

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 849 of 2023

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I.A. No. 2894, 2895 of 2023

**(Arising out of the Order dated April 24, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal-III,
New Delhi) in CP (IB) No. 3083/ND/2019)**

IN THE MATTER OF:

Mr. Rakesh Kumar Jain

S/o Late Shri Manohar Lal Jain

R/o H. No. F-9, Preet Vihar,

Delhi – 110092

...Appellant

Versus

M/s ADTV Communications Private Limited

(Formerly Known as M/s AEZ Infratech Private Limited)

CIN: U92100DL2003PTC122416

Regd. Office: 8-B, Basement Floor, Jangpura,

Main Mathura Road, New Delhi, South Delhi,

Delhi – 110014

...Respondent

Present:

For Appellant : Mr. Sunil Dalal, Sr. Advocate with Mr. Tarun Diwan,
Ms. Pyari, Mr. Chandra Prakash, Mr. Chiraayu
Trehan and Mr. Nikhil Beniwal, Advocates.

For Respondent : Mr. Anish, Proxy Counsel.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, against the Order dated 24.04.2023 passed by the Ld. Adjudicating Authority i.e., National Company Law Tribunal-III, New Delhi in

CP (IB) No. 3083/ND/2019 in the matter of Rakesh Kumar Jain vs ADTV Communications Pvt. Ltd. wherein Appellant is Financial Creditor.

2. The present Appeal, filed by Sh. Rakesh Kumar Jain is impugning the validity of the Order dated 24.04.2023 passed by the Ld. Adjudicating Authority wherein the Ld. Tribunal dismissed the Petition of the Appellant being CP (IB) No. 3083/ND/2019, for initiating the CIRP Proceedings against the Respondent Company.

3. There was some litigation going on between the parties including a suit for recovery of the amount filed by the Appellant/ Financial Creditor against the Respondent before the Hon'ble High Court of Delhi and other courts, wherein the disputes were referred to Mediation before the Mediation and Conciliation Centre Delhi High Court.

4. Appellant and Respondent reached an Agreement and resolved all their disputes in the Mediation Centre and signed a Settlement Agreement detailing terms of the settlement wherein the Respondent agreed to pay an amount of ₹15,23,00,000/- (rupees fifteen crores and twenty-three lakhs only) to the Appellant and issued four cheques of different amounts, which were to be paid on various dates. The Hon'ble Delhi High Court passed a decree in CS(OS) No. 2183/2013 based on the settlement arrived at between the parties in the Mediation and Conciliation Centre.

5. As per the Decree passed by the Hon'ble High Court in terms of the settlement between the parties an amount of ₹5,23,00,000/- (rupees five

crores, twenty-three lakhs only) was paid by the Respondent. But the cheque of ₹10,00,00,000/- (rupees ten crores only) in terms of the settlement, deposited for encashment by the Appellant/Decree Holder was returned unpaid by the banker of the Respondent company on 07.04.2016. For the default of making payment of ₹10,00,00,000/- (rupees ten crores only) the Appellant filed the execution petition being Ex P. No. 65/2016 before the Hon'ble High Court in CS (OS) No. 278/2011. Hon'ble High Court in Ex. P No. 65/2016 attached the bank account of Judgment Debtor/Respondent i.e. Axis Bank, Nehru Place and Kotak Mahendra, Nehru Place to the maximum extent of ₹10,00,00,000/- (rupees ten crores only). And also, Judgment Debtor No. 2 Sanjeev J. Aeren i.e. Director of the Judgment Debtor/Respondent was directed to appear in person on the next date i.e. 19.09.2016 and was also restrained from leaving the country till the next date of hearing. But during the hearing of the Execution Petition it was noticed that the execution has wrongly been filed in CS(OS) No.278/2011 instead of in CS(OS) No.2183/2013. Therefore, the same was withdrawn with the liberty to file the execution in CS(OS) No.2183/2013 in terms of the Settlement Agreement between the parties, which was granted. The Hon'ble Court extended the stay till 30.09.2019 from releasing the amount with Kotak Bank Account No. 5011637955 of Respondent with ₹77,00,000/- (rupees seventy-seven lakhs only) in the accounts. The Hon'ble Delhi High Court in Ex. P No. 133/2016 attached immovable property of the Judgment Debtor being free hold plot of 19795 sq. mtrs. Further, the Hon'ble Delhi High Court in Ex. P No. 133/2016 appointed Mr. Amit Chaddha Advocate as Court

