

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 72 of 2018

IN THE MATTER OF:

M/s. Shri Maruti Electrical Enterprises Ltd. ...Appellant

Versus

M/s. SAS Real Pvt. Ltd. ...Respondent

Present:

For Appellant :

For Respondent : Mr. Ashwin Kumar D.S., Advocate

Company Appeal (AT) (Insolvency) No. 76 of 2017

IN THE MATTER OF:

M/s. Parag Gupta & Associates ...Appellant

Versus

M/s. B.K. Educational Services Pvt. Ltd. ...Respondent

Present:

For Appellant : Mr. Parag Gupta, Advocate

**For Respondent : Mr. Robin R. Davi and Mr. Febin M. Varghese,
Advocates**

Company Appeal (AT) (Insolvency) No. 77 of 2017
I.A. No. 1817 of 2018

IN THE MATTER OF:

**International Road Dynamics
South Asia Pvt. Ltd. ...Appellant**

Versus

D.A. Toll Road Pvt. Ltd. ...Respondent

Present :
For Appellant : Mr. Joydip Bhattacharya and Mr. Hitesh Kumar,
Advocates

Company Appeal (AT) (Insolvency) No. 78 of 2017

IN THE MATTER OF:

Akshay Infrastructure Pvt. Ltd. ...Appellant

Versus

LDS Engineers Pvt. Ltd. ...Respondent

Present :
For Appellant : Mr. Navodaya Rajpurohit and Mr. Joseph Pookkat,
Advocates

For Respondent : Mr. Sanjay Goswamy, Advocate

Company Appeal (AT) (Insolvency) No. 178 of 2018

IN THE MATTER OF:

M. Chakravarthi ...Appellant

Versus

**M/s. Sawhney Trading Company Pvt. Ltd.
& anr. ...Respondents**

Present :
For Appellant : Mr. M. A. Venkata Subramanian, Advocate

Company Appeal (AT) (Insolvency) No. 312 of 2018

IN THE MATTER OF:

Brijesh Kumar Agarwal ...Appellant

Versus

Punjab National Bank & anr.

...Respondents

Present:

**For Appellant : Mr. Robin R. David and Mr. Febin M. Varghese,
Advocates**

ORDER

11.12.2018 In view of the order of remand by the Hon'ble Supreme Court, in each of the appeals, for determination of one of the issue relating to limitation, it is accepted that the appellants case are covered by order of this Appellate Tribunal in '*M/s. Speculum Plast Pvt. Ltd.*' wherein similar issue is involved and the matter has been remitted back to the Tribunal.

This Appellate Tribunal by order dated 1st November, 2018 passed in '*M/s. Speculum Plast Pvt. Ltd. vs. PTC Techno Pvt. Ltd.*', observed and directed as follows:

"This appeal has been preferred by 'M/s Speculum Plast Pvt. Ltd.' against order dated 26th July, 2018 passed by Adjudicating Authority (National Company Law Tribunal), New Delhi Bench which reads as follows:

ORDER

Ld. Counsel for the Operational Creditor has placed reliance on the decision of the Hon'ble NCLAT in the matter of Company Appeal No. (AT) (Insolvency) No. 122/2017 whereby it has been observed that the Limitation Act is not applicable to the Code and in any event the cause of action accrues only on the date of notification of the Code.

Ld. Counsel submits that this petition having being filed in 2017 is therefore within the

limitation. The present case along with other 3 other connected matter on the point are under adjudication before the Hon'ble Apex Court. Judicial propriety demands that the decision of the Hon'ble Apex Court be awaited as the matter is under consideration.

To come up on 28th August, 2018.”

- 2. Learned counsel appearing on behalf of the Appellant submits that in the appeal preferred by B.K Educational Services Pvt. Ltd. vs Parag Gupta and Associates, Civil Appeal No. 23988 of 2017 and analogous case, the Hon'ble Supreme Court by judgment dated 11th October, 2018 held that Limitation Act has in fact been applied from the inception of the Insolvency and Bankruptcy Code.*
- 3. In the aforesaid background, instead of making any observation on the merit or claim and counter claim of the parties, we direct the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench to consider the application under Section 9 of the I&B Code preferred by M/s Speculum Plast Pvt. Ltd. (Appellant) against M/s PTC Techno Pvt. Ltd. after hearing the parties on an early date.*
- 4. Appeal stands disposed of with aforesaid observation and direction. No cost.”*

We find that the appellants are similarly situated and all the appeals are covered by the observations made by this Appellate Tribunal at paragraphs 2 and 3 of the aforesaid order. We accordingly dispose of these appeals with same and similar observations and directions as made at paragraph 3 of the order dated 1st November, 2018 passed in '*Speculum Plast Pvt. Ltd.*' as quoted above.

The appeals, which have been, filed under Section 7 of the I&B Code will also be covered with similar observation and direction and the Adjudicating Authority will consider the question as to where claim are barred by limitation, if raised.

We make it clear that we have not decided any of the case on merit and it is open for the Adjudicating Authority to decide the same. The parties are allowed to raise all their contentions before the Adjudicating Authority for determination of each application(s) filed under Section 9 or Section 7 of I&B Code on merit. The observation made by this Appellate Tribunal by its earlier decision will not come in the way of the Adjudicating Authority to decide the issue afresh.

All the appeals stand disposed of with aforesaid observation and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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