National Company Law Appellate Tribunal, New Delhi

Principal Bench

COMPANY APPEAL (AT) (Insolvency) No. 08of 2021

(Arising out of Order dated 18.12.2020 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Court-2 in C.P. (I.B) No.380/NCLT/AHM/2019

IN THE MATTER OF:

KamleshGovindPansuriya
Shareholder & Director of
M/s. RaghukulCottex& Processing Pvt. Ltd.
(Company under CIRP Process)
Having his address at
Sardar Patel Nagar, Atkot Road,
B/h Ganga Bhuvan, Jasdan-360050.

.....Appellant
(Corporate Debtor)

Versus

1.Bank of India
Having its office address at
High School Road, Near ST Bus Stand
Villag: Atkot, Taluka :Jasdan,
District : Rajkot-360040.

.....Respondent-1
(Financial Creditor)

2. Shalabh Kumar Daga
Interim Resolution Professional
Reg. No. IBBI/IPA-001/
IP-P00071/2017-18/10157
Of M/s RaghukulCottex& Processing
Pvt. Ltd.
Having its Office address at:
405, Atlantis Enclave,
Opp. Maruti Row House,
Nr. SubhashChowkGurukul.
Ahmedabad-380052.

.....Respondent-2
(Financial Creditor)

Appellant:	**Mr. Keith Varghese, Advocate.**
Respondent:	**Mr. Aditya Kumar, for R-1.** **Mr. C. George Thomas, for R-2/ IRP.**

J U D G E M E N T

AnantBijay Singh (J)

1. The Instant Appeal bearing Company Appeal (AT) (Insolvency) No. 08 of 2021 filed on behalf of the Corporate Debtor M/s RaghukulCottex& Processing Pvt. Ltd. being aggrieved and dissatisfied by the Order dated 18.12.2020 by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Court-2 in C.P. (I.B) No. 380/NCLT/AHM/2019 whereby and where under the Learned Tribunal on an Application filed on behalf of the Respondent No. 1(Financial Creditor) under Section 7of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy Code (Application to the Adjudicating Authority) Rules, 2016 had passed the following orders. The Application under Section 7 of the IB Code, **was admitted** and further moratorium of sub-Section (2) and (3) and Section 14(1) of the IB Code was also declared and following orders have passed with following directions.

> *"(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-*
>
> *(i) The institution of suits or continuation of pending suits or proceeding against the Corporate Debtor including execution of any judgment, decree, or order in any Court of Law, Tribunal, Arbitration Panel or other Authority.*
>
> *(ii) Transferring, encumbering, alienating, or disposing of by the Corporate Debtor, any of its assets or any legal right or beneficial interest therein;*
>
> *(iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets*

and Enforcement of Security Interest Act, 2002 (54 of 2002);

(iv) The recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.

(2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(3) The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial section regulator.

(4) The order of moratorium shall have effect from the date of receipt of an authenticated copy of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be."

2. Further, the Adjudicating Authority have also appointed Mr. Shalabh Kumar Daga having Registration No. IBBI/IPA-001/ IP-P00071/2017-18/10157 to act as "Interim Resolution Professional" under Section 13(1)(b) of the IB Code.

3. This Appeal was filed by Appellant on 29.12.2020. The case of Appellant (Corporate Debtor) in short is as follows:-

(i) That the Appellant who is a director and a shareholder of M/s. RaghukulCottex& Processing Pvt. Ltd.

(ii) Corporate Debtor/ M/s. RaghukulCottex& Processing Pvt. Ltd. had availed credit facilities worth Rs. 14,85,00,000/- from Respondent No. 1/ Bank of India on 31.03.2014.

4. The Appellant (Corporate Debtor) wasfailed to pay the defaulted payment of installment in January 2016 and consequently the account was declared as Non-Performing Asset on 07.06.2016.

5. The Respondent No. 1 (Financial Creditor) through his Chief Manager Mr. Raj Kumar Gautam filed an application under Section 7 of 'I&B Code' read with Rule 4 of the Insolvency & Bankruptcy Code, National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Court-2 in C.P. (I.B) No. 380/NCLT/AHM/2019 whereby the Appellant appeared and filed his Reply Affidavit and after hearing the Adjudicating Authority National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Court-2 passed the Order dated 18.12.2020 as the Appeal.

