



INSOLVENCY & BANKRUPTCY

# PERIOD OF LIMITATION STARTS FROM THE DATE OF DEFAULT, NOT FROM THE DATE OF DECREE: NCLAT

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In a recent judgment *Sh G Eswara Rao vs. Stressed Assets Stabilisation Fund*<sup>[j]</sup> National Company Law Appellate Tribunal (“**NCLAT**”), the appellate tribunal under the Insolvency & Bankruptcy Code, 2016 (“**I&B Code**”) held that period of limitation of three years for filing an application an application under Section 7 of the I&B Code commence from the date of default and not from the date of decree.

In this case, Stressed Assets Stabilisation Fund (“**Financial Creditor**”) filed an application under Section 7 of the I&B Code against Saritha Synthetics and Industries Ltd (“**Corporate Debtor**”). The Adjudicating Authority i.e the National Company Law Tribunal (“**NCLT**”) by impugned order dated 01.10.2019 initiated Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor.

The NCLT taking into consideration that the Debts Recovery Tribunal-I, Hyderabad (“**DRT**”) by order dated 17.08.2018 allowed the application of recovery of debt against the Corporate Debtor, held that the application is not barred by limitation. NCLT ascertained three years’ period commence from the date of default/ the date on which the decree was passed by the DRT.

Sh G Eswara Rao (“**Director**”) filed an appeal in NCLAT challenging the order passed by the NCLT on the ground that application under Section 7 of I&B Code was barred by limitation.

It was argued by learned counsel of appellant that the three years period is to be ascertained from the date of default / date on which the account was declared Non-Performing Asset (“**NPA**”) that is from the year 2004 whereas the learned counsel argued for Financial Creditor, it should be counted from the date when the decree of DRT was passed that is 17<sup>th</sup> August 2018.

#### **The issues which came before NCLAT:**

1. Whether the application under Section 7 of I&B Code was barred by limitation?
2. Whether the decree passed by the DRT on 17th August, 2018 can be taken into consideration to hold that application under Section 7 of the I&B Code is within period of three years as prescribed under Article 137 of Limitation Act, 1963?

#### **The NCLAT observed:**

\* In this present case the default of payment occurred before the year 2004 as the application to DRT was filed in the year of 2004; therefore, the period of limitation comes to an end in the year 2007.

\* The judgment and decree passed by DRT on 17.08.2018, only suggests that debt become due and payable and it does not shift the date of default forward. It can only be forwarded to future date if there is an acknowledgement under Section 18 of Limitation Act.

\* The decree passed by DRT on 17th August 2018 cannot be considered an acknowledgement of debt by Corporate Debtor. As noticed above, in absence of any acknowledgement under Section 18 of the Limitation Act, 1963, the date of default/ NPA was prior to 2004 and does not shift forward to the date of decree.

\* Therefore, the period of limitation for the application under section 7 of the I&B code is three years from the date of default i.e 2004 and comes to an end in the year 2007.

\* Hence, NCLAT held that the application under section 7 of the I&B Code was barred by limitation, though the claim may not be barred and the decree can be executed by filing execution.

\* NCLAT set aside the order of NCLT. The appeal by the director was allowed with no costs.

#### **[j] Company Appeal (AT) (Insolvency) No. 1097 of 2019**