

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 407 of 2021

IN THE MATTER OF:

Vivekanand Jha

(Suspended Management
of Telstar Industries Pvt. Ltd.)
Having its registered officer at
Plot No. 503, Road No. 4,
GIDC, Sachin, Surat Gujarat)

...Appellant.

Versus

1. Punjab National Bank

Surat Main Branch, Surat
Having its Registered Head Office at
Plot No. 4, Dwarka,
Sector 10, New Delhi-110075

2. Mr. Jigar Tarunkumar Bhatt

Resolution Professional of
M/s. Telstar Industries Pvt. Ltd.
B/101, Arvind Citadel,
Behind BSNL Office, Navrangpura,
Ahmedabad – 380009,
Gujarat

...Respondents.

**For Appellant: Mr. Adhitya Srinivasan, Mr. Rahul Patel,
Advocates.**

**For Respondent: Mr. Jigar Tarunkumar Bhatt (R-2, RP)
Mr. Hashmat Nabi, Advocate.**

ORDER
(Virtual Mode)

14.06.2021 Heard.

2. This Appeal has been filed by the Appellant who was on suspended management of the Corporate Debtor-Mithilanchal Industries Pvt. Ltd. The Appeal has been filed against impugned Order dated 20.04.2021 passed by Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court No. I) in C.P. (IB) No. 179/7/NCLT/AHM/2019. By the said Impugned Order, the Adjudicating Authority admitted Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) filed by the Respondent-

Punjab National Bank (Hereinafter referred as Bank) against the Corporate Debtor-Telstar Industries Pvt. Ltd. Punjab National Bank claimed before the Adjudicating Authority that it had approved various financial facilities and disbursed Loan in the form of Cash/ Credit and Over Draft Facilities dated 3rd November, 2010 but the Corporate Debtor did not pay the instalments as per the Agreement. The Bank had to resort to proceedings before Debts Recovery Tribunal (DRT in short). The Bank claimed that Notice under Section 13(2) of SARFAESI Act, 2002 was issued to the Corporate Debtor when the Loan Account became Non-Performing Assets. The Bank claimed that the date of default was 27th December, 2014.

3. Before the Adjudicating Authority, the Bank claimed outstanding dues of Rs. 16,15,39,662.27 Paise. The Adjudicating Authority heard the defence raised by the Corporate Debtor and after considering the rival assertions admitted the Application under Section 7 of IBC by the Impugned Order dated 20th April, 2021.

4. Thus, the present Appeal.

5. The Learned Counsel for the Appellant has submitted that the Application under Section 7 of IBC could not have been admitted as the date of default mentioned in Part-IV of the Application under Section 7 of IBC is mentioned as "27/12/2014". It is stated that in SARFAESI Notice NPA date is mentioned as 29.12.2014. It is argued that after the date of 27.12.2014, the Corporate Debtor and the Bank had entered into One Time Settlement (OTS in short) as can be seen at Annexure A-6, Page 71. The Learned Counsel submits that this OTS was entered into between the Corporate Debtor and the Bank on 29. 03.2016 and in terms of this OTS, the parties had agreed to

proceed further with the Loan and the argument is that date of default if any could be only after the acceptance of this OTS which is dated 29th March, 2016 and could not be 27th December, 2014 which is a prior date. Thus, the Learned Counsel claimed that Application deserved to be rejected as date of default stated in Format of Section 7 application was wrong.

6. Against this the Learned Counsel for the Bank has argued and supported the reasoning recorded by the Adjudicating Authority in the Impugned Order which has *inter alia* relied on Judgment in the matter of Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. (Civil Appeal No. 9198 of 2019) to find that the Application was within Limitation.

7. We have heard Learned Counsel for both-sides. The Adjudicating Authority in the impugned Order Paragraphs 12 to 17 observed as under:

*“12. Learned Counsel for the Corporate Debtor argued that the debt is time barre. According to him, as per the Bank’s own statement, the date of default is 27.12.2014. This application is filed on 14.02.2019. It is filed beyond three (03) years from the date of default and it is time barred. He submitted that as per various rulings of the Hon’ble Supreme Court, right from the rulings of **B.K. Education Society and Others** up to the latest case of the Hon’ble Apex Court held that a date of default does not shift and if the proceedings under the I & B Code is not filed within three years form the date of default, it cannot be entertained as barred by limitation as per the Article 137 of the Limitation Act. He further submitted that Judgment of Hon’ble Apex Court in the case of **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.** is not applicable in this proceeding on facts.*

13. As against this, the Learned Counsel for the Financial Creditor submitted that even after date of default, i.e. 27.12.2014, the Corporate Debtor had approached the Bank each year and has been giving one-time settlement (OTS) proposals thereby admitting the debt. Such OTS proposal lastly

was given on 29.03.2016. This application is filed within the three years from the date of last OTS proposal given by the Corporate Debtor. Hence, this proceeding is within limitation in view of Section 18 of the Law of Limitation.

