by the Appellant that such notification is wholly irrelevant to condonation, as the cause of action for filing the petition unequivocally accrues from the date of default, not the enactment of the statute. Furthermore, the Adjudicating Authority failed to appreciate the Respondent No. 1's own

pleadings, wherein it admitted the debt default followed by a demand notice dated 13.01.2010, thereby establishing that the petition, as per the Respondent No. 1's own case, was filed well beyond the permissible limitation period, rendering it time-barred.

12. The Appellant submitted that the Adjudicating Authority has erred by failing to appreciate that the Respondent No. 1, a statutory corporation constituted under a special Act, was endowed with specific enabling powers under Section 29 and Section 31 of the State Financial Corporation Act, 1951, to enforce its claims following the corporate debtor's default, yet inexplicably chose to remain dormant for over 12 years. The Adjudicating Authority further overlooked the material on record demonstrating that the Financial Creditor, having issued a demand notice under Section 29, was duty-bound to diligently pursue its remedies under Section 31 of the State Financial Corporation Act, 1951 to recover the debt, rather than allowing the claim to languish beyond the permissible period, rendering the present proceedings untenable and barred by limitation.

13. The Appellant further submitted that the Adjudicating Authority has failed to discern the true and correct facts, and has instead blindly accepted the Respondent No. 1 submissions regarding possession of the mortgaged property under the State Financial Corporation Act, 1951. The Appellant contended that the Respondent No. 1 merely issued a demand notice pursuant to Section 29 of the State Financial Corporation Act, 1951, which solely outlines the rights of the

State Financial Corporation in the event of default, without any evidence or indication of subsequent steps to enforce possession or recovery as claimed.

14. The Appellant submitted that the Respondent No. 1 obtained possession of the mortgaged property without adhering to due process of law, in flagrant violation of the agreement's terms and the provisions of the State Financial Corporation Act, 1951. Furthermore, the Appellant submitted that the Adjudicating Authority overlooked that the debt, stemming from a legal notice dated 13.01.2010, could not remain due beyond the statutory limitation period of three years, rendering the claim time-barred and the proceedings legally unsustainable.

15. The Appellant submitted that the Adjudicating Authority has erred by allowing the Section 5 of the Limitation Act, 1963 application on limitation, failing to appreciate the material on record which reveals that the Respondent No. 1's claim of being statutorily prevented due to sub-judice proceedings before the Hon'ble High Court is untenable. The impugned order dated 17.05.2024 explicitly notes that on 07.03.2011, the Hon'ble High Court of Rajasthan granted liberty to Respondent No. 1 to auction the property, thereby negating any basis for the Financial Creditor to assert statutory prevention from proceeding against the Corporate Debtor. Furthermore, despite this clear liberty, the Respondent No. 1 failed to exercise its rights within the limitation period following 07.03.2011, and cannot now seek refuge under the pretext of ongoing High Court proceedings, rendering the Adjudicating Authority's findings unsustainable.

16. Concluding his arguments, the Appellant urged this Appellate Tribunal to dismiss the Impugned Order and allow his appeal.

17. Per contra, the Respondent No. 1 denied all the averments made by the Appellant in the present appeal.

18. The Respondent No. 1 submitted that the Loan Agreement between the parties clearly stipulated a repayment mechanism for both the principal loan amount and interest, including a six-month moratorium period applicable solely to the principal repayment instalments, and not to the interest, which the loanee was obligated to repay as per the agreed schedule. The Respondent No. 1 further contended that, in line with standard practice, two separate accounts were maintained for the repayment of the principal and interest, and the Respondent No. 1 has acted in good faith, adhering to both the provisions of the State Financial Corporation Act, 1951, and the terms of the loan agreement. Additionally, it is submitted that the appellant failed to raise any objection regarding the invocation of Section 30 State Financial Corporations Act, 1951 at the relevant time, and any grievance raised at this belated stage lacks merit.

19. The Respondent No. 1 submitted that it is a well-established principle of law that the moratorium period applies solely to the repayment of principal amount instalments, whereas no such moratorium extends to the repayment of interest, which the appellant was obligated to service as per the loan agreement; however, the appellant defaulted by failing to pay even a single interest instalment, compelling the Respondent No. 1 to issue a notice recalling the entire loan

amount. Upon the appellant's continued failure to repay the dues after the notice period expired, the Respondent No. 1, in accordance with the provisions of Section 30 of the State Financial Corporation Act, 1951, took physical possession of the mortgaged property, which remains in its custody. The Respondent No. 1 asserted that these actions were lawfully executed following the issuance of a legal notice, necessitated by the appellant's persistent default, thereby justifying the Respondent No. 1's of the mortgaged assets.

20. The Respondent No. 1 submitted that the Corporate Debtor initially proposed a settlement vide letter dated 22.03.2011, which the Respondent No. 1 could not accept as its terms were not in its interest, followed by subsequent settlement proposals in 2014, 2015, and 2017-18, none of which materialized into an agreement. Due to a bona fide oversight, these requests for a one-time settlement were inadvertently omitted from the initial records of CP (IB) No. 84/7/JPR/2021 before the Adjudicating Authority; however, the Respondent No. 1 contended that the appellant's own admission in the appeal i.e. acknowledging multiple settlement proposals by the Corporate Debtor effectively negates their objections to the company petition filed under Section 7 of the Code. The Respondent No. 1 asserted that these repeated attempts at settlement, coupled with the appellant's failure to honour repayment obligations, reinforce the legitimacy of Respondent No. 1's actions and the initiation of insolvency proceedings.

21. The Respondent No. 1 submitted that the Adjudicating Authority issued directions for filing written submissions on 04.07.2022, after notices were served to the Corporate Debtor through regular service, paper publication, and e-notice at its registered address, yet the Corporate Debtor failed to participate, leading to ex-parte proceedings being initiated vide order dated 04.07.2022. Despite further opportunities on 12.08.2022 and 06.09.2022, the Corporate Debtor remained absent, and even after Advocate Sh. Naresh Kumar Sejwani appeared on 20.09.2022 seeking time to file a vakalatnama, no such document was submitted by 10.01.2023, reflecting the Corporate Debtor's consistent non-engagement with the process.

22. It is further submitted by Respondent No. 1 that the written submissions, as directed on 04.07.2022, were duly filed by the Respondent No. 1 on 12.08.2022 and it was only on that date, and not on 14.07.2022, that the Adjudicating Authority directed a chronological date-wise event submission, which the Respondent No. 1's counsel could not immediately furnish due to practical difficulties. The appellant's attempt to suggest that the Respondent No. 1 failed to address limitation despite opportunities is misplaced, as the Adjudicating Authority, prima facie satisfied with the merits and limitation aspects, proceeded with notices and ex-parte orders due to the Corporate Debtor's evasion, and subsequently sought clarifications only after reviewing the Respondent No. 1's submissions, thus attributing no error to the Adjudicating Authority but rather highlighting the appellant's own lapses.

23. The Respondent No. 1 submitted that it is a settled proposition of law that the omission of the date of default in Column-2, Part IV of Form-I constitutes, at most, a technical defect, and does not render the petition non-maintainable, provided such information can be discerned from other material available on record; this defect is curable by filing an appropriate application. The Respondent No. 1 contended that this legal position underscores the maintainability of the petition despite the appellant's objections, as the requisite details substantiating the default are adequately disclosed elsewhere in the accompanying documentation, thereby aligning with judicial precedents and preserving the integrity of the proceedings before the Adjudicating Authority.

24. The Respondent No. 1 submitted that the Adjudicating Authority correctly held that Respondent No. 1 was statutorily prevented from recovering its dues from the Corporate Debtor due to interim orders of the Hon'ble High Courts, which temporarily restrained direct recovery actions. However, it is emphasized by Respondent No. 1 that such interim orders do not bar the initiation of proceedings under the Code as the framework of the Code operates independently of such restrictions, enabling the corporation to pursue its remedies despite the pendency of matters before the Hon'ble High Court.

