

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1119 of 2019

IN THE MATTER OF:

Rupesh Kumar Gupta

Director (Board under Suspension)
M/s Kut Energy Pvt. Ltd.
R/o House No. 1739,
Nirvana Cooperative House,
Building society,
Sector 49-B,
Chandigarh

...Appellant

Vs

1. Punjab National Bank

Large Corporate Branch,
Bhagwati Towers, RK Rd.,
Cheema Chowk,
Industrial Area-A,
Ludhiana – 141 003

**Financial
Creditor/
Respondent
No. 1**

2. M/s Kut Energy Pvt. Ltd.

Through; Shri Nipan Bansal,
Interim Resolution Professional,
House No. 10-B, Udham Singh Nagar,
Civil Lines,
Ludhiana- 141 001

**Corporate
Debtor/
Respondent
No. 2**

....Respondents

Present:

For Appellant: Mr. Yashraj Singh Deora and Ms. Sonal Mashankar, Advocates

For Respondents: Mr. Pulkit Goyal and Mr. Harsh Garg, Advocates for Respondent No. 1

Ms. Diksha Goyal, Advocate for RP

JUDGMENT

28.02.2020 The Respondent No. 1- Punjab National Bank filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') against Respondent No. 2 M/s Kut Energy Pvt. Ltd. before the Adjudicating Authority

(National Company Law Tribunal) Chandigarh Bench, Chandigarh. The Application under 7 of IBC came to be admitted after hearing the parties.

2. Punjab National Bank- Financial Creditor claimed before the Adjudicating Authority that the Account of the Corporate Debtor had become NPA on 31.03.2015 and the debt outstanding as on 31.8.2018 was of Rs. 89,30,56,987.58. It is stated that Bank Guarantee concerned had not been invoked till then.

3. The present Appeal has been filed against the admission of the Application under Section 7 IBC. The grievance of the Appellant is that the claim was time barred and thus Application under Section 7 of IBC should not have been admitted.

4. Learned Counsel for the Appellant states that Application under Section 7 of IBC was filed on 19.09.2018 which was beyond the period of three years from the date of NPA which is 31.05.2015. The Counsel states that the Application should have been dismissed.

5. Learned Counsel for the Respondent submits that it was brought before the Adjudicating Authority that there was a restructuring of loan done in this matter. The Counsel referred to Reply of Respondent No. 1 (diary No. 16958) at page -24 where the Facility Agreement was executed between the parties. It is stated that Consortium of Banks and the Corporate Debtor had entered into this Facility Agreement. The proposal for sanction of additional Term Loan, review of existing Term Loan and approval of other issues was communicated to the Corporate Debtor by the Financial Creditor vide Annexure –R1 (Colly) on

29.09.2015 and the Corporate Debtor had submitted copy of Minutes of Meeting of the Board of Directors of the Corporate Debtor held on 30.09.2015. Learned Counsel for the Respondent states that when the Company became NPA, the Financial Creditor had initiated action under Section 13 of The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest **Act**, 2002 (in short '**SARFAESI**' **Act**) and under Section 19 of The Recovery of Debts & Bankruptcy Act 1993 before DRT. It is stated Corporate Debtor entered into such restructuring Facility Agreement, as at page 24 of the Reply. The Counsel states that in spite of entering into such Facility Agreement, the Corporate Debtor did not comply with the terms and thus further defaulted.

6. Learned Counsel for the Appellant states that if the Financial Creditor wants to rely on the Facility Agreement, there would be no default as Schedule-III of the Facility Agreement shows that repayment would be in 34 structured quarterly instalments commencing from June, 2016. It is stated that if this is so, there was no default till June, 2016 and the Financial Creditor should not have relied on the NPA dated 31.03.2015. Learned Counsel further states that this Tribunal in Judgment in the matter of **“C. Shivkumar Reddy Vs. Dena Bank and Anr.”** – Company Appeal(AT)(Insolvency) No. 407 of 2019 dated 18th December, 2019 held in paragraph-7 that Application moved by Corporate Debtor to restructure debt or payment of interest does not amount to acknowledgement of debt. It is stated that the Bank could not rely on such document, like the present one, which is the Facility Agreement.

7. Learned Counsel for the Appellant further stated that Facility Agreement was entered but was not acted upon as no further loan was issued to the

Corporate Debtor. To this the learned Counsel for the Respondent points out that the Sanction letter dated 29.09.2015 itself had provided the Terms and Conditions which required the Company to complete the project before 31.03.2016 and no further extension would be warranted again. The Counsel states that the Corporate Debtor default on count and thus the restructured document did not take off.

8. Learned Counsel for the Financial Creditor refers to the “Master Circular Prudential Norms on Income Recognition, Asset Classification Norm and Provisioning pertaining to Advances” issued by RBI vide No. RB/2015-16/101 dated 01.07.2015 and states that the norms issued by RBI have arrangement where even when the account is declared as NPA, re-structuring can be entered into with the concerned defaulter and if in spite of all efforts of restructuring, the defaulter is unable to cure the default, the Financial Creditor can move on the basis of basic date of NPA. Learned Counsel refers to Asset Classification Norm Paragraph- 17.2 of the Norm where paragraph 17.2.6 reads as under:

...

“17.2.6 If a restructured asset, which is a standard asset on restructuring in terms of para 2.02, is subjected to restructuring on a subsequent occasion, it should be classified as substandard. If the restructured asset is a sub-standard or a doubtful asset and is subjected to restructuring, on a subsequent occasion, its asset classification will be reckoned from the date when it became NPA on the first occasion. However, such advances

restricted on second or more occasion may be allowed to be upgraded to standard category after the specified period (Annex-5) in terms of the current restructuring package, subject to satisfactory performance.”

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9. Learned Counsel for the Respondent states that apart from the restructuring documents, there are Minutes of Meeting of Board of Directors of the Company as at page no. 19 of the Reply, which also can be taken as an acknowledgement under Section 18. Learned Counsel referred to resolution adopted by the Corporate Debtor Company in the Board of Directors meeting dated 30.09.2015, the relevant portion of which reads as under:

“1. THAT the Company do borrow the following additional financial assistance by way of Term Loan VI (Additional TL) (the “Facility”) in addition to the existing facility amounting to Rs. 228.00 Crores already availed by the Company from Punjab National Bank, Large Corporate Branch, Bhagwati Tower, R.K. Road, Near Cheema Chowk, Ludhiana, Corporation Bank, SCO 137-138, Sector 8C, Madhya Marg, Chandigarh & Central Bank of India. The Mall, Combere Mere Complex, Shimla to be provided to the Company on the terms and conditions as specified in sanction letter(s) issued by the aforesaid Banks as per the details given hereinbelow:

..

10. The Resolution then referred to the name of lenders and the facility given by three different banks.

11. For deciding the present matter, we need to decide the question whether documents of restructuring are to be ignored for which the learned Counsel for Appellant has referred judgment **“C. Shivkumar Reddy Vs. Dena Bank and Anr.”** – Company Appeal(AT)(Insolvency) No. 407 of 2019. In the present case we have the Minutes of Meeting of the Board of Directors to which we have already referred and it can be clearly stated that there was an acknowledgement of debt by the Corporate Debtor as on 30.09.2015 under Section 18. Account had become NPA on 31.03.2015. With Acknowledgement dated 30.09.2015, the Application under Section 7 of IBC filed on 19.9.2018 was in time. It cannot be stated that the Application under Section 7 of IBC was barred by limitation.

12. There is no substance in the Appeal. The Appeal is dismissed. No orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn