NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Ins) No. 553 of 2023

IN THE MATTER OF:

Heena Nandlal Thakkar ...**Appellant**
Versus

Karnataka Bank Ltd. & Anr. ...**Respondents**

Present:

For Appellant : Mr. Kunal Godhwani, Ms. Dipika Panchmatia, Advocates

For Respondents : Ms. Meghna Rao, Mr. Yahya Batatawala, Advocates

O R D E R

02.05.2023: Heard Mr. Kunal Godhwani, Ld. Counsel for the Appellant.

2. The present appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'Code') against an order dated 24.03.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-II (herein after referred to as 'NCLT') in CP No. (IB) 619/MB/2022. By the said order Ld. NCLT has admitted the application filed under Section 7 of the Code which was filed by the 'Financial Creditor' namely Karnataka Bank Ltd. The Financial Creditor in view of the default in payment of financial debt to the tune of Rs. 15,81,63,867/- (Rupees Fifteen Crore Eighty one lakhs sixty three thousand eight hundred and sixty seven only) had filed application for initiation of Corporate Insolvency Resolution Process (herein after referred to as 'CIRP').

3. As evident from the record, it appears that total sum of amount of Rs. 17,45,00,000/- (Rupees Seventeen Crores forty five lakhs only) was disbursed to the corporate debtor. The appellant is the Suspended Director of the corporate debtor. Since the account remained irregular, on 01.05.2019 the said account was declared as Non-Performing Asset (NPA). Since debt was not cleared the

financial creditor filed an application under Section 7 of the Code before the NCLT. From the order impugned, it is evident that despite valid service of notice on corporate debtor, the corporate debtor preferred not to appear before the NCLT. This fact has also not been disputed by the Ld. Counsel for the Appellant during hearing of the appeal before this Appellate Tribunal. Since, despite valid service of notice the corporate debtor didn't appear and considering the fact that the application was filed within the period of limitation and there was outstanding financial debt of Rs. 15,81,63,867/- by the impugned order Ld. NCLT admitted the application and CIRP has been initiated. Against the said impugned order the present appeal has been preferred.

4. Ld. Counsel for the Appellant though has not disputed the fact that despite valid service of notice the corporate debtor didn't participate in the proceeding before the NCLT, a plea was taken that in a proceeding before the DRT (Debt Recovery Tribunal) the corporate debtor was persuading the matter and thereafter to the extent of about Rs. 4,42,00,000/- (Rupees Four Crores Forty two lakhs only) amount was already paid. However, those facts were not reflected in the impugned order nor financial creditor bothered to inform the NCLT.

5. Ld. Counsel for the Appellant has also drawn our attention to page 361 of the Memo of Appeal, Vol-II to persuade the court that the appellant/corporate debtor in respect of loan/liability of other financial creditor had taken steps and thereafter no due certificates were issued.

6. Ld. Counsel for the Appellant has drawn our attention to page 358 and 359 of Vol-II, of the Memo of Appeal to persuade the court that the appellant had

made communication to the Karnataka Bank/financial creditor with a prayer to allow him to regularize the loan account. According to the Ld. Counsel for the Appellant, out of the total financial debt about 28% amount was paid and as such it was submitted that notice may be issued to the Respondent so that steps may be taken for settling the dispute.

7. Ms. Meghna Rao, Ld. Counsel on instruction of the bank has appeared, however till date no vakalatnama has been filed.

8. Be that as it may, fact remains that the appellant despite service of notice preferred not to participate before the NCLT and as such the order impugned was passed ex-parte. It is also reflected from the material on record that on the date of filing of the application under Section 7 there was total debt of an aggregate amount of Rs. 15,81,63,867/-. It is clear from the chart below:

Details	**Amounts**
Term Loan-I Loan Account No. 5187001600027001 Dated 19th August 2015	Rs. 9,00,00,000/- (Rupees Nine Crore Only)
Term Loan-II Loan Account No. 5187001600028101 Dated 29th February 2016	Rs. 2,00,00,000/- (Rupees Two Crore Only)
Term Loan-III Loan Account No. 5187001600028701 Dated 2nd August 2016	Rs. 3,75,00,000/- (Rupees Three Crore Seventy five Lakhs Only)
Term Loan-IV Loan Account No. 5187001600028801 Dated 4th August 2016	Rs. 2,20,00,000/- (Rupees Two Crore Twenty Lakhs Only)
Overdraft Facility Facility Account No. 5187000600013701 Dated 31st March 2018	Rs. 50,00,000/- (Rupees Fifty Lakhs Only)

It is evident from the aforesaid chart which has been extracted from the impugned order that the loan was sanctioned to the appellant since the month of August, 2015 and said facility continued up to 31.03.2018. However, since the account of the appellant was irregular in the month of May 2019, the account was declared NPA and within the prescribed period of limitation the application under Section 7 of the Code was filed.

9. The financial creditor in view of none clearance of the debt amount was constrained to file application under Section 7 of the Code in which notice was issued to the Corporate Debtor. However, despite valid service of notice, the appellant preferred not to participate in the proceeding before the NCLT. In such view of the matter the NCLT was left with no option but to pass order on the basis of materials available on record.

10. Before the NCLT, the debt was not disputed and the application was filed within the period of limitation and as such the Ld. NCLT has rightly passed the order for initiation of the CIRP.

11. We don't find any apparent error in the impugned order warranting interference, however since the appellant is making submission that they are still ready to settle the dispute, liberty can be granted to the appellant to approach the financial creditor for settling the dispute. We hope that if the appellant approaches the financial creditor i.e. Karnataka Bank with reasonable proposal, the financial creditor may take appropriate decision in accordance with law so that the dispute may come to its logical end.

12. With above observation, the appeal stands disposed of.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivasatava]
Member (Technical)

sr/rr