

Shri Raju Chappakal Pappu Anr vs Shri Arunava Sikdar, Interim ... on 7 March, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 681 of 2019

(Arising out of Order dated 08.05.2019 passed by National Company Law Tribunal,
Mumbai Bench in C.P. 2527(IB)/MB/2018).

IN THE MATTER OF:

1. Shri Raju Chappakal Pappu
(Through Special POA)
At: MR Nivas, Sr. No. 26, Road No. 10,
(PMC) Near Durga Mata Mandir,
Ganesh Nagar, Pune: 411031; and

2. Shri Chitranjan Kumar (Adv.),
At: 608- B, Ganga Building,
Jangid Complex, Mira Road (E),
Mumbai: 401107, 8080070102 (M),
Email Id: legalfocusindia@gmail.com

Both are now power suspended directors of
M/s. Dugal Projects Development Company
Private Limited.

...Appellants

Versus

1. Shri Arunava Sikdar,
Interim Resolution Professional of M/s. Dugal
Projects Development Company Private Limited
(DPDCPL), D-3, LGF Lajpat Nagar Part-1,
New Delhi - 110024, 9810063161 (M),
Email Id: asikdar1990@gmail.com

2. Alchemist Assets Reconstruction
Company Private Limited (AARC),
D-54, First Floor, Defence Colony,
New Delhi - 110024, admin@alchemistarc.com

...Respondents

Appellants: Mr. Arun Bhardwaj, Senior Advocate with Mr. Devendra
Saini, Mr. Vikram Saini, Mr. Chitranjan Kumar,
Advocates.

Respondents: Mr. Ashu Kansal, Advocate for R1.
Mr. Abhijeet Sinha, Mr. Kanishk Khetan, Mr. Ashish Choudhury, Advocates for R2.

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JUDGEMENT

Ashok Bhushan, J:

1. This Appeal has been filed against the Order dated 08th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) admitting the Application CP 2527(IB)/MB/2018 filed by Respondent No. 2-Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'Code'). This Appeal has been filed by two Suspended Directors of the Corporate Debtor-M/s. Dugal Projects Development Company Private Limited.

2. Brief facts of the case necessary to be noted for deciding the Appeal are:

- M/s. Sima Hotels and Reports Ltd. (hereinafter referred as 'Principal Borrower') obtained financial assistance in the year 1986 from Financial Institution namely IFCI/IDBI/ICICI to set up a Five-Star Hotel Projects in Goa at a piece of land at Agonda Beach owned by M/s. Dugal Projects Developemt Company Private Limited-Corporate Debtor.

- A Loan Agreement dated 04.11.1987 was executed by the Lenders in favour of the Principal Borrower. As per the Conditions of Loan Agreement dated 04.11.1987 the Principal Borrower was to procure Corporate Guarantee of the Corporate Debtor. Corporate Debtor i.e. M/s. Duggal Projects Development Private Limited executed a deed of personal guarantee dated 06.11.1987.

Company Appeal (AT) (Insolvency) No. 681 of 2019 • Corporate Debtor leased the land to Principal Borrower for Hotel Projects. There was default of repayment and non-fulfilment of the terms and conditions under the Loan Agreement by Principal Borrower. The IFCI vide its Letter dated 13.03.1989 cancelled the undisbursed loan of Rs. 285 Lakhs. IFCI vide Letter dated 29.11.1989 on behalf of all Lenders recalled the entire outstanding of Rs. 5,43,94,687/-. IFCI vide Letter dated 05.01.1990 finally invoked guarantee given by the Corporate Debtor and other personal guarantors demanding an amount of Rs. 5,43,94,687/- up to 31st October, 1989.

- The Financial Institution filed a joint Civil Suit No. 2654 of 1991 for recovery before the Hon'ble High Court of Bombay. The aforesaid Suit was transferred to Debt Recovery Tribunal, Mumbai (hereinafter referred to as the 'DRT') and was renumbered as O.A. No. 224/2002. A common Judgment dated 06.05.2011 was delivered in the O.A. No. 224 of 2002 decreeing the recovery of amount of Rs. 6,04,77,858/-

along with Pendente Lite Interest at the rate of 12 % interest, in pursuance of Decree dated 06.05.2011 two recovery certificates were issued in 22nd December, 2011.

