

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 44

IA 5726/2023 in C.P. (IB)/1332(MB)2022

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 17.04.2024

NAME OF THE PARTIES: **BANK OF MAHARASHTRA V/S MR**
 IMRAN FURNITUREWALA PERSONAL
 GUARANTOR TO HANJER BIOTECH
 ENERGIES PVT LTD

Sections 95(1) & 60(5) of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 5726/2023 in C.P. (IB)/1332(MB)2022

- 1) Ms. Raina Birla, Ld. Counsel for the Petitioner and Mr. Charles D'souza, Ld. Counsel for the Respondent, Personal Guarantor are present.
- 2) Ld. Counsel for the Personal Guarantor placed reliance on the decision of the Hon'ble National Company Law Appellate Tribunal in the case of *Gulabchand Jain V/s Punjab National Bank and Anr.* passed in Company Appeal (AT) (Insolvency) No. 416 of 2020, wherein the Hon'ble National Company Law Appellate Tribunal held as under:

“The benefit of Section 14 can be availed by a person when the proceedings which was filed before the earlier forum suffers from

lack of jurisdiction or other similar cause. In the present case, it cannot be said that the proceedings before the DRT were suffering from any lack of jurisdiction. Hence, submission of counsel of the Respondent for extension of limitation on the basis of Section 14 cannot be accepted”.

- 3) Ld. Counsel for the Personal Guarantor relies upon the DRT proceedings to defend the present petition is within the limitation period. We noted that the guarantee in this case was invoked on 4th August, 2014 and OA was filed before the DRT by the Counsel for the Financial Creditor. It is the case of the Financial Creditor that the period running from the filing of the OA before the DRT should be excluded for computation of limitation period proceeding before DRT is still pending.
- 4) However, the decision in the case of Gulabchand Jain cited (*supra*); we have no hesitation to hold that exclusion in terms of Section 14 of the Limitation Act, could not be granted in case of proceedings pending before the DRT. Accordingly, the Company Petition bearing CP (IB) No. 1332 of 2022 is disposed of as dismissed. In view of the withdrawal of the main Company Petition, all the pending Interlocutory Application, if any, arising out of the present Company Petition, including IA 5726 OF 2023 shall stand closed.
- 5) There will, however, be no order as to costs. Ordered Accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)