

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 636 of 2020

[Arising out of Impugned Order dated 27th February 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in Company Petition (IB) No. 645/7/HDB/2008]

IN THE MATTER OF:

**State Bank of India
Stressed Assets Management Branch,
Secunderabad
Door No. 6-2-915, 5th Floor
Rear Block, HMWSSB Compound
Khairthabad, Hyderabad – 500004** **...Appellant**

Versus

**Vibha Agro Tech Limited
HIG No. 501, A&B Subhan Sirisampada
No. 6-3-1090/A/1, Rajbhavan Road
Somajiguda, Hyderabad – 500082** **...Respondent**

Present:

**For Appellant : Mr. Sanjay Kapur and Mr. VM Kanan,
Advocates for Appellant.**

**For Respondent : Mr. M Srinivasan Rao and Mr. Joydip Bhattacharya,
Advocates for Respondent.**

J U D G M E N T

KANTHI NARAHARI, MEMBER (TECHNICAL)

The present Appeal arises out of Order dated 27th February 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in Company Petition (IB) No.645/7/HDB/2018, whereby the Learned Adjudicating Authority rejected the Application filed by the Appellant herein.

BRIEF FACTS:

2. Learned Counsel for the Appellant submitted the brief facts:

He submitted that the Appellant Bank granted various credit facilities to the Respondent w.e.f. 26th March 2011. However, the Respondent started defaulting in repayment of the loans. The Appellant Bank and the Consortium of Lenders approved a CDR package for the Respondent and the terms were contained in a Master Restructuring Agreement dated 26th September 2013. The CDR EG decided to allow the Respondent to submit a concrete proposal for revival. The Respondent had submitted a Revival Proposal on 15th July 2014, but the same was rejected by the Consortium of Lenders by concluding that the lenders are not satisfied about the viability of the Revival Proposal.

3. The account of the Respondent stood exited from the CDR package on 31st January 2015, in view of the failure of the CDR package due to defaults committed by the Respondent. While so, the Appellant Bank issued notice dated 20th May 2015 under Section 13(2) of the SARFAESI Act. The Respondent challenged the action of the Appellant against initiation of action under the SARFAESI by filing S.A. No.552 of 2015 before the DRT. The Appellant also filed O.A. No.417 of 2016 before the DRT, Hyderabad and the said matter is pending.

4. It is submitted that at the Joint Lenders Meeting held on 22nd September 2017, the MD of the Respondent had participated and made a proposal for One Time Settlement (for short '**OTS**') admitting the debts and defaults. The Learned Counsel submitted that having accepted the debt and default, the Respondent acknowledged the debt. Even the Respondent in a

representation to the lenders dated 06th April 2018 admitted the debts and the default and sought for an OTS.

5. The Learned Counsel submitted the Hon'ble Adjudicating Authority not considered the fact of acknowledging the debt and default by the Respondent and rejected the Application filed by them under Section 7 of I&B Code seeking initiation of Corporate Insolvency Resolution Process (for short '**CIRP**'). Further, the Learned Counsel for the Appellant submitted that the, only ground taken by the Learned Adjudicating Authority is that the Application is barred by limitation by taking into consideration the date of declaring the NPA as date of default by following the judgments of Hon'ble Supreme Court of India in **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates**. However, Per contra the Learned Counsel relied upon various judgements, in support of his case.

6. In view of the submissions made the Learned Counsel prayed the Bench to allow the Appeal by setting aside the impugned Order dated 27th March 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench.

7. The Learned Counsel appearing for the Respondent filed their Counter Affidavit to this Appeal and submitted that the Hon'ble Adjudicating Authority rightly rejected the Application filed by the Appellant herein, under Section 7 of the I&B Code. He is submitted that in Form-I filed by the Appellant before the Hon'ble NCLT, the debt of default clearly shown as 30th April 2013 and the Application under Section 7 of the I&B Code filed before the Adjudicating

Authority on 12th September 2018, therefore, the Application is barred by limitation. In view of the judgment of the Hon'ble Supreme Court in re-B.K. Educational Services Pvt. Ltd.

