

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2988 OF 2020

BANK OF INDIA APPELLANT(S)

VERSUS

BIMALKUMAR MANUBHAI SAVALIA & ORS. RESPONDENT(S)

O R D E R

The Corporate Debtor, namely, M/s Radheshyam Agro Products Pvt. Ltd., who is respondent no.3 in the present appeal, had entered into several loan agreements and obtained credit facilities from the appellant - Bank of India, for a total fund base limit of Rs.34.69 crores. The date of disbursement of the loan amounts is 23.12.2013.

As there were defaults, the aforesaid credit facilities were classified and declared as Non-Performing Assets (NPA) on 30.09.2014. The outstanding balance towards the principal amount was Rs. 31,87,23,036/-.¹ As per the appellant - Bank of India, the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. was also liable to pay other debts of Rs. 2,36,23,551/-², interest of Rs. 19,14,32,135/- and penalty of Rs.3,09,74,393/-.³

The appellant - Bank of India has initiated proceedings for sale of the secured assets under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and for recovery of dues against the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro

¹ As on 05.11.2014.

² As on 05.11.2024

³ These figures relating to the interest and penalty are as on 27.07.2018.

Products Pvt. Ltd. and the guarantors under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act).

On or around 30.08.2013, the appellant - Bank of India initiated proceedings against the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. under the Insolvency and Bankruptcy Code, 2016 (IBC) by filing an application under Section 7 thereof. This application was contested by the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. primarily on the ground that the proceeding are barred by limitation. This contention was rejected by the National Company Law Tribunal (NCLT).

However, on an appeal preferred by respondent No.1 - Bimalkumar Manubhai Savalia, one of the Directors and shareholders of the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd., the plea has been accepted by the National Company Law Appellate Tribunal (NCLAT) *vide* the impugned judgment/order dated 05.03.2020.

The impugned judgment/order rightly records that the proceedings under the SARFAESI Act and the DRT Act would not extend the period of limitation. However, in our opinion, the NCLAT has erred in its finding that the One Time Settlement (OTS) proposal dated 01.06.2016 would not extend the period of limitation. This letter for OTS proposal, in our opinion, clearly acknowledges and accepts the jural relationship between the appellant - Bank of India as creditor and the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. as the debtor. The letter

clearly accepts that the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. was sanctioned principal amount of Rs.37 crores, and that repayment in various forms to the extent of Rs. 19 crores stands made. Thus, acknowledging that there was substantial liability due and payable towards the principal amount.

This letter by the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. dated 01.06.2016 refers to its earlier request submitted in the month April 2016 and meetings held with the General Manager on 30.05.2016. While setting out the purported reasons for the default in payment, the letter states that the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. would like to settle the dues. The Directors of the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd., having examined the matter, had agreed to revised its OTS proposal from Rs.12 crores to Rs.24.56 crores.

It is now fairly well settled by a series of judgments of this Court⁴ that Section 18 of the Limitation Act, 1963 (limitation Act) is applicable to IBC proceedings.

Section 18 of the Limitation Act requires that the words used in the purported acknowledgement must indicate the existence of a jural relationship and the statement should be made with the intention of admitting the jural relationship.⁵ However, such acknowledgment, for the purpose of Section 18 of the IBC, need not be accompanied with a promise to pay, whether expressly or by

⁴ See - *SBI v. Krishidhan Seeds (P) Ltd.*, (2023) 1 SCC 209; *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366; *Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.*, (2021) 7 SCC 313; and *Laxmi Pat Surana v. Union Bank of India*, (2021) 8 SCC 481.

⁵ See - *Prabhakaran v. M. Azhagiri Pillai*, (2006) 4 SCC 484.

implication; and simple admission of the debt is sufficient.⁶ Generally speaking, a liberal construction should be given to the statement alleged/stated to be an acknowledgment, but the court must also be conscious to not fasten on a person an admission as to an existing jural relationship by a farfetched process of reasoning.⁷

Reliance placed upon Section 23 of the Indian Evidence Act, 1872⁸ (Evidence Act) to state that the letter dated 01.06.2016 is an admission given or made under the circumstances that the parties agreed to not use it as evidence is fallacious and has no merit. The communication/letter dated 01.06.2016 is not confidential and we cannot infer that the parties had agreed, either expressly or under the circumstances, that it would not be lead in evidence. This is not a case where privilege exists or is claimed. The letter dated 01.06.2016 is a request to partially waive the liability and on the pretext that the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. would pay a lesser/lower amount. The provisions of the Evidence Act are not applicable to the proceedings under the IBC.

In *Innoventive Industries Ltd. v. ICICI Bank and Another*⁹, it has been held that the Adjudicating Authority, while considering an application under Section 7 of the IBC, is only required to see if there is an existence of debt and default. Any dispute with regard

⁶ See - *Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd.*, (2004) 12 SCC 360.

⁷ See - *Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd.*, (1971) 1 SCC 67.

⁸ 23. Admissions in civil cases, when relevant. - In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

⁹ (2018) 1 SCC 407.

to the quantum of debt is immaterial. For this purpose, the Adjudicating Authority should see the records of information utility or other evidence produced by the financial creditor.

It is accepted that the OTS proposal is within three years from the date the debt was declared to be NPA i.e. on 30.09.2014.

In view of the aforesaid factual position, provisions of Section 18 of the Limitation Act are attracted and applicable. The period of limitation would get extended in view of the OTS proposal submitted by the Corporate Debtor/respondent no.3 - M/s Radheshyam Agro Products Pvt. Ltd. vide the letter dated 01.06.2016.

In this background, we allow the present appeal and set aside the impugned judgment/order. In other words, it is held that the application under Section 7 of the IBC filed by the appellant - Bank of India against the Corporate Debtor/respondent no.3 has been filed within the prescribed period of limitation.

To cut short the delay, the parties are directed to appear before the NCLT on 02.05.2023 for further proceedings and steps in accordance with law.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(M.M. SUNDRESH)

NEW DELHI;
MARCH 14, 2023.

ITEM NO.35

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2988/2020

BANK OF INDIA

Appellant(s)

VERSUS

BIMALKUMAR MANUBHAI SAVALIA & ORS.

Respondent(s)

(IA No. 81330/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 11763/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 81332/2020 - STAY APPLICATION)

Date : 14-03-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Nakul Dewan, Sr. Adv.
Mr. C. George Thomas, AOR
Mr. Aditya Kumar, Adv.
Ms. Prachi Pandey, Adv.

For Respondent(s) Ms. Rashmi Bansal, AOR

Ms. Aakashi Lodha, Adv.
Mr. Ravi Raghunath, Adv.
Mr. Sanyat Lodha, AOR

UPON hearing the counsel, the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)