NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1954 of 2024

(Arising out of Order dated 15.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court III in C.P. No.(IB) 3425/MB/C-III/2019)

IN THE MATTER OF:

Maneesh Ramakant Sapte …Appellant

Versus

Export Import Bank of India & Ors. …Respondents

Present:

For Appellant : Mr. Abhinav S. Raghuvanshi, Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti Gupta, Ms. Shweta, Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Ms. Palak Nenwani, Mr. Rohit Gupta, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor – Maneesh Ramakant Sapte has been filed challenging order dated 15.10.2024 passed by National Company Law Tribunal, Mumbai Bench, Court-III admitting Section 7 Application filed by Export-Import Bank of India and other three Banks under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**"). The Adjudicating Authority by the impugned order has admitted Section 7 Application and initiated the Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor ("CD"). Aggrieved by which order this Appeal has been filed.

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

i. The Financial Creditors – Respondent Nos.1 to 4 with one Barclays Bank PLC extended Term Loan Facility to the tune of USD 45 million to M/s Svizera Holdings B.V. (Principal Borrower), a subsidiary company of the CD. The loan was extended under a Facility Agreement dated 24.09.2007. The CD stood as a Guarantor. The Barclays Bank LLC, Hong Kong L King Branch acting as Agent and the Offshore Security Trustee of the of the Financial Creditors.

ii. The Principal Borrower – Svizera, Netherlands as well as the CD failed to repay the amounts due on the respective due dates, hence, as per the guidelines of RBI the account of Borrower – Svizera, Netherlands was classified as Non-Performing Assets ("**NPA**") by Respondent Banks on different dates in the year 2011. The Agent Barclays Bank PLC, Hongkong Branch, as instructed by the Financial Creditors issued a notice dated 03.02.2012 to the Borrower as well as Corporate Guarantor. A Demand Notice dated 21.02.2012 was also issued to the Corporate Guarantors of CD with copy to the Borrower requesting the Corporate Guarantor to pay outstanding amount of USD 36,316,260.33 due as on 30.01.2012.

iii. The Respondent Banks filed a suit against Principal Borrower and the CD (Foreign Suit) before the Queen's' Bench, UK in accordance with Clause 37.1 of the Facility Agreement. The CD has also filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**") before the BIFR, on which Case No.74 of 2012 was registered. Barclays Bank filed an Application for intervention before the BIFR. In the Foreign Suit before the Queen's Bench a Decree was passed on 08.04.2014 against the Principal Borrower and the CD of USD 35,355,064.80 (approximately Rs.212.13 crores) along with interest and fees.

iv. After repeal of SICA on 01.12.2016, the Financial Creditors filed a Company Petition under Section 7 before the Adjudicating Authority on 30.08.2019 alleging default by the Principal Borrower and the Corporate Guarantor. On 25.03.2022, NCLT dismissed Section 7 Application as barred by time, against which Financial Creditors filed Company Appeal (AT) (Ins.) No.579 of 2022. The Appeal was allowed on 09.05.2023. Aggrieved by the order of this Tribunal dated 09.05.2023, the Appellant filed an Appeal under Section 62 of the Code before the Hon'ble Supreme Court being Civil Appeal No.4073 of 2023, which was dismissed by the Hon'ble Supreme Court.

v. The Financial Creditors in the meanwhile filed an IA for restoration of Section 7 Application, which was allowed by the Adjudicating Authority on 05.07.2023, restoring Section 7 Application. The Adjudicating Authority refused to adjourn Section 7 Application, aggrieved by which an Appeal was filed on 06.12.2023. This Tribunal passed an order directing the Adjudicating Authority to admit Section 7 Application, which order was challenged before the Hon'ble Supreme Court by the Respondent in Civil Appeal No.8153 of 2023. The Hon'ble Supreme Court allowed the Appeal filed by the CD and directed the NCLT to decide the matter afresh.

vi. An IA No.5566 of 2023 was filed by the CD. and by an order dated 15.10.2024, the Adjudicating Authority heard the Application along with IA No.5566 of 2023 and by an order dated 15.10.2024, admitted Section 7 Application, appointing Mr. Ashish Narayan as an IRP.

vii. Challenging the order dated 15.10.2024, this Appeal has been filed.

3. When the Appeal came for consideration, learned Counsel for the Appellant submitted that Appellant is willing to deposit the entire principal amount as referred in Part-IV of Section 7 Application. This Tribunal passed an interim order on 18.10.2024 to the following effect:

> "**18.10.2024:** Ld. Counsel for the appellant submits that the appellant is ready to deposit the entire amount referred to in Part-IV of Section 7 application and he has depositing the demand draft

of Rs.110/- crores (Rupees One Hundred Ten Crores) by tomorrow. He further submits that balance principal amount shall be paid within 15 days.

2. Counsel for the respondent seeks liberty to communicate the appellant the figure as per all the four banks within a week.

3. List this appeal on 29.10.2024.

4. In the meantime, no further steps shall be taken in pursuance of the impugned order dated 15.10.2024 without prejudice to the rights of both the parties.

4. In pursuance of different orders passed by this Tribunal, the Appellant as on date has deposited total amount of Rs.369.11 crores in this Tribunal. On the Application filed by the Appellant, the amount deposited in this Tribunal has been directed to be kept in the interest bearing fixed deposit. The Appellant submitted a proposal on 06.02.2025 before the Financial Creditors requesting for settlement. The Appellant had also sent a letter dated 16.10.2024 to the Financial Creditors, intimating the amount, which according to the Appellant was required to be paid. The Bank has replied to the final proposal dated 06.02.2025 submitted by the Appellant and as per additional affidavit in reply, which was filed by the Financial Creditor, it is pleaded that amount as calculated by the Appellant is not correct. The Appellant also filed an affidavit in response to the affidavit in reply dated 12.02.2025 where the Appellant pleaded that interest claimed by the Bank is not acceptable. It is submitted that Bank may consider filing of Application under Section 12A on the amount of Rs.369.11 crores towards 100% principal and interest due as on 31.03.2019.

5. Both the parties were heard by this Tribunal on 17.03.2025 and judgment was reserved. Both the parties were given liberty to file written submissions, which have been filed by both the parties.

6. As per the Appellant, the amount deposited of Rs.369.11 crores is sufficient to take care of the principal amount and the interest. It is submitted that Bank is charging interest in violation of the RBI Guidelines. It is submitted that under the Guidelines of the RBI dated 18.08.2023, in respect of NPA accounts, the penal interest should be charged reasonable and levied by the Lender only on the amount under default in a non-discriminatory manner and it must be ensured that there is no capitalization of the penal charges and no further interest computed on such charges. It is further submitted that the said Guidelines also stipulates that the Bank should keep in mind that the intent of levying penal charges is essentially to inculcate sense of credit discipline and such charges are not meant to be used as a revenue enhancement tool. It is submitted that copy of Lender Banks Books of Account indicate that Lenders have charged interest on interest on Notional as well as penal interest, which is unfair lending practice. It is submitted that USD 10 mn. was already repaid. The Borrower Company was liquidated and USD 7272648 was recovered from the sale of offshore securities. Besides, principal Borrower paid 3.276 million euros equivalent to approximate USD 5.32 million. The Appellant and CD – Maneesh Pharmaceuticals Ltd. Is having manufacturing units in Mumbai and Himachal Pradesh and engaging in export of life saving Anti TB drugs to more than 60 countries through WHO contracts and employs about 1800 staff/

workmen across the country. The Company does not have any other financial obligations or borrowings apart from the present guarantee obligation and the Company has already deposited monies more than what is actually due to the Banks herein. It is submitted that the proceedings under the IBC are not recovery proceedings. The Appellant has also established that the interest has been calculated in contravention to the established principles of accounting and against the RBI Guidelines. The Appellant has already deposited Rs.369.11 crores in the Registry of this Tribunal, whereas the Banks are still adamant and pressurising the Appellant to pay the wrongly calculated monies against their alleged claim and they have not shown their willingness to file Section 12 Application for withdrawal of Section 7 proceedings. Learned Counsel for the Appellant has also referred to RBI Circulars and submits that even after 31.03.2019, the Respondents have charged interest and additional interest. The Appellant also sought direction to waive off entire penal interest charged. It was further submitted that Respondents be directed to make an Application for withdrawal of the CIRP against the CD and securities be released.

