NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.315/2022 & IA Nos.667 and 668/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 27.06.2022 in CP(IB) No.109/7/HDB/2020
passed by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad)

In the matter of:

M Suresh Kumar Reddy … Appellant
V
Canara Bank & others ... Respondents
(Erstwhile Syndicate Bank & Others)

Present :

For Appellant : Mr. Prateek Yadav, Advocate

For Respondents : Mr. M.L. Ganesh, Advocate
For Respondent No.1
Ms. Kalpana, Interim Resolution Professional / Respondent No.2

ORDER

(VIRTUAL MODE)

05.08.2022: The Appellant / Suspended Director of M/s. Kranthi Edifice Private Limited, Hyderabad has focused on an instant Company Appeal (AT)(CH)(Ins) No.315/2022, filed before this 'Tribunal', as an 'aggrieved person', on being dissatisfied with the 'Impugned Order' dated 27.06.2022 in

CP (IB) No.109/7/HDB/2020 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad), in admitting the Section 7 Application filed by the 1st Respondent / Financial Creditor / Petitioner under Insolvency & Bankruptcy Code, 2016.

2) The 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) while passing the 'Impugned Order' on 27.06.2022 at Paragraph Nos.14 to 18 had observed the following: -

> *"14. Having heard the learned counsels for both sides, it may be stated that the Corporate Debtor had not denied availing of the credit facilities as stated in the application, besides Bank Guarantee facility for a sum of Rs.19,16,20,100.00, from the Financial Creditor. It is also not the case of the Corporate Debtor that it had discharged even the fund-based facilities extended to and availed by the Corporate Debtor. The main plea of the Corporate Debtor appears to be that the Financial Creditor has honoured the request of the beneficiary for encashment of the Bank Guarantee despite the said invocation by the beneficiary being wrongful, and then converted the aid amount into fund-based liability and claimed a debt of Rs.8.40 crores as due and payable by the corporate debtor. The corporate debtor has not denied the*

acknowledgement of debt dated 05.05.2019 amounting to Rs. 63,36,61,897.26 besides that the entries in the Balance Sheet of the corporate debtor dated 31.03.2019 showing that the said sum as due and payable to the Financial Creditor. That apart the two OTS proposals were made by the corporate debtor on 02.11 .2021 for Rs.40.00 crores and on 21.03.2022 for Rs.40.00 crores and rejection of these proposals by the Financial Creditor on 22.04.2022 also not in dispute.

15. Hon'ble Supreme Court of India, in re, Asset reconstruction Company V Bishal Jaiswal, held that "entries in balance sheets can amount to acknowledgement of debts for the purpose of extending limitation under section 18 of Limitation Act."

16. Thus, from the aforesaid undisputed factual matrix of this case, availing of both fund-based (towards working capital and non-fund based (Bank Guarantee) credit facilities to the tune of Rs.74,52,87,564.93 and Rs.19,16,20,100.00 respectively from the Applicant / Financial Creditor, besides default in payment of the fund based credit facility stands established.

17. So much so, even if we accept the argument of the Ld. SR. Counsel for the Corporate debtor that invocation of Bank Guarantee and debiting amount covered by the Bank Guarantee to the account of the Financial Creditor is illegal and unsustainable, yet the defaulted amount under the fund-based credit facilities by the Corporate Debtor being beyond the threshold limit of this Tribunal, probing the submission of the learned Senior Counsel for the Corporate Debtor as regards the invocation of Bank Guarantee, in our considered view will not impact our above finding, and it will be an exercise in futile. That apart, Bank Guarantee being an independent contract between the beneficiary and the Bank is governed by the terms and conditions between the said parties. So much so, when the beneficiary has invoked the same as per the terms the Banker is bound to honour the request for its encashment without any demur, unless fraud is pleaded and established.

18. Therefore, in view of our discussion as above, we are satisfied that the financial creditor has established before us that a financial debt of a sum over Rs. One crore is due and payable by the Corporate Debtor to the applicant and the Corporate Debtor *has defaulted in payment of the same, hence it is a fit case to put the Corporate Debtor in CIRP."*

and resultantly admitted the 'Application' filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor / Petitioner and declared 'Moratorium', etc.

3) The Learned Counsel for the Appellant submits that the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) had not taken into account the 'One Time Proposal' (OTS) offered before the Bank through a letter dated 15.06.2022, on the debt mentioned viz., Rs.55 Crore and further that the 'Adjudicating Authority' should have appreciated the persistence and constant negotiations with reference to the 'One Time Settlement' (OTS), which was undergoing between the parties.

4) Not resting with the above, the Corporate Debtor had also referred to a letter dated 15.06.2022 of the 1st Respondent / Canara Bank agreeing the 'OTS' offer of Rs.55 Crore. Considering the 'OTS' of the Appellant favourably by the 1st Respondent and is an utmost possibility of settlement between the parties, the Learned Counsel for the Appellant, in the instant case, admits the 'debt and default' aspect, as held by the 'Adjudicating Authority'

(National Company Law Tribunal, Hyderabad Bench, Hyderabad) in the 'Impugned Order' dated 27.06.2022 in CP(IB) No.109/7/HDB/2020.

5) The primordial submission on behalf of the Appellant before this 'Tribunal', is that in the instant Company Appeal (AT)(CH)(Ins) No.315/2022 that the 1st Respondent / Canara Bank is actively considering the proposal for 'OTS' of Rs.55 Crore and in fact the Appellant had paid a sum of Rs.5,14,80,000/- on 11.05.2022 through Cheque to the Bank in respect of the 'Loan Amount', and hence, prayed for some time to be granted to and in favour of the Appellant for awaiting any kind of possible 'Reply' from the 1st Respondent / Bank.

6) Repelling the contention advanced on behalf of the Appellant, the 1st Respondent / Canara Bank / Financial Creditor takes a stand through the Learned Counsel, in the instant case, that the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) had very rightly observed at Paragraph 14 of the 'Impugned Order', among other things, mentioning that the Corporate Debtor had not denied the acknowledgment of debt dated 05.05.2019 amounting to Rs.63,36,61,897.26 from the entries in the 'Balance Sheet of the Corporate Debtor' dated 31.03.2019 showing that the same, as due and payable to the Financial Creditor.

7) The Learned Counsel for the 1st Respondent / Bank / Financial Creditor brings to the attention of this 'Tribunal' that on the earlier occasions 'Two OTS Proposals' were projected by the 'Corporate Debtor' on 02.11.2021 for Rs.40 Crore and on 21.03.2022 for Rs.40 Crore and rejections of these proposals by the 1st Respondent / Bank / Financial Creditor was on 22.04.2022 and these facts, are not in dispute.

8) The entry in the 'Balance Sheet', undoubtedly, is an Acknowledgment of Debt in regard to the aspect of extending the period of Limitation, in terms of the ingredients of Section '18' of the Limitation Act, 1963.

9) At this juncture, it is projected on the side of the 1st Respondent / Bank / Financial Creditor that the recent 'OTS proposal' of the 'Corporate Debtor' dated 15.06.2022 was also rejected by the 1st Respondent / Bank / Financial Creditor on 21.07.2022.

10) This 'Tribunal' has heard the Learned Counsels appearing for the respective parties and noted their contentions.

11) It is brought to the fore that the 1st Respondent / Bank had sanctioned the following working Capital limits in favour of the Appellant, viz.,

(a) Secure Overdraft Facility - Rs.12 Crore

(b) Bank Guarantee Limit - Rs.100 Crore

and these sanctioned limits were secured with Collateral Securities covering 19 properties worth about Rs.38 Crore and personal guarantees of Directors of the Corporate Debtor / Respondent No.3.

