NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1509 of 2019

<u>IN THE MATTER OF</u>:

M M Ramachandran ...Appellant

Vs

South Indian Bank Ltd. & Ors. ....Respondent

Present:

For Appellant: Present but appearance not marked.

For Respondents: Mr. Krishnendu Dutta, Mr. Parag Maini, Mr. Abhimanyu Chopra, Mr. Amit Srivastava and Ms. Mehak Khurana, Advocates for R-1.

<u>O R D E R</u>

22.01.2020: Pursuant to application under Section 7 filed by 'South Indian Bank Ltd.' (Financial Creditor) by impugned order dated 19th November, 2019, the Adjudicating Authority (National Company Law Tribunal), Kochi Bench, Kochi initiated Corporate Insolvency Resolution Process against M/s Atlas Gold Townships (India) Pvt. Ltd.' (Corporate Debtor). The Appellant/ Promoter has challenged the same on two grounds:-

(a) The Application under Section 7 is barred by limitation.

(b) There is no record of default enclosed in terms of Section 7(3)(b).

2. It was submitted by learned counsel for the Appellant that the account of Corporate Debtor was declared Non Preforming Asset (NPA) on 31st December, 2015 and the application under Section 7 was filed on 10th April, 2019 i.e. much beyond the period of three years.

3. Learned counsel appearing on behalf of the Respondent Bank relied on an email received on 2nd May, 2016 followed by a letter received on 30th May, 2016 to support that the Appellant has acknowledged the dues as on 30th May, 2016 and therefore the Bank is entitled to take advantage of Section 18 of the Limitation Act, 1963.

4. Email dated 2nd May, 2016, which was also sent by the Appellant and undated letter received by the Bank on 30th May, 2016 shows that the Appellant acknowledged the dues and intimated that he has taken Rs.220 Crores and the outstanding amount subsequently rose to Rs.250 Crores with interest. In the end of it, it was informed that the Appellant is determined to pay all the amounts granted by the Bank and requested not to give any adverse publicity that may result in reduction in the value of the properties. Email dated 2nd May, 2016 is extracted below:-

Connect Server - Print message

(70)

From: Ram C <ramthn@yahoo.com>
To: md@sib.co.in <md@sib.co.in>
Sent Date: Mon 02 May 2016 [8:46:13 PM]
Received Date: Mon 02 May 2016 [8:46:5 PM]
Subject: Facilities granted to Atlas Jewellery (P) Ltd.

EVP- Gr.
JGM (Monitoring)
Suitable Reply may be got drafted

M. M Ramachandran
P.O Box 1533
Deira
Dubai (UAE)

To
The Chairman
South Indian Bank Ltd
Head Office
Thrissur (India)

Dear Sir,

Facilities granted to Atlas Jewellery (P) Ltd.

This has reference to the credit facilities granted to Atlas Jewellery (P) Ltd. By your esteemed bank.

At the outset I think you profusely for the great co-operation extended by the bank at the time of granting the facilities. The managers of the bank had, in fact, come to a restaurant outside Kerala state after 8 PM on March 23, 2013in order to obtain the signatures of myself and others on the documents purported to create equitable mortgage.

However, matters changed rapidly with the passage of time. All the showrooms of the company were sealed by the bank last year as the monthly statements submitted by the staff were found to be not in order by the bank. The statements were not seen by me as I was unable to travel to India due to the restrictions imposed by the authorities of UAE. The company had availed facilities aggregating to Rs. 220 Crores and substantial amounts to the tune of Rs. ___ Crores were paid by way of interest. The out standings subsequently rose to Rs. 250 Crores as interest continued to be debited although the bank had sealed the showrooms.

It is highly disheartening to note that the bank has exhibited a board saying that the property is in their possession on all the properties of the company and its affiliates. I have also learnt from reliable sources that the bank is taking action to

https://mail.sib.co.in/bayu/servlet/DetailMail?Cmd=print&Folder=INBOX&Msg=1&UnqMsgID=%3C524009... 03-May-16

True Copy

auction the properties without serving a single notice to me in writing. All these actions of the bank will only result in the value of the properties deteriorating day by day and making it more difficult for me to pay off the dues of the bank.

I may be permitted to submit that I am undergoing a period of trial in my life perhaps due to the fact that I depended too much on my people and the internal controls were inadequate. I am sure that I will come out successful very soon, but please stand by my side during this crisis.

I am determined to pay off all the amounts granted by the bank, but please do not give any adverse publicity that may result in the reduction in the value of the properties. I assure you that I shall settle the amount availed by the company, provided I am given some time. I would also request you to release the properties to the extent of payments made into the account.

Thanking you,

<!--[if !vml]-->

<!--[endif]--><!--[if !mso]-->
<!--[endif]-->

Yours truly
M. M
Ramachandran

<!--[if !mso]-->
<!--[endif]--><!--[if !mso & !vml]--> <!--[endif]--
><!--[if !vml]-->

Printed using Mithi Web Mail

5. The Appellant denied the said email and letter on the ground that it is forged. An additional affidavit has been filed by the Bank which also produced the cover by which the letter, which is typed out copy of email dated 2nd May, 2016, was despatched by Mr. M M Ramachandran under his signatures from Dubai on 16th May, 2016 and received by the Bank on 25th May, 2016. The Original letter is also produced before us, therefore, we hold that the email dated 2nd May, 2016 is genuine. The Appellant has taken wrong plea that it is forged.

6. When asked, learned counsel for the Appellant submits that the Appellant was in jail in Dubai for having defaulted to pay creditors there and was under travel restrictions. It shows that he is a habitual defaulter. However, it is not clear how he has sworn affidavit in India.

7. From the record we also find that Bank has enough records to support that there is a default and therefore, the Adjudicating Authority rightly admitted the application under Section 7. In absence of any merit, the appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

am/gc