

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 8135 of 2023

Maneesh Pharmaceuticals Ltd

.... Appellant(s)

Versus

Export Import Bank of India and Ors

....Respondent(s)

ORDER

- 1 The appeal under Section 62 of the Insolvency and Bankruptcy Code 2016¹ arises from an order dated 6 December 2023 of the National Company Law Appellate Tribunal².
- 2 The application filed by the first respondent under Section 7 of IBC was dismissed by the National Company Law Tribunal³ on 25 March 2022 on the ground that the debt was barred by limitation. However, while dismissing the petition on the ground of limitation, the NCLT also made the following observations on merits in paragraph 29 of its decision:

“29. It is clear to the Bench that there is a ‘debt’ in terms of section 3(11) and there is a ‘default’ in terms of Section 3(12) of the IBC. However, keeping in view that the date of NPA in respect of all the four loans are between 26.06.2011 to 31.07.2011 and the Petition has been filed only on 30th August, 2019, the limitation issue is very pertinent in the matter. The Bench has to take a call whether the debt is time-barred or not, in terms of provisions of the Limitation Act, 1963. The Bench before proceeding further would like to mention certain dates and events subsequent to the invocation of guarantee which will help in deciding the matter.”

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Sanjay Kumar
Date: 2024.12.16
12:37:28 IST
Reason: 

- 1 “IBC”
- 2 “NCLAT”
- 3 “NCLT”

- 3 The order of the NCLT was challenged in appeal by the respondents. The NCLAT, by its judgment dated 9 May 2023, set aside the order of the NCLT and held that the finding that the debt was barred by limitation was “patently illegal”. However, while doing so, the NCLAT also observed that “there is no dispute raised regarding the liability of the Corporate Debtor towards the Financial Creditors and the guarantee by the Respondent”.
- 4 The judgment of the NCLAT was questioned before this Court in appeal. The appeal was dismissed on 4 July 2023.
- 5 The respondents filed an IA before the NCLT seeking restoration of the application under Section 7 and the initiation of the Corporate Insolvency Resolution Process. The NCLT allowed the restoration application on 5 July 2023. A review petition has been filed before this Court seeking a review of the order passed on 4 July 2023, which is pending.
- 6 The NCLT, by an order dated 25 October 2023, declined to adjourn the proceedings on the ground of the pendency of the review petition and also recorded the request of the counsel for the appellant who sought time to file a further affidavit. No specific leave for filing an affidavit was granted by the NCLT. Aggrieved by the order of the NCLT dated 25 October 2023, the respondents filed an appeal before the NCLAT, which has been disposed of by the impugned order dated 6 December 2023. The NCLAT has directed the NCLT to admit the application under Section 7. That is how the appeal arises before this Court.
- 7 We have heard Dr Abhishek Manu Singhvi and Mr Dhruv Mehta, senior counsel appearing on behalf of the appellant and Mr Krishnendu Datta, senior counsel appearing on behalf of the respondents.
- 8 The application under Section 7 was originally dismissed by the NCLT on the

ground that the debt was barred by limitation. When the order of the NCLT was questioned in appeal, the NCLAT set aside the order of the NCLT as being “patently illegal”. Once the order of the NCLT was set aside, the order would cease to exist. The observations in regard to whether there was a debt due and payable would also not exist with the setting aside of the order. The order of the NCLAT, properly construed, dealt with the issue as to whether the debt was barred by limitation. A passing reference in the order of the NCLAT to whether the debt was in dispute must be read in the context of the nature of the appeal which arose from an order of the NCLT that the debt was barred by limitation. Hence, it would be inappropriate to read the order of the NCLAT as concluding the issue in regard to whether the application under Section 7 was or was not liable to be admitted. A stray observation in the order of the NCLAT cannot be regarded as a conclusive determination on merits. That apart, the order of the NCLT which contained an observation that the debt was not in dispute was set aside in appeal by the NCLAT in its entirety. Consequently, we are of the view that it was inappropriate for the NCLAT to direct the NCLT to admit the application under Section 7 straightaway without an evaluation of the rival contentions on merits.

- 9 We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 6 December 2023. The application under Section 7 has already been restored to the file of the NCLT. The NCLT shall, after hearing the parties, determine as to whether the application under Section 7 is liable to be admitted. All the rights and contentions of the parties in that regard are kept open.
- 10 Having regard to the pendency of the proceedings before various fora, we direct that the application under Section 7 be disposed of expeditiously and, in any event, by 31 January 2024.

- 11 We clarify that this Court has not expressed any opinion on the merits of the rival contentions which will fall for determination in the course of the hearing of the application under Section 7.
- 12 Responding to the submission of Mr Krishnendu Datta, senior counsel appearing on behalf of the respondents, Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the appellant, has assured the Court that the appellant has no intention to dispose of the assets to the prejudice of the respondents between the date of this order and the date of the final decision of the NCLT on the application under Section 7.
- 13 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
December 15, 2023
-S-

ITEM NO.30

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).8135/2023

MANEESH PHARMACEUTICALS LTD

Appellant(s)

VERSUS

EXPORT IMPORT BANK OF INDIA & ORS.

Respondent(s)

(WITH IA No. 260912/2023 - EX-PARTE STAY, IA No. 260910/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-12-2023 This appeal was called on for hearing today.

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA**

For Appellant(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Dhruv Mehta, Sr. Adv.
Mr. Ashok Kumar Singh, Adv.
Mr. Awanish Sinha, AOR
Mr. Milan Singh Negi, Adv.
Mr. Parth Shekhar, Adv.
Mr. Gauransh Singh Chauhan, Adv.
Mr. Shubham Singh, Adv.
Mr. Richik Harikant, Adv.
Mr. Prem Ranjan Kumar, Adv.

For Respondent(s) Mr. Krishnendu Datta, Sr. Adv.
Ms. Palak Nenwani, Adv.
Mr. Hafeez Patanwala, Adv.
Ms. Riya Hotchandani, Adv.
For M/S. Juris Corp., AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The appeal is allowed in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)
DEPUTY REGISTRAR**

(Signed order is placed on the file)

**(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR**