NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 1

IA 693/2021 in C.P.(IB)3454/MB/2019

CORAM:

SH. PRABHAT KUMAR **JUSTICE VIRENDRASINGH BISHT (Retd.)**

HON'BLE MEMBER (TECHNICAL) **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **03.10.2023**

NAME OF THE PARTIES: **STATE BANK OF INDIA V/s M/S ACE AGRO INDUSTRIES PVT LTD**

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 693/2021

1) Ld. Counsel for the Applicant is present. The matter is listed today under the caption "For Order". Order is pronounced in the Open Court.

2) The Interlocutory Application bearing IA No. 693 of 2021, is rejected and the Company Petition bearing CP (IB) No. 3454 of 2019, is disposed of. Detail orders to follow.

Sd/- **Sd/-**

PRABHAT KUMAR **JUSTICE VIRENDRASINGH BISHT**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Vedant Kedare

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

Interlocutory Application No. 693/2021
IN
Company Petition No. 3454/2019

State Bank of India ... Applicant

Vs.

M/s. Ace Agro Industries
Pvt. Ltd. & Ors. ... Respondent

Order delivered on: **03.10.2023**

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)
Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance:

For the Applicants : O. A. Das, learned Counsel
For the Respondents : Mr. A. P. Steenson i/b APS Law Associates, learned Counsel

ORDER

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This Application under Section 5 of the Limitation Act, 1963 ("the Limitation Act" for short) is preferred by the financial creditor in C.P.(IB)No. 3454 of 2019 under Section 7 of Insolvency & Bankruptcy Code, 2016, for condonation of delay of 1155 days. The

explanation given in the application for condonation of delay is setout in paragraphs 13 to 15 and 17.

2. Mr. O. A. Das, learned Counsel for the Applicant, submits that after the account of the respondent was declared as NPA, the applicant initiated SARFAESI actions and has also filed Original Application in Debt Recovery Tribunal, Mumbai under recovery of debt and Bankruptcy Act. Thus, there is no intentional delay in initiating the present proceeding and therefore, it is absolutely necessary that delay of 1155 days in filing company petition be condoned in the interest of justice.

3. Mr. A. P. Steenson, learned Counsel for the respondent, on the other hand, vehemently opposes the submissions by contending that the abnormal delay has not been explained satisfactory and no sufficient cause is shown so as to invite the indulgence of this Tribunal. Learned Counsel also placed reliance in the judgment given in ***State Bank of India Vs. M/s. Deccan Florabase Ltd.*** in ***Company Appeal (AT) (Insolvency) No. 1310 of 2022*** dated ***07.11.2022*** and this judgment is upheld by Hon'ble Appellate Tribunal.

4. We have considered the submissions of learned Counsel for both the parties. We have also gone through the judgments relied on by the learned Counsel for the respondent.

5. At the outset, it would be apt to note that the legislature has conferred the power to condone the delay by enacting Section 5 of the Limitation Act, in order to enable the Court to do substantial justice to the parties by disposing of the matter on merits. However, there must be existence of "sufficient cause" in order to enable the Court to condone the delay. For the purpose of ascertaining whether sufficient cause exists for the delay, we are required to turn to the facts of the case giving arise to the present application.

6. In our studied view, we are not satisfied that sufficient cause exists for the delay. We qualify this observation.

7. Paragraph 20 of the application goes to show that the date of default in the present case is 31st July, 2013 and the three years period expired on 30th July, 2016. It is also clear from the paragraph 21 of the application that during the period from 30th July, 2016 till the date of filing of CIRP application, the applicant on one hand was exploring all the options available under the law for recovery of its legitimate dues and on the other hand was also negotiating for settlement. Two strikingly notable features from this are that the Financial Creditor was well aware of the default and therefore could have initiated action under Section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor. Secondly, the Financial Creditor was also during the relevant period was negotiating for settlement. The Applicant Bank has also failed to place on record any acknowledgement of debt, except Balance confirmation dated 12.08.2013 from the Corporate Debtor and the Audited financial statement for the year ended on 31.03.2011 in support of acknowledgement of debt. However, these evidences also do not extend the period of limitation beyond 11.08.2016. No reasonable and acceptable explanation for the huge delay is given except mentioning the prosecution of SARFAESI proceeding and the settlement (fact of settlement). No evidence of subsequent proceedings or communication from the Corporate Debtor in any form is placed on record. According to us, applicant has miserably failed to give any acceptable and cogent reason sufficient to condone such huge delay. Simply stating the present is a case of gross negligence and smacks of bonafides.

8. In the case of ***State of India Vs. Deccan florabase limited*** (supra) and the case in hand, the facts are more or less the same. In that case

also the applicant/financial creditor was pursuing under SARFAESI and later on filed the proceedings under section 7 of the IB Code with delay of 1150 days. This Tribunal however was not convinced with the reasons for huge delay and accordingly rejected the application under Section 5 of the Limitation Act. The said order of this Tribunal was upheld by Hon'ble NCLAT. The ratio so laid down in the above case is squarely applicable to the case in hand.

9. For the aforesaid reasons, we pass the following order.

ORDER

1. Interlocutory Application No. 693/2021 is rejected.
2. Consequently, C.P.(IB)No. 3454/2019 is disposed of.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)