



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA-4350/2023
In
(IB) 3267/ND/2019

Order under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

IN THE MATTER OF:

PUNJAB NATIONAL BANK

.....FINANCIAL CREDITOR

VERSUS

M/s. APPLE SPONGE & POWER LTD.

.....CORPORATE DEBTOR

Order Delivered On: - 09.01.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Parties / Counsels present

For Applicant: Mr. Khalid Abdulah, Advocate

For Respondent: Mr. Gaurav Mitra, Mr. Manohar Malik, Advocates



ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Resolution Professional seeking following prayers: -

a) Allow the present Application;

b) Take on record the submissions made in the present Application and the documents annexed thereto and be treated as part and parcel of the Petition under Section 7 of IBC, 2016.

c) Take on record the date of default as 31.03.2014 and the amount of default as Rs. 187,68,23,362/- and the same be treated as the Particulars of Financial Debt as stated in Part-IV of the Application;

d) Consider the correction sought in Part-IV of the Application and the documentary information placed on record for issuing appropriate directions as per law.

2. Briefly stated the facts of the present case as averred by the applicant is that the Financial Creditor has filed the petition under Section – 7 of IBC, 2016 against the Corporate Debtor and the same is pending for adjudication before this Adjudicating Authority. It is further submitted that, the Corporate Debtor has failed to maintain the financial discipline and the debt is still due and payable by the Corporate Debtor. The Corporate Debtor was declared as Non-Performing Asset on 31.03.2014 and as per the guidelines of Reserve Bank of India the Financial Creditor had issued a recall notice on 02.12.2014.

3. It is further averred by the Ld. Counsel appearing for the applicant that, the Financial Creditor had already initiated proceedings under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 before the Debt Recovery



Tribunal, Delhi for self-i.e. Punjab National Bank and on behalf of Bank of Baroda, for a claim amount of Rs.181,91,02,017/- and Rs.99,44,68,450/- respectively for PNB and Bank of Baroda being due as on 31.07.2015 along with pendentelite and future interest Registered as in O.A No.364/2015.

4. It is further submitted that, the Original Application being O.A No.364/2015 has been decided by the Debts Recovery Tribunal vide Judgment dated 19.09.2019 whereby the Original Application was allowed and the Financial Creditor was held entitled to Recover the Claim amount along with interest pendentelite @ 15.75% p.a. from the date of filing of O.A till realization. A recovery certificate has been issued for recovery of the Debt Adjudicated by the Tribunal on 27.09.2019.

5. It is further averred that, the Corporate Debtor has acknowledged the debt payable to the Financial Creditor. Further, the Corporate Debtor has also approached Financial Creditor time to time with an offer for settlements of its liability towards the Financial Creditor. Some of the OTS proposals offered by the Corporate Debtor dated 10.01.2022, 14.06.2022, 30.08.2022 14.10.2022, 06.12.2022 and 18.01.2023 are the acknowledgment of its Financial Liabilities towards the Financial Creditor.

6. It has also been submitted that the present petition was filed on 29.10.2019 and inadvertently the date of default has been wrongly mentioned in Part – IV in IB – 3267/ND/2019 as 30.09.2019. As the Corporate Debtor was declared as NPA on 31.03.2014 so, actual date of default shall be read as 31.03.2014 instead of 30.09.2019. As on date when the Corporate Debtor was declared as NPA the principal amount of debt was Rs. 181,91,02,017/- and thereafter, payment with regards to invocation of Bank Guarantee for Rs. 2,06,82,800/- and entries in Cash Credit facilities for Rs 3,70,38,544/-. Thus, the total amount in default is Rs.187,68,23,362/-. Further, as per the record of default issued by Information Utility under sub-regulation (4) of Regulation 21 of the



Insolvency and Bankruptcy Board of India (Information Utilities) Regulation, 2017 as obtained on 27.04.2023 the amount in default as per Form – D (Record of Default) is Rs. 187,68,23,362/- so, the amount in default should be read as Rs. 187,68,23,362/- instead of Rs. 238,11,15,106/-.

7. In response to the contention raised by the Applicant, the Ld. Counsel appearing for the Corporate Debtor vehemently argued that the Application filed by the Applicant for seeking to amend/change the date of default from 30.09.2019 to 31.03.2014 and amount of default from Rs. 2,38,11,15,106/- to Rs. 187,68,23,362/- is liable to be dismissed as there is no provision under IBC, 2016 to seek change of date of default. The Ld. Counsel to support its contention placed reliance on judgement of Hon'ble NCLAT dealing with the similar question in **Ramdas Dutta vs. IDBI Bank Limited, Comp. App. (AT) No. 1285 of 2022** decided on 26.04.2023 which had held as follow: -

“19. The first question is as to whether the date of default can be changed by Bank? In this regard, it has been held by the Hon'ble Supreme Court in the case of 'Ramesh Kymal Vs. Siemens Gamesa Renewable Pvt. Ltd., (2021) 3 SCC 224 that the date of default cannot be changed”

8. It is further submitted by the Ld. Counsel appearing for the Corporate Debtor that the present application should not be allowed as the Applicant has only filed this Application to fulfil the lacuna in its petition filed under Section – 7 of IBC, as the same was duly pointed out by the Corporate Debtor in its reply.

9. We have heard the argument advanced by the Ld. Counsel appearing for Financial Creditor as well as for the Corporate Debtor.



10. In the light of the arguments advanced and the documents submitted before this Adjudicating Authority, one important questions which arise for our consideration is: -

I. Whether liberty can be granted to the Applicant at this stage to change the date of default and amount in default in the main petition.

11. The Ld. Counsel appearing for the Applicant vehemently argued that determining the date of default in Section 7 application is a mixed question of fact and law. The Applicant can choose the date of default depending on the facts of a particular case. Further it is noted that, Respondent/Corporate Debtor has been in default of its payment obligations under the Loan Agreement and the said defaults are continuing till date.

12. In the light of the submission made by the parties and for a better appreciation of the matter at hand, we would like to place reliance on a judgement of Hon'ble Supreme Court in ***Dena Bank (Bank of Baroda) versus C. Shivakumar Reddy and Another (2021 10 SCC 330)*** wherein it has been held as follows: -

"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."

13. In the present matter, the Applicant has prayed for amendment in date of default on the basis that the Corporate Debtor was declared as Non-Performing Asset on 31.03.2014, and therefore, the same date should be treated as date of default. It is now a settled proposition of law that, date of default will be the date of declaration of account as NPA. Having regard to the conspectus of all relevant facts and circumstances and the judgement cited ***supra***, we are of the considered view that, the Respondent/Corporate Debtor has been in default of its payment obligations under the Loan Agreement and the said defaults are continuing in nature. It is the settled law that, the amendment of pleadings in an Application filed under Section – 7 IBC, can be done at any stage of the matter as laid down in various judgements. In view of the above said position we direct that the date of default be treated as 31.03.2014 as prayed for by the Applicant.

14. IA – 4350/2023 filed by the Applicant seeking amendment of date of default and amount in default is ***allowed***.

SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)