

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1584 of 2024

(Arising out of Order dated 02.08.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-VI, in CP(IB) No.758/MB/2022)

IN THE MATTER OF:

Amit Yogesh Satwara
Suspended Director of Suumaya Industries Limited
(earlier known as Suumaya Lifestyle Limited)
Registered office: Gala No.5F/D
Malad Industrial Units Cooperative Society Ltd.
Kanchpada Ramchandra Lane Extension, Malad (W),
Mumbai-400064 Maharashtra
Through its Power of Attorney Holder Ushik Gala ...Appellant

Versus

Incred Financial Services Limited
Registered office: Unit No. 1203, 12th
Floor The Capital Tower, B-Wing,
Plot No. C-70 G-Block, Bandra Kurla
Complex, Bandra (E), Mumbai-400051,
Maharashtra. ...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Pallavi Pratap, Mr. Pushkraj, Mr. Rohan Marathe, Ms. Yashvi Aswani and Mr. Amjid Maqbool, Advocates.

For Respondent : Ms. Smriti Churiwal and Mr. Jaiveer Kant, Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor (“CD”) has been filed challenging order dated 02.08.2024 passed by National Company Law Tribunal, Mumbai Bench-VI admitting Section 7 Application filed by Financial Creditor.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The Respondent No.1 herein sanctioned Working Capital Facility/ loan of Rs.5 crores on 15.10.2020, for which a Master Facility Agreement was executed on 24.10.2020. A loan recall notice dated 02.06.2022 was issued on behalf of the Financial Creditor claiming an amount of Rs.4,61,51,597/-.
- (ii) Section 7 Application was filed on 20.06.2022, where total amount claimed as on 01.06.2022 was Rs.3.80 crores and interest of Rs.60,36,961/- aggregating to Rs.4,40,53,481/-.
- (iii) On 17.09.2022, during pendency of Section 7 Application a Memorandum of Understanding (“**MoU**”) was entered, where shares were pledged in favour of Financial Creditor. On 19.09.2022, a Share Pledge Agreement was entered into pursuant to MoU. On 29.11.2022, a pledge invocation notice was issued by Respondent to the Applicant invoking pledge.
- (iv) On 07.08.2023, an IA No.4400 of 2023 was filed by the Corporate Debtor seeking dismissal of the Company Petition.
- (v) The Adjudicating Authority heard the parties and by the impugned order dated 02.08.2024 admitted Section 7 Application. Aggrieved by which order this Appeal has been filed.

3. We have heard learned Counsel for the parties.

4. When the Appeal came for consideration before this Tribunal, the Appellant made a statement that Appellant has entered into some negotiation and settlement with the Financial Creditor and partial amount has been paid. This Tribunal noticed following in the proceedings dated 12.08.2024:

“12.08.2024: Ld. Counsel for the appellant submits that appellant is taking steps to enter into some negotiation and settlement with the Financial Creditor.

He submits that the partial amount is already paid and for balance amount steps shall be taken.

As prayed, list this appeal on 02.09.2024.

In the meantime, no further steps shall be taken in pursuance of the impugned order. This shall be without prejudice to rights and contentions of both the parties.

5. The Appeal was taken thereof on several occasion and interim order was continued, but no settlement could be finalized between the parties and the matter was thereafter heard.

6. Learned Counsel for the Appellant submits that shares pledged by the CD were sufficient to cover the entire liability and had the pledged shares were immediately transferred, the value of the shares were Rs.4,79,17,375/-. However, shares were sold by the Financial Creditor at a least value subsequently and no default can be found on the part of the CD. Under the MoU, the Financial Creditor was entitled to invoke shares and by MoU, the dispute between the CD and Financial Creditor was settled and at the time of selling the shares, the value of the shares were approximately Rs.6 crores, which was sufficient to clear and protect the claim of the Financial Creditor.

