(2020) 01 NCLT CK 0014

In the National Company Law Tribunal

Case No : CP/354/IB/2018

Statco Infra Projects Private Limited And Another — APPELLANT

Vs

Statco Infra Projects Private Limited — RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 14(4), 15, 17, 18
Negotiable Instruments Act, 1881 — Section 138, 142
Code Of Criminal Procedure 1973 — Section 190, 200, 482
Companies Act, 1956 — Section 433, 434, 439
Contempt Of Courts Act, 1971 — Section 11
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 4

Citation : (2020) 01 NCLT CK 0014

Hon'ble Judges : R. Varadharajan, J;B. Anil kumar, Member (Technical)

Bench : Division Bench

Advocate : Anant Merathia, Nithyaesh, Vaibhav

Final Decision : Allowed

Judgement

Anil Kumar B, Member (Technical)

1. Under Adjudication is an Application that has been filed by M/s. Narendra Properties Limited (hereinafter referred to as â??Financial

Creditorâ??) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, â??I&B Code, 2016â??) r/w Rule 4 of the Insolvency &

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Statco Infraprojects Apparels Private Limited, (hereinafter referred to as

â??Corporate Debtorâ??).

2. Part-I, of the Application discloses the fact that the Petitioner is a Limited Company with identification number L70101TN1995PLC031532 and the

registered office is stated to be situated at Makhanji House, 2nd Floor, New No. 49, Barnaby Road, Kilpauk, Chennai 600 010. Part-II of the

Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with

CIN: U45400TN1996PTC035457. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No. 4/4, Ground

Floor, Justice Ramanujam Street, Malavya Avenue, Chennai 600 041.

3. Part-III of the Application discloses the fact that the Financial Creditor had proposed the name of one Mr. Mr. Pathukasahasram Raghunathan

Raman as the Interim Resolution Professional, who has also filed his written consent in Form 2. However, it was informed by the Financial Creditor

during the course of arguments that the said IRP is not in a position to take up the instant assignment and in the circumstances, the Financial Creditor

has obtained a consent Form - 2 from one Mr. Chandramouli Ramasubramaniam and filed the same before this Authority on 18.11.2019.

4. Part IV of the application signifies the amount of debt to the tune of Rs. 50,00,000 and the interest calculated at 18% per annum from 01.06.2013 to

28.02.2018 Rs. 42,75,000 totalling to the tune of Rs. 92,75,000 as explained in Annexure-l(B) of the application.

5. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below: Promissory

Note: (Annexure 1(G))

Fresh Promissory Note for Rs. 50,00,000 executed by the Corporate

Debtor (as M/s. Karismaa MEP Services Private Limited) dated 01.04.2013.

Bank Statement:

Bank Statements from 01.08.2011 to 28.02.2018.

1. Board Resolution of Financial Creditor dated 08.03.2018 appointing Mr. Chirag Maher as Authorized Representative to initiate CIRP [Annexure-

1(A)]

2. Computations of amounts due [Annexure-1(B)]

3. Name change certificates of the Corporate Debtor [Annexure-1(C)]

4. Change of address of registered office of the Corporate Debtor-e-filing dated 29.02.2016 [Annexure-1(D)]

5. Letter of submission of Promissory Note & cheque by the Corporate Debtor to

the Financial Creditor dated 30.07.2011 [Annexure-1(E)]

6. Requisition letter from Financial Creditor to Bank Manager for transfer of funds vide RTGS dated 01.08.2011 [Annexure-1 (F)].

