

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1099 of 2024

&

I.A. No. 3953, 3955 of 2024

IN THE MATTER OF:

K.M. Sebastine (Kalarithara Michael Sebastine) ...Appellant(s)
Personal Guarantor of Schiffli India Ltd.

Versus

State Bank of India & Anr. ...Respondent(s)
Present:

For Appellant : Ms. Meenal Garg, Advocate
For Respondents : Mr. Siddharth Sangal, Mr. Chirag Sharma, Ms. Richa Mishra, Ms. Harshita Agrawal, Advocates for SBI
Mr. Prabhat Ranjan Singh, Advocate for R-2/RP

O R D E R
(Hybrid Mode)

18.07.2024: **IA No. 3953 of 2024**

This is an application praying for condonation of 3 days delay in filing the appeal. Sufficient cause has been shown in para 2 and 4 for condonation of delay. Delay condoned.

IA No. 3955 of 2024

This is an application praying for condonation of 78 days delay in refiling of the appeal. The Ld. Counsel for the Appellant submits that the Appellant has cured the defect within the stipulated time thereafter the appeal remained in scrutiny and Registry is re-notified the defects on 05.04.2024 in para 5 to 8. Sufficient cause has been shown for condonation of refiling delay. Refiling delay condoned.

Comp. App. (AT) (Ins) No. 1099 of 2024

Heard Counsel for the Appellant as well as Ld. Counsel appearing for the Respondent. This appeal has been filed against the order dated 31.01.2024 passed by National Company Law Tribunal, New Delhi Bench, (Adjudicating Authority) admitting a Section 95 application filed by the State Bank of India against the Appellant the Personal Guarantor. The Appellant has given personal guarantee to the loan which was given to the Corporate Debtor M/s Schiffli India Ltd. The Proceedings have already been initiated for CIRP against the Corporate Debtor which was initiated by the Adjudicating Authority and appeal against the said order is said to be pending before this Tribunal.

2. The application under Section 95 was filed by the Bank being IB-492/ND/2022 claiming debt and default to the personal guarantor and Resolution Professional was appointed by the Adjudicating Authority who submitted a report under Section 99 and considering the report the application has been admitted under Section 100, aggrieved by that order the personal guarantor has come up in this appeal. Ld. Counsel for the Appellant challenging the order submits that the application filed by State Bank of India was barred by time the notice invoking the corporate guarantee was issued on 26.08.2014 and the application having been filed in 2022 is clearly barred by time.

3. It is submitted that said plea was taken by personal guarantor in the reply but the Adjudicating Authority has not adverted to the said question. It is further submitted that the clause 1 of the guarantee which was dated 19.11.2010 by the appellant clearly indicate that after default by borrower a notice of demand be issued by the lead bank and hence the notice ought to have been issued. It is submitted that notice which was issued in 2014 cannot be basis for filing the application in 2022 and further notices were required to be issued to the guarantor.

4. Ld. Counsel for the Respondent refuting the submission contended that all facts pertaining to the limitation relevant dates and pleadings for extension of limitation were made in the application itself. It is submitted that Corporate Debtor has offered twice OTS on 28.11.2016 and 07.09.2017 which shall clearly extend the limitation under Section 18 of the Limitation Act. It is further submitted that OA No. 394 of 2014 was filed against the corporate debtor and other guarantors in which a decree has been passed by DRT on 28.01.2019 which shall also give the extension of limitation. It is submitted that Adjudicating Authority did not commit any error in admitting Section 95 application, the report of the Resolution Professional was duly considered and relied for admission.

