

The burden of prima facie proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor.

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| CASE TITLE | Rajendra Narottamdas Sheth & Anr. Versus Chandra Prakash Jain & Anr. ¹ |
| CASE CITATION | Company Appeal (AT) (Insolvency) No. 252 of 2020 |
| DATE OF ORDER | 30.09.2021 |
| COURT/TRIBUNAL | Supreme Court of India |
| CASES REFERRED | B.K. Educational Services Private Limited v. Parag Gupta and Associates Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited & Anr |
| SECTION/REGULATION REFERRED | Section 7 of Insolvency & Bankruptcy Code, 2016 |

Brief of the case:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted by the National Company Law Tribunal, Ahmedabad bench to initiate CIRP against R.K. Infratel Ltd.(Corporate Debtor). Thereafter an appeal was preferred by the suspended directors of the board of R.K. Infratel Ltd. which was rejected by the National Company Law Appellate Tribunal, Delhi. Therefore, instant appeal was preferred before the Hon'ble Supreme Court of India. There were two issues that arose for consideration in the Appeal. The first pertains to the maintainability of the application under Section 7 of the Code filed by a power of attorney holder. The second relates to the question of limitation.

Decision:

Hon'ble Supreme Court dismissed the appeal with following observations:

"23. We have already held that the burden of prima facie proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor. While the decision to admit an application under Section 7 is typically made on the basis of material furnished by the financial creditor, the Adjudicating Authority is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation...It is clarified that the onus on the financial creditor, at the time of filing an application under Section 7, to prima facie demonstrate default with respect to a debt, which is not time-barred, is not sought to be diluted herein.

24. In view of the aforesaid, the Appeal is dismissed."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹https://www.livelaw.in/pdf_upload/rajendra-narottamdas-sheth-vs-chandra-prakash-jain-11-2021-sc-524-401659.pdf

Liquidator can ask the secured creditor to return back the assets to the liquidation estate, if secured creditor does not sell secured asset.

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| CASE TITLE | Dhanlaxmi Bank Ltd. Vs. Techno Fab Manufacturing Ltd. & Ors. ¹ |
| CASE CITATION | Company Appeal (AT) (Ins) No. 777 of 2021 |
| DATE OF ORDER | 28.09.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | - |
| SECTION/REGULATION REFERRED | Section 52(1) (b) of Insolvency & Bankruptcy Code, 2016 |

Brief of the case:

An Appeal was preferred by the Appellant, who being a secured creditor in the liquidation process of the Corporate Debtor intimated the Liquidator to realize its asset over which it has exclusive first charge under Section 52(1) (b) of the IBC and in physical possession of the asset. The Liquidator asked the Appellant to vacate its physical possession and to return back asset to the liquidation estate. However, the appellant needed a further time period of 6 months and preferred an application before the Adjudicating Authority which was dismissed.

Decision:

Hon'ble NCLAT dismissed the appeal with following observations:

“4. In the present case, the order of liquidation was passed on 05.09.2018, three years has been lapsed and the liquidation proceeding could not be completed and after granting ample opportunity the Appellant has failed to realize its security interest. Therefore, Ld. Adjudicating Authority has rightly directed the Appellant to handover the asset in possession back to the liquidator within 7 days.

5. We have gone through the impugned order and relevant provisions. We find no legal flaw in the impugned order. Thus, the Appeal is dismissed summarily.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzLORFTEhJLzlwMjEtMDktMjg5Y291cnRzLzlvZGFpbHkvMTYzMTg5ODc2NjEzODcxMzA2Nzc2MTU0MGVjZTRmMTE0LnBkZg=

Before constitution of CoC, the Ld. Adjudicating Authority can consider the Application for setting aside ex-parte admission order but after constitution of the CoC the Ld. Adjudicating Authority cannot in exercise of power under Rule 49(2) of the NCLT Rules, 2016 set aside the ex-parte admission order.
-NCLAT, New Delhi

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| CASE TITLE | Suspended Management of Jay Polypack Pvt. Ltd. Vs. SGV Foils Pvt. Ltd. & Anr. ¹ |
| CASE CITATION | Company Appeal (AT) (Ins) No. 362 of 2021 |
| DATE OF ORDER | 20.09.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | M/s AKJ Fincap Ltd. Through Authorized Representative Vs. Bank of India M/s Forts Biotech Pvt. Ltd. Vs. DCB Bank Ltd. |
| SECTION/REGULATION REFERRED | Section 9 of Insolvency & Bankruptcy Code, 2016. Section 424 (1) of the Companies Act, 2013 r/w Rule 11 of the National Company Law Tribunal, Rules, 2016 and Rule 49 of NCLT Rules |

Brief of the case:

The appellant-Suspended Management of Jay Polypack Pvt. Ltd. filed an Appeal against the order passed by the National Company Law Tribunal, Ahmedabad whereby application for setting aside the ex-parte order filed by the Corporate Debtor under Section 424 (1) of the Companies Act, 2013 r/w Rule 11 of the National Company Law Tribunal, Rules, 2016 was disposed of on the ground that at belated stage, the Adjudicating Authority is unable to use power under Rule 49 of National Company Law Tribunal Rules, 2016. The appellant submitted that Adjudicating Authority erroneously refused to set aside ex-parte order though notice was not duly served on the Applicant (Corporate Debtor), therefore, the Adjudicating Authority in exercise of power under Rule 49 (2) of NCLT Rules could set aside the ex-parte order passed against the Corporate Debtor.

