2026 INSC 155

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 477 OF 2022

B. PRASHANTH HEGDE ...APPELLANT(S)

VERSUS

STATE BANK OF INDIA & ANR. ...RESPONDENT (S)

J U D G M E N T

MANOJ MISRA, J.

1. This appeal, under Section 62 of the Insolvency and Bankruptcy Code, 2016[1], impugns judgment and order of the National Company Law Appellate Tribunal, Principal Bench at New Delhi[2], dated 17.12.2021, passed in Company Appeal (AT) (Ins) No. 68 of 2019 and I.A. No. 1078 of 2021.

FACTS

2. A brief narration of facts in a chronological order would be apposite. The first respondent (State Bank

[1] IBC
[2] NCLAT

of India[3]), claiming itself to be the Financial Creditor[4] of M/s. Metal Closure Pvt. Ltd. (i.e., the Corporate Debtor[5]), filed an application under Section 7[6] of IBC on behalf of self and on behalf of a consortium of

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[3] SBI

[4] FC

[5] CD

[6] **Section 7. Initiation of corporate insolvency resolution process by financial creditor.** – (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.

…..xxx….

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.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish -

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within 14 days of the receipt of the application under sub-section (2), ascertain the existence of default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that -

(a) a default has occurred and the application under sub-section (2) is complete and there is no disciplinary proceedings pending against the proposed professional, it may, by order admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order reject such application

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency process shall commence from the date of admission of the application under sub-section (5).

(7) …xxxx..

banks comprising SBI, Punjab National Bank[7], Corporation Bank and UCO Bank against CD for initiating Corporate Insolvency Resolution Process[8], *inter alia*, alleging that CD is a defaulter of dues, exceeding Rs. 280 crores, payable against various credit facilities extended from time to time by members of the consortium.

3. CD contested the application, *inter alia*, on the ground that the same was filed beyond 3 years from the date when the right to apply had accrued and therefore, the application under Section 7 was liable to be dismissed on the ground of limitation.

4. On 14.12.2018, the National Company Law Tribunal, Bangalore Bench[9] admitted the CIRP petition and declared a moratorium under Section 14 of IBC.

5. Aggrieved by the order of NCLT dated 14.12.2018, the suspended Managing Director of CD filed an

[7] PNB
[8] CIRP
[9] NCLT

appeal (i.e., Company Appeal (AT) (Ins) No. 68 of 2019 under Section 61[10] of IBC before NCLAT.

6. In the meanwhile, NCLT recommended liquidation of the CD which was kept in abeyance pending disposal of the appeal by NCLAT.

7. On 26.09.2019, NCLAT dismissed the aforesaid appeal, *inter alia,* holding: (a) that credit facilities, extended from time to time by various partners of the consortium were secured by mortgage of immovable properties of CD therefore, the limitation period would be governed by Article 62 of the Schedule to the Limitation Act, 1963[11], which prescribes limitation of 12 years; and (b) that though the limitation to file an application under Section 7 of

[10] **Section 61. Appeals and Appellate Authority. –** (1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this Part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) … xxx …

(3) … xxx …

(4) … xxx …

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.

[11] 1963 Act

IBC is three years, as per Article 137[12] of the Schedule to the 1963 Act, the right to apply accrued on 01.12.2016 i.e., when IBC came into force therefore, the application is not barred by limitation. Consequently, the appeal, which was pressed on the sole ground of limitation, was dismissed.

8. On dismissal of the appeal by NCLAT, NCLT, by a separate order, directed liquidation of CD.

9. Aggrieved by the order of NCLAT dated 26.09.2019, the suspended Managing Director of CD filed an appeal under Section 62[13] of IBC before this Court. This Court, *vide* order dated 21.10.2019, allowed the appeal, set aside the order of NCLAT and restored the appeal on the file of NCLAT for being decided afresh,

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[12]

Description of Suit	Period of limitation	Time from which period begins to run
PART II – OTHER APPLICATIONS		
Article 137. Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues

[13] **Section 62: Appeal to Supreme Court.** (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

having regard to the decisions of this Court on the issue of limitation.

10. Pursuant to the order of remand, NCLAT allowed the appeal, *vide* order dated 14.10.2020, *inter alia*, holding:

> (i) The default had occurred on or before 31.01.2010 i.e., the date when the account was declared Non-Performing Asset[14].
>
> (ii) Limitation period, prescribed by Article 137 of the Schedule to the 2003 Act, is 3 years from the date of default, which expired on 30.01.2013.
>
> (iii) Application under Section 7 of IBC was filed on 25.04.2018 and, therefore, barred by limitation.

11. Aggrieved by the aforesaid order, SBI (i.e., the first respondent) filed Company Appeal No. 3765 of 2021 before this Court. This appeal was allowed, *vide* order dated 15.04.2021, thereby giving an

[14] NPA

opportunity to SBI to amend its pleading (i.e., the application under Section 7 of IBC), on payment of costs, for introducing facts to explain that the application under Section 7 was within the period of limitation. The relevant portion of the order of this Court dated 15.04.2021 is extracted below:

> "6. There can be no doubt whatsoever that the Appellant has been completely remiss and deficient in pleading acknowledgement of the liabilities on the facts of this case. However, given the staggering amount allegedly due from the Respondents, we offer one further opportunity to the Appellant to amend its pleadings so as to incorporate what is stated in the written submissions filed by it before the NCLAT, subject to costs of Rs. 1,00,000 to be paid by the Appellant to the Respondent within a period of four weeks from today.
>
> 7. We, therefore, allow the appeal, set aside the judgment of the NCLAT dated 14.10.2020, and restore the appeal to the file to be decided in light of judgment on Civil Appeal No.323 of 2021."

12. Pursuant to the above order, NCLAT allowed the amendment *vide* order dated 15.07.2021. As a result, the Section 7 application was comprehensively amended, thereby introducing detailed facts *qua* the debt to demonstrate that the application was within limitation. Thereafter, NCLAT, *vide* impugned order

dated 17.12.2021, dismissed the appeal of the suspended Managing Director and held the Section 7 application to be within limitation.

13. We have heard learned counsel for the parties at length and have perused the record. Written submissions were also provided for our convenience.

