

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 183 of 2020

[Arising out of Impugned Order Dated 27.08.2019 passed by Hon'ble National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP(IB) No. 102/07/HDB/2019)

In the matter of:

**Jagdish Prasad Sarada
(Suspended Managing Director of the Company)**

Office At:

**Plot No.655, Satamraj Village
Gaganpahad, R.R.Dist. Telangana – 501 323**

Address:

**Villa No.35, Pearl County Attarpur
Hyderabad 48, Telangana, India**

...Appellant

Vs.

**Allahabad Bank
Himayathnagar Branch, 3-6-435
Ground Floor, Main Road, Himayathnagar
Hyderabad – 500 029, Telangana**

....Respondent

Present:

**For Appellant: Mr. S.Nandkumar, Mr. Piyush Singh and Mr.Akshay
Srivastava, Advocates.**

**For Respondent: Mr.Abhishek Sharma, Mr. Anisha Mahajan and Mr.Atul
Sharma, Advocates.**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The Appellant – Jagdish Prasad Sarda, Suspended Managing Director of the M/s. Sarda Agro Oils Limited has filed this Appeal under Section 61 read with Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short

'I&B Code, 2016') & Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Impugned order dated 27.08.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in CP(IB) No.102/07/HDB/2019. The Adjudicating Authority has admitted the Petition and initiated 'Corporate Insolvency Resolution Process' (in short 'CIRP') and appointed 'Interim Resolution Professional' (in short 'IRP') Mr. Madhusudhan Rao Gonugunta.

2. The Appellant prays for allowing the present Appeal and setting aside the ex-parte order dated 27.08.2019 as stated above apart from stay of Insolvency Proceeding against the Corporate Debtor etc.
3. The Appellant has attached Companies list of Debtors and receivable alongwith action for its recovery. In addition to the 'Balance Sheet' as on 31.03.2015. A look at the 'Balance Sheet' reveals that the Company has started making losses from the 'Financial Year' 2014-15. The Appellant has also enclosed 'Memorandum of Writ Petition' filed in Hon'ble High Court of Judicature at Hyderabad in W.P No.2214 of 2016, the same appears to be pending before the Hon'ble High Court of Judicature at Hyderabad and appearing at **Annexure A-6 of the main Application.** They have also filed the order of Debt Recovery Tribunal, (for short 'DRT') Hyderabad in S.A No.10/2017. The DRT, Hyderabad has allowed for quashing the possession notice dated 27.01.2016 of the Bank but has

allowed the Respondent Bank to take measure under Section 13(4) SARFAESI Act, 2002.

4. The Adjudicating Authority has after repeated notice to the Appellant and even when counsel appeared, he failed to file any counter before the Adjudicating Authority. The Adjudicating Authority has posted the case on various dates like 18.02.2019, 06.03.2019, 27.03.2019, 08.04.2019, 29.04.2019, 02.08.2019 & 05.08.2019 but the Appellant has failed to appear before the Adjudicating Authority. The Counsel for the Appellant appeared on 04.07.2019 but did not file any counter nor represented before the Adjudicating Authority when the case was posted on 02.08.2019 and 05.08.2019.
5. The Adjudicating Authority has admitted the case based on some payments made by the Appellant- Corporate Debtor M/s. Sarda Agro Oils Limited, Hyderabad - into the current account of the Respondent Bank and the last payment being on 19.02.2016 for an amount of Rs.49,50000/- reflected in the 'Statement in the Account' of the Corporate Debtor in the books of the Respondent Bank inspite of Non-Performing Asset (for short 'NPA') on 30.09.2015.
6. On the issue of delay in filing the Appeal the Registrar, NCLAT, New Delhi vide its order 28.01.2020 in Interlocutory Application No.415/2020 has already condoned the delay and listed the matter before the Bench 'For Admission'. Although, the Respondent Bank has raised this issue of delay but the matter has already been disposed of vide its order 28.01.2020.