Decision:

Hon'ble NCLAT dismissed the appeal with following observations:

“21. Now, we have considered the facts of this case, the Application under Section 9 was admitted on 27.05.2020 and the Appellant (Corporate Debtor) has filed the Application for setting aside the ex-parte admission order on 06.11.2020 whereas the CoC has been constituted thereafter on 20.11.2020. In such a situation before constitution of CoC the Ld. Adjudicating Authority can consider the Application for setting aside ex-parte admission order but after constitution of the CoC the Ld. Adjudicating Authority cannot in exercise of power under Rule 49(2) of the NCLT Rules, 2016 set aside the ex-parte admission order. Ld. Adjudicating Authority has passed the impugned order after constitution of CoC i.e. on 23.03.2021, therefore, we find no illegality in the impugned order.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://ibbi.gov.in/uploads/order/524c0533e6cd5e7fa73392ea1a7af814.pdf>

In a situation where Application for initiation of CIRP for the Corporate Debtor is pending at NCLT then, initiation of CIRP of the Corporate Debtor is not a prerequisite for initiating IR Process against the Personal Guarantor of that Corporate Debtor before the NCLT.

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| CASE TITLE | PNB HOUSING FINANCE LTD. VS MR. MOHIT ARORA. ¹ |
| CASE CITATION | Company Petition No. (IB)-395(ND)2021 |
| DATE OF ORDER | 29.09.2021 |
| COURT/TRIBUNAL | NCLT, Bench II, Delhi |
| CASES REFERRED | Altico Capital India Ltd. Vs. Rajesh Patel & Ors. Lalit Kumar Jain v. Union of India & Others |
| SECTION/REGULATION REFERRED | Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019. |

Brief of the case:

An Application was preferred by M/s PNB Housing Finance Ltd. (Applicant), under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating the Insolvency Resolution Process against Mr. Mohit Arora (Personal Guarantor), who is the Managing Director of Supertech Ltd. (the Corporate Debtor). It was submitted by the Applicant that there were multiple IBC proceedings pending against the Corporate Debtor before the Adjudicating Authority.

Decision:

Hon'ble NCLT disposed of the application with following observations:

"31. ...in the case herein, there is a situation where various IB applications for initiation of CIR process against the Corporate Debtor are pending. In our considered view, the moment the IB application in relation to Insolvency resolution of the Corporate Debtor is pending before this Adjudicating Authority, the provisions of Section 60(1) get attracted and the jurisdiction to entertain insolvency process against the personal guarantor would, therefore, lie with the NCLT.

32....we would like to summarise that in the case herein, since (i) there are pending IB cases in relation to initiation of insolvency resolution of the Corporate Debtor; ii) Section 60(2) of IBC 2016 is without prejudice to Section 60(1) as held by the Hon'ble Supreme Court in the matter of Lalit Kumar Jain V. Union of India; and iii) Section 179(1) of IBC 2016 is subject to Section 60 of IBC 2016, which includes Sub-Section (1), therefore, in our considered view, the jurisdiction in relation to the insolvency resolution (and liquidation) for corporate persons including corporate debtor and personal guarantors thereof shall be the National Company Law Tribunal in terms of Section 60(1) of IBC 2016.

QR CODE FOR FULL ORDER/JUDGEMENT:



¹https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0710102085082021/04/Order-Challenge/04_order-Challenge_004_16333468721022940615ae538802e3.pdf

An appeal against application pending under Section 61 of IBC is not maintainable: NCLAT, Delhi

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| CASE TITLE | Mr. Jayanti Lal Jain (Liquidator of K. K. Welding Limited). ¹ |
| CASE CITATION | Company Appeal (AT) (Ins) No. 764 of 2021 |
| DATE OF ORDER | 27.09.2021 |
| COURT/TRIBUNAL | NCLAT, Delhi |
| CASES REFERRED | - |
| SECTION/REGULATION REFERRED | Section 61 of the Insolvency and Bankruptcy Rules, 2019. |

Brief of the case:

An appeal was preferred by Mr. Jayanti Lal Jain, Liquidator of K.K Welding against the impugned order of NCLAT whereby Ld. Adjudicating Authority adjourned the matter due to paucity of time for consideration on applications. The appellant submitted that RP filed an application before Adjudicating Authority seeking necessary direction against the Union Bank of India who is one of the Financial Creditor and Member of CoC for releasing liquid asset which comprises of fixed deposit and mutual funds' investments of the Corporate Debtor. The application was pending for more than a year, however, the Adjudicating Authority has not decided the application. Therefore, the appellant prayed that the Adjudicating Authority may be directed to decide the Application expeditiously.

