

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 6-7 of 2024

[Arising out of order dated 20.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Division Bench, Court No. II, Kolkata in Company Petition (IB) No. 236/KB/2022]

IN THE MATTER OF:

Subham Bhagat

R/o Ballughat, Marawari Patty,

Balurghat, Dakshin Dinajpur,

West Bengal 73310

...Appellant

Versus

1. M/S Ankit Metal & Power Limited

Having its registered office at:

SKP House, 132-A,

Shyam Prasad Mukherjee Road,

Kolkata 700026.

2. UCO Bank

Office at:

Flagship Corporate Branch,

2, India Exchange Place,

Kolkata-700001

...Respondents

Present:

Appellant: **Mr. Kumar Anurag Singh, Mr. Zain A Khan, Advocates.**

For Respondents:

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

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 20.12.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court No. II, Kolkata) in Company Petition (IB) No. 236/KB/2022. By the Impugned Order, the Adjudicating Authority admitted the Section 7 petition filed by the UCO Bank - Respondent No. 2 admitting M/s Ankit Metals and Power Ltd – Corporate Debtor into the rigours of Corporate Insolvency Resolution Process (**'CIRP'** in short). Aggrieved by this impugned order, the present appeal has been preferred by the suspended director.

2. The Learned Counsel for the Appellant putting forth his submissions stated that the Corporate Debtor had availed credit facilities of Rs. 65 crore from the Financial Creditor- Respondent No. 2 in 2010. Admittedly, the Corporate Debtor committed a default on 31.05.2014 having failed to service the interest following which their account was classified as Non-Performing Asset (NPA) on 28.08.2014. Subsequent thereto, a Master Restructuring Agreement (**'MRA'** in short) was executed between the Corporate Debtor and a consortium of lenders including the Respondent No. 2-UCO Bank on 25.09.2014. Due to financial difficulties, the last payment was made to the

Financial Creditor on 05.10.2015. However, the Financial Creditor-Respondent No. 2 initiated proceeding under the SARFAESI Act on 07.04.2018 and later filed an application under Section 7 of the IBC on 08.08.2022 for outstanding dues amounting to a sum of Rs. 178 crores.

3. While admitting that the first date of default was 31.05.2014 following which MRA was entered into on 25.09.2014, it was also submitted that the Section 7 application filed by the Respondent No. 2 showed the date of default as 31.05.2014 as may be seen at page 606 of the Appeal Paper Book (**'APB'** in short). It was emphatically asserted that since the date of default was 31.05.2014 as per declaration made by the Financial Creditor in Part IV, the default had become barred by limitation since it was more than three years if counted from the date of default. It was vehemently denied that any written or signed acknowledgement of the outstanding debt was given by the Corporate Debtor to the Financial Creditor any time after 2015 and hence the debt had become time-barred. However, by way of filing a supplementary affidavit before the Adjudicating Authority, the Financial Creditor placed on record certain unsigned balance sheets of the Corporate Debtor to overcome the impediment of time barred debt. It was strenuously contended that these unsigned financials were also wrongly relied upon by the Adjudicating Authority to hold that outstanding debt stood acknowledged therein and hence the debt was not time-barred.

4. Making rival contentions, the Learned Counsel for the Respondent No.2 submitted that it is an undisputed fact that it had sanctioned credit facilities to the Corporate Debtor for which the Corporate Debtor executed security

documents in their favour. Thereafter, as the Corporate Debtor was unable to clear the outstanding interest, at their request, an MRA was executed between them and lenders under a consortium arrangement. However, as the Corporate Debtor failed to adhere to the terms and conditions of the said restructuring, they were declared an NPA. Thus, it was submitted that debt and default has not been disputed by the Corporate Debtor themselves. Subsequently the Corporate Debtor executed a letter of revival letter dated 11.08.2017 and made payments from time to time and the last payment for an amount of Rs 2,49,157/- only was made on 23.08.2018. Further the Corporate Debtor had acknowledged their debt payable to the Financial Creditor in their balance sheet as on 31.03.2022 and this was fact was confirmed by the Chartered Accountant ('CA' in short) before the Adjudicating Authority. Hence, the reliance placed by the Financial Creditor on these entries for filing an application under Section 7 of the IBC to initiate the CIRP process against the Corporate Debtor was justified and hence correctly admitted by the Adjudicating Authority.

