

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.488 of 2019

[Arising out of Order dated 08.03.2019 passed by National Company Law Tribunal, Guwahati Bench, Guwahati in Dy. No.3(185) of 2018]

<u>IN THE MATTER OF:</u>	Before NCLT	Before NCLAT
1. M/s. Supreme Commotrade LLP 506, Siddharth Complex, H.B. Road, Fancy Bazar, P.O Guwahati, Assam – 781001	Petitioner/ Financial Creditor	Appellant No.1
2. Shri Binod Kumar Murarka 506, Siddharth Complex, H.B. Road, Fancy Bazar, P.O Guwahati, Assam – 781001	---	Appellant No.2

Versus

M/s. Shree Sai Rolling India Ltd. Rangsakona, 15 th Mile, G.S. Road, P.O Byrnihat, Meghalaya - 793101	Respondent/ Corporate Debtor	Respondent
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With

Company Appeal (AT) (Ins) No.489 of 2019

[Arising out of Order dated 01.03.2019 passed by National Company Law Tribunal, Guwahati Bench, Guwahati in Dy. No.3(186) of 2018]

<u>IN THE MATTER OF:</u>	Before NCLT	Before NCLAT
1. M/s. Supreme Commotrade LLP 506, Siddharth Complex, H.B. Road, Fancy Bazar, P.O Guwahati, Assam – 781001	Applicants/ Financial Creditor	Appellant No.1

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| 2. Shri Om Prakash Murarka
506, Siddharth Complex,
H.B. Road, Fancy Bazar,
P.O Guwahati,
Assam – 781001 | --- | Appellant No.2 |
| 3. Smt. Asha Devi Murarka
506, Siddharth Complex,
H.B. Road, Fancy Bazar,
P.O Guwahati,
Assam – 781001 | --- | Appellant No.3 |

Versus

M/s. Shree Sanyeeji Ispat Ltd. 79, Brindaban Market, Sati Joymati Road, Athgaon, Guwahati Assam – 781 001	Respondent/ Corporate Debtor	Respondent
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With

Company Appeal (AT) (Ins) No.490 of 2019

[Arising out of Order dated 01.03.2019 passed by National Company Law Tribunal, Guwahati Bench, Guwahati in Dy. No.3(187) of 2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Shri Om Prakash Murarka
506, Siddharth Complex,
H.B. Road, Fancy Bazar,
P.O Guwahati,
Assam – 781001

Petitioner/
Financial Creditor

Appellant

Versus

M/s. Shree Sai Prakash
Alloys Pvt. Ltd.
Rongsokana,
15th Miles,
P.O Byrnihat,
Meghalaya - 793101

Respondent/
Corporate Debtor

Respondent

For Appellants: Shri Manish Raghav and Shri Rohit Gour, Advocates

For Respondent: Shri Saurabh Jain, Shri Bhavishya Singh, Shri Atul Kumar and Shri Nishant Das, Advocates

ORAL JUDGEMENT

29.01.2020 These Appeals have been filed against similar Impugned Orders. In CA 488 of 2019, the Impugned Order is dated 8th March, 2019 and in the other two Appeals, it is dated 1st March, 2019. Supreme Commotrade LLP is common Appellant in two Appeals and in the third Appeal, Shri Om Prakash Muraka is Appellant who is stated to be partner in Supreme Commotrade LLP and others. These three Appeals arise out of different Applications under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) which had been filed by the Appellants against different Respondents – Corporate Debtors who are three different companies. The three Appeals have similar facts and the Impugned Orders have been passed on similar grounds and thus we have taken up all these three Appeals together.

2. We have taken up and heard Company Appeal (AT) (Ins) 489 of 2019, as the lead case. With regard to the other two Appeals, it is stated that CIRP proceedings have now been initiated against the respective Corporate Debtors as shown in those two Appeals - CA 488 of 2019 and CA 490 of 2019 at the instance of other Financial/Operational Creditors. Ordinarily, we would have disposed those Appeals directing the Appellants to go and file their claim with Resolution Professional as must have been appointed in those two CIRPs. However, the learned Counsel for the Appellant submitted that in those two

Appeals also, question of limitation has been held against the Appellants as well as the Appellants have been treated as money lenders hit by the Assam Money Lenders Act and thus the learned Counsel stated that it is necessary that those two Appeals also should be decided. As such, with consent of parties, we have heard those two Appeals also and we are passing the present Judgement.

3. For the sake of convenience of reading and understanding, (unless mentioned otherwise) we will be referring to the facts and evidence in some required details from Company Appeal (AT) (Ins) No.489 of 2019. We will also be reproducing broad facts from the other two Appeals for the sake of present decision.

Company Appeal (AT) (Ins) No.489 of 2019

4. The learned Counsel for the Appellants has submitted that the Appellant No.1 is registered LLP. Appellants 2 and 3 claim to be individuals. Appellants claim to have granted financial assistance of Rs.30/-, Rs.20/- and Rsr.30/- Lakhs to Respondent. It is claimed that it is mainly held by the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench, Guwahati) that these Appellants are money lenders so as to nonsuit the Appellants. It is argued that the Appellants are in wholesale grain business.

5. The learned Counsel referred to Page – 49 of the Appeal where the Appellants had given extracts of their ledger account to show that the Appellant No.2 had given loan of Rs.20 Lakhs to the Corporate Debtor on 30.04.2009. Reference is made to ledger account at Page – 39 (Annexure A2)

to state that the Appellant No.1 had given loan of Rs.30 Lakhs to the Corporate Debtor on 16th December, 2010; and reference is made to document at Page – 59 as ledger account of Appellant No.3 to show that loan was given of Rs.30 Lakhs on 20.08.2009 to the Corporate Debtor. It is stated that Application under Section 7 was filed on 13th December, 2018. Reference is made to Part IV (Page – 97) and the Counsel states that in the format, the date of disbursement was by error shown as 01.10.2014 which the learned Counsel states was actually the date of acknowledgements which are at Pages – 69 to 71 of the Appeal where Director of the Corporate Debtor gave the confirmation of the balance and also issued cheques as at Page Nos.72 to 74. The date of default in the Application under Section 7 of IBC has been shown as 24.10.2018 on the basis that the cheques issued were dishonoured. It is stated that when the cheques were issued on 01.10.2014 with Annexure A-3 (colly), no dates were put by the Corporate Debtor on the cheques, copies of which are at Pages – 73 and 74. Counsel states that later on, the Financial Creditors put the date of 22.10.2018 in the three cheques and the cheques were presented. The Counsel states that in the format, the Appellants wrongly relied on these dates to show the default. It is stated that the actual disbursements were as mentioned above referring to the ledger accounts of the Appellant.

6. The Counsel stated that Annexure A-5 (colly) shows that the three cheques issued by the Corporate Debtor bounced when same were presented. Learned Counsel states that balance sheets of the Corporate Debtor though

not on record, would show the liability of the Appellants and thus, according to him, the balance sheets would save limitation for the Appellants.

7. The learned Counsel for the Appellants states that in the Reply (Page – 103), the Corporate Debtor did not take any plea that the Appellants were money lenders but the Adjudicating Authority at the time of arguments entertained arguments of money lending and the Adjudicating Authority wrongly referred to the three proceedings pending which have given rise to these three Appeals to conclude that money lending was established. The Counsel referred to Judgement in the matter of **“Sitaram Poddar Vs. Bhagirath Choudhary”** reported as MANU/WB/0574/2011 and it is stated that neither there were pleadings nor there was any material to show that there were continuous acts of money lending so as to attract the provisions of the Assam Money Lenders Act.

Company Appeal (AT) (Ins) No.488 of 2019

8. This Appeal claims Appellant No.1 to be LLP and Appellant No.2 to be partner of Appellant No.1 and an individual. The learned Counsel for the Appellants argued that in this Appeal, the Appellant No.2 gave loan on 11.05.2011 of Rs.10 Lakhs and on 16.05.2011 of Rs.10 Lakhs. Counsel referred to Annexure A-2 (colly) (Page – 34 at 37) as the ledger account of the Appellant No.2. It is argued that the Appellant No.1 gave loan to the Corporate Debtor on 23rd December, 2010 of Rs.35 Lakhs and on 24th December, 2010 of Rs.10 Lakhs. Counsel referred to copy of ledger of the Appellant No.1 at Page – 42 to support his submission.

9. The Counsel for Appellant states that in this Appeal also on 1st April, 2016, the Director of the Corporate Debtor issued letters as at Annexure A-3 (colly) (Page – 52 and 53) confirming balance due and issued cheques. Here also, it is stated that the cheques (Annexure A-4 colly) issued on 01.04.2016 were without date and the Appellants subsequently put date of 10th October, 2018 and presented cheques (Annexure A-4 colly) which bounced on presentation as can be seen from Annexure A-5 (colly) (Page – 60 and 61). The Counsel states that in this matter, the Corporate Debtor had confirmed receipt of the amounts as can be seen from Confirmation of Accounts as at Pages – 55 to 57 which are confirmation of accounts made in 2012 and 2013.

