

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

Diary No.03(075)/2018

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating) Authority Rules 2016.*

In the matter of:

Punjab National Bank	...	Financial Creditor
-Versus-		
M/s Shree Sai Rolling Mills (India) Ltd.	...	Corporate Debtor

**Coram:**

Hon'ble Mr Justice P K Saikia, Member(J)  
.....

**ORDER**

**Date of Order: 8th October 2018**

Mr K.K. Nandi, Mr A.J. Ghosh & Ms P. Kalita, learned Advocates are present on behalf of the Financial Creditor. Mr M. Sharma, Mr S. Alam & Mr T. Chiye, learned Advocates represent the CD.

2. Mr M. Sharma, learned Advocate for the CD has submitted a copy of order dated 05.10.2018 rendered by Hon'ble High Court of Meghalaya in CRP.No.24/2018 calling for the record of Diary No.03 (075)/2018. For ready reference, the aforesaid order is reproduced below:

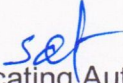
*"Heard learned counsel for the petitioner. Mr K. Paul who submits that the petitioner is ready to settle the matter, but due to interference of the NCLAT, Guwahati Bench, Guwahati it became difficult to settle the matter and the petitioner has already paid Rs.3 crores and Rs.57 crores is still to be paid and further submits that it is a fit case to be placed before the Lok Adalat for settlement.*

*Registry is directed to place the matter before the Lok Adalat positively for settlement.*

*In the meantime, call for the record of Diary No.03 (075)/2018 from the NCLAT, Guwahati Bench, Guwahati."*

3. As directed, let the record of Diary No.03 (075)/2018 be transmitted to the Hon'ble High Court of Meghalaya immediately.

4. Since the record of this proceeding is called for by the Hon'ble High Court of Meghalaya, further hearing on this proceeding would be resumed on getting further order from Hon'ble High Court of Meghalaya.

  
Adjudicating Authority  
National Company Law Tribunal,  
Guwahati Bench, Guwahati.

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NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

I.A. No.66 of 2018  
IN  
DIARY No.03(075)/2018

Under Section 11 of the National Company Law Tribunal Rules, 2016

In the matter of:

M/s. Shree Sai Rolling Mills (India) Ltd. . . . Applicant / Corporate Debtor  
-Versus-  
Punjab National Bank . . . Non-Applicant /Financial Creditor

Order delivered on 08<sup>th</sup> October, 2018

Coram:

Present: Hon'ble Mr Justice P. K. Saikia, Member (J)

**ORDER**

1. This application under Section 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the "Rules of 2016") has been filed by M/s. Shree Sai Rolling Mills (India) Ltd., the Corporate Debtor, seeking the following reliefs: -

"VI. Reliefs:

*Thus in view of the above submissions, Your Honour would be pleased to:*

- i. *Stay the further proceeding of the application for initiate corporate insolvency proceeding filed by the FC being subsequent application till disposal of O. A. No.365/2017;*
- ii. *In view of bar under Section 18 of the Act, 1993, the application for initiate corporate insolvency proceeding is liable to be rejected and/or Your Honour would be pleased to pass other order as Your Lordship may deem fit and proper.*

*And*

*Pending disposal of the instant application the further proceeding of the main application may be differed and the aforesaid questions, may be decided as preliminary issue for the ends of justice".*

2. Heard Mr. Avinash Kr. Rai and Mr. Taj Chije, learned counsel appearing for the applicant herein who is corporate debtor in the connected proceeding under Section 7 of the Insolvency and

Bankruptcy Code, 2016 (in short Code of 2016). I have also heard Mr. Kamal Kanti Nandi, learned counsel, appearing for the non-applicant / financial creditor,

3. The facts necessary for disposal of the present proceeding are found recorded in para 3 to para 9 of the application. For ready reference, said paragraphs are reproduced below: -

*"3. That on perusal of the Application, more specifically Part-V, Column 8, wherein the FC had stated that they have filed an application under Section 19 of the RDB AC, 1993 for issuance of recovery certificate against the Corporate Debtor and also annexed copy of O. A. No.365/2017.*

*4. That on perusal of the O. A. No.365/2017, it is apparent that the question which is sub-judice before the Hon'ble DRT, Guwahati is regarding adjudication of the claim of the FC based upon the alleged default and similarly the same issue is directly ad substantially in issue in the present proceeding which is apparent on perusal of the statements made by the FC I Part IV & V, regarding financial debt and default and both the applications are in respect of the same cause of action.*