7. Learned Counsel appearing for the Banks – Financial Creditors has refuted the submissions of the Appellant and submits that the Appellant has engaged the Financial Creditors in several rounds of proceedings. The Adjudicating Authority on finding 'debt' and 'default' has rightly passed an order of admission in Section 7 Application. The offer made by the Appellant before this Tribunal is merely an eyewash exercise to cause delay in the CIRP. Time bound resolution of CIRP is the purpose of IBC.

The debt and default has not even been questioned before this Tribunal and the submissions made before this Tribunal that Appellant has deposited the entire outstanding amount, itself proves that debt and default is an admitted fact, hence, CIRP need to proceed. It is further submitted that CD on several occasions have acknowledged the debt, which has been noted by the Adjudicating Authority in the impugned order. It is submitted that as per the Facility Agreement the Bank was entitled to charge interest, penal interest and the total amount due as on insolvency commencement date is Rs.5,19,01,61,595.03 and the Appellant for the first time has raised the defence of charging penal interest, despite being well aware that present transaction was a foreign currency term loan (default interest is contractual) and default interest is being charged since the stage of invocation of guarantee. It is submitted that RBI Circulars, which are relied by the Appellant is not applicable, since these instructions of penal charges are not applicable in case of rupee/ foreign currency export credit and other foreign currency loans. The interest is contractual and was always in the knowledge of the CD since the invocation of guarantee. There has been repeated failure by the CD to abide by its own terms. The admission order deserves to be uphold and CIRP be allowed to continue in time bound manner.

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

9. We have already noticed the series of litigation which took place between the parties with respect to default committed by Principal

Borrower and the CD. The Adjudicating Authority in the impugned order has recorded a categorical finding of existence of 'debt' and 'default'. The Adjudicating Authority also noted in its order that settlement proposal submitted by the CD was rejected by the Financial Creditors, which was noticed in paragraph 61 of the impugned order. It is useful to extract paragraphs 61 and 62 of the impugned order, which are as follows:

> "61. The Petitioners, in their reply to additional affidavit dated 28.11.2023 filed by the Corporate Debtor, had brought on record two letters dated 30.11.2023 and 08.12.2023 whereby the Corporate Debtor made settlement proposals to the Petitioners which were, however, rejected by the Petitioners. The Petitioners argue that the proposals dated 30.11.2023 and 08.12.2023 also amounts to acknowledgement of debt and default and this Tribunal on being satisfied with the same, is bound to admit the instant application. The issue of bar of limitation has already been decided and accepted by the Corporate Debtor that the petition is within limitation.
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> 62. Considering the facts of the present case and looking at them from whichever angle, we have no hesitation to conclude that debt and default has been established. Thus, the second issue is also answered in positive."

10. The proceedings in this Appeal as noticed above also indicate that there has been acknowledgment and acceptance of debt and default and the amount deposited before this Tribunal by the Appellant is also towards the acknowledgment and acceptance of debt and default. There being admitted debt and default, we do not find any error in the order of Adjudicating Authority initiating the CIRP.

11. The submission which has been pressed by learned Counsel for the Appellant that although the Appellant has deposited the amount to

liquidate 100% debt as was existing on the date when Application under Section 7 was filed as well as on the date when CIRP commenced, but the Financial Creditors are not ready to accept the amount to liquidate their debt, which indicate that Financial Creditors are proceeding with Section 7 Application only as a recovery measures, which is not the object of IBC. Learned Counsel for the Appellant submitted that levy of penal interest was also not permissible and the calculation and computation provided by the Financial Creditors before this Tribunal are not correct. On the other side, the Bank has supported its calculation and submitted that the deposit made by the Appellant is not full deposit to liquidate the amount of outstanding to all four Banks, who are Respondents herein and who had filed Section 7 Application. It is submitted that the Appellant on earlier occasion has also prayed to clear the entire outstanding, in which he had failed. It is submitted that RBI Circulars relied by the Appellant are not attracted with regard to external commercial borrowings and there being clear Clause-8.3 in the Facility Agreement, which allows default interest to be charged on the entire outstanding amount, including principal, accrued interest etc., the said amount has to be paid by the Appellant.