8. The Learned Counsel for the Respondent submitted that case of the Appellant, is that since the Respondent Company had acknowledged its debt to the Appellant and the period of limitation will get extended beyond 30th April 2013. It is submitted that the said stand of the Appellant, is self-claimed and the Appellants have not filed any proof, showing that the Respondent had given acknowledgment in writing to the Appellant. The only stand taken by the Appellant, is that since the Respondent admitted the debt, therefore, Appellant's contended that period of limitation automatically get extended. It is admitted fact that there was a Master Restructuring Agreement between the Appellant and the Consortium of Lenders, however, even as per the Appellants own admission, the Respondent Company exited out of the Master Restructuring Agreement (MRA) on 31st January 2015. Thus, even for the sake of arguments, if the period of limitation, is reckoned from 26th September 2013 i.e. the date of MRA or even from 31st January 2015, when the Respondent stood exited, the Application filed by the Appellant before the Hon'ble NCLT on 12th September 2018, is still barred by limitation. In view of the submissions made the Learned Counsel prayed this Bench to dismiss the Appeal as barred by Limitation.

9. Heard, the Learned Counsel appearing for the respective parties and perused the pleadings, documents and citations relied upon by the parties.

10. The Learned Adjudicating Authority has rejected the Application by passing a detailed and well-reasoned order. At para 22 of the Impugned Order, page 42 of the Appeal paper book, the Learned Adjudicating Authority has observed as under:

“22. In the present case the account was declared as NPA on 30.04.2013, whereas the present petition under section 7 of the I&B Code was filed on 12.09.2018, which was filed beyond three years. As such the present application is liable to be rejected.”

11. The Learned Adjudicating Authority rightly relied upon the judgment of the Hon’ble Supreme Court in **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates** reported in **2018 SCC OnLine SC 1921** held that the limitation starts from the date of default i.e. when the account was declared NPA. We have perused Form-I annexed at Annexure A-10 page 244 of Appeal paper book filed under sub-rule (1) of Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Part IV of the form, the Appellant had given the particulars of the Financial Debts, the total disbursed amount and the date of disbursement. Part-IV para 2 at Page 247 against column, the date on which the default occurred, it shows that the accounts of unit were classified NPA w.e.f. 30th April 2013 due to failed restructuring as per the provisions of classification of IRAC issued by Reserve Bank of India.

12. Therefore, it is amply clear that the date of default is 30th April 2013 and the Application filed before the Learned Adjudicating Authority under Section 7 of the I&B Code on 12th September 2018 which is beyond three

years and we agree with the finding(s) given by the Learned Adjudicating Authority, that the Application is barred by limitation. Further, the Learned Adjudicating Authority relied upon the judgment of this Hon'ble Tribunal in the matter of C. Shivakumar Reddy Vs. Dena Bank dated 18th December 2019 passed in Company Appeal (AT)(Ins.) No. 407 of 2019 at para 11 held as under:

“Admittedly, the ‘Corporate Debtor’ the defaulted in making payments on 20th September, 2013 and the Dena Bank declared the account as NPA on 31st December, 2013. Therefore, we hold that the application filed under Section 7 of the I&B Code by the Bank is barred by limitation.”

13. We are of the opinion that the Application filed by the Appellant, is hit by Article 137 of the Limitation Act, 1963, since for filing the Application, the period of limitation is three years. Taking into account and in following the judgment of the Hon'ble Supreme Court in re-B.K. Educational Services Pvt. Ltd. the date of NPA is the date of default. In the present case as stated above, the date of default as mentioned by the Appellant in Form-I is 30th April 2013 and the Application filed by them on 12th September 2018 is beyond three years.

