NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 410 of 2023
& I.A. No. 1362 of 2023

IN THE MATTER OF:

Indian Renewable Energy Development Agency Ltd. ...Appellant

Versus

Shri Sai Kripa Sugars and Allied Industries Ltd. ...Respondent

Present:

For Appellant	**:**	**Ms. Varsha Banerjee & Ms. Mahima Ahuja, Advocates.**
For Respondent	**:**	**Mr. Sandeep Sudhakar Deshmukh, Mr. Nishant Sharma & Mr. Rakesh K. Sharma, for R-2/ Impleader.** **Mr. Rahul, for Liquidator.**

O R D E R

[Per Justice Rakesh Kumar Jain (Oral)] :

08.12.2023 This Appeal is directed against the Order dated 09.02.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court II in C.P. (IB) – 248 (MB)/ 2018 in a petition filed by the Appellant under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('**Code**') against the Corporate Debtor (Shri Sai Kripa Sugars and Allied Industries Ltd.) for the resolution of an amount of Rs. 90,71,78,954/- which has been dismissed on the ground of limitation.

2. The petition under Section 7 of the Code was filed on 16.02.2018 and it is admitted by Counsel for the Appellant that even at that time a petition for

winding up of the Corporate Debtor was filed by another Operational Creditor before the Hon'ble Bombay High Court in which Liquidator was appointed in the year 2017.

3. In view thereof, we had issued notice to the Liquidator because pursuant to the issuance of notice in this appeal the Respondent did not put appearance. However, on 13.10.2023 Dharam Raj, company Prosecutor-cum-Official Liquidator appointed in Company Petition 08/2017 by the Hon'ble Bombay High Court appeared and submitted that the Respondent Company (Corporate Debtor) is in liquidation.

4. Counsel for the Appellant has submitted that even if the Respondent (Corporate Debtor herein) is in liquidation in an order of winding up passed by the Hon'ble Bombay High Court, still a petition under Section 7 of the Code is maintainable against the Respondent at the instance of the Financial Creditor and in this regard, she has relied upon a decision of the Hon'ble Supreme Court cited as *(2021) 4 SCC 435*.

5. Since the petition filed by the Appellant was simply dismissed on the ground of limitation, therefore, we have called upon the Counsel for the Appellant to argue on the point as to how the petition filed by the Appellant before the Tribunal was within the period of limitation.

6. It is well known that for the purpose of maintaining a petition either under Section 7, 9 or 10 the limitation is of three years as provided under Article 137 of the Limitation Act, 1963.

7. Counsel for the Appellant has argued that the date of default has been mentioned in Part 4 of Form I as 31.12.2012. According to her, if three years period is to be counted then it would expire on 31.12.2015.

8.` It is argued that though the Appellant, inadvertently could not place on record the balance sheets of the Respondent to show the acknowledgement of the debt by it, yet the same have been filed with the present appeal and in this regard, she has relied upon a decision of the Hon'ble Supreme Court rendered in Civil Appeal 2085 of 2022 ***Axis bank Vs. Naren Sheth & Anr.*** decided on 12.09.2023 to contend that for the purposes of proving acknowledgement of debt to meet the issue of limitation, the balance sheet or the financial documents can be placed on record even in the appeal.

9. She then drew our attention to page 165 and 168 of the Appeal Paper Book, pertaining to the balance sheet for the year 2015 and 2016 in which the amount due to the Appellant by the Respondent is clearly reflected which tantamount to acknowledgement on the part of the Respondent.

10. In case the limitation is thus counted from 31.03.2015, relying upon the balance sheet of the year 2015, then it would expire on 31.03.2020, whereas the petition under Section 7 has been filed on 16.02.2018, much before the expiry period of the limitation.

11. We have heard Counsel for the Appellant and perused the record. As per the Appellant the date of default is 31.12.2012 and if period of three years is counted than the period of limitation is to expire on 31.12.2015. Counsel for

Appellant has been fair enough to admit that the balance sheets of the Respondent could not be placed before the Tribunal earlier but has been made part of the present appeal and in this regard, she has submitted that these balance sheets can be taken into consideration for the purpose of finding out as to whether there is an acknowledgement on the part of the Respondent of the debt due.

12. In this regard, she has referred to the decision of the ***Axis Bank (Supra)*** in which it has been held in para 21 that :-

> *"21. Reference may be made to a recent judgement of this Court in the case of Dena Bank (supra) where facts were similar. The documents relating to acknowledgement claiming benefit of Section 18 were introduced at appellate stage, and such documents being balance sheets and settlement offers. It was held that the same could be accepted even at the appellate stage and a settlement offer akin to an OTS proposal would be an acknowledgment of debt for the purpose of Section 18 of Limitation Act. The only caveat was that such acknowledgments should be before the expiry of limitation prescribed under law. Para 22 of the said judgement refers to the facts in brief which are similar to the facts of the present case where the balance sheet and one-time settlement proposal were introduced. The same is reproduced herein:*
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>> *"22. In other words, the main question involved in this appeal is, whether a petition under Section 7 IBC would be barred by limitation, on*

> *the sole ground that it had been filed beyond a period of 3 years from the date of declaration of the loan account of the corporate debtor as NPA, even though the corporate debtor might subsequently have acknowledged its liability to the appellant Bank, within a period of three years prior to the date of filing of the petition under Section 7 IBC, by making a proposal for a one-time settlement, or by acknowledging the debt in its statutory balance sheets and books of accounts."*

13. As regards the question as to whether the petition can still be admitted despite the fact that the Respondent Company has been ordered to be wound up and the official liquidator has been appointed, she has relied upon the decision rendered in the case of ***Navinchandra Steels Pvt. Ltd. vs. SREI Equipment Finance Limited & Others*** *[(2021) 4 SCC 435].*

14. Since, we are dealing with the issue of limitation only at this stage, therefore, keeping in view the law laid down in the case of Axis Bank (Supra) and the fact that the balance sheets of the year 31.03.2015 onwards reflects the debt of the Appellant in the account of the Respondent, the acknowledgement is writ large. Therefore, the petition filed on 16.02.2018 is well within the period of limitation.

15. Thus, at this stage, we are only deciding the issue of limitation because the application filed by the Appellant under Section 7 of the Code was dismissed by the Tribunal only on that score.

16. Since, we are holding that the application filed by the Appellant under Section 7 was well within the period of limitation, therefore, the Appeal succeeds and the Impugned Order is hereby set aside.

17. The matter is remanded back and the parties are directed to appear before the Tribunal on **20th December, 2022**. However, it is made clear that the Tribunal shall take a decision about admission of the Appeal after hearing the parties.

18. Needless to mention that the matter is pending since long, therefore, the Tribunal may decide the application under Section 7 of the Code expeditiously.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/Ravi