

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 16<sup>th</sup> MAY, 2024, 10:30 A.M.**

**CP (IB)/02/GB/2024**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

In the Matter of	IL&FS Financial Services Ltd. Vs Adhunik Meghalaya Steels Pvt. Ltd.
Under Section	U/s 7 of IBC, 2016

For Petitioner (s) : Ms. K. Sharma, Adv.

For Respondent (s) : Mr. S. Banerjee, Adv.

**ORDER**

Order pronounced in the open court *vide* separate sheets.

Sd/-  
**Satya Ranjan Prasad**  
Member (Technical)

Sd/-  
**H.V. Subba Rao**  
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB)/02/GB/2024**

***In the matter of:***

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process;

**-And-**

***In the matter of:***

IL&FS Financial Services Limited, a Company incorporated under the Companies Act, 1956 and having its Registered Office at The IL&FS Financial Centre, 3<sup>rd</sup> Floor, Plot C-22, G-Block, Bandra Kurla Complex, Bandra East, Mumbai- 400051;

**....Applicant/Financial Creditor**

**-Versus-**

Adhunik Meghalaya Steels Pvt Ltd, a Company incorporated under the Companies Act, 1956, and having its registered office at Plot No. 19 23E, PIP Zone, By Rnihat Meghalaya, Jaintia Hills, Meghalaya- 793101.

**....Respondent/Corporate Debtor**

***Coram:***

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing):***

For Petitioner(s) : Mr. S. Mitra (Adv.)

Mr. K. Sharma (Adv.)

For Respondent(s) : Mr. D.N Sharma (Adv.)

Mr. S.P. Chittawat (Adv.)

**Order reserved on 08.05.2024  
Order pronounced on: 16.05.2024**

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB)/02/GB/2024**

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**ORDER**

1. The present Application has been filed by the Financial Creditor - IL&FS Financial Services Limited (“FC”), under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process of the Corporate Debtor - Adhunik Meghalaya Steels Pvt Ltd (“CD”) for an unresolved Financial Debt of Rs. 55,45,97,395/-
2. The Respondent/ CD filed a detailed affidavit in reply opposing the above Application for which a rejoinder has also been filed by the FC. The important paragraphs of the affidavit in reply praying dismissal of the above CP and written notes of submission by the CD are extracted hereunder for ready reference:
  - 2.1 As the date of default in the present case is March 1, 2018 the three-year period for filing of C.P expired on February 28, 2021 which falls within the COVID period and hence in terms of SC order of January 10, 2022 the last date for filing of the petition by FC was May 30, 2022 and not beyond that. This is because the case of FC will fall under para 5.3 of the order and FC will not get any extended period over and above the maximum period of 90 days from March 1, 2022 because the limitation period for FC was to expire between March 15, 2020 till February 28, 2022.
  - 2.2 FC has relied upon the financial statements of CD from 2016 onwards and for the purpose of saving repetition, the last balance sheet of CD which has been relied upon is for FY 2019-20 at pg-503 of CP volume-III. However, the name of FC does not appear in the financial statements relied upon by FC at page-503.
  - 2.3 CD has relied upon pg-370, volume-III of CP wherein the name of the FC is appearing but this balance sheet is for a period ending March 31, 2017 and after this date the name of FC has never appeared in any balance sheet of CD. Even the amount which is reflected at page-370 of CP is not the same as compared to page-

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB)/02/GB/2024**

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503 and page-76 of CP wherein the FC has made a claim of Rs.55,45,97,395/- while filing the petition.

- 2.4 Therefore, the reliance placed upon the balance sheet of CD and that last balance sheet of the CD was signed in 2020 will not help the misconceived cause of FC because the last date of filing of the petition taking into account para 5.3 of SC order of January 10, 2022 was May 30, 2022 and therefore the CP which has been filed on January 14, 2024 is clearly barred by limitation.
3. Heard Ld. Counsel Mr S. Mitra appearing for the Petitioner and Ld. Counsel Mr. D.N Sharma appearing for the Respondent and perused the records.
4. Even though the CD has filed a detailed affidavit in reply opposing the above CP on various grounds, the Ld. Counsel appearing for the CD, mainly laid stress on the point of limitation. Therefore, the only issue that needs to be decided in this CP is whether the above CP is filed within limitation.
5. It is the submission of Mr Mitra that the date of default in this case is dated 01.03.2018. It is his further submission that the Hon'ble Supreme Court through Order dated 10.01.2022 in *In Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition(C) No.3 of 2020.*) excluded the period from 15.03.2020 till 28.02.2022 for computation of limitation for filing of appeals, suits and any other proceedings before the Courts and Tribunals due to the unprecedented COVID calamity and therefore contends that the cause of action for filing the above CP arises from 30.05.2022 and the above CP having been filed on 15.01.2024 is within limitation. He argues that his case falls within clause (I) of Paragraph 5 of the Order passed by the Hon'ble SC and not clause (III) as argued by Mr D.N Sharma.
6. His alternative argument is that the Balance Sheet of F.Y 2016-17, specifically under the heading "Long Term Borrowings", has the name of FC appearing against a sum of Rs. 24.57 Crores (Page 370: Volume III of Section 7 application) and the same entry has

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

CP (IB)/02/GB/2024

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been made in subsequent balance sheets upto the last available Balance Sheet for F.Y 2019-2020 (Pg 503: Vol III of Section 7 application) under the heading "Borrowings", which pushes ahead the starting point of limitation *vis a vis* 01.03.2018. He submits that as the date of filing of Balance Sheet for F.Y 2019-2020 is 14.02.2021, the aforesaid date becomes the starting point of limitation under Section 18 of Limitation Act, 1963 and the above CP was filed on 15.01.2024, it is well within the 3 years period of limitation and reliance is placed on judgment of the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Limited Vs Tulip Stars Hotels Limited & Ors. (Civil Appeal Nos. 84-85 of 2020)* for this argument.

7. It is interesting to note that both Petitioner and Respondent have relied on the abovementioned Order of the Hon'ble Supreme Court dated 10.01.2022 in *In Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition(C) No.3 of 2020)* to establish their cause. The Ld. Counsel for the Petitioner argues that the abovementioned Order supports his contention that the entire period between 15.03.2020 to 28.02.2022 is excluded for the computation of limitation period in respect of all proceedings and balance period of limitation becomes available from 01.03.2022. In order to decide the issue in controversy, it is important to examine the following paragraphs of the abovementioned Order of the Hon'ble Supreme Court dated 10.01.2022:

*“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A No. 21 of 2022 with the following directions:*

- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any*

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB)/02/GB/2024**

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*general or special laws in respect of all judicial or quasi-judicial proceedings.*

- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits(within which the court or tribunal can condone delay) and termination of proceedings”*

8. The careful reading of all the above clauses in Paragraph 5 in the above Order makes it very clear that the Hon’ble Supreme Court has exempted the COVID period from 15.03.2020 to 28.02.2022 with a grace period of another 90 days from 01.03.2022 to 30.05.2022. The rationale and the object behind passing the above Order is to exclude the COVID period from computing the period of limitation for filing legal proceedings before various courts and tribunals. Admittedly, the cause of action for filing the above CP arises from the date of default, i.e. 01.03.2018, and therefore, the above CP has to be filed on or before 28.02.2021. In view of the automatic extension granted in the above Order of the Hon’ble SC, it has to be filed at best on or before 30.05.2022 and not beyond

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

CP (IB)/02/GB/2024

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that. The above CP being filed on 15.01.2024 is clearly barred by limitation. It is important to mention here that as per Section 9 of the Limitation Act, 1963 when once the limitation period begins to run for filing any suit or proceeding, no subsequent event will stop the running of the limitation. Section 9 of the Limitation Act, 1963 is extracted hereunder for ready reference.

*“9. Continuous running of time—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it: Provided that, where..... administration continues.”*

The Applicant cannot compute the period of limitation from 30.05.2022 excluding the period from the date of default till the commencement of COVID as per Section 9 of the Limitation Act, 1963. Therefore, the argument of Mr. Mitra does not hold any merit and has to be rejected.

9. Let us examine the alternative plea of limitation basing on the balance sheets. It is the submission of Mr. Mitra that the CD has acknowledged its liability in their Balance Sheet for the FY 19-20 and the said balance sheet was signed on 12.08.2020 and filed on 14.02.2021 and the above CP filed on 15.01.2024 is within the limitation period. It is his submission that the relevant date for computing the period of limitation is the date on which the balance sheet was filed with the RoC and the above CP filed on 15.01.2024 is within limitation. In support of his above argument, he has relied on the ruling of Hon'ble Supreme Court in *Asset Reconstruction Company (India) Limited Vs Tulip Stars Hotels Limited & Ors. (Civil Appeal Nos. 84-85 of 2020)*. Let us assume for argument's sake and ignore the non-appearance of the name of the FC in the Balance Sheet for a moment, it becomes pertinent to observe here that even according to the own case of the FC, the Balance Sheet was signed on 12.08.2020 and the above CP filed on 15.01.2024 is beyond 3 years and is clearly barred by limitation. The above judgment relied upon by Mr. Mitra itself is against his argument as the judgment clearly mentions that the relevant date is the date of signing and not the date of filing the Balance Sheet with the

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB)/02/GB/2024**

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RoC. In addition to the above, as rightly contended by Mr. Sharma, the name of FC is nowhere appearing in the Balance Sheet for the year 2019-20 and unless the name of the FC appears in the Balance Sheet, it cannot be considered as an acknowledgement of liability and the argument of Mr. Mitra has to be rejected on that score also. Thus, viewing from any angle, this Bench has no hesitation in holding that the above CP is barred by limitation.

10. Since this Bench is rejecting the above application on the sole plea of limitation, the other issues raised by the CD are neither seriously pressed into nor decided in this Petition.
11. Accordingly, the instant petition, *i.e.* **CP (IB)/2/GB/2024 stands dismissed.**
12. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
13. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
14. File be consigned to record.

Sd/-

**Satya Ranjan Prasad  
Member (Technical)**

Sd/-

**H.V Subba Rao  
Member (Judicial)**

*Signed this on 16<sup>th</sup> day of May, 2024*