

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 932 of 2019

IN THE MATTER OF:

Mr. Piyush Periwal **....Appellant**

Vs.

Stressed Assets Stabilization Fund (SASF) **....Respondent**

Present:

For Appellant: **Mr. Arun Kathpalia, Senior Advocate with Mr. Ranvir Singh, Mr. Abhijeet Sarkar and Mr. Manish Verma, Advocates.**

For Respondent: **None.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

By impugned order dated 26th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench, Guwahati, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by 'Stressed Assets Stabilization Fund (SASF)'- ('Financial Creditor') against 'National Plywood Industries Limited'- ('Corporate Debtor') has been admitted. The Appellant, Promoter and Shareholder of the 'Corporate Debtor', has challenged the same on the ground that the application under Section 7 was barred by limitation.

2. The fact as pleaded by the Appellant is as follows:

One 'National Boards Limited' ('Principal Borrower') had availed of financial loan from the 'IDBI Bank' in the year 1997. The 'Corporate Debtor' executed a Guarantee Agreement on 16th July, 1997. The liability of the Guarantor ('Corporate Debtor') was limited to Rs.320 lakhs. The 'Principal Borrower' failed to clear the loan and therefore, in 2001, the loan facility was withdrawn and a demand of Rs.5,42,94,868/- was raised by the 'IDBI Bank'. Subsequently, the 'IDBI Bank' preferred an application under Section 19 before the 'Debt Recovery Tribunal', Guwahati (OA No. 27 of 2002). The 'Corporate Debtor' was not made a party before the 'Debt Recovery Tribunal'. The 'Debt Recovery Tribunal', in the application filed by the 'Financial Creditor', issued a certificate dated 5th January, 2005 for an amount of Rs.5,42,94,868/- with interest thereon at the rate of 12% till the date of realization of the amount.

Subsequently, by transfer deed dated 30th September, 2004, the 'IDBI Bank' transferred its debt to 'Stressed Assets Stabilization Fund (SASF)'- the Respondent ('Financial Creditor'). On 30th April, 2005, the Respondent ('Financial Creditor') entered into a negotiated settlement with the 'Principal Borrower' and issued a Negotiated Settlement Proposal approving settlement of the entire loan amount of Rs. 215.89 lakhs and waiver of principal amount of Rs.91.89 lakh and simple

interest of Rs.312.73 lakh. Further, under the settlement interest and liquidated damages of Rs.325.05 lakh and future sacrifice of Rs.14.03 lakh aggregating to Rs.743.70 lakh was also waived.

3. According to the Appellant, after obtaining a decree from the 'Debt Recovery Tribunal' and negotiating a settlement with the 'Principal Borrower' in the year 2005, sometimes in the year 2009, the Respondent -'Stressed Assets Stabilization Fund (SASF)'- ('Financial Creditor') filed an application in the pending OA No. 27/2002 seeking an order of attachment for the movable and immovable property which was mortgaged to the 'IDBI Bank' in the year 1997. Subsequently, the prayer in the application was allowed by the order dated 24th March passed by the 'Debt Recovery Tribunal', 2009 and the Respondent was allowed to attach the property.

4. In the year 2011, the Respondent- 'Stressed Assets Stabilization Fund (SASF)' again approached the 'Debt Recovery Tribunal' and sought permission to revalue the land which stood mortgaged in favour of the Respondent. The 'Debt Recovery Tribunal' by order dated 16th November, 2018 observed as follows:

"As per record, SASF has not appeared in the proceeding for more than two years. There are numbers of writ pending before the Hon'ble Gauhati High Court related to the mortgage property. SASF

has not filed any report regarding status of the pending writs.

It is clearly evident that SASF is not interested to proceed in this case. As a result this Tribunal is unable to take any step for recover of certificate amount due to non-cooperation of SASF.

Hence, the matter is adjourned sine die, till such date SASF made its appearance and file proper affidavit to cooperate with the Tribunal in this matter.

Nodal Officer of CHB is directed to hand over a copy of the day's order to the Zonal Head/ Regional Head of CHB.

A free copy of the day's order to be given to CHB.”

5. According to the Appellant, the facts aforesaid emerges that way back in the year 2005 parties had worked out a settlement in terms of which Rs.215.89 lakhs was payable by the 'Corporate Debtor' ('Principal Borrower'). After such payment, the liability of the 'Corporate Debtor' stood extinguished.

6. Learned counsel for the Appellant referred to Section 238A of the 'I&B Code' to suggest that the provisions of the Limitation Act, 1963 so far as the proceedings or appeals before the 'Adjudicating Authority' and 'National Company Law Appellate Tribunal' and the 'Debt Recovery Tribunal' or the 'Debt Recovery Appellate Tribunal' will apply and

submitted that the following facts should be taken into consideration for computing the period of limitation:

“.....The period of limitation is to be computed in the following manner:

(A) Date of invocation of Corporate Guarantee:

03.12.2001

(B) Date of filing of reference before BIFR:

21.02.2002

(C) =(B- A): 80 days

(D) Date of abatement of SICA: 01.12.2016

(E) Date of filing of application in NCLT:

12.03.2019

(F) =(E-D): 831 days

(G) =(C+F): 911 days i.e. about 2 years and 6 months.

Thus, the petition is filed well within the limitation period.”

7. Even if we accept the submissions made on behalf of the Appellant, we find that the order of abatement was passed by SICA on 1st December, 2016 and within three years the application under Section 7 was filed by the Respondent- ‘Stressed Assets Stabilization Fund (SASF)’.

8. It is not the case of the Appellant that the Respondent- 'Stressed Assets Stabilization Fund (SASF)' invoked any guarantee more than three years prior to the date of filing of the application under Section 7 to hold that the application was barred by limitation.

9. We hold that the application under Section 7 of the 'I&B Code' was well within the period of limitation. The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

NEW DELHI
25th November, 2019

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