



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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Central Bank of India vs. Superfine Profile and Extrusions Private Limited
CP (IB) 692/MB/2023
Date of NCLT Judgement: January 03, 2024

Facts of the Case:-

The present CIRP application is filed by the M/s Central Bank of India in the capacity of financial creditor (hereinafter referred as the 'Applicant') against M/s Super profile and Extrusions Pvt. Ltd. (hereinafter referred as the 'Respondent') before the Adjudicating Authority.

The Applicant filed a CIRP application against the Respondent under Section 7 of IBC on 29.07.2023 for claiming a sum for a Secured Loan of INR 66,21,05,008/- vide a Corporate Guarantee Agreement dated 22.08.2015 and 18.11.2016 for the aggregate debt of INR 73,61,00,000/- including the outstanding principal and interest. The Corporate Guarantee Deed was executed between the Applicant and the Respondent for securing the credit facilities granted to the principal borrower i.e. M/s Superfine Metals Pvt. Ltd.

The Applicant submitted that as per the guarantee deed, on the occurrence of default, the Respondent is liable to pay on demand. Accordingly, a demand notice was addressed to the Respondent to pay the outstanding debt claimed. The date of default was 06.03.2023

The Respondent submitted that the Petition, based on default and invoking guarantees dated 22.08.2015 and 18.11.2016, is barred by section 10A as the default date is 29.11.2020. Additionally, He further contends that Cash Credit, Ad Hoc and Funded Interest Term Loan facilities were sanctioned in December 2019 and September 2020 and were not covered in the mentioned guarantees. The Respondent highlighted missing documents and incomplete information, labeling the Petition as inadequate.

NCLT's Observations: -

The AA held that the present petition is not barred by Section 10A as it is a case of corporate guarantee which is payable on demand and the default occurs when a demand is made by the Financial Creditor.



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The AA, based on documents presented by the Applicant, held that the credit facilities were renewed from time to time hence the submission of the Respondent that guarantee deed dated 22.08.2015 and 18.11.2016 were not relevant for transaction of 2019, was not sustainable.

Citing the judgement of the Hon'ble Supreme Court on *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors*, the AA held that the unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. And as soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

Order/Judgement: The AA held that the application made by the Applicant is complete in all respects and it clearly shows that the Respondent is in default of a debt due and payable. Further, the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. Accordingly, the AA admitted the CIRP application against the Respondent and directed the IRP to initiate the process.

Case Review: The CIRP application is *admitted*.