25. It is further submitted by the Respondent No. 1 that the Adjudicating Authority, not being subordinate to the Hon'ble High Court, was fully empowered to admit the petition filed by the Respondent No. 1 and impose a moratorium vide its impugned order dated 17.05.2024, unaffected by the interim orders. The

Respondent No. 1 asserted that this legal position reinforces the authority of the Code framework, ensuring that the Respondent No. 1's rights to initiate insolvency proceedings remain intact, and the Adjudicating Authority's decision aligns with the statutory intent and judicial precedent, warranting no interference.

26. The Respondent No. 1 submitted that the Adjudicating Authority has delivered a just and reasoned order dated 17.05.2024, aptly reflecting the facts and circumstances of the case, wherein a notice recalling the Respondent No. 1's dues were issued to the appellant on 13.01.2010, followed by the appellant's proposals for one-time settlement or repayment in 2011, 2014, 2015, 2016, and 2017, with the last acknowledgment of debt occurring on 16.05.2017. This repeated acknowledgment extends the limitation period, rendering the company petition filed by the Respondent No. 1 well within the permissible timeframe under the law. Thus, the Respondent No. 1 asserted that the Adjudicating Authority's decision to admit the petition is legally sound and merits no interference.

27. The Respondent No. 1 submitted that for the purpose of calculating limitation in the present case, the appellant's acknowledgment of its liability under the loan agreement admitted up to 16.05.2017, is pivotal, extending the limitation period of three years from that date to 15.05.2020. This acknowledgment, stemming from the appellant's repeated proposals for settlement, clearly establishes that the debt remained alive, and thus, the company petition filed by the Respondent No. 1 is well within the statutory timeframe,

reinforcing the correctness of the Adjudicating Authority's impugned order dated 17.05.2024.

28. The Respondent No. 1 submitted that in the background of the nationwide lockdown imposed on 22.03.2020 due to the COVID-19 pandemic, the Hon'ble Supreme Court of India vide order dated 10.01.2020 in Misc. Application No. 21/2022 in Suo Moto Writ Petition (C) No. 3/2020, extended limitation periods expiring between 15.03.2020 and 28.02.2022, thereby ensuring that the petition remains within limitation regardless. Additionally, the Hon'ble Supreme Court of India's consistent rulings affirm that limitation under the Code is extendible via an application under Section 5 of the Limitation Act, 1963 further supporting the Respondent No. 1's position that the petition was timely and lawfully admitted by the Adjudicating Authority.

29. The Respondent No. 1 submitted that the promoters of the Corporate Debtor submitted proposals for a one-time settlement of the Respondent No. 1's dues in 2011, 2014, 2015, 2016, and 2017, thereby keeping the claim/debt alive, with the last acknowledgment occurring vide letter dated 16.05.2017. The Hon'ble Supreme Court of India in ***Dena Bank v. C. Shivakumar Reddy*** [(2021) 10 SCC 330] has held that Section 18 of the Limitation Act should not be interpreted with pedantic rigidity in IBC proceedings, and an offer of one-time settlement within the limitation period constitutes an acknowledgment of debt, extending the limitation by a further three years from 16.05.2017 to 15.05.2020, thus supporting the maintainability of the Respondent No. 1's petition.

30. The Respondent No. 1 submitted that the homebuyers, who paid booking amounts or instalments towards homes/flats, are entitled to submit their claims to the Resolution Professional under the Code framework, ensuring their interests are addressed within the insolvency process. This mechanism provides an adequate remedy for the homebuyers to recover their dues, thereby negating any contention that their rights have been overlooked by the respondent's actions in pursuing the Corporate Debtor.

31. It is further submitted by the Respondent No. 1 that the homebuyers failed to initiate independent legal action against the appellant for any alleged fraud or misrepresentation, and the appellant cannot now seek refuge in this argument to evade its liability towards the dues of Respondent No. 1. Respondent No. 1 asserted that the appellant's attempt to shift responsibility onto the homebuyers' inaction is untenable, and the Adjudicating Authority rightly focused on the Respondent No. 1's claim, which remains unaffected by the homebuyers' separate grievances.

32. The Respondent No. 1 submitted that Sections 29, 30, and 31 of the State Financial Corporation Act, 1951, provide a robust mechanism for recovering dues, with Section 29 empowering the Respondent No. 1 to take over management or possession of the industrial concern's assets, including the right to lease or sell mortgaged property, and Section 30 allowing a demand for repayment before the agreed period, while Section 31 offers special enforcement provisions against the industrial concern. In the present case, the Respondent No.

1 invoked Section 29, took possession of the mortgaged assets, and acted within its statutory rights, thereby pursuing a lawful recovery process against the Corporate Debtor.

33. The Respondent No. 1 submitted that the Adjudicating Authority committed no error in holding that the Respondent No. 1 was statutorily prevented from fully recovering its dues, as the appellant's reliance on the Hon'ble High Court of Rajasthan's interlocutory order dated 07.03.2011 is misplaced. A plain reading of the order revealed that while the Respondent No. 1 was granted limited liberty to organize auction proceedings and invite bids for the mortgaged property, the Hon'ble High Court explicitly prohibited finalizing any auction without its approval, thus restricting the Respondent No. 1's ability to conclude the recovery process.

34. The Respondent No. 1 further submitted that, in compliance with the order dated 07.03.2011, the Respondent No. 1 diligently attempted to auction the Corporate Debtor's mortgaged assets on more than 80 occasions, yet could not finalize the sales due to the High Court's mandate for prior approval. Respondent No. 1 asserted that this statutory constraint justifies the finding of the Adjudicating Authority, debunking the appellant's impression of unrestricted liberty and affirming that the Respondent No. 1's actions were curtailed by judicial oversight, thereby supporting the maintainability of the petition filed under the Code in addition to extending limitation due to acknowledgement of

debts by the Appellant by way of various OTS by the Appellant and the Hon'ble Supreme Court of India order dated 10.01.2020 extending limitation suo moto.

35. Concluding his arguments, Respondent No. 1 prayed to this Appellate Tribunal to dismiss the Appeal with cost.

36. The Respondent No. 2 submitted that the Appellate Tribunal, vide its order dated 03.06.2024, directed that the impugned order initiating the CIRP be held in abeyance; however, the IRP was not discharged from her duties to safeguard the interests of the Corporate Debtor, including its property, and ensure compliance with the provisions of the Code and IBBI regulations. In adherence to this Appellate Tribunal's directive, the IRP duly kept the CIRP process in abeyance while continuing to fulfil her obligations by deploying security guards at the property and personally visiting the site, which had been taken into custody at the time of the CIRP orders, to ensure the Corporate Debtor's interests remained protected.

37. The Respondent No. 2 submitted that the Respondent No. 1 has contributed Rs. 2 lakhs towards the CIRP costs, as mandated by the Adjudicating Authority in its impugned order dated 17.05.2024. Despite the limited contribution from Respondent No. 1, the IRP has continued her responsibilities without being relieved of her duties, thereby entitling her to her professional fees for the services rendered. The Respondent No. 2 requests this Appellate Tribunal to recognize the IRP's eligibility for remuneration.

Findings

38. We have already noted the facts of the case during pleadings in preceding discussions hence we shall not repeat the same.

39. The only issue which is required to be decided in the present appeal is regarding whether the company petition was filed by the Respondent No. 1 i.e., Rajasthan Financial Corporate before the Adjudicating Authority in time or was hit by limitation.

40. The disbursal of loan and non-payment of the loan is undisputed fact, hence, we take as it is.

41. The Appellant submitted that the Company Petition No. 83/7/JPR/2021 was filed on 12.08.2021, hence was completely debarred under Limitation Act, 1963. On the other hand, it is the case of the Respondent No. 1 that due to pending case before the Hon'ble High Court of Rajasthan as well as stay granted by the Hon'ble High Court of Rajasthan, the Respondent No. 1 was statutorily prevented from taking any legal action, hence, the Respondent No. 1 gets legal protection under Section 5 of the Limitation Act, 1963. This was in addition with extension of limitation by the Appellant by acknowledging the debt through its various OTS proposals and suo moto extension of limitation due to by the Hon'ble Supreme Court of India vide its order dated 10.01.2020.