Auctioneer to take steps as per law for sale of free hold plot of 19795 sq. mtrs. situated in Sector 11, G Block, Pratap Vihar, Ghaziabad, Uttar Pradesh, property of the Judgment Debtor for the payment of debt of the Decree Holder. The Ghaziabad authority raised objections with respect to the sale of the freehold plot of 19795 square meters situated in Sector 11, G Block, Pratap Vihar, Ghaziabad, UP as the Judgment Debtor had not paid the dues of the said property. It is a fact that the Respondent has failed to pay and is not able to pay the legitimate debt of the Appellant despite the decree of the Hon'ble Delhi High Court and therefore the Appellant herein proceeded under Section 7 of IBC against the Respondent.

6. The Appellant contends that this Appellate Tribunal, in its various judgments, including in its recent judgement dated 28.02.2022 ***Swaroop Kumar Huggi, Suspended Director Mahendra Investment Advisors Pvt Ltd vs Simplex Infrastructure Limited (FC) and Ors, Company Appeal (AT) (CH) (INS) No. 144 of 2021 i.e. MANU/NL/0143/2022***, has held that a Decree Holder is a Financial Creditor.

7. Appellant also contends that this Petition is within the limitation as the Respondent has admitted its liability to pay the Appellant unequivocally, unconditionally on various occasions. Undisputedly the cause of action arose when the cheque issued by the Respondent got dishonoured on 07.04.2016 and cause of action is continuing one, as the Respondent has admitted its liability before the Hon'ble High Court of Delhi on various dates inter-alia on 23.08.2018 and thereafter on 04.09.2018 and 17.09.2018 which has been

recorded in the orders of Hon'ble High Court. Thus, the cause of action is continuing one and the Petition filed on 15.10.2019 is well within the limitation period as prescribed under law.

8. Appellant also claims that the law is no more res integra and the ratio is settled in ***Civil Appeal No.1650 OF 2020 in Dena Bank (now Bank of Baroda) vs C. Shivakumar Reddy and Anr.***

9. Appellant has sought the relief to set aside the Order dated 24.04.2023 and to admit the said Petition under Section 7 of the Code.

10. Per contra the Respondent contends that the Appeal does not fall within the Code and the Appellant cannot be termed as a "Financial Creditor". The debt as alleged in the present Appeal is at the outset barred by limitation and is not a financial debt that can trigger insolvency under Section 7 of the Code at the instance of the Appellant. The Appellant, for the purpose of placing his cause of action before this Appellate Tribunal, has relied upon a mediation Settlement Agreement, a decree passed thereon wherein an execution is pending and ongoing before the Hon'ble High Court of Delhi. The same clearly cannot be accepted as an ingredient bringing the Appellant and the Appeal is liable to be dismissed on the said ground along. Further the Respondent contends that the present Appeal is barred under Limitation Act, 1963. Admittedly the transaction between the parties are contemplated before 2014, a Mediation Settlement/consent decree dated 11.09.2014 is made basis of debt and default is shown on the basis of cheque given under settlement

which bounced on 07.04.2016, and therefore the present Petition being filed in October 2019 is clearly not maintainable and deserves to be rejected in limine. It is an admitted fact that the alleged debt was settled before the Hon'ble Delhi High Court Mediation and Conciliation Centre on the terms and conditions as stipulated in Agreement-cum-Settlement dated 11.10.2014 and accordingly an Order dated 10.08.2015 was passed by the Hon'ble Delhi High Court in terms of the same Agreement-cum-Settlement dated 11.10.2014. The present Petition is not maintainable and deserves to be rejected on this ground alone.

11. Respondent also contends that though Decree Holder is included within the definition of "Creditor" under Section 3(1) in Part I of the Code, it does not fall within the definition of "Financial Creditor" under Section 5(7) in Part II of the Code and any Decree Holder cannot seek initiation of the Corporate Insolvency Resolution Process as Financial Creditor. This Petition was not maintainable on the grounds that a decree cannot be executed by filing an Application under Section 7 of the Code. A Decree Holder does not come under the purview of the definition of a 'Financial Creditor'.

