

**BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI**

Present : Mr. Justice Ashok Menon, Chairperson

Appeal No. 132/2016

Between

ICICI Bank Ltd.	... Appellant/s
V/s.	
The Official Liquidator of Raipur Manufacturing Company (In Liquidation) &Ors.	...Respondent/s
Ms Gargi Bhagwat, Advocate for Appellant.	

:- Order dated: 10/03/2023:-

The Appellant ICICI Bank Ltd. is aggrieved by the dismissal of its Original Application (O.A.) No. 69 of 2009 on the files of Debts Recovery Tribunal-I, Ahmedabad (D.R.T.) by the Ld. Presiding Officer vide judgment dated 23.11.2015 on the ground of the application being time-barred by limitation.

2. The Respondents who are the borrower company and the holders of privately placed debentures being the first and second series of debentures issued by the first Defendant company are impleaded as parties. Defendants Nos 9 to 11 are impleaded as they have interest over the mortgaged/charged properties. The Respondents appeared neither before the D.R.T. nor before this Tribunal in appeal and were, therefore, set ex-parte.

3. The facts in the O.A. can be encapsulated thus:

The first Defendant/Respondent was a public company which was wound up by the order of the Hon'ble High Court of Gujarat dated 15.10.2001 pursuant to the recommendation of the BIFR which

declared the company 'sick' on 13.02.1996 and disposed of the summary of proceedings in case No. 94/1995 filed by the company on 26.04.2001. The first Respondent is therefore represented by the Official Liquidator attached to the High Court of Gujarat. On request made by the first Respondent company, a series of Debentures were issued with the Appellant's predecessor company namely the Industrial Credit and Investment Corporation of India Ltd. as Debenture Trustees vide agreement dated 28.02.1986. As per the terms of the agreement the company had agreed with the trustees that it would repay the principal monies secured by the debentures on 31.07.1992, i.e., to say, on expiry of seven years from the date of allotment or on a such earlier date as the principal monies secured by the debentures shall become due and payable under or by virtue of the provisions of the agreement together with interest accrued up to date of payment. The company had no option to redeem the debentures earlier than the aforesaid date. Similar provisions were also incorporated with regard to all debentures pertaining to the rest of the Respondents. The Debenture Trust Deed was modified by a Supplemental Trust Deed on 09.07.1986. The first Defendant company also created a mortgage on 18.06.1988 with respect to the properties described in Schedule-I of the O.A.

4. The first Defendant company failed and neglected to pay the principal amount and interest at agreed rates in respect to the aforesaid debentures within a stipulated time and also failed to pay the trusteeship remuneration and other charges payable to the Appellant in its capacity as a trustee for the aforesaid debentures. The Appellant in its capacity as Debentures Trustee issued notice on 25.02.2009

calling upon the Official Liquidator to pay the amount. There was no response, and hence, the Appellant filed the O.A. for recovery of ₹40,29,46,274.13 being the amount due to the Debentures and remuneration due to Trustee together with interest as of 11.07.2009 till recovery.

5. The Ld. Presiding Officer found that the claim was barred by limitation as the Applicant did not approach the D.R.T. within three years from executing the security documents or within 12 years from the creation of the equitable mortgage on 18.06.1988 and even if time spent before BIFR or AAIFR were to be excluded, the O.A. filed only on 24.07.2009 is barred by limitation and hence, dismissed the same. The Appellant is aggrieved and hence in appeal before this Tribunal.

6. Heard Ms Gargi Bhagwat appearing for the Appellant. The Respondents remained ex parte. Records perused.

7. The only point that arises for consideration in this Appeal is whether the D.R.T. was justified in dismissing the O.A. on the grounds of the Application being barred by limitation. The fact that the Defendants did not contest the O.A. is no reason to entertain an application barred by limitation, and on that count, I am in agreement with the impugned finding. Is the Ld. P.O. correct in finding that the Application is barred by limitation is the important question that requires to be examined in this appeal.

8. The Debenture Trust Deed dated 28/02/1986 would state that the debentures with a premium of 5% of the face value of the debentures shall be redeemed in one instalment at the expiry of seven years from the date of allotment, i.e., on 31st day of July 1992 or on such earlier date as the principal money hereby secured by the series

shall become due and payable or by virtue of the provisions of the Trust deed together with interest accrued up to the date of payment. And the Debentures in respect of the Debenture Trust Deed dated 18/06/1988 were to be redeemed on surrender of the Debenture Certificate on the expiry of the 10th year from the date of allotment i.e., on 29/08/1997. The first Defendant Company had in its Annual Report for 1997-98 admitted the outstanding dues due to the Debenture holders of the first series as well as the second series. The 1st defendant company had also submitted a rehabilitation scheme to the 9th defendant IDBI on 26/05/1999 proposing a revival of the company admitting the dues of the Appellant as the Trustee of the Debenture holders.

