

NCLAT

National Company Law
Appellate Tribunal



Advocates
& Solicitors

Mr. R.R. Gopaljee vs. Indian Overseas Bank & Others

Citation	Company Appeal (AT) (Insolvency) No. 319 of 2020
Court	National Company Law Appellate Tribunal
Date	23 June 2020
Bench	Mr. Venugopal M., J., Mr. V.P Singh, J. and Mr. Alok Srivastava, J.

- Indian Overseas Bank (“Financial Creditor/ Respondent No.1”) granted financial assistance to the Malar Energy & Infrastructure Pvt. Ltd. (“Corporate Debtor”) at various dates between 13.06.2011 to 29.05.2015. However, the Corporate Debtor defaulted in payment of loan, therefore, was declared as a Non-Performing Asset (“NPA”) on 01.04.2015.
 - Subsequently, the Financial Creditor sent legal notice dated 15.03.2017 demanding the repayment of Rs. 21,86,26,661/- along with interest. The Corporate Debtor in his reply to notice dated 27.03.2017 acknowledged the debt and stated that they are in process of settling their dues to the Financial Creditor.
 - The Corporate Debtor sent One Time Settlement Proposal on 13.04.2017 which was accepted by the Financial Creditor on certain terms and conditions vide letter dated 03.07.2017. Thereafter, the Corporate Debtor requested for extension of One Time Settlement period vide letter dated 05.08.2017. The Financial Creditor vide letter dated 28.08.2017 extended the time for payment of One Time Settlement. However, as the Corporate Debtor did not repay the loan amount as per One Time Settlement, the Financial Creditor cancelled the One Time Settlement Proposal vide letter dated 22.11.2017.
 - Thereafter, Financial Creditor initiated recovery proceedings under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 and also under SARFAESI Act, 2002; but, the proceedings could not conclude.
- **ADJUDICATING AUTHORITY:**
- The Financial Creditor filed the application under Section 7 of Insolvency and Bankruptcy Code, 2016 (“Code”) on 15.03.2019 (“Said Application”) before National Company Law Tribunal, Special Bench, Chennai (“Adjudicating Authority”) for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor.
 - The Adjudicating Authority admitted the Said Application vide order dated 05.07.2019 (“Impugned Order”) imposed Moratorium and appointed Mr. Radha Krishnan Dharamrajan as Interim Resolution Professional (“IRP/Respondent No.2”).
 - The Promoter/Shareholder of the Corporate Debtor filed an appeal under Section 61(1) of the Code against the Impugned Order before the National Company Law Appellate Tribunal (“Appellate Authority”).
- **ISSUE:**
- Whether the Resolution Plan can be modified once the same has been implemented?
OR Whether the Statutory dues can be claimed after the implementation of Resolution Plan?
- **CONTENTIONS OF APPELLANT:**
- The Adjudicating Authority did not observe the principal of Natural Justice and had passed the Impugned Order commencing CIRP within a period of approximately three days, without even providing an opportunity to the Corporate Debtor to file written submissions or objections the application under Section 7 of the Code.

- The Application itself is defective because in the Said Application, the date of default was not disclosed. The date of default being a crucial date, to determine the period of limitation that was applicable to the given case.
 - The correct date of NPA was not provided by the Financial Creditor. The NPA date was mentioned as 30.06.2015 in the demand notice issued under Section 13(2) of SARFAESI Act by Financial Creditor; whereas, in the Additional Affidavit filed before the Adjudicating Authority NPA date was disclosed as 01.04.2015. In both cases, it was submitted that the debt was time barred as the Said Application was only filed on 15.03.2019.
 - As per Item No. 2, Part IV of the Said Application, term loan of 15 crores was disbursed on 29.05.2015. Whereas, the Corporate Debtor's account was declared NPA on 01.04.2015, this itself shows that the NPA date 01.04.2015 was not correct. • The Adjudicating Authority erroneously relied on a letter dated 27.03.2017 issued by the Corporate Debtor as an acknowledgement of debt, which only stated that the Corporate Debtor would settle issue with the Financial Creditor and there was no specific acknowledgement of Debt in the said communication.
 - The Adjudicating Authority failed to understand that for the purpose of acknowledgement of debt it had to be specifically admitted and clearly stated in the communication (i) the exact amount of debt due and (ii) the timeline for payment. Reliance was placed on judgment of Hon'ble High Court of Delhi in the Case of "Dorham Carelline India Ltd. Vs. Studio Line" 2009 DLT 123, wherein it was held that Section 18 of Limitation Act, 1963 requires (i) an admission or acknowledgement (ii) that such acknowledgement must be in respect of a property or right (iii) that it must be made before the expiry of limitation (iv) that it should be in writing and signed by the party against whom such property or right is claimed. None of these conditions were fulfilled by the letter dated 27.03.2017. • Reliance was also placed on a judgment of Hon'ble Supreme Court in the case of "State of Kerala Vs. T.M. Chacko" (2000) 9 SCC 722 wherein it was held that the person acknowledging must be conscious of his liability and commitment should be made towards that liability. It need not be specific, but if necessary facts which constituted the liability are admitted, an acknowledgement may be inferred from such an admission.
- **APPELLATE AUTHORITY:**
- With respect to the objection of Appellant regarding the NPA date, the Appellate Authority agreed with the finding of the Adjudicating Authority that according to the Corporate Debtor, the Bank had declared it as NPA on 30.06.2015. Hence, it was held by the Appellate Authority that 30.06.2015 is the date of NPA.
 - The Appellate Authority relying upon the decision of the Hon'ble Supreme Court in the case of "J.C. Budhraj Vs. Chairman, Orissa Mining Corporation Ltd." [(2008) 2 SCC 444] observed that it was now well settled that a writing to be an acknowledgement of liability must involve an admission of subsisting Jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability.
 - It was further observed that Admission need not be in regard to any precise amount nor by expressed words. If a defendant wrote to the plaintiff requesting him to send his claim for verification of payment, it would amount to an acknowledgement.

- The Appellate Authority observed that the Hon'ble Supreme Court in the aforesaid judgment also held that in construing words used in the statement made in writing on which a plea of acknowledgement rests, oral evidence has been expressly excluded but surrounding circumstances can always be considered. It is also held that the statement of which a plea of acknowledgement is based must relate to a person's subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words.
- It was observed that the Financial Creditor in demand notice dated 15.03.2017 called upon the Corporate Debtor to pay sum of Rs. 21,86,26,661/- along with further interest till date of payment. The Corporate Debtor in his reply dated 27.03.2017 to the notice did not dispute the amount, admitted the liability and stated that they are in process of settling the dues of Financial Creditor. It was also mentioned in the reply that they have visited number of times to the officials of Financial Creditor. The reply to the notice was signed by the Director of Corporate Debtor.
- It was further observed that on 13.04.2017 the Corporate Debtor, sent a One Time Settlement Proposal to the Financial Creditor (which was not denied by the Corporate Debtor) and on 03.07.2017, the Financial Creditor had accepted the (OTS) proposal of the Corporate Debtor on certain terms and conditions.
- The Appellate Authority held that the Appellant had admitted the subsisting Jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. 5 • Hence, the Appellate Authority while dismissing the appeal, held that the Corporate Debtor had acknowledged the debt within three years i.e. before the expiration of the prescribed period for a suit or application and therefore, the Said Application under Section 7 of the Code was filed well within the period of limitation.