

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

**Company Appeal (AT) (Insolvency) No. 804of 2020**

**In the matter of:**

**Sri Kaustuv Ray**

**....Appellant**

**Vs.**

**State Bank of India & Anr.**

**....Respondents**

**Present:**

**Appellant: Mr. Abhijeet Sinha, Mr. Arjun Asthana, Mr. Subhankar Nag, Advocates.**

**Respondents: Mr. PV Dinesh, Mr. Ashwini Kr. Singh, Advocates for R1.**

**Ms. Bhuvaneshwari Ranasnathan (IRP, R2), Ms. Smriti Churiwal, Mr. Jaivir Sidhant, Mr. Utsav Mukherjee, Ms. Deepti Babel, Ms. Megha Tyagi, Mr. Aman Varma, Advocates for R2 (IRP)**

**ORDER**

**(Through Virtual Mode)**

**20.01.2021:** Pleadings are complete. Short written submissions have also been filed.

Heard learned counsel for the parties. The only issue raised in this appeal is that the claim of Respondent No.1- 'State Bank of India'- ('Financial Creditor') was barred by limitation as default occurred in the year 2013.

After hearing learned counsel for the parties briefly, we find that the account of Corporate Debtor was classified as NPA on 17<sup>th</sup> June, 2013. The Corporate Insolvency Resolution Process (CIRP) was triggered by the Financial Creditor by filing application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) on 1<sup>st</sup> April, 2019. It is by now well settled by a catena of judicial pronouncements from the Hon'ble Apex Court as also by this Appellate Tribunal that the application under Section 7 is governed by Article 137 of the Limitation Act providing for limitation period of three years which has to be reckoned from the date of default viz. the date on which the

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account of Corporate Debtor was classified as NPA. That being the position of law established through a series of Judgments of the Hon'ble Apex Court in **“B.K. Educational Services Private Limited Vs. Parag Gupta and Associates- (2019) 11 Supreme Court Cases 633”**; **“Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd &Anr.-(2019) 10 Supreme Court Cases 572”**; **“Jignesh Shah &Anr. Vs. Union of India &Anr.-(2019) 10 Supreme Court Cases 750”** and this Appellate Tribunal in **“V. Padmakumar vs. Stressed Assets Stabilization Fund (SASD) &Anr.- Company Appeal (AT) (Insolvency) No. 57 of 2020”** and with the latest pronouncement and dictum of the Hon'ble Apex Court in **“Invent Assets Securitization and Reconstruction Private Limited vs. Xylon Electrotechnic Private Limited- Civil Appeal No. 3783 of 2020 (decided on 7<sup>th</sup> January, 2021)”**. Respondent No.1 (Financial Creditor) could not have triggered CIRP by filing application under Section 7 of the 'I&B Code' which was barred by limitation.

Viewed in this context, the impugned order admitting application under Section 7 filed by Respondent No.1- (Financial Creditor) in terms of the impugned order dated 4<sup>th</sup> February, 2020 cannot be sustained. The impugned order is accordingly set aside. Adjudicating Authority will now close the proceeding. The IRP is relieved from her duties and the 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.

Fee of the 'Interim Resolution Professional' for the period she has worked will be decided by the Adjudicating Authority. The appeal is allowed with aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

Disposal of this appeal shall not stand in the way of the Financial Creditor pursuing any legal remedy for recovery in accordance with law.

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

**[KanthiNarahari]  
Member (Technical)**

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

***AR/g***