

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

**Company Appeal (AT) (Ins) 839 of 2019**

(Arising out of Order Dt.26.6.2019 passed by National Company Law Tribunal, Mumbai Bench in C.P.(I.B.) 162/MB/2019)

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Babasaheb Sawalaram  
Chaware Suspended  
Director of the Board  
M/Harneshwar Agro  
Products Power Yeast(I) Ltd  
R/o Ayodhya Niwas,  
Dyandeep Housing Society,  
Swami Samarth Nagar,  
Walchand Nagar, Indapur,  
Dist: Pune 413114

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Appellant

**Versus**

1) Punjab National Bank,  
(A banking company  
having its Head Office  
at Plot No. 4, Sector 10,  
Dwarka, New Delhi, 110075;  
Branch Office: Asset  
Recovery Management,  
9, Moledina Road,  
Pune 411001,  
through Chief Manager.

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Respondent No.1

2) Harneshwar Agro Products,  
Power and Yest (I) Ltd.  
Through IRP Jigar Shah,  
B 801 Gopal Palace  
Shiromani Complex,  
Nehru Nagar Cross Road,  
Nehru Nagar,  
Ahmedabad 380015  
Email: ip.jigar@gmail.com

Corporate Debtor

Respondent No.2

**For Appellant: Mr. Vijay Kumar Advocate**

**For Respondents: Mr. P.B.A. Srinivasan and Mr. Avinash Mohapatra, Advocates**

**Mr. Pravin Waman Satale, Advocate for Intervenor**

**J U D G M E N T**  
**(2<sup>nd</sup> June, 2020)**

**A.I.S.CHEEMA, J. :**

1. Respondent No. 1 Bank ( The Bank ) filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ( IBC – in short ) against the Harneshwar Agro Products Power and Yeast (I) Ltd (Corporate Debtor/Company -) which has been admitted by the National Company Law Tribunal, Mumbai Bench (NCLT - Adjudicating Authority) and hence this Appeal by Director of suspended Board.

2. The case of the Bank as brought before the NCLT and as argued before us is that the Bank had extended term loan to the Corporate Debtor in 2005 and working capital loan, cash credit facility etc. was extended. The facilities were renewed and revised from time to time. Against three term loan accounts availed by the Corporate Debtor, as on 6.1.19 the outstanding dues were of Rs.45,82,14,984/- The Bank placed before the NCLT 17 documents. It was noticed that the Bank had issued Notice Dt. 12.11.11 under

section 13 (2) of SARFAESI ACT for Rs.12,82,06,949 as on 31.10.2011.

3. Corporate Debtor put up defence that the Bank was vindictive. The Loan was received after approval by Consortium of Banks and the other Banks were not made party. The Bank had filed Original Application before DRT which had abated. The notice had been sent to a dead person.

4. NCLT rejected the ground of limitation referring to Simple Mortgage Deed Dt. 28.3.2008. It found the debt to be in limitation, due and in default. The defence raised was rejected. The application came to be admitted and Corporate Insolvency Resolution Process was initiated vide Impugned Order.

5. The lengthy appeal filed is repetitive and material not relevant to decide the matter/appeal is referred. It has been argued and the Appellant, in brief is claiming that NCLT wrongly relied on mortgage document and held that the limitation is 12 years; the Bank had failed in its responsibilities by not releasing working capital on time even after receiving margin money, even though necessary documents were executed; it is not correct that the Corporate Debtor failed to raise share capital; the Bank for itself and Consortium

continued measures after issuing notice under SARFAESI; the notice was issued to Company and its Directors one of whom was dead; O.A. filed abated and thus the application under IBC could not be maintained. It is claimed that from 2015 to 2018 the Bank and consortium forced the Appellant and the Company for one time settlement. It is abated liability and hence no liability. Appellant claims the application admitted is time barred.

It is argued for the Appellant that there was no demand and application under Section 7 has been filed. The documents now being relied on were not relied on before Adjudicating Authority. For such reasons the Appellant wants the Impugned Order to be set aside.

6 The Bank is supporting the Impugned Order and relies on various documents to claim dues outstanding and relies on OTS offers and payments to support the claim that the dues are in limitation. It is argued that the Bank had put up all the documents before Adjudicating Authority and after relying on deed of mortgage it did not refer to other documents, as found not necessary.

7. We have heard both sides. It is not in dispute that term loan was sanctioned in 2005. Appeal page 947 shows the Notice under

S.13 (2) of SARFAESI Act issued on 12.11.11 to M.D. of the Company. Record is that the account became NPA on 31.3.11. Bank filed O.A. 89/14 in DRT, which later abated, is not in dispute. At page 944 is letter Dt. 29.8.11 of Bank to MD of the Company informing that its loan account with the Consortium, comprising the Bank has been classified as NPA by all the member Banks. The loan was thus recalled.

We reject the argument that before filing S.7 IBC proceeding the Bank should have again raised a demand.

8. Now the question of limitation. NPA is dated 31.3.11. Respondent has filed Reply vide Diary No. 15988. We will now refer to documents therein and page numbers from there. Pg.19 is letter dt. 3.12.12 from Appellant himself referring to offer made by the Corporate Debtor for One Time Settlement (OTS) which was not accepted by Bank and improving offer to Rs. 21 Crores. Appellant improved this offer further to Rs. 22 Crores vide letter dt.18.3.13 (Pg.20). At page 25 is the Compromise proposal offered by Appellant on 25.11.13 offering to make down payment of Rs.600 lacs and further amounts in installments as mentioned. Page 18 is letter Dt. 2.5.15 with OTS offer claiming that the Company has paid Rs. One Crore and is ready to pay Rs.3 Crores by 10.5.15 to settle loan of

Rs. 25 Crores. He offered to pay balance in 90 days. Vide letter dt. 21.3.16 (Pg.14) the Company referred to payment of Rs. 4 Crores made and sought time to settle the dues under OTS. The document has a handwritten endorsement which appears to be of Bank Official, not agreeing to extension of time in OTS, and the copy appears to have been given to Appellant who signed receipt with dt.21.3.16. There is yet another similar letter of Corporate Debtor dt.24.5.16 at pg.17. Appellant wrote letter dt.1.7.16 to a Lok Sabha M.P referring to the Company's small farmer base and help of the Hon'ble Member of Lok Sabha to get extension of time for OTS from the Consortium Banks. Finally there is letter dt. 10.7.18 of the Appellant himself to the Bank, referring to ethanol/sugarcane policy of Government and then clearly admitting taking of loan and dues outstanding of the Consortium and OTS sanctioned in 2016 of Rs.25.05 cr. and seeking bailout policy based on GOI bailout policy.

Then the application under S.7 of IBC came to be filed on 11.1.19.

9. Considering the above it is apparent that Appellant all the time admitted and acknowledged the dues and making some payments kept seeking time. Appellant has vaguely pleaded coercion, force and pressure in getting executed OTS documents. There are no

particulars to spell out and no material showing coercion, force or pressure. Rather it appears Appellant consumed time by such constant offers. The correspondence referred has Acknowledgments of dues covered under section 18 of the Limitation Act. The dues outstanding relied on are not hit by limitation. Abatement of Original Suit before DRT will not affect the proceeding in NCLT under IBC as the dues still remain outstanding. As such the Adjudicating Authority (NCLT) rightly admitted the application. We find no substance in the Appeal and arguments raised for the Appellant.

We pass the following order:

**ORDER**

The Appeal is dismissed. No Orders as to costs.

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

[Justice A.B.Singh]  
Member Judicial

[Kanthi Narahari]  
Member Technical