14. However, the Learned Counsel for the Appellant contended that in view of acknowledgement of the Respondent, Section 18 of the Limitation Act, 1963 applies. It is admitted fact that there was a Master Restructuring Agreement (MRA) dated 26th September 2013 and the Learned Counsel for the Appellant relied upon para 2.1 in Article 2 of the MRA at page 55 of the Appeal paper book wherein, it is stated that “Acknowledgement of Indebtedness”. However,

it is an admitted fact that the Respondent exited from the MRA on 31st January 2015. Therefore, the Appellant cannot rely upon the acknowledgement in the Master Restructuring Agreement. Even otherwise, taking into consideration the Master Restructuring Agreement it is well beyond three years, therefore, the Appellant cannot take a stand with regard to the acknowledgement. Further even taking into consideration, the OTS proposal given by the Respondent dated 19th June 2015 as contended by the Learned Counsel for the Appellant that at page 147 of the Appeal paper book. It is stated as under “Proposing for One Time Settlement with banks with a payment in 6 quarters”. The Learned Counsel for the Appellant strongly relied upon, the above statement of the Respondent, that since the Respondent had given a One Time Settlement Proposal on 19th June 2015. Therefore, it is a clear acknowledgement by the Respondent regarding debt. We have gone through the said documents annexed as A-6 at page 143 with the heading as viz:- “Note for the JLM to be held on 19.06.2015 at State Bank of India, SAMB, Khairatabad”. From the perusal of the document, it is clear that at page 147 of the Note for the JLM, it is stated as corrective action plan at Bullet Point No.5 from the top. There is a mention that proposing for One Time Settlement to the Banks with a payment in six quarters. However, even the said document taken into consideration as an acknowledgement, however it is dated 19th June 2015 and the Appellant filed an Application on 19th September 2018 which is beyond period of three years and it is clearly hit by Article 137 of the Limitation Act. Further, the Learned Counsel for the Appellant relied upon judgment of this Hon’ble Tribunal passed in CA (AT)(Ins.) No. 28 of 2019 dated 08th November, 2019. This Tribunal held that

“there is a clear acknowledgement of the outstanding debt in writing and held that the Corporate Debtor cannot wriggle out of the liability so acknowledged”.

15. While so in the present case, there is no specific acknowledgement in writing admitting the debt. Therefore, facts of the said judgment, is not applicable to the facts of the present case. The Learned Counsel for the Appellant also relied upon the judgments of this Tribunal passed in CA (AT)(Ins.) No.1003 of 2019 dated 18th June 2020. Para 23 of the judgment, this Hon’ble Tribunal held as under;

..

“23. Admittedly, in this case date of default is shown as 12th May 2015. As per Article 137 of Limitation Act, the limitation period of three years was available to the applicant. But before expiration of limitation period on 03rd March 2018, the Corporate Debtor submitted an acknowledgment of debt in writing and promise to clear the dues at the earliest possible. In addition to this, the Corporate Debtor had also submitted OTS proposal which was later on accepted by the Bank. The Respondent bank has accepted that account of the Applicant companies classified the Bank approved NPA on 31st March 2015 and OTS submitted by the Corporate Debtor for all the three companies on 27th December 2018. Thus, it is clear that a fresh period of limitation started after the acknowledgement of the debt by the Corporate Debtor and the Petition was filed within the extended period of limitation on account of Section 18 of the Limitation Act. Therefore, it is a Petition is not time-barred.”

16. In this judgment also it is held that as per Article 137 of Limitation Act, 1963 the limitation period of three years was available to the Applicant.

However, it was held that before expiration of limitation period the Corporate Debtor submitted an acknowledgement of debt in writing and promise to clear the dues at the earliest possible. In this judgment also there was a clear acknowledgement in writing by the Corporate Debtor, therefore, the said judgment is also not helpful to the Appellant. In view of the distinct facts of the present case.

17. In view of the above, we do not find any infirmity in the Order passed by the Learned Adjudicating Authority and no interference is called for. Accordingly, the Appeal is dismissed as devoid of merits. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

NEW DELHI
05th MARCH, 2021

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