

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1099 of 2020

[Arising out of order dated 17.01.2020 in C.P. (IB) No. 305/KB/2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata.]

IN THE MATTER OF:

1. Gundeep Gurdeep Singh Sood,

Suspended Director of Kromme Glass Private Limited
Orbit House, 1, Garstin Place,
Second Floor, Room No. 2C,
Kolkata – 700001.

2. Jasminekaur Gundeep Singh Sood,

Suspended Director of Kromme Glass Private Limited
Orbit House, 1, Garstin Place,
Second Floor, Room No. 2C,
Kolkata – 700001.

.... Appellants.

(Corporate Debtor)

Versus

1. Corporation Bank,

Post Box No. 88,
Mangal Devi Temple Road, Pandeshwar,
Mangaluru – 5750001.

..... Respondent No. 1.

(Financial Creditor)

2. Ramchandra Dallaram Choudhary

9-B, Vardan Complex, Near Vimal House,
Lakhudi Circle,
Navrangpura,

Ahmedabad – 380014.

....Respondent No. 2

Present:

For Appellant: Ms. Arka Banerjee, Ms. Aritra Basu, Mr. Jishnu Chowdhury and Mr. Abhay Pratap Singh, Advocates.

For Respondent: Mr. PBA Srinivasan, Advocate for R-1.

Mr. Arjun Padhiyar, Advocate for R-2.

J U D G M E N T

(29th October, 2021)

Justice Anant Bijay Singh;

This Appeal has been preferred by the Appellants – Suspended Board of Directors of Kromme Glass Private Limited (Corporate Debtor) aggrieved and dissatisfied by the order dated 17.01.2020 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 305/KB/2019 whereby and where under the application filed by the Respondent No. 1 (herein) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) was admitted and the Corporate Insolvency Resolution Process of the Corporate Debtor commenced.

2. The facts giving rise in the instant Appeal is as under:

i) That the Appellants – Corporate Debtor was *interalia* engaged in the business of manufacturing and trading of processed glass and allied goods. The Corporate Debtor was in this business since 2011.

ii) For the purpose of diversifying its business, the Corporate Debtor approached the Respondent No. 1 in order to obtain credit facilities. The

Respondent No. 1 agreed to provide credit facilities to the Corporate Debtor. The credit facilities that the Corporate Debtor sought for from the Respondent No. 1, was in the nature of Cash Credit, Term Loan and Bank Guarantees.

iii) Further case is that On 16.01.2012, the Respondent No. 1 sanctioned a sum of Rs. 7,20,00,000/- as Cash Credit, a sum of Rs. 1,32,00,000/- and 90,00,000/- as Term Loan. Furthermore, the Respondent No. 1 also provided a Bank Guarantee to the extent of Rs. 1,50,00,000/- in favour of the Corporate Debtor (Annexure-C at page 70 to 88 of the Appeal Paper Book).

iv) Further case is that the credit facilities were made over by the Respondent No. 1 after taking an unanimous consent from the consortium formed by and between the Respondent No. 1 and Union Bank of India. The members of the consortium, being the Respondent No. 1 and the Union Bank of India, convened a meeting on 02.02.2012, wherein, the members of the consortium decided to amend and/or modify the terms of the credit facilities made over to the Corporate Debtor. In the said Circumstances, an amended sanction letter, modifying the repayment terms and security coverage of the Term Loan was made over to the Corporate Debtor on 06.02.2012 (Annexure-D at page 89 to 90 of the Appeal Paper Book).

v) Further case is that on 28.03.2012 a Working Capital Consortium Agreement was entered into by and between the Respondent No. 1, Union Bank of India and the Corporate Debtor. In terms of this agreement, the Respondent No. 1 and Union Bank of India made over an aggregate sum of Rs. 17,40,00,000/- to the Corporate Debtor in order to acquire the assets and

liabilities of Pabanso India Private Limited (Annexure-E at page 91 to 112 of the Appeal Paper Book).

vi) Further case of the an Inter se Agreement was also executed by an between the Respondent No. 1 and Union Bank of India on 28.03.2012, in terms whereof, the Respondent No. 1 was recognized as the Lead Bank of the consortium formed by and between the Respondent No. 1 and Union Bank of India (Annexure-F at page 113 to 121 of the Appeal Paper Book).

