

THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV
AT NEW DELHI

I.A. 348/ND/2021

IN

Company Petition No. (IB) – 697 (ND)/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

IDBI Bank Limited
Through Shri. Senapati Nag
Presently General Manager
Having Registered Office at
IDBI Tower, WTC Complex, Cuff Parade
Mumbai-400005

... Applicant

Versus

Mr. Devinder Arora
Resolution Professional of
Space Vision Impex Private Limited
Having registered office at:
D-14, Kailash Colony
New Delhi-110048

... Respondent

AND

In the matter of:

M/s The State Trading Corporation of India Limited
3rd Floor, Trade World, C Wing, Kamala Mill,
Senapati Bapat Marg, Lower Parcel (West)
Mumbai-400013
Also At
Jawahar Vyapar Bhawan, Tolstoy Marg
New Delhi-110001

... Operational Creditor

Versus

M/s Space Vision Impex Private Limited
Having Registered office at
D-14, Kailash Colony
New Delhi-110048

.... Corporate Debtor

Order delivered on: 21.02.2022

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions to the respondent to accept the claim filed by the applicant in the capacity of the Financial creditor of Principal borrower for whom the corporate debtor herein is the corporate guarantor.

2. The facts and circumstances of the application are:

A. That CIRP against the corporate debtor was initiated vide order passed by this Tribunal dated 08.05.2019 in IB-697/ND.2018 pursuant to insolvency petition filed by the operational creditor under section 9 of the Code and Mr. Devinder Arora being registration no.

IBBI/IPA-002/IP-N00200/2017-18/10586 was appointed as IRP to carry out the functions mentioned under the Code.

B. Subsequently, Shri. Devinder Arora was appointed as the RP to carry out the duties and responsibilities conferred under the code in respect of the CIRP of the corporate debtor.

C. The applicant had sanctioned working capital limit of Rs.5,00,00,000/- to the principal borrower namely in December 2009 however, the limits were then enhanced from Rs. 5,00,00,000/- to Rs. 20,00,00,000 in December 2010. LCBD facility of Rs. 10,00,00,000 was enhanced to Rs. 40,00,00,000/- in April, 2015. Thereafter, the working capital limits were enhanced from Rs. 40,00,00,000/-to Rs. 70,00,00,000/- in 2016.

D. The applicant further states that supplemental corporate guarantee agreement was executed between the applicant and the corporate debtor on 13 July, 2016 to the original corporate guarantee agreement dated 22 December 2009 in order to secure the credit facilities availed by the Principal borrower from the applicant.

E. The applicant states that the loan account of the Principal Borrower was classified as non-performing asset on 26th March, 2019 due to non-payment of the outstanding balance of the applicant.

F. The applicant states that inspite of repeated requests made by the applicant, the principal borrower failed to repay the outstanding dues to the applicant therefore, loan recall notice dated 04.05.2019

was issued by the applicant to the principal borrower recalling the outstanding balance amounting to Rs. 63,71,41,818.28/- together with interest and expenses thereon with effect from 01.04.2019 until realization.

G. The applicant states that the principal borrower has failed to repay the dues to the applicant, therefore, the applicant had issued notice dated 27.05.2019 to the present corporate debtor invoking corporate guarantee for recovery of the outstanding loan amounting to Rs. 63,72,00,000/- together with interest thereon with effect from 01.04.2019 at the given contractual rates, upon the footing of compound interest until payment/ realization, payable to the applicant.

H. The applicant states that the principal borrower is under liquidation vide order passed by the NCLT, Mumbai dated 04.12.2020 and in view of the same the applicant has submitted its claim before the liquidator of the Principal borrower on 21.12.2020.

July
I. The applicant states that pursuant vide order passed by the NCLT Delhi Bench dated 08.05.2019 to initiate CIRP against this Corporate debtor. As soon as the applicant become aware of the CIRP initiated against the corporate debtor the applicant vide its email dated 06.03.2020 requested the present RP to inform about the status of the proceedings initiated against the present corporate debtor before NCLT

and the form in which the claim has been submitted by the applicant with the RP.

J. The applicant states the applicant vide email dated 26.06.2020 has submitted its claim in prescribed Form C with the respondent.

K. That the applicant states the respondent vide email dated 12.10.2020 addressed to the applicant informed that claim filed by the applicant cannot be accepted by the respondent on the ground that the claim submitted by the applicant is filed beyond the period of 90 days of CIRP commencement date and further it is also asserted by the respondent that the claim filed by the applicant was subject to legal opinion as the applicant was not the direct lender of the corporate debtor.

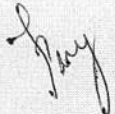
3. The RP has filed application for liquidation of Corporate debtor as recommended by CoC, with NCLT and applicant has option to file its claim as and when the claims are invited under the liquidation process and will be considered as per law.

That the applicant is not direct financial creditor of the corporate debtor and thus not eligible to file claim as financial creditor, reliance can be placed on the judgment passed by the Honb'le Supreme Court in the matter of **Anuj Jain Vs. Axis Bank**.

“For what has been discussed hereinabove, on the issue as to whether lenders of JAL could be treated as

Financial Creditors, we hold that such lenders of JAL, on the strength of the mortgages in question, may fall in the categories of secured creditors, but such mortgages being neither towards any loans, facility or advance to the Corporate Debtor nor towards protecting any facility or security of the corporate debtors, it cannot be said that the corporate debtor owes them any "Financial Debt" within the meaning of Section 8 of the code, and hence, such lenders of JAL do not fall in the categories of the "Financial Creditors" of the corporate debtors JIL"

4. We have heard the parties and perused the case record.
5. Admittedly, the liquidation application has already been filed by the Resolution professional and initiation of liquidation proceeding will not adversely affect the rights of the applicant. Since, the liquidation has already been approved by the CoC, therefore, the delay in filing of claim by applicant cannot be condoned at such belated stage. Moreover, the said application for liquidation filed by RP being no. IA- 348 of 2021 is already allowed, the present applicant is not prejudiced as the present applicant can file its claim before liquidator within time.



6. Therefore, the applicant is hereby directed to file its claim in appropriate Form, before liquidator and liquidator shall adjudicate the same as per law.

Application is disposed of in the aforesaid terms.

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DR. DEEPTI MUKESH)

MEMBER (J)