

Manasi Indrajit Wadkar vs Andhra Bank & Anr on 27 May, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 320 of 2020

[Arising out of Order dated 13th January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (IB) No. 279/7/NCLT/AHM/2018]

IN THE MATTER OF:

Mrs. Manasi Indrajit Wadkar
Suspended Director of Krishna Knitwear
Technology Limited
R/o Triveni Jyot, 3rd Floor, Navapada
Dombivali (West) - 4212020

....Appellant

Versus.

1. Union Bank of India (Formerly Andhra Bank)

Having officer at 5-9-11, Dr. Pattabhai

Bhavan, Secretariat Road,

Hyderabad - 500004

Also at:

8th Floor, Maker Tower, F - Wing, Cuffe

Parade, Mumbai - 400005.

2. Krishna Knitwear Technology Limited

Through its Interim Resolution Professional

Mr. Brijendra Kumar Mishra,

Flat No. 202, 2nd Floor, BhojBhavan,

Plot No. 18-D, Sior - Trombay Road,

Chembur, Mumbai - 400071

....Respondents

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Company Appeal (AT) (Insolvency) No. 320 of 2020

Present:

For Appellant: Mr. Krishnendu Datta, Mr. Abhisek Baid
and Mr. Mohit Bafna, Advocates

For Respondents: Mr. Abhijeet Sinha, Mr. Rohan Aggarwal,
Mr. Darshit Dave, Mr. A.K. Mishra and
Mr. Almira Lasrado, Advocates for R-1.
Ms. Mamta Binani, Mr. Sandeep Bajaj and
Mr. Devansh Jain, Advocates for R-2.

JUDGMENT

(27th May 2021) A.I.S. Cheema, J.: This Appeal has been filed by the Appellant who claims to be earlier Director of the Corporate Debtor-Krishna Knitwear Technology Limited. The Appeal is filed against the Impugned Order dated 13th January, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad) in C.P. (IB) No. 279/7/NCLT/AHM/2018. The Application was filed by Andhra Bank against the Corporate Debtor. Andhra Bank was the Financial Creditor. Andhra Bank is now merged with Union Bank of India and thus in the Appeal the name of Union Bank of India has been substituted. The Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) filed by Andhra Bank was admitted and thus the present Appeal.

2. Andhra Bank (Now Union Bank of India) (Hereinafter referred only as

- Bank) filed Application under Section 7 of IBC claiming that the Corporate Debtor availed Financial Assistance from various Banks and Financial Institutions since 2001 by way of Term-Loan, Cash Credit and Working Capital Demand Loan. Necessary securities and Bank Guarantees were Page | 2 Company Appeal (AT) (Insolvency) No. 320 of 2020 given. The Working Capital Consortium came to be formed which was led by the Andhra Bank. Corporate Debtor approached CDR Cell to restructure Working Capital and Term-Loan Facilities and the restructuring package for Working Capital Limit was sanctioned on 29th December, 2012. OCC Limit was restructured. Subsequently, even Supplementary Consortium Agreement and other security documents were executed. Subsequently, there was no substantial improvement in the operation of the Account and the Account was declared irregular and Non-Performing Assets (N.P.A. in short) with back date on 29th June, 2012. The Bank issued Demand Notice under Section 13(2) of SARFAESI Act on 31st January, 2015. The Bank along with other consortium lenders filed O.A. 150 of 2016 before Debt Recovery Tribunal, Ahmedabad (DRT in short) in March, 2016 which is pending. The Bank also relied on aggregate Rs. 123.30 Crores which were sanctioned by the Bank vide Sanction Letter Dated 29.12.2012 and 30.06.2014. The Bank relied on Statement of Accounts and the Balance Sheet of 2015-16 and other documents. The Application under Section 7 was filed with Part-IV of the Format mentioning date of NPA as 29th June, 2012 and that the particulars were given in Exhibit-D. Securities were referred in Part-V of the Format and particulars of the Financial Contract and Amendments were referred in Para 5 of the Format as well as the narrative in Para 6 of Part 5 with regard to how the transactions has occurred. Certificate under Bankers Book Evidence Act was also filed along with other documents.

