

NEIL INDUSTRIES LIMITED V. JAWAN MINING AND CONSTRUCTION

Neil Industries Limited,
88B, Ground Floor, Lake View Road,
Kolkata – 700029
Corporate Office at 402-403,
Kan Chambers, 14/113,
Civil Lines, Kanpur – 208001

...Appellant

Versus

Jawan Mining and Construction
Equipments Private Limited,
Katewa Sedan, Road No.3,
Jhunjhunu – 333001
Rajasthan

...Respondent

Case No: Company Appeal (AT)(Insolvency) No. 1225 of 2022

Date of Judgement: 14.07.2023

Judges:

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

For Appellant: Mr. Amol Vyas and Mr. Shubham Bharara, Advocates
For Respondent: None

Facts:

Neil Industries Ltd (Appellant) is an NBFC which gave 3 loans totaling Rs. 5.95 crores to Jawan Mining and Construction

Equipment Pvt Ltd (Respondent) between 2015-2018. Repayment was on-demand basis as per sanction letters. Appellant alleges that Respondent defaulted on quarterly interest payments since March 2018 and failed to repay loan amount. Appellant issued demand notice on 07.01.2019 for Rs. 6.44 crores due as on 31.12.2018, including interest of Rs. 49.8 lakhs. Respondent disputed the default in its reply before NCLT

Appellant's Arguments:

It is undisputed that loans were given and terms accepted by Respondent. Respondent was under obligation to pay quarterly interest as per RBI rules. Failure to pay interest is default under loan sanction terms. Loan amount also due as 36 months had elapsed for first tranche given in 2015

Respondent's Arguments Before NCLT:

Default cannot happen before 36 month period. Repayment is on-demand basis, no demand was raised. Interest was paid regularly till March 2018. Discrepancies exist in TDS deductions and interest calculations

Court's Judgement:

Corpus of facts and documents are adequate for NCLT to consider Section 7 application. No cogent reason given by NCLT to return the application. Remanded matter back to NCLT with direction to consider Section 7 application on merits. Prima facie case exists for financial debt and possible default. NCLT should have checked if debt and default of over Rs. 1 lakh existed instead of returning case. Allowed appeal and set aside NCLT's order returning the case

Referred Laws:

Section 5(8) and Section 7 of Insolvency and Bankruptcy Code 2016 pertaining to definition of financial debt and initiation of Corporate Insolvency Resolution Process

Referred RBI Guidelines:

Treatment of all loan accounts as non-performing on default in

one loan account of same borrower/beneficiary

Cited Cases: None

So in summary, the judgement analyses the facts and legal provisions, sets aside the returning of application by NCLT, notes prima facie case for admission and remands the matter back for consideration on merits by detailing what NCLT should look at.

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Court

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Full Text of Judgment:

1. The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 (“IBC” in short) by the Appellant arises out of the Order dated 24.06.2022 (hereinafter referred to as “Impugned Order”) passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in CP (IB) No. 64/7/JPR/2019. By the impugned order, the Adjudicating Authority has

returned the Company Petition filed under Section 7 of the IBC by the Appellant/Financial Creditor seeking to bring the Corporate Debtor/Respondent under the rigours of Corporate Insolvency Resolution Process (‘CIRP’ in short) for being factually deficient particularly in respect of loan account. Aggrieved by this impugned order, the present appeal has been preferred by the Financial Creditor.

2. Outlining the facts of the case, the Learned Counsel for the Appellant submitted that the Appellant-Neil Industries Ltd. is a Non-Banking Financial Company (“NBFC” in short) which had advanced unsecured business loan to the tune of Rs.5,95,00,000/- to the Corporate Debtor-Jawan Mining and Construction Equipment Pvt. Ltd. The details of the loan sanctioned as submitted is as follows: –

| Particulars | Loan 1 | Loan 2 | Loan 3 |
|-------------|--------|--------|--------|
|-------------|--------|--------|--------|

| | | | |
|------------------|------------|-------------|-------------|
| Amount (in Rs.) | 25,00,000 | 4,70,00,000 | 1,00,00,000 |
| Sanction Letter | 20.05.2015 | 22.05.2017 | 15.02.2018 |
| Rate of Interest | 10% p.a. | 12% p.a. | 10% p.a. |
| Period of Loan | 36 months | 36 months | 36 months |
| Repayment | On-demand | On-demand | On-demand |

3. It was further added that the Corporate Debtor in their reply affidavit before the Adjudicating Authority clearly accepted that they had taken a loan of Rs.5,95,00,000/- in three tranches and that the terms and conditions of the loans was governed by the respective sanction letters. That the loan amounts were interest bearing has also not been denied by the Corporate Debtor. The Learned Counsel for the Appellant contended that the Respondent was under legal obligation to pay the interest amount on the above loan amounts on a quarterly basis in terms of RBI guidelines as applicable for NBFCs having an asset size below Rs.500 crores. The Corporate Debtor having failed to maintain the requisite financial discipline of interest payment committed a default in repayment of the loan amount along with interest. The Appellant had issued a demand notice dated 07.01.2019 calling upon the Respondent to repay an outstanding amount of Rs.6,44,80,166/- including an interest amount of Rs.49,80,166/- due as on 31.12.2018. As there was no response from the Corporate Debtor

to the said demand notice, the Appellant filed the Section 7 application before the Adjudicating Authority.

4. Making further submissions, the Learned Counsel for the Appellant stated that the Corporate Debtor while filing their reply affidavit before the Adjudicating Authority had contended that no default had been committed in the repayment of the loan since the period of 36 months had not elapsed in the case of two loan tranches and hence no valid demand could have been raised as no default had occurred. Moreover, since the repayment were to become due only after raising a demand and no such demand having been raised, there was no default. It has been submitted by the Learned Counsel for the Appellant that it was brought to the knowledge of the Adjudicating Authority that the above plea of the Corporate Debtor lacked foundation in that though the tenure of the loan amount was 36 months it was subject to the timely payment of interest on quarterly basis and that there was breach in payment of interest amount since March 2018.

5. It has been submitted by the Learned Counsel for the Appellant that the Adjudicating Authority has wrongly concluded that the amount outstanding does not fall in the category of financial debt as it lacks the time value of money. The reasons ascribed by the Adjudicating Authority for coming to this conclusion were that the demand notice issued by the Financial Creditor was

for a cumulative amount without differentiating the varying interest component of the three separate loan amounts. The Adjudicating Authority had also held that there was variation in the manner of calculating the interest as one party made TDS deductions on quarterly basis while the other deducted TDS on the interest paid in March every year. The Adjudicating Authority has also recorded the findings that the Corporate Debtor had paid interest regularly till March 2018 and that the Financial Creditor did not file proper documents to substantiate his claims and that there was discrepancy in the filing of supporting documents.

6. We have duly considered the arguments advanced by the Learned Counsel for the Appellant and perused the records carefully. Though sufficient steps were taken by the Appellant for service of notice on the Respondent, the Respondent remained absent during all hearings and have not filed any reply affidavit.

7. This brings us to the question whether there was sufficient cause for the Adjudicating Authority to return the application of the Financial Creditor instead of adjudicating on the Company petition. Present is a case where it is an undisputed fact that the Appellant in its capacity as NBFC had sanctioned three loans to the Respondent totaling an amount of Rs.5,95,00,000/- . The three sanction letters are placed at pages 158, 161 and 164 of the Appeal Paper Book

("APB" in short). It is also an admitted fact that the loan amounts had actually been disbursed by the Appellant and had been credited to the accounts of the Corporate Debtor. The Corporate Debtor has also admitted taking the said loan amount before the Adjudicating Authority. As per the respective loan sanction letters, the tenure of each of the three loans was 36 months. The sanction letters also clearly provided that the loan was repayable on demand. The first loan was for an amount of Rs.25,00,000/- sanctioned on 20.05.2015 with an interest of 10% per annum. The second loan amount for Rs.4,70,00,000/- was sanctioned on 22.05.2017 with 12% interest per annum while the third loan was for Rs.1,00,00,000/- with 10% per annum which was sanctioned on 15.02.2018. We notice that the first tranche of loan which had been disbursed on 26.05.2015 (as placed at page 167 of APB) had already become due having crossed the 36 months tenure. It is the contention of the Appellant that the Corporate Debtor was also under obligation to pay interest on a quarterly basis in terms of RBI guidelines and that the same was not done by the Corporate Debtor. It is also the contention of the Learned Counsel for the Appellant that in terms of the aforementioned RBI guidelines once any one loan account of borrower/beneficiary becomes a NonPerforming Asset, the balance outstanding under other credit facilities including accrued interest made available to the same borrower/beneficiary also become

Non-Performing Asset. The relevant RBI guidelines have been placed at Annexure 6 of the APB. We have also noticed that the Corporate Debtor had disputed the fact that a default had been committed in repayment of the loan.

8. Section 5(8) of the IBC which is relevant for the present case defines financial debt to mean a debt along with interest which is disbursed against the consideration for the time value of money. Further, clauses (a) to (i) of Section 5(8) delineates the nature of transactions which are included in the definition of financial debt which includes money borrowed against payment of interest. In the facts of the present case, the Appellant has issued a demand notice which contained cumulative demand of all the three loan amounts. In the given factual matrix, the Adjudicating Authority is required to notice as to whether the application is complete or not and if there is a debt and the Corporate Debtor has defaulted in the payment, whether the amount so defaulted is more than the threshold limit of Rs. 1 lakh.

9. We are of the considered view that, prima-facie, the corpus of facts and documents are sufficiently adequate to consider a Section 7 application. We do not find any cogent basis for the Adjudicating Authority to have returned the application of the Financial Creditor. The appeal is allowed. The impugned order is, therefore, set aside. Without expressing any opinion on the merits of the claim of the Appellant, we remand the matter back to the Adjudicating Authority to consider the Section 7 application. The Respondent is restrained from selling assets of the Corporate Debtor until then. Both parties shall be at liberty to raise all pleas including filing additional documents in support of their averments. No order as to costs.