



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

I.A./5926/ND/2022

IN

Company Petition No. (IB)-421/ND/2021

(Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

M/s. GK Dairy and Milk Products Private Limited
.... Applicant

Versus

M/s. Kotak Mahindra Bank Limited
.... Respondent

AND IN THE MATTER OF:

M/s. Kotak Mahindra Bank Limited
.... Financial Creditor

Versus

M/s. GK Dairy and Milk Products Private Limited
.... Corporate Debtor

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on:13.07.2023



ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The above application i.e., I.A./5926/ND/2022 is filed by M/s. G.K. Dairy and Milk Products Private Limited ('Applicant') under Section 60(5) of the Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, who is the Corporate Debtor in main petition i.e., C.P.(IB)/421/ND/2021 praying for the following relief(s):-

- a) "To allow the present Application and take on record the documents annexed.
- b) Pass any other order as the Hon'ble Tribunal deems fit."

2. Briefly stated the facts of the present case as averred by the applicant are that the applicant is the Corporate Debtor against whom the main Company Application bearing No. C.P.(IB) No.421/ND/2021 seeking initiation of the Corporate Insolvency Resolution Process is filed by M/s. Kotak Mahindra Bank Limited ('Financial Creditor') alleged to have defaulted in the payment of the Financial Debt due and payable to the Financial Creditor.
3. The Applicant submits that the Financial Creditor had permitted the Corporate Debtor, the facility of 10% cut-back ('Tagging Arrangement') in NPA Account of the Corporate Debtor/applicant pursuant to which the applicant was required to leave aside 10% of the total credits in the accounts for appropriation towards the liability under the CC Accounts of Financial Creditor and Punjab National Bank in the sharing ratio of 67.79 ; 30.21.
4. Further, the Applicant submitted that an upfront amount of Rs.50 Lacs was also deposited by the Applicant and moreover, the applicant was successful in setting aside 18.5% of the total credits between 31.03.2022 to 30.09.2022. The Applicant further submitted that in order to become regular, a restriction proposal was submitted with the Financial Creditor



on 29.05.2022 which was disposed off by the Financial Creditor vide communication dated 07.06.2022 wherein it was clearly admitted that “Tagging arrangement was permitted”. The Applicant submitted that pursuant to the Tagging Arrangement, the default (if any) committed by the Applicant is condoned by the Financial Creditor and therefore, no default exist as on date. Accordingly, the applicant prayed for placing the additional documents on record.

5. Per Contra in the reply filed by the Respondent (‘Financial Creditor’), the Respondent submitted that the Applicant (‘Corporate Debtor’) is not able to serve the monthly interest payment and resultantly the total outstanding dues as on 30.11.2022 is to the tune of Rs.27.60 Crores as account is still overdue and interest is accruing on monthly basis and accordingly entire loan was recalled vide issuance of Loan Recall Notice dated 09.10.2020. Moreover, the Respondent submitted that merely paying nominal amount on monthly basis which is much less than the monthly accrued interest dues cannot be a justified reason that there is no default.
6. Furthermore, it was submitted that in order to keep the Corporate Debtor’s account operational and as per Corporate Debtor’s commitment for upfront deposit of 100 lakh which it failed to do is nothing but just an act to delay the insolvency proceedings. It is submitted that the Red Flagging and removal of the Red Flagging of account has no relevance to the present proceedings and the loan account is still under default.
7. We have heard the Ld. Counsels for the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been perused.



8. It is trite that the pleadings are statements in writing drawn up and filed by each party to a case, stating what its contentions will be at the trial/hearing and giving all such details as his opponent needs to know in order to prepare his case in answer. In pleadings, material facts should be stated 'in a concise form'. The pleadings should be concise as well as precise. Pleadings would include contentions raised in Application, Counter, Appeal, Reply, Rejoinder.
9. Sans irrelevant facts, adverting to the factual matrix of the present case, the main Company Application i.e., C.P.(IB)421/ND/2021 is filed under Section 7 of the Code, 2016 seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor having defaulted in the payment of the Financial Debt due and payable to the Financial Creditor. The Corporate Debtor had submitted its reply to the main Company Application (C.P./421/ND/2021) on 23.10.2021.
10. The Corporate Debtor had filed the instant application for taking the following documents on record:-
 - a) ANNEXURE 1 – True Copy of the Letter dated 30.03.2022 sent by Punjab National Bank to sanction the Tagging Facility to the Corporate Debtor.
 - b) ANNEXURE 2 – True Copy of the Letter dated 21.10.2022 and 04.11.2022.
 - c) ANNEXURE 3 – True Copy of Communication dated 07.06.2022.
11. The leave to produce additional documents before the arguments may be granted by this Adjudicating Authority on a good cause being shown by the Applicant i.e., Corporate Debtor. It is often said that procedure is the handmaid of justice. The Hon'ble Supreme Court in Judgement



SUGANDHI (dead) by Lrs. & ANR. Versus P. RAJKUMAR;[Civil Appeal No.3427 OF 2020] observed that:-

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon the procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of documents under sub-rule(3).”

12. From the records, we observe that the Corporate Debtor had submitted its reply in the year 2021, whereas the additional documents sought to be relied upon are related to the year 2022. Therefore, we are of the view that the liberty can be granted to the applicant to produce these additional documents in the main Company Application. The Respondent (applicant under Section 7 application) can raise all his objections to the same, at the time of hearing the C.P.(IB)/421/ND/2021.
13. Accordingly, subject to the aforesaid observation, the present application i.e., **I.A./5926/ND/2022 stands allowed**. C.P. (IB) 421/ND/2021 is now posted for arguments.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (JUDICIAL)