

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.507 of 2020

IN THE MATTER OF:

Vacc-Synbiotech

...Appellant

Versus

Bank of India & Anr.

...Respondents

For Appellant: Shri Hattarkar Siddharameshwar, Advocate

For Respondents: None

O R D E R

03.06.2020 Heard Counsel for Appellant. The Respondent - Bank of India filed CP (IB) No.2947/MB/2019 before the National Company Law Tribunal, Court No.1, Mumbai Bench (NCLT – Adjudicating Authority) against the Appellant – Corporate Debtor claiming that the bank had extended term loan to the Corporate Debtor on 30th March, 2015 for amount of Rs.20,50,00,000/- which was reviewed and reduced to Rs.18,95,00,000/ on - 08.01.2018. The necessary security documents were got executed and the goods were also hypothecated. Respondent bank claimed that there were outstanding dues and the account of the Corporate Debtor was classified as NPA. The Bank relied on acknowledgement of debt letter dated 5th March, 2018 before the Adjudicating Authority. The Bank claimed that there were dues outstanding against the Corporate Debtor and sought initiation of the Corporate Insolvency Resolution Process, as Financial Creditor.

2. The Impugned Order shows that the Company Petition was listed for hearing on 29th August, 2019 and Notice was issued. The Financial Creditor filed Affidavit of Service of Notice on Corporate Debtor on 24th September,

2019. Impugned Order shows that when the matter came up on 27th September, 2019, Counsel for Corporate Debtor appeared and took time to file Vakalatnama. The Order states that the Corporate Debtor later did not file Vakalatnama or the Reply and nobody appeared. After hearing the Bank, the Adjudicating Authority admitted the Application under Section 7 and CIRP was initiated.

3. The learned Counsel for the Appellant – Shri Hattarkar Siddharameshwar is submitting that there were various issues between the Bank and the Corporate Debtor. It is stated that although as per sanction, Rs.20,50,00,000/- were to be disbursed but actually only 18,95,000,00/- were disbursed. It is stated that the Bank was collecting higher EMI instead of actual interest rate on the loan which had been disbursed. Due to overcharging of interest and not releasing amounts and collecting higher EMI, the Bank had on 30th December, 2017 reversed the over charged interest and credited Rs.71,46,859/-. Counsel claims that in spite of this, the tag of NPA which was shown as 28.09.2016 (30.09.2016) was not removed. Counsel refers to documents to claim that at different places different dates are mentioned of NPA. The Counsel states that there were such issues between the bank and the Corporate Debtor but the same could not be put up to Adjudicating Authority. The Bank also issued Notice under Section 13(2) of SARFAESI Act (Annexure A-19) and also moved DRT (Annexure A- 27). The Counsel states that the Bank is claiming more than Rs.24 Crores while according to the learned Counsel, the Corporate Debtor has outstanding dues only of Rupees Twenty Crores and Thirty Lakhs.

According to the learned Counsel, all these issues were required to be looked into.

4. The Counsel states that the Advocate for Appellant appeared before the Adjudicating Authority on 5th December, 2019 and sought time and the matter was adjourned to 4th February, 2020 and on the same day i.e. on 5th December, 2019, Advocate for Appellant had filed Vakalatnama. The Counsel states that on the adjourned date of 4th February, 2020, the Advocate remained under the impression that the matter is actually on 4th March, 2020 and under this misconception, the Advocate did not appear. The Counsel states that for this reason, the above issues could not be placed before Adjudicating Authority and for fault of Advocate, the party should not suffer and the Appeal should be admitted.

5. Having heard the learned Counsel for the Appellant and going through the record, what we find is that even if the Counsel for Appellant had attended the proceeding, the case which the Appellant is trying to put up is regarding what amount should have been released but was not released and non-release of amounts on time and the dispute regarding collecting higher EMI and subsequently, bank depositing the particular amount instead of what the Appellant claims should have been deposited. Issue of date of NPA is also raised. We find that in proceeding under IBC, the Adjudicating Authority is not required to go into such issues when the question is of admission of Application under section 7 of IBC. For the purpose of Section 7 of IBC, Adjudicating Authority has rightly considered that the Respondent bank is Financial Creditor and that it had extended term loan which is in

default. The amount in default admittedly being more than Rs.1 lakh when Application was filed, which is due and in default, we do not think that the Adjudicating Authority erred while admitting the Application. On being asked, Counsel for the Appellant states that he has not filed before us copy of the Application under section 7. Copy of the acknowledgement of debt letter dated 5th March, 2018 which is referred in the impugned order is also not filed. There is no reason why relevant documents are not filed. It is not the case that Acknowledgement as referred by Adjudicating Authority was not issued. Considering the impugned order as it is, and the record put up and submissions, there is no difficulty that the term loan was sanctioned somewhere around 30th March, 2015 and the acknowledgement of debt being of 5th march, 2018, the Application filed under Section 7 on 29th August, 2019 cannot be faulted with. Date of NPA and other issues raised would not be necessary to decide. No question of limitation is raised before us. Remanding matter will not be helpful. For such reasons, we do not find any reason to entertain this Appeal.

The Appeal is dismissed at the stage of admission. No costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Alok Srivastava]
Member (Technical)

/rs/md