

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 949 of 2020**

**In the matter of:**

**Stressed Assets Stabilization Fund**

**....Appellant**

**Vs.**

**Royal Brushes Pvt. Ltd.**

**....Respondent**

**Present:**

**Appellant: Ms. Anju Bhushan, Mr. Kanishk Rana and Mr. Aditya Goel, Advocates.**

**ORDER**

**(Through Virtual Mode)**

**04.11.2020:** This appeal is directed against the impugned order dated 18<sup>th</sup> March, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Court-III, Special Bench, Mumbai in CP IB-902/I&BP/MB/2019 by virtue whereof the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) filed by the Appellant- ‘Stressed Assets Stabilization Fund’ against the Corporate Debtor- ‘Royal Brushes Pvt. Ltd.’ came to be dismissed on the ground that the default had occurred on 1<sup>st</sup> July, 2001 and the Corporate Insolvency Resolution Process could not be initiated beyond three years in terms of Article 137 of the Limitation Act, 1963.

2. The sole ground on which the Appellant assails the impugned order is that the Respondent- ‘Corporate Debtor’ had made an OTS proposal in the year 2006 for Rs. 353 Lakh which was subsequently revised on 7<sup>th</sup> July, 2006 but the

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negotiated settlement was removed on 13<sup>th</sup> December, 2006 due to failure on the part of the Respondent- ‘Corporate Debtor’ to comply with the terms of restructuring of debt.

3. It is manifestly clear that the ground agitated for assailing the impugned order is founded on plea of extension of limitation. The date of default being 1<sup>st</sup> July, 2001, the cause of action would not shift and therefore, limitation for initiating Corporate Insolvency Resolution Process would commence from the date of default.

4. Subsequent restructuring of debt vide negotiated settlement which admittedly aborted and failed, would not give a fresh cause of action to Appellant. Such plea would not sustain even if the limitation is computed from the date of failure of such negotiated settlement as the application is still hit by limitation.

5. Learned counsel for the Appellant submits that there is continuing cause of action. This is a misplaced argument as once the date of default is there which provides cause of action to the Appellant, limitation begins to run from such date. The Hon'ble Apex Court in “**Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.- 2020 SCC OnLine SC 647**” and “**Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr.- (2019) 10 SCC 572**” has clearly laid down that the limitation computed in terms of Article 137 of the Limitation Act, 1963 would commence

from the date of default and in the event of account being declared NPA the date of default would be the date when the account was declared as NPA.

6. We find no merit in this appeal. The same is dismissed. However, we make it clear that the dismissal of this appeal will not preclude the Appellant from seeking appropriate legal remedy before the Competent Forum for recovery of the amount.

**[Justice Bansi Lal Bhat]  
Acting Chairperson**

**[Justice Anant Bijay Singh]  
Member (Judicial)**

**[Dr. Alok Srivastava]  
Member (Technical)**

*AR/g*