HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 28161 OF 2021

Between:

M. Seshavatharam, S/o. M.S.N.Gupta, Aged about 43 years, Occ. Business, R/o. D.No.18-10-11, Marella Vari Street Bhimavaram, Andhra Pradesh-534201, Temporarily at Hyderabad.

...PETITIONER

AND

1. National Company Law Tribunal I, Adjudicating Authority Hyderabad Bench, Represented by the Registrar, Ground floor, Corporate Bhawan, Tirumala Residency Road, R Krishnaiah Nagar, Bandlaguda, Nagole, Hyderabad, Telangana 500068.
2. Punjab National Bank, 8-2-672 Sufi Chambers Road No.1, Banraja Hills, Hyderabad 500034. Represented by its Authorised Signatory.
3. M/s. Sri Guruprabha Power Limited, Represented by Liquidator, Mr.G.Madhusudhan Rao, No.103, Sri Sai Swapnasampada Appts, Balkampet, Hyderabad 500016.
4. Mr.B. Naga Bhushan, Resolution Professional, M/s. Sri Guruprabha Power Limited, H.No.1-1-380/38, Ashok Nagar Extn, Hyderabad 500020.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction, preferably in the nature of a Writ of Certiorari calling for the Order dated 15/03/2021 passed by the Respondent No.1 dismissing the application filed by the Petitioner seeking to dismiss the application filed by the Respondent No.2 vide CP(IB) No.681/7/HDB/2018 under section 7 of the Insolvency and Bankruptcy Code, 2016 and upon perusal of the same be pleased to quash the said proceedings and consequentially dismiss the application filed by the Respondent No.2 vide CP(IB) No.681/7/HDB/2018 under section 7 of the Insolvency and Bankruptcy Code, 2016 as being barred by the limitation and further declare all further proceedings

initiated by the Respondent No.3 and 4 as null, void, non-est and without jurisdiction, in the interest of justice

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.3 not to take any proceedings in the process of liquidation of the Respondent Company No. 3 i.e. M/s. Sri Guruprabha Power Limited, pending disposal of the main Writ Petition in the interest of Justice and pass

IA NO: 3 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order of injunction against the Respondent No. 2 to 4 and proposed Respondent No. 5 restraining them from dismantling, transferring, alienating, transporting any material including raw material and machinery from the unit of the Respondent No. 3 situated at walkidi village, Ghat No. 125, Post Office Mahsawadh, Jalgaon, Maharashtra - 421000 pending disposal of the Writ Petition in the interest of Justice.

IA NO: 1 OF 2022:

Between:

Punjab National Bank, 8-2-672 Sufi Chambers Road No.1, Banraja Hills, Hyderabad 500034. Represented by its Authorised Signatory.

...PETITIONER/RESPONDENT NO.2

AND

1. M. Seshavatharam, S/o. M.S.N.Gupta, Aged about 43 years, Occ. Business, R/o. D.No.18-10-11, Marella Vari Street Bhimavaram, Andhra Pradesh-534201, Temporarily at Hyderabad.

...PETITIONER/RESPONDENT

2. National Company Law Tribunal I, Adjudicating Authority Hyderabad Bench, Represented by the Registrar, Ground floor, Corporate Bhawan, Tirumala Residency Road, R Krishnaiah Nagar, Bandlaguda, Nagole, Hyderabad, Telangana 500068.
3. M/s. Sri Guruprabha Power Limited, Represented by Liquidator, Mr.G.Madhusudhan Rao, No.103, Sri Sai Swapnasampada Appts, Balkampet, Hyderabad 500016.
4. Mr.B. Naga Bhushan, Resolution Professional, M/s. Sri Guruprabha Power Limited, H.No.1-1-380/38, Ashok Nagar Extn, Hyderabad 500020.

...RESPONDENTS/RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

vacate the stay orders dated 21st December 2021 passed in I.A. No. 1 of 2021 in W.P. No. 28161 of 2021 in the interest of justice and equity

Counsel for the Petitioner: SRI L. RAVICHANDER, SENIOR COUNSEL FOR SRI MAYUR MUNDRA

Counsel for Respondent No. 2: SRI K. RAGHAVENDRA RAO

Counsel for Respondent No. 3: SRI P. VAJRA LAKSHMI SUBBA RAO

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.28161 of 2021

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. L.Ravichander, learned Senior Counsel appearing for Mr. Mayur Mundra, learned counsel for the petitioner; Mr. K.Raghavendra Rao, learned counsel for respondent No.2; and Mr. P.Vajra Lakshmi Subba Rao, learned counsel for respondent No.3.

2. By filing this petition under Article 226 of the Constitution of India petitioner has assailed legality and validity of the order dated 30.03.2021 passed by the National Company Law Tribunal, Hyderabad Bench-I, Hyderabad (for short, 'NCLT' hereinafter).

3. By the aforesaid order, NCLT dismissed the interlocutory application filed by the petitioner under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (briefly, 'IBC' hereinafter) read with Rule 17 of the National Company Law Tribunal Rules, 2016 as well as

under Section 420 of the Companies Act, 2013 seeking dismissal of the application filed under Section 7 of the IBC being C.P. (IB) No.681/7/HDB/2018 as being barred by limitation and thereafter to declare all further proceedings based on the Corporate Insolvency Resolution Process as infructuous.

4. Petitioner is a suspended director of a company called M/s.Guruprabha Power Limited (referred to hereinafter as 'corporate debtor'). Corporate debtor is a limited company incorporated under the Companies Act, 1956 having its registered office at Hyderabad. Corporate debtor was established with the prime object of generating 10 MW bio-mass power at Jalgaon in the State of Maharashtra.

5. In the course of its business, corporate debtor had approached respondent No.2 i.e., Punjab National Bank for availing financial assistance. Accordingly, respondent No.2 extended financial assistance to the corporate debtor in the form of Rupee Term Loan-I facility to the extent of

Rs.28,88,40,000-00. Thereafter, second Rupee Term Loan-II was sanctioned by respondent No.2 to the tune of Rs.4,35,30,000-00 along with cash credit limit of Rs.6,50,00,000-00 towards working capital limit of the corporate debtor.

6. For various reasons, corporate debtor faced financial crunch which ultimately resulted in non-payment of instalments to respondent No.2.

7. Respondent No.2 declared the loan account of the corporate debtor as a non-performing asset (NPA) on 31.05.2007.

8. Thereafter, respondent No.2 issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (briefly, 'the SARFAESI Act' hereinafter) on 27.06.2011. This was followed by issuance of possession notice dated 15.09.2011 under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 against the secured

assets mortgaged by the corporate debtor as security while availing the financial assistance.

9. Assailing the action of respondent No.2, corporate debtor approached the competent Debts Recovery Tribunal at Hyderabad (DRT) by filing securitisation application No.259 of 2011. On orders of the DRT, corporate debtor deposited a sum of Rs.1.27 crores with respondent No.2 to enable re-scheduling of the loan. On 19.03.2012, proposal for re-scheduling the loan was considered and letter to that effect was issued. However, according to the petitioner, letter of re-scheduling of the loan was nothing but an eye wash as respondent No.2 had increased the rate of interest besides refusing to provide the facility of working capital.

10. In addition to the remedy under the SARFAESI Act, respondent No.2 also invoked the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 by filing O.A.No.1316 of 2016 before DRT for issuance of recovery certificate.

11. Thus, respondent No.2 had already invoked remedies under both the SARFAESI Act as well as under the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

12. Upon promulgation of IBC in the year 2016 and on establishment of NCLT, respondent No.2 filed an application under Section 7 of IBC before NCLT in the year 2018 seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the corporate debtor. The same was registered as C.P. (IB) No.681/7/HDB/2018.

13. After receiving notice on the aforesaid application filed by respondent No.2, corporate debtor filed reply. However, NCLT admitted the application on 20.09.2019 and initiated Corporate Insolvency Resolution Process of the corporate debtor by declaring moratorium. NCLT appointed respondent No.4 as the Interim Resolution Professional (IRP).

14. Thereafter, resolution applicant submitted resolution plan on 29.02.2020. Committee of Creditors (CoC) suggested for improvement of the accounts, following which another resolution plan was submitted on 06.03.2020 with increased offer price. A third plan was submitted on 12.03.2020 with still improved offer.

15. Respondent No.4 and Committee of Creditors then filed an application for liquidation of the corporate debtor being I.A.No.685 of 2020. NCLT vide the order dated 22.02.2021 passed in I.A.No.685 of 2020 ordered liquidation of the corporate debtor.

16. Petitioner being the suspended director of the corporate debtor filed an interlocutory application before NCLT being I.A.No.114 of 2021 for review of the order directing liquidation as well as the order initiating Corporate Insolvency Resolution Process. It was contended that the application filed by respondent No.2 under Section 7 of IBC was clearly barred by limitation and therefore, all proceedings and orders passed on the basis

of such application were *non est* in the eye of law. If the date of default is taken as 31.05.2011 when the loan accounts were classified as NPA, then the application under Section 7 of the IBC filed in the year 2019 and the order dated 20.09.2019 of NCLT initiating Corporate Insolvency Resolution Process are clearly barred by limitation as per Article 137 of the Limitation Act, 1963, the application being filed beyond the period of three years.

17. However, NCLT dismissed the said application vide the impugned order dated 30.03.2021 simply observing that it would be highly improper to reverse the clock.

18. Assailing the aforesaid order, the present writ petition came to be filed.

19. This Court vide the order dated 21.12.2021 had issued notice and as an interim measure directed NCLT not to proceed further with C.P. (IB) No.681/7/SDB/2018 till the next date which order has since been continued.

20. Respondent No.2 has filed counter affidavit. It is stated that on request of the corporate debtor, respondent No.2 had sanctioned credit facilities vide sanction letter dated 04.04.2007 whereafter financial assistance were provided. Because of persistent default in repayment of the loan amount, respondent No.2 had declared the loan accounts of the corporate debtor as NPA on 31.05.2011 by following the guidelines of Reserve Bank of India.

20.1. Respondent No.2 was compelled to adopt measures under the SARFAESI Act for recovery of the outstanding dues, whereafter, possession of the secured assets were taken over. S.A.No.259 of 2011 was dismissed by DRT on merit. Respondent No.2 issued letter dated 19.03.2012 to the corporate debtor conveying its agreement to the proposal for restructuring of the loan account. Even after restructuring of the loan account, corporate debtor failed to abide by the terms and conditions of the contract and again committed default. NCLT had appointed Interim Resolution Professional of the corporate debtor who after following the due process, sought for liquidation of the

corporate debtor. Thereafter, corporate debtor was sold in auction to the successful bidder M/s.Mahashiv Shakti Trading Company. Successful bidder paid the entire sale amount, whereafter, sale certificate was issued on 13.09.2021 and possession was handed over to it. However, M/s.Mahashiv Shakti Trading Company has not been arrayed as a respondent in the present proceeding.

20.2. After selling the secured assets of the corporate debtor situated at Jalgaon, State of Maharashtra, the sale proceeds were distributed amongst the creditors of the corporate debtor. Thereafter, respondent No.2 proceeded for sale of other secured properties situated at Bhimavaram on the basis of the recovery certificate issued by the recovery officer of DRT. It may be mentioned that DRT had passed an order on 26.10.2018 in O.A.No.1316 of 2016 on the basis of which recovery certificate for an amount of Rs.82,23,55,545.00 was issued.

20.3. Respondent No.2 has contended that in the reply filed by the corporate debtor to the application filed under

Section 7 of the IBC, no averments were made or no contentions were urged that the said application filed by respondent No.2 was barred by limitation. Assuming that corporate debtor was aggrieved by order of NCLT initiating Corporate Insolvency Resolution Process, it had its remedy of appeal under Section 61(1) of the IBC. Limitation for filing such appeal is thirty (30) days. It was much after the limitation period had expired that the related interlocutory application was filed to facilitate filing of the writ petition. However, it is asserted that the application filed under Section 7 of IBC before NCLT is not barred by limitation. Supporting the order of NCLT dated 30.03.2021 respondent No.2 seeks dismissal of the writ petition.

21. Identical counter affidavit has been filed by respondent No.3, i.e., the corporate debtor represented by the official liquidator Mr. G.Madhusudan Rao. At the outset, a preliminary objection has been raised as to non-joinder of necessary party for which it is contended that the writ petition should be dismissed. It is stated that liquidator of the corporate debtor had conducted its sale

as an on going concern on 03.09.2021. In the bidding process, M/s.Mahashiv Shakti Trading Company emerged as the successful bidder. On payment of the entire sale consideration, liquidator had issued a sale certificate on 13.09.2021 in favour of the purchaser M/s.Mahashiv Shakti Trading Company and handed over possession of the corporate debtor to it. Neither have these facts been pleaded in the writ petition nor M/s.Mahashiv Shakti Trading Company made a party to the writ proceeding. Therefore, the writ petition should be dismissed.

21.1. It is stated that corporate debtor had availed various credit facilities from respondent No.2 in connection with setting up of 10 MW bio-mass plant at Jalgaon in the State of Maharashtra. However, because of default in loan repayment, the loan accounts of the corporate debtor were classified as NPA by respondent No.2, whereafter respondent No.2 had invoked provisions of the SARFAESI Act, besides availing its remedy under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 by filing O.A.No.1316 of 2016 before DRT. Notice was

issued by DRT on 14.06.2018 but still there was no repayment of the loan amount by the corporate debtor. Respondent No.2 thereafter filed a company petition under Section 7 of the IBC being C.P. (IB) No.681/7/HDB/2018 on 29.10.2018 to initiate Corporate Insolvency Resolution Process against the corporate debtor. Promoter and suspended Director of corporate debtor including the petitioner had filed reply. After due consideration, NCLT admitted the company petition on 20.09.2019 and appointed respondent No.4 as Interim Resolution Professional to oversee the Corporate Insolvency Resolution Process of the corporate debtor.

21.2. Respondent No.3 has referred to Section 61(1) of IBC and thereafter has contended that petitioner did not file appeal before the National Company Law Appellate Tribunal (NCLAT) against the order dated 20.09.2019 of NCLT. It may be mentioned that subsequently, respondent No.4 was appointed as Resolution Professional.

21.3. In the meanwhile, the Committee of Creditors in its eighth meeting unanimously decided to liquidate the corporate debtor being not satisfied with the resolution plan. It was thereafter that G.Madhusudan Rao was appointed as the liquidator and vide the order dated 22.02.2021 NCLT directed the liquidator to liquidate the corporate debtor.

21.4. After following the due process, liquidator had issued sale notice for sale of the corporate debtor as a going concern by way of e-auction which was held on 03.09.2021. In the auction proceedings, corporate debtor was sold to the successful bidder M/s.Mahashiv Shakti Trading Company which subsequently paid the entire sale consideration. Following which, liquidator issued sale certificate on 13.09.2021 and handed over possession of the assets of the corporate debtor along with documents to the successful bidder. Liquidator has, in the meanwhile, distributed the sale proceeds in accordance with Section 53 of IBC in the month of September 2021 itself and thereafter submitted report to NCLT.

21.5. Petitioner without filing an appeal against the order of NCLT dated 22.02.2021 before NCLAT, instead filed an interlocutory application before NCLT on 10.03.2021 for review of C.P. (IB) No.681/7/HDB/2018 and to dismiss the said application as being bared by limitation.

21.6. NCLT vide the order dated 30.03.2021 dismissed the said interlocutory application being I.A.No.114 of 2021. Instead of preferring appeal against the aforesaid order dated 30.03.2021 before NCLAT, petitioner has approached this Court.

21.7. Detailed averments have been made contending that the application under Section 7 of IBC is not barred by limitation. That apart, it has been contended that Supreme Court in **Laxmi Pat Surana v. Union of India** (Civil Appeal No.2734 of 2020) has settled the issue of applicability of Section 18 of the Limitation Act, 1963 to applications for initiation of insolvency proceedings under the IBC. Respondent No.3, therefore, seeks dismissal of the writ petition.

22. Mr. L.Ravichander, learned Senior Counsel for the petitioner at the outset submits that application filed under Section 7 of IBC by respondent No.2 before the NCLT is clearly barred by limitation. He submits that it is now settled that provisions of the Limitation Act, 1963 are applicable to proceedings before NCLT including proceedings under the IBC. According to respondent No.2 itself, the loan accounts of corporate debtor were classified as NPA on 31.05.2011. However, application under Section 7 of IBC was filed before NCLT in the year 2019 and NCLT had initiated Corporate Insolvency Resolution Process on 20.09.2019. Filing of the application under Section 7 of IBC and passing of the aforesaid order on such application are much beyond the limitation period of three years. He submits that limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority would have no jurisdiction to entertain such suit, appeal or application; proceed with the same and thereafter render a finding on merit.

22.1. On the question of alternative remedy, i.e., filing of an appeal under Section 61 of IBC, non-filing of which has been cited as a ground for dismissal of the writ petition, learned Senior Counsel for the petitioner has submitted a compilation of citations of this Court as well as of the Supreme Court contending that Article 226 of the Constitution of India is a constitutional provision, exercise of which cannot be fettered by any statute or law of limitation. Notwithstanding the availability of alternative remedy, a writ court would still exercise jurisdiction under Article 226 of the Constitution of India if it is satisfied that the order or proceeding assailed is in gross violation of the principles of natural justice or is an infringement of fundamental rights or is without any jurisdiction. A proceeding or an order passed beyond limitation would be without jurisdiction and in such a case, it would be perfectly legitimate for an aggrieved person to approach the writ court rather than subjecting himself to the remedy provided under the statute. He has also distinguished the decision of the Supreme Court in

Assistant Commissioner v. Glaxo Smith Kline Consumer Health Care Limited[1] as being not applicable to the facts of the present case.

22.2. On merit, learned Senior Counsel has referred to the averments made in the writ affidavit, more particularly paragraph 6 thereof and submits that the default in loan repayment had occurred because of the approach and attitude of respondent No.2 i.e., the loan sanctioning agency. Not only there was delay in sanctioning and releasing the loan amount but there was also unauthorised deduction of about Rs.1.50 crore made from the loan amounts without any authority of law. Respondent No.2 itself was largely responsible for the default of the corporate debtor. He, therefore, submits that entire proceedings before NCLT being without jurisdiction, the same is liable to be appropriately interfered with by this Court.

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[1] (2020) 19 SCC 681 : AIR 2020 SC 2819

23. On the other hand, learned counsel for respondents has supported the impugned order. Their contention is that against the order dated 20.09.2019 of NCLT, petitioner did not file appeal before NCLAT under Section 61 of IBC. Petitioner while filing reply to the said application did not raise the issue of limitation.

23.1. In the writ affidavit, there is a clear suppression of the fact that the corporate debtor has been taken over by M/s.Mahashiv Shakti Trading Company through bidding process in auction conducted under orders of NCLT. There is not only suppression of material facts but also necessary party i.e., M/s.Mahashiv Shakti Trading Company has not been arrayed as a respondent. In the circumstances, it is submitted that NCLT was fully justified in rejecting the interlocutory application filed by the petitioner.

23.2. It is further submitted that after allowing the limitation period to expire, petitioner had filed the interlocutory application before NCLT and got it

dismissed; thereafter the writ petition. This is not permissible. In support of such contention, reliance has been placed on the decision of the Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** (supra).

23.3. Insofar limitation is concerned, it is stated that liability in relation to the debt was acknowledged by the corporate debtor in their e-mail communications dated 22.12.2015 and 23.12.2015. In the said communications, corporate debtor had submitted one more proposal for settlement of the dues at Rs.16.00 crores. It was, thereafter, that corporate debtor was called for a meeting by respondent No.2 on 08.01.2016. In the meeting, corporate debtor laid emphasis on One Time Settlement (OTS) proposal and requested consideration of the same. Corporate debtor categorically admitted the debt vide letter dated 13.04.2016 and offered settlement for Rs.17.00 crores on OTS basis. Respondent No.2 agreed for such settlement vide the letter dated 22.04.2016. It is, therefore, not correct to say that that the point of limitation would commence on 31.05.2011 when the loan

accounts were classified as NPA. In support of such contention, learned counsel for the respondents have placed reliance on the decision of the Supreme Court in **Rajendra Narottamdas Sheth v. Chandra Prakash Jain**[2]. They, therefore, have prayed for dismissal of the writ petition.

24. Submissions made by learned counsel for the parties have received the due consideration of the Court.

25. Respondent No.2 i.e., the financial creditor had filed C.P. (IB) No.681/7/HDB/2018 before NCLT under Section 7 of IBC stating that corporate debtor had defaulted in repayment of a sum exceeding Rs.123 crores. NCLT heard both the financial creditor as well as the corporate debtor. In its order dated 20.09.2019, NCLT observed as follows:

> 1. The financial creditor is no way responsible for happening of certain events which causes delay in implementation of the project. Thus, there is no valid objection raised for admission of the petition. The contention of the corporate debtor is that the company is likely to revive its business. This is not a ground on which the petition can be rejected. Further, the corporate debtor admitted default.

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[2] (2022) 5 SCC 600 : 2021 SCC OnLine SC 843

2. The corporate debtor made several allegations against the financial creditor. The allegations raised by the corporate debtor cannot be looked into while deciding application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before admitting the petition filed under Section 7 of IBC, this tribunal has to see whether there is a debt due and if it is in default. Hon'ble Apex Court held in Innoventive Industries Limited v. ICICI Bank [(2018) 1 SCC 407] that the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of notice from the Adjudicating Authority.

3. The corporate debtor admitted that loans were disbursed and also admitted the default. The contention of the corporate debtor is that financial creditor failed to infuse required funds and failed to give financial support as and when required. The financial creditor filed voluminous documents along with the application to prove its claim. The corporate debtor admitted the default but contended that default occurred due to several reasons and also due to breach of terms of sanction letters by the financial creditor. At the request of the corporate debtor, the financial creditor sanctioned OTS. The corporate debtor failed to comply with the terms of OTS Scheme sanctioned by the financial creditor. The accounts of the corporate debtor were declared as

NPA by the financial creditor. The financial creditor has been able to prove to debt and default. The present petition is well within the limitation. The petition is in order. The petition is complete and therefore deserves to be admitted.

4. The financial creditor has suggested the name of IRP who has given consent in Form-2 and there is no disciplinary action pending against present IRP. The account of corporate debtor is treated as NPA and there are grounds to admit the petition.

25.1. Thereafter, NCLT as the adjudicating authority admitted the petition filed under Section 7 of IBC and declared moratorium for the purposes referred to in Section 14 of IBC by issuing certain directions. NCLT directed as follows:

Hence, the Adjudicating Authority admits this petition under Section 7 of IBC, 2016 declaring moratorium for the purposes referred to in Section 14 of the IBC, 2016 with the following directions:

a) The bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets

or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor;

b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period;

c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

d) That the order of moratorium shall have effect from 20.09.2019 till the completion of the Corporate Insolvency Resolution Process or until this bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, whichever is earlier;

e) That the public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code; and

> f) That this bench hereby appoints Mr. B.Naga Bhushan as IRP having registration number IBBI/IPA-001/IP-P00032/2016-17/10085 at 1-1-380/38, Ashok Nagar Extension, Hyderabad – 500 020.
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> Accordingly, this petition is admitted.

25.2. While declaring moratorium with effect from 20.09.2019 during Corporate Insolvency Resolution Process or until approval of the resolution plan, NCLT appointed Mr. B.Naga Bhushan as the Interim Resolution Professional.

26. It appears that thereafter Mr. B.Naga Bhushan, who in the meanwhile was appointed as the Resolution Professional, filed an application under Section 33(2) of IBC before the NCLT seeking orders for liquidation of the corporate debtor. In the proceedings held on 22.02.2021, NCLT recorded as follows:

> 2. This Tribunal vide order dated 20.09.2019 admitted the petition bearing CP (IB) No.681/7/HDB/2018 under Section 7 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the company and appointed the applicant herein as Interim Resolution Professional (IRP). The IRP constituted the Committee of Creditors (CoC)

with Pubjab National Bank as its sole member and its 1st meeting was conducted on 23.10.2019. The CoC in its 1st meeting appointed the IRP as the Resolution Professional (RP) of the Corporate Debtor Company. The CoC in its 2nd meeting on 07.12.2019. approved the Expression of Interest (EoI) inviting Prospective Resolution Applicants (PRAs). In response to the second public announcement on 11.01.2020, the Resolution Professional had received six Expression of Interest (EoI). Pursuant to which, the applicant had issued Request for Resolution Plan (RFRP) and Evaluation Matrix on 20.01.2020. At the request of two Resolution Applicants, following the decision of CoC in its 4th meeting held on 18.02.2020 time for submission of Resolution Plans was extended upto 29.02.2020.

3. The Resolution Plan received from Resolution Applicant viz Sri Chandrakali Prasada Enterprises Private Limited, Bhimavaram was placed before the CoC at its 5th meeting held on 06.03.2020. After deliberations in the 6th CoC meeting held on 11.03.2020, the Resolution Applicant agreed to revise the officer from Rs.850 lacs to Rs.950 lacs to be paid over a period of 30 months and the CoC directed to revise the offer by 16.03.2020. In the meantime extension of CIRP by 30 days was also granted by the Adjudicating Authority vide order dated 18.03.2020 as 180th day of CIRP came to an end on 17.03.2020. The Resolution Professional on 03.06.2020 received the final proposal for Rs.975 lakhs payable in a phased manner over a period of 37 months with a

couple of new conditions. Further the new Resolution Plan submitted the Prospective Resolution Applicant was not in line with RFRP and requested the CoC to consider the same in view of change in the economic situation on account of covid pandemic.

4. However, the CoC in its 8th meeting held on 12.08.2020 deliberated upon the final Resolution Plan and observed that the proposed plan does not comply with the requirement of RFRP documents so the plan is not in compliant with IBC, 2016 and therefore, the CoC unanimously voted in favour of Liquidation of the Company and proposed the name of Sri G.Madhusudhan Rao to act as Liquidator as the Resolution Professional, the applicant herein has expressed his inability to continue as Liquidator.

5. The other reliefs sought for by the applicant is exclusion of 129 days covid induced lockdown from 25.03.2020 to 31.07.2020 from the CIRP period as the factory area of the Corporate Debtor is located in containment zones till 31.07.2020 by relying on Regulation 40C of CIRP Regulations, 2016 and Hon'ble NCLAT New Delhi Suo Motu order dated 30.03.2020 and accordingly CIRP period to end on 19.08.2020 and hence requested this Tribunal to condone the delay in filing the instant application.

26.1. Thereafter, NCLT passed the following order on 22.02.2021:

5. We have heard the applicant in the matter. This application is filed seeking initiation of Liquidation proceedings of corporate debtor. The Hon'ble Apex Court in K.Sashidhar v. Indian Overseas Bank [(2019) 148 LA 497 (SC)] *inter alia* held that:

> The Adjudicating Authority (NCLT) is not expected to do anything more; but is obliged to initiate liquidation process under Section 33(1) of I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.

From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not approve any viable resolution plan/proposal for revival of the company. The CoC in its wisdom has resolved with 100% voting share in favour of the liquidation of the company. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the Code. Therefore, we have no option than to pass an order for liquidation of the company in the manner laid down in Chapter-III of the Code.

ORDER

5. The application is accordingly allowed with the following directions:

(a) The period of lockdown of 129 days (w.e.f. 25.03.2020 to 31.07.2020) stands excluded from the CIRP period;

(b) The corporate debtor i.e., M/s.SRI GURUPRABHA POWER LIMITED shall be liquidated in the manner laid down in Chapter-III of the Code;

(c) Shri G.Madhusudhan Rao, Insolvency Professional is appointed as Liquidator;

(d) He shall issue public announcement stating that the corporate debtor is in liquidation;

(e) The moratorium declared under Section 14 of the Code shall cease to operate here from;

(f) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the corporate debtor;

(g) All powers of the Board of Directors, Key Managerial Personnel and partners of the corporate debtor shall cease to have effect and shall be vested in the Liquidator;

(h) The liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

(i) Personnel connected with the corporate debtor shall extent all assistance and cooperation to the Liquidator as would be required for managing its affairs;

(j) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34(8) of the Code;

(k) This order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the Liquidator; and

(l) Copy of the order shall be furnished to IBBI to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies and Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

27. Following the same, sale notice was issued on 17.08.2021 in newspaper. E-auction was conducted on 03.09.2021 in accordance with Regulation 33(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 for sale of the corporate debtor as a whole. In the e-auction, M/s.Mahashiv Shakti Trading Company was the successful bidder for

Rs.7,30,00,000-00. Thereafter, Letter of Intent was issued to M/s.Mahashiv Shakti Trading Company on 03.09.2021. On payment of the entire amount, sale certificate was issued on 13.09.2021 by the liquidator of corporate debtor in favour of M/s.Mahashiv Shakti Trading Company.

28. These material facts have not been disclosed or stated in the writ affidavit. Had these facts been brought on record, perhaps this Court would not have passed the interim order dated 21.12.2021, which appears to be now wholly redundant because of the intervening events which took place.

29. Be that as it may, petitioner had filed an interlocutory application under Section 60(5) of IBC for dismissal of C.P. (IB) No.681/7/HDB/2018 filed under Section 7 of IBC as being barred by limitation. The interlocutory application was registered as I.A.No.114 of 2021. By order dated 30.03.2021 NCLT dismissed the said interlocutory application in the following manner:

> 3. We have heard the counsel for applicant. We have gone through the records submitted before

us. The counsel for applicant would contend that the Company Petition CP (IB) No.681/7/HDB/2018 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 was admitted by the Tribunal on 20.09.2019 and invoked the CIRP process.

4. The counsel for applicant would contend that during the CIRP process, the RP and CoC filed an application IA No.685 of 2020 for liquidation of corporate debtor and this Hon'ble Tribunal issued an order dated 22.02.2021 for liquidation of the corporate debtor.

5. The counsel for applicant relied on the following decisions of the Hon'ble Supreme Court of India and Apex Court:

i. Order issued by the Hon'ble Supreme Court of India in the matter of **M/s.B.K.Educational Services Private Limited v. Paras Gupta and Association** [(2019) 11 SCC 633] held as shown in para 11, page 7 of the application;

ii. Order dated 25.09.2019 issued by the Hon'ble Supreme Court of India in the matter of **Jignesh Shah v. Union of India** [(2019) 10 SCC 750] held as shown in para 12, pages 7 & 8 of the application;

iii. Order dated 30.09.2019 issued by the Hon'ble Supreme Court of India in the matter of **Sagar Sharma v. Phoenix ARC Private Limited** [(2019) 10 SCC 353] held as shown in para 13 page 8 of the application;

iv. Order dated 14.08.2020 in Civil Appeal No.6347 of 2019 issued by the Hon'ble Supreme Court of India in the matter of **Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited** [(2020) 15 SCC 1] held as shown in para 14 page 8 of the application;

v. Order issued by Hon'ble National Company Law Appellate Tribunal in the matter of **Bank of India v. Coastal Oil Gas Infrastructure Private Limited** [2020 SCC OnLine NCLAT 1095] held as shown in para 15, page 8 of the application;

vi. Order issued by Hon'ble National Company Law Appellate Tribunal in the matter of **Bimalkumar Manubhai Savalia v. Bank of India** [2020 SCC OnLine NCLAT 400] held as shown in para 16, page 9 of the application; and

vii. Order issued by Hon'ble National Company Law Appellate Tribunal in the matter of **Reliance Asset Reconstruction Company Limited v. Hotel Poonja International Private Limited** [2020 SCC OnLine NCLAT 920] held as shown in para 17, page 9 of the application.

We are of the considered view that in the circumstances, it is highly improper to reserve the clock and the petitioner ought to have taken up this matter when the matter was admitted, before the Hon'ble National Company Law Appellate Tribunal (NCLAT), which is the Appellate Authority in the present situation. As such, we find no reason to entertain this IA and accordingly, IA is dismissed.

7. In the result, IA No.114 of 2021 in CP (B) No.681/7/HDB/2018 is dismissed.

30. There are a couple of aspects which we need to highlight in this matter. We have already noticed suppression of material facts by the petitioner and the resultant non-joinder of necessary party. On this ground itself, the writ petition is liable to be dismissed.

31. However, we find that NCLT had passed the initial order dated 20.09.2019 after hearing both the financial creditor as well as the corporate debtor. Petitioner had filed reply to the application filed under Section 7 of IBC but did not raise any issue of limitation. What was urged before the NCLT was that it was because of the methodology adopted by the financial creditor that the corporate debtor ran into liquidity crunch which resulted in default in payment of outstanding dues. Be that as it may, if the petitioner was aggrieved by the order dated 20.09.2019, he had his remedy of filing appeal under Section 61 of the IBC. However, under sub-section (2) of Section 61, such appeal is required to be filed within

thirty (30) days before NCLAT. As per the proviso, NCLAT has the discretion to allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days. Thus, overall there is limitation of 45 days in filing appeal under Section 61. Petitioner did not file any such appeal. Long therafter he filed an interlocutory application under Section 60(5)(c) of IBC for rejecting the application filed under Section 7 of IBC as being barred by limitation which we have seen above has been dismissed by NCLT vide the impugned order dated 30.03.2021.

32. Before proceeding further, let us briefly dilate on Section 60 of IBC which provides for adjudicating authority for corporate persons. As per sub-section (1), the adjudicating authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors shall be NCLT having territorial jurisdiction. Sub-section (5) is relevant and reads as follows:

60. Adjudicating Authority for corporate persons:-

(1) to (4) xxx xxx xxx

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

32.1. From the above, it is seen that as per the aforesaid provision, NCLT shall have jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person; any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the

corporate debtor or corporate person under IBC. It is under this provision that the related interlocutory application was filed by the petitioner. According to us, it has been rightly dismissed by the NCLT.

33. In **Glaxo Smith Kline Consumer Health Care Limited** (supra), Supreme Court has held that ordinarily High Court should not entertain a petition under Article 226 of the Constitution of India after exhaustion of the limitation period provided by the statute for availing the remedy thereunder.

