

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1342 of 2023

**[Arising out of the Impugned Order dated 22.08.2023 passed by the
Adjudicating Authority, National Company Law Tribunal, Allahabad
Bench, Prayagraj in CP (IB) No. 72/ALD/2022]**

In the matter of:

M/s Agroha Paper Industries Private Limited

Through its Director

Chetan Agarwal

At Present Communication Address:

House No. 26, Jankipuram Garden,

Nahar Road, Lucknow- 226021

Email: agrohapi@gmail.com

...Appellant

Versus

Bank of Maharashtra

Through its Authorised Officer

1st Floor, Shobhit Commercial Complex

Aminabad, Lucknow- 226018

Email id: bom1278@mahabank.co.in,

legal_luc@mahabank.co.in

...Respondent

Present :

For Appellant : Ms. Divya Jagga, Mr. Neeraj Kant Singh and Mr. Narendra Kumar, Advocates.

For Respondent : Mr. Sameer Kumar and Ms. Somi Sharma, Advocates.

J U D G M E N T

(Hybrid Mode)

[Per: Barun Mitra, Member (Technical)]

1. The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated

22.08.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) in C.P. (IB) No. 72/ALD/2022. By the impugned order, the Adjudicating Authority dismissed the Section 10 application filed by the Corporate Applicant seeking to initiate Corporate Insolvency Resolution Proceedings ('**CIRP**' in short) against itself. Aggrieved by the impugned order, the present appeal has been preferred.

2. Making submissions, the Learned Counsel for the Appellant submitted that Agroha Paper Industries Pvt. Ltd.- Corporate Debtor had filed an application under Section 10 of IBC for initiation of CIRP against itself. The reason given by the Corporate Debtor for filing the Section 10 application was fiscal distress and suffering of business losses triggered by the Covid pandemic. The net worth having suffered an erosion, it was not in a position to repay the loan which it had availed from the Respondent-Bank of Maharashtra which led to the Respondent Bank declaring the account of the Corporate Applicant as NPA on 28.10.2018. It is further submitted that thereafter the Respondent Bank issued a Demand Notice on 11.01.2019 under Section 13(2) of the SARFAESI Act, 2002. In their reply to the demand notice, the Corporate Debtor had sought additional loan facility from the Respondent Bank which proposal was not accepted by the Respondent Bank. Though having defaulted in making repayment of outstanding loan to the Respondent Bank but being of the view that the Corporate Debtor company had fair chance of revival, the Appellant filed Section 10 application under IBC.

3. Stating that the Section 10 application was complete in all respects and all documents/information as envisaged under Section 10 of the IBC had been provided, it was vehemently contended that the Respondent Bank had no valid grounds to object to the Section 10 application specially when the twin ingredients of existence of debt and default stood established and the Corporate Debtor applicant was not disqualified in any manner whatsoever under Section 11 of the IBC to file the Section 10 application. In support of their contention, attention was adverted to the judgment of this Tribunal in ***M/s Unigreen Global Pvt. Ltd. vs. Punjab National Bank in C.A. (AT) (Ins) No. 81 of 2017*** ('Unigreen' in short) and ***Leo Duct Engineers & Consultants Pvt Ltd vs Canara Bank in C.A. (AT) (Ins) No. 100 of 2017*** ('Leo Duct' in short) wherein it has been held that the Adjudicating Authority is bound to admit a Section 10 application if all information as required under Section 10 and Form-6 is provided and the Corporate Applicant is not ineligible under Section 11. The Adjudicating Authority is not empowered to reject a Section 10 application on any other ground.

4. It is further submitted that the Appellant had filed the Section 10 application as it was hopeful that the Corporate Debtor can be revived from insolvency. It was asserted that the plant and machinery in the Corporate Debtor still had residual work life of around 8-10 years and therefore could be turned around. It was emphasized that the objective of the IBC is to revive the Corporate Debtor rather than push it into corporate death. It was asserted that the Appellant was hopeful that admission of their Section 10 application would be a positive step in the direction of insolvency resolution and blamed the **Company Appeal (AT) (Insolvency) No. 1342 of 2023**

Respondent Bank for dragging the Corporate Debtor into insolvency. It was contended that the Respondent Bank was forcing the sale of property of the Corporate Debtor purely with a view to recover the outstanding loan at the cost of pushing the Corporate Debtor to death. It was therefore asserted that the Adjudicating Authority had committed a mistake in rejecting the Section 10 application merely because SARFAESI proceedings was initiated by the Respondent Bank as such proceedings could not be factorised while considering admission of Section 10 application as per the statutory scheme of IBC.

5. Refuting the contentions of the Appellant, the Learned Counsel for the Respondent submitted that that the Appellant had defaulted in repaying the loan facility which had been secured by them from the Respondent Bank. Repeated notices were issued to the Corporate Debtor prior to their declaration as a wilful defaulter but they intentionally failed to appear before the Bank authorities for hearing. The Respondent Bank therefore invoked Sections 13(2) and (4) of the SARFAESI Act and after issue of notice took possession of the properties of the Appellant mortgaged to the Bank and placed notice of sale/public auction. The sale bid had also been confirmed to the successful bidder before the filing of Section 10 application. In the interregnum, the Corporate Debtor realising that their attempts to obtain a One Time Settlement (**'OTS'** in short) with the bank was turning futile and recovery of the outstanding debt by the Respondent Bank loomed imminent, they chose to file the Section 10 application with a view to take undue advantage of the moratorium provisions of IBC to stall further recovery proceedings. Further basis the investigation report conducted through an expert third party agency, it was asserted that the ground of business revival **Company Appeal (AT) (Insolvency) No. 1342 of 2023**

raised by the Corporate Debtor is a false claim and the Section 10 application was filed to avoid recovery of debt and not for insolvency resolution. Further the fact that the Corporate Debtor also filed a writ petition before the Hon'ble Allahabad High Court challenging the proceedings under Section 13(4) of the SARFAESI Act shows that the Corporate Debtor was desperate to somehow stall the entire auction process which is nothing but an abuse of the process of law.

6. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

7. It is the case of the Appellant that the Section 10 application was complete in all respect and all statutory prescriptions to file Section 10 application had been met. In pursuance of the directions of the Adjudicating Authority on 05.09.2022 even the share-holder details of the Corporate Debtor were placed on record. It was also submitted that there were only two share-holders having 50% share each in the Corporate Debtor and that both share-holders had voted in the Extra Ordinary General Meeting to pass a resolution to file the Section 10 application. The Corporate Debtor had also filed an affidavit of compliance before the Adjudicating Authority stating that there were no other creditors except those mentioned in the affidavit. In compliance of the orders of the Adjudicating Authority, even notice had also been served on the Respondent Bank intimating the filing of Section 10 application. It is submitted that the Adjudicating Authority had committed an error in issuing notice at pre-admission stage to the Financial Creditor which delayed the proceedings by almost one year. It is also contended that the Respondent Bank deliberately chose not to file their reply on

time and resorted to dilatory tactics to utilise the time gained in the process to proceed ahead with the auction the assets of the Corporate Debtor at an under-valued price which is contrary to the objective of IBC of value maximisation and revival of Corporate Debtor. It is also their contention that there were no valid grounds for the Adjudicating Authority to reject their Section 10 application as their application was otherwise complete in all respects and debt and default stood clearly established. In such circumstances, it is canvassed that the impugned order was not in conformity with the requirements and mandate of Section 10 of IBC.

8. Repelling the contentions of the Corporate Debtor, the Respondent Bank has contended that the Appellant had failed to repay the loan as per the terms and conditions of the Bank and neglected all notices of default issued by the Respondent Bank. It is also their contention that when they initiated recovery proceedings before the appropriate forum in accordance with law, the Appellant tried to create a logjam by filing a securitisation application before the Debts Recovery Tribunal, Lucknow (**'DRT'** in short) and subsequently a writ petition before the Hon'ble Allahabad High Court. Having not succeeded in their objective to scuttle recovery proceedings, the Appellant then filed an application under Section 10 IBC purely to wriggle out of their liability to pay. Thus, according to the Respondent Bank, the Section 10 application was filed for reasons other than for insolvency resolution and thus fell foul of the objectives of the IBC.

9. The short question that arises before us is whether the Adjudicating Authority committed any error in rejecting the Section 10 application.

10. Coming to our analysis, basis the factual matrix and the sequence of events, it is an undisputed fact that the Corporate Debtor had taken a loan facility from the Respondent Bank and had clearly defaulted in the payment of the outstanding debt and filed a Section 10 application on 04.08.2022. When we look at the material on record, we have no hesitation in also agreeing with the Appellant that the procedural prescriptions and requirements laid down for filing Section 10 application was met by the Appellant and found complete in all respects. The non-eligibility conditions provided under Section 11 of IBC were also not attracted by the Appellant in any manner.

11. Be that as it may, we also notice that much before the Section 10 application was filed by the Appellant, the Respondent Bank had issued notices to the Appellant for personal hearing before declaring the Appellant to be a wilful defaulter. We also find that the Adjudicating Authority took notice of the fact that the Appellant Company failed to appear before the Respondent Bank in spite of notices having been issued to them twice and gave a slip to the proceedings initiated by the Wilful Defaulter Identification Committee of the Respondent Bank. Even after being declared a defaulter, the Appellant continued not to respond to the notices issued by the Respondent Bank. Moreover, while on the one hand it was dodging the notices for appearance, on the other hand, it was making strenuous efforts to enter into some sort of settlement with the Respondent Bank. We notice one such letter dated 11.03.2019 placed at page 120-121 of Appeal Paper Book (**'APB'** in short) where the Appellant Company has requested the Respondent Bank *“to either sanction additional funds to meet the aforesaid requirement or grant us a time for 6 to 12*

months to arrange for the alternate sources of finance to repay the present debt as well as to meet the Company's fund requirement for smooth business operations in order to keep it as a going concern and contribute towards Country's economy". This shows that the Appellant Company was selectively approaching the Bank requesting for some reprieve but was deliberately avoiding the Bank in the proceedings being conducted for being a wilful defaulter. This glaring duplicity in the conduct of the Appellant as pointed out by the Respondent Bank has also been taken cognisance of by the Adjudicating Authority in concluding that the Appellant has come before it with unclean hands.

12. Learned Counsel for the Appellant has relied upon the judgment of this Tribunal in ***Unigreen and Leo Duct supra*** to canvass that it is incumbent upon the Adjudicating Authority to admit Section 10 application once the application is complete and cannot reject the application on any other ground. The facts of those cases are clearly distinct from the facts of this case. In ***Unigreen and Leo Duct supra***, the issue which arose for consideration was whether non-disclosure of facts relating to third party civil suits by the Adjudicating Authority amounted to over-reaching the statutory requirements under Section 10 of IBC read with relevant regulations. In the present case, the Adjudicating Authority has not sought any third-party information but only endeavoured to find out whether the Appellant has come up with unclean hands by filing the Section 10 application for purpose other than insolvency resolution. Hence, the above judgments do not come to the aid of the Appellant.

13. We would like to next dwell upon the SARFAESI proceedings initiated by the Respondent Bank in juxtaposition to the contention of the Appellant that the Adjudicating Authority failed to appreciate that pendency of SARFAESI proceedings cannot be a ground to reject the Section 10 application. Chronologically seen, the SARFAESI proceedings in the present facts of the case clearly preceded the Section 10 application. The Respondent Bank had issued Section 13(2) notice under SARFAESI Act to the Appellant-Corporate Debtor on 11.01.2019. The Appellant conscious of the initiation of the SARFAESI proceedings, made a request to the Respondent Bank on 11.03.2019 to either sanction additional funds to meet their fund deficit or alternatively grant them additional time to arrange for alternate sources of finance to repay their debt. The Respondent Bank did not accede to either of the request of the Appellant and instead proceeded ahead with the SARFAESI proceedings. Possession and pre-sale notice were issued on 25.03.2019 and 15.10.2019. The e-auction notice was issued on 28.01.2020. The Bank had issued the sale auction notice by following the due procedure and cannot be faulted on this account. The Respondent Bank took physical possession of the property under Section 14 of SARFAESI Act on 24.05.2022 and sale was confirmed to the successful bidder. All these steps under the SARFAESI proceedings had therefore clearly preceded the filing of the Section 10 application by the Appellant.

14. Having noticed that the SARFAESI proceedings were at an advanced stage and this stage had been reached well ahead of filing of the Section 10 application, we now would like to deal with the contention of the Appellant that pendency of SARFAESI proceedings ought not to have been taken into cognisance by the Company Appeal (AT) (Insolvency) No. 1342 of 2023

Adjudicating Authority in dismissing the Section 10 application. At this stage, it may be useful to begin by finding out how the Adjudicating Authority has dealt the matter in the impugned order. The relevant portions of the impugned order is as reproduced below :-

“27. We find substance in the contentions raised by the Ld. Counsel representing the Financial Creditor/ Bank.

28. The applicant seems to not have come with clean hands in as much as, it has been making all out efforts to stall the process in one way or the other, by abuse of process of law. The averments made in the application filed U/s 10 as well as rejoinder filed by the Corporate Applicant to the objections raised by the Financial Creditor, do not further advance the case in its favour only by stating that the auction of assets are at undervalued prices, and would defeat the very purpose of the application filed U/s 10 of the Code. The contention raised on behalf of the Corporate Applicant that the DRT, Lucknow has granted status quo in respect of the several properties vide its order dated 22.11.2022, however it is noted that the auction already took place on 16.07.2022 as per the sale auction notice issued by the Financial Creditor/ Bank by following due procedure.

29. We have also noted that the Bank in its para no. 14 of the reply/ objection has also stated that it has handed over the enquiry to the detective agency for enquiring the net worth and asset details of the applicants and the Bank have sufficient cause to believe that the applicant having sufficient means is still not ready to repay the loan. In view of this, the intentions of the Corporate Applicant to pre-empt any such similar proceedings for recovery by the Bank deserves to be deprecated.

30. The application filed U/s 10 thus lacks bonafide from all perspectives, and therefore deserves to be dismissed.”

15. When we take a holistic view of the entire conspectus of facts, it does not escape notice that the Appellant was trying to embroil the Respondent Bank in multiple layers of litigation. It is an undisputed fact that the Appellant had filed securitization application SA-365 of 2019 before the DRT, Lucknow for stay on

the auction of its properties by the Respondent Bank. Apart from moving the securitization application before the DRT, the Appellant had also knocked at the doors of the Hon'ble Allahabad High Court by filing a Writ petition. Though the matter was heard on the same date (16.07.2022) on which the auction in pursuance of the sale notice was to take place, the Hon'ble High Court did not stay the e-auction. The Hon'ble High Court only observed that the e-auction shall abide by the outcome of the application for interim relief pending before the DRT, Lucknow. Interestingly, we also notice at page 242 of APB that though the DRT, Lucknow in SA-365 of 2019 in its order dated 22.11.2022 had granted status quo in respect of the subject properties under e- auction, but by that time the assets of the Corporate Debtor had already been auctioned by the Respondent Bank. The auction had already been completed by the Respondent Bank and acceptance of the auction bid had been communicated by the Respondent Bank to the purchaser on 16.11.2022 as seen at page 235 of the APB. It is therefore clear that the Appellant made incessant efforts to put a spanner in the recovery proceedings initiated by the Respondent Bank and finally resorted to filing the Section 10 application.

16. There is no quarrel over the fact that Section 10 vests rights on the Corporate Debtor to resolve their insolvency. However, one cannot lose sight of the fact that this protective umbrella over the assets of the Corporate Debtor is not misused or abused in a manner so as to become a tool for deriving undue advantage at the cost of insolvency resolution which objective unequivocally resonates in the preambular aspirations of the IBC. We are of the considered view that the Adjudicating Authority rightly deprecated the Appellant Company

for having filed the application under Section 10 of IBC after unsuccessfully trying at pre-empting recovery proceedings undertaken by the Respondent Bank. We are therefore inclined to agree with the Adjudicating Authority that the bonafide of the Appellant in filing of the Section 10 application was doubtful and that the filing was done for reasons other than insolvency resolution and therefore deserves to be dismissed.

17. For the foregoing reasons as discussed, we find no good reasons which warrants any interference in the impugned order. The Appeal is found to lack merit and is dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 25.07.2024**

Harleen Kaur