

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1118 of 2020

[Arising out of Order dated 20th November, 2020 passed by the Adjudicating Authority, National Company Law Tribunal, Kochi Bench, Kochi in IBA/04/KOB/2020]

IN THE MATTER OF:

Mr. Thomas George

Neelampilalil House,
Ayani, Nada,
Vijaya Road, Maradu,
Ernakulam, Kerla - 682304

...Appellant.

Versus

1. Union Bank of India

(Erstwhile Corporation Bank)
Having its Central Office at:
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai-400041
Having Regional Office at:
Thukalakkat Building,
Thammanam Road,
Palarivattom,
Kochi-682025 and Branch at Edapally
cb0893corpbank.co.in

...Respondent No. 1

2. M/s. Mathstraman Manufacturers and Traders Pvt. Ltd.

Through Mr. K. Easwara Pillai,
(Interim Resolution Professional)
[IBBI/IPA-001/IP-P00448/2017-18/10791]
Vith Floor Amrita Ttrade Towers,
Pallimuku, Kochi-682016
E-mail: keaswaran@gmail.com

...Respondent No. 2.

Present:**For Appellant: Mr. Arvind Kr. Jadon, Advocate.****For Respondent: Ms. Ekta Choudhary, Caveator, R-1.****ORAL JUDGMENT
(Virtual Mode)**

05.04.2021 This Appeal has been filed by the Appellant-Mr. Thomas George who is director of the suspended Board of the Corporate Debtor M/s. Mathstraman Manufacturers and Traders Pvt. Ltd. against the Impugned Order dated 20th November, 2020 passed by the Adjudicating Authority, National Company Law Tribunal, Kochi Bench, Kochi (Annexure A Page 46). The Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) was filed by the Union Bank of India, (Erstwhile Corporation Bank which merged with it) against the Corporate Debtor. The Application came to be admitted on 20th November, 2020 after hearing the parties. Thus, the present Appeal.

2. In the Appeal, The Appellant claims that the debt due and claimed before the Adjudicating Authority by the Bank was time-barred and thus the Application should not have been admitted.

3. The Learned Counsel for the Appellant has argued that the Application under Section 7 (Annexure B – Page 66) at Page 92 shows that the Account of the Corporate Debtor became Non Performing Assets (N.P.A in short) on 31st December, 2010 and the Application under Section 7 came to be filed on 06th January, 2020 and thus the Application was time-barred in view of the Article

137 of the Limitation Act, 1963. The Learned Counsel submits that Impugned Order with regard to the Limitation while dealing with Point No. ii referred to the SARFAESI Proceedings which was initiated and demand notice which was issued by the Financial Creditor. The Adjudicating Authority referred to the proceedings before Debt Recovery Tribunal (DRT in short) and referring to the Judgment in the matter of “Mobilox Innovations Pvt .Ltd. Vs. Kirusa Software Pvt. Ltd.” Civil Appeal No. 9405 of 2017 held the Application under Section 7 to be within limitation.

4. The Learned Counsel for the Respondent Bank relied on Judgment in the matter of “*Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd And Anr.*” and stated that the Hon’ble Supreme Court in that matter has observed that even the SARFAESI Proceedings can be considered while calculating period of limitation by keeping in view provisions of Section 14 of the Limitation Act, 1963. The Learned Counsel submits that the period spent pursuing remedies before SARFAESI and DRT would also be ground for calculating the delay if any which has occurred in approaching the Adjudicating Authority.

Apart from above, the Learned Counsel for the Bank referred to Document (Annexure R-5 of the Reply (Page 102 at Page 110) to state that the Financial Statement for 2014-2015 was filed before the Adjudicating Authority. The Learned Counsel stated that such balance sheet was approved and debt admitted by the Board of Directors on 18th January, 2017 as can be seen from the Page 121. She submits that the Balance Sheet was also filed with Registrar *Company Appeal (AT) (Ins.) No. 1118 of 2020*

of Companies (RoC in short) along with Form AOC-4 (Page 256) of the Reply. The Learned Counsel states that the Document at Page 121 shows the debt being acknowledged by the Directors on 18th January, 2017.

5. The Learned Counsel has then referred to her Reply (Diary No. 25462) Paragraph 4 and documents at Annexure R-23 (Page 215), the OTS Proposal dated 05th January, 2012, Annexure R-24 (Page 221) the request for settlement dated 10th July, 2014 and Annexure R-25 (Page 227) the settlement for request dated 09th August, 2014 at Page 230 to submit that on these various dates, the Corporate Debtor had moved the then Corporation Bank with these proposals which were in the nature of acknowledgment as required under Section 18 of the Limitation Act and these documents read with document at Page 121 dated 18th January, 2017 shows that the Application filed on 06th January, 2020 was within limitation.

6. The Learned Counsel for the Appellant submits that these OTS Proposals and letters were not filed before the Adjudicating Authority. When asked regarding these OTS Proposals and letters, the Learned Counsel for the Appellant refers to Rejoinder (Diary No. 25572) Paragraphs 4-5 to submit that Appellant has denied the contents in Paragraph 4-5 of the Reply filed by the Bank as false, baseless, vague and unfounded. Although, Learned Counsel for Appellant submits that these documents were not filed before the Adjudicating Authority but in the Rejoinder there is no claim made by the Appellant denying the authenticity of these OTS Proposals and settlement offers.

7. In Judgment in the matter of “Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd And Anr.” (Civil Appeal No. 9198 of 2019) the Hon’ble Supreme Court has in Judgment dated 22.03.2021 observed in Paragraphs 63,64,66,67,68,88 and 92 as under:

“63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.

64. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

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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.

67. As observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible.

68. We see no reason why Section 14 or 18 of the Limitation Act, 1963 should not apply to proceeding under Section 7 or Section 9 of the IBC. Of course, Section 18 of the Limitation Act is not attracted in this case, since the impugned order of the NCLAT does not proceed on the basis of any acknowledgment.

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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.

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*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”.

The documents on record referred by Learned Counsel for Bank show series of Acknowledgments of debts by Corporate Debtor since date of NPA which extend period of limitation if Section 18 of Limitation Act is considered. Considering above Judgment of the Hon'ble Supreme Court, OTS Proposals and Settlement requests and balance sheet referred, we do not find that the Application under Section 7 could be said to be barred by Limitation.

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

**[Justice A.I.S. Cheema]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

Basant B./md.