

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1494 of 2019

IN THE MATTER OF:

Asset Care and Reconstruction Enterprise Ltd. ...Appellant

Versus

K.K. Polycolor (India) Ltd. ...Respondent

Present:

For Appellants: Mr. Chandrashekhar A. Chakalabbi, Mr. Ansul Rai, Advocates with Shri S.G. Kundu.

ORDER

19.12.2019 Asset Care & Reconstruction Enterprise Ltd. filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') for initiation of 'Corporate Insolvency Resolution Process' against M/s KK Polycolor (India) Ltd. The Adjudicating Authority dismissed the application as barred by limitation as the account was classified as Non-Performing Asset (NPA) on 30th January, 2008.

2. Learned Counsel appearing on behalf of the Appellant submits that the application is not barred by limitation in the light of Section 17 of the Limitation Act, 1963 and the 'Corporate Debtor' having acknowledge by revival letter dated 31st January, 2011, as extracted below: -

"REVIVAL LETTER

(To be obtained from the Borrower)

*Indian overseas Bank, Place: Chennai 600040
Fourth Main Road Brach, Date : 31/1/2011
Credit facilities granted to me/ us*

*With reference to the credit facilities granted to me/ us, I/
We acknowledge for the purpose of Section 18 of the Indian
Limitation Act, 1963 and any like limitation law to the effect that
I am/ We are, liable to you for payment of the amount due under*

the following promissory Notes/ Agreements, with interest in respect of all present and future indebtedness and liabilities secured thereby and the undermentioned Promissory Notes/ Agreements shall continue to remain in force with all relative securities, including hypothecation and mortgage and obligations.

Yours faithfully

*Sd/-
(Borrower)”*

3. From the revival letter, it is clear that purported document is signed in terms of Section 17 of the Limitation Act, which was signed on behalf of the ‘Corporate Debtor’ on 31st January, 2011, i.e., after the period of limitation of filing a suit or application under Section 7 of the I&b Code. This further shows that it was obtained from the Borrower (‘Corporate Debtor’) as shown in the revival letter.

4. Section 18 of the Limitation Act, dealing with acknowledgement of debt 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 (1 of 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.”*

5. As the default took place on 30th January, 2008., the period of limitation expired on 29th January, 2011 for the purpose of counting the period of limitation under Section 18 of the Limitation Act. The revival letter having been obtained from the Borrower (‘Corporate Debtor’) after the expiry of the period of limitation for filing an application, the Appellant cannot derive the advantage from Section 18 of the Limitation Act. For the said reason, the application under Section 7 of the I&B Code being barred by limitation was rightly dismissed.

6. Learned Counsel appearing on behalf of the Appellant submits that one original application under Section 19 of the Debts Recovery Tribunal Act, 1993 has already been filed and is pending before the Debts Recovery

Tribunal, Chennai. The observation made by the Adjudicating Authority and this Appellate Tribunal should not come in the way of the Appellant to pursue the said original application.

7. We make it clear that the Adjudicating Authority and this Appellate Tribunal has decided that the application under Section 7 of the I&B Code is not maintainable. It has not decided that the original application, which is maintainable before the Debts Recovery Tribunal in terms of the DRT Act, 1963 is barred by limitation, which is to be determined by the Debts Recovery Tribunal uninfluenced by the order passed by this Appellate Tribunal and Adjudicating Authority (National Company Law Tribunal), Kolkata Bench. The Appeal stands dismissed but with the aforesaid observations/clarifications.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Ash/GC