

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 1027 of 2019

IN THE MATTER OF:

Binay Sarawgi

...Appellant

Versus

M/s. Swastik Fruits Products ltd.

Through the Interim Resolution Professional

...Respondent

Present:

For Appellant :

**Mr. Ritesh Khare and Mr. Sidharth Bansal,
Advocates**

For Respondent :

Ms. Pooja Bahry, Resolution Professional

O R D E R

15.10.2019 The Respondent – ‘International Asset Reconstruction Company Private Limited’ (Financial Creditor) filed an application under Section 7 of the ‘Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’) for initiation of ‘Corporate Insolvency Resolution Process’ against ‘M/s. Swastik Fruits Products Limited’ (Corporate Debtor). The Adjudicating Authority (National Company law Tribunal), Bench III, New Delhi by impugned order dated 6th September, 2019 having admitted the application, which has been challenged by the Appellant – Director/Shareholder of the ‘Corporate Debtor’. Learned counsel for the Appellant submits that the last instalment was paid by the ‘Corporate Debtor’ on 12th February, 2016 but subsequently the Respondent asked the ‘Corporate Debtor’ to pay the amount to the extent of Rs.17,72,70,466.98. Having defaulted to pay the amount, the ‘Financial

Creditor' filed an application under Section 7 of the 'I&B Code', which according to the Appellant is barred by limitation.

2. In the present case, we find that the 'Financial Creditor' passed an order for recalling the loan in April, 2016 and subsequently filed the application under Section 7 of the 'I&B Code' on 28th March, 2019, we hold that the application under Section 7 is well within the time and not barred by limitation.

3. Ms. Pooja Bahry, Interim Resolution Professional (Now 'Resolution Professional') submits that the 'Corporate Insolvency Resolution Process' is going on and if the Appellant intends to settle the matter, he may move the application under Section 12A of the 'I&B Code'.

4. In the facts and circumstances though we are not inclined to interfere with the impugned order dated 6th September, 2019 but give liberty to the Appellant to take advantage of Section 12A of the 'I&B Code' before approval of any 'resolution plan'.

The appeal stands disposed of with aforesaid liberty.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc