IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.Nos.17587, 17592 & 17595 of 2020
and
W.M.P.Nos.21805, 21808, 21810, 21811, 21799 & 21798 of 2020

Ankit Agarwal ... Petitioner in W.P.No.17587 of 2020

Anita Agarwal ... Petitioner in W.P.No.17592 of 2020

Ajay Agarwal ... Petitioner in W.P.No.17595 of 2020

Vs.

1. The Assistant Manager,
   State Bank of India,
   SAM Branch, Red Cross Building,
   Montieth Road, Egmore,
   Chennai - 600 008.

2. The Registrar,
   National Company Law Tribunal, Chennai Bench,
   Corporate Bhawan, III Floor, Beach Road,
   Mannady, George Town,
   Chennai, Tamil Nadu - 600 001. ... Respondents in all writ petitions

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the application filed by the 1st Respondent before the 2nd Respondent and quashing the same as being time barred, invalid and illegal under section 238A of the Insolvency and Bankruptcy Code, 2016 r/w Article 137 of the Limitation Act, 1963.

For Petitioner : Mr.P.H.Arvindh Pandian
Senior Counsel
for M/s.Aiyar and Dolia
in all writ petitions

For R1 : Mr.M.L.Ganesh
Standing Counsel
in all writ petitions

COMMON ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

By consent, these writ petitions are taken up today at the admission stage itself and are disposed of by this common order.

2.The petitioner claims to be the Promoter and erstwhile Director of M/s.Ashok Magnetics Limited, which was carrying on business of steel forging, and the said company, in the due course of its business, had availed a loan of Rs.25 Crores from the 1st respondent Bank, for which, the writ petitioner stood as a personal guarantor and also executed a Deed of Guarantee, dated 19.11.2009.

3.The company defaulted in payment of the dues and the loan account was treated as 'Non-Performing Asset' on 17.01.2015. The Bank has also instituted O.A.No.152 of 2016 on the file of the Debts Recovery Tribunal-II at Chennai, for recovery of the dues, which is also pending. The Bank also filed C.P.No.551/(1B)/2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the company, and liquidation was also ordered by National Company Law Tribunal, Chennai Bench, on 09.07.2018, and Resolution Professional also came to be appointed.

4.The 1st respondent Bank has filed an application under Form-C, dated 21.10.2020, under Section 7(2) of the Insolvency and Bankruptcy Rules, 2019, against the petitioner/guarantor for initiation of Corporate Insolvency Resolution Process, and the said application was sent on 12.10.2020, and as per Clause (4) of the Part-III, which deals with particulars of debt, it is stated that the date on which the default occurred was on 17.01.2015 and 15.07.2017, and in the fact sheet related to debt granted and default to Financial Creditor/Guarantor/writ petitioner, in Para No.20, it is averred that "The Financial Creditor further states that since the corporate debtor had defaulted, the loan account was classified/treated as NPA as on 17.01.2015" and in Para No.27, it is averred as follows :

> "The financial creditor further states that the CD as given OTS letter dated 15.07.2017 to the financial creditor, wherein offered to pay a sum of Rs.10.50 Crs as full and final settlement which was not accepted and accordingly rejected the same vide letter dated 18.07.2017. Hence it goes without saying even on OTS letter dated 15.07.2017 the CD Admitted the limited

payable to financial creditor and the application is filed within the limitation that is three years from the date of admission letter & COVID excluded period."

5.Mr.P.H.Arvindh Pandian, learned Senior Counsel, appearing for M/s.Aiyar and Dolia, learned counsel for the petitioner, has drawn the attention of this Court to the judgment rendered by the Hon'ble Supreme Court of India in B.K.Educational Services Pvt. Ltd. v. Paras Gupta & Associates [AIR 2018 SC 5601], would submit that the applicant therein was the Corporate Debtor, and the issue of applicability of limitation in the light of the amended provisions under Section 238-A of the Insolvency and Bankruptcy Code, also came for consideration, and it has been held the Limitation Act applies to the proceedings under the Insolvency and Bankruptcy Code, and in order to bring the application within the period of limitation, the OTS letter dated 15.07.2017 said to have been given by the Corporate Debtor pleaded as the limitation period, and has also drawn the attention of this Court to Chapter-III of the Insolvency and Bankruptcy Code, which deals with the Insolvency Resolution Process, and would further add that, since the petitioner/guarantor is an individual and the date of default even according to the 1st respondent Bank was on 17.01.2015, the application is clearly barred by limitation, and in the light of the minimum scope of jurisdiction vest with the National Company Law Tribunal under Section 7 of the Insolvency and Bankruptcy Code, this Court can alone adjudicate the said issue, and prays for appropriate orders.

6.Per contra, Mr.M.L.Ganesh, learned Standing Counsel, who accepts notice on behalf of the 1st respondent Bank, would submit that the plea of limitation is a mixed question of law and facts, and in the light of the averment in Para No.27 of the application, coupled with the moratorium on account of Covid-19 Pandemic, the application is well within the period of limitation, and prays for dismissal of the writ petition.

7.This Court has carefully considered the rival submissions and also perused the materials placed before it.

8.Though the learned Senior Counsel appearing for the petitioner, as well as the learned Standing Counsel appearing for the 1st respondent Bank, impressed upon the Court to consider their rival claim as to the bar of limitation in respect of the application filed by the 1st respondent Bank, this Court is not inclined to go into the claim in the light of the well settled position of law that the issue relating to limitation is a mixed question of law and facts, especially in the light of the plea taken by the 1st respondent Bank in Para No.27 of their application. It is brought to the notice of this Court by the respective learned counsel for the parties that the 2nd respondent Tribunal is yet to entertain the application.

9.In the light of the above facts and circumstances, this Court permits the petitioner, cited as Corporate Debtor in the said application, to raise the plea of limitation by also putting the 1st respondent Bank on notice, and the 2nd respondent Tribunal is requested to decide on the basis of the materials placed, as to the maintainability of the application, especially in the light of the plea taken by the writ petitioner/Corporate Debtor with regard to the bar of limitation, and decide the same in accordance with law, and depending upon the decision taken/orders to be passed by the 2nd respondent Tribunal, further course would follow.

These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Manager,
State Bank of India,
SAM Branch, Red Cross Building,
Montieth Road, Egmore,
Chennai - 600 008.

2.The Registrar,
National Company Law Tribunal, Chennai Bench,
Corporate Bhawan, III Floor, Beach Road,
Mannady, George Town,
Chennai, Tamil Nadu - 600 001.

KV(CO)
SP(27/01/2021)