(2020) 12 NCLT CK 0047

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : (IB) 792 (ND) Of 2020

Canara Bank And Anr. APPELLANT

Vs

M/S Valley Iron & Steel Co. Ltd. And Ors. RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7
Limitation Act, 1963 — Section 18

Citation : (2020) 12 NCLT CK 0047

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Santosh Kumar Rout, Jitendra Mohapatra, Amrit Pradhan

Final Decision : Dismissed

Judgement

1. The present petition is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the ""Code""), praying for

initiation of Corporate Insolvency Resolution Process of the Respondent/ Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. The facts mentioned in the application in brief are as follows:

i. That the Corporate Debtor, a company incorporated under Companies Act, 1956 approached the Financial Creditor, a member of the consortium of

banks led by Allahabad Bank, to sanction working capital of Rs. 30 Crore.

ii. The Financial Creditor as a member of the consortium of banks sanctioned the credit facility to the Corporate Debtor on 03.08.2007. The credit

facility was renewed on 18.04.2009, 16.01.2010, 30.03.2011 and 16.04.2011.

iii. The Corporate Debtor signed and executed all necessary documents on every occasion pursuant to the credit facility and bound by the terms and conditions of the loaning and security documents in favour of the consortium of banks and also bound by the schedule of payment of the credit facility

availed by it.

iv. To avail the credit facility, the Corporate Debtor has secured the credit facility by producing following securities before the consortium of banks:

PRINCIPAL SECURITY:

(a) First pan i passu charge on Stocks, Book Debts and other Current Assets of the Company along with the consortium member Banks. No drawings

shall be permitted against Book Debts of more than 90 days.

(b) First charge on the existing and proposed Fixed Assets on pan i passu basis along with other term lenders.

(c) For purchase of raw materials - First pan i passu charge on the stock procured under LC Tenor of bills drawn under LC shall not be more than 90

days.

COLLATERAL SECURITY:

For working Capital:

2nd Charge on the fixed assets (Factory, Land and Building, Plant & Machinery and other fixed assets) on pari passu basis along with

other member banks of the consortium.

For Term Loan:

Pari passu 2nd charge on the current assets of the company alongwith other members of the consortium.

For Working Capital Facilities:

2nd Charge on the fixed assets (Factory Land and Building, Plant and Machinery and other fixed assets) on pan i passu basis with other

member banks of the consortium having market value of Rs. 2.54 Crores as per valuation report by Chaney & Associates dated 15.

12.2006.

Common Collateral Security for both TL and Working Capital facilities:

a) Equitable mortgage (pan i passu charge among the member banks) of residential property of Sri Hari Ram Bindal bearing No. K-1/32,

Model Town-11 Delhi.

b) Pledge of total 39,48,068 shares held by the promoters on pan i passu basis among the consortium member banks.

c) Pledge of 50% of shares out of fresh capital of Rs. 24 crores to be raised by the promoters on pan i passu basis among the consortium

member banks.

v. That further at the request of Corporate Debtor Company, the Financial Creditor vide Sanction Letter dated 27.02.2012 renewed the following

Credit Facilities to the tune of Rs. 37.00 Crore on the terms and conditions mentioned therein the said sanction letter.

vi. The Corporate Debtor availed the credit facility from the Financial Creditor but did not stick to the conditions of payment as a result the account

became irregular. The Financial Creditor requested the Corporate Debtor to regularize the account but every attempt ended in futile and the account

became NPA on 06.08.2012.

vii. Further, Agreement for Restructuring of Credit Facilities dated 29.04.2014 was executed between Corporate Debtor and the Financial Creditor.

viii. Independent Auditor' s Report dated 30.08.2018 was duly signed, accepted and submitted by the Corporate Debtor to the Financial Creditor,

wherein the Corporate Debtor admitted and confirmed the debts and liabilities towards the Financial Creditor and other consortium member banks.

ix. Legal notice dated 18.10.2018 was sent to the Corporate Debtor calling upon them to pay the outstanding due amount of Rs. 103,56,06,420.46

including Principal, Interest and other charges up to 30.09.2018 along with interest from 01.10.2018 and costs etc.

x. Despite the above, the Corporate Debtor has failed to discharge its liabilities and therefore, have defaulted in repayment of the dues of the Financial

Creditor.

xi. The Corporate Debtor is not able to pay the outstanding amount of the Applicant Bank/Financial Creditor as experienced by the bank several times

by requesting and sending notices.

