(2025) 01 NCLAT CK 1664

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

Case No : Company Appeal (AT) (Insolvency) No. 1751 of 2024

Inder Pal Singh Wadhawan	APPELLANT
Vs	
Bank of India & Anr.	RESPONDENT

Date of Decision : 21-01-2025

Acts Referred:
Insolvency and Bankruptcy Code 2016 — Section 7

Citation : (2025) 01 NCLAT CK 1664

Hon'ble Judges : Ashok Bhushan, Chairperson;Barun Mitra, Member (T);Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Kanishk Khetan, Akash Srivastava, Karan Gandhi, Sikhar Tiwari, Vidhika Kapoor, Ashish Verma, Nikhil Thakur

Final Decision : Dismissed

Judgement

21.01.2025: Heard Counsel for the Appellant as well as Counsel appearing for the Respondents.

2. This Appeal has been filed by Suspended Director of the Corporate Debtor challenging the order dated 05.04.2024 by which order Section 7 application filed by Bank of India has been admitted. The Adjudicating Authority returned finding of debt and default and on the said finding has admitted Section 7 application.

3. Counsel for the Appellant challenging the order submits that there was no competent authorization to one Mr. Dhawan who had initially filed Section 7 application on 28.06.2019. He further submits that the date of default in the present case was 29.08.2012 on which date Bank of India has issued a letter regarding term loan account and the application filed by Bank of India was barred by time. It is submitted that admittedly the first OTS proposal as was noticed by the Adjudicating Authority was only in December 2015 i.e. beyond three years from the date of default.

4. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant contends that the board has already passed resolution on 27.06.2019 to authorize all the officers in the rank of Assistant General Managers and Deputy General Managers to sign/ execute applications, appeals, vakalatnama before NCLTs, NCLATs, High Court and Supreme Court and in view of the said resolution, Mr. Dhawan who has initially filed a proceeding was fully competent. It is submitted that subsequently fresh form was filed which was signed by another official who was fully authorized and competent and there is no lack of authorization of the proceedings.

5. Coming to the submission of the Appellant that application is barred by time, Counsel for the Respondent submits that the account of the corporate debtor was declared NPA on 31.07.2013 and default has to be pegged 90 days which shall be 30.04.2013 and the OTS proposal which was given in December 2015 is within three years from the said date and hence, application cannot be said to be barred by time. He further submits that continuously OTS proposal was given which was also approved by the financial creditor but default was committed by the corporate debtor in complying the OTS proposal. It is submitted that the application was well within time.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. Coming to the first submission of the Appellant that proceedings was by unauthorized person, on the paper-book at page 480, a Circular of the Bank of India has been brought on record which was issued on 18.07.2019. In paragraph 3 of the said Circular, following was stated:-

“3. In the above context our Board has approved in its meeting held on 27.06.2019 to authorize all officials of the rank of Assistant General Managers and Deputy General Managers to sign execute Applications, Appeals, Vakalatnama, before NCLTS, NCLATS, High Court, and Supreme Court under IBC 2016. All other ancillary Pleadings, Miscellaneous applications,, Affidavits, Written statements etc can be signed \ executed by the dealing officials of Branch as being the practice in other court cases. The Certified copy of Board Resolution is attached as Annexure 1. The copy of the Board Resolution, duly attested by Zonal Manager/General Manager can be produced before NCLT, NCLAT, High Court & Supreme Court as & when required.”

8. The above indicate that Board on 27.06.2019 has authorized all the officers in the rank of Assistant General Managers and Deputy General Managers to sign/ execute applications, appeals, vakalatnama before NCLTs, NCLATs, High Court and Supreme Court, hence, the application under Section

7 which was filed by Assistant General Manager on 28.06.2019 cannot be said to be without a proper authorization. Hence, we do not find any substance in the submission of the Appellant that application was not filed by authorized person. Further after the liberty was granted by the Adjudicating Authority, the form was

amended with regard to date of default which form was signed by officials who are authorized at relevant time when form was signed which also does not suffer from any infirmity.

9. Now coming to the submission of the Appellant that the application was barred by time. Since the date of default has to be treated to be 29.08.2012, counsel for the Appellant has referred to the letter dated 29.08.2012 issued by the Bank of India. The said letter reads as follows:-

"Bank of India

The Bank That Cares

e-mail: Janpath.New Delhi@ bankofindia.co.in JANPATH Branch,

Fax: 011-2332099 66, Janpath.

Telephones: 23320986(AGM), 28844059(CM). New Delhi-110001

28844060, 23355521

Ref No: JP/ADV/UCV/110 Date: 29-08-2012

M/S West Face Hospitality And Management Pvt Ltd,

E-1/7, 2nd Floor,

East Patel Nagar,

NEW DELHI-110008

Dear Sir,

RE: Your Term Loan account with us

Overdrawn position of your account

We write to inform that as per terms of sanction your term loan of Rs1500 lacs is repayable in 84 monthly instalments (first twelve monthly instalments of Rs5 lacs each and next 72 monthly

instalments of Rs20 lacs each) commenced from the month of November, 2010 and interest is repayable as & when applied.

We observe that repayments of monthly interest/instalments in your term loan account are not being serviced in time. As per repayment schedule the outstanding balance in your account should have been Rs1240 lacs whereas the present outstanding in your account is Rs1433.92 lacs; hence your account is overdrawn by Rs193.92 lacs.

We, therefore, request you to please deposit the overdue amount immediately and regularize your account.

Thanking You,

Yours faithfully..

CHIEF MANAGER”

10. The aforesaid letter was a letter issued by the Bank asking the Corporate Debtor to deposit overdue amount immediately and regularize the account. On the record NPA was declared only on 31.07.2013 hence, the default can at best be three months before NPA i.e. 30.04.2013. The finding has been returned by the Adjudicating Authority that OTS was given by the Appellant from December 2015 to April 2018, hence, the OTS proposal which was given by the Appellant was within three years from the date of default as is claimed by the Financial Creditor. We, thus, are also not satisfied that the application was barred by time and ought not to have been admitted. Appellant has given OTS proposal which was also approved by the financial creditor, however, corporate debtor failed on the terms of the OTS which has been noticed by the Adjudicating Authority in paragraph 4 (B). OTS proposal from December 2015 to April 2018 were given and the application was filed by the financial creditor in the year 2019 which cannot be said to be beyond time. We, thus, do not find any substance in any of the submissions of the Appellant. We find no merit in the Appeal. The Appeal is dismissed.