3. The Adjudicating Authority after hearing Learned Counsel for both- sides found that there was debt due and default and that the debt was Page | 3 Company Appeal (AT) (Insolvency) No. 320 of 2020 within Limitation and the Application came to be admitted by the Impugned Order.

4. In the Appeal before us, the Appellant claims and it is argued for the Appellant that the Account was NPA since 29th June, 2012. The Respondent Bank and other consortium banks considered the present restructuring of credit facility to the Corporate Debtor however the Respondent Bank took exit from CDR without any cogent reasons and without informing the Corporate Debtor. The Appellant claims that Corporate Debtor did not acknowledge debt of the Respondent Bank. There was no acknowledgment within three years as required under Section 18 of the Limitation Act and balance sheet relied on before the Adjudicating Authority was only of 2016- 17 and thus it is claimed that the debt was time-barred. It is claimed that OTS given was not accepted and cannot be relied on as acknowledgment. Relying on the Judgment in the matter of "B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates, 2018 SCC Online SC 1929 it is argued that Article 137 of the Limitation Act applies and right to sue accrues when default occurs. Thus it is claimed that the claim was time-barred and Application under Section 7 should have been rejected.

5. Against this, the Learned Counsel for the Respondent No. 1 has argued that there were outstanding dues of Rs. 245,31,64,521.85 paise against the Corporate Debtor and thus Application under Section 7 was required to be filed. It is argued that there was Restructuring Agreement executed between the Corporate Debtor with consortium of lenders on 29th December, 2012 to restructure liabilities of the Corporate Debtor and that further Trust and Retention Agreement dated 29th December, 2012 was Page | 4 Company Appeal (AT) (Insolvency) No. 320 of 2020 executed. The Amendatory Agreement to amend and restate Security Trustee Agreement executed on 25th July, 2011. and Second Amendatory Agreement dated 13th March, 2014 was also executed along with other documents. The Corporate Debtor still defaulted and so action under SARFAESI Act was required to be taken. Instead of restructuring package, there was no substantial improvement and thus the Account of the Corporate Debtor was finally declared as N.P.A. w.e.f. 29th June, 2012 as per Clause 17 of Reserved Bank of India Circular dated 1st July, 2015 copy of which has been filed Exhibit-A with Reply of the Respondent Bank at Diary No. 20697. Referring to the same Circular Clause 3.3 it is argued by the Learned Counsel for Respondent No. 1 Bank that even after declaration of NPA recoveries towards principal and interest are permissible and payments made by Corporate Debtor even after NPA has been declared, is permissible and that Section 19 of the Limitation Act applies.

6. Referring to the documents on record, Learned Counsel for the Respondent Bank claimed that there are acknowledgments in the part of Corporate Debtor which show that the claim of the Respondent Bank is within limitation and the Adjudicating Authority rightly admitted the Application.

7. Learned Counsel for the Appellant has argued that before the Adjudicating Authority balance sheet only of 2016-17 was filed and not other balance sheets and the foundation was not laid before Adjudicating Authority.

8. We have gone through the matter, it would be appropriate to refer to material documents with regard to dispute of Limitation raised. The Page | 5 Company Appeal (AT) (Insolvency) No. 320 of 2020 Application under Section 7 (Annexure A-2 Page 77) is stated to have been filed before the Adjudicating Authority on 21st May, 2018. It appears that effort at restructuring did not give desired

result and the NPA was declared with back date of 29th June, 2012. Thus there are documents on record even subsequent to 29th June, 2012 like Second Amendatory Agreement dated 13th March, 2014. The Application under Section 7 shows Demand Notices being issued under SARFAESI Act on 31st January, 2015 and 19th June, 2016. It appears that O.A. 150/2016 was also filed before the DRT.

