NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.163/2024
(IA No.434/2024)

In the matter of :

MR. VIRIGNENI ANJAIAH,
S/o Shri V. Guruviah,
Aged 63 Years, Occu: Suspended Director,
R/o. 3-182, Mainroad, Nidamanur Mandal,
Nidamanur, Nalgonda, Telangana -508287. **…. APPELLANT**
V
M/S. PRIDHVI ASSET RECONSTRUCTION
AND SECURITIZATION COMPANY LTD.,
Door No 1-55, 4th Floor,
Wing I "Raja Prasadamu",
Masjid Banda Road, Kondapur,
Hyderabad - 500084.
Rep by its Power of Attorney,
Mr KV Ramakrishna Prasad
...RESPONDENT/FINANCIAL CREDITOR

MR. GOVADA VENKATA SUBBARAO,
Registration No. IBBI/IPA-003/IP-N00358/2021-2022/13753,
Flat No-106, Block -A-05,
Rajiv Swagruha Apartments, Classic Diamond towers,
Anand Nagar, Bandlaguda, Hyderabad - 500 0068.
…RESOLUTION PROFESSIONAL

M/S. SRI PAVANA KEERTHI HOTELS INDIA
PRIVATE LIMITED,
Having its registered office at Plot No 207,
Model Colony, S R Nagar, Hyderabad - 500029.
Rep. by its RP: GOVADA VENKATA SUBBARAO
…RESPONDENT/CORPORATE DEBTOR

With

Company Appeal (AT) (CH) (Ins) No.164/2024
(IA No.435/2024)

In the matter of :

SMT.KADIYALA SUNEETHA,
W/o Krishna Prasad Rao Kadiyala,
Aged 55 Years, Occ.: Suspended Director,
Flat No. 102, Block -D, Aparna Towers
Kothaguda, Serilingampally,
Hyderabad, Telangana -500 084. **…. APPELLANT**
V
M/S. PRIDHVI ASSET RECONSTRUCTION AND SECURITIZATION COMPANY LTD.,
Door No 1-55, 4th Floor,
Wing I "Raja Prasadamu",
Masjid Banda Road, Kondapur,
Hyderabad - 500084.
Rep by its Power of Attorney,
Mr KV Ramakrishna Prasad
...RESPONDENT/FINANCIAL CREDITOR

MR. GOVADA VENKATA SUBBARAO,
Registration No. IBBI/IPA-003/IP-N00358/2021-2022/13753,
Flat No-106, Block -A-05,
Rajiv Swagruha Apartments, Classic Diamond towers,
Anand Nagar, Bandlaguda, Hyderabad - 500 0068.
…RESOLUTION PROFESSIONAL

M/S. SRI PAVANA KEERTHI HOTELS INDIA PRIVATE LIMITED,
Having its registered office at Plot No 207,
Model Colony, S R Nagar, Hyderabad - 500029.
Rep. by its RP: GOVADA VENKATA SUBBARAO
…RESPONDENT/CORPORATE DEBTOR

Present:

For Appellant : Mr. Pogulakonda Pratap, Advocate
For Respondents : Mr. Surya Teja SS Nalla, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

These two company appeals, as they stand on a common pedestal, for the purposes of brevity, they are being taken up and decided together. The Appellants of the two company appeal, who are the Personal Guarantors, in their status in the said capacity, question the propriety of the impugned orders of 15.04.2024, as they was rendered in CP (IB) No. 213/95/HDB/2023 and CP (IB) No. 207/95/HDB/2023 respectively. By virtue of the impugned orders, which are under challenge, the proceedings that were held under Section 95 of the I & B Code, 2016, had been directed to be admitted, as against the present Appellants for being carried forward, in accordance with the provisions of law, applicable to it.

2. To be precise, certain dates become relevant to be noted, which are chronologically referred to hereunder: -

(i) On **06.10.2014**, a Personal Guarantee bond was executed by the Appellant, ensuring the Advancement of a Loan to the Corporate Debtor.

(ii) On **13.10.2015**, the Corporate Debtor, that is Respondent No. 3 herein, was declared as NPA (Non-Performing Asset).

(iii) On **01.11.2015**, proceedings by issuance of a demand notice under Section 13 (2) of the SARFAESI Act, 2002, stood initiated as against the Corporate Debtor.