- Principal Borrower filed an Appeal against the Judgment dated 06.05.2011 passed by DRT which was dismissed on 28.10.2015. The Corporate Debtor also filed an Appeal against the Decree dated 06.05.2011 which was dismissed as withdrawn on 14.02.2017.

Company Appeal (AT) (Insolvency) No. 681 of 2019 • The Lenders assigned their debt to the Respondent No. 2 Alchemist Assets Reconstruction Company Private Limited on different dates. The Respondent No. 2-Financial Creditor filed two Section 7 Applications on 10th July, 2018 against the Principal Borrower and Corporate Debtor bearing CP-2528(IB)/MB/2018 and CP 2527(IB)/MB/2018, respectively. Ld. NCLT vide Order dated 08th May, 2019 dismissed the CP(IB) No. 2528/MB/2018 against the Principal Borrower whereas by Order of the same date 08th May, 2019 admitted the CP 2527(IB)/MB/2018 against the Corporate Debtor. The Respondent No. 2 filed Company Appeal (AT) Ins. No. 650 of 2019 against the Order dated 08.05.2019 passed by the Adjudicating Authority rejecting the Section 7 Application against the Principal Borrower. Company Appeal (AT) Ins. No. 650 of 2019 was dismissed by this Tribunal by the Order dated 18.12.2019. By this Judgment dated 18.12.2019 this Tribunal held that Application filed under Section 7 by the Respondent No. 2-Financial Creditor was barred by time. Against the Judgment of this Appellate Tribunal dated 18.12.2019, the Financial Creditor filed a Civil Appeal No. 853 of 2019 before the Hon'ble Supreme Court of India which came to be dismissed on 07.02.2020. Against the Order dated 08th May, 2019 passed by the Adjudicating Authority in CP 2527(IB)/MB/2018, this Appeal has been filed. Although both the Appeals i.e. Company Appeal (AT) Ins. No. 681 of 2019 as well as Company Appeal (AT) Ins. No. 650 Company Appeal (AT) (Insolvency) No. 681 of 2019 of 2019 were listed together but vide Judgment dated 18th December, 2019, Company Appeal (AT) Ins. No. 650 of 2019 was dismissed.

3. This Appeal has been filed by two 'Suspended Directors' of the Corporate Debtor challenging the Order dated 08th May, 2019 passed by the Adjudicating Authority admitting the Application filed by the Respondent No. 2 under Section 7 of the Code. We have heard Mr. Arun Bhardwaj, Sr. Advocate for the Appellant and Mr. Abhijeet Sinha, Advocate for Respondent No. 2. Mr. Ashu Kansal, Advocate appeared for Respondent No. 1.

4. Learned Sr. Counsel for the Appellant challenging the Order dated 08th May, 2019 submits that the Adjudicating Authority committed error in admitting the CP 2527(IB)/MB/2018 filed against the Corporate Guarantor (Corporate Debtor) whereas by the Order of same date rejected the Application CP-2528(MB)/2018 filed against the Principal Borrower. Learned Sr. Counsel submits that the Adjudicating Authority held the Application filed under Section 7 by the Financial Creditor barred against the Principal Borrower and hence there was no jurisdiction to admit the Application under Section 7 against the Corporate Guarantor. It is submitted that Application filed under Section 7 by the Financial Creditor against the Corporate Debtor was clearly barred by time, after the Judgment of the DRT dated 06.05.2011, the Limitation for filing Section 7 Application was at best 3 years i.e. up to 05.05.2014. The Application under Section 7 of the Code having been filed on 10th July, 2018 was clearly barred by time. It was submitted that Application filed by the Financial

Creditor was barred by time but the Adjudicating Authority did not advert to the said argument and Company Appeal (AT) (Insolvency) No. 681 of 2019 without advert to the said argument, has admitted the Application. The Application was barred by time which was wrongly admitted and the said order deserves to be set aside. It is submitted that the issue in the present case is fully covered by the Judgment of this Tribunal dated 18.12.2019 in Company Appeal (AT) Ins. No. 650 of 2019 wherein this Tribunal had held the Application under Section 7 of the Code filed by the Financial Creditor against the Principal Borrower was barred by time. It is further submitted that no guarantee was given by the Corporate Debtor to the Loan obtained by the Principal Borrower. Personal Guarantee dated 06.11.1987 was void, ab initio and invalid.

5. Mr. Abhijeet Sinha, Advocate for the Respondent No. 2 submits that even though Section 7 Application filed by Respondent No. 2 against the Principal Borrower has been dismissed as barred by time by the Adjudicating Authority, the Application filed against the Corporate Debtor under Section 7 is not barred by time. Mr. Sinha submits that at the time when Judgment was delivered by the Adjudicating Authority on 08.05.2019 law regarding applicability of the Limitation Act in Insolvency Proceedings was not clear and now it has been held by the Hon'ble Supreme Court that any proceeding under Code the provisions of Sections 5, 14 and 18 of the Limitation Act, 1963 are applicable hence the Financial Creditor was entitled to the benefit of the aforesaid provisions. Learned Counsel for the Respondent No. 2 has raised two fold submissions to contend that Application filed under Section 7 against the Corporate Debtor was not barred by time; Firstly, he submits that after the Judgment/Decree dated Company Appeal (AT) (Insolvency) No. 681 of 2019 06.05.2011 the Corporate Debtor had submitted a proposal for One Time Settlement of dues of IDBI vide Letter dated 11.02.2014 which shall be treated as acknowledgment of debt both against the Principal Borrower as well as the Corporate Debtor granting extension of limitation. It is further submitted that Principal Borrower again on 04.03.2016 submitted a proposal for offer of settlement of dues of IDBI which shall again be ground for extension of limitation for filing the petition under Section 7 of the Code. He submits that in view of the acknowledgment of debt through One Time Settlement offer dated 11.02.2014 and 04.03.2016, the limitation for filing this Application shall be extended and Application filed on 10th July, 2018 was within time; Secondly, Mr. Sinha submits that against the Judgment and Decree dated 06.05.2011 the Corporate Debtor has filed an Appeal before the Debt Recovery Appellate Tribunal which came to be dismissed only on 14.02.2017. Hence the Limitation for filing Section 7 Application shall be counted from 14.02.2017 when the Appeal was dismissed and decree became final.

6. We have considered the submissions of Learned Counsel for the Parties and perused the Record.

7. The Principal Submissions which have been pressed by learned Sr. Counsel for the Appellant is that the Application filed by Respondent No. 2 against the Corporate Debtor under Section 7 of the Code filed on 10th July, 2018 was barred by time which submission has been refuted by Learned Counsel for the Respondent relying on Section 18 of the Limitation Act, 1963 as noted above.

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8. Before we proceed to consider the submissions of Learned Counsel for the Appellant as well as the Learned Counsel for the Financial Creditor, we may first notice the application which was filed under Section 7 by the Respondent No. 2 against the Principal Borrower and the Judgment delivered therein. As noted above, the Application against the Principal Borrower was for recovery of same amount as has been claimed against the Corporate Debtor. The Adjudicating Authority has rejected the Section 7 Application filed against the Principal Borrower on the ground that debt in question was secured by M/s. Dugal Projects Development Company Private Limited vide deed of Corporate Guarantee dated 06.11.1987 and pursuant to another petition filed by the Financial Creditor against the said corporate guarantee CP(IB) No. 2527 of 2018 for the same debt and default. Against the order dated 08.05.2019 rejecting the Section 7 Application in CP(IB) No. 2528/MB/NCLT/2018 the Company Appeal (AT) Ins. No. 650 of 2019 was filed by Respondent No. 2 which Appeal was also dismissed by this Tribunal holding the Application against the Principal Borrower as barred by time on the ground that judgment/decreed by DRT was passed on 06.05.2011. In paragraph 11 of the Judgment following has been held:

"11. In the present case, it has been accepted that the 'Corporate Debtor' defaulted on 13th March, 1989. With regard to other Banks, it defaulted on 29th November, 1989. The suit was filed by IFCI, IDBI & ICICI Banks in the year August 1990. The Judgment and Decree has been passed as far back as on 6th May, 2011. Therefore, we hold that the application filed under Section 7 of the I&B Code is barred by limitation."

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9. Against the Judgment of this Tribunal in Company Appeal (AT) Ins. No. 650 of 2019, Civil Appeal No. 853 of 2020 in Alchemist Asset Reconstruction Company Limited/Appellant(S) Versus Sima Hotels and Resorts Limited/Respondent(S) was filed which was dismissed by Hon'ble Supreme Court vide Order dated 07.02.2020 which reads as under:

"O R D E R

1. We find no ground to interfere with the impugned order passed by the Tribunal. The appeal is, accordingly, dismissed.

2. Pending application(s), if any, shall stand disposed of."

10. The Application under Section 7 filed by Respondent No. 2-Financial Creditor against the Principal Borrower thus stand dismissed on the ground of limitation. This Tribunal in the said Judgment noticed that decree was passed on 06.05.2011 by DRT and Application was filed on 10th July, 2018 hence was barred by time. Present is the case where on the same day Application under Section 7 was filed by the Financial Creditor both against the Principal Borrower and the Corporate Guarantor i.e. Corporate Debtor. The Application against the Principal Borrower now has been dismissed on the ground of limitation and present in the Appeal which has been filed against the Order of Adjudicating Authority dated 08.05.2019 admitting the Section 7 Application against the

Corporate Guarantor i.e. Corporate Debtor.

11. Mr. Abhijeet Sinha, Advocate submits that the mere fact that Application under Section 7 stand dismissed against the Principal Borrower is no impediment in hearing the present Appeal on merits and deciding the question of limitation for filing Application under Section 7 against the Company Appeal (AT) (Insolvency) No. 681 of 2019 Corporate Debtor concerned. It is submitted that law regarding applicability of limitation in Code was not clear at that time when the Application came to be filed by the Financial Creditor against the Principal Borrower which was rejected which law now stand clear and Mr. Sinha has referred to Judgment of Hon'ble Supreme Court in "B.K. Education Services Private Limited Vs. Parag Gupta and Associates - (2019) 11 SCC 633" where Hon'ble Supreme Court has laid down following in paragraph 27:

"27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

12. Learned Counsel for the Respondent No. 2 has also placed reliance on Judgment of Hon'ble Supreme Court in "Laxmi Pat Surana Vs. Union Bank of India, (2021) 8 SCC 481 and submitted that the Hon'ble Apex Court in the said Judgment has laid down that liability of the guarantor is coextensive with the Principal Borrower and it triggers the moment principal borrower commits default in paying the acknowledged debt. In paragraph 44, Hon'ble Supreme Court laid down following:

"In the present case, the NCLT as well as the NCLAT have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor Company Appeal (AT) (Insolvency) No. 681 of 2019

- corporate debtor after declaration of NPA from time to time and lastly on 08.12.2018. The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower Under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary"

13. Learned Counsel for the Respondent No. 2 has also referred and relied on the Judgment of the Hon'ble Supreme Court in "Asset Reconstruction Company India Limited Vs. Bishal Jaiswal and Ors". (2021) 6 SCC 366 where the Hon'ble Supreme Court laid down that Section 18 of the

Limitation Act gets attracted the moment acknowledgment in writing signed by the party is given.

14. Two submissions have been made by Mr. Sinha to support his submissions that Application filed by the Financial Creditor against the Corporate Debtor is not barred by time. We need to consider the above submissions to find out as to whether the Application which was filed by the Financial Creditor against the Corporate Debtor was within limitation or beyond limitation.

15. Now it is the settled law that Application under Section 7 of the IBC is covered by Article 137 of the Limitation Act, 1963 according to which the Application under Section 7 is to be filed within three years from the date Company Appeal (AT) (Insolvency) No. 681 of 2019 when right to sue occurs. The first submission of Learned Counsel for the Respondent No. 2 is based on One Time Settlement offer given by Principal Borrower on 11.02.2014 and 04.03.2016. Before we proceed to consider the above submission, it is relevant to find out what was the case of the Respondent No. 2 before the Adjudicating Authority on the question of limitation, the Application under Section 7 filed by the Financial Creditor against the Corporate Debtor is filed as Annexure A-18 of the Appeal Paper Book. Under Part-IV of the Application in Item No. 2 the date of first occurrence of default is mentioned 13.03.1989 and under Part-V Particulars of an Order of a Court, Tribunal or Arbitral Panel Adjudicating on the default, if any (attach a copy of the order), reference to Order passed by Tribunal as Annexure 17 of the Appeal Paper Book has been made. The reference to the Order of the Tribunal presumably is the reference of the Order of DRT dated 06.05.2011 by which decree was passed both against the Principal Borrower and the Corporate Debtor for payment of amount as claimed in O.A. No. 224 of 2002 and O.A. No. 33/2011. Under Section 7 Application filed by Financial Creditor against the Corporate Debtor no details regarding the extension of limitation have been specifically pleaded however in rejoinder which was filed by the Financial Creditor before the Adjudicating Authority to the Additional Reply of the Corporate Debtor regarding question of limitation, pleadings have been made in paragraph 5 of the Rejoinder-Affidavit dated 15th December, 2018 is to the following effect:

