Vidyasagar Prasad vs Uco Bank on 22 October, 2024

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2024 INSC 810 REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1031 of 2022

VIDYASAGAR PRASAD … APPELLANT(

VERSUS

UCO BANK & ANR. …RESPONDENT(S)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. By the present appeal, the suspended director of the Corporate Debtor assails the order of the NCLAT1 affirming the order of the Adjudicating Authority 2 admitting the application under Section 7 of IBC3 for initiating CIRP 4 proceedings against the Corporate Debtor.

2. The undisputed facts before us are that the Corporate Debtor (respondent No. 2 herein), now represented by its Insolvency Resolution Professional (IRP), availed loan and credit facilities from 1 National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 238 of 2020, dated 04.10.2021.

Indu Marwah Date: 2024.10.22 19:15:09 IST Reason: 2 Adjudicating Authority/National Company Law Tribunal, Kolkata Bench, Kolkata order dated 13.12.2019 in CP No. 254/KB/2019.

3 Insolvency and Bankruptcy Code, 2016.

4 Corporate Insolvency Resolution Process. UCO Bank (respondent No. 1 herein) and other consortium of banks under agreements dated 21.06.2010, 30.08.2012, 19.07.2012 and 31.12.2012. The said loan and other credit facilities were availed for funding of Corporate Debtor's Thermal Power Plant.

2.1 Having defaulted on repayment of principal as well as interest levied thereupon, Corporate Debtor's account was declared as Non-Performing Asset (NPA) on 05.11.2014. Further, proceedings under SARFAESI5 Act and DRT 6 for recovery of dues were also initiated. However, we are not concerned with these proceedings for disposal of the present appeal.

3. The root of the present controversy arose on 13.02.2019 when UCO Bank filed an application under Section 7 of the Code to initiate CIRP proceeding against the Corporate Debtor before the Adjudicating Authority (NCLT, Kolkata Bench). These proceedings were resisted by the Corporate Debtor, primarily on the grounds of limitation. Additionally, the Section 7 application was also challenged on the grounds that it was not signed by a competent person and also that there is no liability to pay as per the terms of the agreement and as such there is no debt.

5 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest. 6 Debts Recovery Tribunal.

4. On the issue of competency of the Bank to file the petition under Section 7, the Adjudicating Authority held that the General Manager of Bank was legally authorized as attorney to do all acts and also act on behalf of the Bank and he had the authority to sign the application. On the issue relating to the existence of debt, the Adjudicating Authority, examined the contract, the terms and conditions of sanction letter as well as the relevant credit agreements in detail and came to the conclusion that the amount was disbursed as a loan and the Corporate Debtor had in-fact defaulted in repayment of principal as well as interest levied thereupon. Thus, the contention that there was no debt was also rejected.

4.1 The main objection to the initiation of CIRP proceedings on the ground of limitation was rejected by the Adjudicating Authority on the ground that there is an acknowledgement of debt in the financial statements as well as auditor's report of the Corporate Debtor for the year ending on 31.03.2017. On the basis of Section 238A of the Code, incorporating the Limitation Act, the Adjudicating Authority relied on Section 18 of the Limitation Act to reckon the period of limitation from the date of acknowledgement of the debt and concluded that the institution of CIRP on 13.02.2019 is within the period of limitation. The further contention of the Corporate Debtor that name of UCO Bank, the financial creditor, is not specifically mentioned in the relied upon entry in the balance sheet was rejected by NCLT by referring to the Explanation to Section 7(1) of the Code providing that the proceedings thereunder get triggered even in the case of a default by debtor in respect of any financial creditor other than the applicant.

5. Aggrieved by the admission of Section 7 application, initiation of CIRP and appointment of IRP, the appellant preferred an appeal to the NCLAT, Principal Bench. The same arguments were advanced before the NCLAT and having considered the same in detail, the NCLAT dismissed the appeal with the following reasoning:

> "11.5 Therefore, in the instant case, the balance sheet that has been brought on record in the instant case before the Adjudicating Authority shall be taken into consideration while deciding the question of limitation and default on the part of the Corporate

Debtor. The said documents cannot be ignored simply on the premise that it is not pleaded in the Application filed in Form-1 for initiation of the Corporate Insolvency Process.

11.6 We find that the balance sheet for the financial year ending on March 31 2017, was part of the record before the learned Adjudicating Authority and was annexed with Section 7 Application, which was also duly admitted by the Appellant during the hearing. Subsequently, the balance sheet for the financial year ending will March 31 2019, was annexed with the reply filed by Respondent No. 1 before this Hon'ble Tribunal on March 02, 2020. However, as the practice and procedure of this Hon'ble Tribunal, the same was not accepted at the filing counter without the specific mention of this Hon'ble Tribunal. Accordingly, a copy of the Application for the additional document is also annexed as Annexure A. Subsequently; this Hon'ble Tribunal permitted such additional documents to be taken on record vide its Order dated July 15 2020.

