NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1378 of 2019

[Arising out of Order dated 08th November, 2019 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata in CP (IB) No. 522/KB/2018]

IN THE MATTER OF:

Chand Prakash Mehra
Having its Registered Address at
P-22, CIT Road, Entally,
KoLkata – 700014 **...Appellant.**

Versus

1. **Praveen Bansal**
Interim Resolution Professional
of Silverton Spinners Limited
Having his registered address at
LLP, J-347, Sarita Vihar,
New Delhi - 110076 **...Respondent No. 1**
2. **State Bank of India**
Having its registered address at
State Bank Bhavan,
Corporate Centre,
Madam Cama Road,
Mumbai – 400021 **...Respondent No. 2.**

For Appellant: Mr. Abhijeet Sinha, Mr. Sidhartha Sharma, Mr. Arjun Asthana, Mr. Aditya Shukla and Mr. Saikat Sarkar, Advocates.

For Respondent: Mr. PBA Srinivasan, Mr. Avinash Mohapatra, Ms. Icchha Kalash and Mr. Parth Tandon, Advocates for R-2.
Mr. Mohit Jolly, Advocate for R-1.

J U D G M E N T
(20th September, 2021)

A.I.S. Cheema, J.: The Appellant-Erstwhile Director of Corporate Debtor-"M/s. Silverton Spinners Ltd." has filed this Appeal against Order of Admission of Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) against the Corporate Debtor.

2. Respondent No. 2-State Bank of India (hereinafter referred as "Bank") filed CP(IB) No. 522/KB/2018 before the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata). The Bank claimed before the Adjudicating Authority that the Corporate Debtor was granted credit facility initially by Canara Bank in 1995 and subsequently the State Bank of India and Central Bank of India became part of the lenders and granted credit facilities to the Corporate Debtor. Necessary documents were executed. In 2010, there was revival structuring effort. New Sanction Letter was issued on 18th March, 2013. The name of the Corporate Debtor earlier was "M/s. Pacific Cotspin Limited". This name was changed to the present name of Corporate Debtor namely "M/s. Silverton Spinners Limited". The Bank claimed that new Sanction Letter was issued on 18th March, 2013. The Corporate Debtor failed to act as per the CDR Package and the Account was termed NPA on 25.08.2015 subsequently as per Procedure under the RBI Guidelines date of NPA was revised to 15.01.2013 based on when the CDR Package had been formalized. The Bank pointed out the acknowledgements of the Corporate Debtor and the existence of the outstanding debt which was in default. The Bank claimed that the debt outstanding was Rs.

151,19,70,185.24/- which was to be recovered by the Bank as on 31st December, 2017. The Application under Section 7 of IBC was filed on 05th March, 2018. The Bank also claimed before the Adjudicating Authority that the balance sheets of the Corporate Debtor showed the overall borrowings and that anything contrary in any instrument would not be applicable in view of the Section 238 of IBC. Thus, the Bank claimed that the debt was within limitation. The Bank relied on letter of authority given by Deputy General Manager to Sri Subratabarman as per the provisions of the State Bank of India Act and that the signatory was authorized to file the Application.

3. The Adjudicating Authority heard the Bank as well as the Corporate Debtor. Corporate Debtor claimed that the Debt was barred by Limitation. It was claimed that the original amounts became NPA on 15.01.2013. Because of the CDR Package time was given to the Corporate Debtor which ultimately failed in August, 2015. The Corporate Debtor claimed the debt to be time-barred.

4. The Adjudicating Authority looked in the record as well as the acknowledgments in the correspondence and came to the conclusion that there was debt outstanding which attracted provisions of Section 7 of IBC; that the Debt was within limitation; and admitted the Application under Section 7 of IBC.

