NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 153 of 2019

IN THE MATTER OF:

Shalini Publicity Creative Pvt. Ltd. ...Appellant

Vs

Dena Bank ....Respondent

Present:
For Appellant: Shri Rajeev Raizada, Advocate
For Respondent:

O R D E R

18.02.2019: Appellant – 'M/s Shalini Publicity Creative Pvt. Ltd.' (hereinafter referred to as 'Corporate Debtor') is aggrieved of the impugned order dated 7th January, 2019 formulated by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by virtue whereof application of Respondent – 'Dena Bank' (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') has been admitted, moratorium slapped and Interim Resolution Professional appointed with certain directions.

2. At the very outset it was pointed out to learned counsel for the Appellant that in view of the dictum of the Hon'ble Apex Court laid down in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors." – (2018)1 SCC 407,* appeal at the instance of Corporate Debtor would not be maintainable. Contention of learned counsel for the Appellant that the appeal has been preferred through its Director (presently suspended) is not tenable inasmuchas neither the Director of the

(suspended) Board of Directors has filed the appeal in his independent capacity nor has the Corporate Debtor – 'M/s Shalini Publicity Creative Pvt. Ltd.' been arraigned as party respondent to the appeal. The appeal on that score would not be maintainable unless the Director – 'Manobhav Tilak Tripathi' seeks substitution as Appellant in its independent capacity and transposition of the Corporate Debtor as party respondent to the appeal. However, before permitting such exercise to be undertaken, it would be appropriate to ascertain whether in the event of such substitution and transposition being allowed the appeal would lie. That necessitates an inevitable reference to the merits of the case.

3. The case setup before the Adjudicating Authority is that the Financial Creditor alleged default on the part of the Corporate Debtor in repayment of facilities granted to the Corporate Debtor to the extent of Rs.28,15,26,092/-. The Financial Creditor relied upon the 'sanction letter' dated 26th December, 2015 in terms whereof facilities comprising of cash credit, term loan and bank guarantee accumulated at Rs.14,69,00,000/- were granted to the Corporate Debtor, repayment whereof was secured by various security documents. Financial Creditor also relied upon the 'statement of accounts' substantiating its claim with regard to the amount in respect whereof default was alleged.

4. In its reply the Corporate Debtor pleaded that endeavors for settlement were made by the Corporate Debtor which required some more time. It was

further pleaded that the application under Section 7 of the I&B Code at the instance of Financial Creditor was not maintainable since OA No. 1194 of 2016 was pending for adjudication before the Debt Recovery Tribunal, Mumbai. The Corporate Debtor also appears to have expressed its willingness to seek a restructuring of the loan account in terms of the guidelines of the RBI. However, it did not dispute the liability in regard to the financial debt claimed by the Financial Creditor nor contested the allegation of default on its part.

5. The Adjudicating Authority taking note of the fact that the One Time Settlement (OTS) proposal made by the Corporate Debtor had been rejected by the Financial Creditor and that the 'debt' and 'default' was established, proceeded to admit the application thereby initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

6. Learned counsel for the Appellant tried to make a vain attempt to assail the impugned order raising the issue of limitation. In the first place be it seen that no such plea was raised before the Adjudicating Authority. That apart, under Article 137 of the Limitation Act, the right to sue accrues when a default occurs. The period of three years, as envisaged under aforesaid Article, would therefore have to be reckoned from the date of default unless there is a continuing cause of action. It emanates from record that the Financial Creditor

relied upon various security documents connected with the sanction of loan facilities which included certificate of registration of mortgage dated 8th October, 2018 and the letter of acknowledgement of debt dated 26th February, 2015. In addition thereto reliance was also placed on notice under Section 13(2) of SARFAESI Act, 2002 dated 18th February, 2016 demanding a sum of Rs.16,31,06,448/- as on 17th February, 2016. Once the debt was acknowledged on 26th February, 2015 and the suit for recovery was filed before the Debts Recovery Tribunal-3, Mumbai on 19th October, 2016, the claim cannot be held to be barred by limitation. Even otherwise, the objection in regard to the claim being barred by limitation has to be determined during the Corporate Insolvency Resolution Process only. Triggering of Corporate Insolvency Resolution Process on grounds of default of a debt that's payable in law or in fact is different from admission or rejection of a claim of a creditor during such process.

7. Section 7 of I&B Code providing for initiation of Corporate Insolvency Resolution Process by Financial Creditor came into force on 1st December, 2016. Remedy by way of triggering of insolvency resolution process on the ground of default committed qua the financial debt was admittedly not available to a Financial Creditor prior to such date. It is not disputed by learned counsel for the Appellant that the application under Section 7 of I&B Code came to be filed by the Financial Creditor on 12th October, 2018. The triggering of Corporate

Insolvency Resolution Process, therefore,` cannot be said to be beyond limitation, more so as there has been acknowledgement of debt on 26th February, 2015 and remedy for initiation of Corporate Insolvency Resolution Process in terms of Section 7 of I&B Code was not available prior to 1st December, 2016. That apart, there has been continuing cause of action as OA 1194 of 2016 filed by the Financial Creditor against the Corporate Debtor before the Debts Recovery Tribunal, Mumbai on 19th October, 2016 is still pending adjudication.

8. Learned counsel for the Appellant made feeble attempt to contend that the debt acknowledgement letter dated 26th February, 2015 was manipulated and fictitious and same could not be made a basis for either reckoning the period of limitation or for entertaining claim. In absence of such plea having been raised before the Adjudicating Authority besides no complaint alleging forgery, fabrication/ fudging of record being lodged, this argument must be rejected with the contempt that it deserves. On one hand the Appellant was seeking restructuring of loan in terms of RBI Guidelines seeking more time for One Time Settlement (OTS) but on the other hand alleges fabrication and manipulation. What prompted the Corporate Debtor to seek restructuring of loan through One Time Settlement is explainable on no hypothesis other than the one that the Corporate Debtor had committed default qua the outstanding amount which was payable.

9. For the foregoing reasons, I am of the considered opinion that the appeal is devoid of any merit. The appeal is accordingly dismissed. However, there shall be no orders as to cost.

[Justice Bansi Lal Bhat]
Member (Judicial)

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