

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
JAIPUR BENCH**

**Coram: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER**

MA (IB) No. 06/JPR/2024  
IA No. 655/JPR/2023  
& CP No. (IB) – 83/7/JPR/2021

*(Application under Section 7 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of the NCLT Rules, 2016)*

**IN THE MATTER OF:**

**RAJASTHAN FINANCIAL CORPORATION (Applicant)**

..... FINANCIAL CREDITOR

**VERSUS**

**M/S RUBY BUILDESTATES PRIVATE LIMITED (Respondent)**

..... CORPORATE DEBTOR

**MEMO OF PARTIES**

**RAJASTHAN FINANCIAL CORPORATION**

Udyog Bhawan, Tilak Marg, Jaipur-  
302005 (Rajasthan)

..... Applicant / Financial Creditor

**VERSUS**

**M/S RUBY BUILDESTATES PRIVATE LIMITED**

Unit No. 22-26/35-38, 3<sup>rd</sup> Floor,  
Orbit Mall, Arcade International,  
Ajmer Road, Jaipur- 302006  
(Rajasthan)

.....Respondent / Corporate Debtor

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**For the Financial Creditor** : Manjeet Kaur, Adv.  
**For the Corporate Debtor** : Naresh Kumar Sejvani, Adv.

**Order Pronounced On: 17.05.2024**

**ORDER**

**Per: Shri Rajeev Mehrotra, Technical Member**

1. The present Application has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *Rajasthan Financial Corporation* ('Financial Creditor'/ 'Applicant'/ 'RFC') seeking Corporate Insolvency Resolution Process ('CIRP') of *M/s Ruby Buildestates Pvt. Ltd.* ('Corporate Debtor'/ 'Respondent') on account of default in payment of Rs. 20,06,36,348/- (Rupees Twenty Crores Six Lakhs Thirty-Six Thousand Three-Hundred and Forty-Eight Only).
2. The Financial Creditor was constituted under the State Financial Corporation Act, 1951 ('SFC Act') having its registered office at Udyog Bhawan, Tilak Marg, Jaipur- 302005.
3. The Corporate Debtor is a company registered under the provisions of the *Companies Act, 1956* having CIN *U45201RJ2007PTC024000* and registered office at *Unit No. 22-26/35-38, 3<sup>rd</sup> Floor, Orbit Mall Arcade International, Ajmer Road, Jaipur- 302006*. The Authorized Share Capital is Rs. 1,00,000/- (Rupees One Lakh Only), however, the Paid-up Share Capital is Rs. 0/- (Rupees Zero). The Corporate Debtor is involved in the business of real estate. The status of the Company is **ACTIVE Non-**

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**Compliant.** The same has been noted from the website maintained by the Ministry of Corporate Affairs.

4. The Application has been filed on the basis of the following set of facts:

4.1 The Financial Creditor sanctioned the first loan of Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs Only) to the Corporate Debtor in the year 2008. Further, in 2009, the Corporate Debtor again approached the Financial Creditor for a loan of Rs. 3,50,00,000/- (Rupees Three Crores Fifty-Lakh Only), however, only Rs. 2,40,00,000/- (Rupees Two Crores Forty Lakhs Only) was approved. On 06.07.2009, the loan agreement was executed between Financial Creditor and Corporate Debtor for an amount of Rs. 2,40,00,000/- (Rupees Two Crores Forty Lakhs Only) against land measuring 5730.52 sq. mtrs. (6853.87 sq. yards) and building constructed thereon, situated at *Part-D, Scheme Krishna Villa, Khasra No. 1997 (Part) and 1998 (Part), Nagar Chokdi Haveli, Gram Siroli, Jagatpura, Jaipur* for the construction of a residential and commercial complex under the Finance Against Assets Scheme (FAAS) as per the terms and conditions mentioned in the sanction letter. The loan was disbursed on 17.07.2009.

4.2 The loan of Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs Only) was repaid by the Corporate Debtor. At the time of disbursement

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of 2<sup>nd</sup> loan of Rs. 2,40,00,000/- (Rupees Two Crores Forty Lakhs Only) on 17.07.2009, the dues of the 1<sup>st</sup> loan were fully cleared.

