

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins) No.151/2023
(IA Nos. 501, 743, 744 & 1372/2023)

IN THE MATTER OF:

**Disha Choudhary, Erst. Managing Director,
 Dreamz Infra India Limited**

... Appellant

Vs.

**DreamzSneh Project Allottees Welfare Association
 & Anr.**

... Respondents

Present:

For Appellant : Mr. S.D. Singh, Advocate
For Respondents : Mr. T. Ravichandran, Advocate, For R1
 Ms. P. Chitra Nirmala, Advocate, For R2
 Mr. Ashok Kriplani, For Proposed Intervenor

JUDGMENT

Per: Justice Rakesh Kumar Jain:

The Appellant, namely, Ms. Disha Choudhary is the Managing Director of M/s Dreamz Infra India Limited (Corporate Debtor) who has challenged the validity of the order dated 15.02.2023 passed in CP (IB) No. 83/BB/2021 by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by M/s Dreamz Sneh Project Allottees Welfare Association (Respondent No.1/Financial

Creditor) on 19.08.2021 has been admitted by the National Company Law Tribunal, Bengaluru Bench (in short 'Tribunal') and appointed Mrs. Jaya Bharuka as the Interim Resolution Professional and the order dated 21.02.2023 passed in I.A. No. 113/BB/2023 filed in CP IB No. 83/BB/2021 by Respondent No. 1 under Section 420(2) of the Code seeking certain reliefs including appointment of Mrs. Ramanathan Bhuvaneshwari as the IRP which was allowed for modification in the order dated 15.02.2023, appointing Respondent No. 2 as the IRP and kept the rest of the order dated 15.02.2023 unaltered.

2. Brief facts of this case are that Pratap Chandra Padhy and two others (homebuyers) filed an application bearing CP (IB) No. 84/BB/2019 under Section 7 of the Code r/w Rules 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process in respect of the Corporate Debtor for the resolution of an amount of Rs. 40,06,625/-. This application was admitted on 20.08.2019 and the Corporate Debtor stepped into CIRP.

3. During the pendency of the CIRP proceedings, initiated in CP (IB) No. 84/BB/2019, various applications were filed by the

IRP appointed in that case for seeking various directions, however, the Tribunal passed the order dated 04.09.2020 which read as under:-

“29. In the result, the following orders are passed:

1. I.A. Nos. 205, 206, 207, 208, 213, 214, 215, 216, 217, 218, 304, 305, 306, 307, 309, 310 & 311 of 2020 in CP (IB) No. 84/BB/2019 are hereby dismissed as not maintainable.”
2. The CIRP initiated vide order dated 20.08.2019 passed in CP (IB) No. 84/BB/2019 by the Adjudicating Authority is deemed to be in respect of only Dreamz Sumadhur Project.
3. Accordingly, the Applicant is directed to take appropriate action in accordance with extant provisions of Code and the Rules made thereunder and complete CIRP in respect CD with reference to Dreamz Sumadhur Project.
4. Since, the CIRP which was initiated against the CD initially vide order dated 20.08.2019 in which all its projects were included was ultimately confined to only one project, namely, Dreamz Sumadhur Project vide order dated 04.09.2020, therefore, the home buyers of a separate project, namely, Dreamz Sneh Project, floated by the Corporate Debtor in the property at survey no. 121/3, old sy. No. 120/01 at Bhoganahalli Village, Bengaluru East Taluk, comprising ‘A’ Block and ‘B’ Block, through association, filed their own application on 19.08.2021

under Section 7 of the Code, registered as CP (IB) No. 83/BB/2021, which has been admitted on 15.02.2023 and at that time, Jaya Bharuka was appointed as the IRP. However, Respondent No. 1 filed an application bearing I.A. No. 113/BB/2023 for modification in the order dated 15.02.2023. The said application was allowed to the extent indicated in the order dated 21.02.2023 and rest of the order dated 15.02.2023 was maintained.

5. This appeal has been filed by the Managing Director of the Corporate Debtor in order to assail the validity of the order dated 15.02.2023 and the order dated 21.02.2023 only on the ground that the application filed under Section 7 is beyond the period of limitation.

6. Counsel for the Appellant has submitted that the application filed by Respondent No. 1 was beyond the period of limitation because the cause of action has arisen in 2016 whereas the Tribunal has committed an error in considering that the cause of action has arisen to Respondent No. 1 on 04.09.2020 when the order was passed by the Tribunal confining the CIRP only in respect of one project, namely, Dreamz Sumadhur Project. He has argued that the limitation can be

extended only under Section 18 and 19 of the Limitation Act and cannot be extended by an order of the Court.

7. On the other hand, Counsel appearing on behalf of Respondent has submitted that the first petition i.e. CP (IB) No. 84/BB/2019 filed by three home buyers of the Corporate Debtor was against the Company who has floated various projects including Dreamz Sumadhur Project and Dreamz Sneh Project. The said petition was admitted on 20.08.2019. Since, the CIRP was initiated against the Company, therefore, the home buyers of Dreamz Sneh Project, coming to know about the initiation of CIRP against the company vide its order dated 20.08.2019, filed claims to the RP which were also admitted but the subsequent order which came to be passed on 04.09.2020 confined the CIRP only in respect of Dreamz Sumadhur Project, therefore, the necessity to file their own application arose and as such the application has been filed.

8. It is further submitted that the limitation can also be counted from the date of the order and in this regard, reliance has been placed on a decision of the Hon'ble Supreme Court in the case of Dena Bank (Now Bank of Baroda) Vs. C. Shiva Kumar Reddy & Anr., (2021) 10 SCC 330.

9. In rebuttal, Counsel for the Appellant has submitted that the judgment in the case of Dena Bank (Supra), relied upon by Respondent, is in respect of the judgment or the decree and does not contemplate the orders which are relied upon by the Respondents.

10. We have heard Counsel for the parties and perused the record.

11. The Corporate Debtor was incorporated on 16.01.2012. In the year 2014, the Corporate Debtor floated various housing projects including Dreamz Sumadhur Project and Dreamz Sneh Porject. The projects did not pick up leading to filing of various police complaints, cases before the Civil Courts, Consumer Courts and PIL in the High Court in as much as the Appellant (Disha Choudhary) who is the MD and various stakeholders of the Corporate Debtor were in judicial custody for about three years and disqualified under Section 164 of the Companies Act, 2013 for non-filing of annual returns. Three home buyers initiated the legal proceedings under the Code by filing the application under Section 7 bearing CP (IB) No. 84/BB/2019 which was admitted on 20.08.2019. Since, the CIRP was initiated against the Company as a whole (Corporate Debtor), therefore,

the homebuyers of Dreamz Sneh Project also filed their claims to the IRP which were admitted. However, by a subsequent order dated 04.09.2020, the CIRP initiated in CP (IB) No. 84/BB/2019 on 20.08.2019 was ordered to be confined to only one project, namely, Dreamz Sumadhur Porject. As a result thereof, a separate cause of action arose to the Appellant for the purpose of redressal of their grievance with the passing of the order dated 04.09.2020 and therefore, they filed the application under Section 7 on 19.08.2021 within a period of three years from the date of cause of action 04.09.2020 had arisen. In this regard, finding has been recorded by the Tribunal in para 12 of the impugned order which is reproduced as under:-

“The other issue to be examined is whether the C.P. is within the period of limitation. As per the documents of the Respondent/Corporate Debtor itself the project has to be completed and the flats are required to be delivered during the period 2015 to 2019 in respect of various Homebuyers. The Corporate Debtor was unable to complete the Project in time. However, even when one of the homebuyers fulfils the limitation it is sufficient. The Hon'ble Supreme Court in *Manish Kumar vs. Union of India*, (2021) 5 SCC 1, has observed that the homebuyers under Section 7 application only need to show the default qua one of the Financial Creditors in as much to maintain the limitation. Further, the cause of action also arises due to earlier orders dated 20.08.2019 and 04.09.2020

passed by this Adjudicating Authority in CP (IB) No. 84/BB/2019 in respect of same Corporate Debtor, which further extends the Limitation. Since the instant CP is filed on 19.08.2021, the same is filed within the period of limitation”

12. The arguments raised by the Appellant is that the limitation can be extended only under Section 18 and 19 of the limitation Act, cannot be accepted because of the decision of the Hon’ble Supreme Court in the case of Dena Bank (Supra). It has been held that the limitation can be counted from the date of the judgment or decree. The relevant observation of the Hon’ble Supreme Court is reproduced as under:-

“138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant Bank, would not be barred by limitation at least till 24th May, 2020.

140. While it is true that default in payment of a debt triggers the right to initiate the Corporate Resolution Process, and a Petition under Section 7 or 9 of the IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238A

of the IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a Petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Section 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In *Gaurav Hargovindbhai Dave* (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. 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 of the 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.”

13. Thus, in view of the aforesaid discussion, we do not find any error in the impugned order in so far as the issue of limitation has been decided which has only been challenged in this appeal, therefore, the present appeal is found devoid of merit and the same is hereby dismissed. All other pending applications are also hereby closed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

14th May, 2024.

sheetal