

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS.) No. 139 of 2022

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the `Order` dated 19.04.2022 in
CP (IB) / 279 (CHE) / 2021, passed by the `Adjudicating Authority`,
(National Company Law Tribunal`, Division Bench – I, Chennai)**

In the matter of:

Mr. G. Balasubramaniam

Promoter of M/s. GBJ Hotels Pvt. Ltd.

(the Corporate Debtor)

T.S. No. 4035, Krishnasamy Nagar,

50 Feet Road, Ramanathapuram,

Coimbatore-641045, Tamilnadu

..... Appellant / Promoter
of Corporate Debtor

v.

Indian Overseas Bank,

Asset Recovery Management Branch,

Cross Cut Road, Gandhipuram,

Coimbatore - 641012

..... 1st Respondent /Financial
Creditor /Petitioner

Mr. Mahalingam Suresh Kumar,

Reg. No. IBBI / IPA-001 / IP-P00110/

2017-2018/10217,

SPP & Co. No. 27 / 9,

Nivedh Vikas, Pankaja Mill Road,

Puliyakulam,

Coimbatore-641028, Tamilnadu

..... 2nd Respondent /
Resolution Professional

Present:

For Appellant

: Dr. K.S. Ravichandran,
Practising Company Secretary

For Respondent No. 1 / : Mr. M.L. Ganesh, Advocate
IOB

For Respondent No. 2 / : Mr. A.G. Sathyanarayana, Advocate
RP

J U D G M E N T
(Virtual Mode)

Company Appeal (AT) (CH) (INS.) No. 139 of 2022:

Justice M. Venugopal, Member (Judicial):

Introduction:

The 'Appellant' / 'Promoter' of the 'Corporate Debtor' ('M/s. GBJ Hotels Pvt. Ltd. '), has preferred the instant Comp. App (AT) (CH) (INS.) No. 139 of 2022, as an 'Aggrieved Person', in respect of the 'impugned order', dated 19.04.2022 in CP (IB) / 279 (CHE) / 2021, passed by the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – I, Chennai).

2. The 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – I, Chennai), while passing the 'impugned order' dated 19.04.2022 in CP (IB) / 279 (CHE) / 2021 (Filed by the '1st Respondent / Bank / Financial Creditor / Petitioner'), under Section 7 of the I & B Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016, wherein, at Paragraphs 12 to 16, had observed the following:

12. *“Heard the submissions made by the Learned Counsel for the parties. From the averments made in the counter, it is clearly seen that the Corporate Debtor has admitted its liability based on the OTS 18.12.2021 and the same clearly proves the existence of a ‘Financial Debt’ which is due and payable to the Financial Creditor. Further, it is also seen that the ‘default’ which is arising in the present Application has happened much before the advent of COVID-19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.*

13. *Further, on the aspect of limitation, it is seen that the Corporate Debtor has committed default in repayment of the dues owing to which the Loan Account of the Corporate Debtor was declared NPA on 01/06/2019 and if the said date is taken into consideration as the date of default, then the present Application filed under Section 7 of IBC, 2016 before this Tribunal on 27/10/2021.*

14. *Thus, this Tribunal places on record the OTS dated 18.12.2021 amounting to Rs.84.81 crores and the Rejection effected by the Financial Creditor dated 18.12.2021 in which the Financial Creditor had categorically requested the Corporate Debtor to increase the OTS amount. This ex facie proves the existence of a ‘Financial debt’ and ‘default’.*

15. *Apropos, the Hon’ble Supreme Court in the case of Innoventive Industries Limited v. ICICI Bank Limited, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.*

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation*

to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within

7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

16. In view of the facts as stated supra and also in view of the ‘financial debt’ which is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.’’

and ultimately ‘admitted’, the ‘Application’, appointed the 2nd Respondent, as an ‘Interim Resolution Professional’, and declared ‘Moratorium’, etc.

Appellant’s Contentions:

3. According to the Learned Practising Company Secretary, for the Appellant, before the Covid-19 pandemic, the ‘Corporate Debtor’ / ‘M/s. GBJ Hotels Private Limited’, was suffering due to the ‘General Economic

Recession’, and the pandemic declared, by the ‘World Health Organisation’, on 11.03.2020, had almost removed two full years’, between ‘01.04.2020 to 31.03.2022’, and whenever, the ‘Hotel’, was permitted to be operated, the ‘Appellant’ as its ‘Promoter’, and its ‘Managing Director’, had maintained the ‘Property’, in serviceable condition.

