

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
(APPELLATE JURISDICTION)

Company Appeal (AT) (Insolvency) No. 1257 of 2023
& I.A. No. 4433 of 2023

[Arising out of the Impugned Order dated 14.07.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in C.P. (IB) No. 986/NCLT/MB/C-IV/2021]

In the matter of:

- 1. Mr. Kailash Motilal Kakrania,
S/o Mr. Motilal Kakrania,
Rio Kirti Lodge Galli, Ralles Plot,
Amravati-444601 (Maharashtra).**

- 2. Mrs. Manju Kailash Kakrania,
W/o Mr. Kailash Motilal Kakrania,
Rio Kirti Lodge Galli, Ralles Plot,
Amravati-444601 (Maharashtra)**

...Appellants

Versus

**M/s Apurva Oil and Industries Private Limited,
A company registered under the provisions
of Companies Act, 1956,
CIN: U1 7120MH1980PTC022719
Regd. Off.: Plot No A- 23, Amravati Industrial Area,
Nimbhora, Amravati -444 605.**

...Respondent

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Mayank Biyani, Advocates.

For Respondents : Mr. Vinod Kumar Chaurasia, Advocate.

J U D G M E N T
(Hybrid Mode)

[Per: Mr. Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed against the order dated 14.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in C.P. (IB) No. 986/NCLT/MB/C-IV/2021, whereby the Ld. Adjudicating Authority had dismissed the said petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as “Code”**).

2. The facts of the case briefly stated are that Mr. Kailash Motilal Kakrania and his wife Mrs. Manju Kailash Kakrania, collectively referred as Appellants hereinafter had filed a petition under Section 7 of the Code on 04.09.2021 against Apurva Oil and Industries Private Limited (**hereinafter referred as the “Corporate Debtor”**). Mr. Kailash Motilal Kakrania was a shareholder and erstwhile Director of the Corporate Debtor and his wife Mrs. Manju Kailash Kakrania was a shareholder of the Corporate Debtor.

3. The Corporate Debtor engaged in the business of dealing in Oil Seeds, Oil Products and Agro Products.

4. The Appellants in their petition under Section 7 of the Code have claimed a default of Rs. 1,22,42,927/- which includes Rs. 1,01,50,009/- towards principal amount and Rs. 20,92,918/- towards interest calculated at the rate of 9% per annum till 30.06.2021 as per the Balance Sheet of the Corporate Debtor.

5. The petition of Appellants was rejected by the Ld. NCLT vide impugned order dated 14.07.2023 primarily for the reason that the Appellants do not meet the threshold prescribed under Section 4 of the Code as no interest on the said loan appears to have been agreed by the Corporate Debtor in the relevant period and that there was a counter claim of the Corporate Debtor of Rs. 10,85,850/- which brought the debt to less than Rs. One Crore. The relevant portion of the order of Ld. NCLT is reproduced below for reference:

“6. We heard the Counsel and have carefully gone through the pleadings available on records.

6.1. This Bench’s attention was drawn to the Financial Statement of the corporate debtor for the year ended 31.03.2022 which contains the corresponding amounts for the year ended 31.03.2021 also. This Bench finds that the Corporate debtor owed a sum of Rs. 1,01,50,009/- to the Applicant and his wife as on 31.03.2021 and 31.03.2022 as per Note No. 3(B) of the Financial Statement. Further, the Financial statement

shows that the Applicant Mr. Kailash Kakrania owes a sum of Rs. 10,85,850/- as on 31.03.2022 to the Corporate Debtor. Accordingly, it was pleaded by the Corporate Debtor that even though the Corporate Debtor owed a sum of Rs. 1,01,50,009/- as on 31.03.2021, the said liability reduced to Rs. 90,64,159/- as on 31.03.2022, which is less than One Crore.

6.2. Hon'ble NCLAT in the matter of **Asset Reconstruction Company (India) Ltd. Vs. Uniworth Textiles Ltd. 2023) ibclaw.in 443 NCLAT**, held that "It is therefore evident that mere entry in the Balance Sheet cannot be taken as unqualified acknowledgment of the debt. However, it may also not be correct to take every note or caveat regarding entries made in the Balance Sheet as ground to denying acknowledgement of debt in order not to extend the limitation period from such acknowledgment period. It is therefore desirable that while looking such entries of debt amounting to acknowledgment, one has to consider the overall scenario which may be evident from Director's Report, Auditor's Report, notes to the accounts etc. It may also be relevant to consider the entire series of events starting from such loans/ debts to the filing of application under section 7 of the Code, to gauge the true intent of such entries and caveats, if any, which impact the intended acknowledgements or genuine denial of liability on part of the Corporate Debtor. While doing this examination, it may be worthwhile to look into the overall eco system of such transactions which may help in understanding the impact on limitation period based on such acknowledgements."