Decision:

Hon'ble NCLAT disposed of the appeal with following observations:

"3. We have considered the submissions, in the impugned order no adverse order passed against the Appellant, therefore, the Appellant is not aggrieved person. Hence, the Appeal is not maintainable under Section 61 of the IBC. Thus, the Appeal is dismissed as not maintainable. However, we request the Ld. Adjudicating Authority to make all endeavor to decide the Application IA 1514 of 2020 in CP (IB) 1523/MB/2019 which is pending since 15.06.2020 within three weeks from today".



QR CODE FOR FULL ORDER/JUDGEMENT:

¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW11bnRzL2Nhc2Vkb2Mvb3JkZXJzLORFTEhJLzlwMjEtMDktMjcvY291cnRzLzlvZGFpbHkvMTYzMTI1NzlwMzQxNTcyOTQ2MTUyOTFIOTImYmQ5LnBkZg=

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Learning Curve-630

September 8, 2021

Entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgement under Section 18 of Limitation Act.

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| CASE TITLE | <i>Vidyasagar Prasad v. UCO Bank and Ors.</i> ¹ |
| CASE CITATION | Company Appeal (AT) (Insolvency) No. 238 of 2020 |
| DATE OF ORDER | 4 th October 2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | ARCIL v. Bishal Jaiswal Babulal Vardhraj Gurjar v Veer Gurjar Aluminium Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Anr |
| SECTION/REGULATION REFERRED | Section 7 IBC, Section 18 Limitation Act |

Brief of the case:

The Appeal is filed mainly on the ground that impugned Order is erroneous and is liable to be set aside as the same fails to appreciate the facts that the Application under Section 7 of the Code was hopelessly time-barred, having been filed after more than 4.5 years from the date on which the alleged default occurred. It is submitted that the account of Corporate Debtor was declared by Respondent as irregular w.e.f. from 15.08.2014, and that is three months before the date of NPA. The Application filed under Section 7 filed in 2019 was barred by limitation.

Decision:

NCLAT dismissed the appeal and held that,

“It is further observed that if the documents constituting acknowledgement of their debt had not been brought on record, the Application filed under Section 7 of the Code would be liable to be dismissed.

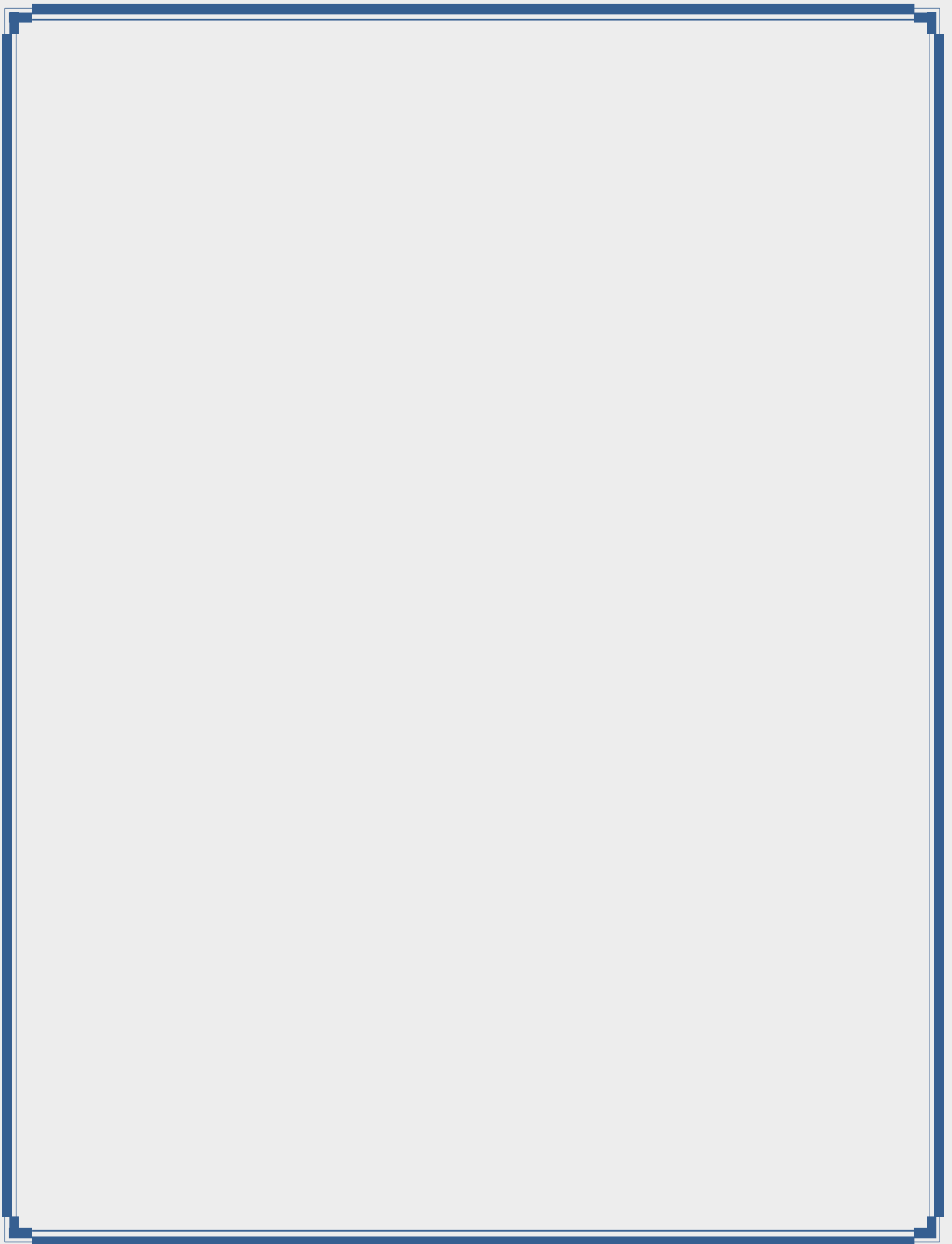
Therefore, in the instant case, the balance sheet that has been brought on record in the instant case before the Adjudicating Authority shall be taken into consideration while deciding the question of limitation and default on the part of the Corporate Debtor. The said documents cannot be ignored simply on the premise that it is not pleaded in the Application filed in Form-1 for initiation of the Corporate Insolvency Process.