vii) On the same day, two Term Loan Agreements were entered into by an between the Respondent No. 1 and the Corporate Debtor. In terms of these Term Loan Agreements, the Respondent No. 1 provided further credit facilities, as Term Loans for a sum of Rs. 90,00,000/- and a sum of Rs. 1,32,00,000/- respectively, to the Corporate Debtor (Annexure-G at page 122 to 148 of the Appeal Paper Book).

viii) In order to diversify its business, the Corporate Debtor requested for revision of the credit facilities. In the said circumstances, negotiations and/or deliberations ensued between the Corporate Debtor and the Respondent No. 1. Ultimately, the Respondent No. 1 agreed to revise the credit facilities as made over by the Corporate Debtor. Accordingly, a further sanction letter dated 09.01.2013 was made over by the Respondent No. 1 to the Corporate Debtor, in terms whereof, the revised credit facilities to the extent of Rs. 11,50,00,000/- was made over by the Respondent No. 1 (Annexure-H at page 149 to 151 of the Appeal Paper Book).

ix) The Corporate Debtor could not tide over its financial difficulties. As a result, there was default on the part of the Corporate Debtor in making Company Appeal (AT) (Insolvency) No. 1099 of 2020

repayment of the credit facilities as made over by the Respondent No. 1. In the said circumstances, the Respondent no. 1, in terms of the guidelines of the Reserve Bank of India, on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated 01.07.2008, declared the account of the Corporate Debtor as Non-Performing Asset with effect from 30th June, 2014, Thereafter, the Respondent No. 1 made over a consolidated notice under Section 13(2) and 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor.

x) The Corporate Debtor failed to make payment of the dues of the Respondent No. 1, a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, being O.A. No. 239 of 2015 was initiated by the Respondent No. 1 before the Debts Recovery Tribunal –II, Ahmadabad.

xi) The Respondent No. 1 did not proceed with the O.A. No. 239 of 2015, filed before the Debts Recovery Tribunal-II, Ahmedabad any further. The Respondent No. 1 on 14.02.2019, initiated a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 being C.P. (IB) No. 305/KB/2019 before the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata (Annexure-L at page 237 to 487 of the Appeal Paper Book).

xii) The Ld. Adjudicating Authority vide order dated 17.01.2020 admitted the application filed under Section 7 of the IBC and consequential orders were passed. Hence this Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellants during the course of argument and his memo of Appeal submitted that the Ld. Adjudicating Authority erred in law and in facts in admitting the company petition filed under Section 7 of the IBC, 2016.

4. It is further submitted that the Ld. Adjudicating Authority have passed the impugned order on 17.01.2020, when the petition filed by the Respondent No. 1 was ex facie barred by limitation.

5. It is further submitted that the Ld. Adjudicating Authority failed to deliberate on the issue of limitation and come to a conclusion thereof despite the fact that the plea of limitation was set up as a defence in the reply Affidavit filed by the Appellants – Corporate Debtor.

6. It is further submitted that the Account of the Appellants declared as a Non Performing Asset (NPA) on 30th June, 2014 and Application was filed under Section 7 of the IBC on 14th February, 2019, in view of the fact that the present case was completely covered by Article 137 of the Limitation Act, 1963, this fact has not been considered by the Ld. Adjudicating Authority.

7. It is further submitted that the Respondent No. 1 contended before the Ld. Adjudicating Authority that the time spent before the Debts Recovery Tribunal-II, Ahmedabad should be excluded under Section 14 of the Limitation Act, 1963, for the purpose of calculating the period of limitation, this fact has also not been considered by the Ld. Adjudicating Authority.

8. Learned Counsel for the Appellant in the course of argument referred to Rejoinder to Reply Affidavit filed by Respondent No. 1 and submitted that no acknowledgement has been made, within the prescribed period of limitation, in writing either by the Appellants or by the Corporate Debtor. The financial statements of the Corporate Debtor being Annexure – R/5 and Annexure – R/6 of the Reply Affidavit filed by the Respondent No. 1, would not corroborate any acknowledgement in writing within the prescribed period of limitation.

9. It is further submitted that in view of the facts and submissions the impugned order cannot be sustained in the eye of law, therefore the impugned order is set aside and the Appeal be allowed.

Submissions on behalf of the Respondent Nos. 1.