6. **Submissions on behalf of the Appellant:**-

(i) Learned Counsel for the Appellant in his Written Submissions and also in his Additional Written Submission filed during the course of arguments submitted that the Respondent Bank has mentioned the date of default as 07.06.2016. Under Section 7 an Application was filed by Respondent Bank on 06.06.2019. Further, it was submitted that the date of default is not pari-material to the date of NPA declaration.

(ii) It is further submitted that the date of default is when default is occurred as per the IBC, 2019 and it was submitted in the instant case, the date of default ought to be 28.01.2016 which the bank has admitted in the DRT proceedings.

(iii) So, based upon these submissions it was submitted that the application filed by Respondent under Section 7 is barred by limitation.

(iv) It was further submitted by the Learned Counsel for the Appellant while referring to Volume-II of the Appeal Paper Book relevant at Page-266 which is shows that the acknowledgment signed by two of the Directors dated 19.11.2018, whereby they had acknowledged the debt. It was submitted that this document was not filed along with the main application.

(v) It was submitted that no sooner the Appellant was made aware of this document of acknowledgment on 01.10.2020 he prefers to lodged a police complaint which is at Page-271 of the Appeal Paper Book, Volume-IIfor forgery and purported acknowledgement of the debt under signature of the Directors therein.

(vi) The Appellant immediately on 01.10.2020 preferred a written police complaint at Page No. 271 of the Appeal Paper Book for forgery against the purported acknowledgment dated 20.11.2018 disputing his signatures of the Director therein.

(vii) Learned Counsel for the Appellant further submitted that the Respondent Bank did not file the purported acknowledgement dated 20.11.2018 marked at Page No. 264 of the Appeal Paper Book with its application under Section 7 of the IBC but these documents were filed at the belated stage of the argument before the Adjudicating Authority.

(viii) It was submitted by the Learned Counsel for the Appellant relying upon the Judgment of ***Hon'ble Supreme Court in "BabulalVardharjiGurjar Vs Veer GurjarAluminium Industries Private Limited" 2020 SCC OnLine SC 547 (Page 13)*** that under Section 18 of the Limitation Act is not applicable in the IBC proceedings and the purported acknowledgment dated 20.11.2018 cannot extend the limitation period.

(ix) So, based on these submissions Learned Counsel for the Appellant submitted that the Impugned Order cannot be sustained of the limitation and fit to be set aside the Appeal be allowed.

7. **Submissions on behalf of the Respondent No. 1**

(i) Learned Counsel for the Respondent No. 1 in his Reply Affidavit and also in his Additional Written Submissions filed during the course of the argument referred to Para-4 at Page-38 of the Appeal Paper Book, Volume- I filed under Section 7 of the IBC before the Adjudicating Authority, where date of default is mentioned on 07.06.2016 total outstanding amount payable was Rs. 23,07,58,224.09/- on 04.06.2019.

Total Outstanding amount payable as on 04.06.2019	Rs.23,07,58,224.09 (Rs. Twenty three Crore Seven Lacs Fifty Eight thousand Two hundred & Twenty four rupees & Nine Paise only)

The workings showing the amount claimed to be in default and its calculation in tabular form (together with the principal amounts, accrued interest and penal interest, as applicable) as on 04.06.2019 is annexed and marked as **Annexure-I/3**

The Statement of Accounts of the Corporate Debtor maintained by Bank of India is annexed and marked as **Annexure-I/4**

Date of Default:

07/06/2016

(ii) An Application under Section 7 was filed by Respondent No. 1 on 06.06.2019. So, it is within the Limitation as it is filed within the prescribed limitation period of three years as per Article 137 of the Limitation Act, 1963.

(iii) Learned Counsel for the Respondent No. 1 further submitted that while relying on the Judgment of the Hon'ble Supreme Court in the matter of ***"Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd." reported in (2019) 10 SCC 572***, wherein Hon'ble Supreme Court held the date of default is the date of NPA and this view has been further in

"***BabulalVardharjiGurjar Vs Veer GurjarAluminium Industries Private Limited" reported in (2019) 15 SCC 209.***

(iv) Learned Counsel for the Respondent No. 1 further referred to the Judgement of the Hon'ble Supreme Court in "***BishalJaiswalVs. Asset Reconstruction Company (India) Limited" reported in (2021) 224 CompCas 166***. Wherein the Hon'ble Supreme Court has held the provision of Section 18 of the Limitation Act is directed to the proceeding of the IBC.

(v) Learned Counsel for the Respondent referred to Annexure- A3 which is Reply Affidavit filed by the Learned Counsel for the Appellant before the Adjudicating Authority relevant is at Page – 65 of the Appeal Paper Book, wherein it was categorically stated in Para-4 stated that the account of Appellant was declared NPA by the Respondent No. 1 on 07.06.2016. Although, the date of default which stated by the Applicant bank on 07.06.2016 was denied.

(vi) It was submitted by the Learned Counsel for the Respondent No. 1 in the Judgements of the Hon'ble Supreme Court in "***BabulalVardharjiGurjar Vs Veer GurjarAluminium Industries Private Limited" reported in (2019) 15 SCC 209.***

> *"35. Apart from the above and even if it be assumed that the principles relating to acknowledgment as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the*

> *present case nor do they ensure to the benefit of Respondent No. 12 for the fundamental reason that in the application made before NCLT, Respondent No. 2 specifically stated the date of default as "8-7-2011 being the date of NPA". It remains indisputable that neither has any other date of default been stated in the application nor has any suggestion about any acknowledgment been made. As noticed, even in Part V of the application, Respondent 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part V of the application and even in residuary Point 8 therein, nothing was at all stated at any place about the so-called acknowledgment or any other date of default".*

(vii) In the instant case also the Learned Adjudicating Authority have considered the fact that in Part 4 of the application under Section 7 filed by Respondent relevant at Page-38 of the Appeal Paper Book. Date of default is given as 07.06.2016 provision of section and the application within time.

(viii) It was further argued that in view of the acknowledgment referred to Page- 264 of Volume – II of the Appeal Paper Book while relevant acknowledgment of the debt marked at Page-266, whereby on 19.11.2018 two Directors have acknowledged of the Appellant's Company in the provision of Section 18 of the Limitation will be acknowledged and there is no question of Limitations and the application filed by Respondent No. 1 under Section 7 of IBC is within Limitation which as follows: -

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4. इसके साथ दूसरी प्रति आपके रिकार्ड के लिए है.

भवदीय,

संलग्नक — प्रबंधक

तारीख ________ 20__

प्रति,

बैंक ऑफ़ इंडिया

1. मैं/हम एतद्द्वारा ऊपर बताए अनुसार रु ________ की राशि के लिए ________ पर मेरी / हमारी ऋणग्रस्तता अभिस्वीकार करता हूँ/करती हूँ/करते है और इसकी पुष्टि करता हूँ/करती हूँ/करते है और पुन: अभिस्वीकार करता हूँ/करती हूँ/करते है कि ऋण उक्त बताए गए ढंग से प्रतिभूत है और ________ हक/विलेख की जमा द्वारा साम्यिक बंधक के दस्तावेज़ पूर्णत: लागू और प्रभावी है तथा उसके अधीन प्रतिभूति भी पूर्णत: लागू और प्रभावी है तथा मैं/हम उसकी शर्तों के मुताबिक आपके प्रति जिम्मेदार हूँ/है

2. मैं/हम एतद्द्वारा पुष्टि करता हूँ/करती हूँ/करते है कि यह अभिस्वीकृत परिसीमन अधिनियम 1963 की धारा 18 के अंतर्गत मेरी / हमारी देयता के रूप में निष्पादित की गई है.

(स्टाम्प)

(स्टाम्प)

(स्टाम्प)

4. A duplicate is sent herewith for your record.

Yours faithfully,

Manager

Encl.

Date 20-11-2018

To,

Bank of India

1. I/We hereby confirm and acknowledge my/our indebtedness on 19/11/2018 in the sum of Rs. CC- 13,37,48,094.57 TL 1662117.01 as stated above and further acknowledge that the debt is secured in the manner stated above and that the aforesaid documents of security / and the equitable mortgage by deposit of title deed on 22/05/2014 are in full force and effect and that the security there under is also in full force and effect and that I/We am/are liable to you in accordance with the terms thereof.

2. I/We hereby confirm that this acknowledgement is executed as an acknowledgement of my/our liability for the purpose of section 18 of the Limitation Act 1963.

(Stamp)

(Stamp)

(Stamp)

(ix) Learned Counsel for the Respondent No. 1 further submitted that so far lodged of a police complaint by the Appellant is concerned in oral argument and also in his Written Submission and only after this document was produced before the Adjudicating Authority, the police complaint was lodged on 01.10.2020 marked at Page 271, Volume-II of the Appeal Paper Book. A written complaint was given to Police Sub Inspector at Atkot Police Station, Atkot, Dist. Rajkot.

