

LEGAL UPDATES

NCLAT: A FRESH CAUSE OF ACTION ARISES TO FILE INSOLVENCY PETITION IF A NEW CONTRACT IS EXECUTED BETWEEN THE PARTIES

The Chennai NCLAT bench composed of Justice M. Venugopal and Learned Kanthi Narahari rejected an appeal preferred by the corporate debtor ('Appellant') against the order of NCLT which permitted an insolvency petition filed by the financial creditor ('Respondent'), on the ground of limitation by observing that a new cause of action arose due to a fresh contract executed between the parties to file an insolvency petition u/s 7 of IBC ('the Act'), which was well within the period of limitation. The appellate tribunal noted that on considering the appellant's offer for 'One Time Settlement' by the respondent allowed the settlement and by virtue of the settlement proposal the appellant was mandated to pay INR 2 Cr. against their outstanding dues of INR 17.12 Cr. as on 01.12.2015. The appellate tribunal observed that it is crystal clear that the fresh contract was executed on 19.02.2018 while the insolvency petition u/s. 7 of IBC was filed on 25.10.2018 by the applicant and hence, the same is within the duration of limitation. It was observed by the bench that as per the fresh contract executed between the parties the appellant had paid an amount of INR 1 Cr. to date and had failed to deposit the upfront amount of INR 9 Cr. with respect to the settlement of the loan amount, the bench upheld that it is well established that the debtor is limited by the fresh contract wherein the creditor has the benefit of commencing the CIRP. Further, highlighting the fact that a decree was obtained by the respondent against the appellant in order to recover a certain amount, the bench remarked that this pushes to a new cause of action for the financial creditor to commence CIRP against the debtor and the same is not barred by law. In conclusion, elaborating that the presence of a jural relationship between the parties needs to be involved for acknowledgement of default and further a motive to retain the relationship till its termination as per law. The appellate tribunal further highlights that the legal nexus that is needed is that the person who provides the acknowledgement should be liable to the other person and a liability should be existing, thereby upholding that the NCLT order is correct and free from any illegality.