5. In Appeal before us, the Appellant is claiming and it is argued that the Corporate Debtor deals in Cotton Yarn Manufacturing and that it did avail of credit facilities from Canara Bank in 1995 and that when the business

increased *Inter Se* Agreement dated 25.09.1998 was executed when the Canara Bank acted as Lead Banker while other Bankers included the State Bank of India. The Appellant claims that the Corporate Debtor executed common loan Agreement dated 25.09.1998 along with joint deed of hypothecation and other documents on 25th September, 1998 which included working capital consortium Agreement dated 25.09.1998 in favour of the consortium. Appellant claims that Corporate Debtor had the understanding that in the event of any default by the Corporate Debtor the Lead Banker-Canara Bank shall be only authorized Banker to initiate any recovery or restructuring proceedings against the Corporate Debtor. Appellant claims that on 30th July, 2002 overall sanction limit of Rs. 8005.75 Lacks was extended and the Corporate Debtor executed necessary documents on 31st July, 2002. The Appeal refers to the further financial services availed. Relying on *Inter Se* Agreement dated 12th January, 2007 Appellant claims that only the Lead Banker i.e. Canara Bank can initiate proceedings. The other Banks had nominated Canara Bank as the Lawful Attorney for them. Referring to RBI Guidelines regarding CDR the Appellant claims that the CDR package was reworked on 15th March, 2013 and Loan Account of Corporate Debtor was reverted back to the state of NPA classified by Canara Bank, as on 27.07.2009 as per RBI Guidelines. It is claimed that in the Letter dated 21st May, 2015 (Appeal Page 561) the Corporate Debtor had intimated only the Canara Bank with regard to the change of the name in the context of CDR Master Restructuring Agreement dated 22.03.2013. Appellant claims that the said nomination became redundant on CDR Exit with the Lead Bank reverting to the status of NPA on 27.07.2009. Thus the

Appellant claims that the said debt is time-barred and that State Bank of India could not have initiated proceedings under Section 7 of IBC.

6. The Learned Counsel for the Appellant has argued the matter on the above lines. On one hand it is argued that as per the documents executed between the parties only the Lead Bank i.e. Canara Bank could initiate action and that State Bank of India could not have filed Application under Section 7 of IBC and on the other hand it is claimed that the date of NPA is the trigger point from where limitation starts running. It has been argued that when Corporate Debtor failed to comply with the terms of CDR Package the Corporate Debtor was reverted to state of NPA classified on 27.07.2009 as per RBI Guidelines. The Learned Counsel relied on Letter dated 23rd December, 2016 (Annexure A-22 Page 831) to point out that the Canara Bank had stated that the Corporate Debtor availed facilities as per agreement terms and the Account became irregular and the Loan Account has been classified NPA on 27.07.2009 as per directives of RBI. The Letter stated that in spite of efforts on CDR Package the Corporate Debtor failed and the account reverted to state of NPA as classified on 27.07.2009. The Learned Counsel has argued that Judgments of Hon'ble Supreme Court of India show that once time starts running, the Application under Section 7 of IBC needs to be filed within three years as per Article 137 of the Limitation Act. The Learned Counsel referred to the documents and RBI Circulars with regard to the manner in which CDR Schemes are entered into and worked out. It is also argued that the CDR restructuring schemes cannot be considered to be acknowledgments of debts and Section 18 of the Limitation Act could not be relied on in view of the Judgments passed by the Hon'ble

Supreme Court. It is argued that the entries in the balance sheets of the Corporate Debtor with regard to the amounts due show overall amounts due and does not reflect any specific debt owed to the State Bank of India. It is also argued that in view of the agreements between the parties only the Lead Bank Canara Bank could have initiated proceedings.

7. Against this, the State Bank of India has filed Reply opposing the Appeal. Learned Counsel for the Bank referred to the documents executed between the parties. Learned Counsel referred to the *Inter Se* Agreement dated 25.09.1998 to argue that the State Bank of India is entitled to enforce its rights when debt is due and outstanding. The Learned Counsel referred to (Annexure A-3, Page 81) the *Inter Se* Agreement and to its clauses to argue that it was an agreement between the State Bank of India and the Canara Bank in which mechanism was laid as to how to initiate action and on recovery how to distribute the proceeds and rights were reserved in clause 7 (Appeal Page 87) with regard to the Lead Bank distributing the realizations and the right of the State Bank of India relating to the Borrower was saved with regard to the action State Bank of India can take regarding money that may still remain to be due. It is argued that this was between the Banks and the Corporate Debtor cannot take advantage of the same and that Section 7 of IBC clearly gives right to the Financial Creditor to initiate action and there is no bar under the law for State Bank of India to initiate action when debt is due and payable. It is argued that if the Lead Bank for any reason does not take action the rights are still there with the other Banks of the consortium to initiate action if the debt has become due and in default.

