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# APPLICABILITY OF SUO MOTO ORDERS OF HON'BLE SUPREME COURT DURING COVID-19 ON FILING APPLICATION U/S 7 OF IBC" GPR POWER CASE STUDY

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1. **INTRODUCTION & BACKGROUND**
    - 1.1 On 29.11.2021, the Hon'ble Supreme Court of India (hereinafter "SCI") speaking through Hon'ble Mrs. Justice Indira Banerjee unanimously set aside the judgment of the National Company Law Appellate Tribunal (Hereinafter "NCLAT") which dismissed the appeal filed against the order dated 09.07.2021 passed by the Adjudicating Authority. [*GPR Power Solutions Private Limited Through Mr. S. Damodaran, Ceo of Appellant v. Mr. Supriyo Chaudhuri (RP of Rohit Ferro Tech Limited) and Others, 2021 SCC OnLine SC 1328*]. The case primarily concerns the condonation of delay in filing of a claim by the Appellant against the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code, 2016 [hereinafter 'IBC'].
  2. **FACTS**
    - 2.1 In response to a purchase order placed by the Corporate Debtor on the Appellant, the Corporate Debtor failed to pay a part of the consideration agreed to the Appellant.
    - 2.2 Resultantly, the Appellant invoked the arbitration clause and subsequently an arbitrator appointed by the High Court, passed an Award in favour of the Appellant.
    - 2.3 During pendency of the challenge to the Award by Corporate Debtor under section 34 of the Arbitration and Conciliation Act, 1996, a Financial Creditor of the Corporate Debtor, filed an application before the National Company Law Tribunal under section 7 of the IBC, for initiation of Corporate Insolvency Resolution Process [hereinafter 'CIRP'] against the Corporate Debtor, and resultantly a Resolution Professional [hereinafter 'RP'] was appointed and thereafter Public Announcement was done and claims were invited from creditors of the Corporate Debtor within the date stipulated in the Public Announcement.
- 2.4 Soon thereafter, in view of the Covid-19 pandemic, a countrywide lockdown was imposed on 25 March 2020, which was extended from time to time.
  - 2.5 According to the appellant, in view of the countrywide lockdown, the Appellant was not aware of the initiation of CIRP against the Corporate Debtor.
  - 2.6 The Appellant contended that on getting the information, the Appellant took immediate steps to prepare and file its claim in Form-B as operational creditor, supported by relevant documents in support of the said claim under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016.
  - 2.7 However, RP refused to entertain the claim on the ground that it had been filed beyond time.
  - 2.8 Subsequently, the Appellant filed an application under section 60(5) of the IBC praying for condonation of delay in filing its claim on the ground of the CEO of the Appellant, being 72 years of age, was working from home because of the COVID-19 pandemic situation and furthermore, because of the manpower crisis in the office of the Appellant.
  - 2.9 However, the Adjudicating Authority dismissed the Application filed by the Appellant under section 60(5) of the IBC for condonation of delay in filing its claim.
  - 2.10 Being aggrieved the Appellant filed an appeal before the learned NCLAT under section 61 of the IBC, which was later dismissed mainly on the ground that the RP had been approved by the Committee of Creditors.
  - 2.11 Thereafter, Appellant filed an appeal before the SCI under section 62 of the IBC.

**3. ISSUE FOR ADJUDICATION**

- 3.1 The issues before the SCI were as follows:
  - 3.1.1 Whether the suo motu order passed by the SCI on the extension of limitation period during Covid-19 pandemic is applicable on application filed under section 7 of IBC?

**4. SUO MOTU WRIT PETITION**

- 4.1 In the wake of the difficulties faced by lawyers in filing petitions, preferring appeals and filing other proceedings including applications on account of the Covid-19 pandemic, the SCI in suo moto proceedings, exercising its power under article 142 read with article 141 of the Constitution of India, passed series of orders/ directions in the years 2020, 2021 and 2022, which are tabulated below:

Date	Order
23.03.2020	In computing the period of limitation for any suit, appeal, application or proceeding, whether under general or special law, the period from 15.03.2020 shall stand excluded until further orders.
08.03.2021	Extension was allowed until 14.03.2021. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
27.04.2021	Extension of limitation was again restored and extended from 15.03.2020 until further orders.
23.09.2021	Extension was allowed until 02.10.2021. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 03.10.2021.
10.01.2022	SCI ordered that the period between 15.03.2020 and 28.02.2020 (both dates inclusive) was to be excluded from the calculation of any limitation period as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01 March 2022.

- 4.2 Effectively, the SCI ordered the following:
  - 4.2.1 The period between 15 March 2020 and 28 Feb. 2022 (both dates inclusive) is excluded from the calculation of any limitation period as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
  - 4.2.2 Consequently, the balance period of limitation remaining as on 15.03.2020,, if any, shall become available with effect from 01 March 2022.
  - 4.2.3 In cases where the limitation would have expired during the period between 15 March 2020 and 28 Feb. 2022, notwithstanding the actual balance period of limitation

remaining, all persons shall have a limitation period of 90 days from 01<sup>st</sup> March 2022. In the event the actual balance period of limitation remaining, with effect from 01<sup>st</sup> March 2022, is greater than 90 days, that longer period shall apply.

