

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 500 of 2023**

**IN THE MATTER OF:**

**Mr. Apoorva Joshi**

**...Appellant**

**Versus**

**Union Bank of India**

**...Respondent**

**Present:**

**For Appellant:**

**For Respondent:** Ms. Ekta Choudhary, Advocate and Advocate Rajiv Malik, for RP

**ORDER**

**11.05.2023:** I.A. 1916 of 2023. This is an application filed by the Appellant for impleadment of Resolution Professional as Respondent No. 2. Application is allowed. Let Resolution Professional be impleaded as Respondent No. 2. Amended Memo of Parties are taken on record.

2. Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondent.

3. This Appeal has been filed against the Order dated 30<sup>th</sup> January, 2023 by which Order, an Application filed by the Union Bank of India under Section 7 of the Code has been admitted by the Adjudicating Authority.

4. Learned Counsel for the Appellant challenging the Order contends that Application filed by the Union Bank of India was barred by time hence could not have been admitted. He submits that there was no specific pleading within the meaning of Section 18 of the Limitation Act with regard to OTS Proposal dated 16.09.2019 which has been relied by the Adjudicating Authority for

holding it within time. It is further submitted that OTS Proposal which was submitted by the Appellant was not an unconditional proposal hence there was no clear acknowledgement.

5. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

6. Section 7 Application has been filed by the Union Bank of India. Copy of which is part of the record. Part-IV of the Application contains “particulars of financial debt” giving details of all transactions and the OTS Proposal which has been relied on by the Adjudicating Authority has also been specifically mentioned in the Application and the Copy of the said OTS Letter was also filed along with Application. At page 100 of the Paper Book, following is stated in the Application:

*“That the corporate debtor acknowledge his liability towards the financial creditor and thus offered one time settlement towards the said liability being an amount of Rs. 1689.77 Lakhs on 16.09.2019 Rs. 17.29 Crores on 19.11.2021.”*

7. Copy of OTS dated 16.09.2019 was also appended and annexed as Annexure A-53 as has been mentioned in page 101.

8. The submission which has been pressed by Learned Counsel for the Appellant is that there was no specific pleading that Appellant is claiming benefit of Section 18 of the Limitation Act for extension of limitation. When the facts regarding OTS Proposal received from the Corporate Debtor within three

years from the date, account were declared NPA was specifically pleaded and  
OTS Proposal brought on record, we do not see that pleadings are wanting in  
any manner. Mere non-mention of Section 18 of the Limitation Act is  
inconsequential when the relevant facts and materials were pleaded and  
brought on record. Any OTS Proposal which was submitted if it contains  
acknowledgement, limitation will be extended by virtue of Section 18 of the  
Limitation Act.

9. The second submission which has been pressed by Learned counsel for  
the Appellant is that there is no clear acknowledgement in the OTS Proposal.  
OTS Proposal which has been submitted by the Appellant, has been extracted  
by the Adjudicating Authority in its Order in paragraph 11. Paragraph 11 of  
the Order of the Adjudicating Authority is as follows:

*“11. On perusal of the record, it is observed that the  
Applicant has placed on record, the OTS proposal dated  
16.09.2019 submitted by the Respondent to the Applicant  
Bank, which is reproduced below:-*

*“Symbol”  
Born to Shine  
Sheen*

*Ref. Sheen/2019-20/01  
Date 16.09.2019*

*“Seal”  
Corporation Bank  
16 Sep 2019*

*To,*

*The Assistant General Manager,  
Corporation Bank,  
Sector 18, NOIDA, U.P.*

*Subject: OTS PROPOSAL*

*Dear Sir,*

*Kindly refer to our ongoing discussions regarding  
OTS for our loan liability within the Bank.*

*Enclosed please find our financial alongwith  
calculation for OTS purpose.*

*We have taken 01.04.2017 as cut off date for the  
purpose of waiver of interest charged under various heads  
after account became NPA.*

*Out total loan liability as on 01.04.2017 was Rs.  
2857 lacs. In due course we have reduced the same by Rs.  
8.53 Crores (by way of disposing our properties).*

*Now our proposal for OTS is before you wherein we  
are requesting waiver in interest in total O/S as on  
01.04.2017, which stands at Rs. 827.40 Lacs only, which  
includes complete waiver of interest charged under various  
heads which stands as interest on PC at Rs. 576.87 Lacs  
and interest on CC at Rs. 250.53 aggregating to Rs. 827.40  
Lacs.*

*Kindly note that difference in principle outstanding  
in our books and bank is due to interest charged after  
account becoming NPA in 2017 is also added in Principle  
outstanding by the Bank.*

*Keeping above as base our offer is to pay principle  
O/S of Rs. 1689.77 Lacs, which will be entirely repaid*

*within 18 months from the date of sanction, we also confirm that in case bank levy's sum part of the interest, same will be acceptable to us, subject to mutual understanding.*

*Thanking you,  
Sincerely yours*

*For Sheen India Private Limited  
Sd/-  
(Director)  
Enclosed Provision Balance Sheet for 2018  
OTS CMA Data”*

10. A plain reading of the aforesaid OTS Proposal indicates that what Appellant has stated “Our total loan liability as on 01.04.2017 was Rs. 2857 Lacs. In due course we have reduced the same by Rs. 8.53 Crores (by way of disposing our properties). Now our Proposal for OTS is before you.”

11. The above proposal made on behalf of Appellant is clear acknowledgement of the debt of the Bank. Reliance by Learned Counsel for the Appellant on the last words “subject to mutual understanding” is with regard to the interest since the Appellant was requesting for not charging the interest hence such observation in no manner affect the acknowledgement of the debt which is contained in the main part of the OTS.

12. We thus are of the view that the OTS Proposal can not be held to be wanting in any manner as acknowledgement under Section 18 of the Limitation Act. We thus are of the view that the Application was not barred by time. Adjudicating Authority did not commit any error in admitting Section 7 Application.

13. Learned Counsel for the Appellant lastly contended that Appellant has made deposit of certain amount and has all intent to settle and revive the Company.

14. We are of the view that in event the Appellant takes steps and arrives at any settlement with the Bank, it shall be open for the Appellant to make an Application under Section 12-A of the Code before the Adjudicating Authority which may be considered/decided in accordance with law. Let the aforesaid steps be taken by the Appellant within 30 days from today.

With these observations, the Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Mr. Barun Mitra]**  
**Member (Technical)**

*Basant/nn*