".....It is submitted herein that it is no body's case that the Financial Creditor did not have right to sue/recover the debt as the Financial Creditor was contesting litigation before the DRT and other forums Company Appeal (AT) (Insolvency) No. 681 of 2019 against the Corporate Debtor since 1990 till date. It is an admitted fact that the recovery suits were filed within the stipulated period of limitation. It is submitted that the present case in hand falls within Article 62 of the Limitation Act, 1963, which says that the time period to enforce the payment of money secured by mortgage or otherwise charged upon is 12 years.

Without prejudice to the above, it is submitted that Section 18 of the Limitation Act, 1963 provides that if any acknowledgment of the liability is made by the party then a fresh period of limitation shall be commuted from the time when the acknowledgment was given. In the instant case, it is an admitted fact that the Borrower had deposited before the DRT the entire suit amount in 2009 with request to determine the interest pendente lite and thus acknowledged the debt of the Financial Creditor. Therefore, the fresh cause of action starts again from 2009 for 12 years, which is till 2021. That,

another ground on which it can be proved that the instant application is within limitation as per the Limitation Act, 1963 is that the decree was passed on 06.05.2011 and therefore, the crystalized amount which became due and payable by the Corporate Debtor and the Borrower is from 06.05.2011 for which the limitation is again 12 years as per Article 136 of the Limitation Act, 1963 and hence, the period within which the Financial Creditor can sue/recover the debt against the Corporate Debtor is till 2023. That from the above, it is crystal clear that as on September, 2018 when the Financial Creditor had filed its Section 7 petition before this Hon'ble Tribunal, the Financial Creditor has a right to initiate proceedings under IBC and therefore, the arguments taken by the Corporate Debtor that the application is barred by limitation stands no good.

Further, the Corporate Debtor in its earlier reply has also stated about its willingness to pay and settle the outstanding dues. Therefore, the defences Company Appeal (AT) (Insolvency) No. 681 of 2019 raised by the Corporate Debtor are frivolous and baseless and the Financial Creditor has proved that there is a debt and default and the cause of action arose well within the limitation described under the law and hence the Petition be admitted and CIRP be initiated."

16. We further notice the Impugned Order of the Adjudicating Authority to find out the discussion on the question of limitation and what are the findings and reasons given by the Adjudicating Authority. Ld. Adjudicating Authority has noticed the objection of the Corporate Debtor in Paragraph 11(f) regarding the application being barred by time which is to the following effect:

"11(f) That the Petitioner has mentioned the date of the first occurrence of default as 13.03.1989 and the present petition is filed on 10.07.2018 which is beyond the limitation period of three years as provided under Article 137 of Limitation Act, 1963 and therefore the petition is barred by limitation. The corporate debtor has relied upon the judgement of Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates contends that the Limitation Act is applicable on the applications made under the I&B Code."

17. The findings and reasons of the Adjudicating Authority begins from the Paragraphs 17 to 29. The Adjudicating Authority in his findings and reasonings has not adverted to the objection raised by the Corporate Debtor that Application is barred by limitation and it appears that the argument raised on behalf of the Financial Creditor that limitation prescribes for recovery is 12 years was impliedly accepted. The case of the Financial Company Appeal (AT) (Insolvency) No. 681 of 2019 Creditor in Paragraph 14 of the Impugned Order regarding the limitation has been noticed in following:

"The Petitioner has replied that it has initiated proceedings in the year 1990 against the Corporate Debtor as Corporate Guarantor for the default committed in the year 1989 in various forums till date. It is stated that the recovery proceedings were appropriately initiated within the limitation period that culminated in a decree in favour of the Petitioner dated 06.05.2011. The said decree is legally enforceable in

terms of Section 5(7) and 5(8) read with Section 3(11) and 3(6) of I&B Code as on the date of initiation of Section 7 petition and the debt due by the Corporate Debtor to the Petitioner is not barred by Limitation Act, 1963 as in the date of filing of the petition and thus the present case is a case wherein the right to sue/recover the debt clearly subsists in favour of the Applicant as on date. The Petitioner has submitted that the petition is within limitation and the decree crystallising its debt was passed on 06.05.2011 and period of limitation prescribed for recovery of the same under the decree is 12 years as per Article 136 of the Limitation Act, 1963. This Petition which is filed in September, 2018 is very well within limitation."

18. Thus, it is clear that in the pleadings and submissions which was raised by Financial Creditor-Respondent No. 2 before the Adjudicating Authority regarding the question of limitation was claiming limitation of 12 years. The Adjudicating Authority did not return any finding or recorded any reason on the objection regarding limitation and without answering the objection and recording any findings, has admitted the Application. When objection was raised before the Adjudicating Authority that Application was barred by time it was incumbent on the Adjudicating Authority to consider Company Appeal (AT) (Insolvency) No. 681 of 2019 and answer the question of limitation. According to Section 3 of the Limitation Act, subject to the provisions of Sections 4 to 24 every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Section 3(1) is to the following effect:

"3. Bar of limitation.--

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

19. Thus, it is mandate of law to dismiss the Application which is barred by limitation. The Adjudicating Authority committed error in not advertng to the objection of Limitation and proceeded to admit the Application.

20. The plea which was set up by the Financial Creditor before the Adjudicating Authority claiming limitation period of 12 years for the Respondent is unsustainable, realising the aforesaid. Learned Counsel for the Respondent No. 2 has not made any submissions which were pressed before the Adjudicating Authority. Learned Counsel for Respondent No. 2 now has made two fold submissions for contention that the Application under Section 7 was well within time. With regard to the first submission which is based on acknowledgement dated 11.02.2014 and 04.03.2016 which is claimed on the basis of One Time Settlement offer made by Principal Borrower to IDBI there is no dispute to the preposition that One Time Settlement offer made by a debtor comes within the meaning of Section 18 which may give fresh period of limitation. Law in this context is well settled. The Judgment of Hon'ble Supreme Court in "Dena Bank Vs. C. Company Appeal (AT) (Insolvency) No. 681 of 2019 Shivkumar Reddy & Anr. (2021) 10 SCC 330 wherein Paragraph 139 and 143 following has been laid down:

"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.

.....

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 Judgement and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

21. Now the question is as to whether the Respondent No. 2 can claim One Time Settlement Offer which was given by Principal Borrower to the IDBI Bank for the purpose of extension of limitation period of the Application filed against the Corporate Guarantor i.e. Corporate Debtor.

22. We have already noticed that the Section 7 Application by the Financial Creditor against the Principal Borrower has already been held to be barred by time by this Tribunal in its Judgement dated 18th December, 2019 in Company Appeal (AT) Ins. No. 650 of 2019. Against this Judgment, Civil Appeal stand dismissed vide Order dated 07.02.2020 as noted above.

Company Appeal (AT) (Insolvency) No. 681 of 2019 When the Application under Section 7 against the Principal Borrower has already been dismissed by this Tribunal and confirmed by the Hon'ble Supreme Court, we need not entertain any submissions of the Learned Counsel for Respondent No. 2 that Principal Borrower was entitled for extension of limitation under Section 18 by virtue of One Time Settlement Offer dated 11.02.2014 and 04.03.2016. We thus are of the view that there is no need to consider the above submissions of Learned Counsel for Respondent No. 2 quo the Application of Principal Borrower within time by virtue of extension of limitation on the basis of aforesaid the proposal of One Time Settlement.

