NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPLE BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 548 of 2021

[Arising out of Order dated 10th March, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) in (IB) 95/(ND)/2021]

IN THE MATTER OF:

R N Khemka Enterprises Private Limited & Anr.
Room No PVT No-9 Plot No-51
KH.No.355/3 Ground Floor, G.T.K. Road
BLK-C Mehendru Enclave, Delhi-110033.

Satsai Finlease Private Limited,
109,Wing-1, Hans Bhawan, 1,
Bahadur Shah Zafar Marg, New Delhi – 110002. **....Appellant**

Versus

Persuasive Realcon Private Limited
Regd office at:
11-A, Hans Vihar Apartments,
Sector-13, Rohini, Delhi- 110095. **....Respondent**

Present:

For Appellant:	**Mr. Manish Jain, Mr. Rakesh Wadhwa & Mr. Chirag Jain, Advocates.**
For Respondent:	**Mr. Ayush B. Paranjpe & Mr. Kishore Gajaria, Advocates for Respondent.**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Aggrieved by the Impugned Order dated 10.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) in IB-95/(ND)/2021, the Appellants who are the ‘Financial Creditors’ preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code').

2. By the Impugned Order, the Adjudicating Authority has dismissed the Application preferred by the 'Financial Creditors' under Section 7 of the Code, on the ground that it is 'barred by Limitation'.

3. Learned Counsel for the Appellant submitted that the Second Appellant M/s. Satsai Finlease Private Limited had agreed to sanction a loan amount of Rs. 1.75 Cr. on 03.10.2014 on terms and conditions reflected in the Loan Agreement. On 22.10.2014, the First Appellant/M/s. R N Khemka Enterprises Private Limited had agreed to sanction a loan amount of Rs. 2 Cr. On 10.10.2014, the Second Appellant disbursed the first tranche of the unsecured loan amounting to Rs. 30 lakhs vide RTGS to the Respondent/ 'Corporate Debtor' Company. The First Appellant disbursed the tranche of unsecured loan of Rs. 13,00,000/- on 29.10.2014 to the 'Corporate Debtor'. It is submitted by the Learned Counsel that the last tranche was disbursed by the First Appellant vide RTGS on 28.03.2017 for an amount of Rs. 85,00,000/-. On 29.03.2017 the Second Appellant had disbursed the last tranche for an amount of Rs. 60,00,000/-. It is submitted that the 'Corporate Debtor' Company defaulted on the terms of the Loan Agreement and reminders were sent on 03.03.2020 and on 27.01.2021. Thereafter the Section 7 Application was filed in the month of February, 2021.

4. Vide order dated 17.02.2021 the Adjudicating Authority had directed the Appellants to file certain documents in the form of a supplementary affidavit and thereafter on 01.03.2021 the matter was reserved for Orders.

5. The Learned Counsel for the Appellant strenuously contended that despite there being an acknowledgment of debt under Section 18 of the Limitation Act, 1963 as the debt was reflected in the Balance Sheets and in the annual returns filed by the Company, the Adjudicating Authority has not considered the same. Learned Counsel drew our attention to the latest audited Balance Sheet of the 'Corporate Debtor' Company for the Financial Year 2019.

6. The Respondent was absent before the Adjudicating Authority despite having been served Notice. Learned Counsel submitted that the Adjudicating Authority has wrongly relied on the Judgement in ***V. Padmakumar vs. Stressed Assets Stabilisation Fund***[1] in Company Appeal (AT) (Ins.) No. 57 of 2020 decided by this Tribunal on 12.03.2020 and the same was set aside by the Hon'ble Supreme Court.

7. It is the case of the Respondent that the Adjudicating Authority has rightly dismissed the Application as 'barred by Limitation' as the entries in the ledgers and the TDS Certificates do not create or enhance the period of Limitation in favour of the Appellant.

8. It is denied that there was any default by the 'Corporate Debtor'. It is submitted that the Appellant had waited a year to issue a recall Notice on

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[1] **2020 SCC OnLine NCLAT 417**

27.01.2021 despite receiving no repayment from the Respondent since 28.04.2017.

9. The Respondent Counsel submitted that on the very same day of receipt of the recall Notice i.e., on 27.01.2021, the Respondent had replied stating that the said amount had already been re-paid in parts over a period of time and that no amount remains payable any more.