5. Contesting the averments made by the Appellant that the debt was time-barred, it was submitted by the Learned Counsel for the Respondent No.2 that the question as to whether the Section 7 application is time-barred or not is to be decided based on the facts and circumstances of the case. In the present case, the Corporate Debtor having acknowledged their debt payable to the Financial Creditor in their balance sheet as on 31.03.2022, the Section 7 application was rightly admitted by the Adjudicating Authority. The Financial Statements of the Financial Creditor clearly disclosed the debt

payable to Respondent No.2/UCO Bank both under the heads of long-term borrowings as well as short-term borrowings in the Notes to Accounts of the financial statements for the year ending 31-03-2022. It was further pointed out that the Adjudicating Authority had correctly applied the well settled proposition of law that the benefit of Section 18 of the Limitation Act is available to proceedings filed under Section 7 of the IBC. Since Section 18 of the Limitation Act, provides that a fresh period of limitation is to be computed from the time when the acknowledgment of liability is signed, the signed financial statements of the Corporate Debtor for the year 2021-22 brings the outstanding dues within limitation.

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

7. It is the contention of the Appellant that the financial documents of the Corporate Debtor which were placed on record by the Respondent No.2 were unsigned and therefore could not have been relied upon by the Adjudicating Authority to give fresh lease of life to time barred debts. Submission was also pressed that the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Ors. (2021) 6 SCC 366*** has held that for any entry made in the balance sheet to be considered as an admission of liability, the same should have been filed by appropriate authorities of the Corporate Debtor and should bear the signature of authorised signatories so that their intent for admission of entries thereof is established.

8. Advancing their arguments further, it was submitted that since the signature of authorised signatories on the financials was amiss in the present

case, this was brought to the notice of the Adjudicating Authority and urged that the unsigned financials should be ignored. However, the Adjudicating Authority instead of ignoring the unsigned financials proceeded to summon the CA from whom the Adjudicating Authority unilaterally confirmed from him that the financial statements have been signed and that the Corporate Debtor had filed its annual returns in the MCA for year ending 31.03.2022. It was contended that the Appellant has reasons to feel aggrieved with the Adjudicating Authority for resorting to such a fishing and roving inquiry while denying opportunity to the Corporate Debtor to put forth its views on the financial statements filed by the said CA. It was also submitted that the Adjudicating Authority also lost sight of the fact that the said CA had no locus to admit and/or acknowledge the debt on behalf of the Corporate Debtor.

9. At this stage it may be useful to examine how the Adjudicating Authority had chosen to proceed in the matter. We notice that the Adjudicating Authority took notice of the fact that the Financial Creditor had relied on unsigned copies of the financial statements and decided to direct the CA who is supposed to have signed the financials to be personally present before them and issued an order on 22.11.2023 which is as reproduced below:

“Corporate Debtor is directed to issue notice to the Statutory Auditor Mr. Gouranga Paul, of J.B.S. & Company, Chartered Accountants to present personally before this Bench for answering certain queries in connection with the matter on Friday i.e., on 24.11.2023.”

10. It is the contention of the Appellant that the CA was heard on 11.12.2023 and an order was passed by the Adjudicating Authority permitting

the CA to send original signed copy of the books and accounts by 12.12.2023. By the same order, the Section 7 application was also reserved for orders thus not giving any chance to the Appellant to put forth their views on the financial statements filed by the said CA.

11. This brings us to the impugned order which was pronounced on 20.12.2023, which in all fairness, records the entire sequence of events, which we would like to reproduce for better appreciation of the case at hand. The relevant excerpts are as follows:

“32..... However we find that the Corporate Debtor has acknowledged the debt payable to the Financial Creditor in its balance sheet as on 31.03.2022.

34. Since, the statements relied on by the Ld. Counsel for the applicant are unsigned, we vide an Order dated November 22, 2023, directed Mr. Gouranga Paul, of J.B.S. & Company, Chartered Accountants who is supposed to have signed the financials of the Corporate Debtor as on 31.03.2022 to be present personally before this Bench to offer clarification.

35. Mr. Gouranga Paul, Chartered Accountant appeared before us on 11/12/2023 and confirmed that the Financial Statements have been signed and the Company has filed its annual returns in the MCA for the said financial year. Further the Chartered Accountant undertook to file signed copies of Financial Statements for the years 2020-21 and 2021-2022 and accordingly the same was filed on 12.12.2022 with the Registry of this Adjudicating Authority.

36. We have perused the signed financial statements of the company filed by the Chartered Accountant for the years 2020 – 21 and 2021 – 2022. While in the Balance Sheets, the borrowing from Secured and Unsecured creditors have been mentioned and all the amounts due to several Financial Creditors have been clubbed together, the notes to Accounts which are the Part of financial statements for the year March 31, 2022, disclosed the debt owed to the Financial Creditor

(UCO Bank) amount of Rs. 4082.22 Lakh and period and amount of continuing default as Rs. 4719.30 Lakh.”

12. It is therefore unambiguously clear on perusal of the impugned order that after summoning the CA on 11.12.2023 and directing him to send original signed copy of the books and accounts by 12.12.2023, on the very same day i.e. 11.12.2023 the order impugned admitting Corporate Debtor into CIRP was reserved by the Adjudicating Authority. While we appreciate the bonafide and genuine efforts made the Adjudicating Authority to satisfy itself of the validity and veracity of the admittedly unsigned financial statements by summoning the CA to place on record the signed financials, we cannot be unmindful of the fact that no notice was given to the Appellant to submit their pleadings and arguments on the financial statements and notes to accounts as furnished by the CA. There is force in the contention of the Appellant that it was neither aware regarding what was filed before the Adjudicating Authority by the CA nor was provided an opportunity to rebut and/or place reliance on the said balance sheets. The Appellant clearly did not get the chance to explain the notes of the said balance sheets which allegedly expressed caveats regarding the debt.

13. It is well settled that adherence to principles of natural justice is the essence of fair adjudication and cannot be given a go-by by the Adjudicating Authority or this Tribunal in the discharge of their adjudicatory and appellate responsibilities. Opportunity to hear is a critical limb of this principle of natural justice. The Tribunal must appraise the party of the case he has to meet so as to enable him to make his representation. This opportunity must

be real and effective. The right to make representation requires that the person/entity proceeded against must have opportunity to peruse all material relied upon against him. Thus, it is imperative that all contesting parties should be put on notice in respect of such documents before any order is passed basis these documents. So also in the present matter, to meet the ends of justice, it was the duty of the Adjudicating Authority to have ensured that the balance sheets produced by the CA was shared with the Appellant party since these documents were to constitute the basis on which the impugned order was premised.

14. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. This inter-alia entails providing for a fair hearing as evinced in the *audi alteram partem* rule and its corollary, namely, *qui aliquid statuerit parte inaudita altera aequum licet dixerit haud acuum facerit* that is, he who decides anything without the other side having been heard, though he may decide rightly, by no means has acted justly. In other words, as is commonly expressed, justice should not only be done but should manifestly be seen to be done. In the absence of notice and such reasonable opportunity having been given to the Appellant, the impugned order passed has become vitiated. To meet the ends of justice we are of the considered opinion that the Appellant deserves to be given appropriate and adequate opportunity to represent itself in respect of the financial statements which were placed by the CA before the Adjudicating Authority.

15. In such circumstances, the present appeal is hereby allowed. The impugned order is set aside. The orders passed by the Adjudicating Authority

initiating CIRP against the Corporate Debtor and appointing Interim Resolution Professional and all other orders pursuant to the impugned order are set aside. The Interim Resolution Professional shall be paid the actual expenses incurred and fees by the Financial Creditor on production of invoices. CP (IB) No. 1420/MB-IV/2020 is restored and the matter is remanded back to the Adjudicating Authority to decide again in accordance with law after hearing all the parties with respect to financial statements which have been submitted by the CA. The parties are directed to appear before the Tribunal within ten days from the date of the order. We however add that we are not expressing our views on the merits of the matter and it will remain open to the parties to raise all contentions. We expect the Adjudicating Authority to make all endeavours to complete the hearing within a period of two months from the date of appearance of the parties before the Tribunal. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice Yogesh Khanna]
Member (Judicial)**

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

Place: New Delhi

Date: 12.03.2024

Ram N.