

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 924 of 2022

IN THE MATTER OF:

Rourkela Steel Syndicate

...Appellant

Versus

Metistech Fabricators Pvt. Ltd.

...Respondent

Present:

For Appellant : Mr. Milan Negi and Mr. Nikhil Kumar, Advocates.

For Respondent : Mr. Sanchit Gawri, Advocate

ORDER

06.02.2023: Heard learned Counsel for the parties.

2. This appeal has been filed against the order dated 09.06.2022 passed by the Adjudicating Authority (NCLT, Cuttack) by which order the Application filed by the Appellant under Section 9 of IBC, the Operational Creditor has been rejected on the ground that the application is barred by Section 69(2) of the Partnership Act. The Adjudicating Authority took the view that Section 69(2) of the Partnership Act bars a suit by an unregistered partnership, hence the present Application which was filed by the Appellant against the third party for enforcing a right arising out of contract is barred.

Section 69(2) of the Partnership Act provides as under:

“Section 69(2) in The Indian Partnership Act, 1932

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm”.

3. Learned Counsel for the Appellant challenging the order of the Adjudicating Authority submits that although the Adjudicating Authority accepted the submission of the Appellant, that the Application is not barred by Limitation, however, on interpretation of Section 69(2) of the Partnership act, 1932, error has been committed in treating the Application akin to a Suit. It is submitted that Section 69(2) of Partnership Act is not attracted where an Application under Section 9 IBC is filed since Section 9 Application is not a suit so as to apply Section 69(2) of the Partnership Act.

4. Learned Counsel for the Respondent refuting the submissions, contends that there are judgments of the Hon'ble Supreme Court, which has been referred by the Adjudicating Authority holding that a suit by unregistered partnership is barred filed against the third party. Learned Counsel for the Respondent supports the impugned order.

5. We have considered the submissions of the Counsel of the parties and perused the records. The IBC provides for filing of the Application under Sections 7 & 9 and it is now settled position of law that for limitation for filing Application under Sections 7,9 & 10 are Article 137 of the Limitation Act, 1963 which is attracted. Article 137 of the Limitation Act provides for filing of

Application, where no period of limitation is provided. Learned Counsel for the Appellant relied on a judgment of the Hon'ble Supreme Court- **(2019) 10 SCC 572** titled **“Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited and Anr.”** where Hon'ble Supreme Court had occasion to consider the provision of Limitation Act, 1963 as well as Application under Section 7 of IBC. In paragraph-6 of the Judgment, following have been laid down:

..

“6. Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being ‘an application’ which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by the learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21-7-2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr Banerjee’s reliance on para 11 of B.K. Educational Services (P) Ltd., suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.”

..

6. An application under Section 9 of IBC cannot be said to be a suit and analogy of Hon'ble Supreme Court judgment in Hargovindbhai Dave's case, supra, is fully applicable to the application filed under Section 9 IBC also. Further, also it is well settled by the judgment of the Hon'ble Supreme Court in **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019)**

11 SCC 633 that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.

7. The Judgments of Hon'ble Supreme Court relied by the Adjudicating Authority regarding bar of Section 69(2) is not attracted in the present case since the application under Section 9 cannot be treated as suit.

8. We are thus of the view that the Adjudicating Authority has committed error in rejecting Section 7 Application on the ground that it is barred by 69(2) of the Partnership Act. We are thus in view that the order impugned cannot be sustained and deserves to be set aside.

9. In result, the present appeal is allowed and the impugned order dated 09.06.2022 is set aside. Application under Section 9 of IBC CP(IB) No. 14/CB/2021 is revived before the Adjudicating Authority to be heard and decided in accordance with law.

The Appeal is allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

akc/nn