However, it may not necessarily specify the exact nature of the liability. But it indicates the jural relation between the parties, and in any event, the same can also be derived by implication. Further, the said Letter is not "without prejudice" basis and, therefore, amounts to an unequivocal acknowledgement of liability of the Corporate Debtor. A reading of the documents above reveals that the Corporate Debtor has acknowledged/subsisting liability to attract the provisions of Section 18 of the Limitation Act, 1963.”



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¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjEtMTAtMDQvY291cnRzLzlvZGFpbHkvMTYzMzOTe5ODkyNTc4NDI2ODYxNWFjNzNIODljODcucGRm



Unpaid rent / unpaid utility bill does not constitute as an Operational Debt in view of pre-existing dispute between the parties.

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| CASE TITLE | Crown Tobacco Company Pvt. Ltd. Vs. Crale Foodlinks Pvt. Ltd. & Ors. ¹ |
| CASE CITATION | Company Appeal (AT) (Insolvency) No. 951 of 2020 |
| DATE OF ORDER | 30.09.2021 |
| COURT/TRIBUNAL | NCLAT, Delhi |
| CASES REFERRED | - |
| SECTION/REGULATION REFERRED | Section 61 of the Insolvency and Bankruptcy Rules, 2019. |

Brief of the case:

An appeal was preferred by the Operational Creditor being aggrieved and dissatisfied by the order dated 21.09.2020 passed by the National Company Law Tribunal, Mumbai Bench whereby the Adjudicating Authority dismissed the petition holding that the Company Petition is not maintainable before this Tribunal and is liable to be dismissed. The Appellant was in possession of a valid Restaurant, Bar, Bakery and Eating House licenses from the ground and first floor premises of a bungalow. Further, the BCA expired by efflux of time, and since the Appellant was not interested in continuing with the business arrangement any longer, the Respondent Company vacated the possession of the business premises. However, the Monthly Conducting Fee and the utility bills (electricity, water etc.) remained unpaid. The Respondent No. 2 and 3 denied the Respondent Company's liability to pay any outstanding amount to the Appellant on frivolous grounds, including the pre-existence of disputes, pending before the Hon'ble Bombay High Court. Thereafter, the Appellant filed Company Petition before the NCLT, Mumbai under Section 9 of the IBC.

Decision:

Hon'ble NCLAT disposed of the appeal with following observations:

"20... in the present case, there was a pre-existing dispute, which is proved by the issuance of notice under Section 106 of the TP Act, much before the issuance of demand notice, under Section 8 of the I&B Code. Based on the above, the application filed under Section 9 of the I&B Code could not have been admitted.

The Ld. Adjudicating Authority rightly come to the conclusion that total amount of 14,62,205/- (Municipal Taxes) which is claimed by the Appellant from period 2010 to 2017 and the Petition under Section 9 of the IBC was filed on 12.03.2018, so all claims prior to 12.03.2015 are time barred. We agree with this finding passed by the Ld. Adjudicating Authority."

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¹<https://ibbi.gov.in/uploads/order/ec31383cc75b7ef7915803f99562cbe8.pdf>

NCLT admits application filed by Reserve Bank of India for initiating CIRP against another Financial Service Provider-Srei Infrastructures.

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| CASE TITLE | Reserve Bank of India vs Srei Infrastructure Finance Limited. ¹ |
| CASE CITATION | CP (IB) No. 295/KB/2021 |
| DATE OF ORDER | 08.10.2021 |
| COURT/TRIBUNAL | NCLT, Kolkata |
| CASES REFERRED | - |
| SECTION/REGULATION REFERRED | Section 7, Section 227 read with Section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 read with rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019. |

Brief Facts of the Case:

An application was filed by the Reserve Bank of India under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 for initiations of Corporate Insolvency Resolution Process against Srei Infrastructure Finance Limited, the Financial Service Provider. The first requisite to be seen was whether the petition satisfies the ingredients of section 7 of the Code. The amount stated to be in default in respect of the principal sum is ₹150 crores and ₹15.56 crore towards interest. The RBI vide its notification dated 04/10/2021, in exercise of its powers under section 45-IE of the Reserve Bank of India Act, 1934 superseded the Board of Directors of SIFL and appointed Mr. Rajneesh Sharma as the Administrator. The RBI proposed the same person to be appointed as the Administrator of the Corporate Debtor.

