NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 912 of 2022

IN THE MATTER OF:

Prasun Kumar Roy
Suspended Director of Arambagh
Hatcheries Ltd. (In CIRP) ...Appellant

Versus

Phoenix ARC Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant: **Mr. Abhijeet Sinha, Mr. Aditya Shukla, Mr. Ajay Gaggar and Mr. Robin Singh Sirohi, Advocates.**

For Respondents: **Mr. Amit Singh Chadha, Sr. Advocate with Mr. Suresh Dutt Dobhal and Mr. Nirmal Goenka, Advocates.**

O R D E R

05.09.2022: Heard learned counsel for the Appellant as well as learned counsel for the Respondent. This Appeal has been filed against order dated 13.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by which order C.P. (IB) No. 1536(KB) of 2019 filed by the Respondent, the Financial Creditor, has been admitted. The Appellant, Suspended Director of the Corporate Debtor, who is aggrieved by the order has come up in this Appeal.

2. Financial assistance was obtained by the Corporate Debtor from Central Bank of India which was subsequently assigned to the Respondent No.1. The account of the Corporate Debtor was declared as NPA on 07.05.2011 and recall notice was issued on 18.09.2013 recalling to pay

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amount of Rs.22,12,64,505.94/- as on 30.09.2013. There were proceedings initiated before the Debts Recovery Tribunal. Subsequently, application under Section 7 was filed by the Financial Creditor on 14.08.2019. The notice was issued to the Corporate Debtor by the Adjudicating Authority. The Financial Creditor had filed Supplementary Affidavit dated 23.02.2022. The Adjudicating Authority after considering the submissions of both the parties by the impugned order has admitted the application.

3. The Adjudicating Authority had referred to and relied on Balance Sheet for the year 2011-2012 upto Balance Sheet for 2018-2019 and come to conclusion that the period of limitation stood extended, hence, application was not barred by time as contended by the Corporate Debtor.

4. Learned counsel for the Appellant, Shri Abhijeet Sinha, challenging the order contends that although the Adjudicating Authority has referred to the Balance Sheets from 2011-2012 upto 2018-2019 but there is no consideration of entries in the Balance Sheet to come to any conclusion that there is any clear acknowledgement which may give the benefit of Section 18 of the Limitation Act. He further submits that date of default was subsequently got amended by the Financial Creditor and in view of the date of default as amended in the application reliance upon the entries in the Balance Sheet is irrelevant. He has referred to judgment of Hon'ble Supreme Court to contend that there has to be adjudication by the Adjudicating Authority with regard to each entry, where it allow benefit of acknowledgment under Section 18.

5. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellant contends that the Balance Sheets from 2011-2012 to 2018-2019 continuously contain the acknowledgment of the debt, hence, no error has been committed by the Adjudicating Authority in giving benefit of Section 18 and holding that application is not barred by time.

6. We have considered submissions of learned counsel for the parties and perused the record.

7. The Adjudicating Authority in Para 15 of the order has made following observations:

> *"15. In light of the above facts and circumstances there has been continuous acknowledgement in the Balance Sheet of the Corporate Debtor for the Financial Years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019, which would extend the limitation period from time to time."*

8. The grievance which has been raised by learned counsel for the Appellant is that there is no consideration with regard to entries of the Balance Sheet. For the aforesaid purpose learned counsel for the Appellant has filed I.A No. 3142 of 2022 placing on record the Balance Sheets from the year 2012-13 to 2017-18. It is true that the Adjudicating Authority has not adjudicated on the entries in the Balance Sheet, hence, we need to examine the same to find out whether the entries contains any acknowledgement. Balance Sheet for the year 2013-14, at page 34 of the Additional Affidavit,

under the heading 'Long Term Borrowings' contains the borrowings from different banks including Central Bank of India. At page 35 is the 'Short Terms Borrowings', where Central Bank of India also finds mention.

Both the entries refer to date of declaration of NPA of the account. It is useful to extract relevant part of the Balance Sheet as on 31.03.2014.