- 4.2.4 The period from 15<sup>th</sup> March 2020 till 01<sup>st</sup> March 2022 shall also stand excluded in computing the periods prescribed under sections 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.

**5. FINDINGS**

- 5.1 In the instant GPR Power case, since the Appellant filed its claim while the suo motu order of the SCI was still subsisting, hence the SCI held that the application of the Appellant under section 60(5) of IBC must have been accepted and allowed.
- 5.2 The order of the Adjudicating Authority which dismissed the application filed by the Appellant seeking condonation of delay in filing its claim against the Corporate Debtor before the RP was set aside by the SCI.
- 5.3 The judgment of the High Court which dismissed the appeal against the order of the Adjudicating Authority was also set aside.
- 5.4 The SCI hence allowed the appeal and condoned the delay.

**6. CONCLUSION**

- 6.1 The applicability of the suo moto orders by the implication of the GPR Judgment was rightly extended to even the timelines prescribed for filing of the claims under the IBC. The extension of suo moto orders to claims filings being in equity, shall at one hand not only lead to ending of proceedings pending before the Adjudicating Authority with regard to the delay in filing of the claims on account of COVID-19 but shall also invariably lead to re-establish the intention and objective of passing the orders in the suo moto petition by the SCI, which was to minimize the difficulties and hardships faced by the litigants, the bar and the bench alike because of the Covid-19 pandemic, without affecting the right to approach the courts of Law.

A copy of the judgment is annexed hereto at **page 3 to 6**.

2021 SCC OnLine SC 1328

In the Supreme Court of India  
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

GPR Power Solutions Private Limited Through Mr. S. Damodaran,  
Ceo of Appellant ... Appellant(s);

*Versus*

Mr. Supriyo Chaudhuri (RP of Rohit Ferro Tech Limited) and Others  
... Respondent(s).

Civil Appeal No. 6553 of 2021  
Decided on November 29, 2021

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.:— This appeal under Section 62 of the Insolvency and Bankruptcy Code 2016, hereinafter referred to as the 'IBC' is against a judgment and order dated 15.09.2021 passed by the Principal Bench of the National Company Law Appellate Tribunal at New Delhi, hereinafter referred to as the 'NCLAT' dismissing the appeal being Company Appeal (AT) (INS.) No. 743 of 2021 filed by the Appellant against an order dated 9<sup>th</sup> July, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench), in CP (IB) No. 1214/KB/2018 whereby the learned Adjudicating Authority dismissed IA/344(KB)/2021 filed by the Appellant seeking condonation of delay in filing its claim of Rs. 1,13,38,651/- against the Corporate Debtor (the Respondent No. 3) before the Resolution Professional.

2. The Appellant carries on business of Supply and Erection of Piping Systems. On or about 25<sup>th</sup> April, 2012 the Respondent No. 3 being the Corporate Debtor contacted the Appellant at its office at Chennai, and placed Purchase Order No. C212425-001 on the Appellant for design, supply, erection and testing of LP piping system and the commissioning of an LDO (Light Diesel Oil) storage handling system for its IX 67.5 MW Power Plant (Unit-II) at Industrial Growth, Kalinga Nagar, Rabana, Post-Jakhapura, Odisha, for a consideration of Rs. 5,37,75,761/- excluding taxes and duties. Later, the Corporate Debtor amended the said purchase order, to include additional work of the value of Rs. 88,64,239/- excluding taxes and duties.

3. The Appellant contends that the Corporate Debtor failed and neglected to pay a sum of Rs. 76,85,472/- due and payable to the Appellant in connection with the purchase order referred to above. The Appellant was therefore, constrained to invoke the Arbitration Clause in the contract between the Appellant and the Corporate Debtor.

4. The Appellant filed an application being AP No. 840 of 2016 in the Calcutta High Court under Section 11 of the Arbitration and Conciliation Act, 1996 hereinafter referred to as the 'A&C Act' for appointment of an Arbitral Tribunal in respect of its aforesaid claim. By an order dated 29<sup>th</sup> September, 2016, a Single Bench of the Calcutta High Court appointed an Arbitrator to adjudicate the dispute that had arisen between the Appellant and the Respondent.

5. The Appellant filed its statement of claim and the Corporate Debtor filed its counter statement before the learned Arbitrator. The respective parties also filed documents in support of their respective contentions.

6. After hearing the respective parties, the learned Arbitrator made and published a final award on 30<sup>th</sup> November, 2018, the operative part whereof is set out hereinbelow:—

*"a) The Claimant shall be awarded a sum of Rs. 55,01,661/- as mentioned more fully and particularly in paragraph 46 hereof.*

*b) The claiming shall be entitled to interest on the aforesaid sum at the rate of two percent higher than the current rate of interest prevalent on the date of the award on and from August 8, 2014 till the date of payment. The expression 'current rate of interest' shall have the same meaning ascribed to it in the explanation to section 31(7) of the said Act.*

*c) The claimant shall be entitled to costs assessed at Rs. 5,00,000/-"*

7. The Appellant filed an Application for setting aside of the award under Section 34 of the A&C Act being Miscellaneous Case No. ARB 11 of 2019 before the Court of the learned District Judge at Alipore District, 24 South Parganas, which is still pending.

