NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 858 of 2023 & I.A. No. 2925 of 2024

(Arising out of the Order dated 19.04.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-IV in I.A./2972/2022 in CP (IB) 477/C-IV/MB/2020)

IN THE MATTER OF:

Namdev Hindurao Patil
Having his address at: Patil Building, Pargaon Padali Road, Plot No. 801 & 802, Nave Pargaon, South East Side, Pargaon, Kohlapur Maharashtra - 416 113 **…Appellant**

Versus

1. Virendra Kumar Jain, Liquidator,
Warana Dairy and Agro Industries Limited
Having address at: Tatyasaheb Kore Nagar,
Post. Warananagar, Tal. Panhala Dist. Kohlapur,
Warananagar 416 112
E-mail ID : vkj310@gmail.com;
vkj@kanchansobha.com **…Respondent No. 1**

2. IDBI Bank Limited
Having registered office at: Matorshree Plaza, Ist Floor, Winson Corner, Kolhapur
E-mail ID :S-KAUL@idbi.co.in ;
aditya.gajbhiye@idbLco.in **…Respondent No. 2**

3. Punjab National Bank (International Limited) London,
Having Address at: 1 Moorgate London, EC2R 6LH
E-mail ID: puneet.kumar@pnbint.com;
recovery@pnbint.com;
moorgate.loans@pnbint.com
SachinJindal@pnbint.com;
Prashant.kumar@pnbint.com **…Respondent No. 3**

4. Shri Warana Mahila Sahakari Panth Sanstha Limited,

Having Address at: Shree Tatyasaheb Kore Warana
Sahkari Navshakti Nirman Sanstha Limited,
Warananagar, Taluka, Panhla 416 113
E-mail ID: ahujahra@gmai1.com **…Respondent No. 4**

5. Amrut Sevak Sah Pat Sanstha Limited
Having Address at: Warana Nagar, Tatyasaheb Kore
Nagar, Post.
Warnanagar, Tal. Panhala, Dist. Kolhapur,
Warnanagar 416 112
E-mail ID : amrutwarana@gmai1.com **…Respondent No. 5**

Present

For Appellant:	Mr. Krishnendu Datta, Sr. Advocate along with Ms. Neha Agarwal & Mr. Nipun Gautam.
For Respondents:	Mr. Udita Singh, for R-1. Mr. Abhishek Sharma, Mr. Kritya Sinha & Mr. Shawaiz Nisar, for R-2. Mr. Mithilesh Kumar Pandey, for R-3.

J U D G E M E N T

(23.04.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Appeal i.e., Company Appeal (AT) (Insolvency) No. 858 of 2023 has been filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') by the Appellant herein i.e., Namdev Hindurao Patil, who is the Suspended Director and one of the Resolution Applicant of the Corporate Debtor i.e., Warana Dairy and Agro Industries Ltd. against the Impugned Order dated 19.04.2023 passed by the National Company Law Tribunal, Mumbai Bench,

Court-IV (in short '**Adjudicating Authority**') in I.A./2972/2022 in CP (IB) 477/C-IV/MB/2020 .

2. Mr. Virendra Kumar Jain is the Respondent No. 1, who is the Liquidator of the Corporate Debtor and IDBI Bank Limited is the Respondent No. 2, Punjab National Bank (International Limited) London is the Respondent No. 3, Shri Warana Mahila Sahakari Panth Sanstha Limited is the Respondent No. 4 and Amrut Sevak Sah Pat Sanstha Limited is the Respondent No. 5, wherein Respondent No. 2, Respondent No. 3 and Respondent No. 4 are Financial Creditors of the Corporate Debtor.

3. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

4. It has been brought out that in I.A. No. 464 of 2023 filed before the Adjudicating Authority, the Appellant sought direction to the Resolution Professional and the Committee of Creditors (in short 'CoC') to consider his Resolution Plan.

5. The Appellant also brought out that the Adjudicating Authority has erroneously allowed I.A No. 2972 of 2022 filed by the Resolution Professional for liquidation of the Corporate Debtor.

6. The Appellant submitted that the Respondent No. 3 filed an application under Section 7 of the Code in CP (IB) 477/C-IV/MB/2020 before the

Adjudicating Authority which was admitted and CIRP commenced against the Corporate Debtor vide order dated 16.09.2021.

7. It has brought out that the CoC consist of Respondent No.2 - IDBI Bank Limited with voting share of 35.66%, Respondent No. 3- Punjab National Bank (International Limited) London with voting share of 30.71%, Respondent No. 4 - Shri Warana Mahila Sahakari Panth Sanstha Limited with voting share of 23.87% and Respondent No. 5- Amrut Sevak Sah Pat Sanstha Limited with voting share of 9.76%.

8. It has been further brought out that IRP published Expression of Interest (in short '**EOI**') on 24.12.2021 wherein the last dated of submission of EOI was 23.01.2022 and only one application came forward. Subsequently, the IRP extended the period of EOI and a fresh form 'E' was published on 19.02.2022 and in response thereto the Appellant filed Form 'G' and submitted his Resolution Plan on 12.05.2022.

9. The Resolution Plan submitted by the parties were discussed in the 11th CoC Meeting held on 26.05.2022 and PRAs were asked to modify their plan. .

10. The Appellant alleged that the Respondent No. 2 wrongly declared the Appellant as wilful defaulter on **19.07.2021** and on 04.10.2021, which was challenged by the Appellant before the appropriate court and the Resolution Professional permitted the Appellant to submit the Resolution Plan subject to outcome of the challenge by the Appellant.

11. The Appellant pointed out that issue regarding his eligibility to submit the Resolution Plan was infact discussed in several CoC Meeting including 17th CoC held on 15.09.2022, 18th Coc Meeting held on 22.09.2022 and 19th CoC meeting held on 27.09.2022.

12. It is the case of the Appellant that Civil Judge granted the stay on 19.09.2022 as such CoC agreed to consider the Resolution Plan submitted by him in 20th CoC Meeting held on 03.10.2022 and the Resolution Plan of the Appellant was discussed. The Appellant was given another opportunity to give amended improved the Resolution Plan and accordingly during 21st CoC Meeting was held on 06.10.2022- 07.10.2022 to consider amended plan submitted by the Appellant. The improved offer of the Appellant was considered wherein CoC decided the Appellant to be ineligible to submit the Resolution Plan on account of his willful defaulter declaration and did not consider the Resolution Plan on merits and further resolved to liquidate the Corporate Debtor. Aggrieved by this action of CoC arising out of 21st CoC Meeting held on 06.10.2022 & 07.10.2022, the Appellant filed an I.A. No. 464 of 2023 before the Adjudicating Authority and finally the Impugned Order dated 19.04.2023 was passed discarding the pleadings of the Appellant.

13. It is the case of the Appellant that he always wanted to revive the Corporate Debtor, whereas the Respondent No. 2 and 3 on wants to liquidate to Corporate Debtor. It has been informed that the Corporate Debtor is going concern

employing more than 400 employees and procuring milk from more than 4700 farmers and is also in MSME unit.

14. The Appellant submitted that the Adjudicating Authority rejected his I.A. No. 464 of 2023 primarily on account of him being wilful defaulter, wrongly done by the Respondent No. 3. The Appellant alleged that the Impugned Order is perverse since it seeks to send a going concern corporate entity into liquidation against the spirit of the Code which is for the resolution and revival of the corporate entity and not for liquidation.

15. The Appellant also alleged violation the principles of natural justice and non considering his pleadings before the Adjudicating Authority.

16. It is the case of the Appellant that at the time when 21st CoC was held on 06.10.2022 to 07.10.2022, ad-interim relief in favour of the Appellant vide order dated 19.09.2022, extended vide order dated 03.10.2022 was continuing and remained in force and therefore the wilful defaulter status of the Appellant being non-est, the Appellant was eligible as the Resolution Applicant on 06.10.2022 when his Resolution Plan was not consider by CoC on the ground of wilful defaulter.

17. The Appellant submitted that one of the CoC Members pointed out that the stay was granted on 12.10.2022 and further informed as per online status that till next date the same continued. However, CoC ignored these vital facts and wrongly assumed that there was no stay in favour of the Appellant.

18. The Appellant alleged that CoC was bound to consider his Resolution Plan in terms of 39(3)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short **'CIRP Regulations'**).

19. The Appellant also alleged failure on the part of the Resolution Professional in terms of 36-A (8) of CIRP Regulations which casts duty on Resolution Professional to conduct due diligence and examine whether the Resolution Plan is in compliance with the provisions of the code and cited the judgment of the Hon'ble Supreme Court of India in the matter of ***Arcelormittal India Private Limited Vs. Satish Kumar Gupta and Others.*** [(2019) 2 SCC 1] in support of his case.

20. The Appellant reiterated his pleadings regarding the rights of the Corporate Debtor as MSME for its continuation in existence in view of the Report of the Insolvency Law Committee of March 2018 contained in paragraphs 27.1, 27.3, 27.4 of the Report and also in view of the judgment of the Hon'ble Supreme Court of India in the matter of ***Swiss Ribbons Private Limited and Anr. Vs. Union of India*** [(2019) 4 SCC 17] his case is covered.

21. Finally the Appellant submitted that his Resolution Plan should have been considered and voted upon by the CoC in terms of Regulation 39(3)(c) of CIRP Regulation for either approving his plan or rejecting his plan on merits and also it was duty of the Resolution Professional to do proper due diligence for

examination regarding Appellant ineligibility under Section 29(A) of the Code, which he failed to do.

22. Concluding his remarks the Appellant urged this Appellate Tribunal to set aside the Impugned Order and allow his appeal.

23. Per contra, the Respondent No. 2 denied all the averments made by the Appellant treating these to be misleading, mischievous, devoid of any merit and only to derail the process of resolution of the Corporate Debtor.

24. The Respondent No. 2 pleaded that the Appellant was not eligible to submit the Resolution Plan since the Appellant was declared a wilful defaulter and disqualified under Section 29(A) of the Code. In this connection, the Respondent No. 2 stated that ad-interim relief obtained by the Appellant in Civil Suit No. 710 of 2022 on 19.09.2022 was conditional relief i.e., interim relief was granted till the filing of the Reply by the defendant which included the Respondent No. 2. The Respondent No. 2 highlighted that the order dated 19.09.2022 clearly stipulated that "the defendant Nos. 1, 3 & 4 or any body through them are hereby restrained by way of temporary injunction from acting upon the order dated 19.07.2021 and 04.10.2021 till filed their say to the application for temporary injunction".

25. The Respondent No. 2 further submitted that subsequent order dated 03.10.2022 did not record any extension of the temporary injunction granted to

the Appellant and the same order further observed that the Reply of the Respondent No. 2 has been filed.

26. The Respondent No. 2 gave the background under which the Appellant was declared as a wilful defaulter under Master Circular of RBI dated 01.07.2015 and stated that the Appellant availed a loan of Rs. 67 Crores from the Respondent No. 2 and did not use it for the purpose for which it was sanctioned, misused the money and defaulted on repayments.

27. The Respondent No. 2 stated that during 21st CoC Meeting held on 06.10.2022 and 07.10.2022, the Resolution Plan of the Appellant was not considered due to his wilful defaulter status and ad-interim stay was not in operation since the Respondent No .2 had filed his Reply in Civil Suit No. 710 of 2022 and after discussion the CoC passed the Resolution for non consideration of the Resolution Plan submitted by the Appellant which was voted by 66.37% majority voting.

28. It is the case of the Respondent that an ad-interim stay is not a final conclusion regarding the wilful defaulter status of the Appellant and it was meant only for not taking any further adverse action by the Respondent No. 2 against the Appellant and it did not absolve wilful defaulter status of the Appellant and therefore Section 29 (A) of the Code was clearly applicable to the Appellant barring Appellant from submitting the Resolution Plan.

29. The Respondent No. 2 further submitted that on 19.12.2022 the Civil Judge dismissed the Civil Suite No. 710 of 2022 and appeal preferred by the Appellant against this order dated 19.12.2022 was also dismissed by District Judge, Kolhapur on 01.04.2023. Thus, there is no valid ground raised by the Appellant which absolve him from ineligibility attracted under Section 29A due to wilful defaulter.

30. The Respondent No. 2 also refuted the contention of the Appellant that eligibility was considered by CoC and he was permitted to submit the Resolution Plan and in this regard drew attention to minutes of 17th CoC Meeting held on 15.09.2022 which took place prior to grant of alleged ad-interim stay order dated 19.09.2022, where it has been clearly recorded that the CoC was unwilful to consider the plan of the Appellant since the Hon'ble High Court of Bombay had refused to interfere with the wilful defaulter stay of the Appellant vide order dated 24.08.2022.

31. During the same meeting, the Erstwhile Resolution Professional informed the CoC that he has received the summon in Civil Suit No. 710 of 2022 filed by the Appellant, CoC decided not to take any final decision regarding Resolution Plan of the Appellant and decided to await the outcome of Civil Suit.

32. Similarly, in the 18th CoC Meeting held on 22.09.2022, after the issuance of ad-interim stay order dated 19.09.2022, the CoC briefly discussed the

eligibility of the Appellant as PRA but decided to wait for the copy of judicial order for ad-interim stay order.

33. The Respondent No. 2 submitted that only in the 19th CoC Meeting held on 27.09.2022 after receipt of the copy of the stay order dated 19.09.2022 the CoC decided to consider the Resolution Plan of the Appellant and accordingly asked him to submit the same and even during this meeting, the Respondent No. 2 recorded his objections and abstained from voting on Resolution Plan of the Appellant.