11.7 The Company's balance sheet is prepared in the statutory format as per Schedule 3rd of the Companies Act 2013, which does not provide for giving the specific name of every secured or unsecured creditor.

11.8 It is further observed that the Corporate Debtor has not denied that there are no outstanding dues to the UCO Bank. A perusal of extract of register of charges submitted with ROC, at Sr. No. 3, shows that a charge of rupees one hundred and seventy-five crores created by the Corporate Debtor has not been satisfied and remains outstanding.

11.9 After the judgement of Hon'ble Supreme Court in case Asset Reconstruction Company (India) Limited v. Bishal Jaiswal (supra), it is settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgement under Section 18.

11.10 In the instant case, we also find that the Corporate Debtor issued a letter dated June 07 2016 (Annexure A Page 11 of their reply affidavit of R-1) wherein it has given OTS proposal. Based on the ratio of the judgement of Hon'ble Supreme Court in the case of Lakshmirattan Cotton Mills Co Ltd and further reiterated in Dena Bank's case (supra) that there is an acknowledgement of subsisting liability of the Corporate Debtor. However, it may not necessarily specify the exact nature of the liability. But it indicates the jural relation between the parties, and in any event, the same can also be derived by implication. Further, the said Letter is not "without prejudice" basis and, therefore, amounts to an unequivocal acknowledgement of liability of the Corporate Debtor. A reading of the documents above reveals that the Corporate Debtor has acknowledged/subsisting liability to attract the provisions of Section 18 of the Limitation Act, 1963.

11.11 Based on the discussion as above, we think that the present Appeal is liable to be dismissed, and the interim Order dated April 07, 2020, is exposed to vacated."

6. Mr. Balbir Singh, senior counsel appearing on behalf of the appellant has emphatically argued only one point before us. It is that there is no clear and unequivocal acknowledgement of debt of the Corporate Debtor in the entries of the balance sheets. If this is true, it is submitted, then the financial creditor cannot have the benefit of Section 18 of the Limitation Act to extend the period of limitation which commenced on 05.11.2014.

7. The commencement of a fresh period of limitation from the time of acknowledgement of the debt is part of the statutory scheme. Section 238A of the Code extends the applicability of the provisions of the Limitation Act to the proceedings under the Code. With the extension of Limitation Act to the provisions of the Code, the benefit of Section 18 of the Limitation Act dealing with the effect of acknowledgement of a debt in writing applies. Considering the same issue in Laxmi Pat Surana v. Union Bank of India 7, the Court observed:

> "42. Notably, the provisions of the Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. For, Section 238-A predicates that the provisions of the Limitation Act shall, as far as may be, apply to the proceedings or appeals before the adjudicating authority, NCLAT, the DRT or the Debt Recovery Appellate Tribunal, as the case may be. After enactment of Section 238-A IBC on 6-6-2018, validity whereof has been upheld by this Court, it is not open to contend that the limitation for filing application under Section 7 IBC would be limited to 7 (2021) 8 SCC 481.

Article 137 of the Limitation Act and extension of prescribed period in certain cases could be only under Section 5 of the Limitation Act. There is no reason to exclude the effect of Section 18 of the Limitation Act to the proceedings initiated under the Code.

43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against

whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC." (emphasis supplied) 7.1 In Dena Bank v. C. Shivakumar Reddy 8 after reviewing the case law on the subject, this Court held;

"138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

.....

140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years." (emphasis supplied) 7.2 A reference must also be made to a three Judge Bench decision in Rajendra Narottamdas Sheth v. Chandra Prakash Jain9 which succinctly observed;

"27. It is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgment of debt, in writing by the corporate debtor, before the adjudicating authority, with such acknowledgment having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the 8 (2021) 10 SCC 330 9 (2022) 5 SCC 600 application can be entertained, if filed within this extended period." (emphasis supplied)

8. In view of the above referred principles, we will now consider the nuanced arguments advanced by Mr. Balbir Singh that there is no unequivocal, unambiguous and specific acknowledgement of debt owed to UCO Bank in the balance sheet entries of Corporate Debtor for the years 2017 and 2019. In the absence of clear demarcation as to what the Corporate Debtor owes to the UCO Bank, the said entries cannot be relied on for the purpose of extending the period of limitation in terms of Section 18 of the Limitation Act. Mr. Balbir Singh further argues that even if said entry is taken to be an acknowledgment of debt, the same cannot aid respondent No.1's case since it fails to mention the

name of financial creditor.