- 4.3 The Corporate Debtor defaulted on repayment installment(s) of the 2<sup>nd</sup> loan. Pursuant to the default, on 13.01.2010, the Financial Creditor issued a legal notice (bearing reference number 2127/02130) under Section 30 of the SFC Act, demanding payment of the entire outstanding amount of Rs. 18,67,110/- (Rupees Eighteen Lakhs Sixty-Seven Thousand One Hundred and Ten Only). The notice further contains that in the event of taking possession under Section 29 of the SFC Act, additional charges and expenses would apply, including the principal of Rs. 2,40,00,000/- (Rupees Two Crores Forty Lakhs Only) and interest of Rs. 15,31,640/- (Rupees Fifteen Lakhs Thirty-One Thousand Six Hundred and Forty Only), aggregating Rs. 2,55,31,640/- (Rupees Two Crores Fifty-Five Lakhs Thirty-One Thousand Six Hundred and Forty Only). Furthermore, on 23.02.2010, the Financial Creditor took possession of the mortgaged property in accordance with Section 29 of the SFC Act.
- 4.4 The Financial Creditor consequently proposed to auction the said mortgaged property on 16.06.2010 which is under its possession to realize its dues. Meanwhile, the Hon'ble Rajasthan High Court, upon filing of Writ Petition (S.B. Civil Writ Petition No. 7116/2010) by the flat purchasers, granted an ex-parte stay order against the auction of the

mortgaged property. It is important to mention here that a few banks have also filed writ petitions against the RFC with respect to the same subject matter.

4.5 The Applicant filed an application seeking vacation of the stay order dated 04.05.2010 issued in S.B. Civil Writ Petition No. 5868/2010, as well as the order dated 26.05.2010 in S.B. Civil Writ Petition No. 7116/2010. These orders were partially modified by the Hon'ble High Court *vide* an order dated 07.03.2011, allowing the Applicant to auction the land situated at *Village Siroli, Jagatpura, Jaipur*, as it was deemed unsuitable for development by the builder. However, the auctioning of the aforementioned property was subject to final approval/permission from the Hon'ble High Court. Additionally, the Respondent was directed to collaborate with the Applicant in proposing solutions to address the concerns of all relevant banks and the Applicant. Furthermore, other writ petitions filed by individual allottees were consolidated with *S.B. Civil Writ Petition No. 5868/2010* by an order dated 07.03.2011. The Respondent's directors submitted a proposal to the RFC in accordance with the directions of the Hon'ble High Court to resolve the matter. However, the proposal was not accepted.



- 4.6 The aforementioned writ petitions have remained pending, despite several early hearing applications moved on behalf of the Applicant. It is submitted that despite the earnest endeavours the Applicant has failed to secure a reasonable proposal/buyer due to the litigation involved in the matter. Additionally, the Applicant has been vigilant and prompt in exercising its right to recover its dues/claims from the Corporate Debtor, starting from sending a legal notice under Section 30 of the SFC Act dated 13.01.2010, followed by taking over possession under Section 29 of the SFC Act on 23.02.2010, and advertising for the auction of the unit, all were initiated well within the limitation.
- 4.7 Further, it is submitted that it is a settled proposition of law that the time consumed in proceedings before other forums of law, such as the Hon'ble High Court, DRT, Civil Courts, etc., is to be excluded when computing the limitation for filing proceedings under Section 7 of the Code.
- 4.8 It is submitted that the Hon'ble Supreme Court of India in the matter of *Seshnath Singh Vs. Baidyabati Sheoraphuli Co. LL 2021 SC 177*, decided on 22.03.2021, held that where proceedings have remained pending before the Hon'ble High Court, the provisions of Section 14 of the Limitation Act, 1963 would apply to the advantage of the Financial Creditor. Furthermore, while the provisions of Section 14 of

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the Limitation Act as well as Section 5 of the Limitation Act are not mutually exclusive, the Adjudicating Authority under the NCLT Act is empowered to exercise its jurisdiction to condone the delay in the given circumstances to achieve complete justice between the parties.

5. The Corporate Debtor has submitted the Reply *vide* Dairy No. 1344/2023 dated 29.05.2023 on the following grounds:

5.1 As per the terms and conditions of the sanction letter, the said loan facility was repayable within a period of 5 years, including a 6-month moratorium, in 19 EQI (Equal Quarterly Installments) of Rs. 18.67 Lakhs. It is a matter of fact and record that the loan was disbursed on 17.07.2009. Therefore, the EQI was supposed to begin after the end of the 6-month moratorium period, i.e., after 16.01.2010. However, during the moratorium period, the Applicant issued the Notice of Demand on 13.01.2010 under the provision of SFC Act, claiming the first EQI of Rs. 18.67 Lakhs (Principal: Rs. 3.35 Lakh & Interest: Rs. 15.32 Lakh) as due and defaulted. The Demand Notice further contains that in case, the aforementioned amount is not paid by the Corporate Debtor, the entire loan may be called upon along with the interest. Since then, a dispute emerged, and consequently, the Applicant took physical possession of the mortgage property on 23.02.2010 under Section 29 of the SFC Act, over which the construction of a residential project was in full swing.