(x) It was submitted by Learned Counsel for the Respondent No. 1 that this police complaint was lodged on the legal advice only when the Respondent No. 1 produced the acknowledgment before the Adjudicating Authority. So, no reliance could be placed on this document, which is an afterthought.

(xi) Learned Counsel for the Respondent No. 1 referred to Para-16 & 17 marked at Page- 25 of the Impugned Order, Volume-I of the Appeal Paper Book which is placed in Volume- I of the Appeal Paper Book and it wasfurther submitted that the reason given by the Learned Adjudicating Authority in accordance with law and the Appeal is devoid of merit and fit to be dismissed.

> ***"16.*** *It is noted that the last date of the transaction in the Bank account is on 27.01.2016 and an Affidavit is filed with a copy of the Acknowledgment*

> *of debt dated 20.11.2018 signed by the two directors of the Respondent/ Corporate Debtor. In view of this and in line with the decision of Hon'ble NCLAT in Yogesh Kumar Jaswantlal Thakkar Vs. Indian Overseas Bank, the application filed under section 7 of IB Code filed on 06.06.2019 is within time.*
>
> ***17.*** *In an affidavit filed on 08.10.2020 the respondent- Corporate Debtor has submitted that the additional affidavit filed by the petitioner should not be taken on record at such belated stage and stated the acknowledgment letter signed by Mr. Kamlesh G. Pansuriya is forged and it was never signed by Mr. Kamlesh G. Pansuriya. The petitioner also enclosed a copy of the complaint sent to the police sub-Inspector by Post along with the Affidavit. However, it is noticed that the acknowledgment of the debt is signed by two directors and not one and on the face of it, the signature matches with that of the two directors who have signed the loan documents. Hence, the objections of the respondent are not sustainable".*

8. **<u>FINDINGS</u>**

After hearing Learned Counsel for the Appellant and Learned Counsel for the Respondent and after perusing the records and including the Written Submissions and oral arguments advanced on behalf of the parties. We are of the considered view that following facts are admitted as follows: -

(i) An application under Section 7 of the IBC was filed by Respondent No. 1/ Financial Creditor, namely, the Bank of India on 04.06.2019. Further, from the perusal of the application Part-4 Volume-I of the Appeal Paper Book marked at Page-38 the date of default is mentioned as 07.06.2016.

(ii) The Appellant in the Reply Affidavit filed before the Adjudicating Authority Para 4 at Page- 65 of the Appeal Paper Book, Volume- I has already stated that 07.06.2016 is the date when the account of the Appellant was declared NPA. And in Para-9 of the Reply Affidavit marked at Page- 67 of the Appeal Paper Book, they have admitted that the installment of month of January, 2019 remain unpaid so the default date started on 30.01.2016.

(iii) Subsequently, through Additional Affidavit filed by the Respondent No. 1 before the Adjudication Authority at Annexure-A/8 Page-262 of the Appeal Paper Book, Volume-II relevant at Page-266 that Respondent No. 1 produced the acknowledgment dated 19.11.2018 signed by two of the Directors mentioned herein above. This acknowledgement shows that two of the Directors have acknowledged the debt of Sum of Rs. 13,87,48,994.57/-. Although the Learned Counsel for the Appellant tried to repudiate this document while stating that soon after this document came into knowledge after police complaint was lodged marked at Page-271, Volume-II of the Appeal Paper Book. And this fact has been dealt with in the Impugned Order passed by the Learned Adjudicating Authority in Para 16 & 17 and we don't find any reason to interfere in the findings of the Adjudicating Authority.

(iv) There is a clear acknowledgment on behalf of two Directors one who have died subsequently.

9. We are of the view that there is no illegality in the Impugned Judgement passed by the Adjudicating Authority and Impugned Judgement is hereby affirmed.

10. Accordingly, there is no merit in this Appeal.

11. And the Appeal is dismissed without costs.

12. Further, the period spent during pendency of this Appeal shall be excluded from the period of CIRP.

13. The Registry is directed to upload this Judgement on the website of this Appellate Tribunal.

14. Registry is directed to send a copy of the Judgement to the National Company Law Tribunal, Ahmedabad Bench.

[Justice AnantBijay Singh]
Member (Judicial)

[Ms. ShreeshaMerla]
Member (Technical)

NEW DELHI
08th July, 2021
Sim.