

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 966 of 2019

IN THE MATTER OF:

Om Prakash Pandey

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant : **Mr. Partha Sil, Ms. Jayati Chowdhury and Mr. Tavish B. Prasad, Advocates**

For Respondent : **Ms. D. Adhikari and Ms. Vineeta Rathore, Advocates**

ORDER

19.09.2019 This Appeal has been preferred by Appellant, Director of 'Sri Balaji Logs Products Pvt. Ltd.' (Corporate Debtor) against the order dated 17th July 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata admitting the application under Section 7 of the Insolvency and Bankruptcy Code, 2016, filed by 'State Bank of India' (Financial Creditor).

2. Leaned counsel for the Appellant submits that the appeal is not barred by limitation having been filed within the time from the date of knowledge which we accepted. On merits, learned counsel for the Appellant submits that the application under Section 7 of the 'I&B Code' was barred by limitation. According to the learned counsel for the Appellant, the default took place on 21st December 2013 when the account of 'Corporate Debtor' was classified as NPA.

3. However, such submission has been opposed by Ms. D. Adhikari, leaned counsel appearing on behalf of the State Bank of India.

4. We have heard the parties and gone through the records. From the records, we find that the account of the 'Corporate Debtor' having become 'Non-Performing Assets' (NPA), 'State Bank of India' had taken steps under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI**' for short) by issuance of Notice under Section 13(2) of the 'SARFAESI Act' on 9th February, 2015. The 'Corporate Debtor' in its reply while challenging the actions, the 'Financial Creditor' again issued another Notice under Section 13(2) in the 'SARFAESI Act'. Subsequently, the Appellant - 'Corporate Debtor' having failed to pay the amount, the 'State Bank of India' filed application under Section 19 of the 'Recovery of Debts due to Bank and Financial Institution Act 1993' before the 'Debt Recovery Tribunal-1, Kolkata on 17th November, 2016 in O.A. No. 202 of 2016 for recovery of dues. The 'Corporate Debtor' and the Guarantors also filed the appeal under Section 17 of the 'SARFAESI Act' against action taken by the 'Financial Creditor' and filed S.A. No. 202 of 2016 which is pending before the Debt Recovery Tribunal-1, Kolkata on 17th November 2016.

5. At this stage the 'Corporate Debtor' made request for 'one time settlement' between 16th March, 2018 to 3rd December 2018. In spite of the same as it could not reach for settlement nor paid any amount, the 'Financial Creditor' - 'State Bank of India' filed application under Section 7 of the 'I&B Code'.

6. From the facts, as narrated above, it is clear that the 'Financial Creditor' immediately took steps for recovery of amount in terms of 'SARFAESI Act' or as also 'Recovery of Debts due to Banks and Financial Institutions Act, 1993' and

the matter is pending . The provisions of ‘SARFAESI Act’ having invoked also suggests that the ‘Corporate Debtor’ has mortgaged the property with ‘State Bank of India’ (Financial Creditor).

7. Insofar as the limitation is concerned for filing the application under Section 7 of the I&B Code, the provisions of Article 137 of Part II of Third Division of the Limitation Act, 1963 is applicable, which reads as follows:

PART II – OTHER APPLICATIONS

Description of application	Period of Limitation	Time from which period being 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.

8. The ‘Insolvency and Bankruptcy Code, 2016’ having come into force on 1st December, 2016. The ‘State Bank of India’ had accrued its right to file the application under Section 7 since 1st December, 2016. On the other hand, it is clear that the application under Section 7 is not barred by limitation.

9. Now the question arises for consideration is as to whether the claim is barred by limitation so as to enable the ‘Corporate Debtor’ to claim that the ‘debt’ is payable in the eyes of law. In this regard, we may refer Article 62 of Part-V of First Division of Schedule of the Limitation Act, 1963 which relates to suit relating to immovable property and to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and reads as follows:

PART V – SUITS RELATING TO IMMOVABLE PROPERTY

Description of Suit	Period of Limitation	Time from which period being to run
62. To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.

10. From the aforesaid facts, we find that there being 12 years limitation prescribed under the law considering the facts, it cannot be held that the claim is barred by limitation and, therefore, 'Corporate Debtor' cannot take plea that no debt is payable in the eyes of law. In fact the 'Corporate Debtor' intended to make one time settlement between 16th March, 2018 to 3rd December 2018, it admitted its liability and never claimed that the claim is barred by limitation.

We find no merit in the appeal. The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

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