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5.2 Further, the Applicant had issued the auction notice and scheduled the auction on 16.06.2010. In the meantime, several homebuyers approached the Hon'ble High Court of Rajasthan (Jaipur Bench) and filed *S.B. Civil Writ Petition No. 7116/2010* titled *Laxman Kriplani & Ors. Vs RFC & Ors.* In this Application, *vide* an order dated 26.05.2010, the Applicant was restrained from alienating or transferring the subject property in question and the auction thereof was stayed. Thereafter, several other writ Petitions were also filed, which were all clubbed together. It is also worthwhile to state that since 26.05.2010, the said matter came up for consideration many times and several orders and directions were passed for the resolution of the matter amicably. In reference, the Respondent even exchanged several proposals. However, at all times, the proposals sent for settlement were rejected by the Applicant for no reason.

5.3 It is submitted that the alleged default claimed to have occurred in the year 2010. A notice of demand under Section 30 was issued on 13.01.2010, and physical possession of the mortgaged property under Section 29 of the SFC Act, 1951, was taken on 23.02.2010. It is a matter of record that except for the settlement proposals sent on 22.03.2011, 03.05.2011, and 22.11.2011 in pursuance of directions of the Hon'ble High Court, there is no correspondence whatsoever with respect to the admission of liability within the period of limitation. The Applicant had

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already, in accordance with the law prevailing at that relevant point in time, taken efficacious steps against the Respondent before the appropriate and competent forum. Therefore, the Applicant could not claim the benefit of exclusion of limitation on account of wrong jurisdiction. This Application was filed on 12.08.2021, which has been filed after an inordinate and unexplained delay of more than twelve (12) years, alleged to be a misuse and abuse of the process of law.

5.4 It is contended that the date of default triggers the period of limitation.

The Hon'ble Supreme Court, in the matter of *Jignesh Shah and another vs. Union of India and another (WP (Civil) No. 455 of 2019)*, held that it is an admitted position that there was a huge round of litigation in this matter before different forums. However, filing of any recovery proceedings (within limitation) does not extend the period of limitation for proceedings under the Code.

5.5 The Respondent further relied upon the judgment of the Hon'ble Supreme Court of India in the matters of *Gaurav Hargovindbhai Dave vs. Asset Reconstructions Company (India) Limited and another [(2019) 10 SCC 571]*. It laid down three essential ingredients to take the benefit of Section 14(2) of the Limitation Act, 1963: (a) *That the applicant has been prosecuting with due diligence in another civil proceeding, whether in a court of first instance or of appeal or revision;* (b) *against the same party;* and (c) *for the same relief.* It was further

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held that an action taken by the Financial Creditor under Section 13(2) or Section 13(4) of the SARFAESI Act, 2002 cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision before an appellate court and the other forum. It was held that action taken under Section 13(2) of the SARFAESI Act, 2002 cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963 in an application under Section 7 in which relief is sought for resolution or liquidation of the Corporate Debtor. In the present case as well, the Applicant akin to the provisions of the SARFAESI Act had duly taken the efficacious steps under the provisions of the SFC Act. Therefore, no benefit can be given to any person under Section 14(2) of the Limitation Act.

- 5.6 Further, it is contended that even if it is assumed that the right to sue under the IBC, 2016 accrued when the provisions of the Code were notified, such contentions would also not be helpful, as the Code was notified in the year 2016, whereas the instant Application has been filed much later i.e. in the year 2021, after a delay of more than 5 years. Additionally, it is contended that the instant Application is improper and incomplete as it suffers from several defects and does not provide complete information.
6. The Applicant filed a Miscellaneous Application *IA(IBC)655/JPR/2023* for a change of Interim Resolution Professional *vide* Dairy No. 2863/2023 dated

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04.12.2023. The Applicant submitted that *Sh. Babu Lal Gurjar* was proposed as the IRP in the proposed insolvency of the Corporate Debtor; however, during the pendency of the company Application, he withdrew his consent. Furthermore, *Ms. Garima Diggiwal*, CA/Resolution Professional, having *Registration No. IBBI/IPA-001/IP-PO2018/2020-2021/13158*, has given her consent to act as the IRP in accordance with Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