3. We have heard the Ld. Counsel for the petitioner and perused the averments made in the application.

4. After the hearing of the main application, some additional documents alongwith the written submissions have been filed on behalf of the applicant,

therefore, we would like to consider those documents and the written submissions.

5. Ld. Counsel for the petitioner submitted that although the NPA was declared on 06.08.2012 but again loan was sanctioned on 12.01.2013, which

was subsequently modified on 12.01.2015. He further submitted that on 29.04.2014, there was restructuring of the credit facility and again on

24.03.2017, the Corporate Debtor sent a plan for OTS and the repayment of the loan, hence the application is within time.

6. In the light of the submission raised on behalf of the applicant, we have gone through the documents enclosed with the main application as well as

filed through the additional affidavit. We notice that in the part-IV of the application, it is mentioned that the date of default is 06.08.2012 i.e. the date

of the NPA and it is mentioned that total days of default are 640 days calculated from 31.03.2018. We also notice that the application was filed on

26.02.2020.

7. At this juncture, we have gone through the documents available in Volume-IV as Annexure 62, which is at page 745 and we notice that the

agreement for restructuring of credit facility was executed on 29.04.2014 between the Corporate Debtor and the Financial Creditors bank. Therefore,

the contention of the applicant is that although the NPA was declared on 06.08.2012, the Corporate Debtor within the period of three years had

acknowledged the debt and restructuring of credit facility was arrived between the Corporate Debtor and the Financial Creditor within the period of

three years.

8. Now, coming to the next submission, Ld. Counsel for the petitioner submitted that after 29.04.2014, again the one time settlement was proposed by

the applicant on 24.03.2017, which is available at page 16 to 18 of the additional documents. We have gone through these documents and we notice

that the heading of the document is status of plant and repayment of loans and from the plain reading of the averment made in this document, we

notice that there is no clear cut acknowledgment as it was in the settlement agreement dated 29.04.2014. The concluding para of this document is

quoted below: -

It is needless to mention that option for recovery through legal process shall perhaps lead to closure of plants thus deteriorating the valuation of assets

and dimming the hopes of early realization of the amount now expected keeping in mind the above, we earnestly request you to kindly take a pragmatic view and ensure that company's debts are brought down to desirable level through a deep restructuring or OTS proposed by strategic

investor or through the settlement with ARCs at the earliest.

9. Therefore, at this juncture, we would like to refer the Section18 of the Limitation Act and the same is quoted below: -

18. Effect of acknowledgment in writing.â?

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in

respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person

through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the

provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.â?"For the purposes of this

section,â?

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment,

delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a

claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word ""signed"" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

10. In the light of the aforesaid provision, when we consider the letter dated 24.03.2017 upon which the applicant has placed reliance, we are of the

considered view that this letter would not be treated as acknowledgement of debt under Section 18 of the Limitation Act.

11. At this juncture, we would also like to refer to the decision of Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. Reported in

Manu/SCOR/47022/2019 wherein the Hon'ble Apex Court held: -

Even in the later decisions, this Court has consistently applied the declaration of law in B.K. Educational Services (supra). As noticed, in the case of

Vashdeo R. Bhojwani (supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7

of the Code while holding that the limitation started ticking from the date of issuance of recovery certificate dated 24.12.2001. Again, in thcase of

Gaurav Hargovindbhai Dave (supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA i.e.,

21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on

03.10.2017 was barred by limitation.

32.2. In view of the above, we are not inclined to accept the arguments built up by the respondents with reference to one part of observations

occurring in paragraph 21 of the decision in Jignesh Shah (supra)

12. In the light of that decision when we consider the case of the applicant, we are of the considered view that admittedly the date of default is the

date of NPA. If we accept the contention of the Ld. Counsel for the applicant that within a period of three years from the date of NPA, the loan was

restructured by the restructuring settlement agreement dated 29.04.2014 then, the limitation shall run from 29.04.2014 but we are unable to accept the

contention of the applicant, that again during the period of three years vide letter dated 24.03.2017, there was acknowledgement of debt. In our

considered view, that letter was regarding the status of the plant and not an acknowledgement of debt as it was earlier done by settlement agreement

dated 29.04.2014, which is at page 475 of the application.

13. Hence, we have no option but to refuse the prayer of the applicant to issue notice upon the Corporate Debtor. Rather we are of the considered

view that the present application is barred by limitation.

14. Accordingly, the same is dismissed as barred by limitation.