



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IBC Case Law Capsule

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State Bank of India Vs. Navjeevan Tyres Private Limited
CP (IB) No.1282/MB/2022
Date of NCLT Judgement: June 25, 2024

Facts of the Case:

The Present Corporate Insolvency Resolution Process (CIRP) application was filed by the State Bank of India (SBI) in the capacity of financial creditor (hereinafter referred as 'Applicant') against M/s Navjeevan Tyres Pvt Ltd./CD (hereinafter referred as 'Respondent') for initiating insolvency process under Section 7 of the IBC, 2016.

The application was initiated due to defaults by Deogiri Infrastructure Private Limited, the principal borrower, for whom the Respondent acted as a corporate guarantor. Despite multiple credit facilities extended from 2007 to 2018, the principal borrower defaulted on repayments, leading the Applicant to declare the loan as an NPA in 2018. Subsequently, a notice under Section 13(2) of the SARFAESI Act was issued in 2019.

The Applicant sought to initiate CIRP against the Respondent due to outstanding dues totaling over ₹ 4100 lakhs, including both cash credit and bank guarantees as on 31.03.19. The Respondent despite not being the principal borrower was involved due to its status as a guarantor and had an obligated role in ensuring the repayment of the borrowed sums, which it failed to fulfill, leading to the initiation of this insolvency application.

NCLT Observations:

The AA examined submissions from both the parties and emphasized that merely calling upon the Principal Borrower and the Respondent/CD to make payment of the outstanding amount within 60 days from the date of publication of the notice will not convert this notice into one intended to invoke the relevant Guarantee Agreements or to make demand upon the guarantors in terms of the Guarantee Agreements.



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By placing its reliance on the judgment pronounced in *State Bank of India vs. Shaliwahan Farms Pvt. Ltd.*, the AA critically evaluated the invocation of the corporate guarantee and found that the guarantee was not formally invoked as the notices intended to invoke the guarantee were sent to an incorrect address and lacked explicit references to the Guarantee Agreements, thus failing to initiate the Guarantee Terms.

Additionally, in line with the Hon'ble Supreme Court's ruling in *Nirja Realtors Pvt. Ltd. vs Janglu (dead) through its Legal Representative 2018*, the AA highlighted that substitute service through paper publication is invalid unless preceded by unsuccessful attempts at direct service. In this instance, the Applicant failed to prove that proper direct service attempts were made, rendering the paper publication invalid.

The AA further stated by cited the judgement decided in *Syndicate Bank vs. Channaveerappa Beleri & Ors. 2006*, emphasizing that the liability of a guarantor depends on the terms of his contract and highlighting the importance of clear, unambiguous invocation of the guarantee as per these terms. Accordingly, The AA held that the Applicant has failed to discharge the onus of proving that it had made demand on the CD by invoking the guarantee and that the latter had committed default in discharge of its liability in terms of the Guarantee Agreements and rejected the application on this ground alone.

Order/Judgement: The AA concluded that the financial creditor failed to prove that a demand was made to the CD as required by the terms of the Guarantee Agreements and rejected the application, stating that the failure to establish a default meant the conditions for initiating CIRP were not met. However, the AA noted that this decision does not preclude the Applicant from pursuing other legal remedies.

Case Review: CIRP Petition is **Rejected**.