NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 636 OF 2020

IN THE MATTER OF:

State Bank of India **...Appellant**

Versus

Vibha Agro Tech Ltd. **...Respondent**

For Appellant: **Mr. Sanjay Kapur, Ms. Megha Karnwal and Mr. Arjun Bhatia, Advocates**

For Respondents: **Mr. Paras Mithal, Advocate**

O R D E R

23.08.2022: This appeal is directed against the order dated 27.02.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Appellant (Financial Creditor) on 12.09.2018 has been dismissed on the sole ground being barred by limitation.

2. Initially, this appeal bearing CA (AT) (Ins) No. 636 of 2020 was heard by two members bench of this Tribunal and was dismissed vide order dated 05.03.2021, affirming the order of the Adjudicating Authority. However, the Appellant challenged the order dated 05.03.2021 by way of a Civil Appeal No. 2264 of 2021 before the Hon'ble Supreme Court. The said appeal was allowed on 20.10.2021. The relevant observations made by the Hon'ble Supreme Court are reproduced as under:-

"……….

We are of the view that subject to the appellant being put to terms, the course adopted by this Court in Asset Reconstruction Company (India) Limited (supra) should be followed. Accordingly, we allow the appeal and set aside the impugned order. The appeal is remanded back and will be restored back to file.

We permit the appellant to seek amendment of the application under Section 7 so as to incorporate the case based on acknowledgement as contained in the balance sheets allegedly of the respondent.

We leave open all contentions available to the respondent. This benefit will be available to the appellant subject to the appellant paying a sum of Rs.3 lakhs as costs to the respondent within a period of three weeks from today.

The appeal is allowed as above.

………"

3. Pursuant to the aforesaid order, an application bearing I.A. No. 87 of 2022 came to be filed by the Appellant before this Tribunal by which the Appellant has sought to place on record the amended application under Section 7 of the Code. It is needless to mention that the amendment which has been brought in the said application is only in part -iv of the application. The new averments introduced in the application filed under Section 7 of the Code are reproduced hereinbelow for a quick reference:

> "The cause of action / date of default would start on 30.04.2013 when the Accounts were declared NPA, in terms of the RBI guidelines due to failed Restructuring. Even subsequent to the declaration of the Account as NPA, the Corporate Debtor has continuously and repeatedly year on year acknowledged and admitted the debt owed to the banks in its balance sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 for the Financial Years 2013-14, 2014-15 and 2015-16 respectively. On each of the said dates when the Corporate Debtor acknowledged the debt, a fresh period of limitation shall be computed in terms of Section 18 of the Limitation Act. Thus, the application us 7, IBC filed on 06.09.2018 is well within the period of limitation u/a 137 of the Limitation Act. Copy of the Balance Sheets dated 16.08.2014, 27.08.2015 and 27.08.2016 are annexed hereto and marked as ANNEXURE 58."

4. Counsel for the Appellant has submitted that the application bearing I.A. No. 87 of 2022 has been allowed by this Tribunal vide its order dated 11.01.2022. The said order is also reproduced as under:-

> "Heard the Learned Counsel Mr. V.M. Kannan appearing for the Appellant/Bank.
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> According to the Learned Counsel for the Appellant/SBI, the instant I.A. No. 87 of 2022 in CA (AT) (Ins) No. 636 of 2020 is filed pursuant to the orders of the Hon'ble Supreme Court in Civil Appeal No. 2264 of 2021 in the matter of 'State Bank of India v Vibha Agro Tech Ltd.' dated 20.10.2021 whereby and whereunder the Appellant/Applicant/Bank is permitted to file the amendment application and accordingly, the instant application is filed seeking to amend the application under Section 7 of the I & B Code, 2016 filed by the Appellant/Applicant/Bank with a view to incorporate the case based on 'Acknowledgment' as contained in the Balance Sheet allegedly of the Respondent.
>
> There is no representation on the side of Respondent at the time of calling of the matter.
>
> In view of the fact that the Hon'ble Supreme Court in the aforesaid Civil Appeal No. 2264 of 2021 dated 20.10.2021 has permitted the Applicant/Appellant/Bank to amend the application under Section 7 of the I & B Code, 2016 so as to incorporate the case based on acknowledgment as contained in the Balance Sheet purportedly of the Respondent, this 'Tribunal' in the interest of justice allows the I.A. No. 87 of 2022 in CA (AT) (Ins) No. 636 of 2020. No costs.
>
> Consequent to the allowing of I.A. No. 87 of 2022 in CA (AT) (Ins) No. 636 of 2020, the Respondent is permitted to file 'Additional Reply' if any if it so desires/advised before the Office of the Registry not only through e-filing but also through the hard copy and the copy of the same shall be exchanged between them well in advance before the next date of Hearing.
>
> The Registry is directed to list the matter on 07th March, 2022."

5. It is pertinent to mention that before the application was allowed, the Respondent herein was also afforded an opportunity to file Reply. Counsel for the Appellant has submitted that once the application has been allowed to be amended by this Tribunal, the issue is as to whether the application was within the period of limitation or not is to be adjudicated upon.

6. On the other hand, Counsel for Respondent has submitted that whether the application is within limitation or not it is within the domain of the Adjudicating Authority and therefore, the application should have been filed by the Appellant before the Adjudicating Authority instead of this Tribunal.

7. We have heard Counsel for the parties and after perusal of the record are of the considered opinion that the Hon'ble Supreme Court has only allowed the Appellant to amend the application filed under Section 7 of the Code in order to incorporate further material by way of copies of the balance sheets in order to show that there was acknowledgement of debt on the part of the Respondent and therefore, the application filed under Section 7 of the Code was well within the limitation as prescribed under Article 137 of the Limitation Act, 1961.

8. The issue regarding the appreciation of the balance sheets which has now become part of record is to be looked into by the Adjudicating Authority to hold as to whether the application filed under Section 7 of the Code is within limitation or not. Therefore, we are of the considered opinion that this matter requires a relook by the Adjudicating Authority especially after the amendment has been made in the application filed under Section 7 of the Code to find out as to whether the application filed under Section 7 is within limitation in terms of the alleged acknowledgment of the part of the Respondent by way of the entries made in the balance sheets.

9. In the view of the aforesaid discussion, the appeal is allowed and the order of the Adjudicating Authority is set aside. The matter is remanded back to the Adjudicating Authority to reconsider the amended application, filed

under Section 7 of the Code, at the instance of the Appellant. It is needless to mention that the Hon'ble Supreme Court has also given liberty to the Respondent to raise all the issues available to it in order to contest the said application. The said liberty shall remain open. The parties shall appear before the concerned Adjudicating Authority on **11.10.2022.**

The registry is directed to send a copy of this order to the concerned Adjudicating Authority for information.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

SC/RR