4. It is represented on behalf of the Appellant, that the ‘Corporate Debtor’, was banking, solely with the ‘Financial Creditor’ only, and all the receipts (credits) and payments (debits) are routed, through the ‘Bank Account’ of the ‘Corporate Debtor’, with the ‘Sole Financial Creditor’.

5. The Learned PCS for the Appellant, points out that the ‘Date of Non Performing Asset’, mentioned in the ‘Application’, was 01.06.2019, and as per the ‘Income Recognition and Asset Classification Norms’, issued by the ‘Reserve Bank of India’, the ‘Banks’, are obliged to mark an Account as ‘Non Performing Asset’, if the ‘Borrowers’, Defaults in payment of Instalments or Interest, thereon, the ‘Default’, continues for 90 days. Therefore, it is the plea of the Appellant, that the ‘Date of Default’, cannot be ‘01.06.2019’, at all. Also that, the ‘01.06.2019’ date, cannot be the ‘Date of Default’, because in ‘Para 1 of Part IV’ of the ‘Application’, the ‘Financial Creditor / Bank’, had stated that the last

`Renewal of Term Loan of Rs.100.64 Crores', and `LG of Rs.2.77 Crores', and `Miscellaneous Cash Credit' (MCC Limit of Rs.5 Crores), were vide `Sanction Letter', dated 04.10.2017.

6. According to the Appellant, the main CP (IB) / 279 / IB / 2021, filed by the `1<sup>st</sup> Respondent / Bank', is `barred by time', because the initiation date was only 18.11.2021.

7. The Learned PCS for the Appellant, takes a plea that the `Term Loan', was mentioned in the `Application', for `Petition', as if, it is a `Credit Facility', and if it is a `Term Loan', `Repayable in Instalments', over a period of time, the sum, said to be in `Default', cannot be the whole amount. As such, the 1<sup>st</sup> Respondent / Bank / Financial Creditor, had failed to state the `Actual Sum in Default', as well as the `Actual Date of Default'.

8. The stand of the Appellant is that, the `Term Loan', is repayable over 90 monthly instalments, beginning from April 2016 and entire `Loan', will get `Repaid', only in October 2023. Hence, on 01.06.2019, the Sum in `Default', cannot not be Rs.107.48 Crores, at all. Even, as per the averment of the 1st Respondent / Bank / Financial Creditor's averment, the `Loan Account', was running `irregular', on 01.03.2019, and before that, there was `No Default'.

9. The Learned PCS for the Appellant, brings it to the `notice` of this Tribunal, that the `Adjudicating Authority` / `Tribunal`, was guided probably by the `OTS Proposal`, dated 18.12.2021, which was `rejected`. Besides this, the `Adjudicating Authority`, had not adverted to the contentions projected in the `Counter of the Corporate Debtor`, and had misconceived the ratio of the Hon'ble Supreme Court's decision in Innoventive's case.

10. The other submissions of the Learned PCS for the Appellant, is that, the `1<sup>st</sup> Respondent / Bank`, had reversed the `interest charged`, and had communicated an `Outstanding of Rs.77.10 Crores only, as of the `Non Performing Asset`, Viz. 01.06.2019. In the Application, the 1<sup>st</sup> Respondent / Bank / Financial Creditor, claims Rs.107.48 Crores, charging illegally huge interest, which even `Local Money Lenders`, would not charge.

11. The Learned PCS for the Appellant points out that the `Adjudicating Authority`, had failed to distinguish between the aspect of accepting to pay, under `One Time Settlement`, as specified in the `Offer`, and the actual `Default`, in `Repayment`.

12. The Learned PCS for the Appellant, submits that a stand the `Adjudicating Authority` / `Tribunal`, had failed to decide whether the

Retention of Funds compulsorily and releasing a portion only, to the Corporate Debtor to manage its operations prove the fact that the 'Corporate Debtor', had not committed any default.

13. The Learned PCS for the Appellant points out that the 'impugned order', passed by the 'Adjudicating Authority', is stricken with an 'arbitrariness', 'want of reasoning', and 'non-application of mind'.