FINDINGS OF NCLAT

14. Before noticing the submissions made before us, it is necessary to understand the context in which those submissions were made. Therefore, in our view, it would be useful to notice the findings returned by NCLAT on the issues arising before it. The relevant paragraphs of the impugned judgment of NCLAT are reproduced below:

> "31. The table below gives the relevant dates in connection with the debts of the Corporate Debtor owed to the four banks in the consortium, which are as per arguments and pleadings of the Respondent No.1, and which would be necessary for calculating the limitation and the dates when the Corporate Debtor acknowledged the debts through various documents:

Action	SBI	PNB	Corporation Bank	UCO BANK
CD's loan accounts declared defaulter by banks with implicit acknowledgment of debts which is relevant for counting limitation	28.05.2014	30.06.2014	10.10.2014	31.12.2014
CD's debts entered in its balance sheets for year ending 31.03.2014 and	30.09.2015	30.09.2015	30.09.2015	30.09.2015

31.3.2015				
CD's reply to Section 13(2) SARFAESI notice filed with debt details	13.11.2015	13.11.2015	13.11.2015	13.11.2015

32. From the dates in the table in the previous paragraph, the learned senior counsel for Respondent No.1 has argued that banks and CD were discussing restructuring of debts, and thereby CD implicitly acknowledged the respective debts as relevant for counting limitation in accordance with the judgment of Hon'ble Supreme Court in ARCIL vs. Bishal Jaiswal (2021 SCC OnLine SC 321). Debt restructuring efforts with SBI went on till 28.5.2014, with PNB till 30.06.2014, with Corporation Bank till 10.10.2014 and with UCO Bank till 31.12.2014. As a result of the restructuring efforts certain letters of arrangement and consortium agreements were entered into by the consortium of banks and the CD. Hence these are relevant dates when debts were in default and cause of action started. As regards the claim of the appellant that the dates of default of debts of the banks were in 2010, it was clarified by learned senior counsel for Respondent No.1 that the date of NPA which was shifted to 2010 was in accordance with an RBI Master Circular dated 1.7.2013 for the purposes of banks working and asset classification. The actions taken by the banks and the CD between 2010 and 2014 when CD's debt was being restructured, including signing of new working capital consortium agreements and their sanction, in continuation of the old debts did provide acknowledgements of the loans by CD. The Statement of Accounts are detailed in items 7 & 8 of Part IV of the Section 7 application are, therefore, sufficient for purpose of acknowledgement of debt liability to the four banks.

33. Learned senior counsel for Respondent No.1 has stated in his written submissions (attached at pp. 33-34 of the Convenience Compilation of the Appellant Vol. I filed vide Diary number 27721 dated 1.7.2020) that while originally the account of the Corporate Debtor was classified as NPA on 21.1.2010, it is an admitted fact that there were actions taken thereafter during 2010 to 2014 to restructure the account of the Corporate Debtor. As a result, various Consortium Agreements were executed between the four banks and the Corporate Debtor. The existence of the Consortium Agreements and letter of arrangement are given in item 5 of Part V of amended Section 7 application (attached at pp. 93-114 of written submissions and Convenience Compilation of Appellant, volume 1). These

Working Capital Consortium Agreements and letter of arrangement and their existence has not been denied by the Corporate Debtor. It is the contention of the Respondent No.1 that, through these Consortium Agreements the Corporate Debtor has inter-alia admitted its debt default and liability to pay to all the four banks till the date of signing of the Working Capital Consortium Agreement dated 21.3.2014.

34. The judgments of Hon'ble Supreme Court in Swiss Ribbons (P) Ltd. (supra), Innoventive Industries Ltd. (supra) and B.K. Educational Services (P) Ltd. (supra) do not explicitly cover the issue of acknowledgement of debt through documents such as balance sheet. In the matter of ARCIL vs. Bishal Jaiswal (supra), the Hon'ble Supreme Court has held that fresh limitation will start from the date of acknowledgement in the balance sheet of the CD. This judgment of Supreme Court now holds the fort insofar as calculation of limitation period is concerned taking into account the acknowledgements by CD in certain documents like the balance sheets and in other documents. In the case of Reliance Asset Reconstruction Co. Ltd. vs. Hotel Poonja International Pvt. Ltd., the balance sheets were not relied upon because no evidence had been put forward to show that they were signed before the expiry of the prescribed period of limitation and there was no pleading to the said effect in the application under Section 7 of IBC. As opposed to this situation, in the present case the balance sheets relate to the period within three years from the date of NPA of the four banks, which are 28.5.2014 for SBI, 30. 6.2014 for PNB 10.10.2014 for Corporation Bank and 31.12.2014 for UCO Bank and hence the acknowledgements which were implicit in these balance sheets are within three years of the date of start of limitation, and therefore extend limitation as per section 18 of the Limitation Act.

35. In the case of Indian Overseas Bank vs. Patel Woods Products Limited 2020 SCC OnLine NCLAT 551, the Securitization Application filed by Indian Overseas Bank had been disposed of. Since Section 7 application which was filed thereafter, took the date of default *as barred by limitation and expressly for recovery of amount*. Hence, the Section 7 application was not admitted. In contrast, in the present appeal, there is no decree for execution and the Section 7 application is also considered to be within limitation, due to various acknowledgements in balance

sheets for the financial years 2013-14 and 2014-15 and reply filed before DRT, which provide fresh lease of life to the issue of limitation.

36. xxx omitted xxx

37. In Swiss Ribbons (P) Ltd. case (supra), Hon'ble Supreme Court has held that in so far as set-off and counterclaim is concerned, such set-off may be considered at the stage of filing of proof of claims during the resolution process by the Resolution Professional. In the present appeal, only counter claim has been made before DRT but no set off amount has been adjudicated upon. Moreover, any amount of counterclaim cannot retract from the fact of acknowledgement of the debts.

38. In ARCIL vs. Bishal Jaiswal (supra), Hon'ble Supreme Court has very clearly held that section 18 of the Limitation Act gets attracted the moment acknowledgement in writing signed by the party against whom such right to initiate resolution process under Section 7 of IBC enures. This ratio is supportive of claim made by Respondent No.1 SBI in the present case, where acknowledgements in writing signed by the Corporate Debtor come into play to extend the period of limitation under section 18 of the Limitation Act.

39. In Bengal Silk Mills Co. (supra), it was held that a compulsion in law to prepare a balance sheet does not imply compulsion to make any particular admission and if a qualification regarding a particular creditor or credit is made with caveats, the case has to be examined on the basis of its context to establish whether an acknowledgement of liability has, in fact, been made for extending the limitation. In the present case, there is no caveat regarding acknowledgement or otherwise of the debt. On the contrary, the Auditor's report in the balance sheet only adverts to the fact that the Corporate Debtor is not a going concern but makes no qualifying remarks about the debt which is included in the balance sheet.

40. Learned Counsels for Appellant and Respondent No.1 both have referred to the Master Circular No. RBI/2013-14/62 DBOD No. BP. BC. 1/ 21.04.048/2013-14 dated July 1, 2013 (pp. 166-167 of written submissions and convenience compilation of appellant, Vol. I) with appellant interpreting its provisions regarding asset classification as NPA to be year 2010 from which the dates of default should

be considered whereas Respondent No.1 claims that the year should be 2014. We agree with the argument of Ld. Senior Counsel of Respondent No.1 that while the asset classification of the restructured loan account would be governed as per applicable prudential norms regarding classification as NPA, insofar as acknowledgement of the debts is concerned they were implicitly present in working capital consortium agreements and other documents executed by the CD and banks and the debts were therefore alive at the time these agreements were entered into.

41. We now consider the contention of the Corporate Debtor that the amount of counterclaim raised against the banks by the Corporate Debtor being Rs.1500 crores which is much more than the amount of debt, hence there will be a net amount payable to the corporate debtor and not to the banks. Therefore, there is no debt in default and liable to be paid to the banks. We note that the counterclaim has not been decided and so it remains just a proposition yet to be adjudicated upon. Moreover, merely raising a counterclaim in DRT proceedings does not in any way detract from the fact that debts are acknowledged, and they are in default, and therefore liable to be paid by the Corporate Debtor as the application under Section 7 is found to be within limitation.

42. We are convinced by the argument of Respondent No.1 that the date of NPA of the debt due to SBI is 31.1.2010 only for the purposes of the RBI guidelines. The actual date to default is the dates on which NPAs were initially declared by respective banks with 28.5.2014 for SBI, 30.6.2014 for PNB, 10.10.2014 for Corporation Bank and 31.12.2014 for UCO Bank, since the debts of respective banks were acknowledged by the CD till those dates. This is so because during the period from 2010 to 2014 when efforts were made by the four banks and the Corporate Debtor to restructure the debts, there was admission and implicit acknowledgment of the debts by the Corporate Debtor.

43. We then find that the acknowledgement of these debts have been made, inter alia, in the CD's balance sheets for year ending 31.3.2014 and 31.3.2015 which was signed on 30.9.2015, which is within three years from the date the debts were acknowledged in 2014 during debt restructuring process when Working Capital Consortium Agreements etc were signed by the CD and the banks. Thus, the debts get a fresh lease of limitation for three years from 30.9.2015. This

limitation period will run till 29.9.2018 in accordance with Article 137 of Limitation Act. The Section 7 application was filed on 25.4.2018 which is within three years from 30.9.2015. Hence, we find that on the basis of amended application under Section 7 and the documents attached thereto, as well as pleadings of Respondent No.1, the Section 7 application is found to be within limitation. The debts are in default, and they are due and payable to the four banks viz., SBI, PNB, Corporation Bank and UCO Bank.

44. We are also of the view that criminal complaints filed against officials of consortium of banks, and further action thereon have no bearing or relevance to the proceedings under Section 7 of the IBC.

45. In the light of discussion in above paragraphs, we are convinced that the debts of the four banks (SBI, PNB, Corporation Bank and UCO Bank) are in default, due and liable to be paid by the Corporate Debtor as on the date of filing of amended Section 7 application. The amended Section 7 application is found to be in limitation. Thus, State Bank of India (Respondent No.1) and other banks (who have authorized SBI to act on their behalf) have been able to establish to our complete satisfaction that the ingredients of application under Section 7 of IBC against the Corporate Debtor have been met and the application u/s 7 deserves to be admitted."

(Emphasis supplied)

15. In a nutshell, the findings/ conclusions of NCLAT can be summarized as under:

(a) There is no dispute that CD is a defaulter. The dispute is whether the Section 7 application is within the period of limitation as specified in Article 137 of the Schedule to the 1963 Act, or not.

(b) Documents on record indicate that CD was in negotiations with the creditor banks for restructuring of its debt(s) and, ultimately, signed Working Capital Consortium Agreement(s) with the Banks, thereby acknowledging its dues.

(c) As per document(s) available on record, the NPA declaration date(s) are 28.5.2014 for SBI, 30.6.2014 for PNB, 10.10.2014 for Corporation Bank and 31.12.2014 for UCO Bank.

(d) On 30.09.2015, CD in its balance-sheet(s) of 2013-2014 and 2014-2015 acknowledged the debt(s). Such acknowledgement would extend limitation up to 29.09.2018, whereas the Section 7 application was filed on 25.4.2018 and therefore, the same is within limitation.

(e) The NPA date 31.01.2010 mentioned by SBI is for classification of debt because the

restructuring exercise failed; therefore, it cannot be taken as the date of default for purposes of computing the limitation period.

(f) Mere filing of counterclaim would not wipe out the debt.

(g) Lodging of FIR is inconsequential for determining the issue *qua* admission of the Section 7 application.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. On behalf of the appellant, it was submitted that the application under Section 7 ought to have been dismissed on the following grounds:

(i) The original as well as the amended application did not contain particulars of the default. They only disclose as to when the accounts were declared NPA. Such application is against the form (i.e., Form-I) prescribed for filing an application under Section 7.

(ii) Limitation starts from the date of default. In absence of disclosure of the date of default, extension of the limitation period by acknowledgement (i.e., under Section 18[15] of the 1963 Act) did not arise.

(iii) The amendment made pursuant to the order of remand was way beyond what was permitted by the order of remand dated 15.04.2021.

(iv) The balance-sheet(s) relied upon by NCLAT were neither authenticated nor approved in the meeting of shareholders and were not filed with the Registrar of

[15] **Section 18. Effect of acknowledgment in writing.**—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment 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 acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,— (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Companies[16]. Besides, acknowledgement, if any, in the balance-sheet(s) was qualified and, as such, it did not extend the limitation.

(v) The Section 7 application is vitiated by fraud, malice and suppression of material facts and, therefore, hit by Sections 65 and 75 of IBC.

17. To buttress the above submissions, reliance was placed on Section 7 (3) (a) of IBC to contend that sub-section (3) mandates FC to furnish record of the default recorded with the information utility, or such other record or evidence of default, as may be specified; the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016[17] prescribe Form 1 for filing an application under Section 7 of IBC; Part IV of Form-I mandates mentioning of the amount claimed to be in default and the date on which the default occurred along with workings for

[16] ROC
[17] 2016 Rules

computation of the amount(s) and days of default in a tabular form; additionally, Part V requires FC to file evidence and record of default with the information-utility, if any. In the present case, FC did not comply with these provisions. In absence thereof, the finding that a default had occurred could not have been recorded by the Adjudicating Authority, having regard to the decisions of this Court in ***Indus Biotech Private Limited V. Kotak India Venture (Offshore) Fund & Ors***[18] and ***Swiss Ribbons Pvt. Ltd. & Anr V. Union of India & Ors***[19]**.** Besides, the original application filed on 25.04.2018 mentions no date of default, and in the amended application, the date(s) of default is/are shown as 28.05.2014, 30.06.2014, 10.10.2014 and 31.12.2014, which are none other than the date(s) on which each member of the consortium declared their respective accounts NPA. Most importantly, NCLAT's order dated 14.10.2020 identifies 31.01.2010 as the date on which CD's

[18] (2021) 6 SCC 436
[19] (2019) 4 SCC 17

account was declared NPA. This finding of NCLAT was not disturbed in appeal and, therefore, it was impermissible for NCLAT to record a different finding on the date of default.

18. In the alternative, it was argued that the NPA date cannot be taken as the date of default. Limitation for the purposes of filing an application under Section 7 commences from the date of default in payment of amount exceeding Rs. 1 lakh (as it then was, now Rs. 1 crore). This position is clear from the decisions of this Court in ***M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.***[20] and ***Laxmi Pat Surana v. Union Bank of India & Anr***[21].

19. It was further argued that the remand order dated 15.04.2021 allowed FC to amend the Section 7 application to incorporate what was stated in the written submissions. But the case set up in the amended application is much beyond what the order of remand permitted. Since the remit of remand was

[20] (2018) 1 SCC 407
[21] (2021) 8 SCC 481

limited, it was not open for NCLAT to consider and allow a completely different case than what was permitted by this Court.

20. It was also submitted that in absence of the date of default in the application under Section 7, an assessment as to whether the limitation period got extended by acknowledgment was not possible. Besides, a balance-sheet can be considered as an acknowledgment only when it is duly approved by the shareholders in an appropriate meeting, as was held by the Calcutta High Court in ***Pandam Tea Company Ltd.***[22] Whereas the balance-sheet relied by NCLAT was not authenticated, and one which was never approved in the shareholder meeting. Besides, the last balance-sheet filed by CD with ROC was in the year 2013, and the same balance-sheet made no acknowledgement of liability as it was qualified by stating:

> *"Company has filed SARFAESI Appeal under Section 17 of the SARFAESI Act and claimed cost of compensation which is higher than the consortium bank's total advances."*

[22] 1973 SCC OnLine Cal 93

21. As regards initiation of CIRP with a mala fide intent, it was submitted that CIRP proceeding was initiated not to resolve insolvency, but to circumvent proceedings initiated by CD against the consortium of banks. In that context, the following facts were highlighted:

> (i) First Information Report(s) were lodged by the appellant against various accused, including the consortium of banks and their officials, which were investigated by the Criminal Investigation Department (CID Economic Offences Wing, Bengaluru, Karnataka) culminating in two chargesheets dated 05.05.2018 and 07.12.2018 arising from Case Nos. 580 of 2016 and 486 of 2015 respectively.
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> (ii) The chargesheets reveal forging of cheques with appellant's signatures, forging of statements of accounts, siphoning of

money and sale of machinery in open market, unauthorized RTGS payments, forging of bills of lading to make unauthorized payments etc. They also reveal that after taking over physical possession of the assets of CD, the bank made no efforts to auction the units. These findings in the chargesheet(s) reflect the true intent of the officials of the first respondent in invoking proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[23] , which was to shut down operations of CD. Even the order of the Karnataka High Court dated 13.03.2023 in W.P. No. 18864 of 2021 directed the Trial Court to take cognizance against both banks, i.e., SBI and PNB, in accordance with law, and directed the

[23] SARFAESI

Investigation Officer to file additional chargesheet by showing both banks as accused.

(iii) Besides, FC filed a claim under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993[24], in which CD filed a counterclaim seeking Rs. 1299 crores. The said proceeding was initiated in 2015, by which time the appeal under Section 17 of SARFAESI Act, questioning the taking over of physical possession of the plants of CD and appointment of Forensic Auditor, was pending. In this background, when proceedings under the RDDB Act and SARFAESI Act were pending, there was no justification to invoke the provisions of IBC in the year 2018 i.e., 02 years after IBC came into force. The mala fide intention to initiate proceedings under IBC also

[24] RDDB Act

becomes clear from the fact that after filing of the application under Section 7 of IBC, the first respondent had been seeking adjournment in proceedings under the SARFAESI Act and RDDB Act.

22. Finally, it was submitted that the Adjudicating Authority was required to examine whether it was expedient to initiate CIRP in the context of pending litigation between the parties, as held by this Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.***[25]

23. Based on the above submissions, the learned counsel for the appellant prayed that the impugned order passed by NCLAT be set aside and the Section 7 application be dismissed.

SUBMISSIONS ON BEHALF OF RESPONDENT

24. *Per contra*, on behalf of the first respondent, it was submitted:

[25] (2022) 8 SCC 352

(i) The application under Section 7 of IBC was well within limitation as CD had acknowledged its dues from time to time in writing and therefore, a fresh period of limitation started from each such acknowledgement. In this regard, the relevant dates were provided in a tabular form reproduced below:

Date	**Particulars**
31.01.2010	Account declared NPA.
18.03.2010 30.03.2011 18.04.2013 21.03.2014	As a part of restructuring, working capital consortium agreements executed between CD and Financial Creditors granting further credit facilities, wherein CD acknowledged earlier credit facilities obtained from the Financial Creditors.
28.05.2014	Even after restructuring, on account of non-adherence of terms of repayment, the account of CD turned NPA with SBI. However, in terms of RBI[26] guidelines, the date of NPA was shifted to 31.01.2010 for the purpose of provisioning.
30.06.2014 10.10.2014 31.12.2014	Account of CD turned NPA with PNB, Corporation Bank and UCO Bank
15.09.2015	SBI issued demand notice under Section 13(2) of SARFAESI Act.