6.3. This Bench finds that the Financial Statement of the Corporate Debtor clearly shows that an amount is claimable from the Applicant, and its statutory Auditor has explained the reason for disclosing the amount receivable from and payable to the Applicant separately in the financial Statement. Accordingly, the admission of the amount as on 31.03.2021 is to be read in the light of developments taken place in the Financial year 2021-2022, in view of fact that the Demand notice was issued on 16.07.2021.

6.4. This Bench further notices that the Applicant Financial Creditor has claimed an interest @ 9% p.a. for the period from 01.04.2019 till 15.07.2021, and has submitted that the Corporate Debtor in its board meeting convened on 15.01.1999 and 26-08-1999 has agreed to pay interest on loan from directors and members at 9% p.a. However, the Corporate Debtor in its reply has denied any liability on that account. Though the Petitioner has filed the Board Resolution, but the said Resolution stipulated payment of interest only for the financial year 1998-1999 and 1999-2000. The Tax Audit Report evidences payment of interest in the year 2008-2009 only. This Bench could not find any authorisation or evidence suggesting that the Applicant Financial Creditor had right to claim any interest for the period from 01.04.2019 onwards. It appears more strange if this fact is looked in the light of no claim of interest for any period after 2008-2009 till 2018-2019. Accordingly, the claim of interest is not tenable.

6.5. In view of above discussion, this Bench finds that the Corporate Debtor cannot be said to owe more than Rs. 90,64,159/- as on 31.03.2022. Since this Application has been filed on 04.09.2021, when the threshold limit under Section 4 of the Code was Rs. 1 crore, this petition is not maintainable on this ground.

6.6. This Bench further finds that the Applicant holds 28.8% share capital of the Corporate Debtor and the Corporate Debtor has alleged him to be indulged into cheating and misappropriation of the property of the Corporate Debtor. This leads us to a conclusion that the present petition seems to be motivated by extraneous reasons than for resolution of the Corporate Debtor. This petition is not maintainable on this ground also.

6.7. Though, there exists a “financial debt” within the meaning of Sec. 5(8) of the Code, but for the reasons stated above, this Bench is of the view that this petition is therefore not maintainable under Section 7 of the Code for initiation of CIRP against the Corporate Debtor and deserves to be Dismissed.”

6. In its written and oral submissions, the Appellants stated that unilateral entry of Rs. 10,85,850/- has been made by the Respondent/ Corporate Debtor in its books during pendency of the said petition filed by the Appellants, in order to bring the admitted debt of more than Rs. 1 Crore below threshold limit and the Respondent/Corporate Debtor has not made any submission regarding this in its reply dated 19.12.2021 filed before the Ld. NCLT and it was for the first time in their affidavit dated 11.04.2022 and in their Balance Sheet as on 31.03.2022 that the said claims were made. The Appellants submitted that no demand for the alleged sum of Rs. 10,85,850/- was raised by the Respondent/Corporate Debtor. The unilateral entry recorded in the balance sheet was done after filing of the said petition with an aim to defeat the said petition. The Appellants further submitted, without prejudice, that even if the said claim of Rs. 10,85,850/- made by the Corporate Debtor is accepted, it will be contingent receivable/asset and as per accounting standard No. 4 it cannot be set off against the long-term borrowing and that the Statutory Auditor's Certificate dated 29.04.2023 has also stated so.

7. In its written and oral submissions the Respondent/Corporate Debtor has admitted that the Corporate Debtor owed a sum of Rs.

1,01,50,009/- as on 31.03.2021, which is also being continuously reflected in its previous and current year Balance Sheets. However, the threshold under section 4 is not met as Appellants also owed a sum of Rs. 10,85,850/- to the Corporate Debtor and the net liability is only Rs. 90,64,159/- which is less than Rs. 1 Crore, the threshold prescribed under Section 4 of the Code.

8. The Learned Counsel for the Respondent has also submitted that no interest was payable on the said loan and interest was paid only for Financial Year 1998-99 and 1999-00. The Respondent highlighted the fraudulent conduct of the Appellants and stated that the Appellant Mr. Kailash Motilal Kakrania ceased to be the Director of the Company w.e.f. 16.08.2014 and yet he continued to misrepresent himself as a Director/Authorized Representative of the Respondent/Corporate Debtor and executed leave and license agreement for the registered office of the Respondent with some persons and collected Rs. 10,85,850/- as rent/license fees from them on behalf of the Respondent in his personal accounts without informing the Respondent Company. The details of such leave and license agreements/receipts and rent due from them were duly reflected in the reply dated 19.12.2021 submitted before the Ld. NCLT.