*5. That as per Section 19 of the RDB Act, the Hon'ble DRT, is competent to adjudicate the dispute between the parties with regard to classification of the account as NPA which is based upon default as per RBI Guidelines and debt which is due upon determination of such default and similar as per Section 7 of the Code, 2016, this Hon'ble Tribunal is to determine the existence of default in payment and on perusal of Part-IV, the default which has been shown is nothing but the date of classification of the account as NPA, thus the aspect of existence of default is sub-judice in an earlier proceeding which is pending disposal before the Hon'ble DRT, Guwahati.*

*6. That the Hon'ble DRT, Guwahati, will adjudicate the various claims of the party, based upon the Statement of Account and various Agreements and Sanction Letter and same documents have been filed before this Hon'ble Court to adjudicate the question of existence of default.*

*7. That though the application has been filed under Section 7 of the Code, 2016 but on perusal of the various Deed of Hypothecations and Agreements, it is apparent that the instant application involves claims based upon goods and services, and validity and legality of those documents are also sub-judice before the Hon'ble DRT, Guwahati.*

*8. That it is most respectfully submitted that if the O. A. pending disposal before the Hon'ble DRT is dismissed, then the aforesaid judgements shall operate as Res-Judicate in the instant proceeding, in view of which the instant proceeding is liable to be stayed till disposal of O. A.*

*9. That the Code, 2016 does not have any non-obstante clause, thereby overriding the effect of RDB Act, 1993, whereas Section 34 of the Act, 1993 contains a Non-Obstante Clause and rather Section 18 of the Act, 1993 bars jurisdiction of any Court in respect of matters to be decided by the Hon'ble DRT, and as such the instant application is barred by law and as such continuation of the instant proceeding is nothing but amounts to abuse of process of law."*

4. During the course of hearing, the applicant herein points out / submits that an Original Application / execution proceeding aforementioned has been filed by the FC before the DRT, Guwahati alleging default in respect of dues payable to the them. However, in respect of same amount, the present proceeding under Section 7 of the Code of 2016 has also been filed before this

Authority seeking initiation of CIRP on alleging there had been default in repayment of said debt. According to the counsel for applicant, it is an established proposition of law that two parallel proceedings on the same subject are not permissible under the law.

5. Further, the connected proceeding U/s 7 of the Code of 2016 is liable to be rejected for another very valid reason. In that connection, it has been stated that while the Code of 2016 does not incorporate in it any Non-Obstante clause, there is a Non-Obstante clause in RDB Act, 1993 in the form of Section 34 which ousts the jurisdiction of any other Act or Code as far as matters covered by RDB Act, 1993 are concerned. Consequently, this Authority has no jurisdiction whatsoever to try the dispute which is also the subject matter of a proceeding before the learned Debt Recovery Tribunal, Guwahati.

6. It has also been contended that the present proceeding is also barred by law of limitation since the proceeding under consideration has not been initiated within the period, specified in the relevant provision in the aforesaid Act. On all those grounds, the applicant herein (CD in the connected proceeding) urges this Authority to dismiss the connected proceeding under Section 7 of the Code of 2016.

7. The non-applicant / FC has refuted such allegations stating that the proceeding in question is required to be dismissed at the threshold, since it was structured on misconception of law and facts. In this connection, it has been pointed out that Section 238 of the Code of 2016 contains Non-Obstante Clause which clearly shows that the Code of 2016 would have overriding effect on all other Acts dealing with the matters, covered by Code of 2016.

8. Therefore, even if some other Acts have made some provisions for dealing with the matters, covered by the Code of 2016, all other Acts / Code must make the way for this Authority to invoke its jurisdiction on the matters covered by the Code thereby excluding completely the jurisdiction of all other Acts/Code over such matters. For ready reference Section 238 of the Code of 2016 is reproduced below.

*"238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

9. In support of such contentions, my attention has been drawn to Para 3 and 4 of the decision of the Hon'ble National Company Law Appellate Tribunal in the case of Aditya Kumar Jajodia & Anr.

Vs SREI Infrastructure Finance Ltd & Ors., reported in III (2018) BC 51 (NCLAT). For ready reference, the same has been reproduced below.