8. On or about 7<sup>th</sup> February, 2020 while the application filed by the Corporate Debtor under Section 34 of the A&C Act being Misc. Case No. ARB 11 of 2019 was pending in the Court of learned District Judge at Alipore, 24 South Parganas, the Respondent No. 2 namely State Bank of India being a Financial Creditor of the Corporate Debtor, filed an application before the Kolkata Bench of National Company Law Tribunal under Section 7 of the IBC, for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, and a Resolution Professional was appointed.

9. On or about 11<sup>th</sup> February, 2020 the CIRP was advertised and claims invited from creditors of the Corporate Debtor within the date stipulated in the advertisement. Soon thereafter, the entire country was engulfed by the COVID-19 pandemic, and a countrywide lockdown was imposed on 25.03.2020, which was extended from time to time. According to the appellant, in view of the COVID-19 pandemic and subsequent imposition of countrywide lockdown, the Appellant was not aware of the initiation of CIRP against the Corporate Debtor. It was only on 27<sup>th</sup> November, 2020 when counsel engaged by the Appellant to defend Misc. Case No. ARB 11 of 2019 filed by the Appellant, appeared in the Court of the learned District Judge at Alipore District, 24 Parganas, that he came to know that the Corporate Debtor had not been taking steps in the Arbitration Proceedings in view of Insolvency process initiated against it. It was only thereafter that the Appellant came to know of the order dated 7<sup>th</sup> February, 2020 of the learned Adjudicating Authority.

10. The Appellant contends that on the date of commencement of Corporate Insolvency Resolution Process on 7<sup>th</sup> February, 2020 the total claim of the Appellant against the Corporate Debtor was Rs. 1,13,38,651/-. The Appellant took immediate steps to prepare and file its claim in Form-B, supported by relevant documents in support of the said claim under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations 2016, hereinafter referred to as the "Insolvency Regulations". However, by an email dated 14<sup>th</sup> January, 2021 the Resolution Professional appointed to conduct the CIRP informed the Appellant of his refusal to entertain the claim on the ground that it had been filed beyond time.

11. On 11.03.2021, the Appellant filed an application under Section 60(5) of the IBC being No. IA/344 (KB) 2021 in CP (IB) No. 1214/KB/2018 submitting its claim, as aforesaid alongwith an application for condonation of delay in filing its claim.

12. The said application under Section 60(5) of the IBC being IA/344 (KB) 2021 was delayed by about two months as the CEO of the Appellant, 72 years of age had been working from home at Chennai because of the COVID-19 pandemic situation. Furthermore, there was a manpower crisis in the office of the Appellant at Chennai. By an order dated 9<sup>th</sup> July, 2021, the Adjudicating Authority dismissed the Application filed by the Appellant under Section 60(5) of the IBC for condonation of delay in filing its claim.

13. Being aggrieved the Appellant filed an appeal before the learned NCLAT under Section 61 of the IBC, which has been dismissed by the judgment and order

impugned in this appeal, mainly on the ground that the Resolution Process had been approved by the Committee of Creditors on 21.06.2020.

14. It appears that the attention of the learned Adjudicating Authority was not drawn to the orders passed by this Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020*.

15. On 22.3.2020, this Court passed the following order:

"This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15<sup>th</sup> March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all courts/tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction."

16. The aforesaid *suo motu writ petition* was disposed of by an order dated 8<sup>th</sup> March, 2021, the operative part whereof is set out herein below:

"We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:—

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods 2 Page prescribed under Sections 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.
4. The Government of India shall amend the guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

3. The Suo Motu Writ Petition is disposed of accordingly.”

17. Since the appellant was required to file its claim within 3 months from 11.02.2020, and the appellant actually filed claim well before 14<sup>th</sup> January, 2021, the claim ought not to have been rejected. The order dated 22.03.2020 of this Court was subsisting and in force.

18. In computing the limitation for any application, the period from 22.03.2020 till 14.3.2021 is to be excluded. All litigants whose limitation expired after 22.03.2020 would be entitled to extension of limitation till the 90<sup>th</sup> day from 15.03.2021. The learned NCLAT also did not notice the orders passed by this Court in suo motu Writ Petition (Civil) No. 3 of 2020.

19. The learned Adjudicating Authority ought not to have rejected the claim of the appellant. The learned NCLAT erred in dismissing the appeal, without even considering the effect and impact of the orders of this Court in the suo motu writ petition.

20. The appeal is, therefore, allowed. The impugned judgment and order of the learned NCLAT is set aside. The impugned order dated 9.7.2021 of the learned Adjudicating Authority is also set aside and the application of the appellant under Section 60(5) of the IBC is allowed.

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