7. The Respondent Bank in its submission has also made an observation that when this Appellate Authority was hearing the matter on 07.02.2020, it has already observed “only issue that deserves consideration in this matter is whether the Application under Section 7 of the I&B Code, 2016 filed by the Respondent Bank was within the period of limitation”.
8. The Respondent Bank has also submitted that the Corporate Debtor/Appellant was already sanctioned the cash credit facility of Rs.20 Crore, Term Loan of Rs.14 crore and Letter of Creditor of Rs.65 Crores by way of a Common Sanction Letter dated 31.05.2012. It was also submitted that the Appellant became irregular in repayment and consequently **the account was declared NPA on 30.09.2015**. The Respondent Bank has taken necessary measure by invoking provisions section 13(2) & (4) SARFAESI Act, 2002. They have realized Rs.49,50,000/- on 19.02.2016 by way of cash and is reflected in the ledger of Corporate Debtor maintained with the Respondent Bank. The Respondent Bank has gone on further submission that by operation of Section 19 of the Limitation Act, 1963 read with Article 137 of the Schedule to the said Act, a fresh period of limitation of 3 years commenced from 19.02.2016 when a part of the debt/interest was repaid. The Respondent Bank has also averred that they have filed under Section 7 Application of I&B Code, 2016 on 31.12.2018 which is within 3 years from 19.02.2016. They have cited the Hon’ble Apex Court Judgment of M/s. Gaurav Hargovindbhai Dave Vs Asset Reconstruction Company (India) Ltd. & Anr., (2019) 10 SCC 572.

This decision has been followed by this Hon'ble Tribunal in the matter of Ishrat Ali Vs. Cosmos Cooperative Bank Ltd & Anr. (Company Appeal (AT) (Ins) No.1121 of 2019). Further, in the context of Section 19 of the Act, the Hon'ble Supreme Court in the case of Kamla Devi and Ors. Vs. Pt. Mani Lal Tiwari & Ors. (1976) 4 SCC 818 held that "4.... The function of Section 19 is to provide a later date to count the period of limitation afresh, and that fresh period of limitation will be computed from the time when the acknowledgement is signed....".

9. The Appellant has averred that even after the alleged payment of 19.02.2016 made by them the account of the Corporate Debtor remained to be an NPA and was not regularized by the Respondent Bank and 'Debt' of 'Default' continued to be mentioned as the date of NPA.

10. The Hon'ble Supreme Court has already observed in Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K.Educational Services Pvt. Ltd Vs. Parag Gupta and Associates dated 11.10.2019 that the limitation period for application under section 7 of the Code is 3 years as provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extendable only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court in **'B.K.Educational Services**

Private Limited Vs. Parag Gupta and Associates' that the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condonation of delay is carved out, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in '***Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No.6347 of 2019)***' decided on 14th August, 2020. It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.

11. We are of the firm view that the determining factor is the three years period from date of default/NPA. This Appellate Tribunal has also observed in Rajendra Kumar Tekriwal Vs. Bank of Baroda in Company Appeal(AT) (Ins) No.225 of 2020 dated 13.08.2020 that the period of three years from the date of the Account of Corporate Debtor is classified as NPA then it becomes impermissible to proceed with Section 7 Application as observed in the para 11 of the Judgment.

12. All these leads to reiterate that the provisions of The Limitation Act, 1963 vide Section 238A of the I&B Code, 2016 will be applicable to all NPA cases provided they meet the criteria of Article 137 of the Schedule to The Limitation Act, 1963. The extension for the period of Limitation can only

be done by way of application of Section 5 of The Limitation Act, 1963, if any case for the condonation of delay is made out.

13. In view of the above, this Appeal is allowed and we set aside the impugned order dated 27.08.2019 passed by the Adjudicating Authority (NCLT, Hyderabad Bench, Hyderabad). Consequently, orders passed by the Adjudicating Authority appointing IRP/RP, declaring moratorium, freezing of account etc. and all consequential action taken by IRP/RP including advertisement publication etc. all such orders and actions are declared illegal and set aside. The Adjudicating Authority will now close the CIRP proceedings and fix the fee of IRP/RP and the Corporate Debtor will pay the fees of IRP/RP and other costs incurred by him. Let the Registry to communicate the judgment of the Adjudicating Authority (NCLT, Hyderabad Bench, Hyderabad). Copy of the judgment be provided to the party concerned as per laid down Rules as well as copy of the judgment be uploaded in the website of this Appellate Tribunal. If any, interim orders were issued stands vacated. IA, if any, is disposed of. No order as to costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

New Delhi
28th August, 2020
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