7. The Applicant has filed another *Miscellaneous Application MA (IBC) No. 06/JPR/2024* under Section 5 of the Limitation Act, 1963, read with Rule 11 of the IBC for condonation of delay *vide* Dairy No. 318/2024 dated 05.02.2024. Through this Application, the current position of the matter was reiterated, including all the proceedings. Furthermore, the Applicant demonstrated the time consumed in the proceedings pending before the Hon'ble Rajasthan High Court. It is submitted that the benefit of exclusion of time consumed in the proceedings pending before other forums of law must be given to the Applicant. It is further submitted that the Code came into force in December 2016, therefore, the Applicant had initiated proceedings against the Respondent in 2010 itself in view of the default committed by the Respondent and those proceedings were stayed by the Hon'ble High Court, could have made an application within 3 years from the coming into force of the provisions of the Code. The aforementioned

limitation of 3 years was up to December 2019. Due to COVID-19, the entire nation went into lockdown, and the Hon'ble Supreme Court has exempted the period from 15.03.2020 to 28.02.2022 for the purpose of counting limitation for filing Applications/applications, etc. The instant Application was filed on 12.08.2021, which is only after the delay of a short period from January 2020 to 14.03.2020, which may be condoned in the interest of justice by this Tribunal.

8. The Respondent has filed the Reply *vide* Dairy No. 580/2024 to the Miscellaneous Application MA (IBC) No. 06/JPR/2024 filed by the Applicant seeking condonation of delay. It is submitted that the admission of exorbitant delay in unequivocal terms on the part of the Applicant couldn't be condoned on the grounds that proceedings were pending before the Hon'ble High Court, which couldn't be termed as 'sufficient cause'. Further, despite being well aware of the proceedings, the Applicant chose to sleep over its rights and remedies. Additionally, at the present situation, the notification of the provisions of the IBC is not relevant for the purpose of the trigger point of limitation. In support of its arguments, the Respondent relied upon the following Judgements:

- i. *Edelweiss Asset Reconstruction Co. Ltd. Vs. Chemstar Organics (India) Ltd. [NCLAT- 23.12.2022]*
- ii. *Edelweiss Asset Reconstruction Co. Ltd. Vs. Chemstar Organics (India) Ltd. [NCLT Mumbai- 03.06.2021]*
- iii. *Stressed Assets Stabilization Fund Vs. Delta International Limited [NCLAT- 05.01.2023]*

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- iv. *Ishrat Ali Vs. Cosmos Cooperative Bank Limited & Another's* [NCLAT- 12.03.2020]
- v. *Sabarmati Gas Limited Vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)* [SC- 04.01.2023]
- vi. *V. Hotels Limited and Ors. Vs. Asset Reconstruction Co. (India) Ltd. and Ors.* [NCLAT- 11.12.2019]
- vii. *Vedica Credit Capital Limited Vs. Shriram Power and Steel Private Limited* [NCLAT- 05.01.2023]
- viii. *Jignesh Shah & Ors. Vs. Union of India & Ors.* [SC- 25.09.2019]
- ix. *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates* [SC- 11.10.2018]

9. The Applicant has filed the written submissions *vide* Dairy No. 646/2024 dated 13.03.2024. It is submitted that the Applicant has been unnecessarily dragged into litigation by the banks and homebuyers. Further, the Corporate Debtor has neither challenged the proceedings taken by the Applicant under sections 30 and 29 of the SFC Act nor contested the proceedings initiated by the banks and homebuyers. Additionally, the Applicant have made following submissions:

9.1 The Applicant has been vigilant and prompt in exercising its right to recover its dues/claims from the corporate debtor. All actions have been taken within the prescribed time; therefore, any such delay was not caused by the Applicant in exercising its rights.

9.2 Further, in support, the Applicant submitted the judgement of Hon'ble Supreme Court titled as *Sabarmati Gas Limited vs. Shah Alloys Limited* (*supra*) wherein it was held that the limitation period for initiating

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CIRP under IBC is extendable only by application of Section 5 of the Limitation Act, 1963.

10. The Respondent has filed the written submissions *vide* Dairy No. 707/2024 dated 20.03.2024 wherein the contentions submitted earlier are reiterated.
11. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submission, Applications along with the documents enclosed therein.
12. In the captioned Application, the main question for consideration is whether a delay beyond three years in filing an application under Section 7 of the Code can be condoned when an application for condonation of delay is made by the Applicant under Section 5 of the Limitation Act, 1963?
13. Consideration of the issue, mentioned above and to be mentioned hereinafter, is called for, in the following factual background:

It is observed from the sequence of events that due to the non-payment of loan installments by the Corporate Debtor, a legal notice under Section 30 of the SFC Act was issued on 13.01.2010, and possession by the Financial Creditor was taken on 23.02.2010 as per Section 29 of the SFC Act. In furtherance, a notice of auction was also issued; however, due to a writ petition filed by the flat purchasers, the auction proceedings were stayed by the Hon'ble High Court on 26.05.2010. Since then, various applications have been made by the Applicant for early hearings; however, the matter is still pending before the Hon'ble High Court. The fact that the Corporate

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Debtor had availed a loan and committed default in respect of the loan account is not disputed.

14. The Applicant has strongly argued that whatever rights it had to invoke security interest and effect recoveries were already exercised in 2010, and due to pending interventions by certain home buyers, the process of auctioning the property could not be completed. The fact cannot be ignored that the Applicant was forced into litigation. The question of acknowledgment of debts does not arise in the present matter as the Applicant had taken possession of the mortgaged property on 23.02.2010 and has remained in possession since then. Due to the litigation/s pending before the Hon'ble Rajasthan High Court the cause of action still continues. Therefore, the contention of the Respondent cannot be accepted that there was no acknowledgment of debt since 2011.
15. After taking possession of the mortgaged property, the Applicant proceeded with the auction of the said property. The home buyers/intervenors approached the Hon'ble High Court for an order to stay the auction. The resorts available to the Applicant were limited, except for approaching the Hon'ble High Court to vacate the stay order and to request an early listing of the application. The Applicant took such steps and was able to partially modify the interim orders dated 04.05.2010 and 26.05.2010, which gave them liberty to auction the property of *M/S Krishna Villa Prime Apartments Pvt. Ltd. situated at Village Siroli, Jagatpura, Jaipur, vide order dated*

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07.03.2011. While the hearings in the Hon'ble High Court were pending, the IBC came into force in December 2016, and the Applicant with the resort to approach this Bench under Section 7 of the Code could have made an application within three years from the coming into force of the provisions of the Code. On 03.10.2019, the Applicant made an Application before the Hon'ble High Court for the early listing of the case, which was again allowed but the decision on Application of home buyers against the Applicant is still not concluded.

16. The Applicant was hopeful of resolving the matter and obtaining final orders from the Hon'ble High Court and therefore did not deem it necessary to initiate CIRP against the defaulting debtor within three years from the coming into force of the IBC. The aforementioned limitation of three years was up to December 2019. Furthermore, due to the onslaught of Covid-19, the Hon'ble Supreme Court took suo moto cognizance vide Writ Petition (C) No. 3 of 2020 for extension of limitation wherein the Apex Court exempted the period from 15.03.2020 to 28.02.2022 for the purpose of counting limitation for filing Applications/suits/applications, etc. This Application was filed on 12.08.2021. However, there is a short period between January 2020 and 14.03.2020 for which a condonation application has been made as per Section 5 of the Limitation Act, 1963. Considering the timely action for recovery of its dues taken by the Applicant in 2010 itself, the subsequent actions could not be completed due to ongoing proceedings

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in the Hon'ble High Court of Rajasthan. It is therefore submitted that the delay in filing the Application was due to intervention by certain flat owners in the High Court.

17. The Hon'ble Supreme Court in *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, (2019) 11 SCC 633 has stated that Section 5 of the Limitation Act, 1963 may be applied to condone the delay in filing Applications under Section 7 and 9 of the Code. It specifically states as follows:

*"It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."*

18. It is a settled principal of law that Section 5 of the Limitation Act showing 'sufficient cause' is the only criterion for condoning delay. The Hon'ble Supreme Court while deciding upon similar issue in *Sabarmati Gas Limited vs. Shah Alloys Limited* 2019 SCC OnLine NCLT 12117 was held as follows:

*"As relates Section 5 of the Limitation Act showing 'sufficient cause' is the only criterion for condoning delay. 'Sufficient Cause' is the cause for which a party could not be blamed."*

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In view of the aforementioned judgment of the Hon'ble Apex Court, we are of the opinion that the condonation of delay is not a right of the parties; however, it has to be considered in each case based on the facts and circumstances thereof. Only if the delay is explained by sufficient cause/substantial grounds, then the delay can be condoned. If in a case where the actions are not within the power and control of a party, then in such cases, it amounts to a sufficient cause, and for that, the party cannot be blamed. In the instant case as well, the actions taken against the Applicant were not within its power and control; hence, the Applicant cannot be blamed. Thus, it amounts to sufficient cause as per Section 5 of the Limitation Act, 1963.

