2022 INSC 428

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 910 of 2021

State Bank of India **....Appellant**

Versus

Krishidhan Seeds Private Limited **....Respondent**

O R D E R

1 The National Company Law Tribunal[1], by its judgment dated 16 September 2020, rejected the application dated 19 September 2018[2] filed by the State Bank of India, the appellant, under Section 7 of the Insolvency and Bankruptcy Code 2016[3] against the respondent, the alleged Corporate Debtor, for initiation of the Corporate Insolvency Resolution Process[4].

2 The respondent received credit facilities from the appellant commencing from 30 November 2006. According to the appellant, as on 24 June 2013, the outstanding under the credit facilities extended to the respondent totaled to Rs 102.4 crores. In lieu of these credit facilities, the respondent (along with other persons) provided securities in favor of the appellant. The respondent allegedly failed to honor the

1 "NCLT"
2 TP No 82/2019 in CP (IB) No 500/7/NCLT/AHM/2018
3 "IBC"
4 "CIRP"

terms of these credit facilities and defaulted on their repayments. Hence, the respondent's account with the appellant was classified as a Non-Performing Asset[5] on 10 June 2014.

3 Thereafter, at various junctures, the appellant aimed to seek recourse to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and Recovery of Debts Due to Banks and Financial Institutions Act 1993, while continuing to engage in negotiations with the respondent. Thereafter, the respondent issued letter dated 19 January 2016 to the appellant offering a one-time settlement[6] of Rs 61 crores in lieu of its debts, which was conditionally accepted by the appellant. However, by a letter dated 18 September 2017, the respondent unilaterally revised the OTS to Rs 40.6 crores, which was refused by the appellant.

4 The application for initiation of the CIRP was then filed by the appellant on the ground that there was a default on the part of the respondent in paying a financial debt in the amount of approximately Rs 189 crores (calculated with interest as on 30 June 2018). The date of default was mentioned as 10 June 2014, when the respondent's account was declared as an NPA.

5 While rejecting the application under Section 7 of the IBC on the ground of limitation, the NCLT observed that:

(i) The respondent's loan account was declared to be an NPA on 10 June 2014, while the proceeding under Section 7 was instituted on 19 September 2018 beyond a period of three years from the date on which the right to apply

5 "NPA"
6 "OTS"

accrued;

(ii) In the decision in the case of **V Padmakumar** v **Stressed Assets Stabilisation Fund and Another**[7], the NCLAT has held that a statement contained in the balance sheet cannot be treated as an acknowledgement of liability under Section 18 of the Limitation Act 1963[8]; and

(iii) The proposal for OTS which was submitted by the respondent on 18 September 2017 was also beyond three years from the date of default.

6 The order of the NCLT has been upheld in appeal[9] by the National Company Law Appellate Tribunal[10] on 17 November 2020. In appeal, the NCLAT held that limitation will be calculated in accordance with Article 137 of the Limitation Act. Presently in the appellant's application filed before the NCLT in the prescribed format, the date of default was recorded as 10 June 2014. The NCLAT held that such a date could neither be shifted nor extended once the default occurred. Hence, the application under Section 7, which was instituted on 19 September 2018, was held to be barred by limitation since it was filed beyond four years from the date of default. The NCLAT further noted that it was on the basis of such a default that the Financial Creditor had moved the Debt Recovery Tribunal[11] on 20 October 2015 and there could not be two defaults in respect of the same debt; one for the purpose of the DRT and another for the purpose of adjudication under the IBC. Finally, the NCLAT held that recourse to Section 18 of the Limitation Act was not available to the appellant.

7 2020 SCC Online NCLAT 417 ("**V Padmakumar**")
8 "Limitation Act"
9 Company Appeal (AT) (Insolvency) No 972 of 2020
10 "NCLAT"
11 "DRT"

7 In the present appeal, the appellant has appeared through Mr Niranjan Reddy, senior counsel, while Mr Shyam Divan, senior counsel, has appeared on behalf of the respondent.

8 The NCLT placed reliance on the judgment in **V Padmakumar** (supra). The decision in the above case has been specifically overruled in a judgment of a three-Judge Bench of this Court in **Asset Reconstruction Company (India) Limited** v **Bishal Jaiswal and Another**[12], where Justice R F Nariman, speaking for the Bench, held:

> "46. It is, therefore, clear that the majority decision of the Full Bench in *V. Padmakumar* is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of NCLAT dated 12-3-2020"

9 Apart from the above decision, it is also necessary to note that the provisions of Section 18 of the Limitation Act were held applicable to IBC proceedings by a two-Judge Bench of this Court in **Sesh Nath Singh** v **Baidyabati Sheoraphuli Coop. Bank Ltd.**[13].