"Long Term Borrowings"

Name	*Total due as on 31.03.2014*	*Principal due as on 31.03.2014*	*Interest due as on 31.03.2014*	*Account declared NPA as on*
Central Bank of India	*976.65*	*887.00*	*89.65*	*April'11*

"Short Term Borrowings"

Name	*Total due as on 31.03.2014*	*Principal due as on 31.03.2014*	*Interest due as on 31.03.2014*	*Account declared NPA as on*
Central Bank of India	*716.31*	*637.00*	*79.31*	*April'11*

9. Learned counsel for the Appellant has submitted that the aforesaid have to be read alongwith the notes which are part of the Balance Sheet. He has referred to Auditors note at Para Nos. 26.6 and 26.7 at page 59, which is to the following effect:

> *"26.6 Few Banks have issued notice U/S 13(2) of SARFAESI Act, 2002. The Company has filed objections to their notices by the concerned Banks.*
>
> *26.7 Few Banks have initiated action U/S 13(4) of SARFAESI Act, 2002. The Company has filed*

> *Securitization Application (SA) before DRT Kolkata and is contesting the actin by these Banks."*

10. The aforesaid two paras only mentions proceedings initiated under SARFAESI Act, 2002. Learned counsel for the Appellant has also referred to Para 25.14 which is at page 60, which is to the following effect:

> *"25.14 Most of the position of amount shown payable and receivables to banks, creditors, loans, advances and debtors are subject to reconciliation as balance confirmation not received."*

11. Learned counsel for the Appellant has emphasised that since position of amount shown payable and receivable to banks, creditors are subject to reconciliation as balance confirmation not received will make the entry qualified and cannot be read as acknowledgement within the meaning of Section 18.

12. We have looked into the Long Terms Borrowings and Short Terms Borrowings, as noted above, as well as Paras 26.6, 26.7 and 25.14 referred to by learned counsel for the Appellant. The statement made in Para 25.14 that the position of amount shown payable and receivable in the Balance Sheet are subject to reconciliation as balance confirmation not received shall not take away the acknowledgement contained in the entries. Amount being subject to reconciliation is not any such condition that will take away the meaning and effect of the entries.

13. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in ***"Civil Appeal No. 910 of 2021, State Bank of India vs. Krishidhan Seeds Pvt. Ltd."*** and referred to Para 12 and 13 of the judgment. In Para 13, the Hon'ble Supreme Court has noticed the principles that emerges with regard to Section 18:

> *"13. In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this Court. The principles which emerge are that:*
>
> *(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and*
>
> *(ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default."*

14. There is no quarrel regarding the preposition laid down by the Hon'ble Supreme Court in the above judgment and earlier judgments as noticed in its Para 12. When we apply the law laid down by the Hon'ble Supreme Court in the facts of the present case, we are of the clear opinion that entries in the Balance Sheet for the year 2013-14 contains acknowledgement which can be read within the meaning of Section 18 of the Limitation Act. Appellant has also brought on record other Balance Sheets; for example we refer to Balance

Sheet as on 31.03.2016, where names of assignees have been reflected with names of previous Banks and interest amount has also been captured in the Balance Sheet. Auditor's note to the effect that entries are subject to reconciliation does not take away the value acknowledged for the purpose of Section 18.

15. The Balance Sheet continuously from 2013-14 to 2018-19 contain the acknowledgement of debt and no error has been committed by the Adjudicating Authority in holding that the period of limitation stood extended and application filed under Section 7 is not barred by time.

16. Learned counsel for the Appellant has also submitted that after amendment were allowed in Section 7 application, Appellant has filed an appeal against the order of the Adjudicating Authority allowing the amendment, where this Court has while dismissing the appeal has made following observations in Para 5:

> *"5. It is well settled that Application under Section 7 can be amended and additional documents can be filed by the parties in proceedings under Section 7. We do not find any error in the order of the Adjudicating Authority permitting amendment in Section 7 Application. Appellant is protected since two weeks' time have been allowed to file Reply. It is always open for the Appellant to file Reply and additional documents which they rely. The order clearly says that objections shall be decided at the time of hearing. This clearly means that whatever the amendment has been made that does not ipso facto means that date*

> *of default has been changed and that same shall be decided by the Court at the time of hearing after hearing both the parties."*

17. The amendments made in the application were subject to objection by the Appellant which was expressly noted by the Adjudicating Authority and were also observed by this Appellate Tribunal in Para 5, as noted above.

18. From the impugned order passed by the Adjudicating Authority it is clear that the Adjudicating Authority has computed limitation from the NPA date in the year 2011, hence, no error has been committed by the Adjudicating Authority in computing the limitation from first NPA date which is not subject to any dispute.

19. We, thus, do not find any error in the order of the Adjudicating Authority admitting Section 7 application. There is no merit in the appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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