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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 07th August, 2024**
+ **W.P.(C) 10937/2024 & CM APPL. 45049/2024**

HONEY KATYALPetitioner
Through: Mr. Mohit Chaudhary, Mr.
Kunal Sachdeva, Ms. Vaishali
Shukla & Mr. Aashish Arya,
Adv.

versus

PUNJAB AND SIND BANKRespondent
Through: Mr. Brijesh Kumar Tamber,
Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 45050/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 10937/2024 & CM APPL. 45049/2024

3. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, thereby seeking a declaration to the effect that the suretyship obligation imposed upon him under the Deed of Guarantee dated 23.01.2014 in respect of the loan facility availed by the Corporate Debtor/EUIPL¹ is time barred

¹ Earthcon Universal Infratech Private Limited



and cannot be enforced against him by way of the impugned Demand Notice dated 27.10.2023.

4. Learned counsel for the respondent/Punjab and Sind Bank is present on advance notice through video conferencing.

5. Learned counsel for the petitioner has urged that credit facilities had been extended to EU IPL initially under a Letter of Sanction dated 31.12.2013, which was subsequently amended *vide* Sanction Letter dated 15.01.2024. Alluding to the impugned Demand Notice dated 27.10.2023, it is pointed out that the date of default in making repayment towards the loan amount evidently occurred on 06.03.2018, since from that date the account of the Corporate Debtor was declared NPA², and therefore, it is vehemently urged that the limitation of three years started running from the date of such declaration and the period for affecting any recovery against the present petitioner/guarantor expired on 05.03.2021, or at the most on 20.04.2021, which was three years subsequent to the date of Demand Notice sent by the Bank to the borrower under Section 13(2) of the SARFAESI Act, 2002.

6. In his submissions, learned counsel relied on decisions in **Mardia Chemicals Ltd. v. Union of India**³; **Bank of Baroda v. Gopal Shriram Panda**⁴; **Elsamma v. The Kaduthuruthy Urban Co-operative Bank Ltd.**⁵ and **Ashok Kumar Raizada v. The Bank of Rajasthan**⁶, to hammer the point that the limitation stopped running w.e.f. 2021. Additionally, it is also submitted that in view of

² Non Performing Asset

³ (2004) 4 SCC 311

⁴ Civil Revision Application No. 29/2011

⁵ AIR 2019 Ker 23

⁶ ILR (2014) 1 Delhi 356



the COVID-19 Pandemic period, the limitation stood extended in terms of the decision passed by the Supreme Court in *suo-moto* Writ Petition (C) No. 3/2020 titled in ‘Cognizance for Extension of Limitation’ *vide* directions contained in paragraph 5(iii), to seek enforcement of surety ship/guarantee till 01.06.2022. It was therefore urged that the Demand Notice calling upon the petitioner to join the IBC⁷ proceedings is without any jurisdiction.

7. It was also brought to the notice of the Court that a commercial suit was filed bearing CS(COMM) No. 2854/2024 before the learned District Judge (Commercial)-03, South-East District, Saket Courts, New Delhi, in respect of the same cause of action against the respondent/bank. However, the learned District Judge (Commercial)-03, South-East District, Saket Courts, New Delhi, has held that it has no jurisdiction to entertain the suit in view of the Bar under Sections 63, 231 and 238 of the IBC.

8. *Per contra*, learned counsel for the respondent bank vehemently challenged the submissions advanced by the learned counsel for the petitioner and alluded to the observations made by the Supreme Court in paragraphs (138) and (140) of the decision in **Dena Bank v. C. Shivakumar Reddy**⁸. It was urged that there was an “acknowledgement of debt” on the part of the Principal Borrower/Corporate Debtor confirming the debit balance of Rs. 47.85 crores in terms of the letter dated 30.06.2019 (Annexure P-7).

9. It was pointed out that the revival letter/acknowledgement of

⁷ Insolvency and Bankruptcy Code, 2016

⁸ (2021)10 SCC 330



the Debt on the part of the Principal Borrower/Corporate Debtor is binding on the petitioner in terms of the relevant clause/covenant in the Deed of Guarantee executed by the petitioner, wherein it was stipulated as under:-

“Any part payment, acknowledgement of indebtedness, renewal of documents by the principal obligant/obligants will automatically extend the period of limitation against me/us. Besides that it will be a continuing indemnity and guarantee and my/our liability shall continue till the account/accounts are finally adjusted and closed and you would have received all your dues and outstandings from the customer.”

10. Learned counsel for the respondent bank further alluded to the contents of the impugned Demand Notice dated 27.10.2023 and it was specifically pointed out that after filing proceedings *vide* O.A. No. 349/2021 under Section 19 of the Recovery of Debts and Bankruptcy Act 1993, the erstwhile promoter/personal guarantor even approached the financial creditor by way of a One Time Settlement (‘OTS’) proposal dated 01.12.2021 for settlement of the account by proposing to make payment of Rs. 14 crores towards full and final satisfaction of the loan, which already stands rejected. It was further pointed out that the personal guarantors failed to fulfil their commitments in terms of the Deed of the Guarantee executed by them to secure the loan facilities availed by the Corporate Debtor.

11. Learned counsel for the respondent bank took this Court through the provisions of Sections 95 to 100 of the IBC and it was pointed out that Mr. Ravi Jindal has already been appointed as an Interim Resolution Professional and that the present writ petition is nothing but an attempt to interfere with the jurisdiction of the



competent forum, which alone can adjudicate upon the matter.

12. Having heard learned counsels for the parties, this Court finds that the plea by the learned counsel for the petitioner that the impugned Demand Notice is not sustainable in light of the claim being barred by the limitation period of three years, is bereft of any merits and cannot be sustained in law.

13. In the case of *Dena Bank (supra)*, the Supreme Court had an occasion to answer the issue as to whether proceedings under Section 7 of the IBC would be barred by limitation for the claim having not been filed within the period of three years from the date of default/of the account becoming NPA. Answering the aforementioned issue, it was observed that the provisions of the Limitation Act are applicable to proceedings under the IBC and that in the case of applications under Section 7 and 9 of the IBC, the period of limitation is determined in terms of Article 137 of the Limitation Act. It would be expedient to re-reproduce the relevant findings that read as under:

“138. While it is true that default in payment of a debt triggers the right to initiate the corporate resolution process, and a petition under Section 7 or 9 IBC is required to be filed within the period of limitation prescribed by law, which in this case would be three years from the date of default by virtue of Section 238-A IBC read with Article 137 of the Schedule to the Limitation Act, the delay in filing a petition in the NCLT is condonable under Section 5 of the Limitation Act unlike delay in filing a suit. Furthermore, as observed above Sections 14 and 18 of the Limitation Act are also applicable to proceedings under the IBC.

139. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of one-time settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In *Gaurav Hargovindbhai Dave [Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.,*



(2019) 10 SCC 572 : (2020) 1 SCC (Civ) 1] cited by Mr Shivshankar, this Court had no occasion to consider any proposal for one-time settlement. Be that as it may, the balance sheets and financial statements of the corporate debtor for 2016-2017, as observed above, constitute acknowledgment of liability which extended the limitation by three years, apart from the fact that a certificate of recovery was issued in favour of the appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21-3-2019 [*Dena Bank v. Kavveri Telecom Infrastructure Ltd.*, 2019 SCC OnLine NCLT 7881] .

140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.”

14. In view of the aforesaid proposition of law, besides the fact that the revival of the loan and acknowledgment of the debt liability on the part of Principal Borrower/Corporate Debtor is *per se* binding upon the petitioner, the jurisdiction of this Court cannot be invoked since evidently, proceedings are pending before the NCLT⁹. It would be open for the petitioner to raise all relevant contentions as to whether or not the aforesaid clause in the guarantee deed was binding upon him, or for that matter if there was any novation of the original contract so as to discharge his liability as a guarantor under Sections 132 and 135 of the Contract Act.

15. Before parting with the instant matter, suffice to state that the case laws cited by the learned counsel for the petitioner do not come to his rescue. The provisions of the IBC have been brought into effect w.e.f. 28.05.2016 and the IBC is a complete statute in itself and

⁹ National Company Law Tribunal



provides a detailed mechanism for proceedings to be undertaken. Therefore, the authorities relied upon have no bearing on the present matter. Faced with the aforesaid situation, learned counsel for the petitioner cited the decisions in **Vashdeo R. Bhojwani v. Abhyudaya Co-Operative Bank Ltd.**¹⁰ and **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd.**¹¹. In the decision in *Vashdeo (supra)*, the Supreme Court dealt with the argument that limitation would be saved in view of Section 23¹² of the Limitation Act, 1963. While rejecting the said argument, it was observed that since a recovery certificate was issued 24.12.2001 in respect of the account which was declared NPA on 23.12.1999, limitation began ticking from the date of issue of recovery certificate, and in those circumstances the Section 7 application, which only came to be moved in 2017, was time-barred.

16. Suffice to state that the decision in *Gaurav Hargovindbhai Dave (supra)* was made in the context of the NCLT erroneously applying the provisions of Article 62 of the Limitation Act to proceedings under Section 7 of the IBC, in respect of which the Supreme Court held Article 62¹³ of the Limitation Act to be inapplicable as the same is applicable only to suits.

¹⁰ Civil Appeal No. 11020/2018

¹¹ Civil Appeal No. 4952/2019

¹² **23. Suits for compensation for acts not actionable without special damage.**—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

¹³ Article 62:- **Description of suit:** To enforce payment of money secured by a mortgage or otherwise charged upon immovable property

Period of Limitation: 12 Years

Time from which period begins to run: When the money sued for becomes due.



17. In view of the foregoing discussion, there are no grounds to issue any prerogative writs in favour of the petitioner as the matter is already *subjudice* before the NCLT, which shall be decided in accordance with law.

18. The pending application stands disposed of.

DHARMESH SHARMA, J.

AUGUST 07, 2024

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