Decision:

Hon'ble NCLT, Kolkata Bench admitted the petition with following observations:

“12. The documents placed on records prima facie prove that there has been a default and that the sum involved in such default is in excess of the threshold limit of one crore rupees prescribed at present under section 4(1) of the Code. Moreover, since the sanction letters are in the year 2018 onwards and date of default from November 2021, the petition is not hit by limitation.

13. We are, therefore, satisfied that this is a fit case for initiation proceedings under section 227 read with rule 5 of the Rules ibid, since the debt in question qualifies as financial debt under section 5(8) read with section 3(11) of the Code.”

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¹<https://ibbi.gov.in/uploads/order/ec31383cc75b7ef7915803f99562cbe8.pdf>

GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017. It cannot be edited or reduced by the Resolution Professional himself- NCLAT, Chennai.

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| CASE TITLE | Bijoy Prabhakaran Pulipra Resolution Professional PVS Memorial Hospital Private Limited v. State Tax Officer (Works Contract). ¹ |
| CASE CITATION | Company Appeal (AT) (CH)(Insolvency) No. 42 of 2021 |
| DATE OF ORDER | 07.10.2021 |
| COURT/TRIBUNAL | NCLAT, Chennai |
| CASES REFERRED | MSE Property Developers Private Limited versus State of Karnataka and Others |
| SECTION/REGULATION REFERRED | Section 238 of the Insolvency and Bankruptcy Code, 2016 read with regulation 14 Insolvency and Bankruptcy (CIRP) Regulations and Rule 107 and 108 of the GST Rules 2017 |

Brief Facts of the Case:

An Appeal was filed against the Impugned Order passed by the National Company Law Tribunal, Kochi Bench. NCLT, Kochi bench vide its Order issued necessary clarification to the Appellant in respect to the filing of the Appeal before the Joint Commissioner, SGST Department as directed by the NCLT. Appellant sought necessary clarification from NCLT Kochi, Bench as to whether the RP has authority under Regulation 13 and 14 of CIRP Regulations to file Appeal before the Joint Commissioner, GST, as part of verification and determination of claim submitted by the GST department.

Decision:

Hon'ble NCLT, Kolkata Bench dismissed the petition with following observations:

“20.4 ... the GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017. It cannot be edited or reduced by the Resolution Professional himself. Even if the IRP/Resolution Professional was aggrieved by the said Order, they should have filed the Appeal under Section 107 of the CGST/SGST Act, 2017, read with Rule 108 of the GST Rules 2017. Any revision of assessment orders also cannot be made under the pretext of Section 238 of IBC.

23. In the circumstances stated above, we consider that the Resolution professional committed an error in exercising their power and exercised the powers of GST Authorities under the pretext of Regulation 14 of the Code, which is not sustainable.”

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¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0NIRU50QUkvMjAyMS0xM0wNy9jb3VydmVMS9kYWlseS8xNjMzNjA5MzYxODY5MTY3MzA5NjE1ZWU2OTE4ZiAzNS5wZGY=

CoC is like a Board of Directors and IRP/RP functions as CEO under the supervision of CoC. Thus there should be perfect cohesiveness between the two pillars of CIRP: NCLT, Ahmedabad

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| CASE TITLE | COC Sintex Industries Ltd. v. Pinakin S. Shah IRP for Sintex Industries Ltd. |
| CASE CITATION | IA 424 of 2021 & IA 392 of 2021 |
| DATE OF ORDER | 04.10.2021 |
| COURT/TRIBUNAL | NCLT, Ahmedabad |
| CASES REFERRED | Karad Urban Co-operative Bank Limited vs. Swapnil Bhingardevay Naveen Kumar Jain Vs. Committee of Creditors of K.D.K. Enterprises Pvt. Ltd. Bank of India vs. Nithin Nutritions (P) Ltd. State Bank of India vs. Metenere Limited |
| SECTION/REGULATION REFERRED | Section 22 and 27 of IBC, 2016 |

Brief Facts of the Case:

An application was preferred by Committee of Creditors seeking replacement of IRP. Suspended Management of Corporate Debtor alleged that proposed Resolution Professional is not an independent person and has a conflict of interest with the Corporate Debtor. Though RP had given an affidavit declaring that he is an independent person and there is no conflict of interest in any manner. The suspended management also filed another application in support of continuation of present IRP as RP to conduct CIRP.