7. Fresh Promissory Note for Rs. 50,00,000 executed by the Corporate Debtor dated 01.04.2013. [Annexure-l(G)]

8. Confirmation of balance by the Corporate Debtor for Rs. 75,00,000 dated 04.04.2012. [Annexure-1 (H)]

9. Confirmation of balance by the Corporate Debtor for Rs. 50,67,500 dated 26.04.2013. [Annexure-1 (I)]

10. Confirmation of balance by the Corporate Debtor for Rs. 50,00,000 dated 31.03.2014. [Annexure-1 (J)]

11. Confirmation of balance by the Corporate Debtor for Rs. 50,00,000 dated 31.03.2015. [Annexure-1 (K)]

12. Copy of the cheque dated 18.01.2016 along with the Bank Endorsement dated 02.03.2016 for return of the cheque [Annexure-l(L)]

13. Notice U/S 433, 434 & 439 of Companies Act, 1956 dated 19.12.2016 and reply dated 28.01.2017 [Annexure-l(M)] 14. Bank Statements of

Financial Creditor from 01.08.2011 to 28.02.2018 [Annexure-1(N)].

15. Affidavit in support of the Application filed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. [Annexure-

1(0)].

6. Accordingly, as submitted by the Financial Creditor, the Corporate Debtor is indisputably indebted to Financial Creditor a total amount of Rs.

92,75,000 (Rupees Ninety-Two Lakhs Seventy-Five Thousand only) which includes principal sum of Rs. 50,00,000 (Rupees Fifty Lakhs only) and a

sum of Rs. 42,75,000 (Rupees Forty Two Lakhs Seventy Five Thousand only), towards interest calculated at 18% per annum on the principal sum as

on 28.02.2018.

7. The background of the transaction dates back to 01.08.2011 when as requested for a loan of Rs. 1,00,00,000 (Rupees One Crore only) by the

Corporate Debtor, the Financial Creditor had sent a requisition letter dated 01.08.2011 to their Bank Manager to disburse the said sum Rs. 1,00,00,000

(Rupees One Crore only) vide RTGS to the Corporate Debtor.

8. The Corporate Debtor was carrying business in its original name M/s. Statco Infraprojects Private Limited and changed its name on various

occasions as on the following dates:

i. On 10.05.2011 from M/s. Statco Infraprojects Private Limited to M/s. Statco MEP Services Limited.

ii. On 05.08.201 from M/s. Statco MEP Services Private Limited to M/s. Karismaa MEP Services Private Limited; and

iii. Further, on 19.03.2015 it was changed back to M/s. Statco Infraprojects Private Limited.

9. Subsequently, the Corporate Debtor had applied for change of situation of registered office through online application.

10. As per the Application, the Corporate Debtor had partly repaid the principal to the extent of an amount of Rs. 50,00,000 (Rupees Fifty Lakhs only)

during March and December 2012 in two instalments. Subsequently, the original promissory note for Rs. 1,00,00,000 (Rupees One Crore only) was

cancelled and a fresh promissory note for Rs. 50,00,000 (Rupees Fifty Lakhs only) dated 01.04.2013 was executed in favour of the Financial Creditor

and the Corporate Debtor also guaranteed to repay the principal amount together with interest at the rate of 18% p.a. for the balance of the value

received.

11. It has been submitted by the Applicant that the Corporate Debtor had confirmed its balance towards the Financial Debtor for an amount of Rs.

75,00,000 (Rupees Seventy Five Lakhs only) in a letter dated 04.04.2012. The Corporate Debtor in a letter dated 26.04.2013 had once again

confirmed its balance including the interest rate for the month of March 2013 for an amount of Rs. 50,67,500 (Rupees Fifty Lakhs Sixty Seven

Thousand Five Hundred only) and also annexed the details of accounts of Financial Creditor in its Books of Accounts and the monthly interest

payments have been made by the Corporate Debtor till May 2013.

12. Thereafter, as stated by the Financial Creditor, the Corporate Debtor had defaulted the interest payment obligation due to the Financial Creditor

from June 2013. It has been submitted that when the loan amount was called back Corporate Debtor gave assurance to repay the amount

acknowledging the debt and confirmed its balance for an amount of Rs. 50,00,000 (Rupees Fifty Lakhs only) vide letter dated 31.03.2014 and also

confirmed the same in letter dated 31.03.2015.

