

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 972 of 2020

In the matter of:

State Bank of India

....Appellant

Vs.

Krishidhan Seeds Pvt. Ltd.

....Respondent

Present:

Appellant: Mr. Arun Kathpalia, Senior Advocate with Ms. Pallavi Kumar, Mr. Varghese Thomas, Ms. Fatema Kachwalla and Ms. Pallavi Kumar, Advocates.

ORDER

(Through Virtual Mode)

17.11.2020: Appellant- 'State Bank of India' (Financial Creditor) has preferred instant appeal against impugned order dated 16.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Indore Bench at Ahmedabad, Court-1, whereby and whereunder, its application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code " for short) has been rejected for being hit by limitation. The Appellant assails the impugned order primarily on the ground of there being an acknowledgment on the part of the Corporate Debtor in the form of revival letter extending the period of limitation which is said to have been overlooked by the Adjudicating Authority while passing the impugned order.

2. Shri Arun Kathpalia, Senior Advocate representing the Appellant has referred to Annexure A-14 to appeal paper book (page 687) which is a One Time Settlement proposal stated to be emanating from the Corporate Debtor . It is

dated 13th June, 2015. In terms of this proposal, the Corporate Debtor, while expressing its inability to revive the company, proposed to raise funds from various investors for taking over of its business subject to settlement of its liabilities towards the lenders/ financial creditors. This, according to Shri Arun Kathpalia, Senior Advocate, amounts to acknowledgment of liability. He also referred to Annexure A-16 at page 706 of the appeal paper book in terms whereof the Corporate Debtor reiterated its One Time Settlement proposal. Banking on these communications Shri Arun Kathpalia, Senior Advocate submits that the time for limitation would begin to run from 6th November, 2015 when OTS proposal was reiterated and the application under Section 7 of the 'I&B Code' having been filed by the Appellant before the Adjudicating Authority on 19.09.2018 would be within the prescribed period of three years. He also referred to provision of Section 238A of the 'I&B Code' extending the provisions of the Limitation Act, 1963 to proceedings before the Adjudicating Authority and also relied upon the dictum of the Hon'ble Apex Court in various judgments including ***"B.K. Educational Services Private Limited Vs. Parag Gupta and Associates- (2019) 11 Supreme Court Cases 633"***.

3. After hearing learned counsel for the Appellant and having waded through the record, we notice that the application filed by the Appellant under Section 7 of the 'I&B Code' before the Adjudicating Authority on 19.09.2018 was dismissed on 16.09.2020 in terms of the impugned order on the ground that the same was barred by limitation. It is well settled by now that the provisions of the Limitation Act, 1963 were applicable to proceedings under 'I&B Code' from its very inception and the provisions of Section 238A

introduced subsequently are merely clarificatory in nature. The Hon'ble Apex Court has, in a catena of authorities held that the applications under Sections 7 and 9 of the 'I&B Code' not being a suit are governed under the residuary provision engrafted in Article 137 of the Limitation Act which prescribes a period of three years as limitation. In **"B.K. Educational Services Private Limited"** (Supra), it was held that the limitation period for application under Section 7 of the 'I&B Code' is three years as provided by Article 137 of the Limitation Act which commences from the date of default and is extendable only by application of Section 5 of the Limitation Act, if a case for condonation of delay is made out. In **"Jignesh Shah & Anr. Vs. Union of India & Anr. (2019) 10 Supreme Court Cases 750"**, the Hon'ble Apex Court held that the winding up petition filed beyond three years from the date of default would be barred by limitation. In **"Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd & Anr.-(2019) 10 SCC 572"**, where the date of default was stated in the application under Section 7 to be the date of NPA i.e. 21st July, 2011, the Hon'ble Apex Court held that limitation began to run from the date of NPA and hence application filed on 3rd October, 2017 was barred by limitation.

4. Adverting to the facts of this case, be it seen that in the application to Adjudicating Authority filed in prescribed format the date of default is recorded as 10th June, 2014 whereas the application under Section 7 came to filed on 19th September, 2018 i.e. more than four years after the default occurred. The time, for purposes of reckoning limitation in terms of Article 137 of the Limitation Act, would commence from the date of default i.e. 10th June, 2014

which would neither be shifted nor extended once a default has occurred. On the basis of such default the Financial Creditor, in the instant case, has approached Debts Recovery Tribunal on 20th October, 2015. In the given circumstances, it cannot lie in the mouth of the Appellant that the date of default gets extended on account of acknowledgment made in the OTS proposal emanating from the Corporate Debtor. There cannot be two defaults in respect of the same debt, one for the purpose of claim filed before the Debts Recovery Tribunal and the other for purposes of 'I&B Code' based on OTS proposal, more so when in application filed before the Adjudicating Authority in prescribed format date of default has unambiguously been reflected as 10th June, 2014. The application having been filed before the Adjudicating Authority beyond three years of occurrence of default is hopelessly time barred and it is not permissible for Appellant to take recourse to Section 18 of the Limitation Act for triggering Corporate Insolvency Resolution Process under Section 7 of the 'I&B Code' against the Corporate Debtor.

We find no merit in this appeal. It is accordingly dismissed in limine. No costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

AR/g