NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.182/2024

In the matter of:

M/S VASAVI POWER SERVICES PVT.LTD
(Represented by its Authorised Representative Mr. Thamban Velichamthottu Padinjare V.)
Office at: 405, 4th Floor, Golden Edifice,
Khairtabad,
Hyderabad-500004, Telangana
Registered Office at: Door No.4-13,
Post Ibrahim Patnam,
Vijayawada-521456, Krishna District,
Andhra Pradesh.
Tel: +91-40-2331 1368/369;
Email: info@vasavipower.com **… Appellant**

Vs

M/S PROMAC ENGINEERING INDUSTRIES LTD.
Registered Office: Off Kanakapura Road,
Alahalli, Anjanapura Post,
Bangalore-560108,
Karnataka.
Factory at: Plot No.306, 307, 308, 309 & 311,
KIADB Industrial Area,
Harohalli 2nd Phase,
Harohalli Hobli,
Kanakapura, Taluk,
Ramanagara District-562112,
Karnataka.
Ph: +91 80-26320372;
Email: jr@promacindia.com **… Respondent**

Present :

For Appellant : Mr. Amir Bavani, Advocate
For Respondent : Mr. S. Sathiyanarayanan, Advocate
Mr. Bathry Narayanan, Advocate

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma; Member (Judicial)] :

1. The Appellant in the instant Company Appeal (AT) (CH) (Ins) No.182/2024, challenges the Impugned Order, as it has been rendered by the NCLT, Bangalore Bench in CP(IB) No. 100/BB/2023, being the proceedings which the Appellant has drawn under Section 9 of I&B Code, 2016, as against the Respondent/Corporate Debtor. The aforesaid Company Petition, thus preferred by the Appellant has been dismissed by the Learned Adjudicating Authority, holding it, to be barred by limitation as having been preferred beyond the prescribed period contemplated under law for initiation of the CIRP proceedings.

2. Brief facts, as it engages consideration are that, the Appellant on 17.04.2023, had filed an application under Section 9 of I & B Code, 2016 thereby praying for drawing a CIRP proceedings as, against the Respondent Corporate Debtor, on the ground that the Corporate Debtor has committed a default of non-payment of total outstanding amount of Rs. 2,43,48,930/-. It was contended and rather admitted too, that the default was committed as back as on 07.09.2019, as would be apparent from the date of default as referred to in Part IV of Form 5 as issued by the Appellant to the Respondent Corporate Debtor.

3. There are various factual facets, which have been pleaded by the Learned Counsel for the Appellant in the instant Appeal but this Tribunal is not required to venture into these facts, for the reason being, that the Impugned Judgment has

resulted to a dismissal of proceedings on the ground of limitation. The admitted positions which emerge and were considered by the Learned Adjudicating Authority are as under:

i. The date of default as per Form 5 is 07.09.2019.
ii. If the period of limitation as per Section 238 A of I & B Code is taken into consideration it will be 3 years from date of default which would be ending on 06.09.2022.
iii. Owing to Covid-19 situation, the Hon'ble Apex Court in its Judgment in Suo-moto Writ Petition (C) No. 3/2020 has granted the exclusion of the period from 15.03.2020 till 28.02.2022 for the purposes of limitation.

4. The limitation period in the instant case starts from 07.09.2019 and, the period which has lapsed prior to the date of imposition of Covid restrictions, that is, 15.03.2020 would be 190 days. The limitation period will expire on 06.09.2022, that is, 3 years from the date of default. It is the contention of the Appellant that in his case, the limitation period is 3 years, or 1095 days, that after deducting 190 days, the balance period of limitation remaining is (1095-190) 905 days and hence as per the order MA 21/2022 is in Suo Moto WP(C) No. 3/2020, the end date of the limitation period will be 905 days from 01.03.2022 and accordingly the limitation period in his case will extend to 22.08.2024.

5. The operative portion of the aforesaid Judgment of the Hon'ble Apex Court, as contained Para 5(I), (II) & (III) are extracted hereunder: -

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

6. In the instant Appeal, actual balance period of limitation remaining with effect from 01.03.2022 is the period from 01.03.2022 to 06.09.2022, that is, 190 days. Since this is greater than 90 days, as per Para 5 (III) of the judgment as extracted above, where it is stipulated that "the longer period shall apply", the end date of limitation period will continue to be 06.09.2022 and not 22.08.2024 as contended by the Appellant.

7. The Appellant has admittedly e-filed the Company Petition only on 10.04.2023 and has physically filed the Company Petition on 17.04.2023. Even if filing of the Company Petition is construed from 10.04.2023, it will be much beyond the end date of the limitation period as computed under the principle laid down by the aforesaid Judgment of Hon'ble Apex Court in MA No. 21/2022 in MA No. 665/2021 in Suo Moto Writ Petition (C) No. 3/2020.

8. The determination of period of limitation as it has been sought to be impressed upon by the Counsel for Appellant, in which he is attempting to compute the end date of the limitation period by adding 905 days from 01.03.2022 on the premises that 905 days is the actual balance period of limitation remaining is absolutely a misconceived notion because the actual balance period of limitation has to be calculated from 01.03.2022. Thus, the plea of the Appellant runs contrary to the observation made by the Hon'ble Apex Court, as contained in Para 5 (III) of the Hon'ble Apex Court Judgment. Therefore, as the Company Petition was filed only on 17.04.2023, it is clear that it has been filed much beyond 06.09.2022, the end date of limitation period and accordingly, the rejection of the Company Petition on the ground that has been observed by the Learned adjudicating authority does not suffer from any error.

9. As such, the same deserves to be dismissed. The dismissal of the Company Appeal is also desirable for the reason being that, the proceedings which are held under the I & B Code,2016, are to be strictly construed in a straight jacketed

formula, so far it relates to the aspect and computation of limitation, because period of limitation invariably in all the proceedings under the I & B Code, 2016 has an objective to be attained and it cannot be stretched according to the expectation of the appellant to defeat the very objective of the Act, which itself contemplates that, the proceedings of CIRP has had to be concluded in the specified time frame. Owing to the above the Appeal lacks merits and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

17.12.2024
RO/TM/MS