13. It has been stated that in continuation of the multiple representations,

reminders and personal follow ups made by the Financial Creditor; the

Corporate Debtor had issued a cheque bearing No. 013588 dated 18.01.2016 for a sum of Rs. 50,00,000 (Rupees Fifty Lakhs only) in favour of

â??M/s. Narendra Properties Limitedâ?. When the aforementioned cheque was presented for payments it had been returned back to the Financial

Creditor along with â??Return Memoâ? dated 02.03.2016 which stated that â?? Payments stopped by the Drawerâ? as the reason for the dishonour

of the cheque.

14. Thereupon, the Financial Creditor was constrained to issue a statutory notice under Section 138 of the Negotiable Instruments Act, 1881 dated

19.03.2016 for which an untenable stand was taken by the Corporate Debtor in the reply notice dated 13.04.2016 and spuriously denied to pay the loan

amount. 10. The Financial Creditor has stated that a complaint (C.C. 4929 of 2017) was filed before the Court of XIV Metropolitan Magistrate Court,

Egmore under Sections 190 and 200 of Cr.P.C. for offences under Sections 138 and 142 of the Negotiable Instruments Act, 1881 by the Financial

Creditor on 26.04.2016. Pursuant to that, the Corporate Debtor filed a Writ Petition (Crl.O.P. No. 28867 of 2017) before the Hon'ble High Court of

Madras under Section 482 of Cr.P.C.

15. Further, the Financial Creditor served a notice under Sections 433, 434 and 439 of the Companies Act, 1956 dated 19.12.2016 demanding

repayment of loan amount with interest rate at 18% p.a. which is reported to have been spuriously and vaguely denied by the Corporate Debtor in a

reply notice dated 28.01.2017.

16. In furtherance of these events it is submitted that the Financial Creditor had served a notice dated 04.07.2017 demanding payments and a reply

notice dated 02.08.2017 from the Corporate Debtor stating spurious denial to any amounts due by them. Pursuant to that, the Financial Creditor

instituted a suit for recovery on August 2017 before the Hon'ble High Court of Madras for repayment of the outstanding debts due by the Corporate

Debtor which is Rs. 87,50,000 (Rupees Eighty-Seven Lakhs and Fifty Thousand only) which includes the principal amount of Rs. 50,00,000 (Rupees

Fifty lakhs only) along with 18% interest from 01.06.2013 till 31.07.2017.

17. Thereupon, the Financial Creditor was constrained to prefer this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 on the

grounds, inter alia, that M/s. Statco Infraprojects Private Limited is unable to service its admitted debts to its lawful Financial Creditors in the ordinary

course, and is as such unable to continue business in the foreseeable future as a going concern, unless managed as a going concern under the

Insolvency and Bankruptcy Code, 2016 by a duly-appointed resolution professional.

18. In spite of the above petition, the Corporate Debtor had failed to repay the pending amounts due. As on date of this application the Corporate

Debtor is liable to pay a sum of Rs. 92,75,000 (Rupees Ninety-Two Lakhs Seventy-Five Thousand only) which includes principal sum of Rs. 50,00,000

(Rupees Fifty Lakhs only) and a sum of Rs. 42,75,000 (Rupees Forty-Two Lakhs Seventy Five Thousand only) as interest charged at 18% per month

on the amounts due.

