

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 604 of 2019

IN THE MATTER OF:

Mr. Rajen Amrit Lal Parikh

.....Appellant

Vs.

**Asset Reconstruction Company (India)
Ltd. & Anr.**

.....Respondents

Present :

For Appellant: Mr. Ashish Kothari, Advocate

For Respondents: Mr. Dinkar Singh, Advocate

O R D E R

06.08.2019 - The Appellant – ‘ Mr. Rajen Amrit Lal Parikh’, Director of ‘GPT Steel Industries Ltd.’ (‘Corporate Debtor’) has preferred this appeal against the order dated 2nd May, 2019 passed by the Adjudicating Authority (‘National Company Law Tribunal’), Ahmedabad Bench, Ahmedabad admitting application u/s 7 of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) preferred by Asset Reconstruction Company (India) Ltd. (‘Corporate Debtor’).

2. Earlier, when the matter was taken up, learned counsel appearing on behalf of the Appellant submitted that the application u/s 7 of the ‘I&B’ Code is *barred by limitation* and placed reliance in the decision of Hon’ble Supreme Court in *B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates (Civil Appeal*

...contd.

No. 23988 of 2017).

It was further submitted that the Adjudicating Authority while admitting the application under Section 7 has not appointed any 'Interim Resolution Professional'. According to the learned counsel for the Appellant, the application under Section 7 was not complete.

3. However, while discussing the matter on the issue of *limitation*, learned counsel for the Appellant sought some time to settle the matter with the Respondent – 'Financial Creditor'. The case was adjourned from time to time but no settlement is reached and it is informed that the matter is pending consideration.

We have heard learned counsel for the parties and perused the records.

4. For maintaining the application u/s 7 of the 'I&B' Code, Article 137 of Part II of Third Schedule of the Limitation Act, 1963 is applicable which deals with 'Other applications' and reads as follows :

PART II – OTHER APPLICATIONS

Description of application	Period of limitation	Time for which period being to run
137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	Where the right to apply accrues

...contd.

5. As the present case has admittedly the right to apply accrued to the Appellant ('Financial Creditor') since 1st December, 2016 i.e. the date when 'I&B' Code came into force, we hold that the Application under Section 7 of the 'I&B' Code is well within the time and maintainable.

6. So far as the claim of the Respondent is concerned, the Adjudicating Authority noticed that the 'Corporate Debtor' admitted the debt, as reflected in para 13 of Impugned Order as quoted below: -

- (I) *“Letter dated 01.12.2010 addressed to consortium of banks proposing for one-time settlement of loans availed from six banks;*
- (II) *Letter dated 23rd October, 2012 addressed to State Bank of India requesting the respondent company to allow continuing operations and to convert 75% of principal amount as Redeemable Preference Shares;*
- (III) *Letter dated 08.03.2013 addressed to State Bank of India Proposing one-time settlement;*
- (IV) *Letter dated 29.05.2015 addressed to consortium of banks to review the status of one-time settlement;*

...contd.

(V) *Letter dated 23.03.2016 addressed to the applicant/ financial creditor putting forward a one-time settlement proposal.”*

7. The ‘Corporate Debtor’ while borrowing the amount also mortgaged its immovable property on 10th March, 2005. The corporate guarantee / personal guarantee was also given by the ‘Corporate Debtor’ on 5th March, 2005.

8. From the aforesaid facts, it is clear that there is a continuous cause of action. Further, we find that the ‘Corporate Debtor’ by its letter dated 23.06.2016 also requested the ‘Financial Creditor’ to accept one-time settlement. Thus, we find that the claim of Respondent (‘Financial Creditor’) was not *barred by limitation*. Further, there being mortgaged property the period of limitation to enforce payment of money secured will be 12 years when money sued for becomes due. For the reason aforesaid, we hold that the claim of ‘Financial Creditor’ is not *barred by limitation*.

9. On the earlier occasion when we heard the matter, learned counsel for the Appellant sought some time to settle the matter but it is informed that negotiation is still going and is pending. However, on such ground, we are not inclined to keep appeal pending in absence of any substance in the appeal.

....contd/

10. In the facts and circumstances we are not inclined to interfere with the Impugned Order dated 2nd May, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal'), Ahmedabad Bench, Ahmedabad, allow the Appellant to take benefit of Section 12A of the 'I&B' Code. Interim Order passed on 2nd May, 2019 stands vacated.

The appeal stands disposed of with the aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/gc