

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.15

IA/802(AHM)2021 in CP(IB) 321 of 2020

Order under Section 60(5) IBC,2016

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Chandra Prakash Jain RP of Sintex Prefab & Infra Ltd

.....Respondent

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :


For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**


**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

IA No. 802 of 2021 in CP(IB) 321/7/NCLT/AHM/2020

In the matter of :

[An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 10 of NCLT Rules, 2016]

In the matter between:

State Bank of India,

Having its address at:

Madam Cama Road, Nariman Point,
Mumbai-400031

And

Stressed Asset Management Branch,
Paramsidhi Complex,
Opposite-V.S. Hospital,
Ellis Bridge, Ahmedabad

....Applicant

Versus

Mr. Chandra Prakash Jain

Resolution Professional of
M/s. Sintex Prefab and Infra Limited,
Having address at:
D-501, Ganesh Meridian,
Opposite High Court, S.G. Road,
Ahmedabad-380060

....Respondent

**Order Reserved On : 30.03.2022
Order Pronounced On : 27.04.2022**

Coram: MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)

PRESENTS:

For the Applicant: Mr. Baiju A Nair, Advocate

For the Corporate Debtor : Mr. Monaal J Davawala, Advocate

ORDER

[Per: BENCH]

1. The instant application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) r.w. Rule 10 of NCLT Rules, 2016 by the State Bank of India-Applicant against the rejection of the claim by the Resolution Professional of the Corporate Debtor vide letter dated 23.10.2021 filed by the Applicant with respect to the corporate guarantee given by the Corporate Debtor.
2. The applicant has submitted that credit facilities aggregating to Rs. 299 crores were sanctioned to M/s. Sintex BAPL Ltd. (hereinafter referred to as **"Sintex"**) and the Corporate Debtor has executed a corporate guarantee on 22.06.2018 in favour of the applicant. M/s Sintex failed to comply with the obligation towards the applicant consequently the account of the M/s Sintex was classified as NPA. The applicant issued



the recall notice of Rs. 231,17,81,291.52/- to the guarantor-Corporate Debtor as well as M/s. Sintex on 12.01.2021. But, the Corporate Debtor as well as M/s Sintex failed to pay the said outstanding amount.

3. The applicant further submitted that M/s. Sintex was admitted into CIRP at the instance of an application filed by M/s. Zielem Industries Pvt. Ltd.- Operational Creditor in petition bearing no. CP(IB) No. 759 of 2019 vide order dated 18.12.2020 passed by this Adjudicating Authority. Mr. Ketulbhai Ramubhai Patel was appointed as an IRP.
4. The applicant has submitted that claim was submitted to the IRP of M/s Sintex of Rs. 259,00,53,273.51/- which comprises outstanding liabilities in cash credit and bank guarantee limits as on 17.12.2020. The IRP already admitted the claim of Rs. 228,06,89,554.55/- in respect to the credit facilities and Rs. 10.97 Crores has been provisionally admitted with respect to the bank guarantees provided to the M/s Sintex.
5. The applicant further submitted that in meantime M/s. Sintex Plastics Technology Ltd. (in short **"STPL"**) (a holding company of M/s Sintex) has filed an appeal before the Hon'ble NCLAT for setting aside the order dated 18.12.2020



on the ground that the said company has arrived at a settlement with the Operational Creditor. The Hon'ble NCLAT vide order dated 04.01.2021 allowed the appeal of the STPL and directed the STPL to approach this Adjudicating Authority seeking an exit, after filing settlement Terms before the Adjudicating Authority. The Hon'ble NCLAT has further directed not to constitute the COC for one week from the date of the order, and liberty was granted to the respondent to oppose such motion if permissible in law.

6. In pursuant to the order dated 04.01.2021 STPL filed an application before this Authority seeking withdrawal of the CIRP. This Authority vide order dated 29.06.2021 approved the withdrawal of the CIRP of M/s Sintex. Immediately, after the approval of withdrawing the CIRP initiated against M/s Sintex, one intervenor who already filed an application filed a papis seeking an urgent stay on the order allowing withdrawal of CIRP on the ground that the intervention application has been listed for further consideration on 05.07.2021.
7. This Adjudicating Authority vide order dated 30.06.2021 stayed the order dated 29.06.2021 allowing the withdrawal of



the CIRP. Thereafter, an appeal along with a stay application was filed by an intervening party before Hon'ble NCLAT for setting aside the CIRP withdrawal order dated 29.06.2021. The Hon'ble NCLAT vide order dated 12.07.2021 stayed the order dated 29.06.2021 passed by this Adjudicating Authority and restored the order ante-before passing of the impugned order dated 29.06.2021.

8. The applicant further submitted that the Corporate Debtor was admitted into CIRP at the instance of Bank of Barda, a Financial Creditor under Section 7 of the IBC, 2016 vide order dated 24.02.2021 of this Adjudicating Authority in CP(IB) No. 321 of 2021. Mr. Chandra Prakash Jain was appointed as an IRP. In pursuance of the public announcement made by the IRP, the Applicant submitted two separate claims in Form C. The first claim was submitted on 12.03.2021 for the amount of Rs. 17,53,45,156.71/- towards its claim against the Corporate Debtor for outstanding liability as on 23.02.2021 with respect to the working capital facilities granted by the applicant to the Corporate Debtor. Secondly, the claim of Rs. 265,26,94,047.30/- was submitted on 02.06.2021 for the credit facilities and Bank Guarantees

granted by the applicant to the M/s. Sintex for which the Corporate Debtor has executed a guarantee deed in favour of the applicant.

