

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1389 of 2019

IN THE MATTER OF:

R.B. Synthetics & Anr. Appellants

Vs

Bee Ceelene Textile Mills Pvt. Ltd. Respondent

Present:

For Appellants: **(A Company Secretary appeared but attendance not marked).**

O R D E R

02.12.2019 The Appellant – R.B. Synthetics & Anr. ('Financial Creditors') filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') for initiating 'Corporate Insolvency Resolution Process' against M/s. Bee Ceelene Textile Mills Private Limited. The Adjudicating Authority (National Company Law Tribunal) Ahmedabad Bench, Ahmedabad, rejected the application on the ground of limitation.

2. The Company Secretary appearing on behalf of the Appellants submits that the Appellants were entitled for extension of period under Section 5 of the Limitation Act, 1963 as the Appellant, who was the Applicant had sufficient cause for not preferring the application within the period. It was submitted that the parties were in dispute and petition filed under Section 397 and 398 of the Companies Act, 1956 (now Sections 241 and 242 of the Companies Act, 2013) is pending. However, such cause cannot be accepted to entertain an application filed under Section 7 of the I&B code, when it was clearly hit by limitation.

3. If parties were contesting a petition under Section 397 and 398 of the Companies Act, 1956, it means they were Member of the Companies. If that

be so, it has not been made clear as to how the Appellants come within the meaning of 'Financial Creditors'. However, we are not deciding the question as to whether the Appellants are 'Financial Creditors' or not, as the Adjudicating Authority has rightly held and we also find that application filed under Section 7 of the I&B code was barred by limitation.

4. It is not in dispute that the default occurred in the year 2012 and the application under Section 7 of the I&B Code was filed on 5th October, 2017. According to the Appellants, it was filed after the order passed in petition under Section 397 and 398 of the Companies Act, 1956, but that cannot be a ground to file an application under Section 7 with delay.

5. The Adjudicating Authority has noticed the decision of the Hon'ble Supreme Court and observed: -

*"23 Before proceeding further on merit of the case, we find it expedient to see as to whether it is payable under law or not in light of the decision taken by Hon'ble Supreme Court of India in **B.K. Educational Services (P) Ltd. vs. Parag Gupta & Associates** ([2018] 1 IBJ (JP) 649 (SC)) wherein it is held as under: -*

"The Limitation Act is applicable to applications filed under Sections 7 and 9 from the inception of the Code. Article 137 of the Limitation Act get attracted. The right to sue, therefore, has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases, where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such applications."

24. In light of the above decision, we find that the default occurred in the year 2012 and right to sue accrues in the year 2012. The applicant has filed the instant application on 5th October, 2017 when the default has occurred over three years prior to filing of the application. Thus, in view of the above referred decision of the Hon'ble Supreme Court, the said debt is not payable under law. Otherwise also, if we go by **Section 137 of the Limitation Act, 1963**, the application is barred by limitation. Section 137 of the Limitation Act, 1963 is reproduced here below: -

137	Any other application for which no period of limitation is provided elsewhere in this division	Three years	when the right to apply accrues
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25. As a matter of fact, if we go by Section 18(1) of the Limitation Act, 1963 also, the instant application is not maintainable. For ready reference Section 18 of the Limitation Act, 1963 is reproduced below: -

“18. Effect of acknowledgement 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.”

26. *In the instant case there is no acknowledgement by the respondent after the year 2012.*
 27. *In view of the above discussions we are of the considered view that the instant application No. CP (IB) 158 of 2017 is not maintainable and hence rejected.”*
6. On hearing the Counsel for the Appellants, we find no reason to interfere with the aforesaid finding of the Adjudicating Authority. In absence of any merit, the Appeal is dismissed. No costs.

[Justice S. J. Mukhopadhyaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

Ash/GC