

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 735 of 2018

IN THE MATTER OF:

Shankar Vardharajan

...Appellant

Versus

**M/s. Dewachand Ramsaran
Corporation Pvt. Ltd. & anr.**

...Respondents

Present:

For Appellant : Mr. Anish R. shah and Mr. Ravhav R., Advocates

For 1st Respondent: Mr. Ashim Sood and Ms. Payal Chandra, Advocates

O R D E R

28.11.2018 This appeal has been preferred by the Director of 'M/s. Win Wind Power Energy' (Corporate Debtor) against the order dated 28th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai in C.P./250/IB/2018 whereby and whereunder the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, '**the I&B Code**') preferred by 'M/s. Dewachand Ramesaran Corporation Private Limited' has been admitted and 'corporate insolvency resolution process' has been initiated against the 'Corporate Debtor'.

2. Learned counsel appearing on behalf of the appellant submitted that claim of the respondent was time barred as they had claimed from 'M/s. Win Wind Power Energy' of various project in the year 2014. Reliance has been placed on the decision of the Hon'ble Supreme Court in '*B.K. Educational Services Pvt. Ltd.*

vs. Parag Gupta and Associates' in Civil Appeal No. 23988 of 2017 wherein the Hon'ble Supreme Court observed that the Limitation Act has in fact been applied since the inception of the Code and observed as below:

- “27. *It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default 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 application.*
28. *In view of our finding that the Limitation Act has in fact been applied from the inception of the Code, it is unnecessary for us to go into the arguments based on the doctrine of laches. The appeals are therefore remanded to the NCLAT to decide the appeals afresh in the light of this judgment.”*

As per Section 238A of the I&B Code :

“238A. Limitation.—*The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.*”

3. It is true that the Limitation Act is applicable as far as it practicable in terms of Section 238A of the I&B Code. For triggering a resolution process under Section 7 or Section 9 or Section 10 of the I&B Code, Article 137 of Part II of the Limitation Act is applicable, which reads as follows:

PART II – OTHER APPLICATIONS

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

From the aforesaid provision, it is clear that where the period of limitation has not been prescribed elsewhere, three years limitation period has been prescribed since the date when right to apply accrues.

4. In the present case, the right to apply under Section 9 of the I&B Code accrued to the respondent since 1st December, 2016 when the I&B Code came

into force. Therefore, we find that for triggering the application under Section 9, the application is within the time limit.

5. So far as the claim is concerned, it is for the 'Interim Resolution Professional / Resolution Professional' to decide the claim, which may be corrected by the Adjudicating Authority if so required, and in appropriate case, he may decide whether the claim is time barred or not.

6. In the present case, it is not the case of the appellant that there is no debt payable in the eyes of the law. In this case an amount of Rs.1,99,27,145/- was payable together with interest @ 18% per annum as claimed by the respondent. This claim was made initially in the year 2014 when the company petition was filed, which was disposed of due to certain defects in the earlier application on 1st August, 2017. Therefore, the present application cannot be stated to be barred by limitation and on the other hand we find there is continuous cause of action.

For the aforesaid reason, we are not inclined to interfere with the impugned order passed by the Adjudicating Authority. The appeal is accordingly dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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