[26] Reserve Bank of India

30.09.2015	CD acknowledged debt in its Balance Sheets for FYs 2013-14 and 2014-15.
13.11.2015	CD sent reply to demand notice u/s 13(2) SARFAESI Act wherein it acknowledged the debt.
28.12.2015	SBI filed OA[27] No. 21 of 2016 before DRT[28].
28.01.2016	CD filed application u/s 17 of SARFAESI Act enclosing balance sheets dated 30.09.2015 for the FYs 2013-14 and 2014-15. *Note: DRT by its order dated 21.03.2024 dismissed the application filed by the CD.*
02.08.2016	SBI filed application u/s 14 of SARFAESI Act. CMM[29] Bangalore passed an order directing physical possession of plant and machinery.
24.04.2018	SBI filed application u/s 7 of IBC.
09.08.2018	After more than 3 years, CD filed its counterclaim before DRT in OA and thereby acknowledged its debt.
14.12.2018	NCLT passed CIRP Order.

(ii) Acknowledgement in the balance-sheets, filed by CD, of its debts due to FCs would extend the limitation period under Section 18 of 1963 Act, as held by this Court in ***Asset Reconstruction Company (India) Ltd. v.***

[27] Original Application
[28] Debt Recovery Tribunal
[29] Chief Metropolitan Magistrate

Bishal Jaiswal & Anr.[30] Further, the balance-sheet(s) were signed by the Director(s) of CD including the appellant, and verified by their Chartered Accountant. Therefore, the application under Section 7 of IBC was not barred by limitation.

(iii) It is incorrect to state that the default, if any, occurred on or before 31.01.2010, because the account of CD was repeatedly restructured between 2010 – 2014 whereunder CD was granted further facilities/ concessions. Besides that, various Working Capital Consortium Agreements were executed between CD and Banks recording admission of dues and grant of further credit facilities, the last of which is dated 21.03.2014. As CD failed to adhere to the terms of repayment even after restructuring, the account with SBI, once again, turned NPA

[30] (2021) 6 SCC 366

on 28.05.2014. This date was shifted back to 31.01.2010 for the purposes of provisioning as per RBI norms, on account of failure of the restructuring exercise. However, the date of NPA remains 28.05.2014 as per IRAC norms for accounts in the books of the bank.

(iv) The above facts were clarified through the amended application, under Section 7 of IBC, pursuant to the order of this Court dated 15.04.2021. The amended application categorically mentions the date of default and also how subsequent acknowledgements were made by CD, thereby extending the period of limitation.

(v) CIRP proceedings were not mala fide. Rather, criminal proceedings were initiated by CD to avoid repayment of credit facilities, and those proceedings have been challenged before the Karnataka High Court through Criminal Petition No. 6885 of 2018, wherein

stay has been granted on 20.09.2018. Further, mere filing of chargesheet does not prove the allegations. Besides, the same allegations made by the appellant before DRT in TSA No. 9 of 2023 were discarded *vide* order dated 21.03.2024.

(vi) Mere filing of counterclaim before DRT would have no bearing on the outstanding debt unless the same is decreed. Moreover, the counterclaim was filed with the sole intent to detract CIRP proceeding, which would be clear from the following date(s) and event(s):

(a) SBI filed O.A. before DRT on 28.12.2015.

(b) Application under Section 7 was filed on 24.04.2018.

(c) Counterclaim was filed by CD before DRT on 09.08.2018 i.e., after filing of application under Section 7.

(vii) There is nothing in IBC which interdicts a CD from pursuing its remedies, as held by this Court in ***Swiss Ribbons (supra)***. Therefore, the counterclaim for compensation would not come in the way of CIRP proceeding. Moreover, the claim for compensation would be deemed rejected on dismissal of TSA No. 9 of 2023 by DRT *vide* order dated 21.03.2024.

(viii) Once the Adjudicating Authority is satisfied that there is a default of an amount exceeding the threshold, there is hardly any discretion left with the Adjudicating Authority to refuse admission of an application under Section 7 IBC, as held by this Court in ***M. Suresh Kumar Reddy v. Canara Bank and Others***[31].

25. Based on the above submissions, it was prayed on behalf of the respondent that the appeal be dismissed.

[31] (2023) 8 SCC 387

ISSUES

26. We have considered the rival submissions. In our view, the main issues which arise for our consideration in this appeal are:

(i) Whether the application under Section 7 of IBC was liable to be dismissed for lack of material particulars regarding the debt and date of default, as required by Form I prescribed by the 2016 Rules?

(ii) Whether the application under Section 7 of IBC was within limitation?

(iii) Whether the application under Section 7 of IBC was for an oblique purpose and, therefore, ought not to have been admitted, more so, when proceedings *inter se* parties for recovery of debt were pending before various judicial fora?

ANALYSIS

27. Before we proceed to address the issues, we must bear in mind that these proceedings emanate from an application under sub-section (1) of Section 7 of IBC.

Section 7 falls in Part II of IBC. Section 4 (1) of IBC, which falls in Part II, states that this Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is one lakh rupees. The Proviso to sub-section (1) of Section 4 provides that the Central Government may, by notification, specify the minimum amount of default of a higher value, which shall not be more than one crore rupees. In exercise of that power, *vide* notification dated 24th March 2020, the Central Government specified one crore rupees as the minimum amount of default for the purposes of the said section. Thus, a default of one crore rupees or above, post notification dated 24th March 2020, is the threshold at which Part II of IBC applies. In the aforesaid context, we shall examine as to what are those essential ingredients which an application under sub-section (1) of Section 7 of IBC must satisfy.

