

3. The question whether the Limitation Act, 1963 will be applicable for initiation of 'corporate resolution process' under Section 7 or 9 or 10 of I & B Code, fell for consideration before this Appellate Tribunal in "*M/s. Speculam Plast Pvt. Ltd. vs. PTC India Pvt. Ltd. etc. in Company Appeal (AT) (Insolvency) No. 47 of 2017*". This Appellate Tribunal by judgment dated 7th November, 2017 observed and held as follows :

- “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.*
- 70. Therefore, if it comes to the notice of the Adjudicating Authority that the application for initiation of 'Corporate Insolvency Resolution Process' under section 7 or Section 9 has been filed after long delay, the Adjudicating Authority may give opportunity to the Applicant to explain*

the delay within a reasonable period to find out whether there are any laches on the part of the Applicant.

71. *The stale claim of dues without explaining delay, normally should not be entertained for triggering 'Corporate Insolvency Resolution Process' under Section 7 and 9 of the 'I&B Code'.*

72. *However, the aforesaid principle for triggering an application under Section 10 of the 'I&B Code' cannot be made applicable as the 'Corporate Applicant' does not claim money but prays for initiation of 'Corporate Insolvency Resolution Process' against itself, having defaulted to pay the dues of creditors.*

In so far it relates to filing of claim before the 'Insolvency Resolution Professional', in case of stale claim, long delay and in absence of any continuous cause of action, it is open to resolution applicant to decide whether such claim is to be accepted or not, and on submission of resolution plan, the Committee of Creditors may decide such question. If any adverse decision is taken in regard to any creditor disputing the claim on ground of delay and laches, it will be open to the aggrieved creditor to file objection before the Adjudicating Authority against resolution plan and for its necessary correction who may decide the same in accordance with the observations as made above."

4. In view of the decision in “*M/s. Speculum Plast Pvt. Ltd.* (Supra), we hold that the Adjudicating Authority was wrong in holding that the application was barred by limitation.

5. There are other factors to be noticed before treating an application under Section 433 of the Companies Act, 1956 as an application under section 9 of I&B Code in terms of Rule 5 of “The Companies (Transfer of Pending Proceedings) Rules, 2016”, which reads as follows:

“5. Transfer of Pending proceedings of Winding up on the ground of inability to pay debts.— (1) *All petitions relating to winding up of a company under clause (e) of Section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of Section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:*

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under Sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible

to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.”

6. In terms of Rule 5, if an application under Section 433 is transferred, it is to be seen whether within the time prescribed the applicant provided all information other than relevant information(s) as per the I & B Code and as required to be furnished in requisite form prescribe under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. For treating the application as an application under Section 9, it is to be seen as to whether the applicant had issued notice under Section 8(1) and received a reply under Section 8(2) of the I &B Code. If notice has been issued and reply has been received, then only it can be seen whether there is an ‘existence of dispute’. All these issues are required to be noticed from the records and, therefore, we are not going to deliberate on such issues at this stage.

7. For the reasons aforesaid, we set aside the order dated 10th November, 2017 and remit the case to the Adjudicating Authority (National Company law Tribunal), Chennai passed in TCP/170/(IB)/CB/2017 and will reconsider the issue after notice to the parties.

8. It will be open to the respondent to point out whether notice under Section 8(1) of the I&B Code was issued on him and in reply he raised any objection and in such case if the notice was issued, whether there is an 'existence of dispute' or not. In case no such notice was issued then the application under Section 433 be treated as abated. Similarly in other information which are required to be given in Form 5 and has not been provided in the petition filed under Section 433, in such case the application cannot be dismissed.

9. The appeal is allowed and the case is remitted back to the Adjudicating Authority (National Company Law Tribunal), Chennai with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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