SVG FASHIONS PVT. LTD. EARLIER KNOWN AS SVG FASHIONS LTD. v. RITU MURLI MANOHAR GOYAL , 2022 SCeJ 0416, 2022 PLRonline 1794

Supreme Court of India

Hemant Gupta, J. V. Ramasubramanian, , J.

SVG FASHIONS PVT. LTD. EARLIER KNOWN AS SVG FASHIONS LTD. v. RITU MURLI MANOHAR GOYAL.

CIVIL APPEAL NO.4228 OF 2020

29th March 2022

limitation act 1963 S.18 – insolvency and Bankruptcy Code 2016 S. 8, S.9 – Affect of cheques issued alongwith a covering letter – NCLAT completely overlooked the pleadings revolving around the letter and the six cheques – The failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact on this – Matter remanded.

Cases referred to :

1. *Para 9: Jignesh Shah and Another v. Union of India and Another, (2019) 10 SCC 750*
2. *Para 9: Babu Lal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited and Another, (2020) 15 SCC 1*
3. *Para 9: B.K. Educational Services Private Limited v. Parag Gupta and Associates, (2019) 11 SCC 633*
4. *Para 9: Laxmi Pat Surana v. Union Bank of India And Another, (2021) 8 SCC 481*
5. *Para 9: Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another, (2021) 6 SCC 366*

Petitioner Counsel: SAURABH MISHRA, Respondent Counsel: MEERA MATHUR RASHI BANSAL

JUDGEMENT

V.RAMASUBRAMANIAN, J.

1. Aggrieved by the order of the National Company Law Appellate Tribunal (for short “NCLAT”), reversing the order of ‘Admission' passed by the National Company Law Tribunal (for short “NCLT”) and holding that their application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short “the Code”) was barred by limitation, the operational creditor has come up with the present appeal.

2. We have heard the learned counsel for the appellant-operational creditor; the learned counsel for the first respondent-shareholder and Director of the corporate-debtor and the learned counsel for the second respondent-Interim Resolution Professional.

3. The appellant herein filed an application under Section 9 of the Code on 20.04.2018 against M/S Arpita Filaments Private Limited, contending inter alia: that the corporate-debtor started having business dealings with them from 2013; that they sold and delivered various fabrics to the corporate-debtor; that the corporate-debtor was irregular in making payments as per the bills; and that the demand notice issued by them under

Section 8 of the Code read with Rule 5 did not invoke any response.

4. Before NCLT, the corporate-debtor raised four major objections, one of which was that the claim was barred by limitation. But NCLT found on the basis of a letter dated 28.09.2015 produced by the operational creditor that six cheques had been issued in favour of the operational creditor. These cheques returned dishonoured when presented for payment. The stand taken by the corporate-debtor was that those six cheques were lost by the corporate-debtor in March 2017 and that they had already issued "stop payment instructions" to the bank on 4.03.2017. The corporate-debtor also claimed that the letter dated 28.09.2015 relied upon by the operational creditor was issued by Shree Adeshwar Textiles and that therefore, the operational creditor cannot rely upon the same to save limitation.

5. However, the NCLT, by an order dated 26.09.2019 overruled the objections and held that there was an acknowledgment of liability on the part of the corporate-debtor and that therefore, the application was within the period of limitation. Consequently, the NCLT ordered the admission of the application under Section 9 of the Code and also declared moratorium in terms of Section 14.

6. On an appeal filed by the appellant, the NCLAT held that the debt arose during the period from 11.08.2013 to 02.09.2013 and that the six cheques purportedly issued towards part payment of the liability having been issued on 5.12.2017, will not save limitation. The NCLAT further held that even if the date of default is taken to be 7.10.2013 as pleaded by the operational creditor, the acknowledgment of liability in terms of Section 18 of the Limitation Act ought to have happened on or before 07.10.2016. But the cheques were dated December 2017 and hence NCLAT reversed the decision of NCLT and dismissed the application of the operational creditor.

7. But we find from the order of NCLAT that there was no discussion at all about the letter dated 28.09.2015. According to the operational creditor, the six cheques in question were handed over along with the letter dated 28.09.2015. The cheque numbers and the bank on which the cheques were drawn, given in the letter dated 28.09.2015 tallied with the particulars of those six cheques allegedly lost by the corporate debtor in March 2017. Though the first respondent herein clamed in his affidavit in reply that the corporate-debtor had issued stop payment instructions, he conceded that the acknowledgment issued by the banker contained the date 01.01.2018. The following extract from the affidavit in reply/objections of the Director of the corporate-debtor makes an interesting reading:

"…Hereto annexed and marked collectively as AnnexureC are copies of the intimation issued by the banker of the Corporate Debtor duly recording the instruction of stop payment qua the cheques in question taking record that the cheques had been lost. It is submitted that the banker of the Corporate Debtor has issued such notices acknowledging stop payment instruction on account of loss of the cheques on 04/03/2017, however inadvertently due to the error in the computers of the banker, the date on the top right shows as 01/01/2018. the Corporate Debtor in the process of obtaining appropriate letter from the banker of the Corporate Debtor to the effect that the error in the date has occurred due to some problem in the computers of the banker, and the Corporate Debtor craves leave to produce copy of the same as and when referred to and relied upon and available with the Corporate Debtor from the banker."

8. Unfortunately NCLAT completely overlooked the pleadings revolving around the letter dated 28.09.2015 and the six cheques. The failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact on this.

9. It is needless to point out that the law relating to the applicability of Section 18 of the Limitation Act, 1963 is fairly well settled. In Jignesh Shah and Another v. Union of India and Another, (2019) 10 SCC 750, this Court pointed out that when time begins to run, it can only be extended in the manner provided in the Limitation Act. For holding so this Court made a reference to Section 18 of the Limitation Act. Though in Babu Lal Vardharji

Gurjar v. Veer Gurjar Aluminium Industries Private Limited and Another, (2020) 15 SCC 1, a two member Bench of this Court held that the reference in Jignesh Shah (supra) to Section 18 of the Limitation Act was only illustrative and that the ratio in B.K. Educational Services Private Limited v. Parag Gupta and Associates, (2019) 11 SCC 633 did not stand altered by Jignesh Shah, no discordant note was struck. But the cloud of doubt created by Babu Lal (supra) was cleared subsequently in Laxmi Pat Surana v. Union Bank of India And Another, (2021) 8 SCC 481. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another, (2021) 6 SCC 366, this Court, while applying Section 18 of the Limitation Act, even went to the extent of holding that an entry in the balance sheet of the company could also be treated as an acknowledgment in writing, subject however to any caveat found in the accompanying reports.

10. The law as it has developed on the applicability of Section 18 of the Limitation Act and the circumstances in which it would apply, have also not been examined by NCLAT. Therefore, the order of NCLAT is liable to be set aside and the matter liable to be remanded back for a fresh consideration. Accordingly, the appeal is allowed, the impugned order of NCLAT is set aside and the matter remanded back to NCLAT for a fresh consideration in the light of the observations and the principles of law indicated above. There will be no order as to costs.

Tags: 2022 PLRonline 1794, 2022 SCeJ 0416, IBC S. 8, IBC S. 9, Limitation Act S. 18, SVG FASHIONS, SVG FASHIONS PVT. LTD. EARLIER KNOWN AS SVG FASHIONS LTD. v. RITU MURLI MANOHAR GOYAL