9. The Ld. Presiding Officer has calculated the beginning of the period of limitation running from 18/06/1988, the date on which the mortgage was created and has observed that the money is to be realised before the expiry of 12 years starting from that date. It is pertinent to note that the Learned Presiding Officer has noted that while computing the period of limitation the period spent before BIFR or AAIFR is required to be excluded and calculates that time as from 1995 to 2001 and holds that, even if that period is excluded, the O.A. filed on 24/07/2009 would not be within the time period.

10. The Annual Report of the company for the period 1997-98 would undoubtedly come as an acknowledgement of the liability due on the Debenture Trust Deed. Ms Gargi Bhagwat, the learned counsel appearing for the Appellant relies on the decision *Asset Reconstruction Company (India) Ltd vs. Bishal Jaiswal & Ano* (2021) 6 SCC 366 in support of her argument regarding the application of section 18 of the

Limitation Act with regard to a corporate debtor admitting liability to pay the debt in the balance sheet of the company. The only condition is that such acknowledgement, however, must be before the expiration of the period of limitation prescribed period. The limitation period to enforce the mortgage securities is 12 years. Taking into consideration the acknowledgement made under section 18 of the Limitation Act, and also the letter of the 1st defendant company dated 09/07/1992 requesting the Appellant to defer the redemption of Debentures in respect of the Debenture Trust Deed dated 28/02/1986 from 31/07/1992 to the year 1997-98 and 1998-1999 in consultation with major Debenture holders in view of the fact that the 1st defendant company was facing problem due to crisis in the textile industries and that the net worth of the company had become negative, the period of limitation would get extended. Moreover, the 1st defendant company was declared sick on 13/02/1996 and the IDBI was appointed as an operating agency to form a viable proposal for the rehabilitation of the company.

11. Under Article 62 of the Limitation Act, to enforce payment of money secured by a mortgage or otherwise charged upon immovable property the suit has to be filed within 12 years of when the money sued for becomes due. In the above-cited decision of *Asset Reconstruction Company (India) Ltd.* (Supra), the Hon'ble Supreme Court has referred to several earlier decisions in *Mahabir Cold Storage vs. CIT 1991 Supp (1) SCC 402* and in *A.V.Murthy vs. B.S.Nagabasavanna (2002) 2 SCC 642* where it was held that the entries in the books of accounts would amount to an acknowledgement of the liability within the meaning of section 18 of the Limitation Act, 1963 and extend the

period of limitation for the discharge of the liability as debt. If the amount borrowed is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. The Calcutta High Court has in *Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff* AIR 1962 Cal 115 held that if the balance sheet contains an admission of liability; the agent of the company who makes and signs it intends to make those admissions. The admissions do not seem to be acknowledgements of liability merely on the ground that they were made in the discharge of statutory duty. Under section 19 of the Limitation Act an acknowledgement of a debt need not be made to the creditor nor need it to amount to a promise to pay the debt. The balance sheet in the instant case is dated 31st of March 1998 and therefore, by virtue of the acknowledgement of debt in the balance sheet, the time would begin to run from there and the O.A. need to be filed only within a period of 12 years from thereon. The O.A. is filed on 24/07/2009 and is, therefore, within the period of limitation. The Ld. Presiding Officer has therefore committed an error by dismissing the O.A. on the ground of limitation. The Appellant has proved its claim otherwise which is not challenged by the Respondents either before the DRT or before this Tribunal. Hence, the impugned order is set aside.

12. In the result the appeal is allowed and the impugned judgment of the DRT dated 23/11/2015 dismissing the O.A. on the ground of limitation is set aside since there is already a finding that the Applicant has proved its claim against defendant No. 1, the O.A. is allowed as prayed for and the recovery certificate be issued in favour of the

Applicant/Appellant as trustees for the Debenture holders and against the 1st defendant company acting through the Official Liquidator, High Court of Gujarat directing it to pay a sum of ₹40,29,46,274.13 being the amount due to the Debenture holders in respect of 1st and 2nd series of debentures and remuneration due to the trustees together with interest at the rate of 6% per annum with effect from the date of filing of the O.A. till realisation and costs to be recovered from the 1st defendant company through the official liquidator from out of the movable and immovable assets belonging to the 1st defendant company more particularly described in schedule I and II to the application.

Sd/-
Chairperson

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