5. We have considered submission of Counsel for the parties and perused the record.

6. The first question which need to be considered is as to whether the application is barred by time or not? It is well settled that even if there is no plea raised regarding limitation, the court is to oblige to examine the question of limitation before proceeding further in an application. In the impugned order Adjudicating Authority has noticed the pleading of the application and in paragraph 22 and 23 at page 60 following has been pleaded:

*“22. That the Corporate Debtor offered proposals for One Time Settlement (OTS) on 28.11.2016 and 07.09.2017 but the same were not accepted by the Applicant Bank. Copy of proposal for One Time Settlement dated 28.11.2016 is annexed herewith as **Annexure-U**. Copy of proposal for One Time Settlement dated 07.09.2017 is annexed herewith as **Annexure-V**.*

*23. That the Applicant/State Bank of India also filed an O.A. bearing 394 of 2014 against the Corporate Debtor and other guarantors including the present Personal Guarantor which was decreed for an amount of Rs. 35,87,60,842.92/- along with future interest at the rate of 12% per annum simple in the favour of the Applicant/State Bank of India by the DRT, Bench-II, New Delhi on 28.01.2019. Copy of the decreed final order dated 28.01.2019 passed by Ld. DRT-II, New Delhi is annexed herewith as **Annexure-W**”.*

7. The above pleadings made by the State Bank of India clearly contains the extension of limitation under Section 18 of the Limitation Act when the pleadings are on the record which provide for extension of limitation no error can be said to be committed by Adjudicating Authority in admitting Section 95 application against the personal guarantor. We are satisfied that application filed under Section 95 was not barred by limitation and on this ground no error can be found.

8. Ld. Counsel for the Appellant relies on paragraph 1 of the guarantee which is as follows:

“1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs. 9 Crore) together with interest, costs, charges, expenses and/or other money for the time being due to the Lead Bank in respect of or under the abovementioned credit facilities or any of them the Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding Rs. Nine Crores only) together with interest, cost, charges, expenses and/or any other money as may be then due to the Lead Bank in respect of the abovementioned credit facilities and shall indemnify and keep indemnified the Lead Bank against all losses of the said principal sum, interest or other money due and all costs, charges and expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower”.

9. There can be no dispute that after default is committed by borrower notice of demand has to be given. In the present case notice of demand was given on 26.08.2014 which has already been brought on record which notice was addressed to the appellant, the personal guarantors in the notice paragraph 3, 7 and 8 following has been stated.

“3. At request of addressees No.2 and 3, the Bank has extended several credit facilities to M/s. Schiffli India Limited, addressee No.1 company various credit facilities. You being the guarantor executed several deeds / agreements of guarantee from time to time in favour of the Bank.

7. Therefore, I call upon all of you by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 07 days from the date of this notice. Your outstanding liabilities in aggregate due and owing to the Bank is in the sum of Rs.35,49,85,748.25/- (Rupees Thirty Five Crores Forty Nine Lacs Eighty Five Thousand Seven Hundred Forty Eight and Paise Twenty Five Only) as on 25.08.2014. You are also liable to pay future interest on the contractual rate on the aforesaid amount compounded with monthly rests with incidental expenses and costs, charges etc.

8. If you fail to repay to the Bank the aforesaid sum of Rs.35,49,85,748.25/- (Rupees Thirty Five Crores Forty Nine Lacs Eighty Five Thousand Seven Hundred Forty Eight and Paise Twenty Five Only) as on 25.08.2014 with future interest and incidental expenses, cost as above in terms of this notice, the Bank shall initiate legal action for the recovery of the amounts due with cost and further interest up to the full realization of the claims of the Bank and enforcement of its securities”.

10. Thus the notice of demand was clearly given to the Personal Guarantor. The submission of the Appellant that after the said notice further fresh notices were required for filing Section 95 application does not appeal to us. When by the notice guarantee was invoked by the bank, bank was entitled to initiate proceedings and present is the case where bank is claiming extension of limitation under Section 18 thus we are not satisfied that invocation of guarantee was to be repeatedly done by the bank before filing the application under Section 95. When the application under Section 95 is well within time the said ground cannot be a ground to interfere with order impugned. We thus do not find any error in order of Adjudicating Authority admitting Section 95 of the application. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

sr/nn

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