9. The Respondent Bank has filed Reply (Diary No. 20697) along with Reply there is document filed at Page 166 of Diary No. 20697 which was sent in response to the SARFAESI Notice dated 31st January, 2015. This Reply dated 23rd March, 2015 mentions (Page 174) as under:

".....The Company & the Group have no previous track record of default and therefore, for an isolated default of repayment, which is also partly attributed to inaction of the Bank(s) and partly to the several external factors beyond the control of the Company, issuance of Notice under SARFAESI is highly unwarranted. The Company with clear & bonafide intention has provided securities worth Rs. 872.08 crores towards total outstanding credit facilities of Rs. 807.43 crores to the consortium as a whole, to be shared on pari passu basis and the Bank at any stage can exercise its right towards the said securities. However, keeping in mind the principle of natural justice, it is imperative on the part of the Bank to first allow the Company with a reasonable time and opportunity to revive its operations and improve financials to meet the debt obligations. Thus, the Company requests the Bank to provide ample opportunity and time to regularize its account and if the company fails to do so, the Bank may proceed further as per its discretion.

In nutshell, if the Bank would have timely restructured the account and would have considered requests of the Company for adequate working capital and term loan, the present financial crunch would have been averted to have win-win situation for both the parties. Nevertheless, the Page | 6 Company Appeal (AT) (Insolvency) No. 320 of 2020 Company once again requests the Bank to evaluate the revival plan submitted by them vide letter dated 24.12.2014 and accord their approval. The Company once again reiterates its stand that they are open for discussions and suggestions from the Bank(s) in order to reach to a mutually beneficial solution....."

This Document is within three years of date of NPA dated 29th June, 2012. Then there is document filed with the Reply at Page 177 which is letter from Corporate Debtor to the Andhra Bank dated 05th April, 2016 where there is reference to the OTS Proposal and that the Corporate Debtor proposed to pay the outstanding and due balances as on date of NPA, excluding reversal of interest, penal interest, other charges etc., if any. Thus, even if these two documents which have contents in the nature of acknowledgment as covered under Section 18 of the Limitation Act the Application filed on 21st May, 2018 can be said to be within limitation.

10. Apart from these, there are part-payments made on 19th July, 2017 and 25th September, 2017 referred to by the Learned Counsel for the Respondent Bank from Diary No. 20994, at Page 5 and 15. The Learned Counsel for the Respondent Bank submitted that these amounts are part- payments

received in the Account of the Corporate Debtor. It is argued that these Accounts were before the Adjudicating Authority and that Adjudicating Authority also relied on the last payment into the Account dated 25th September, 2017 in Para 25 of the Impugned Order. Although the Learned Counsel for the Appellant has argued that the letters dated 23rd March, 2015 and 05th April, 2016 (Page 166 to 177 with Diary No. 20697) were not filed before the Adjudicating Authority and thus it is claimed that foundation was not laid, still we find that the Respondent Bank has Page | 7 Company Appeal (AT) (Insolvency) No. 320 of 2020 produced the documents with the Reply and the Appellant is not denying the authenticity or sending of such letters to the Bank. The argument is only technical that these documents were not filed before the Adjudicating Authority. When authenticity and sending of such letters to the Bank is not disputed, for technical reasons, it does not appear appropriate that we ignore the documents. The parties have been given sufficient opportunities to contest. Apart from this, the Reply filed on behalf of the Corporate Debtor before the Adjudicating Authority, Annexure A-3 Page 96 itself has various details with regard to the transactions and the various documents executed. In paragraph 3 of the said Reply filed before the Adjudicating Authority it was mentioned as under:

".....The Respondent further states that in terms of CDR sanction and/or individual sanction issued by the Applicant, the repayment was extended up to F.Y 2019 and therefore the present Application which has been filed before the cut-off date i.e. the date up to which the Respondent was permitted to repay the loan, is premature and not tenable. The Respondent states that even going with the said sanction of CDR EG, no default has occurred and therefore the Application filed by the Applicant is not maintainable under Section 7 of IBC 2016. The Respondent craves leave of the Hon'ble Tribunal to rely upon and refer to the said sanction which produced....."

11. The Reply before the Adjudicating Authority further stated in Paragraph 7 (Page 141) as follows:

"7.....

iii. The Respondent states that the Applicant has allegedly treated the account of the Respondent as "NPA" w.e.f. 29.06.2012, however the fact remains that the Applicant has deposited a sum of Rs. 53,86,04,308.47 from the said cut off date to 28.07.2014, as per details marked and exhibited as "Annexure R-7"....."

Page | 8 Company Appeal (AT) (Insolvency) No. 320 of 2020 For such and other reasons, the Corporate Debtor claimed before the Adjudicating Authority that the Application should be rejected. In addition to the above, there is balance sheet of 2015-16 (Page 20 of Diary No. 20994) which has been signed by the Director on 25th May, 2016 and there is Balance Sheet even of 2017-18 (Page 43 Diary No. 20994) which has been signed by the Directors at pages 53 and 65 on 26th May, 2018. The Learned Counsel for the Respondent Bank has referred to these documents to show that the debts of the bank were duly acknowledged in the Accounts by the Corporate Debtor. The Balance Sheets for the purpose of acknowledgment can be relied on in view of the observations of the Hon'ble Supreme Court in the matter of "M/s Mahabir Cold Storage Versus C.I.T., Patna" reported

as 1991 Supp (1) Supreme Court Cases 402 as well as the observations of the Hon'ble Supreme Court in the matter of "A.V. Murthy Vs. B.S. Nagabasavanna" reported in (2002) 2 SCC 642. The Learned Counsel for the Appellant has argued that before the Adjudicating Authority there was only balance sheet of 2016-17 and not the balance sheet of 2017-18 or the balance sheet of 2015-16. These are technical grounds raised. The authenticity of such balance sheets has not been questioned and for technical reasons, we do not think it to be in the interest of justice to ignore such documents.

12. The parties have relied on various Judgments to submit whether or not Sections 18 and 19 of Limitation Act would apply and with regard to their submissions as regards limitation of the present Application. In this regard, it would be appropriate to refer to the latest Judgment of the Hon'ble Supreme Court of India in the matter of "Sesh Nath Singh & Anr. Vs. Page | 9 Company Appeal (AT) (Insolvency) No. 320 of 2020 Baidyabati Sheoraphuli Co-operative Bank Ltd and Anr." in Civil Appeal No. 9198 of 2019 delivered on 22.03.2021. In the said Judgment, the Hon'ble Supreme court observed in Paragraphs 85, 86, 87, 88 and 92 as under:

"85. In the instant case, the proceedings under the SARFAESI Act may not have formally been terminated. The proceedings have however been stayed by the High Court by an interim order, on the prima facie satisfaction that the proceedings initiated by the financial creditor, which is a cooperative bank, was without jurisdiction. The writ petition filed by the Corporate Debtor was not disposed of even after almost four years. The carriage of proceedings was with the Corporate Debtor. The interim order was still in force, when proceedings under Section 7 of the IBC were initiated, as a result of which the Financial Creditor was unable to proceed further under the SARFAESI Act.

86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.

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.

Page | 10 Company Appeal (AT) (Insolvency) No. 320 of 2020 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.

.....

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. Relying on the above Judgment and Documents as discussed above, we do not find that the financial debt due and in default was time barred or that Adjudicating Authority committed any error when the Application under Section 7 was admitted.

There is no substance in the Appeal. The Appeal is dismissed. No orders as to costs.

[Justice A.I.S. Cheema] Member (Judicial)/ The Officiating Chairperson [Dr. Ashok Kumar Mishra] Member (Technical) New Delhi Basant B. 27.05.2021 Page | 11 Company Appeal (AT) (Insolvency) No. 320 of 2020