42. It is the case of the Respondent No. 1 that the Appellant kept on making one time settlement ('OTS') from time to time which was made on 03.05.2011,

24.11.2011, 16.09.2014, 24.02.2015, 26.05.2015, 18.06.2015, 20.05.2016, 12.05.2017 and 16.05.2017. Thus, acknowledging debt and extending the limitation period.

43. We note that in reply to the appeal, the last OTS date was mentioned as 16.05.2017 which according to the Respondent No. 1 was acknowledgement of the Appellant of its liability in terms of loan facility provided by the Respondent No. 1 under loan agreement dated 06.07.2009.

44. We have already noted that the loan was sanctioned in 2008-09 and disbursement was made on 17.07.2009. Thus, first OTS of the Appellant to Respondent No. 1 dated 03.05.2011 extended the limitation period. Similarly, further OTS dated 24.11.2011 also extended the limitation period. We note that within three years of this OTS dated 24.11.2011, the Appellant is stated to have made another OTS on 16.09.2014 which was within three years and hence, same extended limitation period. This was further followed by another OTS proposal by the Appellant dated 24.02.2015 followed by various other OTS proposals by various other OTS proposals by the Appellant vide letters dated 26.05.2015, 18.06.2015, 25.05.2016, 12.05.2017 and finally dated 16.05.2017.

45. If we take the last OTS by the Appellant dated 16.05.2017 into consideration, which signifies the acknowledgement of debt by the Appellant, the limitation period gets extended up to 15.05.2020. Hence, the Company Petition could have been filed by 15.05.2020, whereas the Company Petition was filed by the Respondent No. 1 before the Adjudicating Authority on 12.08.2021.

46. Hence, we need to look into the rational for counting this period for the purpose of limitation. We take into consideration the pleading made by the Respondent No. 1 that the Hon'ble Supreme Court of India, taking suo moto cognizance vide Writ Petition (C) No. 03 of 2020 for extension of limitation, wherein the Apex Court vide its order dated 10.01.2020 exempted the period from 15.03.2020 to 28.02.2022 for the purpose of counting of limitation for filing applications, suits, etc.

47. The facts regarding the various OTS proposals of the Appellant have been mentioned by the Respondent No. 1 in his reply affidavit to the Appeal dated 16.07.2024 which was permitted by this Appellate Tribunal in its order dated 03.06.2024 while issuing notice to the Respondent No. 1.

48. In the same order dated 03.06.2024, this Appellate Tribunal gave three weeks time to the Appellant to file Rejoinder. The said order is reproduced as under :-

“These appeals have been filed against the impugned orders both dated 17.05.2024.

2. The submission of the learned Counsel for the Appellant is loans were granted to two companies namely, M/s Amay Home Services Ltd. and M/s Ruby Buildestates Pvt. Ltd. in the year 2008. The loans after sanction were disbursed between the years 2008 till March, 2009. The First Demand Notice was given by the Respondent on 13.01.2010 and thereafter Respondent Corporation took physical possession of the mortgaged property on 23.03.2010. The auction of the

property was also scheduled in the year 2010. But on 04.05.2010, Jaipur Bench of Hon'ble Rajasthan High Court restrained Respondent-Corporation from alienating or transferring the said property. On 12.08.2021, Company Petitions No. 84/7/JPR/2021 and 83/7/JPR/2021 were filed. The prime submission made by the learned Counsel for the Appellant is the petitions were beyond limitation having been filed even three years after coming into force of the Code in the year 2016. Further it is alleged the impugned order does not disclose sufficient cause to condone the delay under Section 5 of Limitation Act, 1963. It is alleged as per own admission of the Respondent, these Company Petitions were ought to have been filed by December, 2019 and but then Respondent-Corporation has taken benefit of orders passed by the Hon'ble Supreme Court due to Covid condition. It is thus submitted no sufficient cause is shown for not filing the petitions between January, 2019 to March, 2020 hence the impugned order(s) are challenged before us.

3. Learned Counsel for the Respondent submits so far the debt is concerned, the same is not challenged by the Appellant and on at least seventy earlier occasions the Respondent is trying to auction the mortgaged property but to no avail.