8. We have heard the parties and gone through the material on record. Although much is argued with regard to the circular issued by RBI, we keep Section 238 of IBC in view which provides that the code applies notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Keeping this provision in view, we refer Section 7 of IBC which provides that Financial Creditor either by itself or jointly with other Financial Creditors or any other person on behalf of Financial Creditor as may be notified by the Central Bank may file an Application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority when a default has occurred. Considering this, even if the State Bank of India was part of the consortium or there are documents executed between the parties, or there are circulars of RBI as to how Banks should try to help the defaulting debtors with CDR Packages and how date of NPA should be calculated, still in IBC for Section 7 of IBC, the material factor is that the State Bank of India is a Financial Creditor whose debt is outstanding and it was in default on the part of the Corporate Debtor and thus the State Bank of India has a right to move Application under Section 7 of IBC. The personal documents between the parties cannot take away such statutory right of the Bank to initiate proceedings. If the Lead Bank for any reason does not take steps or fails to take steps, the other Banks in the consortium cannot be left high and dry without any remedy, as Limitation Act does not differentiate on such count.

9. Respondent No. 2-State Bank of India filed Application before the Adjudicating Authority pointing out debt due to the Bank which turned NPA

on 25.08.2015 and when the CDR Package failed the date was revised to 15.01.2013 when CDR Package was formalized. Thus the debt relating to the State Bank of India became NPA on 15.01.2013. If time is calculated from this date of 15.01.2013, firstly there is a Letter dated 21st May, 2015 (Appeal Annexure A-19, Page 561G). Admittedly, at that time there was a consortium existing and Corporate Debtor had taken loan from Canara Bank, State Bank of India and Central Bank of India. In this context, the Corporate Debtor on 21st May, 2015 wrote to the Lead Bank informing that there was change in the name of the Company from "M/s. Pacific Cotspin Limited" to "M/s. Silverton Spinners Limited". The contents of the Letter may be reproduced as under:

"SUB: CHANGE IN THE NAME OF THE COMPANY

Pursuant to our application dated nil, the Bank has sanctioned credit facility [WC] upto a maximum of Rs. 77.49 crores along with TL of Rs. 85.55 cr subject to the terms and conditions stipulated in the Bank's sanction letter bearing reference no MSCR:PACIFIC:643:2012-13:GD dated 15.03.2013 and MRA dt. 22.03.2013.

Accordingly, we have executed loan documents dated 22.03.2013 and Master Restructuring Agreement & Inter Se Agreement among Canara Bank, State Bank of India & Central Bank of India dated 22.3.2013.

Our name of the Company has been changed from M/S PACIFIC COTSPIN LIMITED to M/S SILVERTON SPINNERS LTD. The earlier loan papers executed by us in the name of M/S PACIFIC COTSPIN LIMITED is Continuing and Binding on us.

Yours Faithfully

[Borrower]"

Thus, the Corporate Debtor clearly referred to the credit facilities and documents executed between the parties and the binding liability under the documents on the Corporate Debtor.

10. Then, reference needs to be made to another acknowledgment of the Corporate Debtor which is dated June 15, 2016 (Reply of the Bank, Annexure A-1, Diary No. 19139). This Letter was addressed by the Corporate Debtor to (1) Deputy General Manager CDR Cell, (2) Canara Bank, (3) State Bank of India and also (4) Central Bank of India. The subject was proposal for resolution of debts and in the proposals, relevant part of Paragraphs 14 needs to be reproduced which reads as under:

> *"14) Based on discussions with them, since it is now proposing to invest substantial amount of money through supply of raw material, the cash flow for which would be rolled over within the overall fund flow which is reflected in the enclosed projections, therefore the company has proposed the following in consultation with M/s. Manjeet Cotton Pvt. Ltd.*
>
> *173) Position of Debt as on date with all the Lending Banks to be resolved in 10 years.*

(Rs. In Cr.)