10. The Learned Counsel for the Respondent No. 1 (Union Bank of India erstwhile Corporation Bank) during the course of argument and his Reply Affidavit as also Written Submissions submitted that the Appellants during the course of the arguments are completely baseless and without application of mind.

11. It is further submitted that the Appellants contented that they did not acknowledge the financial statements available on the MCA website (which is a public domain) for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 are completely false.

12. It is further submitted that such false statements/submissions made by the Appellants before this Tribunal amounts to forgery, as the financial

statements available on the website of MCA which is a public domain were duly acknowledged/signed by the Appellants and moreover, the Appellants cannot put such information without any acknowledgement/signature into the public domain like MCA website.

13. It is further submitted that that the Appellants in their Balance Sheet dated 01.09.2018 and 25.06.2019 for the period of 2017-2018 and 2018-2019 respectively, acknowledged that they have availed the credit facilities from the Respondent No. 1.

14. It is further submitted that the account of the Corporate debtor became NPA on 30.06.2014 and the Appellants in the financial statements available on the MCA website for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 acknowledged that the Corporate Debtor has availed credit facilities from the Respondent No. 1. Further, in the balance Sheet dated 01.09.2018 and 25.06.2019 for the period of 2017-2018 and 2018-2019 respectively, the Appellants acknowledged Loan Term and Short Term Borrowings from the Respondent No. 1. Thus, the Application filed by the Respondent No. 1 – Financial Creditor under Section 7 of the IBC, 2016, is well within the period of limitation.

15. It is further submitted that the Hon'ble Supreme Court vide order dated 15.04.2021 in the matter of '**Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. reported in 2021 (6) SCC 366**' observed as following:

“33. It is, therefore, clear that the majority decision of the

***Full Bench in V. Padmakumar (supra) is contrary to the
Company Appeal (AT) (Insolvency) No. 1099 of 2020***

aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We therefore, set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020.

34. *The NCLAT, in the impugned judgment dated 22.12.2020, has, without reconsidering the majority decision of the Full Bench in V. Padmakumar (supra), rubber-stamped the same. We, therefore, set aside the aforesaid impugned judgment also.*

35. *On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is remanded to the NCLAT to be decided in accordance with the law laid down in our judgment.”*

16. It is further submitted that based on these submissions the Ld. Adjudicating Authority has rightly passed the impugned order. There is no merit in the instant Appeal, the Appeal is fit to be dismissed.

Submissions on behalf of the Respondent No. 2

17. Learned Counsel for the Respondent No. 2 - Resolution Professional of the 'Corporate Debtor' during the course of argument and his Affidavit stated that on 08.06.2020 made the public announcement in the prescribed "Form-G" in the newspapers, namely, the Business Standard (English) and Divya Bhaskar (Gujrati) (Gujrat Edition) (Annexure- G at page 76 of the Affidavit).

18. It is further submitted that the 3rd Committee of Creditors (for Short CoC) meeting was duly convened on 02.07.2020 by the RP wherein the members resolved to defer the resolution of initiation of EOI process a new to the next CoC meeting (Annexure-H at page 77 to 87 of the Affidavit).

19. It is further submitted that 4th CoC meeting was duly convened on 29.07.2020 by the RP wherein the members resolved to initiate fresh EOI process (Annexure-I at page 88 to 98 of the Affidavit).

20. It is further submitted that EOI was received from Gundeepsingh Gurdeepsingh Sood, Jasminekaur Gundeepsingh Sood and Cauvery Healthworth Private Limited jointly on 23.09.2020.

21. It is further submitted that the RP convened 6th CoC meeting on 29.09.2020 wherein the members resolved to extend the period of insolvency resolution process period for another period on 90 days as per the provisions

contained in Section 12 of the IBC, 2016 (Annexure-M at page 123 to 131 of the Affidavit).

22. It is further submitted that the RP filed application for extension of CIRP for 90 days beyond 180 days before the NCLT, Kolkata Bench on 10.10.2020. Further, the NCLT, Kolkata Bench vide its order dated 16.12.2020 passed the order in I.A. No. 1075/KB/2020 in C.P. No. 305/KB/2019 for extension of CIRP for 90 days beyond 180 days (Annexure-O at page 148 to 149 of the Affidavit).

23. It is further submitted that the RP filed application for exclusion of 57 days from CIRP before Ld. NCLT, Kolkata Bench on 04.01.2021 as the 180 days of CIRP expired on 21.10.2020.

24. It is further submitted that the 8th CoC meeting was duly convened on 07.01.2021 by the RP wherein the members resolved to initiate fresh EOI process and further resolved to sale scrap glass at the factory of the Corporate Debtor (Annexure-P at page 150 to 172 of the Affidavit).

25. It is further submitted that 9th CoC meeting was duly convened on 16.01.2021 by the RP wherein the members resolved to approve the Insolvency Resolution Process Cost incurred.

26. It is further submitted that the RP on 18.01.2021 made the public announcement in the prescribed "Form-G" and further submitted that EOI was received from 2 (Two) prospective REsolutino Applicants i.e. Gundeepsingh Gurdeepsingh Sood and Jasminekaur Gundeepsingh Sood jointly and Mega Innovative Crops Private Limited.

27. It is further submitted that the Hon'ble NCLT, Kolkata Bench vide order dated 08.02.2021 granted the exclusion for the period from 21.10.2020 till 16.12.2020 i.e. period of 57 days (Annexure- S at page 189 to 190 of the Affidavit).

28. It is further submitted that the members of CoC decided not to consider the Resolution Plan submitted by Mr. Gundeepsingh Sood and others as it was not complying with the Minimum Criteria as specified in Section 25(2)(h) of the Code. Further, the Resolution Plan submitted by M/s. Mega Innovative Crops Private Limited was discussed during the meeting and the members of the CoC negotiated the same in terms of finance and accordingly, M/s. Mega Innovative Crops Private Limited agreed to submit the revised plan within 3 days from the conclusion of 10th meeting of the CoC (Annexure-T at page 191 to 199 of the Affidavit). Thereafter, M/s Mega Innovative Crops Private Limited submitted revised resolution plan on 19.03.2021.

29. It is further submitted that 11th CoC meeting was duly convened on 24.03.2021 by the RP wherein the members decided to put the Resolution Plan submitted by M/s. Mega innovative Crops Private Limited for e-voting subject to increasing the final value of the plan as per the expectations of the member of the CoC and period of 2 days were given to the Resolution Applicant for taking in to considerations the requirements of member of CoC and to submitted the revised Resolution Plan (Annexure-U at page 200 to 218 of the Affidavit).

30. It is further submitted that the 12th CoC meeting was duly convened on 31.03.2021 by the RP wherein Resolution No. 1 - *"To approve initiation of Company Appeal (AT) (Insolvency) No. 1099 of 2020*

Liquidation Process under Section 33 of the Insolvency and Bankruptcy Code, 2016 and appointment of Liquidator in case if the Resolution Plan is not approved by the AA." (Annexure-V at page 219 to 241 of the Affidavit).

31. It is further submitted that the E-voting period for all the resolutions of the 11th and 12th meeting of the CoC ended on 05.04.2021. The final resolution plan dated 25.03.2021 submitted by M/s. Mega Innovative Crops Private Limited was approved by the member of the CoC with 100% voting in favour (Annexure-W at page 242 to 244 of the Affidavit).

32. It is further submitted that the RP filed the application for the approval of Resolution Plan under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 before the Hon'ble NCLT, Kolkata Bench on 09.04.2021.

FINDINGS

33. After hearing the parties and having gone through the records of the case, Reply Affidavit along with Written Submissions on behalf of the Respondent No. 1 and Affidavit on behalf of the Respondent No. 2, we are of the considered view that the following facts are admitted in the instant Appeal.

- That the Appellants are suspended board of Directors of the Corporate Debtor – Kromme Glass Private Limited.
- That on 16.01.2012, the Respondent No. 1 sanctioned a sum of Rs. 7,20,00,000/- as Cash Credit, a sum of Rs. 1,32,00,000/- and 90,00,000/- as Term Loan. Furthermore, the Respondent No. 1 also

provided a Bank Guarantee to the extent of Rs. 1,50,00,000/- in favour of the Corporate Debtor.