19. It has been submitted that an order allowing the petition was passed by this Authority on 10.10.2018.

20. In the Memo filed by the Financial Creditor, it has been stated that:

a) the order dated 25.09.2018 passed by this Hon'ble Tribunal was challenged before the Hon'ble High Court of Madras by the Respondent/Corporate

Debtor by way of Civil Revision Petition Nos: 3077 & 3080 of 2018. An interim stay was granted till 24.10.2018 by the Hon'ble High Court of

Madras. Nevertheless, the proceedings before this Hon'ble Tribunal continued on the next date of hearing which was on 08.10.2018 as it was inferred

that only the operative portion of the impugned order was stayed and not the entire order dated 25.09.2018. Subsequently, the Respondent/Corporate

Debtor was admitted into the Corporate Insolvency Resolution Process period by way of an Order of this Hon'ble Tribunal dated 10.10.2018, the

same was passed on merits after due opportunity having been provided to both the parties to their present cases.

b) Meanwhile, one of the shareholders of the Respondent/Corporate Debtor had filed a Civil Revision Petition Nos. 3348 & 3350 of 2018 against the

Applicant herein in the Hon'ble High Court of Madras for setting aside of the aforementioned impugned order dated 10.10.2018 in CP.354/IB/2018 in

NCLT, Chennai.

c) the matters came up before the Hon'ble High Court of Madras and the same was contested by both the parties. The essence of contention of the

Respondent/Corporate Debtor is that it was not granted due opportunity before the Hon'ble Tribunal when the impugned orders were passed.

d) the Respondent had also filed a Contempt Petition numbered as Cont. P. 2527 & 2528 of 2018 under Section 11 of Contempt of Courts Act, 1971

against the Applicant herein under the grounds of willful and deliberate disobedience of the order dated 11.10.2018 in CRP Nos. 3080 & 3077 of 2018.

e) It is seen that the parties had expressed their â??No objectionâ?? in the event of setting aside of orders in CRP Nos. 3348 & 3350 of 2018 to

remand the proceedings back before this Hon'ble Tribunal for fresh consideration.

f) It has been reported that upon hearing the submissions of both the parties, the Hon'ble High Court of Madras set aside the impugned order dated

10.10.2018 in CP.354/IB/2018 and remanded the proceedings back before this Hon'ble Tribunal for fresh consideration after granting due

opportunities to both the parties and disposed of CRP Nos. 3348 & 3350 of 2018 and all other CRP's connected with it.

g) Keeping in view of the observations made by the Hon'ble High Court in the aforementioned Civil Revision Petition, the Court was of the view that

no orders were required in the Contempt Petition and therefore the contempt petitions were too disposed off.

h) in the current state of affairs, the case has been brought back before this Hon'ble Tribunal to continue being heard and adjudicated upon afresh.

21. The Learned Counsel for the Corporate Debtor submitted that this Application is barred by Limitation as all the monies were advanced by the

Financial Creditor in the year 2011 and the alleged interest payment were made till June 2013 for which the limitation expired on June 2016 and the

documents which were produced by the applicant before this Authority to overcome limitation are forged and fabricated documents and are not

admitted documents.

22. In the Rejoinder filed by the Applicant/Financial Creditor, it has been stated that:

a) the Respondent has only initiated frivolous proceedings against the Applicant across multiple fora in a bid to escape from facing the rigors of the

law, for various defaults on part of the Respondent and subsequent malignant acts and deeds committed by the Respondent.

b) It has been reiterated that the Respondent had issued a Balance Confirmation

Letter dated 04.04.2012 to the Chartered Accountant of the

Applicant, agreeing that there exists a balance of the loan amount to the tune of Rs. 75,00,0000. The same has not been denied by the Respondent

herein until this point of time. The Promissory note dated 01.04.2013 and the letters denoting confirmation of balance dated 31.03.2014 and 31.03.2015

issued by the Respondent are not forged documents and that it is only a futile defence by way of an absolutely crystal clear afterthought put forth by

the Respondent herein.

23. It is submitted by the Applicant that Respondent had chosen to allege that the various letters issued on various dates were not legally sustainable

and are forged at a belated stage, that too after the case under the Insolvency and Bankruptcy Code, 2016 was initiated against the Respondent. The

Respondent had taken its own time and initiated such proceedings of dispute belatedly after the S.7 proceedings under the IBC, 2016 were set in

motion by the Applicant in March 2018, with an ulterior motive to frustrate the same.