Category	*Type of loan*	*Can Bk*	*SBI*	*CBI*	*Total*
Sustainable as per CDR LOA	*RTL*	*14.21*	*11.03*	*4.30*	*29.54*
Non-Sustainable as per CDR LOA	*FITL*	*17.76*	*15.45*	*7.75*	*40.96*
	WCTL	*6.31*	*6.68*	*2.02*	*15.01*
	WC	*37.60*	*30.14*	*20.72*	*88.46*
	Total	*61.67*	*52.27*	*30.49*	*144.43*
Grand Total		*75.88*	*63.30*	*34.79*	*173.97*

"

The Letter which is a proposal was sent by Director of the Corporate

Debtor. Thus, again there is a clear acknowledgments of the debts outstanding of the State Bank of India. This acknowledgment is dated June 15, 2016.

11. It is clear from the above that if that account of the Corporate Debtor with the State Bank of India became NPA on 15.01.2013 there is firstly acknowledgement in Letter dated 21st May, 2015 and then there is another acknowledgment vide letter dated 15.06.2016 as referred above. As such, Section 7 of IBC Application filed on 05th March, 2018 must be said to be within limitation.

12. It is much argued for the Appellant that there has to be a categorical acknowledgments and that Letter dated 25th May, 2015 to Canara Bank could not be relied on. It would be appropriate to reproduce Section 18 of the Limitation Act, 1963 which reads as under:

> *"18. Effect of acknowledgment in writing. —*
>
> *(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
>
> *(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.*
>
> *Explanation.—For the purposes of this section,—*
>
> *(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy,*

or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

It is clear from Clause (a) of the Explanation of Section 18 of the Limitation Act that even if an acknowledgment is made to person other than a person entitled to the property or right, still it shall fall in the definition of Explanation below the Section 18 of the Limitation Act. The Learned Counsel for the Appellant referred to the various earlier Judgments of the Hon'ble Supreme Court of India. We are not burdening this Judgment with the analysis made by the Ld. Counsel for Appellant of the earlier Judgments. The Hon'ble Supreme Court of India itself has referred to its earlier Judgments and legal positions with regard to the applicability of the Limitation Act to provisions of IBC has made quite clear in recent Judgments of Hon'ble Supreme Court of India in the matter of "Laxmi Pat Surana Vs. Union Bank of India & Anr." MANU/SC/0221/2021 (Civil Appeal No. 2734 Of 2020), "ARCIL Vs. Bishal Jaiswal & Anr" MANU/SC/0279/2021 (Civil Appeal No.323 Of 2021) and "Dena Bank vs. C. Shivkumar Reddy & Anr." MANU/SC/0502/2021 (Civil Appeal No. 1650 of 2020). Now the legal position is quite clear with regard to the applicability of Section 18 of the Limitation Act and other provisions of Limitation Act, as far as may be. In view of the Hon'ble Supreme Court of India itself explaining the law of limitation referring to its earlier Judgments, the earlier Judgments referred to by the Learned Counsel for the Appellant do not require detailed reference here.

13. For the above reasons, we find that there is no substance in the Appeal. The Adjudicating Authority rightly found the Application to be within limitation and has rightly admitted the Application filed by the State Bank of India.

14. When this Appeal was filed, this Appellate Tribunal on 29th November, 2019 had granted interim relief directing the Interim Resolution Professional not to constitute Committee of Creditors, till next date of hearing, if not yet constituted. Subsequently the Interim Order has been continued during pendency of the Appeal. We exercise powers under Rule 11 of NCLAT rules to exclude period.

15. We proceed to pass the following order:

i. There is no substance in the Appeal, the Appeal is dismissed.

ii. Interim Order passed in this Appeal dated 29th November, 2019 does not survive. The period from 29th November, 2019 till today will be excluded for the purpose of Section 12 of IBC. No costs.

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

[Kanthi Narahari]
Member (Technical)

New Delhi
Basant