34. Insofar extension of limitation in proceedings under IBC is concerned, we may refer to the decision of the Supreme Court in **Chandra Prakash Jain** (supra). In that case, the corporate debtor had not raised any objection to the application filed under Section 7 of IBC contending that it was barred by limitation. However, the objection was raised in appeal before the NCLAT. It was contended that the date of declaration of loan account as NPA would be the starting point of limitation. Subsequent

negotiations or offers would not extend limitation. Adverting to Section 18 of the Limitation Act, 1963, Supreme Court held that the said provision is applicable to applications filed under Section 7 of IBC. In case the application under Section 7 of IBC is filed beyond the period of limitation of three years from the date of default and the financial creditor furnishes the required information relating to acknowledgement of debt in writing by the corporate debtor before the adjudicating authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained if filed within this extended period. Supreme Court held as follows:

> 25. In the instant case, there is no dispute that the date of default is 30-9-2014 and the application under Section 7 of the Code was filed on 25-4-2019. According to the financial creditor, Section 18 of the Limitation Act is applicable in view of the corporate debtor acknowledging its debt by way of letters, written in and after 2018, giving details of amount repaid, acknowledging the amount outstanding and

requesting consideration of one-time settlement proposal.

26. Sub-section (1) of Section 18 of the Limitation Act reads as under:

> "**18.** ***Effect of acknowledgment in writing.***—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

27. It is no more *res integra* that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgment of debt, in writing by the corporate debtor, before the adjudicating authority, with such acknowledgment having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period.

28. There is no dispute that the date of default in this case is 30-9-2014, as mentioned by the financial creditor in its application under Section 7. A copy of the debit balance confirmation letter dated 7-4-2016 was filed along with the application. As the

application was filed only on 25-4-2019, which is beyond a period of three years even after taking into account the debit balance confirmation letter dated 7-4-2016, the application was barred by limitation. However, the corporate debtor had, in its reply before the adjudicating authority, placed on record a letter dated 17-11-2018, which detailed the amount repaid till 30-9-2018 and acknowledged the amount outstanding as on 30-9-2018. On the basis of this letter and the record showing that the corporate debtor had executed various documents amounting to acknowledgment of the debt even in the Financial Year 2019-20, NCLT was of the opinion [*Union Bank of India* v. *R.K. Infratel Ltd.*, 2020 SCC OnLine NCLT 6064] that the application was filed within the period of limitation. The said view was upheld [*Rajendra Narottamdas Sheth* v. *Chandra Prakash Jain*, 2020 SCC OnLine NCLAT 827] by NCLAT.

29. 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. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension

period in accordance with Section 18 of the Limitation Act and such material has also been considered by the adjudicating authority before admitting the application under Section 7 of the Code. The plea of Section 18 of the Limitation Act not having been raised by the financial creditor in the application filed under Section 7 cannot come to the rescue of the appellants in the facts of this case. 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. In the present case, if the documents constituting acknowledgment of the debt beyond April 2016 had not been brought on record by the corporate debtor, the application would have been fit for dismissal on the ground of lack of any plea by the financial creditor before the adjudicating authority with respect to extension of the limitation period and application of Section 18 of the Limitation Act.

35. In the instant case, we have already noted the date of declaration of the loan account as NPA. It is 31.05.2011. Demand notice was issued by respondent No.2 to the corporate debtor under Section 13(2) of the SARFAESI Act on 22.06.2011, followed by possession notice dated 15.09.2021. While proceeding under the SARFAESI Act was going on, a proposal for rescheduling

of the loan account was mooted by the parties on 19.03.2012. Corporate debtor had also executed balance confirmations on 04.07.2013. Thereafter, corporate debtor had submitted proposal by way of e-mail communications dated 22.12.2015 and 23.12.2015 showing its readiness and willingness to settle outstanding dues at Rs.16.00 crores. A meeting was held thereafter between the corporate debtor and the financial creditor on 08.01.2016. Following further communications between the parties, respondent No.2 agreed for settlement of its dues under OTS vide letter dated 22.04.2016. It was thereafter that application under Section 7 of IBC was filed before NCLT in the year 2018, to be precise on 29.10.2018, which ultimately led to the order dated 20.09.2019. Therefore, it cannot be said that the application under Section 7 of IBC is barred by limitation.

36. Thus, on a thorough consideration of all aspects of the matter, we are of the unhesitant view that the present writ petition is thoroughly misconceived and is liable to be

dismissed. It is accordingly dismissed. However, there shall be no order as to costs.

37. Consequently, interim order passed on 21.12.2021 stands vacated.

Miscellaneous applications, pending if any, shall stand closed.

SD/- T. TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

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MBC
GJP

HIGH COURT

DATED: 13/04/2023

HIGH COURT FOR THE STATE OF TELANGANA
24 APR 2023
DESPATCHED

ORDER

WP.No.28161 of 2021

DISMISSING THE WRIT PETITION

WITHOUT COSTS

22

MA
24/4/23