7. Learned Counsel appearing for Respondent refuting the submissions, submits that shares which have been invoked by the Financial Creditor fetched only an amount of Rs.1,94,10,790.14 and the value of balance shares as on the said date was Rs.47,58,767.86. Hence, the CD continued in default. The CD was given opportunity before the Adjudicating Authority to file the reply, which was never filed. The pledge share was invoked on 29.11.2022, which did not satisfy the debt. The Adjudicating Authority has rightly found that there was debt and default, which was sufficient for admitting Section 7 Application. Even before this Appellate Tribunal, the Appellant took several opportunities to settle the matter and make the payment. However, the Appellant was not able to discharge its debt and there is no ground to interfere with the impugned order.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. The findings recorded by Adjudicating Authority with regard to debt are not even questioned. The case setup by the Appellant before the Adjudicating Authority as well as before this Tribunal to settle the matter and discharge its liability, itself indicate that there was a debt and default. In paragraph 6.13, the Adjudicating Authority has noticed the amount released by sale of pledged shares and it was found that amount of Rs.2,05,54,296 is still due and payable. Paragraph 6.13 of the order of the Adjudicating Authority is as follows:

“6.13 Coming now to the merits of the main Application, we find that the Financial Creditor has annexed to the Application copies of Sanction Letter dated 15.10.2020, Master Facility Agreement-cum-Hypothecation Agreement dated 24.10.2020, Personal Guarantee Deed dated 24.10.2020, Demand Promissory Note dated 24.10.2020 and Letter of Continuity for Demand Promissory Note dated 24.10.2020 in order to prove the existence of ‘financial debt’ within the meaning of Section 5(8) of the Code. The Financial Creditor has also furnished copy of the Loan Recall Notice dated 02.06.2022 so as to prove the factum of default. The Financial Creditor has also placed on record copy of Record of Default dated 20.07.2022 with the NeSL showing date of default as 03.12.2021 and the default amount at Rs.4.05 Crores. In Part-B of the NeSL report, the Corporate Debtor has admitted that the “debt exists”, though the outstanding amount is wrong. The Financial Creditor has also furnished copy of the financial statements of the Corporate Debtor downloaded from www.corpository.com as on 14.06.2022 showing the amount of financial debt of Rs.5,00,00,000/- availed from the Financial Creditor. Thus, we find that the Financial Creditor has brought on record sufficient materials to prove the existence of ‘financial debt’ under Section 5(8) of the Code and default in repayment thereof on part of the Corporate Debtor. It is also noticed from the record that the Financial Creditor has claimed the total amount in default to be Rs.4,40,53,481/- in the Application out of which it has realised a sum of Rs.2,34,99,185/- from sale of pledged SCL shares. In other words, financial debt of Rs.2,05,54,296/- [Rs.4,40,53,481- Rs.2,34,99,185] is found to be still due and payable by the Corporate Debtor to the

Financial Creditor under the original loan documents.

10. It appears that after filing of the Appeal, certain amount is also claimed to be paid by the Appellant.

11. The submission of the Appellant is that had the shares been transferred on the date when shares were pledged, the Financial Creditor would have obtained amount of Rs.6 crores, sufficient to clear the claim, cannot be accepted. Under the MoU, it was the sole discretion of Financial Creditor to invoke the shares and pledge invocation was noticed on 29.11.2022 and thereafter shares were realized and the amount, which was realized by the sale of shares have been noticed, which did not discharge the debt of the Financial Creditor. The fact that CD has taken steps to settle the dues before the Adjudicating Authority as well as this Tribunal, itself indicate that both, debt is there and default is an admitted fact. We have in this Appeal also granted opportunity to the Appellant to enter into settlement with the Financial Creditor, but inspite of several opportunities taken, the Appellant could not bring any accepted settlement on record. The debt and default having been proved, we do not find any error in initiating the CIRP against the CD.

12. We, thus, do not find any ground to interfere with the impugned order in the present Appeal. We, however, observe that in event any settlement is entered between the CD and Financial Creditor, it is open for the parties to take route of Section 12-A for withdrawal of CIRP as per law laid down by the Hon'ble Supreme Court in **GLAS Trust Company**

LLC vs. BYJU Raveendran & Ors. – Civil Appeal No.9986 of 2024

decided on 23.10.2024. Subject to above, the Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

15th January, 2025

Ashwani