9. It is also submitted by the applicant that the RP has admitted the claim of Rs. 17,53,45,156.71/- of the applicant as credit facilities given to the Corporate Debtor. However, the RP has rejected the second claim of Rs. 265,26,94,047.30/- which was submitted for the corporate guarantee provided by the Corporate Debtor for the credit facilities and the bank guarantee to M/s. Sintex vide letter bearing no. IPCPJ/SPIL/2021-22/578 dated 23.10.2021, on the ground that the IRP of M/s. Sintex has already admitted the claim of Rs. 229,17,51,364.51 for credit facilities and Rs. 10,97,00,000/- has been provisionally admitted with respect to the bank guarantee given by the applicant in favor of M/s. Sintex.
10. The applicant has further submitted the rejection of the claim by the RP of the Corporate Debtor on the ground that the claim has already been admitted by the Resolution Professional of M/s Sintex with respect to the bank guarantee and credit facility granted by the applicant to M/s.



Sintex for which the Corporate Debtor has given a guarantee. Hence, the claim submitted before the IRP of Corporate Debtor is not admissible, is unlawful, and is against the provision of IBC, 2016.

11. We heard the Learned Counsels for both sides and perused the material on record. The moot question of this application is whether a simultaneous claim can be submitted by the financial creditor in the CIRP initiated against the Corporate Debtor as well as against the Corporate Guarantor. It is not a disputed that the M/s. Sintex has already been admitted into CIRP and order has been stayed by the Hon'ble NCLAT. The claim of Rs. 228,06,89,554.55/- against the credit facilities and Rs. 10,97,00,000/- against the bank guarantee of the applicant has been admitted by the Resolution Professional of M/s. Sintex.
12. It is also not in dispute that amount of Rs. 17,53,45,157 has already been admitted by the RP of the Corporate Debtor against credit facilities granted to the Corporate Debtor. The rejection of the second claim of Rs. 265,26,94,047.30/- of the applicant submitted to RP of the Corporate Debtor as a corporate guarantor on the ground that the aforesaid claim



has already been admitted by the IRP of M/s. Sintex is not valid. As per Section 3(6) of the IBC, 2016, the claim submitted by the applicant in the CIRP of the Corporate debtor (corporate guarantor) is well within the definition of the claim as the Corporate Debtor as well as M/s. Sintex has breached the contract and failed to pay the outstanding amount. For ready reference, we reproduce Section 3(6) of the IBC, 2016 hereunder:

**3. In this Code, unless the context otherwise requires,—*

*“(6) “**claim**” means—*

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”*

13. We are also of the considered view that the claim submitted by the applicant of Rs. 265,26,94,047.30/- with respect to the corporate guarantee provided by the Corporate Debtor is a “financial debt” as per Section 5(8)(i) of the IBC, 2016 and the applicant is a financial creditor as per section 5 (7) of IBC, 2016. For ready reference, we reproduce Section 5(7) and Section 5(8)(i) hereunder:



Section 5: Definitions.

“(7) financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

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(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause”;

In view of the above provisions, it is clearly shown that the second claim submitted by the applicant is a financial debt and the applicant is a financial creditor.

14. It is also noted that Section 60(2) of the IBC, 2016 empowers the Financial Creditor to initiate the CIRP against the Corporate Debtor as well as the corporate guarantor of the Corporate Debtor. If, the financial creditor is entitled to initiate a CIRP against the Guarantor during the pendency of CIRP or liquidation proceeding pending against the Corporate Debtor. Thereby, the claim can not be rejected merely on the

ground that the claim has already been admitted in CIRP of M/s Sitex. Moreover, there is no bar in the IBC, 2016 to submit the simultaneous claim in the CIRP of the Corporate Debtor as well as in the CIRP of the corporate guarantor. For ready reference we reproduce section 60 (2) of IBC, 2016 as under;

“Section 60: Adjudicating Authority for corporate persons.

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(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.”

15. The Hon'ble NCLAT in “*State Bank of India vs. Athena Energy Ventures Private Limited*”, MANU/NL/0436/2020 has upheld that when the principal borrower and surety are undergoing CIRP the creditor is entitled to file a claim in CIRP on both of them. For ready reference, we reproduce the relevant para of the aforesaid judgment hereunder:

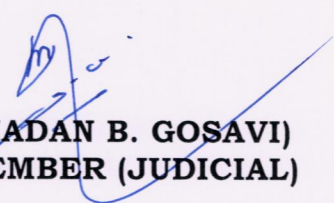
“...16. We find substance in the arguments being made by the learned Counsel for Appellant which are in tune with the Report of ILC. The ILC in para-7.5 rightly referred to subsequent Judgment of "Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Ltd. and Ors." dated 20th September 2019 which permitted simultaneously initiation of CIRPs against Principal Borrower and its Corporate Guarantors. In that matter Judgment in the matter of Piramal was relied on but the larger Bench mooted the idea of group Corporate Insolvency Resolution Process in para-34 of the Judgment. The ILC thus rightly observed that provisions are there in the form of Section 60(2) and (3) and no amendment or legal changes were required at the moment. We are also of the view that simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this. We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise. It would be a matter of adjustment when the Creditor receives debt due from the Borrower/Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. This can be conveniently done, more so when IRP/RP in both the CIRP is same. Insolvency and Bankruptcy Board of India may have to lay down regulations to guide IRP/RPs in this regard...”



16. In view of the above, the present application is allowed. it is directed to the RP of the Corporate Debtor to verify and admit the claim submitted by the applicant with respect to the corporate guarantee executed by the Corporate Debtor for the credit facilities as well as Bank Guarantee Given to M/s Sintex
17. Accordingly, the present application is allowed and disposed of.

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(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

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