Decision:

Hon'ble NCLT, Ahmedabad Bench disposed of the application filed for replacement with following observations:

“9... In our view COC is like a Board of Directors and IRP/RP functions as CEO under the supervision of COC. Thus there should be perfect cohesiveness between the two pillars of CIRP. It is also noted in present case IRP was proposed by the original Financial creditor, hence, prima facie professional competency, capacity and neutral approach of such IRP cannot be doubted... Thus, we hold that the CoC should reconsider its decision and evaluate the performance of IRP dispassionately. In case it is found that the present IRP can complete the CIRP in professional manner to satisfaction of the CoC then the present IRP may be allowed to continue. However, if it is not found so then COC may file an application for change of IRP based upon the short comings in the overall performance of IRP so far.”



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Once the Resolution Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh resolution plans may come in intervention of an already approved Plan.

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| CASE TITLE | Amanat Randhawa Hotels Pvt. Ltd. Versus Shashi Kant Nemani Resolution Professional of Aryavir Buildcon. ¹ |
| CASE CITATION | COMPANY APPEAL (AT) (INSOLVENCY) No. 701 of 2021 |
| DATE OF ORDER | 07.10.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors Ghanshyam Mishra & Sons Pvt. Ltd. Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors |
| SECTION/REGULATION REFERRED | Section 30 of IBC 2016 and Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 |

Brief Facts of the Case:

An Appeal was preferred by the Unsuccessful Resolution Applicant- 'Amanat Randhawa Hotels Pvt. Ltd.' against the impugned order of the Adjudicating Authority wherein the Adjudicating Authority dismissed the Application preferred by the Applicant for consideration on the ground that the Application was filed after the approval of the Resolution Plan by the CoC.

Decision:

Relying on the decisions of Hon'ble Supreme Court in the matters of '**Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors.'** and also in other matters, Hon'ble NCLAT dismissed the appeal with following observations:

*"19. taking into consideration, the legislative intent of the statute together with the fact that in the instant case the Resolution Plan was accepted by 100% of voting share in the CoC Meeting dated and having regard to the fact that the Appellant had never participated in the EoI, we are of the view that any reliefs granted in contra to the timelines would be ultra vires to the scope and objective of the Code. The ratio of the Hon'ble Supreme Court in '**Ebix Singapore Pvt. Ltd.' (Supra)** is squarely applicable to the facts of this case wherein it was observed by the Hon'ble Apex Court that once the Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh plans may come in intervention of an already approved Plan."*



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://ibbi.gov.in/uploads/order/515da2caf582ac4801cbb5d876c73c90.pdf>

The payment of dues for electricity supplied to the corporate debtor during the moratorium period should be paid out of CIRP costs by the Resolution Professional and any dues relating to electricity supplied after the moratorium has ceased will have to be paid by the corporate debtor.

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| CASE TITLE | Damodar Valley Corporation Vs. Cosmic Ferro Alloys Limited & Anr. ¹ |
| CASE CITATION | Company Appeal (AT) (Insolvency) No. 110 of 2020 |
| DATE OF ORDER | 01.10.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | Committee of Creditors of Essar Steel India Limited' Vs. 'Satish Kumar Gupta & Ors Ghanshyam Mishra & Sons Pvt. Ltd. Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors Telangana State Power Distribution Co. Ltd. Vs. Srigdha Beverages |
| SECTION/REGULATION REFERRED | Section 31 of the Insolvency and Bankruptcy Code, 2016 |

Brief Facts of the Case:

An appeal was filed under Section 31 of the Insolvency and Bankruptcy Code, 2016 aggrieved by the order dated 20.11.2019 of the National Company Law Tribunal, Kolkata. The Appellant Damodar Valley Corporation (DVC), the Operational Creditor, used to supply power to the Corporate Debtor, and it is alleged by the Appellant that the Corporate Debtor was in huge arrears in payment of electricity dues and delay payment charges. Consequently, a disconnection notice was given by DVC to the Corporate Debtor on 1.1.2018 and its power supply was disconnected on 17.1.2018. It is also claimed by the Operational Creditor DVC that when the electricity supply was disconnected it was not aware of the initiation of Corporate Insolvency Resolution Process of the Corporate Debtor.

Decision:

Hon'ble NCLAT disposed of the appeal with following observations:

"25. We, therefore, quash and set aside the impugned order and make it clear that any security deposit or other charges for requested increase in contract demand and enhanced supply line for electricity will have to be paid to the discom DVC in accordance with the relevant and extant laws and regulations. The payment of dues for electricity supplied to the corporate debtor during the moratorium period, to keep the corporate debtor as a going concern, should be paid out of CIRP costs, and the payment should be ensured by the Resolution Professional. Any dues relating to electricity supplied after the moratorium has ceased will have to be paid by the corporate debtor to the discom DVC. The Adjudicating Authority could be approached in case of any difficulty."

