

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI  
(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH)(Ins) No. 13 of 2021**

**(Under Section 61 of the Insolvency and Bankruptcy Code 2016)**

**(Arising out of Order dated 12.1.2021 in IA/80/KOB/2019 in Co.Petition**

**IB No.IBA/46/KOB/2019 passed by the Hon'ble National Company Law Tribunal,  
Kochi Bench, Kerala )**

**IN THE MATTER OF:**

Kerala Ayurveda Ltd.  
VII/415, Nedumbaserry,  
Athani Post, Aluva,  
Ernakulam District,  
Kerala 683585

... Appellant

**V.**

Tata Global Beverages Ltd.  
1, Bishop, Lefroy Road,  
Kolkatta 700020.

..Respondent

**Present :**

**For Appellant : Mr.T.K.Bhaskar, Advocate and  
Mr.Sanjay Lodha, Advocate**

**For Respondent : Mr.Joseph Kodianthara, Advocate, and  
Mr. Mithun, Advocate**

**ORDER**

**(VIRTUAL MODE)**

Heard both sides.

2. At this juncture, this 'Tribunal' on going through the 'Impugned Order' dated 12.1.2021 in IA No.80/KOB/2019 in IB No.IBA/46/KOB/2019, filed by the 'Appellant/Applicant/Corporate Debtor', before the

'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) the following observations were made at Paragraph 18

*....."since it is clear that there is an acknowledgement in the records of the 'Financial Creditor', the Limitation Act are to be examined in the light of the facts of this particular case. In the present case, the true extract of statement of accounts maintained by the Financial creditor clearly depicts that the period of non-payment is from April 2017 and the last date of payment received by the Financial Creditor as 24.11.2017."*

and ultimately the application was dismissed.

3. When this 'Tribunal' posed a pertinent query to the Learned Counsel for the 'Appellant/Applicant/Corporate Debtor' as to how the instant Company Appeal (AT) (CH)(Ins) No. 13 of 2021, is 'Ex facie' maintainable in the teeth of Section 61(1) of the Insolvency & Bankruptcy Code, 2016 the Learned Counsel for the Appellant/Applicant/Corporate Debtor, sought permission from this 'Tribunal' to raise the pleas of 'Limitation' and also as regards the aspect of 'True extract of Statement of Accounts' maintained by the 'Financial Creditor' in pending main Application IBA/46/KOB/2019 on the file of 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala), this 'Tribunal' without any haziness holds that the instant 'Appeal' is not maintainable in law.

4. In this connection, the Learned Counsel for the 'Respondent/Corporate Debtor' refers to the order dated 16.3.2020 of this Appellate Tribunal in Company Appeal No.AT(Ins)429 of 2020 between Kerala Ayurveda Ltd. V. Tata Global Beverages Ltd. at Spl.Pg.195, of the Paper Book (vide D.No.41 dated 16.2.2021), wherein it is observed as under :

*....."Mere finding on an Interlocutory Application that the debt claimed by the Creditor constituted a 'financial debt' would not ipso facto justify admission or rejection of the application as learned Adjudicating Authority is required to consider the debt along with default and unless there is a finding in respect of default and an order of admission is passed, 'Corporate Insolvency Resolution Process' does not commence. Viewed in this perspective, it is futile to contend that the appeal in terms of Section 60(1) shall be maintainable.*

*The appeal is accordingly, dismissed as being premature leaving it open to the learned Adjudicating Authority to decide the application on merit and in the event of the Appellant being aggrieved of order of admission passed under Section 7, it shall be open to the Appellant to raise all issues in appeal."* and submits that the 'Impugned Order' in

IA No.80/KOB/2019 in IB No.IBA/46/KOB/2019, dated 12.1.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) requires no interference in the hands of this 'Tribunal' in 'Appeal', in view of the fact that in Law, the instant Appeal in Company Appeal (AT) (CH)(Ins) No. 13 of 2021, is 'ex facie' not maintainable as per Section 61 of the 'Insolvency & Bankruptcy Code', 2016.

5. It is represented on behalf of the 'Appellant/Applicant/Corporate Debtor' that in the main Section 7 Application, the 'Appellant/Applicant/corporate Debtor' had only filed the 'Interim Reply' and hence he is permitted to file a detailed 'Reply/Response/Counter' to the main Section 7 Application. Soon after the receipt of copy of 'Reply/Response/Counter' of the 'Appellant/Corporate Debtor', it is open to the 'Respondent/Financial Creditor' to file rejoinder, if any raising all factual pleas.

6. Although, this 'Tribunal' has held that the instant Comp.App. No. (AT)(CH)(Ins)No.13/2021 on the file of this Appellate Tribunal is not maintainable in Law, yet it grants liberty to the Appellant/Applicant/Corporate Debtor to raise the plea of 'Limitation' in main Section 7 Application IB No.IBA/46/KOB/2019 filed under 'Insolvency & Bankruptcy Code', being a "question of Fact and Law". It is open to the Appellant's side to raise a plea of veracity/admissibility of "True extract of

Statement of Accounts” maintained by the ‘Respondent/Corporate Debtor” as made mention of in the “impugned Order’ of the ‘Adjudicating Authority’ in IA No. 80/KOB/2019 in IB No.IBA/46/KOB/2019, in which event, the ‘Adjudicating Authority (National Company Law Tribunal, Kochi Bench, Kerala) shall permit the ‘Appellant/Applicant/corporate Debtor in this regard.

7. As a matter of fact, both the sides are given the liberty to marshal on factual and legal pleas to raise the same before the ‘Adjudicating Authority’ while adverting to or countering the same and further that the ‘Adjudicating Authority’ (National Company Law Tribunal, Kochi Bench, Kerala ) shall provide ‘adequate opportunity’ of hearing to the respective parties and to pass a reasoned speaking order on merits in a fair, just and dispassionate manner (dealing with all the contentions raised) and to dispose of the pending main Section 7 Application filed under the Insolvency & Bankruptcy Code, 2016 in IB No.IBA/46/KOB/2019 on the file of National Company Law Tribunal, Kochi Bench, Kerala, ofcourse uninfluenced and untrammelled with any of the observations made by this ‘Tribunal in the present ‘Appeal’.

8. With the aforesaid observations/directions, the instant ‘Appeal’ in Comp.App.(AT)(Ins) No.13/2021 on the file of this Appellate Tribunal shall stand disposed of. No costs. IA No.34(‘Stay Application’) and IA

No.35/2021 ('seeking exemption to file certified copy of the Impugned Order dated 12.1.2021') are closed. However, the 'Appellant' is directed to file certified copy of the 'Impugned Order' of the 'Adjudicating Authority' ( National Company Law Tribunal, Kochi Bench, Kerala) in IA No. 80/KOB/2019 in IB No.IBA/46/KOB/2019 within 2 weeks from today without fail.

***[Justice Venugopal M]***  
***Member (Judicial)***

***[V.P.Singh]***  
***Member (Technical)***

***16 .03.2021***

**HR**