ESSENTIAL INGREDIENTS FOR AN APPLICATION UNDER SECTION 7(1) OF IBC

28. Sub-section (1) of Section 7 provides that an application may be filed at the instance of 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 specified by the Central Government, when a default has occurred. Section 3 (12)[32] of IBC defines default as non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid. Explanation to sub-section (1) of Section 7 of IBC clarifies that for the purposes of sub-section (1), 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. Therefore, the essential ingredients which an application under sub-section (1) of Section 7 must satisfy are: (a)

[32] **Section 3.** – In this Code, unless the context otherwise requires, -

(12) "default" means any non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;

the applicant must be a financial creditor; (b) there must be a financial debt; (c) there must be a default in respect of payment of financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor; and (d) the default must not be of a value lower than the threshold specified under Section 4 of IBC.

LIMITATION FOR FILING THE APPLICATION UNDER SECTION 7

29. Even if the essential ingredients of an application under Section 7 are satisfied, the application for initiating CIRP is not to be entertained if it is not within limitation. Section 238-A of IBC inserted by Act 26 of 2018 with effect from 06.06.2018 provides that the provisions of 1963 Act would apply to proceedings or appeals before the Adjudicating Authority, the NCLAT, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

30. In ***B. K. Educational Services (P) Ltd. v. Parag Gupta & Associates***[33] this Court held that the definition of "default" in Section 3(12) of IBC uses the expression "due and payable" followed by the expression "and is not paid by the debtor or the corporate debtor…". It was held that when the expressions "due" and "due and payable" occur in Sections 3 (11) and 3 (12) of IBC, they refer to a default which is non-payment of a debt that is due in law i.e., such debt is not barred by the law of limitation. Thus, the corporate insolvency resolution process against a corporate debtor can only be initiated either by a financial or operational creditor in relation to debts which have not become time barred. In addition to above, it was held that Article 137 of 1963 Act would be applicable to an application under Section 7 or 9 of IBC and that the right to sue accrues when default occurs. Therefore, if the default has occurred over three years prior to the date of filing of the

[33] (2019) 11 SCC 633

application, the application would be barred under Article 137 of 1963 Act.

31. In ***Sesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Cooperative Bank Ltd. and Anr.***[34] this Court held that Section 238-A of IBC makes the provisions of 1963 Act, as far as may be, applicable to proceedings before NCLT and NCLAT, and since IBC does not exclude the application of Sections 6 or 14 or 18 of 1963 Act to proceedings under IBC, the same would be applicable to proceedings in NCLT/ NCLAT to the extent feasible. In consequence, even if the default had occurred more than three years prior to the date of filing the application under Sections 7 or 9 of IBC, if there had been acknowledgment of debt within three years of filing the application, while the debt had not become barred by time, the application would be within limitation as the acknowledgment would extend the period of limitation under Section 18 of 1963 Act.[35]

[34] (2021) 7 SCC 313
[35] Dena Bank (Now Bank of Baroda) v. C. Shivakumar Raddy and another, (2021) 10 SCC 330

FORM AND MANNER OF SUCH APPLICATION

32. Sub-section (2) of Section 7 provides the procedure to be adopted in making an application under sub-section (1) of Section 7. According to sub-section (2) of Section 7, the application under sub-section (1) of Section 7 by a financial creditor is to be made in such form and manner and accompanied with such fee as may be prescribed[36].

33. In exercise of the powers conferred by clauses (c), (d), (e) and (f) of sub-section (1) of Section 239 read with Sections 7, 8, 9 and 10 of IBC, the Central Government has notified the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016[37]. Rule 4 thereof provides that an application under Section 7 of IBC shall be made in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Rule 10 thereof, with which we are not

[36] **Section 3 (26)** - 'prescribed' means prescribed by rules made by the Central Government.
[37] 2016 Rules

concerned, provides for other procedural aspects including fee.

34. As one of the issues i.e., issue (i), which arises for our consideration, is whether the application was in conformity with the Form prescribed, we deem it appropriate to reproduce Form 1 below:

Form 1

[*See* sub-rule (1) of Rule 4]

[5]**[APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS *UNDER CHAPTER II OF PART II/ UNDER CHAPTER IV OF PART II OF THE CODE**

[*strike out whichever is not applicable]]

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

[Date]

To,
The National Company Law Tribunal
[Address]
From,
[Names and addresses of the registered offices of the financial creditors]
In the matter of [name of the corporate debtor]
Subject : Application to initiate corporate insolvency resolution process in the matter of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016
Madam/Sir,
[Names of the financial creditor(s)], hereby submit this application to initiate a corporate insolvency resolution process in the matter of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part I

PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CREDITOR MAKING THE APPLICATION)	
1.	NAME OF FINANCIAL CREDITOR

2.	DATE OF INCORPORATION OF FINANCIAL CREDITOR
3.	IDENTIFICATION NUMBER OF FINANCIAL CREDITOR
4.	ADDRESS OF THE REGISTERED OFFICE OF THE FINANCIAL CREDITOR
5.	NAME AND ADDRESS OF THE PERSON AUTHORISED TO SUBMIT APPLICATION ON ITS BEHALF (ENCLOSE AUTHORISATION)
6.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)

Part II

PARTICULARS OF THE CORPORATE DEBTOR	
1.	NAME OF THE CORPORATE DEBTOR
2.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR
3.	DATE OF INCORPORATION OF CORPORATE DEBTOR
4.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)
5.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR
[6][6.	DETAILS OF THE CORPORATE DEBTOR AS PER THE NOTIFICATION UNDER SECTION 55 (2) OF THE CODE— (*i*) ASSETS AND INCOME (*ii*) CLASS OF CREDITORS OR AMOUNT OF DEBT (*iii*) CATEGORY OF CORPORATE PERSON (WHERE APPLICATION IS UNDER CHAPTER IV OF PART II OF THE CODE)]

Part III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL	
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

Part IV

PARTICULARS OF FINANCIAL DEBT	
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)

Part V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR

	ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)
2.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)
3.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)
4.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)
5.	THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)
6.	A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT INFORMATION COMPANY (ATTACH A COPY)
7.	COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT

I, hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

[7][Name of the financial creditor] has paid the requisite fee for this application through [state means of payment] on [date] and served a copy of this application by registered post/speed post/by hand/electronic means to the registered office of the corporate debtor and to the Board].

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

Instructions

Please attach the following to this application:

Annex I Copies of all documents referred to in this application.

Annex II Written communication by the proposed interim resolution

	professional as set out in Form, 2.
Annex III	Proof that the specified application fee has been paid.
Annex IV	Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants.
[8][Annex V	Proofs of serving a copy of the application (*a*) to the corporate debtor, and (*b*) to the Board.]

RELEVANCE OF THE FORM

35. Statutory Form 1 under Rule 4 (1) of the 2016 Rules comprises Parts I to V, of which, Part I pertains to particulars of the applicant, Part II pertains to particulars of the corporate debtor, and Part III pertains to particulars of the proposed interim resolution professional. Parts IV and V require particulars of financial debt with documents, records and evidence of default including the date on which the default occurred. We are concerned with compliance of Parts IV and V.

36. The purpose of providing the necessary particulars in a prescribed form is to give a bird's eye

view of the details of the corporate debtor, the financial debt, the default and the date of default so that the Adjudicating Authority can discard frivolous applications at the threshold. This is clear from clause (b) of sub-section (5) of Section 7 of IBC which empowers the Adjudicating Authority to reject an incomplete application. However, as per the proviso to clause (b) of sub-section (5) of Section 7, if the application is incomplete, the Adjudicating Authority is required to give notice to the applicant to rectify the defects within 7 days of receipt of such notice before rejecting the application.

37. In ***Dena Bank***[38], upon consideration of the provisions of IBC and the Rules and Regulations framed thereunder, this Court held that the provisions of IBC and the Rules and Regulations framed thereunder must be construed liberally and in a purposive manner to further the objects of enactment of the statute, and should not be given a narrow and

[38] See Footnote 35

pedantic interpretation which defeats the purpose of the Act. This Court on a careful reading of the provisions of IBC, and particularly the provisions of sub-sections (2) to (5) of Section 7 read with the 2016 Rules, held that there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed. It was also held that 14 days' time, stipulated in Section 7(4) to ascertain the existence of a default and of curing the defects in 7 days of receipt of notice under the proviso to sub-section (5) of Section 7, is directory and not mandatory, and in an appropriate case, the adjudicating authority may accept the cured application even after the expiry of the aforesaid period.

38. In ***E.S. Krishnamurthy & Ors v. Bharath Hi-Tech Builders (P) Ltd.***[39], after noticing the earlier decisions, this Court held that to assess whether the corporate debtor is in default, the adjudicating

[39] (2022) 3 SCC 161, paragraphs 30 and 34

authority has to merely see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no consequence that the debt is disputed so long as the debt is due i.e., payable, unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It was held that the adjudicating authority thus has only to verify whether an application under sub-section (2) is complete and whether a default above the specified threshold has occurred.

39. In ***M. Suresh Kumar Reddy (supra),*** a decision relied by the respondents, after considering the earlier decisions, this Court clarified that the decision in ***Vidharba Industries (supra),*** a decision relied upon by the appellant, was confined to its own facts and cannot be read and understood as taking a view contrary to the one taken in ***Innoventive (supra)*** and ***E. S. Krishnamurthy (supra)***. Consequently, it was held, once the Adjudicating Authority (NCLT) is

satisfied that a default has occurred, there is hardly any discretion left with it to deny admission of the application under Section 7 of IBC.[40]

40. In our view, a conjoint reading of sub-sections (1), (2) and (5) of Section 7 makes it clear that an application under Section 7 of a financial creditor for initiating CIRP of CD hinges on a default on part of CD of financial debt of an amount exceeding the specified threshold. The Form prescribed for making the application *inter alia* serves the purpose of bringing out the necessary ingredients for presentation of an application under Section 7(1) of IBC. The purpose of providing the date of default is to show that the debt is due and payable i.e., it has not become time barred. Therefore, in our view, if the application is substantially in conformity with the prescribed Form and discloses the necessary ingredients for making an application under sub-section (1) of Section 7 and provides the relevant materials/ information to

[40] See paragraph 11 of M. Suresh Kumar Reddy (citation at Footnote 31)

substantiate those ingredients, the purpose of adhering to the Form is served, and such application is not liable to be rejected under clause (b) of sub-section (5) of Section 7 of IBC on the ground of any insignificant omission or error in the application. The aforesaid view finds support from use of the expression 'may' before 'reject' in Section 7(5)(b) of IBC. This means that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all the necessary ingredients are satisfied for presentation of an application under Section 7(1) of IBC, it may not reject the application for an insignificant omission or non-adherence to the Form.

41. In light of the aforesaid legal position, we will consider the issues posited above.

ISSUE (I)

42. In the present case, there is no dispute about the existence of financial debt and default. The dispute is as regards the date of default. Date of default assumes importance because it is the factor which determines

whether the application under sub-section (1) of Section 7 is within limitation or not. The argument on behalf of the appellant that the application does not specify the exact date of default but only the date on which the debt was declared NPA and, therefore, was liable to be rejected, in our view, is misconceived as the application was comprehensively amended pursuant to the order of this Court in the earlier round of litigation. The amended application was taken on record by the order of NCLAT dated 15.07.2021. Once the amended application was accepted on record, it became part of the record and had to be considered.

43. The argument that amendments were more extensive than what was permitted by this Court cannot be accepted considering the decision of this Court in ***Dena Bank (supra)*** where the power of the Adjudicating Authority to allow rectification of application and acceptance of documents beyond the stipulated time frame was recognized.

44. The amended application and the documents placed gave the material particulars of how the debt was restructured and fresh working capital consortium agreements were entered into. In that context, the dates on which the accounts were declared NPA were portrayed as the date(s) of default. These NPA dates were 28.5.2014, 30.6.2014, 10.10.2014 and 31.12.2014 for SBI, PNB, Corporation Bank and UCO Bank respectively. The application also disclosed that on 30.09.2015, CD's debt was disclosed in the balance sheets of the year ending 31.03.2014 and 31.03.2015, signed by one of its directors /officers.

45. What is important here is that CD and the creditors undertook a debt restructuring exercise and in connection therewith various Working Capital Consortium agreements were executed and signed acknowledging the existing debt, thereby giving it a fresh lease of life. In that context, as to when the initial default had occurred lost its relevance because, by virtue of the restructuring exercise and subsequent

agreements, the existing debt got a fresh lease of life. In such circumstances, the disclosure of NPA date(s) as the date(s) of default was justified which, coupled with acknowledgment in the balance sheets, served the purpose of indicating that the debt was not time barred as on 25.04.2018 i.e., the date of presentation of the Section 7 application. We are therefore of the view that the amended application under Section 7 disclosed all the material particulars to fulfill the ingredients of an application under Section 7(1) of IBC. Issue No.(i) is decided in the aforesaid terms.

