

Kishanlal Likhmichand Bothra vs Canara Bank on 24 March, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT) (Insolvency) No. 704 of 2020

[Arising out of Order dated 06th July, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench - IV in C.P. (IB) No. 2579/MB.IV/2019]

IN THE MATTER OF:

Kishanlal Likhmichand Bothra,

(Erstwhile Director of Bothra Metal and Alloys Ltd.)

House No. 1078, Sector 15,

Panchkula - 134113, Haryana

...Appellant

Versus

Canara Bank,

(Financial Creditor Syndicate Bank

amalgamated w.e.f. 01.04.2020)

Having its Registered Office At: -

No. 112, JC Road,

Bangalore - 560002, Karnataka,

Also At:

(Branch office of erstwhile Syndicate Bank)

Stressed Asset Management Branch,

Maker Tower 'F', 2nd Floor, Cuffe Parade,

Colaba, Mumbai - 400005

...Respondent

Present:

For Appellant: Mr. Navneet Dugar, Advocate.

For Respondent: Mr. Rohan Agrawal, Mr. Prakash Shinde and

Almira Lasrado, Advocates.

ORDER

(Virtual Mode) 24.03.2021 Heard. This Appeal has been filed by the Appellant- Erstwhile Director of Bothra Metals and Alloys Ltd-Corporate Debtor.

2. Syndicate Bank had filed Application C.P. (IB) No. 2579/MB.IV/2019 before the Adjudicating Authority (NCLT) Mumbai Bench - IV against the Corporate Debtor. Syndicate Bank is now amalgamated with the Respondent- Canara Bank.

3. The Application was filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short). The Financial Creditor Bank referred to the financial assistance provided to the Corporate Debtor by way of Cash Credit, Letter of Credit, Term Loan and Forward Cover. The Corporate Debtor had executed necessary documents. The Financial Creditor claimed that there was total debt due and outstanding against the Corporate Debtor to the extent of Rs. 61,47,52,521.59/-.

4. The Application was heard by the Adjudicating Authority. After hearing both the sides, the Adjudicating Authority admitted the Application and hence the present Appeal.

5. The Appeal claims and Learned Counsel for the Appellant is arguing that in the present matter, the date of NPA is 3rd December, 2015 and Application under Section 7 was filed on 04th July, 2019 which was more than three years from the date of NPA. According to the Learned Counsel under Article 137 of the Limitation Act, 1963 the period of Limitation is three years Company Appeal (AT) (Ins.) No. 704 of 2020 and the Application filed beyond period of three years should have been dismissed.

6. In support of such submission the Learned Counsel for the Appellant is relying on the Judgment in the matter of "B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates", MANU/SC/1160/2018 and "Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (I) Ltd", 2019 SCC Online SC 1239. The Learned Counsel submits that if these Judgments are considered, if in 3 years of N.P.A Section 7 application is not filed, and application under Section 5 of Limitation Act is not there the Application would be time barred.

7. The Learned Counsel for the Respondent is submitting that the Corporate Debtor had raised issue of limitation before the Adjudicating Authority and that the Adjudicating Authority after considering the balance - sheets which were brought on record and the OTS Proposals which were admittedly given by the Corporate Debtor, concluded that the debt was not time-barred. Learned Counsel submits that there are various Judgments of the Hon'ble High Courts as well as Hon'ble Supreme Court which show that debt acknowledged in the books of accounts or balance -sheets can be treated as acknowledgments for extension of limitation under Section 18 of Limitation Act, 1963.

8. The Learned Counsel for the Appellant accepts that the Appellant has not filed copy of the Application under Section 7 of IBC which was filed before the Adjudicating Authority. It is also accepted that even the copies of balance- sheets which were filed before the Adjudicating Authority

and which are Company Appeal (AT) (Ins.) No. 704 of 2020 considered by Adjudicating Authority have not been filed in this Appeal. The Learned Counsel for the Respondent claims that these documents have purposely not been filed as they are against the Corporate Debtor and thus kept back.

