

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 100 of 2021**

In the matter of:

Kotak Mahindra Bank Ltd.

....Appellant

Vs.

Indian Speciality Fats Ltd.

....Respondent

Present:

Appellant: Mr. Nirmal Goenka, Advocate.

Respondent:

ORDER

(Through Virtual Mode)

16.02.2021: The issue raised in this appeal against order dated 5th August, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench, Cuttack in TP No.202/CTB/2019 arising out of CP(IB) No.4202/MB/2018 dismissing the Appellant's application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for being barred by limitation is that the right to file application was surviving on the date of its filing before the Adjudicating Authority.

2. After hearing Mr. Nirmal Goenka, Advocate representing the Appellant, we find that the account of Corporate Debtor- 'M/s. Indian Speciality Fats Ltd.' was classified as NPA prior to the assignment of financial debt by Financial Creditor/ Assignor- State Bank of India to 'Kotak Mahindra Bank Limited' in terms of the Assignment Deed dated 16th January, 2006. The Appellant- 'Kotak Mahindra Bank Limited' who stepped into the shoes of the original Financial Creditor- State Bank of India as Assignee approached the Debt Recovery Tribunal, Jabalpur for execution of final order dated 23rd October, 2002 passed by the DRT, Jabalpur in OA No.196/2000 in terms whereof the Corporate

Contd/-.....

Debtor had been directed to pay a total sum of Rs.14,20,80,104.61/- along with costs and interest. As per assertion in application filed before the Adjudicating Authority in prescribed format the decree in respect of the aforesaid amount which is duly reflected in the recovery certificate, has not been assailed in appeal by the Corporate Debtor and the same has attained finality. The Assignee- 'Kotak Mahindra Bank Limited', pursuant to assignment of financial debt in its favour by the State Bank of India, is pursuing the execution proceedings and the recovery proceedings of outstanding dues are continuing before the Recovery Officer, DRT, Jabalpur.

3. It is abundantly clear that the financial debt which the Corporate Debtor owed to the Assignor- State Bank of India was declared NPA prior to 16th January, 2006 i.e. the date when the financial debt came to be assigned to Appellant- 'Kotak Mahindra Bank Limited'. It also emerges from the record that the Assignor- State Bank of India had filed recovery proceedings before DRT, Jabalpur somewhere in year 2000 and the final order came to be passed on 23rd October, 2002 culminating in issuance of Recovery Certificate which is pending execution before the Recovery Officer. Thus, computed from the date of classification of account of Corporate Debtor as NPA or even from the date of issuance of Recovery Certificate, filing of application under Section 7 on 29th October, 2018 is beyond three years. It is by now settled that Article 137 of the Limitation Act, 1963 governs filing of an application under Section 7 of the 'I&B Code'. The default having occurred over three years prior to filing of application, prayer of Appellant to trigger CIRP against the Corporate Debtor has rightly been declined. That apart, the Appellant having approached the Recovery Officer for execution of the decree passed by the DRT, Jabalpur and execution proceedings and recovery proceedings being subsisting as on the date of filing of application under Section 7 of the 'I&B Code', it would not be open to the Appellant to seek initiation of CIRP by resorting to the Insolvency Resolution mechanism under 'I&B Code' which is not a recovery forum.

We find no merit in this appeal. The same is dismissed. However, we make it clear that dismissal of this appeal shall not in any manner affect the right of the Appellant to pursue the recovery proceedings and seek execution of the decree before the Competent Court.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

AR/g