

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.219/2023
(IA Nos.723, 725 & 724/2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 24.03.2023 in
CP(IB) No.335/7/HDB/2022, passed by the ‘Adjudicating
Authority’ (National Company Law Tribunal, Hyderabad Bench)

In the matter of:

Sanjay Kumar Makhariya **... Appellant**

V

State Bank of India & Anr. **...Respondents**

Present :

For Appellant : Dr. SV Rama Krishna, Advocate.
For Respondents : Mr. Pranava Charan, Advocate for R-1.
Mr. Bendi Raviteja, Advocate for R-2.

ORDER
(Virtual Mode)

[Per; Justice Rakesh Kumar Jain (MJ)] (ORAL)

28.07.2023: This Appeal is directed against the Order dated 24.03.2023, by which an Application filed by the Respondent under Section 7 of the Insolvency and Bankruptcy Code, 2016, (for short ‘The Code’) read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules 2016, (‘Rules’) for the Resolution of sum Rs.7,73,30,22,118.85/- as on

30.09.2022 has been admitted, Moratorium has been imposed and Shri Chillale Rajesh was appointed as the Interim Resolution Professional ('IRP').

2. Counsel for the Appellant has submitted that the account was declared NPA on 11.07.2012, whereas the Application under Section 7 was filed on 27.10.2022 after more than a decade, therefore, the Application is 'barred by Limitation' in view of the fact that the Application under Section 7 can be filed only within a period of three years, prescribed under Article 137 of the Limitation Act, 1963.

3. On the other hand, Counsel appearing on behalf of Respondent, on advance Notice, has submitted that the Application under Section 7 has been filed on the basis of a Recovery Certificate pursuant to a decision of an OA No.451/2014 passed by the Debt Recovery Tribunal, Hyderabad. He has submitted that the Tribunal has relied upon a decision of the Hon'ble Supreme Court in the case of '*Dena Bank*' Vs. '*C. Shivkumar Reddy & Anr.*', 2021 SCC OnLine 543 and held that a fresh period of Limitation would start from the date of issuance of Certificate of Recovery by the DRT in favour of the Financial Creditor. It is thus submitted that the Application under Section 7, having been filed on 27.10.2022, on the basis of Recovery Certificate dated 21.02.2020, is within the period of three years and is thus within Limitation.

4. He has also submitted that the decision of the Hon'ble Supreme Court in Dena Bank (Supra), has further been confirmed by the Hon'ble Supreme Court

(three Judges Bench) in the case of '**Kotak Mahindra Bank**' Vs. '**A Balakrishnan & Anr.**' in **Civil Appeal No. 689/2021** decided on 30.05.2022.

5. We have heard Counsel for the Parties and perused the record.

6. The issue in this case is as to whether the Application filed by the Respondent (Bank) on 21.02.2020, on the basis of a Recovery Certificate bearing RC-314/2020, issued to it in the case No. OA 457/2021 by the DRT Hyderabad – I, gave rise to a fresh cause of action for filing of Application?

7. The aforesaid question is no more *res integra*, in view of the decision of the Hon'ble Supreme Court in the case of '**Dena Bank**' (*Supra*). In this regard, reference may be had to paragraph 141 of the said Judgement, which is being reproduced as hereunder:

“141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”

8. The aforesaid Judgement has been further affirmed by a three Judge Bench Judgement of the Hon'ble Supreme Court in '**Kotak Mahindra Bank** (*Supra*)', in this regard Para 85 of the said Judgement read thus '*we further find that view*

taken by the two Judge Bench of this Court in the case of 'Dena Bank' (Supra) is connected along and we affirmed the same'.

9. In view of the aforesaid facts and circumstances, we hardly find any merit in the present Appeal, therefore, the same is hereby dismissed. No Costs.

10. It is also observed herein that all the Applications filed by the Appellant alongwith this Appeal are hereby closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mrs. Shreehsa Merla]
Member (Technical)**

HA / MD / NG