

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 54 of 2020

IN THE MATTER OF:

Indian Overseas Bank

...Appellant

Vs

Patel Woods Products Ltd.

...Respondent

Present:

For Appellant: Mr. Surendra Kumar, Advocate.

For Respondent:

ORDER

13.01.2020: The Appellant – ‘Indian Overseas Bank’ filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) against ‘M/s Patel Woods Products Ltd.’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench–V by impugned order dated 9th December, 2019 rejected the application on the ground that the application under Section 7 was barred by limitation.

2. Learned counsel for the Appellant submits that the application under Section 7 is not barred by limitation as the Respondent also made payment in the year 2016.

3. The facts as pleaded by learned counsel for the Appellant are as follows:-

- (i) The Respondent (Corporate Debtor) had taken credit facility on 27.04.2004 which was enhanced/ renewed from time to time by the Financial Creditor by letter dated 08.08.2005, 11.09.2006, 22.01.2007, 05.02.2008, 06.08.2008, 22.10.2008 onwards upto 21.01.2011.

- (ii) The Corporate Debtor accepted and acknowledged the liability towards the Appellant on various dates by executing the Revival Letters dated 22.01.2007, 12.05.2007, 31.03.2009, 27.01.2011 and 25.01.2014.
- (iii) The Appellant declared the subject amount as Non-Performing Asset (NPA) on 27th February, 2012 w.e.f 28th October, 2010.

4. The Adjudicating Authority noticed that the application under Section 7 is barred by limitation, the default having taken place on 28th October, 2010, the subject amount having declared NPA on 27th February, 2012 w.e.f. 28th October, 2010. From the record we find that the Appellant had taken action under Section 13(2) of SARFAESI Act, 2002 and issued notice on 03.12.2012 and Guarantee Mortgage on 31.05.2013 and 04.06.2013 pursuant to which symbolic possession has been taken by the Appellant of all mortgaged properties as far back as in the year 2013. Securitization Application No. 243/2016 filed by the Appellant was disposed off by the Debts Recovery Tribunal, New Delhi on 14th October, 2016. The Financial Creditor also filed Original Application no. 224/2017 titled “Indian Overseas Bank Vs. M/s Patel Woods Products Pvt. Ltd.” under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is pending before Debts Recovery Tribunal – III, Delhi.

5. The aforesaid facts suggest that the application under Section 7 is barred by limitation, by date of default i.e. 28th October, 2010 (as NPA declared on 22nd February, 2012 w.e.f. 28th October, 2010). The Appellant has already taken possession of the asset of the Corporate Debtor under the SARFAESI Act, 2002 and has also moved Original Application No. 224/20107 before Debts Recovery Tribunal – III, Delhi, which is pending since 2017. Now it is only for recovery of amount, that application under Section 7 was filed, though barred by limitation, which is not intended for resolution or liquidation and covered by Section 65 of the I&B Code.

6. We find no merit in this appeal. However, the order passed by the Adjudicating Authority or this Appellate Tribunal will not stand against the Appellant in the SARFAESI Proceedings and the Original Application pending before the Debts Recovery Tribunal. The appeal is dismissed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)