(iv) On **01.11.2015,** as a consequence of, the issuance of a demand notice under Section 13 (2) of the SARFAESI Act, 2002, the Financial Creditor are said to have invoked the Personal Guarantee.

(v) On **09.07.2019**, the Debt Recovery Certificate (DRC No. 176 of 2019) was issued by DRT-I, Hyderabad.

(vi) On **22.07.2020**, a demand notice was issued by the Recovery Officer, DRT (Debt Recovery Tribunal), Hyderabad, for the recovery of the amount, as it was reflected in it, which was due to be paid by the Corporate Debtor.

(vii) On **29.12.2021**, a demand notice as contemplated, under Rule 7 was issued, raising a demand with regard to the amount due to be paid by the Appellants, as against which the present Appellant stood as a Personal Guarantor.

(viii) On **05.07.2023**, Respondent No. 1 filed an application under Section 95 of the I & B Code, 2016, against the Appellants before the Ld. NCLT, Hyderabad.

3. The said demand notice was issued as per the provisions contained under Rule 7 of the IBBI (Insolvency and Bankruptcy Board of India) Liquidation Process Regulations, 2016, “Insolvency and Bankruptcy (Application to

Adjudicating Authority) etc. Rules, 2019". Rule 7 in itself contemplates issuance of a demand notice under Clause B of Section 95 (4) of the I & B Code, 2016, which is mandatorily required to be served on the Guarantor, demanding payment of the amount of default, which has to be issued in the shape of Form - B. It is not in dispute that the demand notice in the shape of Form - B was issued on 29.12.2021.

4. It is based on the demand notice of 29.12.2021, the Respondent No. 1 filed application under Section 95 of I & B Code, 2016, for initiation of the IRP proceedings, as against the respective Appellant/Personal Guarantor, before the Ld. Adjudicating Authority on 23.05.2022, and the proceedings were numbered as CP (IB) No. 191/95/HDB/2022, in respect of Mr. V. Anjaiah and CP(IB) No. 199/95/HDB/2022 in respect of Mrs. K. Suneetha. After taking up the hearing, the Ld. Adjudicating Authority vide its order of 25.05.2023, dismissed the proceedings, simpliciter on the solitary ground that since service of notice of demand as per under Section 95 of the Insolvency and Bankruptcy Code (IBC), 2016, to be read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process against Personal Guarantors to Corporate Debtors) Rules, 2019, was not proved to be served on the respective Personal Guarantor, the institution of the proceedings was held to be bad. However, the Ld. NCLT, while parting with the judgment on 25.05.2023, left it open for the Financial Creditor to file a fresh application as per law after

issuing the required notice. The order of 25.05.2023 has attained finality, as not been challenged. It is extracted hereunder: -

> *"It is submitted by the Ld. Counsel for Personal Guarantor that before filing of this application, the* ***mandatory demand notice was not served*** *on the Personal Guarantor. In terms of section 95 IBC, before instituting, filing the application against the Personal Guarantor seeking Insolvency Resolution, a notice to the Personal Guarantor is mandatory. Under the circumstances this application cannot survive.* ***Hence, it is dismissed, however, giving liberty to the Financial Creditor to file a fresh application as per law, after issuing the required notice****."*

5. It is the case of the Respondent, that after the judgment of 25.05.2023, a fresh demand notice was served upon the Appellants on 18.04.2023, the same stood acknowledged by the Appellant, which could be very well established by the document of acknowledgement, which has been placed on record of the company appeal, which finds an endorsement of the receipt by the Appellants. It is after that, the Respondent No. 1, had instituted fresh proceedings, by filing the same on 05.07.2023, which was numbered as CP No. 213/95/HDB//2023, in respect of Mr. V. Anjaiah and CP No. 207/95/HDB/2023 in respect of Mrs. K. Sunetha. After submission of the Resolution Professionals Report on 26.12.2023, as per Section 99 of the I & B Code, 2016, by the impugned judgment of 15.04.2025, the Personal Guarantors were directed to be admitted to the CIRP proceedings, consequent to which further steps have been taken by issuance of a public notice under Section 102 (I) of the I & B Code, 2016.

6. A few peculiar questions, which have been attempted to be argued by the Ld. Counsel for the Appellants, are that the proceeding itself would be bad in the eyes of law, because, the same would be barred by limitation and because that, the same would not be maintainable as no fresh notice as contemplated by the judgment of 25.05.2023, was ever issued to the Appellant to sustain the subsequent proceedings of the CP No. 213/95/HDB//2023 and CP No. 207/95/HDB/2023.

7. In order to answer the aforesaid argument, the Ld. Counsel for the Respondent has submitted and we also observe that, if the basic implication of the judgment of 25.05.2023, is taken into consideration, at that point of time, the Ld. Adjudicating Authority had only held the proceedings bad merely because, as per Section 95 of the Insolvency and Bankruptcy Code (IBC), 2016, to be read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process against Personal Guarantors to Corporate Debtors) Rules, 2019, the demand notice as contemplated to be issued under Form – B, was required to be served, and in the absence of service of the same being established, the proceeding was held to be bad.

8. The inference, which could be drawn from the judgment of 25.05.2023, is that, it is not to be misconstrued to be read as if a fresh Form - B notice was required to be issued as the order 25.05.2023 never contemplated as such, contrary to what is being argued by the Ld. Counsel for the Appellant, because it

was only the procedural *lacuna* of non-service of the notice of 29.12.2021, which stood satisfied when the said notice of demand dated 29.12.2021, was served upon the Appellant on 18.04.2023, and the same was acknowledged. Even otherwise also the fresh notice in shape of Form – B would not had any new contents in it in relation to the demand, particularly when the Appellant do not dispute the contents of notice of demand dated 29.12.2021.

9. Admittedly, the demand notice which was issued on 29.12.2021, was well within the prescribed time limit, and the bar of limitation, will not come into play. Further, if 3 years period under Article 137 of the Limitation Act, is taken into consideration, from the date of filing of an application on 05.07.2023, it was still well within the prescribed period of limitation, if determined from the date of the notice itself, i.e., 29.12.2021.

10. Issuance of a fresh notice, was not the object or intention of the order dated 25.05.2023, in fact, it was only an order, which attempted to rectify a procedural error of non-service of the demand notice by ensuring that, it is served upon the Appellant before the proceedings under Section 95 are actually initiated, which stood rectified by the service of demand notice as made on 18.04.2023, which was even acknowledged to be received. From the said perspective, since the notice of demand dated 29.12.2021 was admittedly served on 18.04.2023, and the proceeding was initiated on 05.07.2023, the same would not be barred by limitation, and it cannot be said that, it did not comply with the statutory necessity

of, service of the notice under Section 95 of the Insolvency and Bankruptcy Code (IBC), 2016, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process against Personal Guarantors to Corporate Debtors) Rules, 2019. Because the service of notice of 29.12.2021, on 18.04.2023, satisfied the basic ingredient and the purpose of the service of notice as intended by the law, when the same was admitted to be served upon the Appellant on 18.04.2023, which is a fact not denied by the Appellant.

11. The Appellants have preferred these company appeals, while questioning the propriety of impugned orders of 15.04.2024, as respectively rendered in the two company petitions detailed above, on these two short grounds, that is,

a) about the bar of limitation, and
b) the necessity of issuance of a fresh notice after the judgment of 25.05.2023.

12. If the Memorandum of Appeal is taken into consideration, these two grounds on which the Ld. Counsel for the Appellant has heavily harped upon. And if the judgment of the Ld. Tribunal is taken into consideration from the aforesaid perspective, and the finding which has been recorded by the Ld. Tribunal, particularly that as detailed in para 12, it could be reasonably inferred that the factum of existence of a debt and the amount of default is a fact which stood acknowledged by issuance of Form - B and its acceptance by the Appellant, which has never been made as a bone of contention or debate by the Appellant.

13. The Ld. Tribunal, while considering the rival contentions and particularly, the written submissions, which were placed before it, has formulated the question, though it has not been pressed before this Ld. Tribunal, as to whether under Section 100 of the I & B Code, 2016, the insolvency resolution process can be ordered against the Personal Guarantors, as the Ld. Counsel for the Appellant has not raised any question on the said issue; we are not venturing to answer the same. But owing to the finding, which has been recorded, by the Ld. Tribunal in its judgment, a satisfaction has been recorded with regards to the service of notice, by which the *lacuna* of the earlier proceedings, stood filled up, which stood decided by the judgment of 25.05.2023.

14. On an overall consideration of the findings which were recorded, it is only upon the classification of the loan account as NPA (Non-Performing Asset) on 31.10.2015, that the Guarantor's liability in pursuance to the demand raised by the creditors on the Guarantor got crystalized to be proceeded with and limitation will start from 09.07.2019, date of issue of Debt Recovery Certificate. The period of 3 years would have to be computed after excluding the period specified limitation by the judgment of the Hon'ble Apex Court, as rendered in ***Suo Moto* Writ Petition No. 3/2020**, i.e., the period from **15.03.2020 to 28.02.2022**. As the Application were filed on 05.07.2023, they stand well within the limitation period, as the limitation period would stand extended in the light of the judgment rendered by the Hon'ble Apex Court, a finding in relation to which has been recorded in Para 20 of the judgment.

15. What could be conclusively determined from the records, is that, in principle, the Appellant has admitted the liability, as it was reflected in the demand notice issued under Rule 7 and more aptly in pursuance to the demand notice issued under Section 13(2) of the SARFAESI Act, 2002. Neither of the issues with respect to limitation is now an issue, which is *res integra* as the law has already been settled in the judgment rendered by ***Dena Bank Vs. C. Shivakumar Reddy and Another as reported in 2021, 10 SCC page 330***, wherein the Hon'ble Apex Court held that, the recovery certificate, gives rise to a fresh cause of action, and the recovery certificate holder is to be treated as to be the Financial Creditor under Section 5 (7) of the I & B Code, 2016. In that eventuality the Recovery Certificate of 09.07.2019, as issued by the DRT (Debt Recovery Tribunal) Hyderabad, would give a fresh cause of action holding the Respondent to be the Financial Creditor under Section 5 (7) of the I & B Code, 2016, for the purposes of initiation of the proceedings, in the matters of Dena Bank Vs. C. Shivakumar Reddy and Another, has observed above in its para 142 & 143, has considered the aspect of limitation, which is extracted hereunder: -

> *"**132**. It is true that, when the petition under Section 7 IBC was filed, the date of default was mentioned as 30-9-2013 and 31-12-2013 was stated to be the date of declaration of the account of the corporate debtor as NPA. However, it is not correct to say that there was no averment in the petition of any acknowledgment of debt. Such averments were duly incorporated by way of amendment, and the adjudicating authority rightly looked into the amended pleadings.*

__133__. As observed above, the appellant Bank filed the petition under Section 7 IBC on 12-10-2018. Within three months, the appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decree dated 27-3-2017 in OA No. 16 of 2015 and the recovery certificate dated 25-5-2017, enabling the appellant Bank to recover Rs 52 crores odd. The judgment and order/decree of the DRT and the recovery certificate gave a fresh cause of action to the appellant Bank to initiate a petition under Section 7 IBC."

__134__. …….
__135__. …….
__136__. …….
__137__. …….
__138__. …….
__139__. ……
__140__. ……
__141__. ……

__"142__. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such

> *documents and pleadings did not call for interference in appeal.*
>
> ***143**. For the reasons discussed above, the impugned judgment and order is unsustainable in law and facts. The appeal is accordingly allowed, and the impugned judgment and order [C. Shivakumar Reddy v. Dena Bank, 2019 SCC OnLine Nclat 907] of Nclat is set aside."*

16. The Recovery Certificate that was issued by the Debt Recovery Tribunal on 09.07.2019, and the Financial Creditor, having been determined as to be a certificate holder under the said certificate in the DRT proceedings, acquired the status of having a fresh cause of action and thus, proceedings having been initiated on 09.12.2021, after issuance of the demand notice by the DRT (Debt Recovery Tribunal), will not be barred by limitation. Even the subsequent company petition proceedings which stood initiated on 05.07.2023, will be well within the prescribed time limit, if limitation is computed from 29.07.2019 after accounting for the exclusion period mandated by Hon'ble Apex Court on account of the Covid-19 pandemic.

17. After having heard, the Ld. Counsel for parties, and having gone through the records, we are of the view that, the finding which has been recorded by the Ld. Tribunal on the question of limitation, and on the question of issuance of proper notice for initiation of the proceedings, do not suffer from any apparent error, because the notice of 29.12.2021, will be treated to be in continuity to the proceedings, having been served on 18.04.2023, which itself bring the proceedings to be well within the prescribed limitation. The 'company appeal'

lacks merit and the same is accordingly, ‘dismissed’. All pending ‘interlocutory applications’ would stand ‘closed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24/07/2025
SN/MS/RS