8.1 Mr. Partha Sil, counsel on behalf of respondent No. 1-Bank submitted that the Balance Sheets of a company are prepared in the prescribed statutory format as per Section 129, read with Schedule III of the Companies Act 2013, which does not provide for giving specific names of each and every Secured and Unsecured creditor. In support of his submission, Mr. Partha Sil referred to the judgment in Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal10 where it was observed that there was no compulsion for Companies to make any particular admissions in the balance sheet, except for what is prescribed.

9. A three Judge Bench of this Court in Bishal Jaiswal (Supra) has addressed and clarified this issue by holding that;

"35. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff , that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act." (emphasis supplied)

10. Having considered the specific facts and circumstances of this case, the Adjudicating Authority as well as the NCLAT have concurrently held that the entries in the balance sheets amount to clear acknowledgment of debt. We agree with the findings. Further, Note 3.4 appended to said balance sheet entry dated 31.03.2017 10 (2021) 6 SCC 366.

mentions that "company has made certain defaults in the repayment of term loans and interest." It further mentions of a continuing default. The entry also mentions long-term borrowings. The conclusions of NCLT and NCLAT that there is acknowledgment of debt are unimpeachable.

10.1 Following the principles as expounded in the case of Bishal Jaiswal (Supra), the Adjudicating Authority as well as the NCLAT have examined the case in detail and have come to the conclusion that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. We see no reason whatsoever to take a different view of the matter. Their findings are fortified when we examine the matter from another perspective.

11. Adjudicating Authority and NCLAT have also considered the Corporate Debtor's proposal of One Time Settlement (OTS) to UCO Bank. The proposal made by letter dated 07.06.2016 acknowledges

that there were prior debts owed to UCO Bank. To substantiate the argument that such OTS constituted acknowledgment of debt since it relates to present and subsisting liability and indicates existence of a jural relationship between the parties, UCO Bank relied on judgment of this Court in Lakshmirattan Cotton Mills Co. Ltd. and Messrs Behari Lal Ram Charan v. Aluminium Corporation of India Limited11. The implication of a statement about a present and subsisting debt of a Corporate Debtor is articulated by this Court in the following manner;

"9. It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far- fetched reasoning..." (emphasis supplied) 11.1 It is also relevant to refer to judgment in Dena Bank (Supra) which held as follows:

> "139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of one- time settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act..." (emphasis supplied) 11 (1971) 1 SCC 67.
>
> 12. Both these factors, acknowledgment of debt in the balance sheet as well as in the OTS proposal, have been considered by NCLAT while dismissing the appeal. The relevant portion of the NCLAT findings, after considering balance sheet entries and OTS letter are as follows:
>
> "11.7 The Company's balance sheet is prepared in the statutory format as per Schedule 3rd of the Companies Act 2013, which does not provide for giving the specific name of every secured or unsecured creditor.
>
> 11.8 It is further observed that the Corporate Debtor has not denied that there are no outstanding dues to the UCO Bank. A perusal of extract of register of charges submitted with ROC, at Sr. No. 3, shows that a charge of rupees one hundred and seventy-five crores created by the Corporate Debtor has not been satisfied and remains outstanding.

> 11.10 In the instant case, we also find that the Corporate Debtor issued a letter dated June 07 2016 (Annexure A Page 11 of their reply affidavit of R-1) wherein it has given OTS proposal. Based on the ratio of the judgement of Hon'ble Supreme Court in the case of Lakshmirattan Cotton Mills Co Ltd and further reiterated in Dena Bank's case (supra) that there is an acknowledgement of subsisting liability of the Corporate Debtor. However, it may not necessarily specify the exact nature of the liability. But it indicates the jural relation between the parties, and in any event, the same can also be derived by implication. Further, the said Letter is not "without prejudice" basis and, therefore, amounts to an unequivocal acknowledgement of liability of the Corporate Debtor. A reading of the documents above reveals that the Corporate Debtor has acknowledged/subsisting liability to attract the provisions of Section 18 of the Limitation Act, 1963."
>
> 13. Having examined the matter in detail, we are of the opinion that the findings arrived at by the Adjudicating Authority and NCLAT are correct in law and fact. We find no merit in the appeal.

The Civil Appeal No. 1031 of 2022 arising out of the NCLAT order dated 04.10.2021 (Company Appeal (AT) (Insolvency) No. 238 of 2020) is dismissed accordingly.

14. No order as to costs.

.....J. [PAMIDIGHANTAM SRI NARASIMHA] .....J. [SANDEEP MEHTA] NEW DELHI;

October 22, 2024.