12. The Respondent also relies upon this Appellate Tribunal's judgment in ***Sh. Sushil Ansal vs Ashok Tripathi and Ors, CA(AT) (Insolvency) No. 452 of 2020***, where it was held that:

"20. A 'decree-holder' is undoubtedly covered by the definition of 'Creditor' under Section 3(10) of the 'I&B Code' but would not fall within the class of creditors classified as 'Financial Creditor' unless the debt was disbursed against the consideration for time value of money or falls within any of the clauses thereof as the definition of 'financial debt is

inclusive in character. A 'decree is defined under Section 2(2) of the Code of Civil Procedure, 1908 ("CPC" for short) as the formal expression of an adjudication which conclusively determines the rights of the parties with regard to the matters in controversy in a lis. A 'decree holder', defined under Section 2(3) of the same Code means any person in whose favour a decree has been passed or an order capable of execution has been made. Order XXI Rule 30 of the CPC lays down the mode of execution of a money decree. According to this provision, a money decree may be executed by the detention of the judgment-debtor in civil prison, or by the attachment or sale of his property, or by both. Section 40 of the 'Real Estate (Regulation and Development) Act, 2016 lays down the mode of execution by providing that the RERA may order to recover the amount due under the Recovery Certificate by the concerned Authority as an arrear of land revenue. In the instant case, RERA has conducted the recovery proceedings at the instance of Respondent Nos. 1 & 2 against the Corporate Debtor which culminated in issuance of Recovery Certificate and passing of order under Section 40 of the 'Real Estate (Regulation and Development) Act, 2016' directing the concerned Authority to recover amount of Rs. 73,35,686.43/- from the Corporate Debtor as an arrear of land revenue. As already stated elsewhere in this Judgment, Respondent Nos. 1 & 2 instead of pursuing the matter before the Competent Authority sought triggering of Corporate Insolvency Resolution Process against the Corporate Debtor resulting in passing of the impugned order of admission which has been assailed in the instant appeal. The answer to the question whether a decree-holder would fall within the definition of 'Financial Creditor' has to be an emphatic 'No' as the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money and does not fall within the ambit of any of the clauses enumerated under Section 5(8) of the 'I&B Code'.

21. Now we proceed to determine whether execution of decree on the strength of Recovery Certificate issued by the 'UP RERA' would justify triggering of the Corporate Insolvency Resolution Process at the instance of Respondent Nos. 1 & 2. This Appellate Tribunal has considered the issue in "G. Eswara Rao v. Stressed Assets Stabilisation Fund and Ors. MANU/NL/0092/2020". It was held that an application under Section 7 of the 'I&B Code' cannot be filed for execution of a decree. The relevant portion of the Judgment may be reproduced hereunder:

"26. By filing an application under Section 7 of the I&B Code, a Decree cannot be executed. In such case, it will be covered by Section 65 of the I&B Code, which stipulates that the insolvency resolution process or liquidation proceedings, if filed

fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, attracts penal action.”

13. Further the Respondent also relies on this Appellate Tribunal’s judgment in ***Digamber Bhondwe vs JM Financial Asset Reconstruction Company Limited in Company Appeal (AT) (Insolvency) No. 1397 of 2019, [2020] 157C LA 237***, where it was held that Decree Holder, although mentioned in Section 3(10) of the Code, does not give cause to initiate application under Section 7 of the I&B Code. The relevant paragraph of the judgement is herein reiterated as;

"19. We further reject the submission that because in Section 3(10) of I&B Code in definition of "Creditor" the "decree holder" is included it shows that decree gives cause to initiate application under Section Z of I&B Code. Section 3 is in Part I of I&B Code. Part II of I&B Code deals with "Insolvency Resolution and Liquidation for Corporate Person", & has its own set of definitions in Section 5. Section 3 (10) definition of "Creditor" includes "financial creditor", "operational creditor" "decree holder" etc. But Section 7 or Section 9 dealing with "Financial Creditor" and "operational creditor" do not include "decree-holder" to initiate CIRP in Part II. We accept the submissions made by the Learned Counsel for the Appellant and hold that the Application under Section 7 in this matter was time-barred and impugned order admitting the Application deserves to be set aside.”