34. The Respondent No. 2 submitted that 20th CoC Meeting held on 03.10.2022 and 04.10.2022, the other members of the CoC considered the Resolution Plan of the Appellant and asked him to give improved Plan.

35. Subsequently, in the 21st Meeting CoC held on 06.10.2022 and 07.10.2022, the CoC member pointed that since ad-interim stay in favour of the Appellant stood vacated pursuant to filing of Reply by the Respondent No. 2-IDBI Bank in Civil Suit No. 710 of 2022 on 03.10.2022 and the CoC decided not to consider the revised Resolution Plan of the Appellant.

36. The Respondent No. 2 emphasised that the ad-interim stay order dated 19.09.2022 was conditional and was in operation till the Respondent No. 2 as contesting the Respondent No. 2 filed his Reply on 03.10.2022 and as such ad-interim stay was deemed to have been vacated and therefore, the CoC was legally entitled not to consider the Resolution Plan of the Appellant in view of provisions

of Section 29 (A) of the Code and accordingly in the 21st CoC Meeting held on 06.10.2022 and 07.10.2022 decided to treat the Appellant as ineligible which was supported by 66.37% of the CoC. Thus, the CoC took all reasonable steps in order to follow the judicial orders and only on deemed vacation of the stay order CoC took a final decision in this regard in 21st CoC Meeting.

37. The Respondent No. 2 submitted that the decision taken in any case falls within the ambit of the commercial wisdom of the CoC and hardly any judicial review is required or permitted in view of several judgements of Hon'ble Supreme Court of India as well as this Appellate Tribunal and cited the judgement of this Appellate Tribunal held in ***Epitome Components Pvt. Ltd. vs. Divyesh Desai, The Liquidator of Trend Electronics Ltd. & Ors***. *[(2022) SCC OnLine NCLAT 305]*.

38. The Respondent No. 2 refuted the allegations of the Appellant that Resolution Professional did not perform his duties under the Code regarding determination of eligibility of the Resolution Applicant and pointed out that the Resolution Professional complied with all statutory requirements including Regulation 36(A)(8)(b) of the Regulation. The Resolution Professional categorically commented on the eligibility criteria of the Appellant and the status of wilful defaulter proceeded before the Hon'ble High Court of Bombay and placed the matter accordingly before the CoC for decision and therefore it was for CoC to take the decision and to consider the Appellant as eligible Resolution

Applicant or other wise and hence, there was no fact of the Resolution Professional in this regard.

39. The Respondent No. 2 submitted that none of the lenders would like to see the Corporate Debtor into liquidation and it is only when all steps for resolution of the Corporate Debtor failed, Financial Creditors were left with no option but to recommend the liquidation of the Corporate Debtor and to precisely the same happened in the present case.

40. The Respondent No. 2 also highlighted that the decision to liquidate a Corporate Debtor also falls within the scope of commercial wisdom of the CoC and not open to any judicial scrutiny which has been confirmed by judgements of various courts including, this Appellate Tribunal and cited judgments of the Hon'ble Supreme Court of India in the matter of ***Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.*** *[(2019) 2 SCC 1].*

41. The Respondent No. 2 submitted that a show-cause notice dated 24.01.2020 was sent to the Appellant asking him reason why he should not be declared as a wilful defaulter in terms of RBI Circular dated 01.07.2015 and after long deliberation declared the Appellant as the wilful defaulter as decided by the committee of the Respondent No. 2 vide its order dated 19.07.2021 which was also confirmed by wilful defaulter review committee vide its order dated 04.10.2021.

42. The Respondent No 2 reiterated that the Appellant has been trying to evade his status by challenging the declaration of wilful defaulter before the Hon'ble High Court of Bombay and since the High Court was not inclined to grant any relief to the Appellant, the Appellant withdrew the petition and filed Civil Suit No. 710 of 2022 before the Civil Judge Junior Division, Kolhapur and the ad-interim relief availed by him became nullified after filing of reply by the Respondent No. 2 as per judicial order and therefore the Appellant is squarely covered under the definition of wilful defaulter and ineligible under Section 29 (A) of the Code.

43. Concluding his arguments, the Respondent No. 2 requested this Appellate tribunal to dismiss the appeal with exemplary cost.

44. The Respondent No. 3 gave the background of the case and supported the averments made by the Respondent No. 2, which we have noted earlier.

45. The Respondent No. 3 pointed that the Appellant has neither taken the ground for exemption as MSME under section 240 A of the Code in appeal No. 853 of 2023 not before the Adjudicating Authority in I.A. No. 2972 of 2022. The Respondent No. 3 submitted that the Appellant also did not qualify the conditions to be covered under Section 240 A of the Code.

46. The Respondent No. 3 also submitted that Appellant was required to challenge the status of wilful defaulter as RBI per Guidelines, within 15 days from the date of issue of notice by the Respondent No. 2, which the Appellant did not

challenge and therefore the status of the Appellant as wilful defaulter attained the finality.

47. The Respondent No. 3 submitted that the Appellant is chronical and habitual litigant and filed various litigation before the Adjudicating Authority, this Appellate Tribunal, Hon'ble High Court of Bombay, Civil Judge Kolhapur, District Judge Kolhapur and also Hon'ble Supreme Court of India and did not get any support in judicial fora. In fact all the application and SLP were decided in favour of the Financial Creditors including the Hon'ble Supreme Court of India who did not find any ground against the Order of this Appellate Tribunal and the Appeal of the Appellant was dismissed on 25.08.2023 in Civil Appeal No. 4135 of 2023.

48. The Respondent No. 3 submitted that the Appellant and one consortium, namely - 'RNP Scaffolding & Framework Pvt. Ltd, M/s RNO Infracon Pvt. Ltd. & RN Paints and Engineering Works & M/s Alliance Infra' were the two parties who submitted the Resolution Plans, which were discussed and deliberated by the CoC in its meeting on 26.05.2022.

49. The Respondent No. 3 stated that vide its order dated 19.09.2022 the City Civil Court restrained the Respondents by way of temporary injunction from acting upon the notices dated 19.07.2021 and 04.10.2021 till they file their reply to the application for temporary injunction and the suit was ultimately dismissed by the Civil Judge on 19.12.2022 holding the same to be not maintainable. The

Regular First Appeal (being Regular Civil Appeal No.4 of 2023) against the aforesaid order dated 19.12.2022 filed by the Appellant before District Court, Kolhapur was also dismissed vide order dated 01.04.2023.

50. The Respondent No. 3 further stated that the second appeal moved by the Appellant challenging the order dated 01.04.2023 remains pending before the High Court of Bombay (being Second Appeal No. 322/2023), however, till date no stay has been granted by the High Court on the Willful Defaulter declaration.

51. The Respondent No. 3 informed that that it was in the meantime in the 2I' COC meeting dated 06/07.10.2022, the CoC resolved that the Appellant was ineligible to submit the Resolution Plan on account of Willful Defaulter Declaration and further resolved to liquidate the Corporate Debtor after detailed discussion. The Respondent No. 3 stated that the Financial Creditors were not even satisfied with the amount offered by the Appellant as part of Resolution Plan and the eligibility of the Appellant was also discussed in light of the Willful Defaulter Declaration made by Respondent No.2.

52. The Respondent No. 3 highlighted the relevant observation made by the member of CoC recorded in the said minutes , which reads as under :-

> *" Mr. Aditya stated that as of now there was no permanent stay or vacation order by the Hon'ble Civil Court in the said order and since IDBI was restrained and granted temporary injunction for acting further on the order for declaration of*

willful defaulter. The order mentioned that the temporary injunction was given till 03-10-2022 and up to filling of the reply by the IDBI. The order said that the reply to be filed by IDBI till 03-10-2022 and accordingly the reply was filed by IDBI and as per the order dated 19-09-2022 it seems that at present there was no stay and as of now they were not in receipt of the order of the hearing dated 03-10-2022.

53. The Respondent No. 3 highlighted that even if the COC was to hold the Appellant eligible, dismissal of the Appellant's Civil Suit subsequently on 19.12.2022 would have again made him ineligible to submit a Resolution Plan under the relevant provisions of the Code.

54. The Respondent No. 3 submitted that the CIRP process could further not have been kept pending only to wait for the Appellant to possibly succeed in overturning his Willful Defaulter declaration. The Resolution Professional as well as CoC had to conduct and proceed with the CIRP proceedings within the given statutory timelines which could not have been breached.

55. The Respondent No. 3 submitted that the issue of eligibility has been considered and decided by the Adjudicating Authority in the impugned order wherein it has observed that it felt the CoC had discussed both the eligibility and resolution plan of the Appellant and the Appellant was satisfied with CoC

recommendation not to consider the Resolution Plan of the Appellant and also found the Corporate Debtor fit for liquidation.

56. Concluding his arguments, the Respondent No. 3 requested this Appellate tribunal to dismiss the appeal with suitable cost.

Findings

57. We note that the Impugned Order, in fact, disposed off four I.A.s i.e., 2972 of 2022 filed by the Resolution Professional seeking liquidation of the Corporate Debtor, I.A. No. 872 of 2023 filed by the Respondent No. 2 on appointment of liquidator , I.A. No. 3372 of 2022 filed by the Respondent No. 3 for an order of restrain qua Resolution Plan by the Appellant and I.A. No. 464 of 2023 filed by the Appellant seeking the Appellant to be eligible under provisions of Section 29A of the Code.

58. We have already noted that the Corporate Debtor was admitted under CIRP vide order of the Adjudicating Authority dated 16.09.2021 based on an application filed by the Respondent No. 3. Subsequently, after appointment of IRP public notice was issued and EoI were invited in response to which eight participants shown their interest, however, only two applicants submitted their EoI and only one applicant, namely, M/s Nalwa Steel and Power Limited was found eligible. Therefore, another EoI was invited and the last date of submission of EoI on 06.03.2022 in response to which, two PRA submitted their Resolution

Plan including the Appellant. We have noted that these were deliberated in various meetings of the CoC and finally in the 21st CoC held on 06.10.2022 and 07.10.2022, it was decided not to accept the Resolution Plan of the Appellant and also recommended liquidation of the Corporate Debtor.

59. The Appellant raised few issues in the present appeal including non consideration of his pleadings by the Adjudicating Authority, legal protection on declaration as wilful defaulter by the Respondent No. 2 by the Court order liquidation being against the spirit of the Code, status of Corporate Debtor as going concern giving employment to large number of people etc.

60. The Appellant also raised issue regarding the Corporate Debtor being MSME and the violation of principles of natural justice.

61. The main issue which requires to be deliberated and decided in the present appeal is regarding the eligibility of the Appellant to submit the Resolution Plan under section 29 A of the Code and issue regarding commercial wisdom of the CoC regarding non consideration of the Resolution Plan submitted by the Appellant and resultant recommendation of the CoC for liquidation of the Corporate Debtor which was accepted by the Adjudicating Authority in the Impugned Order dated 19.04.2023.

62. Here, we would like to take into account the relevant portion of the provision of the Code as contained in Section 29 A which reads as under :-

*"**29A. Persons not eligible to be resolution applicant. -** A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—*

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);"

(Emphasis Supplied)

63. Further, it would be desirable to look into Section 240 (A) of the Code i.e., application of the Code to the MSME and the relevant portion reads as under :-

"240A. Application of this Code to micro, small and medium enterprises. –

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process (Ins. by Act No. 26 of 2021, sec.17 (w.e.f. 04-04-2021).)[or pre-packaged insolvency resolution process] of any micro, small and medium enterprises."

(Emphasis Supplied)

64. It will be pertinent to understand that Section 29A of the Code was added by the Amendment Act of 2021 with the intent that any person who by his misconduct contributed to the default of the Corporate Debtor or is otherwise

undesirable, should be prevented from gaining or regaining control of the Corporate Debtor. In a way, Section 29A intents to give protection to the genuine creditors of the Corporate Debtor by preventing unscrupulous persons from rewarding themselves at the expenses of the creditors and undermine the process and object of the Code.

65. We observe that first line of Section 29 A stipulates that "A person shall not be eligible to submit a Resolution Plan, if such person" suffers from any of the infirmity stated in sub- clauses (a) to (i) of Section 29 which makes it clear that Section 29 A disqualifies those people who were cause or contributed for the downfall of the Corporate Debtor and therefore they became unsuited to take rein of the management of the Corporate Debtor.

66. It is also noted that in accordance with the guidelines of the RBI, a person who though able to pay, does not pay, is declared as willful defaulter and is barred by Section 29 A of the Code to submit Resolution Plan.

67. We also note that MSME entity were exempted partially from the provisions of Section 29 A of the Code w.r.t. Section 29 A (c) and Section 29 A (H) only with qua such Corporate Debtor which was done perhaps with thought process that, other Resolution Applicant may not come forward which may not be helpful in resolution of such MSME Corporate Debtor leading to its logical liquidation. The objective of the Code is for the Resolution of the Corporate

Debtor and not for liquidation of the Corporate Debtor, hence these two exemptions to MSME were granted w.r.t. Section 29A of the Code.

68. We have earlier discussed that the Promoters of MSME are exempted only from sub-section (c) and (h) of the 29 A of the Code and other eligibility criteria as stipulated under section 29 A of the Code will be applicable i.e., Section 29 A(b) is not carved out.

69. Thus, the exemption under Section 240 A of the Code is not applicable to Section 29 A (b) of the Code which is the case under discussion in the present Appeal.

70. It is well settled principle that the CoC has the powers to take informed decision with regard to approval of the Resolution Plan and once, the Resolution Plan is decided by the CoC, the Resolution Professional is required to file suitable application before the Adjudicating Authority for approval. Thus, the CoC has full powers to decide regarding approval or non approval of the Resolution Plan.

71. It is also viewed that the CoC is also duty bound to consider the eligibility or ineligibility of the Resolution Applicant under section 29 A of the Code as upheld in catena of the judgments passed by the Hon'ble Supreme Court of India as well as by this Appellate Tribunal where it has been made clear that the ineligibility for submission of the Resolution Plan, would be determinate w.r.t date on which the Resolution Applicant submits his Plan.

72. We note that the Appellant submitted the Resolution Plan on 12.05.2022 which was considered in 11th CoC meeting held on 26.05.2022 and in various subsequent CoC meetings up to 21st CoC Meeting of CoC held on 06.10.2022 and 07.10.2022 where the Resolution Plan of the Appellant was not approved by 66.37% of the voting share of the members of the CoC.

73. It is also worth noting again that the Respondent No. 2 having the voting rights of 35.66% objected and abstained from voting on the Resolution Plan of the Appellant on the ground of being contesting party in Civil Suit No. 710 of 2021 in 19th CoC Meeting held on 27.09.2022.

74. We note that the Appellant filed Writ Petition No. 2885 of 2022 before the Hon'ble High Court of Bombay and vide order dated 28.08.2022 the Hon'ble High Court allowed the plea of the Appellant to withdraw the said Writ Petition with a liberty to file a civil suit, primarily on issue of writ jurisdiction.

75. Subsequently, the Appellant filed Civil Suit No. 710 of 2022 before the Civil Judge, Junior Division, Kolhapur challenging the willful defaulter declaration by the Respondent No. 2 and Civil Judge granted ad-interim relief in favour of the Appellant vide Order dated 19.09.2022 which was disposed on 19.12.2022 as not maintainable by Civil Judge. The Appellant filed a Civil Appeal No. 4 of 2023 before the District Court, Kolhapur challenging Civil Judge vide its order dated 19.12.2022 which was also dismissed vide order dated 01.04.2023.

76. The Appellant again filed Second Appeal No. 322 of 2023 which is still pending before the Hon'ble High Court of Bombay.

77. The Appellant tried to defend his case regarding eligibility w.r.t. judicial protection by way of ad-interim stay by Civil Judge, Junior Division, Kolhapur. Hence, it would be desirable to look into the respective orders passed by the judicial fora on the appeals by the Appellant from time to time.

(i) We have already observed from the pleadings as well from the appeal that since the Hon'ble High Court of Bombay was not inclined to interfere in the appeal made by the Appellant due to fact that the Respondent No. 2 – IDBI Bank Limited is the private bank and therefore, the writ jurisdiction was not available in such cases, the Appellant choose to withdrew the petition and accordingly the Writ Petition was disposed off as withdrawn on 24.08.2022.

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ANNEXURE A-6

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2881 OF 2022

Shree Warana Sahakari Dudh
Utpadak Prakriya Sangh Ltd. ..... Petitioner

Vs.

IDBI Bank Ltd. & Anr. ..... Respondents

WRIT PETITION NO. 2885 OF 2022

Namdeo Hindurao Patil & Ors. ..... Petitioners

Vs.

IDBI Bank Ltd. & Anr. ..... Respondents

Mr. Rohit Gupta a/w. Ms. Prashansa Agarwal a/w. Mr. Aamir Attari I/b. Dhruve Liladhar & Co. for the Petitioners in 2881/2022
Mr. Rohit Gupta a/w. Ms. Prashansa Agarwal a/w. Mr. Aamir Attari I/b. Taurus Legal for the Petitioners in 2885/2022
Mr. Onkar Kelkar a/w. Mr. Sanjay Kelkar for Respondent No.1.

CORAM: S.V.GANGAPURWALA &
MADHAV J. JAMDAR, JJ.

DATED : AUGUST 24, 2022

P.C.

1 The learned Counsel for the Petitioners, on instructions, seeks leave to withdraw the Writ Petitions with liberty to file civil suit.

2 The Writ Petitions stand disposed of as withdrawn. The Petitioners may file suit, as may be permissible in law.

(MADHAV J. JAMDAR,J.) (S.V. GANGAPURWALA, J.)

Basavraj 1/1

Namdeo Hindurao Patil

(ii) The Appellant filed Second Appeal No. 322 of 2023 before the Hon'ble High Court of Bombay where the last order dated 02.05.2023, as made available reads as under :-

ANNEXURE R/5

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Board Sr.No.:-22

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO. 322 OF 2023

Namdev Hindurao Patil ....APPELLANT
V/S
Idbi Bank Ltd ....RESPONDENT

Counsel Mr. Viraj Parikh i/by Mr. Indrajeet Hingane for Appellant.
Mr. Subhaschandra Pawar for Respondent No. 1,3,4.

CORAM : HON'BLE SHRI JUSTICE MADHAV J. JAMDAR J
DATE : 2nd May, 2023

P.C. :

At the request of the learned Counsel for the Appellant(s)/ Applicant(s) / Petitioner(s) / Respondent No. stand over to 15/06/2023. Ad-interim order, if any, to continue till then.

(FOR REGISTRAR JUDICIAL - I)

(iii) This Appellate Tribunal vide its order dated 14.03.2023 dismissed the application of the appellant filed in Company Appeal (AT) (Ins.) No. 1080 of 2021challenging the CIRP of Corporate Debtor under Section

7 of the Code by the Order of the Adjudicating Authority dated 16.09.2021, reads as under :-

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

Company Appeal (AT) (Insolvency) No. 1080 of 2021

IN THE MATTER OF:

Mr. NamdevHindurao Patil ...Appellant

Versus

Punjab National Bank (International) Ltd. ...Respondent

Present:

For Appellant : **Mr. Amar Dave, Aatreya Singh, Nityash Solanki, Adv.**

For Respondent : **Mr. Mithilesh Kumar Pandey, Adv. for R1**

O R D E R

Per: Justice Rakesh Kumar Jain:

14.03.2023: Punjab National Bank (International) Ltd. (Financial Creditor) filed an application under Section 7 against Warana Dairy and Agro Industries Ltd. (Corporate Debtor) for the resolution of an amount of US$5,725,994.06 (@71(Rs.40,65,45,578.00) inclusive of applicable interest and other charges. The said application was admitted on 16.09.2021. Rakesh Bothra was appointed as the Interim Resolution Professional (IRP) and moratorium was imposed.

2. Aggrieved against the order dated 16.09.2021, the present Appeal has been preferred by Namdev Hindurao Patil, an ex-director of the Corporate Debtor and challenged the finding of the Adjudicating Authority recorded in Para 10 of the impugned order on the ground that the application was barred by limitation.

3. Counsel for the Appellant has opened his submissions by referring to the sanction letter of term loan facility of USD 5.00 Million dated 30.10.2012 and the agreement dated 14.01.2013 entered into between the Financial

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Creditor and the Corporate Debtor. He has first referred to the definition and interpretation provided in the agreement pertaining to the 'event of default' which means any of the events or circumstances described in Clause 13.1 (Event of Default) and has then referred to Cluse 13.1 which prescribes that "there shall be an event of default if; (a) the borrower fails to pay on the due date in the currency and manner provided in this agreement any sum payable by it under this agreement or any finance document when due." He has submitted that the Respondent served demand notice on 08.07.2016 to which reply was sent dated 29.07.2016 in which averment was made that "at the outset my client states that there was no reason for you to give such a harsh notice to my client because my client has so far made payment in the sum of US$ 7,87,500/- to PNB (International) Ltd. against principal amount due up to June, 2015". He has argued that according to the Corporate Debtor the principal amount was paid up to June, 2015 and thereafter, no payment was made and date of default should be taken as the month of June, 2015 and since, the application under Section 7 was filed on 31.01.2020, therefore, it was clearly barred by limitation which is prescribed under Article 137 of the Limitation Act, 1961.

4. On the other hand, Counsel appearing for Respondent has submitted that not only the Appellant made various payments up to February, 2017 but also on 07.03.2019 sent a proposal for one time settlement of term loan which tantamounts to acknowledgement, therefore, the petition filed under Section 7 on 31.01.2020 was well within the period of limitation and has rightly been held by the Adjudicating Authority in Para 10 of the Impugned order.

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5. We have heard Counsel for the parties and after perusal of the record are of the considered opinion that there is no substance in the argument of Counsel for the Appellant because the Respondent has appended complete detail of various payments made by the Corporate Debtor in the loan account no. 56000983 much after 2015 or till 23.02.2017 when the last payment USD 1 Lakh was made, therefore, there was an acknowledgment on the part of the Corporate Debtor about the debt which was to be paid and since the application under Section 7 was filed on 31.01.2020, therefore, it is well within the limitation.

6. Thus, in view thereof, there is hardly any substance in the present appeal for the purpose of interfering in the order of admission on the ground of limitation.

7. No other point has been raised.

8. In view of the aforesaid facts and circumstances, we do not find any merit in the present appeal and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

sc/rr

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(iv) The order of this Appellate Tribunal dated 14.03.2023 was challenged before the Hon'ble Supreme Court of India in Civil Appeal No. 4135 of 2023 which was dismissed vide its order dated 25.08.2023, which reads as under :-

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4135 OF 2023

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NAMDEV HINDURAO PATIL — APPELLANT(S)

VERSUS

PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED — RESPONDENT(S)

O R D E R

We do not find any good ground and reason to interfere with the impugned judgment and hence, the present appeal is dismissed.

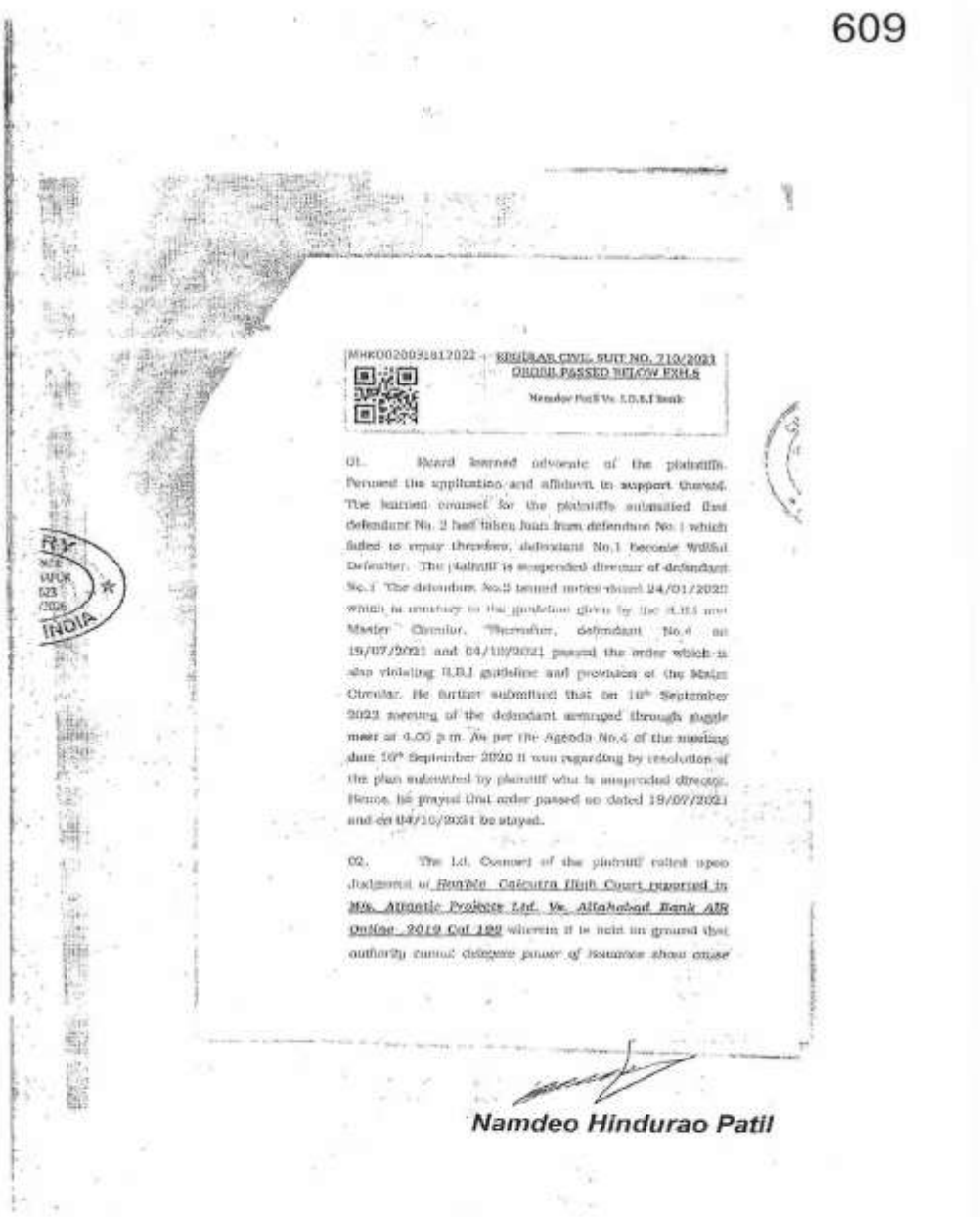
Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
AUGUST 25, 2023.

(v) In regular Civil Suit No. 710 of 2021 filed before the Civil Judge, Junior Division, Kolhapur, the order was passed by Civil Judge on 19.09.2022 which reads as under :-



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MHKO020091817022 - RDJ(L)AS CIVIL SUIT NO. 710/2021 ORDER PASSED BELOW EXH.6

Namdeo Patil S Vs. I.D.B.I Bank

01. Heard learned advocate of the plaintiffs. Perused the application and affidavit in support thereof. The learned counsel for the plaintiffs submitted that defendant No. 2 had taken loan from defendant No. 1 which failed to repay therefore, defendant No.1 become Willful Defaulter. The plaintiff is suspended director of defendant No.1 The defendant No.3 issued notice dated 24/01/2020 which is contrary to the guideline given by the R.B.I and Master Circular. Therefore, defendant No.4 on 19/07/2021 and 04/10/2021 passed the order which is also violating R.B.I guideline and provision of the Main Circular. He further submitted that on 10th September 2021 meeting of the defendant arranged through google meet at 4.00 p.m. As per the Agenda No.4 of the meeting date 10th September 2020 it was regarding by resolution of the plan submitted by plaintiff who is suspended director. Hence, he prayed that order passed on dated 19/07/2021 and on 04/10/2021 be stayed.

02. The Ld. Counsel of the plaintiff relied upon Judgment of *Hon'ble Calcutta High Court reported in Mis. Atlantic Projects Ltd. Vs. Allahabad Bank AIR Online 2019 Cal 198* wherein it is held on ground that authority cannot delegate power of Insurance show cause

Namdeo Hindurao Patil

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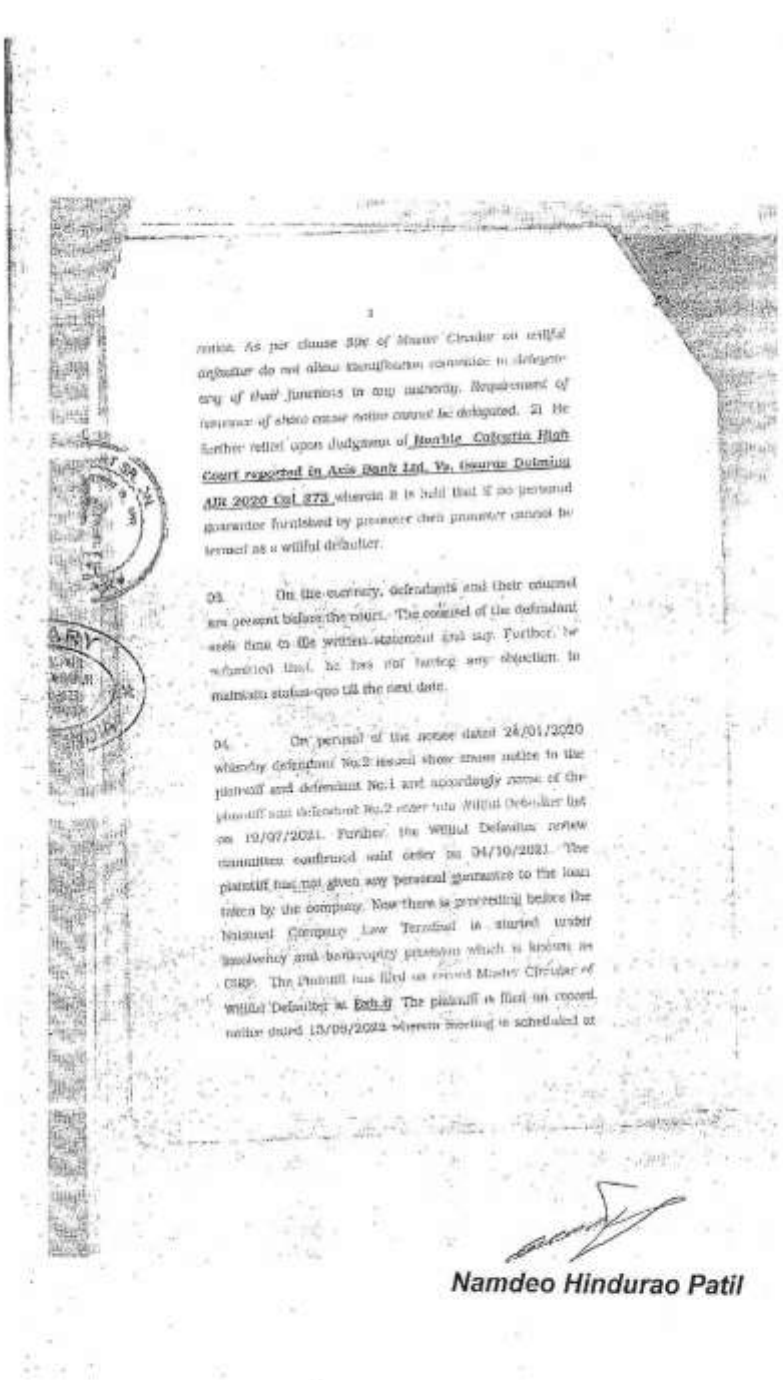

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notice. As per clause 3(e) of Master Circular on wilful defaulter do not allow constitution committee to delegate any of their functions to any authority. Requirement of issuance of show cause notice cannot be delegated. 2) He further relied upon judgment of Hon'ble Calcutta High Court reported in Axis Bank Ltd. Vs. Gaurav Dalmiya AIR 2020 Cal 373 wherein it is held that if no personal guarantee furnished by promoter then promoter cannot be termed as a willful defaulter.

03. On the contrary, defendants and their counsel are present before the court. The counsel of the defendant seek time to file written statement and say. Further, he submitted that, he has not having any objection to maintain status-quo till the next date.

04. On perusal of the notice dated 24/01/2020 whereby defendant No.2 issued show cause notice to the plaintiff and defendant No.1 and accordingly name of the plaintiff and defendant No.2 enter into Willful Defaulter list on 19/07/2021. Further, the Willful Defaulter review committee confirmed said order on 04/10/2021. The plaintiff has not given any personal guarantee to the loan taken by the company. Now there is proceeding before the National Company Law Tersibul is started under insolvency and bankruptcy provision which is known as CIRP. The Plaintiff has filed on record Master Circular of Willful Defaulter at Exh-9. The plaintiff is filed on record notice dated 13/09/2022 wherein meeting is scheduled at

Namdeo Hindurao Patil

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16/09/2022 which is regarding resolution plan submitted by the plaintiff. The case laws relied by the counsel of the plaintiff can be considered at the time of deciding case on the merit and after evidence of both the parties.

06. It appears that present matter involved different provisions under Banking Regulation Act plus RBI Guidelines. If defendant acted upon order dated 19/07/2021 and 04/10/2021 it will adversely affect right of the plaintiff and matters will be infectious. Hence, in interest of the plaintiff ought to be protected. The very purpose of the grant of temporary injunction will be defeated if the delay is caused. Therefore, the following order is passed.

ORDER

The defendant Nos. 1, 3 & 4 or anybody through them are hereby restrained by way of temporary injunction from acting upon the order dated 19/07/2021 and dated 04/10/2021 till final disposal of the application for temporary injunction.

Date: 19/09/2022.
Ratnagiri.

(M. D. Khasare)
6th A. C.S. Judge Junior Division,
Ratnagiri.

CIVIL COURT

Namdeo Hindurao Patil

Note:- From the order dated 19.09.2022 it become clear that the defendants (Financial Creditor) were restrained by way of temporary injunction from any other adverse action based on the order of the Respondent No. 2 dated 19.07.2021 and 04.10.2021 till defendant file their say to the application for temporary injunction.

(vi) The Civil Judge order sheet dated 03.10.2022 and dated 21.11.2022 are reproduced as under :-

Daily Status
In the Court of 8th Jt. Civil Judge Jr. Dn. Kolhapur
CNR No MHK0020031812022
Case No RCS/0000710/2022
Namdev Hindurao Patil Vs IDBI Bank Ltd
Through Officer, Regional Office Kolhapur
And Goa Region
Dated 3/10/2022

Business	:	Today on behalf of both parties the advocate is present. As per Exhibit-27/B on behalf of defendant No 1, 3, 4 the say is read and on Exhibit-28/D on behalf of the plaintiff about status quo application till 12/10/2022 status quo case on Exhibit-18 on receiving say of defendant No 3, 4
Next purpose	:	Written statement
Next Hearing Date	:	12/10/2022
8th Jt. Civil Judge Jr. Dn. Kolhapur		

Namdeo Hindurao Patil

Note : English translation as made available in the Appeal Paper Book

Daily Status
In the Court of 8th Jt. Civil Judge Jr. Dn. Kolhapur
CNR No MHK0020031812022
Case No RCS/0000710/2022
Namdev Hindurao Patil Vs IDBI Bank Ltd
Through Officer, Regional Office Kolhapur
And Goa Region
Dated 21/11/2022

Business	:	Started today. Advocate of plaintiff present, defendant absent, advocate present. On behalf of plaintiff paper filed on Exhibit 41D the application for permission, sanctioned on Exhibit 42D – On behalf of plaintiff list of paper of 1 paper filed on exhibit-43D. For plaintiff under Order-7 Rule-11 of CPC the application was filed. Other side to say on Exhibit 43, Defendant gave say on exhibit-43 – For further order dated 19/9/2022 further date is given. Hence primary points are on argument
Next purpose	:	Written statement
Next Hearing Date	:	16/12/2022
8th Jt. Civil Judge Jr. Dn. Kolhapur		

ARY
V. PATIL
OLHAPUR
3623
/9/2026
INDIA

Namdeo Hindurao Patil

Note : English translation as made available in the Appeal Paper Book

78. For sake of clarity regarding eligibility of the Appellant under section 29 A of the Code, we will once again recapitulate relevant dates as under :-

(i) The Appellant was declared as wilful defaulter by the Respondent No. 2 on 19.07.2021 and 04.10.2021.

(ii) The Appellant submitted the Resolution Plan on 12.05.2022 .

(iii) The Appellant challenged the status of wilful defaulter by Writ Petition No. 2885 of 2022 before the Hon'ble High Court of Bombay which was dismissed as withdrawn vide its order dated 24.08.2022.

(iv) The Appellant filed regular Civil Suit No. 710 of 2022 before the Civil Judge, Kolhapur and for the first time ad-interim relief was granted in favour of the appellant vide its order dated 19.09.2022, however, vide order dated 19.12.2022 the suit was held to be not maintainable by civil judge and disposed off accordingly.

(v) The Appellant challenged Civil Judge order dated 19.12.2022 by regular Civil Appeal No. 04 of 2023 before the District Judge, Kolhapur which was dismissed on 01.04.2023.

(vi) The Appellant filed Second Appeal bearing 322 of 2023 challenging the order of District Judge dated 01.04.2023 which currently being heard by the Hon'ble High Court of Bombay.

Thus, it becomes clear that the Appellant was declared wilful defaulter way back on 19.07.2021 and 04.10.2021 by the Respondent No. 2- IDBI Bank Limited

whereas the Appellant submitted his Resolution Plan on 12.05.2022. Thus, as per Section 29 A of the Code on the date of submission of the Resolution Plan, the Appellant was clearly ineligible to submit the Resolution Plan as per Section 29 A (b) of the Code.

(vii) We have already noted that Section 240 A of the Code does not give any reprieve to the Appellant from applicability of Section 29A (b) of the Code. Thus no legal remedy is available to the Appellant from being held as ineligible to submit Resolution Plan which was rightly done by the CoC and adjudicated by the Adjudicating Authority vide its Impugned Order dated 19.04.2023.

79. In this regard. we would also take into consideration the Judgment passed by the Hon'ble Supreme Court of India in the matter of ***Hari Baby Thota*** in Civil Appeal No. 4422/2023 vide its order dated 29.11.2023 and the relevant para of the said judgment reads as under :-

> *"22. We certainly can look to the statement of the Minister for purposes of a cut off date that "there is no other specific provision providing for cut off date" which submits that it should be the date of application of making a bid. Thus, to opine that it is the initiation of the CIRP proceedings which is the relevant date, cannot be said to reflect the correct legal view and thus, we are constrained to observe that the law laid down in Digambar Anand Rao Pigle (supra) case by the*

Tribunal is not the correct position in law and the cut off date will be the date of submission of resolution plan."

(Emphasis Supply)

80. From above relevant analysis, it is very clear that relevant date is the date of submission of the Resolution Plan and the Appellant was not eligible to submit the Resolution Plan on 12.05.2022, since he had already been declared as wilful defaulters by the Respondent No. 2 on 17.07.2021 and 04.10.2021. i.e., much prior to his submission of Respondent Plan. It is also fact that no judicial stay existed in favour of the Appellant on 12.05.2022 regarding his status as wilful defaulter. Hence, we hold that the Appellant was not eligible to submit the Resolution Plan and this was rightly adjudicated by the Adjudicating Authority.

81. Thus, we do not find any error in the Impugned Order dated 19.04.2023. The appeal devoid of any merit stand dismissed. No Costs. Interlocutory Application(s), if any, are Closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

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