12. After having considered the submissions of learned Counsel for the parties and perusing the records, we fully endorse the view and the findings of the Adjudicating Authority that Financial Creditors have fully proved the 'debt' and 'default' on the part of the CD and no error has been committed by the Adjudicating Authority in directing for admission of Section 7 Application and for initiation of CIRP against the CD. We, thus,

uphold the order of Adjudicating Authority directing for admission of Section 7 Application.

13. We, however, are not unmindful of the fact that the Appellant has deposited in this Tribunal an amount of Rs.369.11 crores, which according to the Appellant will fully satisfy the outstanding of the Financial Creditors along with interest.

14. The dispute between the parties regarding charging of penal interest and charging of interest on interest or other issues regarding computations, are not the issues, which need to be examined and decided in these proceedings.

15. The Hon'ble Supreme Court in ***GLAS Trust Company LLC vs. BYJU Raveendran & Ors.*** in ***Civil Appeal No.9986 of 2024*** decided on 23.10.2024 has laid down the law that for withdrawal of CIRP, the appropriate course open for the parties to initiate proceedings under Section 12A with Regulation 30A. Thus, for withdrawal of the proceedings, appropriate measures have to be taken under Section 12A and Regulation 30A of the CIRP Regulations before the Adjudicating Authority. By interim order passed by this Tribunal on 18.10.2024, the Committee of Creditors ("**CoC**") could not be constituted by the IRP. We, thus, are of the view that in the facts of the present case, the CoC needs to be constituted to find out the claim of the Financial Creditors and to permit the Financial Creditors and other claimants to file their claims and the IRP to collate the claims. In event the Appellant is desirous of submitting a settlement proposal for withdrawal of Section 7 Application,

it is always open for the Appellant to submit a proposal before the IRP, who can place the same before the CoC. In event the CoC with 90% vote share approve the settlement, the IRP can always file an Application for withdrawal of the proceedings.

16. Any proposal submitted by the Appellant, may also include the payment of amount of Rs.369.11 crores deposited in this Tribunal for payment to the Lenders, can be placed by the IRP/ RP before the CoC to obtain the decision. The Members of the CoC at that stage needs to take a decision with requisite vote share, as to whether withdrawal of the proceedings is to be done or not. In the facts of the present case, we are of the view that the amount deposited in this Tribunal of Rs.369.11 crores may await the decision of Adjudicating Authority. In event the CoC does not accept the settlement proposal of the Appellant, we grant liberty to the Appellant to file an Application for withdrawal of the amount deposited in this Tribunal.

17. In result of foregoing discussions and conclusions, we dispose of this Appeal with following directions:

(1) The order passed by Adjudicating Authority dated 15.10.2024 admitting Section 7 Application filed by the Financial Creditors is upheld.

The interim order passed by this Tribunal on 18.10.2024 is vacated.

The CIRP against the CD will proceed. The IRP may constitute the CoC in accordance with law.

(2) The period from 18.10.2024 till the date of this order, is excluded from the CIRP of the CD.

(3) The Appellant shall be at liberty to submit proposal before the CoC with copy to the IRP. After constitution of the CoC, the IRP may place the settlement proposal before the CoC for obtaining a decision as contemplated by Section 12A read with Regulation 30A of the CIRP Regulations. In event the settlement proposal is accepted, the IRP may file an Application under Section 12A.

(4) It shall be open for the CoC to consider the settlement proposal submitted by the Appellant, which may also include the payment of the amount deposited in this Tribunal of Rs.369.11 crores to the Lenders. It is for the CoC to take its commercial decision to accept or not to accept the settlement proposal. The settlement proposal may also include other terms and conditions in addition to payment of amount of Rs.369.11 crores to the Financial Creditors.

(5) The entire process of submission of settlement proposal by the Appellant and consideration by the CoC shall be completed within 60 days from the

date of this order. After expiry of 60 days, the IRP/ RP may proceed with the CIRP of the CD in accordance with law.

(4) In event the settlement proposal is not accepted by the CoC with 90% of vote shares or 12A Application is not allowed, the liberty is reserved to the Appellant to make an application for withdrawal of the amount along with interest, deposited in this Tribunal under orders passed by this Tribunal.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

24th April, 2025

Ashwani