"3. Learned Counsel appearing on behalf of the appellant submitted that the "Financial Creditor" has already taken steps under Section 19 of the 'Recovery of Debts Due to Banks and Financial Institutions Act, 1993' (DRT Act). Further, according to him action has been taken under Section 13(4) of the 'Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002' (the SARFAESI Act). Therefore, according to the appellant, proceedings under the aforesaid provisions having already initiated, the application under Section 7 of the 'I&B Code' is not maintainable.

4. However, the aforesaid submissions cannot be accepted in view of the decision of this Appellate Tribunal in *M/s. Unigreen Global Private Limited v. Punjab National Bank & Ar., II* (2018) BC 132 (NCLAT) = *Company Appeal (AT) (Insolvency) No.81 of 2017*, wherein this Appellate Tribunal by its judgement dated 1<sup>st</sup> December, 2017, held:

"25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.

26. Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.

27. It is also desirable to refer to Section 238 of the I & B Code, as quoted below:

"238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

In view of the aforesaid provision also, I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc."

10. In regard to contention that the present suit is barred by limitation, it has been submitted that the Law of Limitation has no application in the case in hand. In this connection, my attention has been drawn to the decision of the National Company Law Appellate Tribunal, rendered in the case of *Mack Soft Tech Pvt. Ltd. & Ors. Vs Quinn Logistics India Ltd.* reported in III (2018) BC 14 (NCLAT). The relevant part of the said judgment is reproduced below: -

“31. This Appellate Tribunal in *M/s. Speculum Plast Pvt. Ltd. v. PTC Techno Pvt. Ltd. II (2018) BC 103 (NCLAT)=Company Appeal (AT) (Insolvency) No.47 of 2017*, held that the law of limitation is not applicable to ‘I & B Code’ and observed as follows:

“68. **In view of the settled principle, while we hold that the Limitation Act, 1963 is not applicable for initiation of ‘Corporate Insolvency Resolution Process’, we further hold that the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim.**

69. *If there is a delay of more than three years from the date of cause of action and no laches on the part of the applicant, the applicant can explain the delay. Where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise.*

70. *Therefore, if it comes to the notice of the Adjudicating Authority that the application for initiation of ‘Corporate Insolvency Resolution Process, under Section 7 or Section 9 has been filed after long delay, the Adjudicating Authority may give opportunity to the applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the applicant.’*”

11. It has further been submitted that in the present proceeding there are enough information in the documents, annexed with the application under Section 7 of the Code of 2016 to show that the debt in question is also not barred by limitation.


12. I have considered the rival contentions, advanced by the respective counsel of the parties hereto. Coming to the contention that Non-Obstante clause in RDB Act, 1993 bars the jurisdiction of this Authority to entertain the connected application, I have found that such contention is wholly incorrect. The Code of 2016 in the form of Section 238 contains a Non-Obstante clause ousting completely the application of all other Acts or the Code as far as matters, covered by the Code of 2016 are concerned. The decision of Hon’ble NCLAT in Aditya Kumar Jajodia (supra) makes such position abundantly clear.

13. Coming to the contention that the connected proceeding is barred by law of limitation, I have found that such contention too bears no substance. The decision of Hon’ble NCLAT in its decision in Mack Soft Tech Pvt. Ltd. (supra) clearly held that law of limitation has no application to a proceeding seeking initiation of corporate insolvency resolution process. Situation being such, in my considered opinion, the contention that the connected proceeding is barred by limitation is also found to be based on misconception of law.

14. Mr. Nandi, learned counsel for the applicant/financial creditor further submits that even if one assumes for the sake of argument that the Limitation Act is applicable to a proceeding initiated

under the Code of 2016, there are enough materials to show that the present proceeding is not barred by limitation. I have considered the materials on record particularly, the balance-sheets, annual returns of the CD as well as other relevant documents, annexed with the application and also heard learned counsel appearing for the applicant herein and on doing so, I have found reason to conclude that the present proceeding is initiated well within the period, specified in the Limitation

15. Resultantly, this proceeding, same being IA No.66 of 2018, stands dismissed.

  
(Adjudicating Authority)  
National Company Law Tribunal  
Guwahati Bench, Guwahati.

Dated, Guwahati the 08<sup>th</sup> October, 2018

/Deka/08-10-2018//

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