

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

**Company Appeal (AT) (Insolvency) No. 731 of 2019**

**IN THE MATTER OF:**

**K.R.V. Uday Charan Rao**

**...Appellant**

**Versus**

**Bank of India & Anr.**

**...Respondents**

**Present:**

**For Appellant :**           **Mr. Abhinav Vasisht, Senior Advocate with Mr. Puneet Yadav, Mr. Sourabh Yadav and Mr. Tarun Arora, Advocates.**

**For Respondents:**       **Mr. Ashish Rana and Mr. Harshit Garg, Advocates for R-1.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘M/s. Bank of India’- (‘Financial Creditor’) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. Sainath Estates Private Limited’- (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, by impugned order dated 8<sup>th</sup> July, 2019 admitted the application.

2. Learned counsel appearing on behalf of the Appellant/ Shareholder submitted that the application under Section 7 was barred by limitation.

3. It was submitted that the loan was availed by the 'Corporate Debtor' on 20<sup>th</sup> August, 2010 from the 'Financial Creditor'. Subsequently, notice issued under Section 13(2) of the SARFAESI Act, 2002, but no action was taken against the 'Corporate Debtor'.

4. It was submitted that on invocation of provisions of the 'I&B Code', the 'Corporate Debtor' had no option but to provide confirmation of debt on 5<sup>th</sup> March, 2018. It was submitted that the said Agreement executed by the 'Corporate Debtor' was in violation of Section 25 of the Indian Contract Act.

5. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***"Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr. - Civil Appeal No. 4952 of 2019"*** to suggest that the application is barred by limitation.

6. Learned counsel for the Respondents submitted that the application under Section 7 is not barred by limitation for the following reasons:

- (i) The 'Corporate Debtor' have acknowledged the debt vide letters dated 17<sup>th</sup> March, 2015, 20<sup>th</sup> March, 2015 and 5<sup>th</sup> March, 2018.
- (ii) The 'Corporate Debtor' has made offer of One-Time Settlement through various letters dated 17<sup>th</sup> January, 2017, 8<sup>th</sup> February, 2017 and 23<sup>rd</sup> March, 2017 to the Hyderabad Asset Recovery Branch with respect to the account maintained with Mid-

Corporate Branch. The said letter reflects another acknowledgment of debt by the 'Corporate Debtor'.

- (iii) On 27<sup>th</sup> March, 2017, the Bank approved the compromise offer on the terms and conditions mentioned therein. Acting on the same 'Corporate Debtor' made payment of Rs.1,00,00,000/- and further sought time to make balance payment vide letters dated 4<sup>th</sup> July, 2017 and 10<sup>th</sup> July, 2017. It is submitted that making part payment to the Bank also amounts to acknowledgment of liability by the 'Corporate Debtor'
- (iv) The Respondent Bank has received following part payments against the outstanding debts in the following

<b>M/s. Sainath Estates Pvt. Ltd. Credit received</b>			
<b>S.No.</b>	<b>Date</b>	<b>OTS Part Payment Amount</b>	<b>Remarks</b>
1	31-Mar-17	5,00,000.00	
2	30-Jun-17	95,00,000.00	
3	31-Aug-17	1,07,74,714.00	Received from Syndicate Bank
4	29-Jan-18	50,00,000.00	
5	23-Feb-18	50,00,000.00	
6	18-Apr-18	25,00,000.00	
7	21-Apr-18	1,75,00,000.00	
	<b>Total</b>	<b>5,07,74,714.00</b>	

The above clearly establishes that the 'Corporate Debtor' has acknowledged the existence of debt.

- (v) The 'Corporate Debtor' has acknowledged its debt in the financial statements for the Financial Year 2016-2017 and 2017-2018 filed with the Registrar of Companies.
- (vi) After issuance of notice dated 4<sup>th</sup> December, 2013, the Bank has duly taken action under Section 13 (4) of the SARFAESI Act, 2002 through lead banker Syndicate Bank, who vide notice dated 5<sup>th</sup> September, 2014 has taken symbolic possession of the properties. It is pertinent to mention that the Borrower has filed WP No. 46730/2016 before the High Court of Telangana and I.A. No. 1/2016 (WPMP No. 57551/2016) wherein it has sought stay against the said notices. The Hon'ble High Court has passed a conditional order and as a consequence of which the Borrower had deposited Rs. 3 Crore which was shared by all the secured lenders. Therefore, this part payment again shows that the acknowledgment of liability and extension of contract.