9. The Respondent further submitted that they had filed police complaint on 06.06.2021 for cheating and fraud against Mr. Kailash Kakrania and they had also filed criminal application for registering FIR with the Ld. Chief Judicial Magistrate, Amravati. The copy of the police complaint dated 06.06.2021 is available at page 610-613 of the Appeal Paper Book. The Respondent submitted that the police complaint was filed on 06.06.2021 which is before the filing of Company Petition under Section 7 of the Code on 04.09.2021.

10. The Respondent submitted that accounting treatment has been given to the amount receivable from the Appellant as per the Accounting Standards and the amount is shown as receivable from the Appellant Mr. Kailash Motilal Kakrania under the heading “Other Current Assets” as part of the Balance Sheet as on 31.03.2022 at page 541 of the Appeal Paper Book. It is further submitted that the Appellant has not claimed any interest right from 2008-09 onwards, and there was no board resolution authorizing interest payment during the relevant period. It is prayed that since the net outstanding debt is less than Rs. 1 Crore, the Appeal deserves to be rejected.

11. We have considered the oral and written submissions and have gone through the records. It is admitted by both the sides that there was a financial debt of Rs. 1,01,50,009/- collectively payable to Mr.

Kailash Motilal Kakrania (Rs. 88,79,026/-) and his wife Mrs. Manju Kailash Kakrania (Rs. 12,70,983/-). The said outstanding is reflected continuously in the earlier balance sheets and the balance sheet of Financial Year 2021-22 (at page 540 of the Appeal Paper Book). Since the amount has been continuously shown in the balance sheet, and duly acknowledged, there is no dispute that it is within limitation. The financial debt of Rs. 1,01,50,009/- is due and payable and is within limitation is thus an admitted fact. It is the claim of the Respondent/Corporate Debtor that an amount of Rs. 10,85,850/- is due from Mr. Kailash Motilal Kakrania which is reflected in the Other Current Assets of the balance sheet of Financial Year 2021-22 at page 541 of the Appeal Paper Book. It is alleged by the Respondent/Corporate Debtor that the Appellants have collected these amounts from tenants by misrepresenting himself as Authorized Representative or Director of the Corporate Debtor and this amount is due and recoverable from the Appellant.

12. It is the submission of the Corporate Debtor that a police complaint was filed relating to these transactions. However, on closer examination of the police complaint, it is seen that the Corporate Debtor has only stated that the Appellant is misrepresenting as Director of the Corporate Debtor and “took money” in the name of

the Corporate Debtor. No transactions are identified nor any amount involved is identified in the said complaint.

13. The alleged entry in the ledger account is given in page 523 of the Appeal Paper Book. Apparently, the entire entries are made on a single date showing amount receivable from Mr. Kailash Motilal Kakrania of Rs. 10,85,850/- relating to 8 (eight) transactions. The voucher nos. are in seriatum from voucher no. 1 to voucher no. 8 and all entries are made on 10.07.2021. The Corporate Debtor in his written submissions has nowhere stated that any demand of the said amount was ever made on Mr. Kailash Motilal Kakrania. There is no entry in the balance sheet, prior to the date of filing of petition under Section 7, regarding the said amount. Even in the books of account of the Corporate Debtor, the amounts are not adjusted against the financial debt, and are shown separately in the balance sheet as on 31.03.2022. It has been stated in the **Khushbu Dey Chem Pvt. Ltd.**

V. Chemical Suppliers India Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 664 of 2024, (2024) ibclaw.in 474 NCLAT “that there is no provision under the Code for set off/adjustment/counter claim.”

14. In the present case, there is no dispute regarding financial debt of Rs. 1,01,50,009/- which is duly reflected in the balance sheets for

various years, including for financial year 2021-22. The debt is due and is within limitation. We find that the Adjudicating Authority has erred in allowing adjustment of Rs. 10,85,850/- against the financial debt for the reasons aforesaid. The order of the Ld. NCLT dated 14.07.2023 is set aside and is remanded back to the Ld. NCLT for passing necessary consequential order admitting Corporate Debtor in CIRP under Section 7 of the Code. The Appeal is accordingly allowed. No order as to costs. All connected I.As, if any, are also disposed off.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 15.10.2024
Ram N.