ISSUE (II)

46. On the issue as to whether the Section 7 application was within limitation, the application was presented on 25.04.2018 i.e., within three years from 30.09.2015 i.e., the date on which CD's balance sheets for the year ending 31.03.2014 and 31.03.2015 were signed. An acknowledgment of debt in the balance sheet of the CD is considered sufficient to extend the period of limitation if other conditions of a valid acknowledgment

are fulfilled[41]. To wriggle out from the consequences of the aforesaid acknowledgement, the appellant has raised a plea that the balance sheets were not submitted for approval of the members of CD and were not authenticated by the person authorized. What transpires from the record is that the balance sheets were signed by one of the directors of CD and were brought on record by CD itself in S.A. No.152 of 2016 for challenging the measures taken by the Banks under the SARFAESI Act[42].

47. Section 18 of 1963 Act provides that 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. Clause

[41] Asset Reconstruction Company v. Bishal Jaiswal (See Footnote 30)

[42] See: Paragraph 9 of Written Submissions on behalf SBI

(a) of the Explanation to Section 18 provides that an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right. Clause (b) of the said Explanation provides that for the purposes of Section 18, the word 'signed' means signed either personally or by an agent duly authorized in this behalf. A director of a company can be considered its agent for the purposes of Section 18 of 1963 Act.

48. As there appears no dispute that the director of CD had signed the balance sheets and those were produced by CD in proceedings before DRT, the acknowledgment therein of the debt, *albeit* with a caveat that the recovery matter is *sub judice* before DRT, in our view, would be

sufficient to serve as an acknowledgment within the purview of Section 18 of 1963 Act.

49. Thus, we find no error in the view taken by NCLAT that such acknowledgement had the effect of extending the period of limitation by three years starting from 30.09.2015. Insofar as the claim that acknowledgment was not made within three years from the date of default is concerned, suffice it to say that from time-to-time various Working Capital Consortium Agreements were executed between CD and the Banks. As many as four such agreements i.e., dated 18.03.2010, 30.03.2011, 18.04.2013 and 21.03.2014, were set up in the amended application to indicate that CD availed fresh credit facilities and in the process acknowledged its past liability. In such circumstances, NCLAT was correct in holding that the acknowledgment was within the period of limitation and, therefore, the period of limitation would run till 29.09.2018. In consequence, the Section 7 application filed on 25.04.2018 was within the period of limitation as prescribed by Article 137.

50. At this stage, we shall deal with another submission made on behalf of the appellant. According to the appellant, NCLAT had observed that NPA date in respect of credit facilities extended by SBI was shifted to the year 2010 as per RBI master circular dated 01.07.2013, therefore, if the date of NPA falls in the year 2010, the acknowledgement in the balance sheet(s) made on 30.09.2015 would be beyond the period of three years. Consequently, it would not extend the limitation period. The aforesaid submission is out of context. NCLAT had not observed that the date of default would fall in the year 2010. Rather, NCLAT referred to the master circular of RBI to indicate that the shifting of NPA date to the year 2010 was merely for bank's asset classification. In our view, how a bank classifies its debt for managing its balance sheet is not a factor determining the starting point of limitation more so, when the debt is restructured and is acknowledged in fresh working capital consortium agreements entered for availing credit facilities. What is relevant is that by

virtue of execution of these working capital consortium agreements the banks got a fresh lease of life for their dues and based on those agreements, new NPA date(s) became relevant as starting point for computing limitation.

51. In ***Axis Bank Limited v. Naren Seth and another***[43], this Court held that a one-time settlement proposal of the debtor can constitute a valid acknowledgment. Likewise, in ***Dena Bank (supra)***, this Court held that an offer for one-time settlement of a live claim, made within the period of limitation, can be construed as an acknowledgment to attract Section 18 of 1963 Act. In light thereof, if CD had entered into various working capital consortium agreements with the Banks while availing further credit facilities and in the process acknowledged its past debt, it would constitute a valid acknowledgment for extending the limitation period. Thus, the NPA dates, based on subsequent working capital consortium agreements, coupled with

[43] (2024) 1 SCC 679

acknowledgment of debt(s) in the balance sheets signed on 30.09.2015, extended the limitation period up to 29.09.2018, within which the Section 7 application came to be filed.

52. Another argument that NPA date in the earlier order of NCLT / NCLAT was found to be falling in the year 2010 therefore the application was time barred, is also worthy of rejection. This is because the earlier order of NCLAT was set aside and, subsequently, the Section 7 application was comprehensively amended under order of this Court which has attained finality. As a result, there was no bar for NCLAT to return a fresh finding regarding the date on which the account was declared NPA. In consequence, we do not find any error in the finding returned by NCLAT that the Section 7 application was within limitation. Issue No. (ii) is decided accordingly.

ISSUE (III)

53. The next issue raised on behalf of the appellant is that the application under Section 7 was filed with an

oblique purpose to stall the proceedings initiated by the Banks at other fora and to penalize CD for initiating criminal proceedings against the Banks. In addition, it is submitted on behalf of the appellant that a counterclaim of Rs.1500 crores was set up, which was more than the outstanding debt, and therefore, the application under Section 7 of IBC was submitted to avoid the consequences of those proceedings.

54. We do not find any substance in the aforesaid plea as initiation of proceedings by a financial creditor under other statutes does not bar filing of an application under the provisions of IBC. Moreover, mere pendency of a counterclaim for damages against a financial creditor will not operate as a bar on the right of the financial creditor to invoke the provisions of IBC.

55. Insofar as the institution and pendency of criminal proceedings are concerned, they will be decided on their own merits. Besides, mere allegations about commission of offences by officers of the financial creditor cannot stifle proceedings under IBC, particularly when those

offences have no bearing on the existence of the financial debt. Issue No. (iii) is decided in terms above.

CONCLUSION

56. In conclusion, we find no merit in the appeal. The same is dismissed. Interim order, if any, is discharged.

57. Pending applications, if any, shall stand disposed of.

.....J.
(P. S. NARASIMHA)

.....J.
(MANOJ MISRA)

New Delhi;
February 12, 2026