7. Counsel for the Respondents also placed reliance on Section 18 of the Limitation Act to suggest that the Application is not barred by limitation as the limitation starts from the date of acknowledgement, which reads as follows:

***“18. Effect of acknowledgment in writing.— (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an***

*acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

8. For counting the period of limitation in filing the application under Section 7, we find that Part II of Third Division of Schedule of Limitation Act, 1963 i.e. Article 137 is applicable, which reads as follows:

Part II-OTHER APPLICATION		
Description of application	Period of Limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

9. From the aforesaid provisions, it is clear that the limitation will start from the date of accrual of right. The accrual of right is also to be noticed from the date of confirmation or acknowledgment of the debt and to be read along with Section 18 of the Limitation Act, 1963.

10. It was in this background, as far back as on 17<sup>th</sup> March, 2015, the ‘Corporate Debtor’ acknowledged the debt for the purpose of accepting the liability under Section 18 of the Limitation Act, 1963, as extracted below:

4. इसके साथ दूसरी प्रति आपके रिकार्ड के लिए है।

भवदीय,

4. A duplicate is sent herewith for your record.

Yours faithfully,

संलग्नक

प्रबंधक

Encl.

Manager

तारीख \_\_\_\_\_ 20 \_\_\_\_\_

Date 17/03/2015

प्रति,

बैंक ऑफ़ इंडिया

To,

Bank of India

1. मैं / हम एतद्वारा उपर बताये अनुसार रु. \_\_\_\_\_

की राशि के लिए \_\_\_\_\_ पर मेरी / हमारी

ऋणग्रस्तता अभिस्वीकार करता हूँ / करती हूँ / करते हैं और इसकी

पुष्टि करता हूँ / करती हूँ / करते हैं और पुनः अभिस्वीकार करता

हूँ / करती हूँ / करते हैं कि ऋण उपर बताए गए ढंग से प्रतिभूति

है और \_\_\_\_\_ हक / विलेख की जमा

द्वारा सामयिक बंधक के उपर्युक्त प्रलेख पूर्णतः लागू और प्रभावी

हैं तथा उसके अधीन प्रतिभूति भी पूर्णतः लागू और प्रभावी है तथा

15 दिनों के अन्दर मुताबिक आपके प्रति जिम्मेदार हूँ / हैं।

1. I / We hereby confirm and acknowledge my / our

indebtedness on 13-1-15 in the

sum of Rs. 460836160.09 as stated above and further acknowledge that the debt

is secured in the manner stated above and that the aforesaid documents of security / and the equitable

mortgage by deposit of title deed on 21-8-2010

are in full force and effect and that the security thereunder is also in full force and effect and that I/We

am/are liable to you in accordance with the terms thereof.

2. मैं / हम एतद्वारा पुष्टि करती हूँ / करती हूँ / करते हैं कि

यह अभिस्वीकृति परिसीमन अधिनियम, 1963 की धारा 18 के

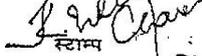
अंतर्गत मेरी / हमारी देयता के रूप में निष्पादित की गई हैं।

2. I / We hereby confirm that this acknowledgement

is executed as an acknowledgement of my / our liability

for the purpose of section 18 of the Limitation Act, 1963.

For Sainath Estates (P) Ltd.

  
स्वामि  
Director

For Sainath Estates (P) Ltd.

  
स्वामि  
Director

स्वामि

Stamp

स्वामि

Stamp





We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice A.I.S. Cheema ]  
Member (Judicial)

[ Kanthi Narahari ]  
Member (Technical)

NEW DELHI

13<sup>th</sup> November, 2019

/AR/