10 While the observation in **Sesh Nath Singh** (supra) was *obiter dicta*, the matter has been set at rest in a decision of a three-Judge Bench of this Court in **Laxmi Pat Surana** v **Union Bank of India and Another**[14], where, speaking for the Bench, Justice A M Khanwilkar has held:

> "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

12 (2021) 6 SCC 366 ("**Asset Reconstruction Company**")
13 (2021) 7 SCC 313 ("**Sesh Nath Singh**")
14 (2021) 8 SCC 481 ("**Laxmi Pat Surana**")

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 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**)

11 An acknowledgement in a balance sheet without a qualification can be relied upon for the purpose of the proceedings under the IBC. This principle also emerges from the decision in **Asset Reconstruction Company** (supra), which noted the decisions in **Sesh Nath Singh** (supra) and **Laxmi Pat Surana** (supra). This Court held:

> "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*, 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."

12 The decisions in **Sesh Nath Singh** (supra), **Laxmi Pat Surana** (supra) and **Asset Reconstruction Company** (supra) have subsequently been followed in numerous decisions of this Court delivered by two-Judge Benches, namely: *(i)* **Dena Bank** v **C. Shivakumar Reddy**[15]; *(ii)* **State Bank of India** v **Vibha Agro Tech Limited**[16]; *(iii)* **Devas Multimedia Private Ltd.** v **Antrix Corporation Ltd. and Another**[17]; and *(iv)* **SVG**

15 (2021) 10 SCC 330
16 2021 SCC OnLine SC 1297
17 2022 SCC OnLine SC 46

Fashions Pvt. Ltd. (Earlier Known As SVG Fashions Ltd.) v **Ritu Murli Manohar Goyal and Another**[18]. Besides the above decisions, there is a more recent decision of a three-Judge Bench of this Court in **Rajendra Narottamdas Sheth and Another** v **Chandra Prakash Jain and Another**[19], where, speaking for the Bench, Justice L Nageswara Rao held:

> "25. We have already held that the burden of *prima facie* proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor. While the decision to admit an application under Section 7 is typically made on the basis of material furnished by the financial creditor, the Adjudicating Authority is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the Adjudicating Authority before admitting the application under Section 7 of the Code. The plea of Section 18 of the Limitation Act not having been raised by the Financial Creditor in the application filed under Section 7 cannot come to the rescue of the Appellants in the facts of this case. It is clarified that the onus on the financial creditor, at the time of filing an application under Section 7, to *prima facie* demonstrate default with respect to a debt, which is not time-barred, is not sought to be diluted herein. In the present case, if the documents constituting acknowledgement of the debt beyond April, 2016 had not been brought on record by the Corporate Debtor, the application would have been fit for dismissal on the ground of lack of any plea by the Financial Creditor before the Adjudicating Authority with respect to extension of the limitation period and application of Section 18 of the Limitation Act."

13 In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this Court. The principles which emerge are that:

18 2022 SCC OnLine SC 373
19 2021 SCC OnLine SC 843

(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and

(ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default.

14 At this stage, we may also note that Mr Niranjan Reddy has relied upon documentary material to indicate that the acknowledgements of liability were within a period of three years from the date of default and, hence, the applicant filed by the appellant under Section 7 of the IBC was within limitation. Reliance has also been placed on the letter of revival dated 26 April 2015 and the offer of OTS on 6 November 2015.

15 Since we are inclined to restore the proceedings back to the NCLT for fresh adjudication in view of the decisions of this Court noted above, we are not entering upon the factual dispute on whether the application filed under Section 7 of the IBC would result in an initiation of the CIRP in the present case. The appropriate course of action would be to keep open all rights and contentions of the parties on merits to be adjudicated upon before the NCLT.

16 With the above clarification, we allow the appeal and set aside the impugned judgment and order of the NCLAT dated 17 November 2020 and of the NCLT dated 16 September 2020. The proceedings shall stand restored to the file of the NCLT for adjudication afresh, keeping all rights and contentions of the parties open on the factual aspects of the controversy.

17 As the application under Section 7 of the IBC was instituted before the NCLT on 19 September 2018, the NCLT shall expeditiously dispose it, no later than within three months from the date of this order.

18 Pending application(s), if any, stand disposed of.

…….J.
[Dr Dhananjaya Y Chandrachud]

…….J.
[Surya Kant]

New Delhi;
April 18, 2022
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