

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 32 of 2019

[Arising out of order dated 10th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench Chennai, in CP/759/(IB)/2018]

IN THE MATTER OF:

T. Johnson,

Majority Shareholder & Managing Director,
St. John Freight Systems Limited,
106, J/66, Millerpuram,
Tuticorin – 628008.

....Appellant

Vs

1. Phoenix ARC Pvt. Ltd.,

Dani Corporate Park, 5th Floor,
158, CST Road, Kalina
Santa Cruz (E),
Mumbai – 400 098.

2. St. John Freight Systems Limited,

Through Mr. R. Venkatakrisnan,

Interim Resolution Professional of
St. John Freight Systems Limited
Partner of RVKS & Associates, Chartered Accountants,
“RANGAS” # 1/4, 4th Main Road,
R. A. Puram, Chennai – 600 028.

....Respondents

Present:

For Appellant: Mr. Atul Sharma, Mr. S. C. Dass, Mr. Pushkar Sood and Mr. Harshit Kher, Advocates.

For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Suresh Dutta Daboal and Ms. Sonakshi Dhiman, Advocates for Phoenix.
Mr. Aditya Verma, Mr. Shrey Patnaik, Advocates for RP.

J U D G M E N T

BANSI LAL BHAT, J.

This appeal, filed by 'T. Johnson', majority shareholder and erstwhile Managing Director of 'M/s St. John Freight System Limited' (hereinafter referred to as 'Corporate Debtor') seeks to assail the legality and correctness of order of admission of application of Respondent No. 1 – 'Phoenix ARC Pvt. Ltd.' (hereinafter referred to as the 'Financial Creditor') filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') vide order dated 10th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench Chennai by virtue whereof the application of Financial Creditor came to be admitted with consequential slapping of moratorium and appointment of Interim Resolution Professional as a sequel to the order of admission. The impugned order has been assailed on the grounds that claim in the application filed by the Financial Creditor was grossly exaggerated and barred by limitation.

2. The undisputed facts germane for disposal of instant appeal require to be noticed. The 'Corporate Debtor' secured loan from 'State Bank of Travencore' (hereinafter referred to as 'Bank') somewhere in 1999. Total amount of loan granted was Rs.59.35 Crores. The credit facility extended to the 'Corporate Debtor' came to be renewed or enhanced from time to time. It

is not in controversy that such credit facilities were duly secured by pledging of core immovable assets in the form of mortgage of immovable properties and hypothecation of stock, receivables and other assets. Account of the 'Corporate Debtor' came to be declared as a Non-Performing Asset (NPA) by the 'Bank'. It happened on 30th September, 2015. Admittedly, the 'Bank' assigned the account of 'Corporate Debtor' to 'Phoenix ARC Pvt. Ltd.' (Financial Creditor) on 31st March, 2016 in terms of Letter of Assignment. According to notice issued by the 'Financial Creditor' u/s 13(2) of SARFAESI Act, 2002, the total amount of default as on 30th November, 2016 was Rs.60,92,44,653/- which the 'Corporate Debtor' failed to pay and the same aggregated to Rs.73,08,54,170/- as on 15th March, 2018 when the application for initiation of Corporate Insolvency Resolution Process was filed.

3. The Adjudicating Authority, upon hearing the parties and consideration of the matter dismissed the plea of limitation and objection regarding inflation of claim set up by the 'Corporate Debtor' and passed the impugned order of admission. In arriving at its finding on the issues raised, the Adjudicating Authority was largely influenced by the documents including revival letter dated 20th February, 2016, balance confirmation dated 22nd February, 2016 executed by the 'Corporate Debtor' and factum of last payment having been made by the Corporate Debtor on 14th November, 2017.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the Appellant submits that the impugned order cannot be sustained as the claim in the application was time barred and there was no debt payable in law. He submits that the issue was raised before the Adjudicating Authority, who failed to properly consider the same. Per contra it is submitted on behalf of the Respondent - Financial Creditor that apart from execution of revival letter dated 20th February, 2016 and balance confirmation letter dated 22nd February, 2016 by the Corporate Debtor, the last payment having been made as recently as on 14th November, 2017, it is manifestly clear that the Financial Creditor's claim is well within the period of limitation.

6. We have given our anxious consideration to the arguments advanced at the Bar. Even a cursory look at the record placed before the Adjudicating Authority as also before this Appellate Tribunal brings it to fore that the factum of State Bank of Travancore from whom the loan was raised as far back as 1999 as a duly secured debt was renewed from time to time and finally in the year 2015, and upon declaration of the account of Corporate Debtor as NPA on 30th September, 2015 same being assigned to the Respondent - Financial Creditor, is an admitted position. Apart from the revival letter and the balance confirmation letter executed by the Corporate Debtor in February, 2016, there is an admission on the part of Corporate Debtor as emanating out of the 'Summary of differences' forming part of the written submissions of the Appellant before the Adjudicating Authority at page 121 of the paper book, which acknowledges balance as according to

Appellant at Rs.58,53,69,581/- on 15th March, 2018 though disputing the correctness of balance worked out by the Financial Creditor at Rs.73,08,04,386/- as on 15th March, 2018. It is also an admitted fact that Corporate Debtor made the last payment on 14th November, 2017. One more material fact requiring to be noticed is the case put forth by the Corporate Debtor that subsequent to assignment of debt by State Bank of Travancore in favour of the Respondent - Financial Creditor in terms of Assignment Deed dated 31st March, 2016, the Corporate Debtor paid off an amount of Rs.1.38 Crores to the Respondent - Financial Creditor. The assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the I&B Code as a valid mode of transfer of right across the ambit of Section 5(7) bringing it within the fold of 'Financial Creditor', does not affect the liability and obligations of the Corporate Debtor to discharge the debt. In the face of such huge documentary evidence and stand taken by the Corporate Debtor before the Adjudicating Authority and the Appellant before this Appellate Tribunal the inevitable conclusion is that the plea of limitation is unfounded. The claim has rightly been held to be within the period of limitation and on this score no fault can be found with the impugned order as regards initiation of Corporate Insolvency Resolution Process. The contention raised is accordingly repelled.

7. In so far as gross exaggeration of claim on the part of Respondent - Financial Creditor is concerned, same appears to be based on a pure

surmise. The Appellant has resorted to conjecture which is attributable to pure fancy/ imagination. There is no basis to arrive at a conclusion that subsequent to declaration of the loan account of Corporate Debtor as NPA, the loan was assigned by the Bank to the Respondent – Financial Creditor for a sum of Rs.39.90 Crores. Assuming though not holding that it was so, still it does not dilute the liability of Corporate Debtor who is under an obligation to discharge the outstanding debt in full. The consideration for assignment of debt is of no relevance in so far as the liability and obligation on the part of Corporate Debtor is concerned. The assignment only changes the hands of the creditor clothing the assignee with authority to enforce the claim. The liability in regard to claim as regards the Corporate Debtor remains intact and does not get diluted in any manner whatsoever. The Adjudicating Authority has the jurisdiction to initiate Corporate Insolvency Resolution Process by passing order of admission on an application of the Financial Creditor or its Assignee if the amount of debt exceeds Rupees One Lakh. Admittedly, the debt in respect of default allegedly exceeded the prescribed amount of Rupees One Lakh. Admission of a claim pursuant to collation and verification of claims by the Resolution Professional is a matter to be dealt with when the Corporate Insolvency Resolution Process is underway. Same is irrelevant at the stage of admission of application under Section 7 of the I&B Code. The challenge on this score is also without substance.

8. In view of the foregoing discussion, we find no merit in this appeal. The impugned order, in our considered opinion, does not suffer from any legal infirmity. In so far as grievance against the Resolution Professional is concerned, the Adjudicating Authority shall look into the same and take appropriate steps to ensure that the Resolution Process is handled in a fair and transparent manner. With these observations, the appeal being devoid of merit, is dismissed. There shall be no orders as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

7th May, 2019

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