
(2022) 07 NCLT CK 0047
In the National Company Law Tribunal
Case No : CP (IB) NO. 41/MB/2020

State Bank Of India

APPELLANT

Vs

Aegis Glass Container Private Limited

RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7
Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016 — Rule 4
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)

Citation : (2022) 07 NCLT CK 0047

Hon'ble Judges : H.V. Subba Rao, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Zaman Ali

Final Decision : Dismissed

Judgement

H.V. Subba Rao, Member (Judicial)

1. This Company Petition is filed by State Bank of India (hereinafter called "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Aegis Glass Container Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved "Financial Debt of Rs. 16,22,63,700/- (Rupees Sixteen Crore Twenty-two lacs sixty thousand seven hundred only).

2. The Applicant is a body corporate constitute under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its Head Office and its Specialized Prime Corporate Branch at the address mentioned in the cause of the Company Petition.

3. The Corporate Debtor has been availing credit facilities from the Financial Creditor since past 9 years. At the request of the Corporate Debtor, the creditor facilities in the form of Term Loans, WCDL & Cash Credit Facility were permitted, reviewed, enhanced, reviewed and modified from time to time and documents were executed in respect thereof.
4. The Financial Creditor sanctioned cash credit facility of Rs. 2,50,00,000/- Term Loan-1 Facility of Rs. 1,55,00,000/-, Term Loan-2 Facility of Rs. 4,00,000/- and WCDL Facility for Rs. 1.65 crore on the 24.02.2011 on terms and conditions as mentioned in the letter of arrangement.
5. The Corporate Debtor by its Board Resolution confirmed the credit facility of Rs. 8,05,00,000/- by accepting terms and condition of the loan facilities. The Board resolution dated 28.02.2011 passed that the Corporate Guarantee towards the security of the loan facilities granted to Corporate Debtor.
6. The Financial Creditor submits that the agreement of Loan Cum Hypothecation, Guarantee Agreement, Continuing Guarantee Agreement, Tripartite Agreement, Memorandum for Recording Creation of Mortgage by Deposit Deeds, Letter of Confirmation on 04.03.2011; 17.03.2011 & 18.03.2011.
7. The Corporate Debtor passed a resolution on the 26.03.2013, that the company obtain WCDL facility by agreeing and acceptance of terms and condition of the enhanced exposures and Resolution for extending the Corporate Guarantee given to WCDL.
8. Financial Creditor further submits that the Supplemental Agreement of Loan Cum Hypothecation, Guarantee Agreements, Revival letter, Memorandum Recording Extension of Mortgage by Deposit Title Deeds Confirmation Letter executed on the 29.03.2019.
9. A demand notice has been issued by the Financial creditor under section 13(2) of the SARFAESI Act dated 10.08.2013 to Corporate Debtor to pay off the Financial Debt raised by them failing which measures under the SARFAESI Act would be taken against secured assets for which the Corporate Debtor sent reply notice dated 07.10.2013 to the Financial Creditor. The Financial Creditor on 15.10.2013 issued rejoinder to the reply notice dated 07.10.2013 sent by the Corporate Debtor. However, the Corporate Debtor neglected & failed to pay the sum specified in the said notice. Hence this petition.
10. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Since the Corporate Debtor failed to file reply, he was set ex-parte vide order dated 21.10.2021. Heard the counsel appearing for the Financial Creditor and perused the material available on record. The above Company Petition was filed on 11.12.2019 in respect of default committed on 28.06.2013. The Financial Creditor got issued demand notice under Section 13(2) of the SARFAESI Act and also initiated measures under the SARFAESI Act and RDDB Act in 2013. This Bench after noticing that

the above Company Petition was filed 6 years after the date of default directed the Financial Creditor to file the balance sheets of the Corporate Debtor to prove that the debt is within 3 years from the date of default.

11. This bench specifically directed the Financial Creditor to file the balance sheet of the years 2016 to 2019. Accordingly, the Financial Creditor filed the balance sheet of 2018-19 in which an amount of 55,116,390/- was shown under the heading 'Secured Loans from the bank'. Nowhere the name of the State Bank of India is shown in the balance sheets. It seems there are 5 lenders other than the State Bank of India who have granted loans to the Corporate Debtor. Therefore, the above balance sheets will not help the Financial Creditor for extending the period of limitation as the name of State of India was not specifically mentioned anywhere in the balance sheets. The Financial Creditor miserably failed to explain the limitation either by filing the acknowledgment of debts or revival letters executed by the Corporate Debtor from time to time or decree or order of any court or tribunal to prove the limitation. In fact, there is no pleading nor any explanation with regard to limitation in the above Company Petition. The Financial Creditor miserably failed to prove the limitation despite granting number of adjournments.

12. For the aforesaid reasons, this Bench is of the considered opinion that the above Company Petition is hopelessly barred by limitation and is liable to be rejected on that score alone.

13. Accordingly, the above Company Petition is dismissed.