- That on 28.03.2012 a Working Capital Consortium Agreement was entered between the Respondent No. 1, Union Bank of India and the Corporate Debtor. In terms of this agreement, the Respondent No. 1 and Union Bank of India, made over an aggregate sum of Rs. 17,40,00,000/- to the Corporate Debtor in order to acquire the assets and liabilities of Pabanso India Private Limited.
- It is also admitted fact that two Term Loan Agreements were entered between the Respondent No. 1 and the Corporate Debtor. In terms of these Term Loan Agreements, the Respondent No. 1 provided further credit facilities, of Term Loans for a sum of Rs. 90,00,000/- and a sum of Rs. 1,32,00,000/- respectively, to the Corporate Debtor. Further, a sanction letter dated 09.01.2013 was made by the Respondent No. 1 to the Corporate Debtor, in terms the revised credit facilities to the extent of Rs. 11,50,00,000/-.
- It is also admitted fact that as the Corporate Debtor failed to pay instalment of the loan amount dated 01.07.2008, the account of the Corporate Debtor was declared as NPA w.e.f. 30th June, 2014.
- It is also admitted fact that a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, being O.A. No. 239 of 2015 was initiated by the Respondent No. 1 before the Debts Recovery Tribunal –II, Ahmadabad.
- The Respondent No. 1 on 14.02.2019, initiated a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 being C.P. (IB)

No. 305/KB/2019 before the Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata and passed the impugned order.

- In view of the fact the account of the Corporate Debtor was declared as NPA on 30th June, 2014. The Appellant submitted that the application under Section 7 of the IBC filed by Respondent No. 1 on 14.02.2019 was much after delay of 3 years, so application under Section 7 is hit by limitation.
- On the other hand, the Learned Counsel for the Respondent No. 1 has filed financial statements for period 01.04.2015 to 31.03.2016 (Annexure –A/5 at page 237 to 295 of the Reply Affidavit), 01.04.2016 to 31.03.2017 (Annexure –A/6 at page 296 to 405 of the Reply Affidavit) and balance sheet in the Annual Report 2017-2018 (Annexure –A/7 at page 406 to 452 of the Reply Affidavit) duly signed by the Appellants.
- The Learned Counsel for the Appellants have taken plea in the Rejoinder that the signature of the Appellants in the financial statements and in the audit report of the Corporate Debtor which are Annexed as Annexure – 5, 6 and 7 of the Reply Affidavit filed by the Respondent No. 1, cannot be an acknowledgement to be made within the limitation period and the Respondent No. 1 will not be entitled for fresh period of limitation.
- The Respondent No. 1 has annexed a letter dated 04.01.2020 signed by the Appellant No. 1 – Gundeep Singh Sood which is annexed as Annexure –A/9 (at page 453 of the Reply Affidavit). The said letter is captioned as **“Offer for One Time Settlement (OTS) in NPA A/c, of Kromme Glass Pvt. Ltd. with your Banks”** in which the Appellants

proposed to settle the account with both the Banks at a total offer value of Rs. 8.75 Crores which also amounts to acknowledgment of debt.

- Although, the Learned Counsel for the Appellant in the Rejoinder tried to dispute this documents on the ground that the signature of the Appellant in Annual Report as Annexure –R/7 and R/8 of the Reply Affidavit cannot be regarded as an acknowledgement made within the prescribed of limitation. Therefore, the Respondent No. 1 will not be entitled to a fresh period of limitation.
- Further, this Tribunal take note of the fact that no interim order was passed by this Tribunal as per the status report of the Respondent No. 2. The CIRP has been completed and resolution plan has been submitted before the Ld. Adjudicating Authority for approval.
- It is admitted fact that in the letter dated 04.01.2020 the Appellants stated that they are ready to settle the amount with both the Banks at the total value of 8.75 Crores, this OTS amounts to acceptance of the debt and in view of the law laid down in the judgment passed by Hon'ble Supreme Court in '**Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. reported in 2021 (6) SCC 366**' (*supra*) the application under Section 7 of the IBC is not barred by limitation.

ORDER

34. We are of the considered view that there is no illegality in the impugned order and we hereby affirm the impugned order dated 17.01.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench,

Kolkata and Ld. Adjudicating Authority has rightly admitted the application filed by the Respondent No. 1 (herein) in C.P. (IB) No. 305/KB/2019. There is no merit in the instant Appeal, the Appeal is hereby dismissed. No order as to costs.

35. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

29th October, 2021

R. Nath.