10. Learned Counsel for the Respondent placed reliance on the Judgement of Hon'ble Delhi High Court (also referred to in the Impugned Order) in the matter of ***Utility Power Tech Limited Vs. Amit Traders***, RFA No. 551/2015 decided on 15.05.2018 wherein it is held as follows:

> *"22. In view of the aforesaid findings, agreeing with the decisions aforesaid, at the cost of repetition, we hold:*
>
> *As the filing of Balance Sheet/ Annual Return being mandatory under Section 92/4) of the Companies Act, 2013, falling of which attracts penal action under Section 92/5) & (6), the Balance Sheet/ Annual Return of the 'Corporate Debtor' cannot be treated to be an acknowledgment under Section 18 of the Limitation Act, 1963.*
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> *It is the argument is accepted that the Balance Sheet/ Annual Return of the 'Corporate Debtor' amounts to acknowledgment under Section 18 of the Limitation Act, 1963 then in such case, it is to be held that no Limitation would be applicable because every year, it is mandatory for the 'Corporate Debtor' to file Balance Sheet/ Annual Return, which is not the law."*
>
> *19. In the light of the aforesaid decision, we consider the submission of the applicant and we are of the considered view that the amount shown in the ledger account of the applicant cannot be treated as acknowledgement of debt. Since, the applicant in its part-IV of the Application has admitted that the last*

> *payment was made on 28.03.2017 and he also received a part payment on 28.04.2017 whereas the present Application has been filed on 04.02.2021, that is after a period of three years when the right to apply accrues in view of Article 137 of the Limitation Act. Hence, we are of the considered view that the Application is 'barred by Limitation'."*

11. It is submitted by the Learned Counsel for the Respondent that even if for arguments sake the Respondent had failed to repay the loan amount, since the first part payment was made on 28.04.2017, the fact that the recall Notice was sent on 27.01.2021 i.e., after 3 years and 9 months, clearly shows that the Petition was 'barred by Limitation'.

Assessment:

12. The brief point which falls for consideration in this Appeal is whether the Adjudicating Authority was justified in dismissing the Application filed under Section 7 of the Code, as 'barred by Limitation'.

13. At the outset, it is observed that the Adjudicating Authority had placed reliance on the Judgement of this Tribunal in ***V. Padmakumar vs. Stressed Assets Stabilisation Fund (referred supra)*** passed in ***Company Appeal (AT) (Ins.) No. 57 of 2020*** which was set aside by the Hon'ble Supreme Court in ***'Asset Reconstruction Company (India) Limited' Vs. 'Bishal Jaiswal & Anr.', 2021 SCC OnLine SC 321.***

14. Keeping in view that there is no denial by the Counsel for the Respondent that the amount was reflected in the Balance Sheets coupled with the fact that the Appellant had filed the Balance Sheet for the Financial Year 2019 which reflects these amounts under unsecured loans, this Tribunal is of the considered view that the acknowledgement in the Balance Sheet squarely falls under 'acknowledgment of debt' as provided for under Section 18 of the Limitation Act, 1963.

15. The Hon'ble Supreme Court in ***Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr.*** has observed as follows:

> *"114. In Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal wherein this Court speaking through Nariman, J. relied, inter alia, on Sesh Nath Singh and Laxmi Pat Surana and held that the question of applicability of Section 18 of the Limitation Act to proceedings under the IBC was no longer res integra.*
> ……………………………………………………………………
> *138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of Limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.*
>
> *139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of one-time settlement of a live claim, made within the period of Limitation, should not also be construed as an acknowledgment g to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave cited by Mr Shivshankar, this Court had no occasion to consider any proposal for one-time settlement. Be that as it may, the Balance Sheets and Financial Statements of the 'Corporate Debtor' for 2016-2017, as observed above, constitute acknowledgment of liability which extended the Limitation by three years, apart from the fact that a certificate of recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly*

> *admitted the Application by its order dated 21-3-2019.*
>
> *140. To sum up, in our considered opinion an Application under Section 7 IBC would not be 'barred by Limitation', on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the 'Corporate Debtor' as NPA, if there were an acknowledgment of the debt by the 'Corporate Debtor' before expiry of the period of Limitation of three years, in which case the period of Limitation would get extended by a further period of three years."*
>
> *(Emphasis Supplied)*

16. The Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India***[2] and in ***Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy***[3] has held that if the debt is reflected in the Balance Sheet/ Financial Statements of the 'Corporate Debtor' Company, it is to be construed as 'acknowledgment' under Section 18 of the Limitation Act, 1963.

17. At the cost of repetition, in the instant case it is an admitted fact that the Appellants had disbursed the last tranche of the loan on 28.03.2017 and on 29.03.2017 respectively and have filed the Section 7 Application in the month of February, 2021. However, the Balance Sheet of the FY 2019-20 reflects these amounts.

18. Therefore, we are of the considered view that the Section 7 Application is not 'barred by Limitation' and hence this Appeal is allowed and the Impugned Order is set aside.

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[2] **Civil Appeal No. 2734/2020**

[3] ***Civil Appeal No. 1650 of 2020***

19. We clarify that we have not expressed any view on the merits of the matter and have only addressed to the aspect of Limitation. The Respondent is at liberty to raise all issues regarding merits of the 'debt' and 'default' before the Adjudicating Authority.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

Principal Bench,
New Delhi
06th December, 2022

SA