

National Company Law Appellate Tribunal,
Chennai Bench
Company Appeal (AT) (CH) (Ins) No. 130 of 2022

(Arising out of order dated 21st March, 2022 passed by National Company Law Tribunal, Division Bench - I, Chennai Bench in CP/IB/75/2021 along with IA/839/CHE/2021 and IA/844/CHE/2021)

IN THE MATTER OF:

1. **Mr. Amar Vora**
S/o. Lalji Vora,
Suspended Director of M/s. Milan
Textiles Enterprises Pvt. Ltd.,
No. 12-13-14, Amman Street,
Madurai- 625001

...Appellant

Versus

1. **City Union Bank Ltd.**
Represented by its Manager,
Mr. Renganath,
149, T.S.R. Big Street,
Kumbakonam,
Thanjavur District - 612001
2. **Mr. Gopalsamy Ganesh Babu**
Interim Resolution Professional (IRP),
986-H Block, 24th Street, Anna Nagar
(West),
Chennai - 600040

...Respondents

Present:

For Appellant: Ms. Tamizh Malar, Advocate
For Mr. T. Lajapathi Roy, Advocate
For Mr. Veerabathran Prasanth, Advocate
Respondents: Mr. Raghav Rajeev Menon, Advocate

J U D G M E N T
(Virtual Mode)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed aggrieved by the order dated 21.03.2022 in CP 75 of 2021 passed by the Adjudicating Authority (NCLT) Division Bench-I Chennai whereby the Adjudicating Authority admitted the application filed by the Respondent/Financial Creditor under Section 7 of the I & B Code 2016.

Brief Facts:

Appellant Submissions:

2. The Ld. Counsel appeared for the Appellant submitted that the Hon'ble NCLT did not consider various factual and legal positions put forth before it and passed the impugned order utterly ignoring the same. It is submitted that the Appellant obtained three Credit facility from the financial Creditor/1st Respondent to develop the mall for a tune of Rs. 5,20,00,000/- on various dates by offering the property in town bearing survey nos. 80 to 85 of Managiri bit 1

village, KK Nagar Madurai North Taluk as collateral. Though the financial Credits obtained from the 1st Respondent Bank on various occasions, they have also repaid the interest without any default so far. However, the first Respondent Bank initiated proceedings under Section 7 of I & B Code,2016 before the Adjudicating Authority (NCLT Chennai) alleging certain defaults. However, the 1st Respondent did not brought to the knowledge of the Hon'ble NCLT that it had earlier issued a demand notice to the Appellant under Section 13 (2) of SARFAESI ACT, 2002 on 30.08.2018 for a default of Rs. 14,14,61,066/- followed by paper publication dated 27.09.2018. The authorised officer took symbolic possession of the property mortgaged as per Section 13(4) of the SARFAESI ACT, 2002. Thereafter, the subject property was attached with DRT Madurai Bench.

3. It is submitted that the Hon'ble NCLT did not consider the fact that OA No. 497 of 2019 on the file of DRT Madurai against the Appellant for recovery of debts and the parallel application in CP 75 of 2021 before the Adjudicating Authority under Section 7 is amount to forum shopping. It is submitted that there is a symbolic

and physical possession of the Appellant Company in the PBPT Proceedings and SARFAESI Proceedings, hence the initiation proceedings under Section 7 of the I & B Code, 2016 should have been kept in abeyance until the orders in PBPT had attained finality.

4. The Ld. Counsel further submitted that the Proceedings before the Adjudicating Authority is barred by limitation and therefore prayed this Bench to allow the Appeal by setting aside the impugned order passed by the Adjudicating Authority in admitting and initiating the CIRP against the Corporate Debtor.

Analysis/Appraisal:

5. This Tribunal intent to take up the Appeal and decide the same at the admission stage itself having gone through the Appeal and the order under challenge, hence, no notice was ordered to the Respondent. However, Counsel appearing for the Respondents present in person at the time of taking of the Appeal.

6. After hearing the Ld. Counsel for the Appellant the three points emerge for consideration is:

- (i) Whether the pendency of proceedings under SARFAESI ACT, DRT and before PBPT, prohibits the Respondent/financial Creditor for initiation of Proceedings under IBC, 2016?
- (ii) Whether the debt and default is proved in respect of Corporate Debtor?
- (iii) Whether the application is barred by limitation?
- (iv) Whether the order under challenge is reasoned order dealing with all issues as raised by the Appellant/Corporate Debtor?

7. Now we take up point no.(i)

It is the case of the Appellant that the financial Creditor issued notice under Section 13(2) of the SARFAESI ACT, 2002 for a default of Rs. 14,14,61,066/- for almost 12 accounts and the financial Creditor has also filed an application bearing OA No. 497 of 2019 before the DRT Madurai against the Appellant/Corporate Debtor for recovery of debts Rs. 19,73,47,599/- and filing the application before the Adjudicating Authority for default in loan amount to the tune of Rs. 8,04,86,434/- with interest for the very same loan

facility would amount to forum shopping and hence initiation of CIRP by the Adjudicating Authority cannot be maintained. Further, the Ld. Counsel submitted that an application being IA 844 of 2021 filed before the Adjudicating Authority praying the Authority to keep abeyance till the matter in reference no. R-1929 of 2020 before the prohibition of Benami Property Transaction Act, 1988 is decided.

8. The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.

10. Now we deal with Point no. (ii):

Form-1 dated 09.03.2021 filed by the Respondents/financial Creditor at part -IV regarding particulars of financial debt shown as Rs. 5,20,00,000/- and the Appellant has in para 6 of the counter filed before the Adjudicating Authority admitted that the Appellant obtained three credit facility from the financial Creditor to a tune of

Rs. 5,20,00,000/- on various dates by producing the subject property as collateral. In view of the reason the Appellant had admitted the debt and default. The Adjudicating Authority also took the stand that the existence of debt and default had been proved beyond reasonable doubt. Accordingly, the point is answered against the Appellant.

11. Now we deal with Point no. (iii):

The Respondent/financial Creditor in the application form-1 dated 09.03.2021 in part – IV column -2 with regard to date of default it is mentioned that the date of default is 31.05.2018, however the fact remains that the application filed by the Respondent/financial Creditor before the Adjudicating Authority is on 18.03.2021 which is within the period of limitation i.e. 3 years from the date of default as per Section 137 of the limitation Act since the limitation act applicable to the proceedings under IBC. Therefore, the application filed before the Adjudicating Authority is within the period of limitation and accordingly the point is answered against the Appellant.

12. Now we deal with Point no. (iv):

The order passed by the Adjudicating Authority in admitting the application filed by the 1st Respondent against the Corporate Debtor is a well reasoned order and we do not find any legal or factual infirmity in the order and no interference is called for.

Conclusion:

13. In view of the reasons as stated above, the Appeal sans merit and the same is dismissed. No order as to costs.

**[Justice M. Venugopal]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

11/05/2022

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