19. The Hon'ble Supreme Court further observed in *Sabarmati Gas Limited vs. Shah Alloys Limited (supra)* that if a party was statutorily prevented from initiating action, then it would result in injustice to such a party. In the present Application, the Applicant was statutorily prevented, as litigation was imposed upon it despite proceeding with the rightful remedy as per the applicable provisions of the SFC Act. Furthermore, it is also clear that the Applicant proceeded to obtain possession of the mortgaged property under the SFC Act well within time. However, in the present Application under Section 7 of the Code, the Applicant has proceeded against the Corporate Debtor. The details of the pending proceedings as submitted by the Applicant are as follows:



S.No.	Date	Particulars
1	26.05.2010	The Hon'ble Rajasthan High Court, upon filing of Writ Petition (S.B. Civil Writ Petition No. 7116/2010) by the flat purchasers against the RFC and Ors., granted an <i>ex-parte</i> stay order against the auction of the mortgaged property.
2	07.03.2011	RFC moved an application before the Hon'ble High Court to vacate the orders dated 04.05.2010 and 26.05.2010. In pursuance to that the Hon'ble High Court given the liberty to RFC to auction the property of M/S Krishna <i>Villa Prime Apartments Pvt. Ltd. situated at Village Siroli, Jagatpura, Jaipur</i> along with directions to the Builder to give its proposal to RFC.
3.	18.02.2016	In the Civil Writ Petition No. 5868/2010 filed by HDFC against RFC and Ors. before the Hon'ble High Court wherein it was directed to HDFC Bank to come out with some arrangement by which the due amount of RFC as well as Bank is paid.
4	14.03.2016	Further in the Civil Writ Petition No. 5868/2010, the Hon'ble High Court directed the Bank to inform




		whether they can take the liability of RFC to take over the projects with or without the settlement of the builders.
5	11.07.2016	Thereafter in the Civil Writ Petition No. 5868/2010, RFC had filed application for modification of order dated 07.03.2011 with the prayer to allow the auction of the other mortgaged property.
6	10.02.2017	All the writ petitions were clubbed together and the court directed to list the case on 03.03.2017 for final hearing.
7	07.05.2018	The case for not listed for final hearing, early hearing application was filed and Hon'ble High Court directed to list the matter on 09.07.2018.
8	03.10.2019	Application for early listing was again allowed and it was directed to list the case on 06.11.2019. Next date as per website was 15.07.2021, however the case was not listed.
		The case is still pending before the Hon'ble High Court, Rajasthan.

20. From the aforementioned list of pending litigations, we are convinced that due to timely action taken by the Applicant to enforce its rights in 2010 itself,




along with the ongoing litigation in the Hon'ble High Court, which has also been regularly pursued by the Applicant. Therefore, we are condoning the delay from January 2020 to 14.03.2020 in filing Section 7 Application under the Code. The question formulated hereinbefore is accordingly answered.

21. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.
22. This Adjudicating Authority perused all the relevant papers and found them in order. The Registered Office of Corporate Debtor is situated in Jaipur, and therefore this Adjudicating Authority has jurisdiction to entertain and try this application.
23. The Applicant has named *Ms. Garima Diggiwal* CA/Resolution Professional having Registration No. IBBI/IPA-001/IP-PO2018/2020-2021/13158, duly registered with Indian Institute of Insolvency Professionals of ICAI, to be appointed as the Interim Resolution Professional (IRP). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.
24. Consequences of initiation of CIRP shall be inter-alia as follows:

24.1 The IRP proposed by the Applicant is *Ms. Garima Diggiwal*, who is an IP registered with Indian Institute of Insolvency Professionals of ICAI having Registration No. IBBI/IPA-




001/IP-PO2018/2020-2021/13158. She is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

24.2 Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

24.3 The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray her expenses to be incurred and fees on the account. The Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation



to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

24.4 In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

25. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

26. In the circumstances, CP No. (IB) 83/7/JPR/2021 is admitted. IA No. 655/JPR/2023 and MA (IB) No. 06/JPR/2024 are allowed.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**