

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 960 of 2019

IN THE MATTER OF:

Sri Amit Kumar Agarwal

...Appellant

Versus

UCO Bank & Anr.

...Respondents

Present:

For Appellant :

**Mr. Sukanta Sarkar, Mr. Soumya Dutta and
Mr. Rajesh Sen, Advocates**

O R D E R

18.09.2019 This appeal has been preferred by 'Sri Amit Kumar Agarwal', Director of 'M/s. Kumlai Tea and Industries Ltd.' (Corporate Debtor) against the order dated 1st August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata whereby the application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the **I&B Code**') filed by UCO Bank (Financial Creditor) has been admitted. Mr. Sukanta Sarkar, learned counsel appearing on behalf of the Appellant submitted that the impugned order was passed *ex parte* without hearing the counsel for the 'Corporate Debtor'. However, from the order-sheet we find that Mr. Sukanta Sarkar, Advocate appeared and his name has been reflected. It was stated that though he filed Vakalatnama but on the date of hearing he was not present and

for the said reason we have now heard Mr. Sukanta Sarkar, Advocate in detail on merit of the case.

2. Learned counsel appearing on behalf of the Appellant submitted that the application under Section 7 of the 'I&B Code' was barred by limitation. Reliance has been placed on Article 137 of the Limitation Act, 1963. Article 137 relates to application for which no period of limitation has provided in the Third Division of the Schedule. The said provision 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.

3. Admittedly, the 'UCO Bank' had accrued its right to apply under Section 7 since 1st December, 2016 when the 'Insolvency and Bankruptcy Code, 2016' came into force. Therefore, we find that Section 7 application is within the period of limitation.

4. It was next contended by the learned counsel for the Appellant that the claim of the Respondent – 'UCO Bank' was barred by limitation and thereby 'debt' was not payable in the eyes of law. However, it is accepted that the 'Corporate Debtor' mortgaged its property in favour of the 'UCO Bank'.

5. Learned counsel for the Appellant submitted that the default occurred as back as in 1st October, 2009 and the account was declared as 'Non-Performing Asset' (NPA) on 23rd April, 2010. However, from the record, we find that the

‘Financial Creditor’ took action under Section 13(2) of the ‘Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) on 15th June, 2010. In view of the same, the ‘Corporate Debtor’ moved before the ‘Debt Recovery Tribunal’ under Section 17 of the SARFAESI Act by filing S.A. 91/2011 where the matter remained pending.

6. Apart from the aforesaid fact that there is continuous cause of action and the ‘Corporate Debtor’ having mortgaged its property in favour of the UCO Bank, Article 62 of Part-V of First Division of Schedule of the Limitation Act, 1963 is applicable, which 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.

7. 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.

8. The main argument of the counsel is that injustice was done as the counsel was not given proper hearing by the Adjudicating Authority and order passed was *ex-parte*. However, we have heard the case on merit and decide the appeal. We find no reason to remit the case as it would be a futile exercise.

For the reason aforesaid, we are not inclined to interfere with the impugned order. The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

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