

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 96 of 2018

IN THE MATTER OF:

Anandkumar & another

...Appellants

Versus

Punjab National Bank & anr.

...Respondents

Present:

For Appellants : Mr. S. D. Khati, Advocate

**For 1st Respondent: Mr. Rajesh Kr. Gautam and Mr. Soumo Palit,
Advocates**

O R D E R

16.03.2018 The appellants, shareholders of 'Corporate Debtor' has challenged the order dated 14th February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby and whereunder an application under Section preferred by the respondent – Punjab National Bank (Financial Creditor) has been admitted, order of moratorium has been passed and the Insolvency Resolution Professional has been appointed with certain directions.

2. Learned counsel for the appellant submits that in the notice issued under Section 433 of the Companies Act, 1956, the 'Financial Creditor' shown a lesser amount whereas in the application under Section 7 higher amount of Rs.79,10,51,494 has been shown as outstanding dues as on 31st May, 2017. It is submitted that there being variation in the claim amount, this Section 7 application was not maintainable.

3. Learned counsel appearing on behalf of the respondent brought to our notice that in the notice under Section 433 the amount as was due on 30th April, 2016 was shown whereas in the application under Section 7, the amount as due on 31st May, 2017 has been shown, which includes subsequent interest.

4. Similar issue fell for consideration before this Court in “*Minitri Tea Company Limited & Ors. Vs. Punjab National Bank in Company Appeal (AT) (Insolvency) No. 237 of 2017*”. In the said case, this Appellate Tribunal by order dated 22nd December, 2017 observed and held as follows:

9. *In the present case, it is not disputed that there is a debt due and default has accrued. The Appellant(s), including the Corporate Debtor, has not claimed that default has not occurred in the sense that the “debt” includes disputed claim but not due. It is also not the case of the Appellant(s) that the debt is not due nor payable in law or in fact. The amount of debt, which is the claim amount will always vary with the default of debt amount which may be part of the claim and total amount and may include interest.*

10. *In the present case as we find that the Respondent on calculation of interest have shown the amount due and default taken place, such records placed before the Adjudicating Authority and record being complete if the application under Section 7 of the I & B Code has been*

entertained as admitted, no interference is called for.

We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no orders to cost.”

5. As the case of the appellant is covered by the aforesaid decision, the first ground taken by the appellant cannot be accepted.

6. Learned counsel appearing on behalf of the appellants next submits that the amount claimed is barred by limitation. However, such submission cannot be accepted. In “*M/s. Speculum Plast Pvt. Ltd. vs. PTC Techno Pvt. Ltd. – Company Appeal (AT)(Insolvency) NO. 47 of 2017*”, this Appellate Tribunal by judgment dated 7th November, 2017 held :

68. *In view of the settled principle, while we hold that the Limitation Act, 1963 is not applicable for initiation of 'Corporate Insolvency Resolution Process', we further hold that the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim.*

69. *If there is a delay of more than three years from the date of cause of action and no laches on the part of the Applicant, the Applicant can explain the delay. Where there is a continuing cause of action, the question of*

rejecting any application on the ground of delay does not arise.”

7. In the present case, we find that there is a continuous cause of action and interest has accrued during all the year and notice under Section 433 was issued on 25th November, 2016 to which the appellants replied and objected the claim. Therefore, it cannot be stated that there is delay of more than three years from the date of cause of action and there is a laches on the part of the respondent – Punjab National Bank. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc