# IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI, BENCH-VI C.P. (IB) No. 587/ND/2023

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

and Rule 4 of the Insolvency `and Bankruptcy (Application to

Adjudicating Authority), Rules, 2016.

### IN THE MATTER OF:

### Jammu and Kashmir Bank

Impaired Asset Recovery Branch
JAMMU & KASHMIR BANK,
ZO Delhi North (Gurgaon) Plot No.132-34,
Sector 44, Gurgaon-122003 (HARYANA)

...Petitioner/Financial Creditor

### **VERSUS**

# L D Crystals Private Limited

TU-70, Pitampura, New Delhi-110034 IN

...Respondent/ Corporate Debtor

# **CORAM:**

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Appearance -

Counsel for Petitioner: Adv. Syed Arsalan, Adv. Prateek

Khaitan, Adv. Chatanya Sharma,

Adv. Shitij Chakravarty.

**Counsel for Respondent:** 

### ORDER

## PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 10.09.2024

- 1. The present petition has been filed by Jammu and Kashmir Bank Limited i.e. Financial Creditor to initiate a corporate insolvency resolution process (hereinafter referred to as "CIRP") in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 against L.D. Crystals Private Limited (Hereinafter referred to as "Corporate Debtor"), being the Corporate Guarantor to the Financial Creditor for the credit facilities availed by the Gee Ispat Private Limited (herein after referred to as "Borrower").
- 2. The averments germane to the adjudication of the present dispute have been briefly elucidated as under
  - In the year 2013, the Borrower approached Financial Creditor seeking credit facilities of INR 30,00,00,000.00 (Rupees Thirty Crores Only). It is pertinent to mention herein that the Borrower initially availed Cash Credit Facility of INR 20,00,00,000/- (Indian Rupees Twenty Crores Only) and ILC/FLC Limit of INR 10,00,00,000/- (Indian Rupees Ten Crores Only) vide Sanction letter dated 24.01.2013 and the Corporate Debtor as a Corporate Guarantor signed and executed unconditional and irrevocable Corporate Debtor Guarantee for securing the credit facilities availed by Borrower dated 09.02.2013 in favor of the Financial

- Creditor. Last payment made by the Borrower to the Financial Creditor was done on 24.03.2014.
- II. However, after availing the aforesaid Credit facilities, the accounts of the Borrower became irregular. The Borrower failed and neglected to regularize its Credit Facilities and failed to make payment of the outstanding amounts under the said credit
- III. As the Financial Creditor did not receive any other payment the from the Borrower hence, the Financial Creditor was left with no other alternative but to declare the account of the Borrower as NPA and thus, the account was declared as NPA on 30.06.2014 as per the Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances issued by RBI.
- IV. Therefore, the Borrower failed to repay its remaining outstanding dues, the Guarantee Invocation Notice dated 31.12.2021 was sent to the Corporate Debtor being the Corporate Guarantor by the Financial Creditor. The total outstanding amount of INR 57,67,39,465.25 (Indian Rupees Fifty-Seven Crores Sixty Lacs Thirty Nine Thousand Four Hundred Sixty Five and Paisa Twenty Five Only) payable as on 31.12.2021 by the Corporate Debtor being the Corporate Guarantor to the Borrowers in terms of the Deed of Corporate Guarantee dated 09.02.2013.
- V. Further the Petitioner/FC has stated that the last payment was made by the Borrowed in its loan account on 24.03.2014.

  However, the Balance Sheet(s) of the Financial years 2015-2016 & 2016-2017 of the Borrower incorporates the amount payable to the financial creditor by the Borrower for the credit facilities

availed and therefore, the acknowledgement of Debt in the Balance Sheet results into extension of limitation under Section 18 of the Limitation Act making the Borrower as well as Corporate Debtor being the Corporate Guarantor liable for the outstanding amount payable to the Financial Creditor.

VI. The Corporate Debtor did not appear in spite of proper notice and hence, was declared *ex parte* vide order dated 26.04.2024.

# Analysis and findings -

- We have heard the Ld. Counsel appearing for the Petitioner and perused the averments and documents placed on record filed by the petitioner.
- 4. Prior to adjudication of the present application, it is pertinent to refer to section 5(8)(h) and 5(8)(i) of the IBC, 2016, wherein it has been stated that liability in the form of a guarantee is deemed to be a financial debt the germane provision has been reiterated as under
  - "(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution:
  - (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

- 5. In the present dispute, on the basis of the documents placed on record by the Petitioner it can be concluded that a guarantee deed dated 09.02.2013 existed between the Petitioner/FC and the Respondent/CD and the said deed comes under the ambit of "financial debt" in accordance with section 5(8) of the IBC, 2016. Consequently, it is evident that a financial debt amounting to INR 57,67,39,465.25 (Indian Rupees Fifty-Seven Crores Sixty Lacs Thirty Nine Thousand Four Hundred Sixty Five and Paisa Twenty Five Only) in favor of the Petitioner/FC in the form of aforesaid guarantee deed existed.
- 6. Further, it is pertinent to mention at this juncture that even though the last payment made by the borrower to the Petitioner/FC was made on 24.03.2014 and consequently, the said claim i.e., the invocation of the grantee deed would be barred by the limitation. However, it can be inferred that the Borrower acknowledged the liability towards the Petitioner/FC by the virtue of the balance sheets for Financial years 2015-2016 & 2016-2017 annexed with the present application.
- 7. In the present case, prior to establishment of debt and/or default, it is pivotal to consider the aforesaid question i.e., if the said invocation of guarantee is barred by limitation, it would be prudent to refer to the judicial precedent laid down by the Hon'ble Supreme

Court in Asset Reconstruction Company (India) Limited v. Bishal Jaiswal And Anr., CIVIL APPEAL NO.323 OF 2021 wherein it was held that acknowledgement of debt can be inferred from the acknowledgement of the debt in the balance sheet, in the present case the same has been reflected in the balance sheet of the Corporate Debtor and consequently, the period of limitation commences from the aforesaid acknowledgement of the financial debt vide the balance sheet of the at specific year.

- 8. Consequently, it can be concluded from the aforesaid judicial precedent that the limitation period for the invocation of the deed of guarantee commenced from the date of acknowledgement of the financial debt by the borrower, the said period was further extended throughout 2020 and 2021 in light of the order passed by the Hon'ble Supreme Court in SMW(C)· of 03 of 2020 which excluded the period of Limitation from 15.03.2020 to 28.02.2022.
- 9. Moreover, the notice for invocation of guarantee issued by the FC/Petitioner in the present dispute was served upon the CD in the present dispute on 31.12.2021, consequently the limitation period for the present petition commenced from the date of issuance of the aforesaid notice pertaining to the invocation of the guarantee deed. Consequently, in light of the fact that the present petition was filed on 20.02.2022, the present petition for the initiation of CIRP against the CD is not barred by limitation.

- 10. A bare reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application.
- 11. The Hon'ble Supreme Court in the matter of *M. Suresh Kumar Reddy* v. *Canara Bank*, (2023) 8 SCC 387 held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7 of the IBC, 2016. The relevant excerpt from the aforesaid precedent has been reiterated as under
  - 11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:
    - 3. Definitions.—In this Code, unless the context otherwise requires—

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(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it

becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

12. Additionally, it has been opined by the Hon'ble Supreme Court that the role of the Adjudicating Authority is confined to establishing that a Financial Debt exists and there has been a default against the corresponding debt in E S Krishnamurthy & Ors. Versus M/s Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No 3325 of 2020). The germane excerpt from the said precedent has been reiterated as under –

"The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5)."

13. In light of the aforesaid judicial precedents and the relevant provisions of the IBC, 2016, it can clearly be inferred from the present petition that a financial debt amounting to INR 57,67,39,465.25 (Indian Rupees Fifty-Seven Crores Sixty Lacs

Thirty-Nine Thousand Four Hundred Sixty Five and Paisa Twenty Five Only) existed, the said amount was due towards the FC/Petitioner in the present case by the virtue of the notice invocation of the deed of guarantee dated 31.12.2021.

- 14. Additionally, since the CD in the instant case has been set ex-parte by the virtue of the order dated 26.042024 this AA is confined to the material placed on record by the Petitioner/FC, in light of the same, it can be clearly inferred that the borrower defaulted in repayment of the financial debt due towards the Petitioner/FC and consequently the notice for invocation of the guarantee deed was issued to the CD. Therefore, it can be concluded that there was debt and default in the present case.
- 15. We are satisfied that the present application is complete in all respects and the applicant Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the Financial Debt.
- 16. In light of the above and in terms of the fact that existence of debt and its default by the Corporate Debtor has been established by the virtue of the material placed on record, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

- 17. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Anuradha Gupta for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP- P-01495/2018-2019/12296. The proposed IP has a valid AFA. Therefore, this Adjudicating Authority, appoints, Anuradha Gupta having registration number IBBI/IPA-001/IP- P-01495/2018-2019/12296 (Email anuradhagupta70@gmail.com), to act as Interim Resolution professional in the matter. She shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.
- 18. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Anuradha Gupta to meet out the expenses to perform the functions assigned to her in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor.
- 19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to

admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

- 20. We also declare moratorium in terms of Section 14 of the Code.

  The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

  Thus, the following prohibitions are imposed:
  - "(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

- 21. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- 22. The Interim Resolution Professional shall perform all her functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing

an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all her functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 23. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.
- 24. Let copy of the order be served to the parties.

-SD/-

(Rahul Bhatnagar) Member (Technical) (Mahendra Khandelwal) Member (Judicial)