The Appellant is alleging its claim based on the Settlement-cum-Agreement dated 11.09.2014, pursuant to which Order dated 10.08.2015 was passed by the Hon'ble Delhi High Court in Rakesh Kumar Jain vs M/S AEZ Infratech Pvt Ltd and Anr in CS (OS) 2183/2013 mentioning the Settlement cum Agreement dated 11.09.2014. It is pertinent to say that the execution proceedings in the abovementioned matter are pending before the Hon'ble Delhi High Court, in Execution Petition No. 133 of 2016 in CS (OS) No.

2183/2013 in Rakesh Kumar Jain vs M/S AEZ Infratech Pvt Ltd and Ors. It is contended by the Respondent that when the execution proceedings are pending in a matter before an execution court, simultaneous insolvency proceedings cannot be admitted before the Adjudicating Authority. This Hon'ble Appellate Tribunal in "**International Asset Reconstructions Co. Pvt Ltd vs Jayant Vitamins Ltd. in Company Appeal (AT) (Insolvency) No. 1472 of 2019**" had held that since the Application under Section 7 of the Code was filed when execution was pending and the Application was barred by limitation, the case would come under the purview of Section 65 of the Code as the same was filed with malicious intent, not for resolution of insolvency or liquidation.

14. Respondent contends that the present Appeal is devoid of any merit or substance and is ex-facie liable to be dismissed. Also, that the original transaction between the parties was advanced against the property and not loan, even the balance sheet of the Respondent does not show any debt or loan. In view of the afore stated objections as to limitation of the claim, existence of the dispute and the inability of the Decree Holder to come within the purview of "Financial Creditor", the Respondent contends that present Appeal deserves to be dismissed in limine with a heavy cost.

Appraisal:

15. We have heard counsels of both sides and perused all documents on record and orders were reserved on 03.10.2024. The matter was heard again on 21.11.2024 and 12.12.2024 for seeking some clarifications and reserved for orders on 12.12.2024.

16. In this Appeal, Rakesh Kumar Jain as a Financial Creditor has sought to initiate the CIRP against the Respondent, ADTV Communications Pvt Ltd under Section 7 of the IBC. The NCLT, rejected the Appellant's Petition for initiation of CIRP, holding that the Appellant did not fall within the definition of a "Financial Creditor" and that the Petition was time-barred.

17. The Appellant and the Respondent were involved in a long-standing litigation, including a suit for recovery of dues before the Hon'ble Delhi High Court. The disputes between the parties were referred to mediation, resulting in a Settlement Agreement dated 11.09.2014. As per the terms of this Settlement Agreement, the Respondent agreed to pay the Appellant an amount of ₹15,23,00,000/- (rupees fifteen crores and twenty-three lakhs only) in four separate instalments through cheques issued for different dates. A decree based on this Settlement Agreement was passed by the Hon'ble Delhi High Court in CS(OS) No. 2183/2013. The Respondent, however, defaulted on the payment, and one of the cheques for ₹10,00,00,000/- (rupees ten crores only), deposited by the Appellant, was dishonoured on 07.04.2016. Consequently, the Appellant filed an Execution Petition before the Hon'ble Delhi High Court for the enforcement of the decree. The Respondent, despite acknowledging its liability on multiple occasions before the Hon'ble High Court and failing to comply with the decree, continued to default in payments.

18. The Respondent argued that the decree obtained from the Hon'ble High Court does not qualify as a financial debt under Section 5(8) of the IBC. It claims that a Decree Holder cannot be classified as a "Financial Creditor", as

the amount under the decree was an adjudicated amount and not a debt disbursed against the consideration for time value of money. The Respondent further contended that the Application was time-barred, as the original transaction between the parties dated back to 2014, and the dishonour of the cheque occurred in 2016 and the present Petition filed in October 2019 was well beyond the limitation period and should be dismissed. The NCLT had dismissed the Appellant's Petition mainly on two grounds: (i) the Appellant, as a Decree Holder, did not qualify as a "Financial Creditor," and (ii) the Application was barred by limitation.

19. The following issues arise for determination in this Appeal:

- i. Whether the Petition filed by the Appellant is barred by limitation?
- ii. Whether the Appellant, as a Decree Holder, qualifies as a "Financial Creditor" under the IBC?

