

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT) (Insolvency) No. 1297 of 2019**

**IN THE MATTER OF:**

**V.K. Abdul Rahim**

**...Appellant**

**Vs**

**The Federal Bank Ltd. & Anr.**

**....Respondents**

**Present:**

**For Appellant: Mr. Mushtaq, Mr. Adhil Saifudheen and Mr. Ranjay N, Advocates.**

**For Respondents: Mr. P.I. Jose and Mr Kunal Manav, Advocates for Respondent No. 1**

**Ms. P.S. Chandralekha, Advocate for Respondent No. 2**

**ORDER**

**27.01.2020** The Appellant shareholder and Director of Respondent No. 2- Corporate Debtor M/s Sargam Builders Pvt. Ltd. has filed this Appeal against Impugned Order dated 20.09.2019 filed by the Respondent No. 1 – The Federal Bank Limited (Financial Creditor). By the Impugned Order (page-120), the Adjudicating Authority (National Company Law Tribunal, Kochi Bench) admitted Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (**IBC** in short). The Adjudicating Authority found that there was debt due and default and also that the debt was within limitation period and admitted the Application.

2. Before us, learned Counsel for the Appellant submitted that the Application filed by the Bank was time barred keeping in view of the Judgment of the Hon'ble Supreme Court in **“B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates”** (2018 SCC Online SC 1921). According to the learned Counsel, the Bank had sent Notice (Annexure-35, page-247) on

15.01.2013 informing the Corporate Debtor that the Account of the Corporate Debtor had become NPA. It is stated that the Corporate Debtor had taken a loan from the Bank in 2009 and also a Bank Guarantee was executed by the Bank at the instance of the Corporate Debtor and on both these counts, the debts arisen had defaulted. Learned Counsel for the Appellant stated that Section 7 Application (Annexure-49, page-403) was filed on 31.07.2018 which was clearly time barred keeping in view Article 137 of the Limitation Act, 1963. Learned Counsel referred to the Impugned Order to state that the Impugned Order relied on Article 62 of the Limitation Act to record that there was a mortgage and thus the debt was not time barred.

3. Learned Counsel for the Respondent pointed out that the Appellant had appeared before the Adjudicating Authority and raised the question of limitation and Bank filed on record documents to show that there were series of acknowledgments which under Section 18 of the Limitation Act protected the Bank and also extended the periods of limitation.

4. Learned Counsel for the Appellant is objecting to claim that the documents being relied on as acknowledgement were not filed before the Adjudicating Authority.

5. Learned Counsel for the Bank stated that the documents being relied on were part of O.A. which was filed before Debt Recovery Tribunal and copy of that O.A. with Annexures were filed before the Adjudicating Authority. The Counsel does not dispute that as per Judgment in the matter of **“B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates”** (2018 SCC Online SC

1921), for purpose of Application under Section 7 of IBC, period of limitation is to be looked into from date of default which is when Account became NPA and relevant provision to rely on is Article 137 of the Limitation Act. He, however, states that there are series of Acknowledgements which save the limitation under Section 18 of the Limitation Act.

6. Learned Counsel for the Respondent is referring to Annexure A-37 as Reply of Corporate Debtor to Notice dated 15.02.2013 which was sent by the Corporate Debtor clearly acknowledging the debt on 05.02.2013. Learned Counsel has then pointed out documents in the Reply Affidavit filed in Appeal (diary No. 17183) and Annexure-R1 in the said Reply which is the copy of the letter which was sent by the Corporate Debtor on 03.02.2016 to show that within three years from 05.02.2013, there was further acknowledgment by the Corporate Debtor giving fresh period of limitation of three years and Section 7 Application came to be filed within such period on 31.07.2018 which was within limitation period.

7. Learned Counsel for the Appellant for Corporate Debtor referred to Annexure- R2 of his Rejoinder (diary no. 17729) i.e., letter dated 11.03.2016 to point out that One Time Settlement which was offered was withdrawn. It is stated that this letter was issued with regard to the above letter dated 03.02.2016 being relied on by the Respondent-Bank. Learned Counsel submitted that when the Appellant had withdrawn the letter dated 03.02.2016, the Respondent-Bank could not rely on the same as an acknowledgement.

8. Section 18 of the Limitation Act, 1963 reads as under:

*“18. Effect of acknowledgment in writing.—*

*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.*

*Explanation. —For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

[Emphasis supplied]

9. Proceeding under Section 7 of IBC is an “Application”. Considering the above Section 18 of the Limitation Act, 1963, when the documents relied by the Respondent – Bank are considered, it can be seen that if the Account became NPA on 15.01.2013, there was reply sent by the Corporate Debtor to the Bank on 05.02.23013 which contained acknowledgment for the debt. As per Section 18 of the Limitation Act, 1963, fresh period of limitation shall be computed from the time when the acknowledgment was signed. Then there is a letter dated 03.02.2016 (Annexjre-R1, diary No. 17183) within three years of the earlier dated 05.02.2013 and thus it would give fresh period of limitation. Section 7 Application thus filed on 31.07.2018 could not be said to be time barred. Although the learned Counsel for the parties are at Bar questioning each other as to which or the other Acknowledgement was filed before the Adjudicating Authority, we are not entering into that technicality of procedure as fact remains in this matter that the Appellant before us is not disputing the genuineness of the issuance of such letters/acknowledgments. We are not relying on Article 62 of the Limitation Act which Adjudicating Authority did. But we rely on above reasons to hold the Application under Section 7 of IBC to be within limitation.

The Appeal is dismissed. No orders as to cost.

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

[Justice Anant Bijay Singh]  
Member (Judicial)

(Kanthi Narahari)  
Member(Technical)

*Akc/Md*