10. It is submitted by the learned Counsel that even in this matter when Application under Section 7 was filed, in the format, dates of disbursement were referred to wrongly as of 01.04.2016, which was actually the date when acknowledgement was issued and the default was shown as of 12.10.2018 which actually was the date of dishonour of the cheques.

11. In this Appeal also, the learned Counsel is similarly claiming (as in CA 489 of 2019) that the Appellants could not have been held as money lenders.

Company Appeal (AT) (Ins) No.490 of 2019

12. This Appeal is by individual. In this Appeal also, the learned Counsel for the Appellant referred to (Annexure – A2 (colly) Page – 30) ledger account of the Appellant and stated that the loan of Rs.50 Lakhs was given on 9th April, 2012 of which the Corporate Debtor returned Rs.15 Lakhs on 8th March, 2013. The learned Counsel then referred to Annexure – A3 (Page – 37) to say

that on that date, the Director of the Corporate Debtor executed receipt of Rs.35 Lakhs on loan account and also issued cheque (Annexure A-4 - Page 38) which the Counsel states, was without date and thus, the loan was acknowledged. It is stated that here also Annexure A-5 (Page – 39) shows that when the cheque issued on 01.11.2016, date was not put and later Appellant put date to cheque (Annexure A-4) as 30.10.2017 and when it was presented, it bounced on 1st November, 2017. It is stated that in this matter also, in the format which was filed under Section 7 of IBC, wrongly, date of disbursement was shown as 01.11.2016 and date of default was shown as 30.10.2017 when cheque was dishonoured.

13. The learned Counsel for the Appellant states that in all these three matters, when the loan was given, no specific period was fixed for return of the money and the Corporate Debtor was bound to return on demand.

14. In the Appeals, the learned Counsel states that the Appellants were wrongly held as money lenders and refers to the argument.

15. The learned Counsel for the Appellants in these three Appeals states that in all these matters, the Respondents were paying interest from time to time as reflected in the ledger accounts of the Appellants.

16. The Counsel for the Respondent submits that in all these three Appeals, the Appellants are merely relying on their own ledger accounts to say that loan was disbursed and that interest was being paid and that amounts were outstanding. The Counsel states that no bank statements have been put on record and no proof has been given that the Respondents had been paying

any interest at any times. The learned Counsel states that the formats submitted under Section 7 of IBC in all the three Appeals were totally wrong and did not reflect the real transactions and the record shows that the transactions date back to 2009 to 2011 in Appeal Nos.489/2019 and 488/2019 and in the third Appeal 2012. The Counsel states that the alleged acknowledgements were beyond period of three years of signing of the loans and benefit of Section 18 of the Limitation Act could not be taken. It is stated that in the absence of proof of payment of interests and acknowledgements within three years, all the three matters were time barred and the same has been rightly held by the learned Adjudicating Authority. It is further argued that the Appellants accept that in these three Appeals alleged acknowledgements were issued on 01.10.2014 (CA 489 of 2019), 01.04.2016 (CA 488 of 2019) and 01.11.2016 (CA 490 of 2019) and admittedly on those dates, no money was actually paid but these documents were got executed to create a document of acknowledgement. According to the Counsel, if there was no date fixed for return, the date of loan should have been taken as triggering point of limitation, under Article 21 of the Limitation Act.

17. The learned Counsel further submitted that the Adjudicating Authority has rightly held that the Appellants are money lenders.

18. Coming to the question of limitation, if the Appeal No.489 of 2019 is seen, the loans were allegedly given on 30.04.2009, 20.08.2009 and 16.12.2018. No document of loan is shown and Appellants are relying only on personal ledgers. There is no foundation laid that the loan was to be repaid on demand. Mere argument in Appeal before us would not be helpful. Apart

from this, even if it was to be said that the loan was to be repaid on demand, the learned Counsel for the Respondent is referring to Article 21 of the Limitation which prescribes limitation for Suit in cases of money lent under agreement that it shall be payable on demand. The period of limitation is three years and the time from which the period begins to run, is when the loan is made. Although the learned Counsel for Respondent has relied on that Article, we are conscious that this limitation relates to when a party wants to file a suit. In fact, Article 19 relating to Suit for money payable from money lent, also the period of limitation is three years from the time when the loan is made. Admittedly, in none of these Appeals, Suits were not filed within three years of making of loan. If the facts in CA 489 of 2019 are to be specifically referred, the loans are said to have been given in 2009 and 2010. When alleged balance was confirmed and cheques issued on 1st October, 2014, the debt was already time barred, if Suit was to be filed. Admittedly on 01.10.2014, no amount was lent and the cheque without date was admittedly kept for another more than three years to go to the bank only in October, 2018. The Appellants have not shown how for a debt for which Suit could not be brought, the Application under Section 7 could be filed. For the purpose of Application under Section 7, it is necessary to show that there is a debt and that there has been a default. Admittedly, in the formats submitted under Section 7 in all these Appeals, the dates given of default were when the cheques bounced in 2018 in Appeal No.489 of 2019 and Appeal No.488 of 2019 and 2017 in Appeal No.490 of 2019. Admittedly, the dates of defaults given in the format are erroneous and no acceptable foundation is laid to show debt due and default and as to how the same could be said to be within limitation. The

formats submitted with erroneous and wrong information deserve to be rejected. the Appellants have failed to show debt due and date of default and thus, the Application under Section 7 deserved to be dismissed.

19. Same are the facts in the other Appeals – CA 488 of 2019 and CA 490 of 2019, the details of which we have already referred.

20. As regards the questions of money lending, learned Counsel for the Appellants has relied on the Judgement in the matter of “Sitaram Poddar” referred (supra) where the Hon’ble High Court observed in para – 17 as under:-

“17. Therefore, one or two isolated or occasional acts of lending money will not constitute a money-lending business; instances of occasional lending of money even at a remunerative rate of interest are not sufficient to constitute business of money-lending. Every loan is a debt, but every debt is not loan. Thus, by laying stress on the business trait of the lending, the Bengal Money-Lenders Act, 1940 contemplates a professional money-lender and it is in relation to such a professional money-lender that the provisions as to a licensee and registrations are applicable.”

Hon’ble Supreme Court in Order passed in “**Kalcida Wallang and Ors.**

Vs. U. Lokendra Suiam” (MANU/SC/0907/1987) observed:-

“Both the appellate court and High court have found that the plaintiff was not a money lender within the meaning of Assam Money Lenders’ Act, 1934. The High Court observed that a few disconnected and isolated transactions would not make the plaintiff a person engaged regularly in money lending business. The approach of the High Court to the question was correct. We also notice that the defendants did not take the plea that the plaintiff was money lender in the written statement nor did they adduce any evidence before the trial Court that the plaintiff was a money lender. In view

of this we find no merit in the appeal. it is, therefore, dismissed, but in the circumstances without costs.”

21. It is admitted fact that in the Replies filed by the Corporate Debtor before the Adjudicating Authority, no stand was taken that the Appellants are money lenders. Apart from this, the Judgements show that not only pleading should be there but also evidence is required to be adduced to prove a person as money lender. There have to be instances showing repetitive acts of money lending and profession will have to established so as to conclude that a person is money lender. The law remains similar for the various Money Lenders Acts where one would have to prove as such fact that a person is money lender prohibited under the given Act.

22. The Adjudicating Authority without foundation in pleadings, merely on arguments and only on the basis that there are these three proceedings filed, appears to have concluded that the Appellants were money lenders. We find that the proceedings under Section 7 and 9 of IBC are summary in nature and merely on averment, it would not be appropriate to hold Appellants to be hit by the Monet Lenders Act. It would require a suit with pleadings and evidence to come to such conclusion. It would be different if there is some decree or Order of some Court holding that the particular Financial Creditor is a money lender prohibited under the Money Lenders Act in which case, the Adjudicating Authority can look into the same. Otherwise merely on an averment, such fact cannot be investigated in proceeding under Section 7 of IBC, which is summary in nature. Whether or not the Appellants are money

lenders prohibited under The Assam Money Lenders Act concerned will have to be left open for consideration in appropriate proceeding.

23. For the above reasons, all these three Appeals are partly allowed. The Impugned Orders where they hold the Appellants as money lenders, the findings to that extent are quashed and set aside. However, for reasons discussed in this Judgement, we would not disturb the other findings of Adjudicating Authority for reasons discussed in all these three Appeals. The Applications filed under Section 7 in all these Appeals were rightly dismissed.

The Appeals are disposed accordingly. No Orders as to costs.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md