20. Since both the issues are intertwined, we'll discuss them together.

21. First, we look into the issue whether a Decree Holder can be classified as a Financial Creditor. We note that 'Creditor' is defined under Section 3(10) in Part I of the Code as follows:

"(10) **"creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor **and a decree-holder**;"

(emphasis supplied)

Basis the definition of the Creditor as provided in the Code, a Decree Holder is no doubt a Creditor.

22. On the issue of Appellant/a Decree Holder has to be treated as a Financial Creditor or not, law is laid down in the judgment of the Hon'ble

Supreme Court in ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy & Anr., (supra)***, wherein it was held that a Decree Holder falls within the purview of a "Financial Creditor" under the IBC, if the decree is based on a financial debt. The relevant extracts of the judgment which deals with this issue and also the issue of limitation and a Decree Holder are as follows:

“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.”

(emphasis supplied)

23. Further, the Appellant gets support from the judgment of Hon’ble Supreme Court in ***Laxmi Pat Surana vs Union of India (2021) 8 SCC 481*** wherein it was held that Section 18 of the Limitation Act gets attracted the moment acknowledgement in writing signed by the parties against whom such right to initiate resolution process under Section 7 of IBC ensures. The relevant portions of the judgments are reproduced as under:

"Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial credit to initiate action under section 7 IBC. However, section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" into the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in section 3 (12) to mean non-payment of 'debt' when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to no-payment of debt. Thus, when the principal borrower and/or the (corporate guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of section 18 of limitation act. Section 18 of the Limitation Act get attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under section 7 IBC ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability

to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under section 7 IBC. Further, the acknowledgment must be of a liability in respect of which financial creditor can initiate action under section 7 IBC."

(emphasis supplied)

24. Basis the definition of the Creditor as in the Code and also the case laws as cited above, we find that the Appellant's status as a Decree Holder does not preclude him from being recognised as a Financial Creditor. Also, the Settlement Agreement dated 11.09.2014 clearly recognised the Appellant's debt arising out of a financial transaction. The Settlement Agreement recorded the Appellant's financial claim, and the decree passed by the Hon'ble Delhi High Court formalised the Respondent's obligation to pay this amount. Therefore, the decree does not alter the character of the underlying financial debt.

25. Now we look into the issue of limitation. In the facts of the case we find that even though the cause of action for the Appellant arose when the cheque issued by the Respondent was dishonoured on 07.04.2016, yet under Section 18 of the Limitation Act, 1963, a fresh period of limitation begins from the date of acknowledgment of the liability.

26. We note that in the orders of Hon'ble Delhi High Court dated 04.09.2018 and 17.09.2018, the Respondent Company had admitted and acknowledged the claim/debt as under

"that in reply to Para 7 of the execution petition **it is stated that the judgment debtor number one company has not deliberately defaulted in making payment of the decretal amount and the non-compliance has happened on account of reasons beyond the control of the judgment debtor** number one company on

account of force majeure conditions as the property market is witnessing pan-India recession..."

Further, in the Order dated: 04.09.2018, the Respondent admitted and acknowledged the claim/debt of the Appellant and the said Order reads as under:

"Mr. Sanjay Aggarwal, authorized representative of judgment debtor No.1 appears and submits that ***judgment debtor no.1 seeks six months' time to clear off the debt and that within three months they shall make some payment to the decree holder.....***"

Also in Order dated: 17.09.2018:

"as per the submission made by learned counsel for judgment debtors that they are seeking six months' time to clear off the debt, Learned counsel for judgment debtor no.1 and Mr. Sanjeev J. Aeren who was erstwhile Director at the time of cause of action has also appeared today and the learned counsel for judgment debtors say they are in the possession of the property but with encumbrances and rather the property is attached by this court too till the payment per settlement agreement dated: 11.09.2014 is made. The modalities need to be culled out for payment hence as requested by judgment debtors the parties to appear before the organizing secretary, Delhi High Court Mediation and Conciliation center on 24.09.2018 at 2:30 PM..."

