



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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**GUNDEEP GURDEEP SINGH SOOD & ORS. VS. CORPORATION BANK & ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO. 1099 OF 2020
DATE OF NCLAT JUDGMENT: 29TH OCTOBER 2021**

Facts of the Case: -

This Appeal has been preferred by the Suspended Board of Directors of Kromme Glass Private Limited (Corporate Debtor 'CD') aggrieved and dissatisfied by the order passed by National Company Law Tribunal, Kolkata Bench (Adjudicating Authority 'AA'). The application filed before AA by the Respondent No. 1 (Corporation Bank) under Section 7 of the IBC, 2016 was admitted, commencing CIRP of the CD.

The facts of the case are that for the purpose of diversifying business, CD approached Respondent No. 1 to obtain credit facilities and the same was agreed. The CD received credit facility in Credit Facility, Term Loan, Working Capital and Bank Guarantees to the tune of Rs. 7,20,00,000/-, 2,22,00,000/-, 17,40,00,000/- and 1,50,00,000/- respectively. The credit facilities were made by the consortium of Respondent No. 1 and Union Bank of India. Further, to diversify its business, the CD requested for revision of the credit facilities and after negotiations, the Respondent No. 1 agreed to revise the credit facilities to the extent of Rs. 11,50,00,000/-.

Subsequently, as the CD was facing financial difficulties, which resulted in default in repayment of the credit facilities resulting in its account being declared as Non-Performing Asset. Thereafter, the Respondent No. 1 made over a consolidated notice under Section 13(2) and 13(3) of the SARFAESI Act, 2002 to the CD, as the CD failed to make payment of the dues of the Respondent No. 1, a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was initiated in the Debts Recovery Tribunal -II, Ahmadabad. The Respondent No. 1 did not proceed with appeal filed before the DRT any further and initiated a proceeding under Section 7 of the IBC, 2016. The AA vide its impugned order admitted the application filed under Section 7 of the IBC resulting in this Appeal.



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NCLAT's Observations: -

The Appellate Tribunal in view of the above facts and financial statements placed by Respondent No. 01 duly signed by the Appellants wherein the Appellants took plea in the Rejoinder that the signature of the Appellants in the financial statements and in the audit report of the CD, cannot be an acknowledgement to be made within the limitation period and the Respondent No. 1 would not be entitled for fresh period of limitation.

Further, Respondent No. 1 placed a letter signed by the Appellant Offer for One Time Settlement (OTS) in NPA A/c, of CD, in which the Appellants proposed to settle the account with both the Banks at a total offer value of Rs. 8.75 Crores which also amounted to acknowledgment of debt. Although, the Appellant in the Rejoinder tried to dispute these documents on the above-mentioned ground. Therefore, Respondent No. 1 will not be entitled to a fresh period of limitation.

Further, the Appellate Tribunal took note of the fact that no interim order was passed by it as per the status report of the Respondents. Further, the CIRP has been completed and resolution plan has been submitted before the AA for approval. It is admitted fact that in the letter the Appellants stated that they are ready to settle the amount with both the Banks at the total value of 8.75 Crores, this OTS amounts to acceptance of the debt and in view of the law laid down in the judgment passed by **Hon'ble Supreme Court** in '*Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. reported in 2021 (6) SCC 366* the application under Section 7 of the IBC is not barred by limitation.

Order: -

The Appellate Tribunal in view of the above was of the considered view that there was no illegality in the impugned order, and it affirmed the impugned order passed by the AA. It found no merit in the instant Appeal and dismissed the same.

Case Review: - Appeal Dismissed