4. Issue Notice. Learned Counsel for the Respondent-Corporation may file Reply Affidavit within four weeks. Rejoinder be filed three weeks thereafter.

5. List these matters on 22nd July, 2024. Till then the operation of the impugned order qua initiation of CIRP shall remain in abeyance.”

49. Another two weeks time was granted to the Appellant to file the Rejoinder by this Appellate Tribunal vide its order dated 06.09.2024, which reproduce as under:-

“Learned Counsel for Respondent No. 1 submits that they have already filed the Reply.

Appellant submits that Reply has not been served. Counsel for Respondent No. 1 is directed to serve the Reply to the Counsel for the Appellant within a week.

Rejoinder, if any, may be filed with further two weeks.

The name of Mr. Naresh Kr. Sejvani be shown as Counsel for the Appellant.

IRP has also appeared in person. List these Appeals on 18th October, 2024.

Interim Order to continue.”

50. Further two weeks time was granted by this Appellate Tribunal to the Appellant to file rejoinder affidavit vide its order dated 18.10.2024 which reads as under :-

“Learned Counsel for the Appellant prays for and is allowed two weeks time to file the Rejoinder Affidavit.

List this Appeal on 21st November, 2024.”

51. Further, two weeks time was allowed to the Appellant vide this Appellate Tribunal’s order dated 21.11.2024 which reads as under ;-

“The Respondent No.1 has filed the reply. Rejoinder, if any, be filed within two weeks from today.

It is submitted some applications have been filed by Respondent No.1 but are not on record. Be placed on record. List these appeals on 09.01.2025.”

52. On 09.01.2025, the Appellant requested for an adjournment on the ground that the Senior Arguing Counsel is in some personal difficulty. Finally, the Appellant was heard on 17.02.2025 and order was reserved.

53. We note that this Appellate Tribunal gave four specific opportunities to the Appellant to file the rejoinder affidavit, however, the Appellant did not file any rejoinder. On next occasion, the Appellant requested for an adjournment. Thus, we note that despite of several opportunities, the Appellant did not give any contrary facts through his reply affidavit contesting submissions made by the Respondent No. 1 before us. Thus, we take into consideration the facts mentioned by the Respondent No. 1 regarding OTS letters and the issue of extension of limitation from time to time, including last OTS dated 16.05.2017 extending limitation period upto 15.05.2020 and the Apex Court, suo moto order dated 10.01.2020 passed in Writ Petition (c) No. 03 of 2020 which extended limitation period from 15.03.2020 to 28.02.2022. The Respondent No. 1 filed the Company Petition on 12.08.2021 which was within limitation period available in the present case. Thus, we hold that Company Petition was covered under limitation period as discussed in preceding discussion.

54. We also note that in catena of judgments including by the Hon'ble Supreme Court of India, it has been held that limitation is a matter of both facts and law and it can be invoked at any stage by any of the party or any court even at an appeal stage. We will take into consideration one of recent judgment of the Hon'ble Supreme Court of India passed in the case of ***Pathapati Subba Reddy v. LAO [(2024) SCC OnLine SC 513]***, where the Apex Court stipulated fundamental principles which reads as under :-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be

exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamount to disregarding the statutory provision.”

(Emphasis Supplied)

The present case of the Respondent No. 1 gets benefits from the above judgment.

55. In view of above analysis, we hold that the Company Petition was filed by the Respondent No. 1 within limitation period before the Adjudicating Authority and was not hit by limitation as alleged by the Appellant. Since, this is the only issue involved in the present appeal, hence we do not find any merit in the appeal.

56. We also note that the Respondent No. 2 i.e., Ms. Garima Diggiwal, IRP of Corporate Debtor has requested this Appellate Tribunal during hearing to reimburse her fee and cost. Since, fee and the cost are within the domain of the

Adjudicating Authority, the Respondent No. 2 may file suitable application in accordance with law for getting further relief before the Adjudicating Authority.

57. The Appeal devoid of any merit stand rejected. IA, if any, are closed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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