

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1523 of 2023

(Arising out of the Impugned Order dated 27th October, 2023
passed by the 'Adjudicating Authority' (National Company Law
Tribunal, Mumbai Bench-I in CP (IB) No. 9/MB/2023]

IN THE MATTER OF:

Rajesh Ravji Patel
Suspended Director of
Vilsons Roofing Product Pvt. Ltd.
Address: Omkar, 1140, E Ward, Lohia Lane,
Sykes Extension, Kolhapur,
Maharashtra – 416 001

...Appellant

Versus

- 1. Pegasus Assets Reconstruction Pvt. Ltd.**
(Acting in its capacity as a trustee of
Pegasus Group Twenty-Eight Trust 4)
Address: 507, Dalamal House,
Jamnalal Bajaj Marg, Nariman Point,
Mumbai, Maharashtra – 400 021

Also at:
55-56, 5th Floor, Free Press House
Nariman Point, Mumbai,
Maharashtra – 400 021

...Respondent No.1

- 2. Vandana Garg**
Interim Resolution Professional
of Vilsons Roofing Product Pvt. Ltd.
Address: Unit No. 307, 3rd Floor,
Exgellencia Lodha Supremus 2,
Wagle Estate, Panchpakhadi, Thane,
Maharashtra-400 604

...Respondent No.2

Present:

For Appellant : Mr. Kunal Tandon, Mr. Kunal Kanungo, Ms. Richa Sandilya, Ms. Tanushree Sogani, Mr. Atishay Jain, Ms. Bhavna Vijay, Advocates

**For Respondent : Mr. Dinkar Singh, Mr. Rohit Singh, Advs. for R-1
Mr. Rajeev K. Panday, Mr. Rajeev M. Roy, Mr. Akhilesh Chadha, Advocates for R-2**

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal challenges the Order of the National Company Law Tribunal, Mumbai (NCLT) dated 27.10.2023 (hereinafter referred to as the "Impugned Order") in Company Petition No. 9 of 2023 (hereinafter referred to as "the said Company Petition") filed by Respondent No.1. The Impugned Order initiated the Corporate Insolvency Resolution Process (CIRP) of Vilson Roofing Product Pvt. Ltd. (hereinafter referred to as "the Corporate Debtor") and appointed Respondent No.2 as the Interim Resolution Professional (IRP). The Appellant is a suspended director of the Corporate Debtor.

Grounds of Appeal

2. The Respondent No.1 claims to be the Assignee of Shamrao Vithal Co-operative Bank Ltd. (hereinafter referred to as "the said Bank"). The Corporate Debtor allegedly defaulted on a secured term loan and cash credit facility advanced by the said Bank. Respondent No.1 asserts that it was assigned the debt owed by the Corporate Debtor to the said Bank.

3. Respondent No.1's case before the Hon'ble NCLT was that the Corporate Debtor was in receipt of and defaulted on a secured term loan and cash-credit facility advanced by the Shamrao Vithal Cooperative Bank Ltd. The Corporate Debtor's account was classified as an NPA on 31.08.2018 by the bank. The date of default mentioned in part-IV of the Company Petition is 30.04.2018. The loan, along with underlying securities/rights, was assigned to Respondent No.1 via an Assignment Agreement dated 27.02.2020. Part payments were made towards the loan in 2020. The loan

was restructured by Respondent No.1 on 27.03.2021 under a Sanctioned Restructuring Plan. The Corporate Debtor defaulted on the terms of the Sanctioned Restructuring Plan, leading to a notice issued on 21.07.2021 by Respondent No.1 to clear the outstanding dues. The Corporate Debtor sought additional time to clear the dues via a letter dated 26.07.2022. The Sanctioned Restructuring Plan was purportedly cancelled by Respondent No.1 on 26.08.2022, with amounts already received adjusted against the outstanding liability. Subsequent payments of Rs. 10 lakhs on 30.08.2022 and Rs. 43 lakhs on 15.09.2022 were made by the Corporate Debtor. Further proposals by the Corporate Debtor were not accepted by Respondent No.1. Respondent No.1 then filed Company Petition No. 9 of 2023 under Section 7 of the IBC before the Hon'ble NCLT.

4. Several contentions were raised by the Corporate Debtor before the Hon'ble NCLT, which were not properly appreciated. Specifically, the Hon'ble NCLT failed to consider:

4.1. Incorrect Date of Default: Respondent No.1 had sanctioned a new payment plan to the Corporate Debtor by way of restructuring. Any default could only occur when there was non-payment of the debt due under the restructuring plan. Therefore, the date of default could only be the date of non-payment under this plan, not before.

4.2. Determination of Default Date: It is settled law that the Adjudicating Authority cannot determine and proceed on a date of default different from the date stated by the Petitioner in the Company Petition.

4.3. Improper Basis for Default: Respondent No.1 proceeded on the basis of a default arising from the classification of the account as a Non-Performing Asset (NPA) (on 30.08.2018) by the original lender, which occurred prior to the restructuring. This basis is incorrect, rendering the Company Petition not maintainable. Acting on a default date predating the Sanctioned Restructuring Plan was erroneous. The Hon'ble NCLT failed to consider that the restructuring of the loan altered the basis for determining default. The purported date of default prior to the loan restructuring cannot be the basis for initiating CIRP against the Corporate Debtor.

4.4. Acknowledgment of Debt: The finding that part payments by the Corporate Debtor constituted an acknowledgment of debt leading to an extension of the limitation period was incorrect.

4.5. Barred by Limitation: The claim of Respondent No.1 is barred by limitation. The purported date of default is 30th April 2018, but the Petition was filed on 15th December 2022, more than three years after the alleged date of default. The finding that the Petition was within the limitation period was erroneous.

4.6. Compliance with Circular: Respondent No.1, as an Asset Reconstruction Company, failed to comply with the Master Circular on Asset Reconstruction Companies dated 10.02.2022.

4.7. Clause 7 Interpretation: The reliance on Clause 7 of the Sanctioned Restructuring Plan for determining the date of default under Section 7 of the IBC was misplaced.

4.8. Lack of Evidence: Respondent No.1 did not place any document on record to substantiate the default date of 30.04.2018.

4.9. Service of Petition: Under Rule 4(3) of the Application to Adjudicating Authority Rules, 2016, every Petition must be served upon the Insolvency and Bankruptcy Board of India before filing with the NCLT.

4.10. Malicious Intent: The Petition was filed with malicious intent, given that the Corporate Debtor is a solvent company with over 137 employees.

4.11. Hon'ble Supreme Court Precedents: The Hon'ble NCLT failed to correctly appreciate the law laid down by the ***Hon'ble Supreme Court in Vidharbha Industries Power Ltd. vs. Axis Bank Limited (Civil Appeal No. 4633 of 2021)*** and ***M. Suresh Kumar Reddy vs. Canara Bank & Ors. (Civil Appeal No. 7121 of 2022)***.

5. In light of the above grounds, the Appellant, being a suspended director of the Corporate Debtor, prays that the Impugned Order dated 27.10.2023 admitting Company Petition No. 9 of 2023 and initiating CIRP against Vilson Roofing Product Pvt. Ltd. be set aside.

Case of Financial Creditor / Respondent No 1

6. Respondent No. 1 (hereinafter referred to as the "Financial Creditor") is an Asset Reconstruction Company (ARC) registered with the Reserve Bank of India (RBI) under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

7. The Learned Adjudicating Authority, in Paragraphs 3 to 23 of its judgment dated 27th October 2023, has recorded the facts of the case. These

facts have not been disputed by the Appellant. Therefore, for the sake of brevity, the facts are not repeated herein.

8. Non-Dispute on Key Facts by Appellant:

8.1. The Appellant has not disputed the classification of the Corporate Debtor's account as a Non-Performing Asset (NPA) on 31st August 2018 by the Assignor Bank, which occurred due to the default committed by the Corporate Debtor in payment of outstanding amounts.

8.2. The Appellant has also not disputed that the account of the Corporate Debtor, after assignment, was restructured by the Financial Creditor upon the request of the Corporate Debtor via a sanction letter dated 27th March 2021, and modified by a letter dated 30th March 2021 (Sanctioned Restructuring Plan). The salient features of the Sanctioned Restructuring Plan were:

- Admission of liability by the Corporate Debtor as on 31.12.2019, amounting to Rs 30,33,02,248.17 plus further fees, charges, and interest as per the terms of the loan documents executed with the Assignor Bank.
- The cutoff date for restructuring was 17.03.2021.
- In the event of default, the sanction was to be revoked, and the original liability as on the cutoff date plus accrued interest was to be reinstated.

Notices and Subsequent Correspondence

9. The Appellant has not disputed the Financial Creditor's letter dated 10.05.2022, advising the Corporate Debtor to clear the overdue amount

immediately and comply with the restructuring terms, failing which the Financial Creditor would take appropriate action as per the Sanctioned Restructuring Plan.

10. Continuous default by the Corporate Debtor led the Financial Creditor to issue a seven-day notice on 21.07.2022 to clear the overdue amount, failing which the restructuring plan would be cancelled.

11. On 26.07.2022, the Corporate Debtor requested additional time to clear outstanding dues and to avoid cancellation of the restructuring plan.

12. The Financial Creditor cancelled the Sanctioned Restructuring Plan on 26.08.2022. Consequently, the original liability as on the cutoff date plus accrued interest was reinstated, with adjustments for amounts already received against the total outstanding liability.

13. Post-cancellation, the Corporate Debtor made payments of Rs 10,00,000 on 30.08.2022 and Rs. 43,00,000 on 15.09.2022.

14. The Financial Creditor, by letter dated 16.09.2022, informed the Corporate Debtor that the Sanctioned Restructuring Plan had been cancelled, and payments made post-cancellation would be adjusted against dues without reviving the restructuring plan.

15. Despite further proposals by the Corporate Debtor to clear dues, these were rejected by the Financial Creditor by letter dated 31.10.2022.

Application Under Section 7 of IBC

16. In light of the above, the Financial Creditor filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for defaulting on the facility availed.

Defense Raised by Corporate Debtor

17. The Corporate Debtor raised two primary defenses before the Adjudicating Authority:

- a) The Petition was barred by limitation.
- b) The default basis, NPA classification, did not subsist post-restructuring of the loan.

Findings of the Adjudicating Authority:

18. The Adjudicating Authority found the existence of debt and default corroborated by records and undisputed that the amount was disbursed to the Corporate Debtor, who defaulted in repayment.

19. The Petition was deemed within the limitation period. Although the default date was 30.04.2018, the NPA date was 31.08.2018. The limitation period extended due to the restructuring of the debt acknowledged on 27th March 2021 and modified on 31st March 2021.

20. Clause 7 of the Sanctioned Restructuring Plan legally entitled the Financial Creditor to revoke the sanction upon default and reinstate the original liability as on the cutoff date.

Objection on Limitation

21. The Corporate Debtor argued that limitation should be counted from the default date (30.04.2018). However, even if the limitation period

commenced on 30.04.2018, acknowledgment of debt by the Corporate Debtor on 27th March 2021 extended the limitation period, making the filing of the Petition on 15.12.2022 timely.

22. The Respondent submits that the Supreme Court's order dated 10th January 2010, in Suo Moto Writ Petition (C) No. 3 of 2020, excluded the period from 15.03.2020 to 28.02.2022 for limitation purposes.

Legal Right Under Sanctioned Restructuring

23. The Respondent exercised its legal right under Clause 7 of the Sanctioned Restructuring to revoke the restructuring upon default, reinstating the original liability plus interest.

24. The Corporate Debtor's failure to meet the restructuring terms led to the revocation, and subsequent letters from the Corporate Debtor requesting additional time were not grounds for continuation of the restructuring plan.

25. In view of the admitted facts, the documentary evidence, and the justified findings of the Adjudicating Authority, the Financial Creditor submits that the present appeal is devoid of merit and should be dismissed in the interest of justice.

Appraisal:

26. Heard the Learned Counsel for the Appellant and the Respondent, perused the documents, pleadings and reliance placed in support of their case.

27. Upon reviewing the submissions and documentary evidence, the Tribunal finds that Appellant has not disputed on Key Facts including the classification of the Corporate Debtor's account as NPA on 31.08.2018, the

restructuring of the debt by Respondent No.1 on 27.03.2021, modified by a letter dated 30.03.2021, which included the admission of liability by the Corporate Debtor amounting to Rs. 30,33,02,248.17 plus further fees, charges, and interest.

Date of Default and Limitation Period

28. The Petition was filed under Section 7 of the IBC, which requires establishing the existence of a default. The date of default is mentioned as 30.04.2018 in the Petition, whereas the NPA classification occurred on 31.08.2018. The primary contention of the Appellant is the incorrect date of default. The Corporate Debtor, raised an objection that the limitation was to be counted from date of default 30th April, 2018, as declared in the Application and not from the date of declaration of NPA as on 31st August, 2018. It is admitted that the Financial Creditor, in the Application, mentioned date of default as 30th April, 2018. However, the application was not barred by the Limitation, even if the date of default is taken as 30th April, 2018. The three years Limitation period was to be reckoned from 30.04.2018, which would have been culminated on 29.04.2021, but the date of filing of the Petition, was 15.12.2022. Looking in the facts of the case we find that the period of limitation was extended, pursuant to the restructuring of debt, vide letter dated 27th March, 2021, and further modified vide letter dated 31st March, 2021. By this, the corporate debtor acknowledged its liability as on 31.12.2021, to the extent of Rs. 30,33,02,248.17. Thus, there was due acknowledgment of debt/liability, by the corporate debtor, prior to expiry of limitation period on 29.04.2021, even if the date of default is taken as 30.04.2018. Therefore, we find that the Adjudicating Authority has correctly

concluded that the limitation period was extended due to the restructuring of the debt acknowledged on 27.03.2021, thus making the filing of the Petition on 15.12.2022 within the limitation period. The part payments made by the Corporate Debtor post-cancellation of the restructuring plan do not alter this acknowledgment.

29. Additionally, the Hon'ble Supreme Court's order in *Suo Moto Writ Petition (C) No. 3 of 2020*, which excluded the period from 15.03.2020 to 28.02.2022 for limitation purposes, further supports the timely filing of the Petition. The Honourable Apex Court had issued direction that period from 15.03.2020 till 28.02.2022, shall stand excluded for the purposes of limitation as may be prescribed under any special or general statute.

Legal Right Under Sanctioned Restructuring

30. Furthermore, Respondent No.1 exercised its legal right under Clause 7 of the Sanctioned Restructuring to revoke the restructuring upon default, reinstating the original liability plus interest. The Corporate Debtor's failure to meet the restructuring terms led to the revocation, and subsequent letters from the Corporate Debtor requesting additional time were not grounds for continuation of the restructuring plan.

Compliance with Circular and Other Grounds

31. The Appellant's contention regarding non-compliance with the Master Circular on Asset Reconstruction Companies dated 10.02.2022 is not substantiated with concrete evidence. Furthermore, the arguments about malicious intent and lack of evidence are unsubstantiated, given the documentary evidence presented by Respondent No.1.

Interpretation of Clause 7

32. Clause 7 of the Sanctioned Restructuring Plan explicitly provides that in the event of default, the Financial Creditor has the legal right to revoke the sanctioned restructuring and restore the original liability as on the cutoff date. The Corporate Debtor's non-compliance with the restructuring terms justified the revocation.

33. Further the Appellant has relied on the judgement of the ***Hon'ble Apex Court in Vidharbha Industries Power Limited vs Axis Bank Limited Civil Appeal NO. 4633 OF 2021*** wherein it was held that discretionary power vests with this Tribunal under Section 7 (5)(a). It was held that while discretion is conferred on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously. However, in a later judgement the ***Hon'ble Supreme Court in M. Suresh Kumar Reddy vs Canara Bank & Ors. Civil Appeal No. 7121 of 2022*** clarified the position of law after considering the decision in case of ***Vidarbha Industries (Supra)*** and held as under:

“13. Thus, it was clarified by the order in review that the decision in the case of Vidharbha Industries was in the setting of facts the case before this court. Hence, the decision in the case of Vidharbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good.”

34. The Hon'ble Supreme Court further held that the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the case of Innoventive Industries and E.S. Krishnamurthy. It finally held that the non-payment of a part of the debt when it becomes due and payable will amount to default on the part of the

corporate debtor and an order under Section 7 Insolvency Bankruptcy Code ("IBC") must follow. So both these judgements do not support the case of the Appellant.

Conclusion

35. In view of the admitted facts, documentary evidence, and the justified findings of the Adjudicating Authority, the Appeal lacks merit. The Impugned Order dated 27.10.2023, admitting Company Petition No. 9 of 2023 and initiating CIRP against Vilson Roofing Product Pvt. Ltd., is upheld.

Order

36. The Appeal is dismissed with no order as to costs. The Corporate Insolvency Resolution Process (CIRP) against Vilson Roofing Product Pvt. Ltd. shall continue as per the Impugned Order dated 27.10.2023. The Interim Resolution Professional (IRP) appointed by the NCLT is directed to proceed with the CIRP in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, and ensure compliance with all statutory requirements.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi
9th July, 2024
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