14. The Learned PCS for the Appellant brings it to the 'notice' of this 'Tribunal', that at 'no point of time', after the alleged 'Non Performing Asset', the Loan was recalled by the 'Bank', and in fact, the recoveries by cut back against every credit to the Account was made in the Ordinary Course (even after the Classification of Accounts as 'NPA').

15. The Learned PCS for the Appellant, raises an argument that can a Public Sector Bank, Claim almost Rs.30 Crores for only these two years, which is nothing but, an act of 'usurious in nature', considering the fact, if the 'Sum', in default, was to be only Rs.77.10 Crores, which was the Sum, remaining outstanding, on the 'Date of NPA', and it was 'Atrocious', to Claim Rs.107.48 Crores in 2021.

16. The Learned PCS for the Appellant points out that for every Credit, falling into the 'Account', in respect of the period from 01.01.2019 to

06.10.2021, 20% was cut back and retained by the 'Sole Financial Creditor', and the entire control over the Finances, was with the 'Sole Financial Creditor', and no cheque will pass, unless it was approved and unless there is a cutback, retained by the 'Sole Financial Creditor'.

17. According to the Appellant that the 1st Respondent / Bank, is fully secured by the 'Valuable Properties of the Company', as well as highly 'Valuable Personal Collateral Securities'. Furthermore, the 'Corporate Debtor', is operating with the 'Bank', one and only 'Bank Account', without any 'Diversion of Funds'.

18. On behalf of the Appellant, it is pointed out that when the 1st Respondent / Bank even now, had granted 'One Time Settlement', the only meaning is that, it does not deserve putting the Corporate Debtor into the gallows of the 'CIRP', because of the fact that the grant of 'OTS', and pursuing a 'Settlement', is completely antithetical, to 'Corporate Insolvency Resolution Process'.

19. The Learned PCS for the Appellant submits that the Corporate Debtor is a 'Going Concern', and in terms of the 'Financials and Valuations', it is commercially 'Solvent', and added further, on the 'Date of Non Performing Asset', there was 'no past due', and hardly one

instalment was payable, as 'admitted', by the 'Bank', in its 'NESL Reporting', in May 2019.

20. The Learned PCS for the Appellant contends that the Corporate Debtor is doing well and the interest of the 1st Respondent / Bank, were fully secured and the 'Adjudicating Authority' / 'Tribunal', should have considered the other options, as was held by the 'Hon'ble Supreme Court in Vidarbha Industries' case.

21. It is represented on behalf of the Appellant that the 1st Respondent / Bank / Financial Creditor's application, before the 'Adjudicating Authority', was a malicious one, besides, the same being an 'Abuse of Process of Law', and therefore, prays for 'allowing' of the instant 'Appeal', by this 'Tribunal', in the interest of justice.

Appellant's Citations:

22. The Learned PCS for the Appellant, refers to the decision of the Hon'ble Supreme Court in Vidarbha Industries Power Limited case, reported in 2022 8 SCC 352 at spl page 375, wherein, at Paragraph 77, it is observed as under:

77. ``On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the

Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.’’

23. The Learned PCS for the Appellant, adverts to the Judgment of this ‘Tribunal’ (Three Member Bench) dated 11.10.2022, in Comp App (AT) INS No. 1085 of 2019, between Deepak Vegpro Pvt. Ltd. v. Shree Hari Agro Industries Ltd., 2022 SCC OnLine NCLAT 401, wherein, at Paragraph 39, it is observed as under:

39. ‘‘Thus the Hon’ble Supreme Court rejected the view of NCLT and NCLAT that once it is found that a debt existed, and a corporate debtor is in default in payment of the debt there would be no option to the Adjudicating Authority (NCLT) but to admit the petition under Section 7 of the IBC. Going by the scheme of IBC and the legislative intent, the Hon’ble Supreme Court has observed that the Adjudicating Authority would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP, unless there are good reasons not to admit the petition. The Hon’ble Apex Court has observed that if the facts and circumstances warrant exercise of discretion in a particular manner, such discretion would have to be exercised with the condition that such discretionary power cannot be exercised arbitrarily or without any proper reason.’’

24. The Learned PCS for the Appellant, cites the Judgment of this ‘Tribunal’ dated 09.09.2022 in Comp. App (AT) (INS.) 993 of 2020 in

Air Travel Enterprises India Limited, Kerala v. Union Bank of India, Kerala and three Ors., wherein, at Paragraph 20, it is observed as under:

20. ``Be that as it may, for all the aforementioned reasons and having regard to the Written Submissions that efforts would be made to settle the matter, in the interest of justice and taking into consideration the fact that in this pandemic, the travel dependent sector, which is the core business of the 'Corporate Debtor', has more than suffered the negative impact of the crisis, this opportunity is being given to settle which could help mitigate the blow. We are also conscious of the fact that the 'Corporate Debtor' has settled the matter with Dhanlaxmi Bank, the Applicant of Section 7 Application in IA/06/KOB/2020 & IBA/41/KOB/2019 which was disposed of as withdrawn based on the settlement terms on 06.01.2020, during which period of pendency, this Section 7 Application was filed on 27.12.2019 against the same 'Corporate Debtor'. We reiterate, that the scope and objective of the Code is Insolvency & not recovery. The Admission of Section 7 Application is set aside. Keeping in view the peculiar facts of the attendant case, we dispose of this Appeal with a direction that if the 'Corporate Debtor' fails to settle in 6 months time from the date of this Order, the Respondent Bank is at liberty to take appropriate steps. Any observations made in this Appeal shall not stand in the way of any further proceedings, if initiated. Needless to add, the period spent in pursuing this Appeal shall be excluded for the purpose of limitation.'`

25. The Learned PCS for the Appellant, seeks in aid of the Judgment of this `Tribunal', dated 24.08.2020, in Comp. App (AT) (INS.) No. 270 of 2020, between Park Energy Pvt. Ltd., through its Authorised Representative, Hari Chaudhary v. Syndicate Bank and Anr., reported in

2020 SCC OnLine NCLAT 637, wherein, at Paragraph 29, it is observed as under:

29. ``In the face of ample and weighty evidence on record, it cannot be said that the Corporate Debtor is under no obligation to discharge its liability in respect of the 'Financial Debt' payable to the 'Financial Creditor' but the mere fact of debt being due and payable in law is not enough to justify initiation of Corporate Insolvency Resolution Process at the instance of Financial Creditor unless it establishes default on the part of the Corporate Debtor in regard to the debt. The onus of proof of default on the part of Corporate Debtor lies on the Financial Creditor and it has to demonstrate that default has occurred on account of failure on the part of Corporate Debtor to discharge its liability.'`

1st Respondent / Bank's Submissions:

26. The Learned Counsel for the 1st Respondent / Bank / Financial Creditor contends that the `Appellant', has admitted that the `Corporate Debtor', could not make the payment during the period of April 2020 to March 2022, due to the pandemic situation, and further the Appellant in an unequivocal term had admitted in Paragraph No. (r) (vide Vol. I - Page 11 of the instant `Appeal Paper Book – Diary No. 337 dated 26.04.2022), that on the `Date of Non performing asset', the amount in `Default', was shown as Rs.77.10 Crores.

27. The stand of the 1st Respondent / Bank / Financial Creditor is that, the 'Appellant', in his Affidavit at Page 369 of Vol. II of the instant Appeal Paper Book (vide Diary No. 337 dated 26.04.2022), at Paragraphs 4 to 6, had averred that the funds were organised through Foreign Institutional Lender and 10% Conditional Amount was remitted by them, to the Account of the Respondent with the Applicant Bank on 16.02.2022 and that the Copy of the Remittance Certificate was enclosed, and further, the Copy of the email sent by the Investor SP Asset Management BV dated 21.02.2022, confirming the remittance and their readiness to pay the full and final settlement amount, once the 'One Time Settlement', was approved by the 'Petitioner / Bank'.

28. In addition to the above, in the Affidavit, of the Promoter of the Corporate Debtor / Appellant Mr. G. Balasubramaniam, at Paragraph 2 (vide Page 369 of the Vol. II of the Appeal Paper Book – Diary No. 337 dated 26.04.2022), had stated that the 'Final OTS Letter', was submitted by the Respondent, to the Applicant Bank, on 03.02.2022 and the Applicant / Bank, had replied to the said Letter on 09.02.2022, stating that the 'OTS Letter' of the Respondent, will be considered once the Petitioner deposits 10% of the Due Amount in the 'No-lien Account'.

29. On behalf of the 1st Respondent / Bank, it is projected that when there is a clear 'Admission of Liability', and there was an undertaking, to discharge, the 'Loan Liability', under 'One Time Settlement', the 'Appellant', is not justified, in coming out with vexatious and frivolous issues.

30. The Learned Counsel for the 1st Respondent / Bank, points out that to secure the 'Repayment of Loan Amount', the 'Guarantors' / 'Directors', and the 'Corporate Guarantors', 'M/s. Shree Murugan Flour Mills (P) Ltd.', and 'M/s. Rajaram Flour Mills (P) Ltd.', had offered 'Guarantee', in favour of the 'Financial Creditor', and had executed the 'Loan Security Documents', on 19.05.2012, 04.10.2017, respectively.

31. On behalf of the 1st Respondent / Bank, the Learned Counsel points out, that the 'Corporate Debtor', 'Guarantors', 'Mr. G. Balasubramaniam', 'Mrs. B. Jeevarathinam', and 'Corporate Guarantors', 'M/s. Shree Murugan Flour Mills (P) Ltd.', and 'M/s. Rajaram Flour Mill (P) Ltd.', had offered 'Collateral Security' of the 'Immovable Property', to secure the 'Loan Sum', by executing a 'Memorandum', pertaining to the 'Deposit of Title Deeds', as per 'Section 58 (f) of the Transfer of Property Act, 1882'.

32. It is the version of the 1st Respondent / Bank, the 'Corporate Debtor', 'Guarantors' and 'Corporate Guarantors', had executed the 'Revival Letters', on 15.04.2015, 09.04.2018, for the purpose of 'Section 18 of the Limitation Act, 1963'.

33. The Learned Counsel for the 1st Respondent / Bank / Financial Creditor, brings it to the 'notice' of this 'Tribunal' that the 'Corporate Debtor's Loan Accounts', for not paying the 'Principal' and the 'Interest', regularly, as per the 'Loan Security Documents', got slipped into the 'NPA Category', on 01.06.2019, in terms of the 'Reserve Bank of India's Guidelines'. Moreover, the 'Account' of the 'Corporate Debtor', went into 'Non Performing Asset', before the 'Pandemic', and therefore, the contra plea, taken on behalf of the Appellant, is unworthy of acceptance, by this 'Tribunal'.

34. The Learned Counsel for the 1st Respondent / Bank / Financial Creditor, proceeds to point out that on 19.06.2020, the Financial Creditor / Bank, had issued a 'Demand Notice', to the 'Corporate Debtor', for its failure to regularise the 'Loan Account' (as per 'Section 13 (2) of the SARFAESI Act, 2002') and 'Possession Notice', was also issued on 07.01.2021, but it proved futile.

35. On behalf of the 1st Respondent / Bank / Financial Creditor, it is brought to the fore, before this 'Tribunal', that the 'Corporate Guarantor' M/s. Shree Murugan Flour Mills (P) Ltd., had also individually, availed the 'Credit Facilities', from the 'Financial Creditor', and defaulted to repay the same and that the said 'Company', is also under the 'Corporate Insolvency and Resolution Process'.

Status Report of the 2nd Respondent / RP :

36. The Learned Counsel for the 2nd Respondent / Resolution Professional of the 'Corporate Debtor', in his email dated 04.06.2022, addressed to the 'Corporate Debtor' / 'GBJ Hotels Pvt. Ltd.', had stated that 'no effective support is being received, from the Corporate Debtor's side', and further that, the updated books of accounts, were not received and inspite of repeated reminders, no attempts were made to furnish the same by the 'Corporate Debtor', and also that, an 'Application' (under Section 19 (2) of the I & B Code, 2016), was filed by the 'Resolution Professional'.

37. Furthermore, the 2nd Respondent / Resolution Professional, addressed to the 'Corporate Debtor' / 'GBJ Hotels Pvt. Ltd.', had mentioned in the aforesaid email dated 04.06.2022 that 'many of the

Licenses are not renewed', and the Hotel was operated without appropriate renewals, during the past periods and that the lack of Key Department Heads in the Organisation, is one of the 'key reason' for such non-compliances. We are now taking steps to renew all such 'Licenses and Registrations', and assured that care of the Company as a 'Going Concern', will be taken care, in the best possible way, during this 'Corporate Insolvency Resolution Process' period.