24. It is seen by this Tribunal that the Respondent, had been continuously making payments of interest on a monthly basis until May, 2013. The

payments of interest have also not been denied or disputed by the Respondent at any point in time and the same is substantiated by the Bank

Certificate dated 10.08.2018 obtained from the Bank of Baroda. The TDS Reconciliation Analysis and Correction Enabling System referred to as

â??TRACESâ??, being a reliable statutory document clearly reinforces the fact that continuous interest payments have been made by the

Respondent to the Applicant which substantiates Respondent's liability towards the Applicant to repay the said financial debt.

25. The Balance Confirmation letters dated 31.03.2014 and 31.03.2015 provided by the Respondent to the Applicant are legally sustainable. Further, it

is relevant to mention that the signature of Mr. Manoj K. Sheth, the Director of the Respondent Company, in the Board Resolution is same as that of

the signature of the Balance Confirmation letters issued by the Respondent Company in the year of 2014 and 2015. It is also pointed out the fact that

Mr. Nand Kishore Sonthalia was no longer a Director of the Respondent from 03.09.2013, so it is evident that he could not have signed the Balance

Confirmation Letters that were issued by the Respondent after the said date.

Accordingly, we uphold the contention of the applicant that the

respondent's claim on forged document is false.

26. It is alleged that the Respondent had produced a report from a privately functioning forensic organization, stating that the impugned documents are

forged, without the leave of this Hon'ble Tribunal and since this Tribunal on comparison of signatures in two different documents have come to the

aforesaid conclusion that no forgery is involved, it is not necessary for this Tribunal to consider the report of the forensics obtained by the Corporate

Debtor suo motto.

27. Further, as to the aspect of limitation, it is evident that the present application has been filed before this Authority on 27.03.2018 and in view of the

observations made supra and having come to the conclusion that signature of Mr. Manoj K. Sheth, the Director of the Respondent Company, in the

Board Resolution is same as that of the signature of the Balance Confirmation letters issued by the Respondent Company in the year of 2014 and

2015 and also in view of the fact that the last balance confirmation being made on 31.03.2015, the plea of limitation as raised by the Corporate Debtor

does not hold water, as this Application was filed before this Authority on 27.03.2018 and falls well within the prescribed period of limitation of 3

years.

28. It is also pertinent to note here that Corporate Debtor had issued a cheque bearing No. 013588 dated 18.01.2016 for a sum of Rs. 50,00,000

(Rupees Fifty Lakhs only) in favour of â??M/s. Narendra Properties Limitedâ?, and when the aforementioned cheque was presented for payments it

had been returned back to the Financial Creditor along with â??Return Memoâ? dated 02.03.2016 which stated that â??Payments stopped by the

Drawerâ? as the reason for the dishonour of the cheque. In this context, it is relevant to refer to the decision of the Hon'ble High Court of Gujarat,

in Hindustan Apparel Industries v. Fair Deal Corp., New Delh i(AIR 2000 Guj. 216) wherein it has been held that the â??Cheque given by a

debtor to pay his dues is an acknowledgement, even though the Cheque is dishonoured.â? Thus, taking into consideration, the position of law and also

in view of the observations made supra, we are of the considered view that the present petition as filed by the Financial Creditor is within the period of

limitation.

29. The Financial Creditor has proposed the name of Mr. Chandramouli Ramasubramaniam having Registration Number [IBBI/IPA-002/IP-

N00052/2016-17/100096] as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the

Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed

as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such

other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the Code and file his report within 20 days

before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the

CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

30. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1)

and as extracted hereunder shall follow in relation to the Corporate Debtor;

(a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or

order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action

under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.â??

31. However, during the pendency of the moratorium period in terms of Section 14(2)(2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during

moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of

such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has

not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any

financial sector regulator.

32. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution

Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have

effect from the date of such approval or liquidation order, as the case may be.â??

33. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this

date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of

the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the

Registry.