14. Learned Counsel further submitted that Hon'ble Apex Court, in case of **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr.** has held that if a bank had filed proceeding under SARFAESI Act in debts Recovery Tribunal and then files proceeding under Section 7 in the National Company Law Tribunal, then the period during which the Bank's proceedings under SARFAESI Act was pending, has to be excluded while reckoning the period of limitation as per Article 14 of Law of Limitation. In this case, if that period is excluded, then this application cannot be said to be a time barred. Moreover, Hon'ble NCLAT in case of **Kishanlal Likhmichand Bothra Vs. Canara Bank**, Civil Appeal No. 704 of 2020 has held that: "Fresh period of limitation from the date of which acknowledgement is said shall start as per Section 18 of the Limitation Act."

15. We considered submissions of Learned Counsels for both the parties. We note that whether the period of limitation gets extended upon acknowledgement of debt or not is the point completely been answered by the Hon'ble NCLAT in case of **Kishanlal Likhmichand Bothra Vs. Cananra Bank**. It has been held by Hon'ble NCLAT that:

"13. Considering above judgment of the Hon'ble Supreme Court of India, we have no difficulty to state that Section 18 of the Limitation Act is applicable to proceedings under IBC and that if there is acknowledgement of debt in the balance sheets or the OTS Proposal, the period of limitation would get extended if the acknowledgment is made before the period of limitation expires....."

16. Keeping before our sight the above order of Hon'ble NCLAT, if we consider the facts in this case, we find that the date of default is 27.12.2014 thereafter by way of OTS firstly dated 09.11.2015 and thereafter on 29.03.2016, the Corporate Debtor acknowledged the date (before expiry of period of three years from the date of default). This application is filed on 14.02.2019, i.e. three years from the last date of acknowledgement of the debt. Hence, we hold that it is filed well within the period of limitation.

17. The Financial Creditor established that an amount of debt of Rs. 8,39,68,045=92 is due and payable by the Corporate Debtor and the Corporate Debtor has committed default in paying the same. This application is defect filed within the limitation. Hence, we admit the corporate Debtor in the Corporate Insolvency Resolution Process.”

8. For such reasons, the Adjudicating Authority found that there was debt due and default and the Application filed by the Bank was complete and that the same deserves to be admitted.

9. It can be seen that there was an earlier Offer of settlement dated 09th November, 2015 and there was yet another offer by way of OTS on 29th March, 2016. After the grant of Loan, the Corporate Debtor made default in payment of instalments. The Bank relied on the OTS offer dated 09th November, 2015 and OTS dated 29th January, 2016 as acknowledgments and thus claimed before Adjudicating Authority that this Application under Section 7 of IBC filed on 12th February, 2019 was in Limitation.

10. Considering the record, the Loan Account of the Corporate Debtor was in default on 27th December, 2014 and if on 29th March, 2016, the Corporate Debtor entered into the OTS as at Annexure A-6 that is in the context of the Debt already due and in default. Date of Default will not shift. The OTS is only an Acknowledgment of debt due and arrangement how the debt in default would be paid. Annexure A-6 has one condition of “Rs. 60 Lakh to be deposited immediately”. On being asked, Learned Counsel for Appellant states that, not Rs. 60 Lakhs, but part of it was paid.

11. We are not accepting the submissions made that Date of Default would have to shift to period post OTS dated 29.03.2016. We keep in view Judgment of Hon’ble Supreme Court of India in “Sesh Nath Singh & Anr. Vs. Baidyabati

Sheoraphuli Co-operative Bank Ltd. & Anr.” and find that the claim of Appellant of debt to be barred by Limitation cannot be accepted.

12. We do not find any substance in the Appeal. We agree with the Adjudicating Authority with regard to finding that the Application was within Limitation.

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

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

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

Basant B./gc.