I & B Code, 2016:

38. A 'Financial Creditor', under the 'Code', is an 'individual', who has a right to 'Financial Debt'.

39. Unlike, the Companies Act, which provides 'inability to pay Debt', as a ground for 'Winding up of a Company', the I & B Code, 2016, provides that an action for an 'Insolvency', may be initiated, if 'Default', is really / actually committed by a 'Person' or the 'Corporate Debtor'.

40. No wonder, an 'Application', is not to be turned down, on the basis that, the 'Account' of the 'Corporate Debtor', is eligible for 'Restructuring', in the teeth of 'Master Circular', of the 'Reserve Bank of India'.

41. In reality, it is not the property, which is at the root of the 'I & B Code, 2016'. Further, a just 'Dispute', about the quantum of payment, does not affect the 'Right of a Financial Creditor'.

42. It is to be remembered that the 'Cash Liquidity', is only the basis for triggering a 'Corporate Insolvency Resolution Process', in the considered opinion of this 'Tribunal'.

43. It cannot be gainsaid that, any 'Debt', which is payable upon a 'contingency', is not a 'Debt', until the said 'contingency', had taken place, as per decision 'People v. Arguello' (1869) 37 Calif 521.

44. A Section 7 Petition, under the I & B Code, 2016, is to be considered on its own merits, going by the available materials on 'Record'. Even though, the 'Debt', is controverted, if the 'Sum', is more than Rs.1 Lakh (before the Amendment), and after the Amendment (Rs. 1 Crore and above), to the I & B Code, 2016, then, the 'Application', is 'maintainable in Law'.

45. A 'Sum of Money', which is certainly and in all events, payable is a 'Debt', without regard to the fact, whether, it is payable immediately or at a 'future date'. The term 'Receivable', means 'any Sum', which a 'Person', is entitled to receive or received from 'another Person'.

Discussions:

46. In the instant case on hand, it transpires, that the `Corporate Debtor' / `Company', had approached the `1<sup>st</sup> Respondent / Bank' (`Financial Creditor'), for its business operations and that the `Bank', had extended the following `Credit Facilities', which are depicted, are as follows:

Date	Nature of Facility	Limit
30/12/2011	Term Loan with sublimit of LC	Rs.108 Crores
04/10/2017	Renewal of Term Loan	Rs.100.64 Crores
04/10/2017	LG	Rs.2.77 Crore
04/10/2017	Miscellaneous Cash Credit	Rs.5 Crore

47. On behalf of the 1st Respondent / Bank, a reference is made to the Letter dated 12.08.2022 of Pressana Flour Mills (P) Ltd., addressed to the CEO and CMD of the Indian Overseas Bank, Chennai - 2, wherein, it is averred by the Managing Director of the Flour Mills that, `we commit ourselves to settle OTS Compromise Amount due by GBJ Hotels Pvt. Ltd., within the time permitted by your goodselves', etc.

48. The Learned Counsel for the 1st Respondent / Bank / Financial Creditor, adverts to the Letter dated 09.09.2022 of `Pressana Flour Mills Private Limited', addressed to the `CEO and CMD of the Indian Overseas Bank', Chennai – 2, wherein, it is mentioned by the Director that `.... We

can offer an amount of Rs.102.50 Crores (Rupees One Hundred and Two Crores and Fifty Lakhs only) as settlement amount, inclusive of all dues of GBJ Hotels Pvt. Ltd'. Also, a favourable letter was requested by the Director of the Pressana Flour Mills Pvt. Ltd., in the Letter dated 09.09.2022, addressed to the `CEO and CMD of the Indian Overseas Bank, Chennai – 2, to settle the amount, within a period of 45 days from the date of Bank's Approval Letter'.

49. On behalf of the 1st Respondent / Bank / Financial Creditor, the Letter dated 12.09.2022 of the `Corporate Debtor / GBJ Hotels Pvt. Ltd.', duly signed by its Managing Director, addressed to the CEO and CMD of Indian Overseas Bank, Chennai – 2, on the subject of `Settlement of our Dues', to your `Bank', is referred to, wherein, it was among other things, averred that `they had made all arrangements to execute the `Terms', swiftly.

