

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**IA(I.B.C)/1427(KB)2022
in
C.P. (IB)/165(KB)2022**

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11, 42 and 55 of the National Company Law Tribunal Rules, 2016*

In the matter of:

State Bank of India

.....Financial Creditor

-Versus-

In the matter of:

Shree Padmawati Metaliks Pvt Ltd.

.....Corporate Debtor

And

In the matter of:

State Bank of India

.....Applicant

-Versus-

In the matter of:

Shree Padmawati Metaliks Pvt Ltd.

.....Respondents

Date of Hearing: 10/11/2023

Date of Pronouncement: 18/01/2024

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)

State Bank of India v. Shree Padmawati Metaliks Pvt. Ltd.
IA(I.B.C)/1427(KB)2022 in C.P. (IB)/165(KB)2022

Appearances (via video conferencing/physically)

Mr. Mainak Bose, Adv. : For Financial Creditor
Mr. Santosh Kumar Roy, Adv.
Ms. Rituparna Sanyal, Adv.
Ms. Swastika Sengupta, Adv.

Mr. Joy Saha, Sr. Adv. : For Corporate Debtor
Ms. Urmila Chakraborty, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through hybrid mode.
2. This IA has been filed by the State Bank of India for filing its rejoinder affidavit. The rejoinder affidavit has been placed at page 19 of this IA. In para 3 of this IA, it is being contended on behalf of the applicant bank, the counsel who was appearing earlier did not seek time to file rejoinder and the bank was compelled to engage a new counsel and this IA has been filed for filing the rejoinder.
3. In reply affidavit by the Corporate Debtor, it is alleged that the debt claimed by Financial Creditor is barred by limitation. Keeping in view the plea raised by Corporate Debtor, it was necessary to file rejoinder by the Financial Creditor.
4. The applicant contends that the petition under Section 7 of IBC is not barred by limitation and through this rejoinder, he wishes to place on record the details regarding date of default, date of NPA, OTS proposals, date of Civil Suit and Writ Petition being W.P 7104 (W) filed before Hon'ble High Court at Calcutta by the Corporate Debtor, it is contended in this IA that the Corporate Debtor acknowledged the outstanding dues of the company are above 68 Crores. All that is sought to be brought on record through rejoinder is to rebut the plea of limitation and to show that the petition filed by the bank is within limitation. It need to be noticed here that there is a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

**State Bank of India v. Shree Padmawati Metaliks Pvt. Ltd.
IA(I.B.C)/1427(KB)2022 in C.P. (IB)/165(KB)2022**

reference of civil suit filed by Corporate Debtor before Hon'ble High Court at Calcutta in main CP, copy of which is sought to be placed on record.

5. This IA is supported by an affidavit of Chief Manager of applicant Bank.
6. Reply affidavit has been filed by the Corporate Debtor to that IA wherein it is stated that the petition is barred by limitation and reply affidavit was filed in October, 2022 and after that the matter has been posted for arguments. There were adjournment sought by bank on various dates and petitioner has made its submissions and the matter was kept for arguments of the Corporate Debtor.
7. At this stage, keeping in view the position noted above, applicant cannot be permitted to file its rejoinder affidavit, particularly through the medium of this rejoinder, the bank intends to place on record certain new facts through this rejoinder sought to be taken on record. There is no new fact pleaded in the reply affidavit by Corporate Debtor where there is a need for filing any rejoinder affidavit. The purported pleadings cannot be used as an admission in the present proceedings. This petition filed by applicant bank is time barred.
8. We have heard the Ld. Counsel for the parties and perused the record.
9. Rule 42 of NCLT Rules, 2016 empowers this Tribunal to allow filing of rejoinder for just decision of the case. It is true, if there was a need for filing rejoinder affidavit, permission should have been sought immediately when the reply affidavit was filed. However, without filing rejoinder, the matter proceeded for arguments.
10. As noted above, it is contended in this application that Ld. Counsel appearing for bank did not seek an opportunity to file rejoinder though it was necessary and, therefore, he was replaced by another counsel. Through the medium of this rejoinder, some documents i.e. copy of the civil suit, copy of writ petition, copy of one order by Hon'ble Supreme Court of India

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)**

**State Bank of India v. Shree Padmawati Metaliks Pvt. Ltd.
IA(I.B.C)/1427(KB)2022 in C.P. (IB)/165(KB)2022**

and some official communications are sought to be placed on record. The existence of the communications sought to be placed on record is not disputed by non-applicant. These documents whether advance the case of applicant or not, remains a matter of adjudication after hearing both the sides. Since the matter is at the stage, the Corporate Debtor will have all the opportunity to respond to these documents sought to be placed on record.

11. No doubt, the rejoinder, if any, normally was required to be filed before the commencement of arguments, however, keeping in view the facts and circumstances as explained in para 3 of this IA that the rejoinder could not have filed because of the lapse on the part of earlier lawyer and the Financial Creditor, therefore, changed its lawyer for further contesting this case. We are also of the view that the Financial Creditor cannot be made to suffer for the lapse of his counsel, therefore, ends of justice would require this rejoinder to be taken on record. We are of the considered opinion, no prejudice is going to be caused to the Corporate Debtor while arguing its plea of bar of limitation of this petition.
12. Keeping in view the totality of circumstances, we allow the rejoinder to be taken on record subject to payment of Rs. 10,000/- as the cost to be paid by the applicant to the non-applicant.
13. Post this matter on **12.2.2024**.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on 18th of January, 2024.

zia