

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2264 OF 2021

STATE BANK OF INDIA

Appellant(s)

VERSUS

VIBHA AGRO TECH LIMITED

Respondent(s)

O R D E R

This appeal is directed against the order of the National Company Law Appellate Tribunal (hereinafter referred to as 'NCLAT' for brevity) dismissing the appeal filed by the appellant.

The appellant-Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC' for brevity) on 12.09.2018. The application was dismissed on the ground that it is barred by time. In the appeal, the NCLAT has affirmed the decision of the National Company Law Tribunal (hereinafter referred to as 'NCLT' for brevity).

We have heard Shri V. M. Kannan, learned counsel for the appellant, and Shri Nikhil Nayyar, learned senior counsel for the respondent.

The argument which is pressed before us by the learned counsel for the appellant is that, in this case, there were

acknowledgements made by the respondent in its balance sheets which would operate as acknowledgement under Section 18 of the Limitation Act, 1963. In this regard, he drew support from judgment in *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another* (2021) 6 SCC 366. A perusal of the order would reveal that the NCLAT has indeed considered the case of acknowledgement set up by the appellant on the basis of the acknowledgement in Master Restructuring Agreement (MRA) dated 26.09.2013 and further, the acknowledgement contained in the One time Settlement(OTS) application dated 19.06.2015. It was *inter alia* found by the NCLAT that having regard to the fact that the application under Section 7 of the IBC was only filed on 12.09.2018, the application would be barred by limitation even if the acknowledgements as pressed for by the appellant in the MRA and the OTS were taken into consideration.

The contention that there was acknowledgement within the meaning of Section 18 of the Limitation Act by virtue of the acknowledgment contained in the balance sheets of the respondent does not seem to have been considered in the order. It is the case of the appellant that a perusal of the rejoinder and the written submissions would show that such a contention was indeed taken.

Learned senior counsel for the respondent, on the other hand, would point out that this is a case where the appellant may have projected the case of acknowledgement

under Section 18 of the Limitation Act referable to the acknowledgments contained in the balance sheets in the rejoinder affidavit and that too before the NCLAT and no such case was set up before the NCLT. He would press before us the judgment in *Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy and Anr.* 2021 (9) SCALE 145. He drew support from the following statements in the said judgment:

"144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."

Countering the said line of argument, Shri V.N. Kannan, learned counsel for the appellant, drew our attention to paragraph 57 of the judgment in *Asset Reconstruction Company (India) Limited* (supra) which reads as follows:

57. There can be no doubt whatsoever that the appellant has been completely remiss and deficient in pleading acknowledgement of liability on the facts of

this case. However, given the staggering amount allegedly due from the respondents, we afford one further opportunity to the appellant to amend its pleadings so as to incorporate what is stated in the written submissions filed by it before NCLAT, subject to costs of Rs 1,00,000 to be paid by the appellant to the respondents within a period of four weeks from today.

Learned counsel for the appellant would contend that the amount involved in this case also is in the region of Rs.323 crores with interest.

We are of the view that subject to the appellant being put to terms, the course adopted by this Court in *Asset Reconstruction Company (India) Limited (supra)* should be followed. Accordingly, we allow the appeal and set aside the impugned order. The appeal is remanded back and will be restored back to file.

We permit the appellant to seek amendment of the application under Section 7 so as to incorporate the case based on acknowledgement as contained in the balance sheets allegedly of the respondent.

We leave open all contentions available to the respondent. This benefit will be available to the appellant subject to the appellant paying a sum of Rs.3 lakhs as costs to the respondent within a period of three weeks from today.

The appeal is allowed as above.

We make it clear that the questions relating to the case set up by the appellant relating to the acknowledgement flowing from MRA dated 26.09.2013 and OTS dated 19.06.2015

CIVIL APPEAL NO. 2264 OF 2021

shall not be revisited.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
October 20, 2021.

ITEM NO.35 Court 10 (Video Conferencing) 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. 2264/2021

STATE BANK OF INDIA

Appellant(s)

VERSUS

VIBHA AGRO TECH LIMITED

Respondent(s)

(With IA No. 71576/2021 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 71574/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 71573/2021 - STAY APPLICATION)

Date : 20-10-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. V. M. Kannan, Adv.
Mr. Sanjay Kapur, AOR
Ms. Megha Karnwal, Adv.
Mr. Arjun Bhatia, Adv.
Ms. Shubhra Kapur, Adv.

For Respondent(s)

Mr. Nikhil Nayyar, Sr. Adv.
Mr. Devashish Chauhan, Adv.
Ms. Charchika Yadav, Adv.
Ms. Charu Ambwani, 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 applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file.]