50. The Learned Counsel for the 1st Respondent / Bank / Financial Creditor, refers to the Sanction of `OTS' / `OCS' Proposal dated 11.10.2022, issued by the `Indian Overseas Bank, Specialised Asset Recovery Management Branch', Coimbatore, addressed to the GBJ Hotels Private Limited, Managing Director Mr. G. Balasubramaniam, Coimbatore (Appellant in Appeal), wherein, it was mentioned that the

`Competent Authority' of the Bank, had accorded Sanction for accepting the `Compromise Settlement Offer of Rs.105.00 Crores', in Full and Final Settlement of the Account, under Section 12A of the IBC Process, as per terms and conditions, mentioned therein. Also, in the said `Letter of the Bank dated 11.10.2022', it was indicated categorically, that `Automatic Cancellation of Compromise Settlement', sanctioned in the event of non fulfilment of stipulated terms and conditions, and further, it was mentioned that the entire amount, as per `Procedure for Compromise Settlement', under Section 12A of IBC, should be deposited in `No Lien Account', before filing `Withdrawal Application', under Section 12A with the `NCLT'. It was also made crystalline clear that the `Sanction of Compromise Settlement', is subject to the `Approval of National Company Law Tribunal'.

51. As far as the present case, is concerned, the very fact that the `Corporate Debtor', had admitted its `Liability', cementing on the `One Time Settlement' dated 18.12.2021, the same unequivocally, points out the `factum', of `Financial Debt', (as per ingredients of `Section 5 (8) of the I & B Code, 2016'), which is due and liable to be paid by it, to the `1<sup>st</sup> Respondent / Bank / Financial Creditor', (as per `Section 5 (7) of the Code').

52. The very fact that the Loan Account of the Corporate Debtor / Company, slipped into the category of 'Non Performing Asset', on 01.06.2019, in accordance with the guidelines of the Reserve Bank of India, the contra plea taken on behalf of the Appellant that the 'Default', took place before the Covid-19 Pandemic, is turned down, by this 'Tribunal'.

53. Admittedly, the main CP (IB) / 279 (CHE) / 2021, preferred by the '1st Respondent / Bank / Financial Creditor', under Section 7 of the Code on 27.10.2021, before the 'Adjudicating Authority' / 'Tribunal'. The 'Corporate Debtor's Loan Account', was declared as 'NPA', on 01.06.2019'. As such, the main CP (IB) / 279 (CHE) / 2021, was filed well within the 'Limitation Period', by the 1st Respondent / Bank / Financial Creditor / Petitioner, and the point, is so answered.

54. In the present case, it cannot be lost sight of that the 'One Time Settlement', dated 18.12.2021, amounting to Rs.84.81 Crores was rejected, by the 1st Respondent / Bank on 18.12.2021 itself, whereby and whereunder the 'Corporate Debtor / Company', was requested to raise the 'OTS Sum', which is a clear cut pointer, about the 'Existence of Financial Debt and Default'.

55. Be that as it may, in the instant case, the `Corporate Debtor's Financial Debt`, with the `1<sup>st</sup> Respondent / Bank / Financial Creditor`, is established by means of a `Default`, committed by the `Corporate Debtor`. The available material records projected on the side of the 1st Respondent / Bank, supports the case of the Bank that the Corporate Debtor, had committed `Default`, in respect of the `Debt`, due and payable.

56. Suffice it, for this `Tribunal`, to pertinently make a mention that as the `Debt`, due and payable by the `Corporate Debtor`, is not interdicted by any `Law`, and this `Tribunal`, on being subjectively satisfied as to the `Default`, committed by the `Corporate Debtor`, in respect of the `Financial Debt`, due and payable, then, the view arrived at, by the `Adjudicating Authority` / `Tribunal`, in holding that the `Financial Debt` of the `Corporate Debtor`, was proved by the `1<sup>st</sup> Respondent / Bank / Financial Creditor`, is free from any `Legal Flaws`. Looking at from that angle, the `admission` of the main CP (IB) / 279 (CHE) / 2021, passed by the `Adjudicating Authority`, `National Company Law Tribunal`, Division Bench – I, Chennai, is in `Order`. Viewed in that perspective, the instant `Appeal` fails.

Conclusion :

In fine, for the foregoing qualitative and quantitative discussions and reasons, the instant Comp. App (AT) (CH) (INS.) No. 139 of 2022, is `dismissed`, by this `Tribunal`. No costs. The connected `IA Nos. 324 and 325 of 2022`, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

25/04/2023

SR / TM