QR CODE FOR FULL ORDER/JUDGEMENT:



¹<https://ibbi.gov.in/uploads/order/534810343c47f3c4ae1969bff1d4a5bc.pdf>

When there is a specific provision for withdrawal of petition under section 7, 9 or 10 provided under section 12A of the Code, there is no justification for invoking the inherent power of NCLAT under Rule 11 of NCLAT Rules, 2016

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| CASE TITLE | Mr Harish Raghavji Patel Versus Shapoorji Pallonji Finance Private Limited. ¹ |
| CASE CITATION | Company Appeal (AT) (Ins) No. 391 of 2021 |
| DATE OF ORDER | 06.10.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors Kamal K Singh Vs. Dinesh Gupta & Anr. Anuj Tejpal Vs. Rakesh Yadav & Anr. |
| SECTION/REGULATION REFERRED | Section 7 and 12A of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLAT Rules, 2016 |

Brief Facts of the Case:

The Adjudicating Authority vide impugned order dated 13.05.2021 admitted the Company Petition u/s 7 of the IBC and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Appeal was filed against the impugned order, praying that in terms of the settlement arrived before constitution of CoC, on 23.09.2021, the Appellate Tribunal exercising the inherent power under Rule 11 of NCLAT Rules, 2016 may set aside the impugned order and quash the CIRP against the Corporate Debtor in terms of settlement.

Decision:

Hon'ble NCLAT dismissed of the appeal with following observations:

“12. The procedure prescribed for withdrawal of the petition under Section 7, 9 or 10 of the IBC before the constitution of CoC and after constitution of CoC is provided in Section 12-A and Regulation 30-A of the Regulation. When the settlement has taken place at an appellate stage the Applicant who has filed the petition under Section 7 or 9 of the IBC may file the Application (Form 6 Company Appeal (AT) (Ins) No. 391 of 2021 – FA) under Section 12-A of the IBC r/w Regulation 30-A of the Regulations for withdrawal of the Petition before the Ld. Adjudicating Authority...

14. We are of the view that there is a prescribed procedure for withdrawal of Petition under Section 7 of the IBC. Therefore, there is no justification to invoke inherent power of this Appellate Tribunal and to take on record the terms of the settlement and pass the order for withdrawal of Petition under Section 7 of the IBC. On the contrary, in the facts of the present case exercising the inherent power under Rule 11 of NCLAT Rules amounts to abuse of process of this Appellate Tribunal.”



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¹<https://ibbi.gov.in/uploads/order/e7ca96fe35d42eadfb73f2a8d8107af6.pdf>

Limitation period under Section 61 of IBC to file appeal runs from day of pronouncement of order, not date of uploading order: Supreme Court

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| CASE TITLE | V Nagarajan v. SKS Ispat and Power Ltd. and Ors. ¹ |
| CASE CITATION | Civil Appeal No. 3327 of 2020 |
| DATE OF ORDER | 22 nd October 2021 |
| COURT/TRIBUNAL | Supreme Court |
| CASES REFERRED | <ul style="list-style-type: none">• <i>Kalpraj Dharamshi v. Kotak Investment Advisors Ltd</i>• <i>B K Educational Services (P) Ltd v. Parag Gupta and Associates</i>• <i>Essar Steel India Ltd v. Satish Kumar Gupta</i> |
| SECTION/REGULATION REFERRED | Section 3(31), 14, 61, 238A of the Code |

Brief Facts of the case:

An appeal was filed challenging the NCLAT order rejecting Corporate Debtor’s liquidator’s application seeking interim relief against invocation of a bank guarantee by respondent, for being barred by limitation. NCLAT stated that IBC circumscribes the discretion to condone delays up to fifteen days, which had elapsed in this case.

The appellant filed a Civil Appeal against this order of the NCLAT on the question of limitation. The issues to be decided were: (i) when will the clock for calculating the limitation period run for proceedings under the IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC.

Decision:

Hon’ble Supreme Court upholds the NCLAT judgement and remarks that,

17...when timelines are placed even on legal proceedings, reading in the requirement of an “order being made available” under a general enactment (Companies Act) would do violence to the special provisions enacted under the IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor... the omission of the words “from the date on which the order is made available” for the purposes of computation of limitation in Section 61(2) of the IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution.

20. ... the mandate of law is to impose an obligation on the Appellant to apply for a certified copy once the order is pronounced by the NCLT... in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation.

21...It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC.

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¹ [4120777db77882af1815c52e807a890f.pdf \(ibbi.gov.in\)](https://www.ibbi.gov.in/4120777db77882af1815c52e807a890f.pdf)

NCLT admitted the application to initiate the Corporate Insolvency Resolution Process (CIRP) towards the Hindusthan National Glass & Industries Ltd (HNG).

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| CASE TITLE | DBS Bank Limited Versus Hindusthan National Glass & Industries Limited. ¹ |
| CASE CITATION | C.P (IB) No.369/KB/2020 |
| DATE OF ORDER | 22.10.2021 |
| COURT/TRIBUNAL | NCLT, Kolkata |
| CASES REFERRED | - |
| SECTION/REGULATION REFERRED | Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 |

Brief Facts of the Case:

A petition was filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by DBS Bank Limited, a corporate entity seeking initiation of corporate insolvency resolution process in respect of the Hindusthan National Glass & Industries Limited. It is stated that the amount claimed to be in default is Rs.48,450,708.97 on account of principal and Rs.6,091, 897.34 towards interest totalling up to Rs.54,542,606.31 and the date of default is stated to be 31st December, 2019.