9. We have seen the copy of the Reply-Affidavit which was filed by the Corporate Debtor before the Adjudicating Authority. The copy is at Annexure

-A filed by the present Respondent-Bank along with Reply of the Respondent (Diary No. 22006). The Learned Counsel for the Respondent points out Paragraph 19 of that Reply filed by the Corporate Debtor where clearly the Corporate Debtor accepted that principal amount due and in default reflecting in their accounts was Rs. 41.67 Crores. It is stated that this is admittedly more than Rs. 1 lakh. It is stated that the debt due has been accepted.

10. The Corporate Debtor further stated in the Reply in Paragraph 30 as under:

"30. I say and submit that the Corporate Debtor further say that they are trying to settle with Financial Creditor since the date they have declared the Debtors account as NPA. The debtor have submitted various OTS plans dated. 02.07.2018, 26.03.2019, 19.08.2019 and Resolution Plans dated 20.11.2018, 12.02.2019 to the Financial Creditor which has replied negatively nor have put any effort to modify the plan and consider it in favour of Corporate Debtor at any time and it is beyond the law of mediation because any dispute can be settled outside the court if the Financial Creditor behaves positively with the Corporate Debtor. OTS Plans and Resolution Plans marked and annexed to as "Annexure -L to L-4."

Company Appeal (AT) (Ins.) No. 704 of 2020

11. Perusal of the Impugned Order shows that the Adjudicating Authority considered this defence taken by the Corporate Debtor and the Adjudicating Authority in Paragraphs 10 and 13 of the Impugned Order observed as under:

"10. Upon perusal of the documents on record, it is seen that there is acknowledgment of debt in the balance sheet of the corporate debtor all along. It is well-settled through various judgments of the Hon'ble Supreme Court now that an acknowledgment in the balance sheet of the company satisfies the requirements of Section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement. Further, the reply also makes it clear that there is a debt due and payable to the Financial Creditor, which remains unsatisfied. Therefore, the aspect of limitation raised as one of the defences by the Corporate Debtor does not hold water.

.....

13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under Section 4 (1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor."

12. As regards limitation, reference may be made to the Judgment in the matter of "Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-Operative bank Ltd and Anr." Civil Appeal No. 9198 Of 2019 passed by the Hon'ble Company Appeal (AT) (Ins.) No. 704 of 2020 Supreme Court of India on 22nd March, 2021. Hon'ble Supreme Court of India discussed the various Judgments passed by the Hon'ble Supreme Court of India with regard to limitation and which are now being relied on by the Learned Counsel for the Appellant and observed in Paragraphs 66, 88 and 92 of the Judgment as under:

"66. Similarly under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

.....

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.

C o m p a n y A p p e a l (A T) (I n s .) N o . 7 0 4 o f 2 0 2 0
.....

92. In other words, the provisions of the Limitation Act would apply mutatis mutandis to proceedings under the IBC in the NCLT/NCLAT. To quote Shah J. in New India Sugar Mill Limited v. Commissioner of Sales Tax, Bihar, "It is a recognised rule of interpretation of statutes that expression used therein should ordinarily be

understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature".

13. Considering the above Judgment of the Hon'ble Supreme Court of India, we have no difficulty to state that Section 18 of the Limitation Act is applicable to proceedings under IBC and that if there is acknowledgment of debt in the balance-sheets or the OTS Proposal, the period of limitation would get extended if the acknowledgment is made before the period of limitation expires. Reference may be made to the Judgment in the matter of "Mahabir Cold Storage Vs. Commissioner of Income Tax, (1991) 188 ITR 91 and Judgment in the matter of "A.V. Murthy Vs. B.S. Nagabasavanna" (2002) 2 SCC 642 where Hon'ble Supreme Court considered entries in Books of Accounts/Balance Sheets and observed that entries in such records may amount to Acknowledgment of debt.

14. Considering the findings recorded by the Adjudicating Authority based on balance-sheets and even keeping in view the admitted dates when OTS Proposals were made by the Corporate Debtor, we do not find that Appellant is able to demonstrate that the Adjudicating Authority committed any error when the Adjudicating Authority concluded that the debt was not time-barred and admitted the Application.

Company Appeal (AT) (Ins.) No. 704 of 2020

15. There is no substance in the Appeal. The Appeal is dismissed.

[Justice A.I.S. Cheema] Member (Judicial) [Mr. V.P. Singh] Member (Technical) Basant B./md/
Company Appeal (AT) (Ins.) No. 704 of 2020