23. Now we come to the second submission of Learned Counsel for the Respondent No. 2 for extension of Limitation for the Application filed by the Financial Creditor against the Corporate Debtor which is based on submission that against the Order dated 06.05.2011 the Corporate Debtor had filed two Appeals Appeal No. 23/2013 and 68 of 2013 which was dismissed only on 14th February, 2017 hence the decree dated 06.05.2011 became final only on 14.02.2017 hence with effect from 14.02.2017 the Respondent No. 2 shall have fresh period of limitation. We have noticed the Judgment of Hon'ble Supreme Court in Dena Bank (supra) in paragraph 43 which makes it clear that from the date when decree is passed by DRT or Recovery Certificate is issued, the Financial Creditor shall have fresh period of limitation of three years. Thus, the period of limitation of three

years with effect from 06.05.2011 or 22.12.2011 shall come to an end in the year 5.5.2014 and 21.12.2014. Whether dismissal of the Appeal of the Corporate Company Appeal (AT) (Insolvency) No. 681 of 2019 Debtor on 14.02.2017 shall give a fresh period of limitation is question to be examined and answered. The submission of Learned Counsel for the Respondent No. 2 presumably is on the basis that after the Judgment of the Appellate Tribunal the decree passed by DRT dated 06.05.2011 merges in the decree of Appellate Tribunal hence fresh period of limitation shall begin from 14.02.2017.

24. We may first notice the contents of the Order dated 14.02.2017 passed by the DRAT, Mumbai in the Appeal No. 23 of 2013 which was filed by the Corporate Debtor against the Decree dated 06.05.2011. The Copy of the said Order has been brought on record along with the Reply filed by the Respondent No. 2 dated 18.12.2021. The Order dated 14.02.2017 is to the following effect:

"This application is filed by appellants to dismiss its appeal on the ground that appeal is registered without considering serious defects involved in the appeal and first prayer is to direct the Registry of DRAT, Mumbai to enquire and investigate into the illegality/serious defects involved in numbering of appeal and the second prayer to dismiss the appeal with liberty to appellants to take appropriate steps. Therefore appellants want its appeal to be dismissed. With regard to contention that appeal is wrongly numbered, it is for the appellants to take appropriate steps and if appeal is wrongly numbered appellant is equally responsible for filing such defective appeal. Other request made is to allow the appellants to take steps for review of common order that is challenged in the appeal. If law provides right to a party there is no necessity to give any permission and therefore such a relief cannot be entertained. When statute provide such relief it is for the party to invoke such remedy and not for the Tribunal to grant any permission for Company Appeal (AT) (Insolvency) No. 681 of 2019 such remedy. For these reasons appeal is dismissed with costs."

25. A perusal of the Order reproduced above indicates and case of the Applicant (Respondent No. 2 herein) appears is that the Appeal filed before the DRAT, Mumbai was defective and was wrongly numbered. M/s Dugal Projects Development Company Private Limited itself filed an Application for withdrawal of the Appeal which was allowed to be withdrawn on 14.02.2017 and the Appeal was dismissed by the DRAT noticing the aforesaid submissions. We are thus of the view that Order dated 14.02.2017 shall not give any fresh cause of action to the Respondent No. 2 to file Section 7 Application. The fresh cause of action which arose to the Financial Creditor on the basis of Decree dated 06.05.2011 and the Recovery Certificates dated 22nd December, 2011 of Debt Recovery Tribunal came to an end in the year 2014 itself and the Application under Section 7 filed on 10th July, 2018 was beyond the period of Limitation.

We thus are not persuaded by any of the submissions of Learned Counsel for the Respondent No. 2 for extension of period of limitation beyond the year 2014. We are thus of the considered opinion that Application under Section 7 filed by the Financial Creditor against the Corporate Debtor was beyond the period of limitation and could not have been admitted by the Adjudicating Authority. The Order of the Adjudicating Authority dated 08.05.2019 passed in CP(IB) No. 2527 of 2018

deserves to be set aside and is hereby set aside. The Appeal is allowed. The Order dated 08th May, 2019 Company Appeal (AT) (Insolvency) No. 681 of 2019 passed in CP (IB) No. 2527 of 2018 is set aside and the CP(IB) No. 2527 of 2018 is dismissed as barred by time. The parties shall bear their own costs.

[Justice Ashok Bhushan] Chairperson [Dr. Alok Srivastava] Member (Technical) NEW DELHI 07th March, 2022 Basant B. Company Appeal (AT) (Insolvency) No. 681 of 2019