27. In the facts of the case the limitations start running from the date when the payments are not being made as per the settlement. The default occurred on 07.04.2016 when the cheque was dishonoured. The Execution Petition was filed by the Appellant on 20.09.2016 and as noted earlier the Respondent had on various hearings before Hon'ble High Court of Delhi, acknowledged the debt as per the settlement. The Respondent on 04.09.2018 and 17.09.2018 had before the Hon'ble High Court of Delhi acknowledged the debt admitted and submissions were made for clearing the same within six months. Therefore, the cause of action effectively starts after six months or Order dated 17.09.2018 i.e. on 16.03.2019. And the Appellant had filed the

Section 7 Petition on 11.10.2019 under Section 7 of the IBC. The acknowledgments by the Respondent on 23.08.2018, 04.09.2018, and 17.09.2018, as recorded by the Hon'ble High Court, extended the limitation period under Section 18 of the Limitation Act, 1963. The issue was further taken up for clarification by this Tribunal on 21.11.2024, when neither parties had appeared, and also on 12.12.2024, when the Appellant appeared and brought to our notice the records of the EP before the Delhi High Court. In the objections raised by Judgment Debtor No. 1 (M/S ADTV Communications Pvt Ltd), filed on 23.08.2018 before the Delhi High Court, there is a clear acknowledgment in para 3, which is noted below:-

“3. That in reply to para 3 of the execution petition it is stated that the settlement was for Rs 152,300,000 as full and final settlement amount for all the claims of the decree holder against the judgment debtor company. It is however submitted that the judgment debtor number one company paid Rs 52,300,000 to the decree holder in accordance with the decree and for balance Rs 10 crores, a cheque was given. As the financial condition of the judgment debtor number one company was not good, the said cheque of Rs 10 crores got dishonoured. It is not denied that the judgment debtor number one company is liable to pay Rs 10 crores to the decree holder but levy of interest at the rate of 36% per annum would not be justified in fitness of things as the judgment debtor number one is facing fiscal distress.”

Basis above, it can be concluded that the Petition filed on 15.10.2019 was within the limitation period.

28. Another argument pressed by the Respondent is that the Appellant has filed the execution proceedings and IBC proceedings cannot be used to convert this Tribunal into an Execution Court needs to be tested. We note that IBC is a complete Code in itself and in view of the provisions of Section

238 of the Code, the provisions of the IBC would prevail, notwithstanding anything inconsistent therewith in any other law for the time being in force. Section 238 of the Code contains the non-obstante clause of the widest terms possible and therefore the code will prevail over other provisions. The fact that the Appellant/Financial Creditor had also taken other steps of execution proceedings before the Hon'ble High Court of Delhi is no ground to not accept the Section 7 Petition. Thus, the Appellant is indeed a Financial Creditor within the meaning of Section 5(7) and Section 5(8) of the IBC.

29. The Respondent has placed reliance on **Sh. Sushil Ansal vs Ashok Tripathi (supra)** vis-à-vis which it claims that a Decree Holder would not fall within the definition of Financial Creditor. This issue has been dealt in **Dena Bank (supra)** and is now a settled law that a Decree Holder falls within the purview of the Financial Creditor under the Code, if the decree is based on a financial debt. Therefore, this judgment is of no avail to the Respondent. Further, in the light of the judgment of **Dena Bank (supra)** we cannot rely on the judgment of **Digamber Bhondwe (supra)**, also which is also being relied upon by the Respondent. Furthermore, the contention of the Respondent that the Petition has been filed with a malicious intent and is covered by **International Asset Reconstructions Co. Pvt Ltd (supra)** is not borne out by the facts of the case as we cannot see malicious intent of the Appellant.

30. Therefore, the Adjudicating Authority was incorrect in dismissing the Petition under Section 7 of the IBC on the ground that it is barred by limitation.

Conclusion

31. In view of the above analysis, it is evident that the Appellant qualifies as a Financial Creditor, and the Petition under Section 7 of the IBC is within the period of limitation. The NCLT's Order dated 24.04.2023 is thus erroneous and is liable to be set aside.

Order

32. The Appeal is allowed. The Impugned Order dated 24.04.2023, passed by the Adjudicating Authority, NCLT-III, New Delhi, is hereby set aside. Application filed by the Appellant under Section 7 of the IBC is admitted, and the CIRP against the Respondent, ADTV Communications Pvt Ltd, is initiated. Adjudicating Authority is to pass required further orders for admitting the Petition under Section 7 of the IBC, 2016 within 15 days of the presentation of the copy of this order. The Adjudicating Authority is directed to appoint an Interim Resolution Professional (IRP) and take necessary steps as per the IBC. Parties are directed to be present before the Adjudicating Authority accordingly.

33. No order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
December 17, 2024.

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