12) For a fuller and better appreciation of the facts of the present case the 'Debt' sanctioned by the 1st Respondent / Financial Creditor and disbursed by the 'Syndicate Bank' is given in 'tabular form', as under:-

Sl.No.	Nature of Facility	Amount Sanctioned	Amount Disbursed
01	Secure Overdraft facility (SODH) dt. 07.02.2013	Rs.12.00 Crores	Rs.12.00 Crores
02	Enhancement/Renewal of Secure Overdraft facility dt. 14.11.2014 and 06.05.2016	Rs.12.00 Crores	Rs.12.00 Crores
03	Bank Guarantee Limit Dt. 07.02.2013	Rs.110.00 Crores	Rs.110.00 Crores
04	Enhancement/Renewal of Bank Guarantee Limit dt. 14.11.2014 and 06.05.2016	Rs.110.00 Crores	Rs.110.00 Crores

13) Before the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) the Corporate Debtor / M/s. Kranthi Edifice Private Limited, Hyderabad / 3rd Respondent had taken a plea that it had not 'Defaulted' on the loan amount due to the 1st Respondent / Financial Creditor and the 'Application' filed under Section 7 of the Insolvency & Bankruptcy

Code, 2016, by the 1st Respondent / Bank / Financial Creditor before the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) is not maintainable in 'Law'. Further, there was a suppression of facts and non-disclosure of 'Default' or event of 'Default' by the Financial Creditor / Bank and, in short, the 1st Respondent / Bank had indulged malafide illegal and arbitrary action against it.

14) To be noted, that the total sum outstanding on Secure Overdraft facility as per the Statement of Account dated 30.11.2019 was Rs.74,52,87,564.93 Ps. and BG outstanding was Rs.19,16,20,100.00 as per particulars of 'Financial Debt' mentioned in Part IV of the Section 7 Application filed by the Syndicate Bank / Financial Creditor (presently Canara Bank – 1st Respondent herein).

15) The 'Adjudicating Authority' under Section 7 of the Insolvency & Bankruptcy Code, 2016 is to ascertain whether there is a 'Debt' and 'Default' committed by the 'Corporate Debtor'. Always, it is open to the 'Corporate Debtor' to point out that the 'Default' has not occurred and the 'Debt' / 'Default Claim' is not due.

16) Be that as it may, this 'Tribunal' on going through the 'Impugned Order' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in CP(IB) No.109/7/HDB/2020

dated 27.06.2022 is of the considered view that the aspect of 'Debt' and 'Default' were established.

17) When once the 'Debt' due and payable in Law and in fact is established on the part of the Financial Creditor / Bank in a given case, then the rigour of Section 7 of the Insolvency & Bankruptcy Code, 2016 comes into operative plea. More importantly, the 'Default' incurred by the Corporate Debtor / 3rd Respondent is not disputed on behalf of the 'Appellant' before this 'Appellate Tribunal. To put it precisely, the 'Corporate Debtor' had acknowledged that on 05.05.2019 a sum of Rs.63,36,61,897.26 was due and that was reflected in the 'Balance Sheet' dated 31.03.2019.

18) Suffice it for this 'Tribunal' to point out that the facts and circumstances of the Case available on record, latently, patently, unerringly indicate that the 1st Respondent / Bank had established the aspect of 'Debt' and 'Default' and the same is to be payable in 'Fact' and in 'Law' by the 3rd Respondent / Corporate Debtor.

19) Viewed in that perspective, this 'Tribunal' unhesitatingly, comes to a consequent conclusion that the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) had rightly admitted the CP(IB) No.109/7/HDB/2020 on 27.06.2022 filed by the 1st Respondent / Financial

Creditor / Bank (Syndicate Bank) and that the 'Impugned Order' is 'free from legal flaws' and consequently the instant Company Appeal (AT)(CH)(Ins) No.315/2022 fails.

In fine, the instant Company Appeal (AT)(CH)(Ins) No.315/2022 is **'dismissed',** but without Costs. The connected I.A. Nos.667/2022 (Stay Application) and IA No.668/2022 (Exemption Application) are **Closed.**

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

ghk/tm