Decision:

Hon'ble NCLT admitted the petition for initiation of Insolvency proceedings with following observations:

“36...In the present matter, the pleadings specifically and loudly speak for admission of the application because the OTS proposal has failed due to the non-adherence of the terms and conditions fixed between the parties by way of Settlement Agreement. There cannot be any other plea by the Ld. Counsel for the Financial Creditor in such circumstances. However, the Ld. Counsel for the Financial Creditor had indicated that on or before reopening i.e. 20/10/2021, he will seek instructions either to withdraw the application, or else will accept whatever orders are passed by in the present application by this Adjudicating Authority.

37. Since no instructions or application has been filed for withdrawal of the present application, in view of the pleadings of the parties and documents placed on record, this is a fit case for admission and initiation of CIRP against the Corporate Debtor and therefore we pass the following orders:-

ORDERS

i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor Hindusthan National Glass & Industries Limited is hereby admitted...”



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¹<https://ibbi.gov.in/uploads/order/2021-10-25-120905-oj7mn-09e8d62a83c705f3a5b8932d132d0b53.pdf>

Statutory Bodies like Reserve Bank of India are fully empowered and competent to handle the matters of financial, economic and corporate decision making. It would be hazardous and risky for the courts to enter into such domain which are dealt with by expert bodies: Bombay High Court

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| CASE TITLE | Adisri Commercial Private Limited and another Vs. Reserve Bank of India and others. ¹ |
| CASE CITATION | WRIT PETITION (L) NO.22872 OF 2021 |
| DATE OF ORDER | 07.10.2021 |
| COURT/TRIBUNAL | Bombay High Court |
| CASES REFERRED | Peerless General Finance and Investment Company Limited Vs. Reserve Bank of India |
| SECTION/REGULATION REFERRED | Section 45IE of the RBI Act and Article 226 of the Constitution of India |

Brief Facts of the Case:

A petition was filed under Article 226 of the Constitution of India by Adisri Commercial Private Limited (Srei Group promoters) seeking quashing of the impugned order dated 01.10.2021 and the related press release dated 04.10.2021 issued by the RBI. By the impugned order dated 01.10.2021 passed under section 45IE of the Reserve Bank of India Act, 1934, RBI has superseded the Board of Directors of M/s Srei Infrastructure Finance Limited and appointed Shri. Rajneesh Sharma as its administrator with immediate effect. By the press release dated 04.10.2021, RBI stated about the supersession of the Board of Directors of M/s Srei Infrastructure Finance Limited also about appointment of the administrator further mentioning that respondent RBI intends to shortly initiate the resolution process.

Decision:

Hon'ble High Court relied upon the judgement in the matter of ***Peerless General Finance and Investment Company Limited Vs. Reserve Bank of India*** and dismissed the petition with following observations:

“10.1 As per section 45IE of the RBI Act, Reserve Bank of India is empowered to supersede the Board of Directors if it is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors or for securing the proper management of such company or for financial stability, it is necessary so to do...”

12. Upon thorough consideration of the entire matter, we are of the view that present is not a fit case where we should invoke our extra ordinary jurisdiction under Article 226 of the Constitution of India. ... It cannot be said that Reserve Bank of India has acted without jurisdiction or in violation of the principles of natural justice. These are matters of financial, economic and corporate decision making to handle which statutory bodies like Reserve Bank of India are fully empowered and competent. It would be hazardous and risky for the courts to enter into such domain which are dealt with by expert bodies.”



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¹<https://ibbi.gov.in/uploads/order/cff9938790e532b585137b498da71294.pdf>

The threshold limit of 1 Cr. will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020.- NCLAT

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| CASE TITLE | M/S JUMBO PAPER PRODUCTS VS HANSRAJ AGROFESH PRIVATE LIMITED. ¹ |
| CASE CITATION | Company Appeal (AT) (Ins) No. 813 of 2021 |
| DATE OF ORDER | 25.10.2021 |
| COURT/TRIBUNAL | NCLAT, New Delhi |
| CASES REFERRED | Madhusudan Tantia Vs. Amit Choraria & Anr Union of India & Ors. Vs M/s. G.S. Chatha Rice Mills & Anr. |
| SECTION/REGULATION REFERRED | Section 9 of IBC, 2016 |

Brief Facts of the Case:

The Operational Creditor thereafter filed application under section 9 of IBC On 13.9.2020 since there was a debt in default since 27.5.2018 till 23.6.2018. The Adjudicating Authority dismissed the application of the Operational Creditor in view of notification S.O 1205(E) dated 24.3.2020 issued by the Ministry of Corporate Affairs, Government of India on the ground that the alleged debt that is claimed to be payable in application under section 9 was below the threshold limit stipulated in the said notification.

Decision:

Hon'ble Court dismissed the application with following observations:

“10.. It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case.”



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¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzLORFTEhJLzlwMjEtMTAtMjUvY291cnRzLzlvZGFpbHkvMTYzNTE1NTc4MTM2MTU3OTE5NjYxNzY3ZjQ1NWYyYmMucGRm