



 **Prakhar Galaw***

Legal Decisions Affecting Bankers

Applicant : N. C. Goel & Maya Goel...**Financial Creditors;**

Vs.

Non-Applicant : Piyush Infrastructure India Private Limited ... **Corporate Debtor.**

Court : NCLT

Bench Strength: 2

Bench : Rajasekhar V.K. & Virendra Kumar Gupta

Citation : 2022 SCC OnLine NCLT 159

Relevant Provision of Law

- Section 5 of the Insolvency and Bankruptcy Code, 2016: Financial Debt
- Section 7 of the Insolvency and Bankruptcy Code, 2016: Initiation of corporate insolvency resolution process by financial creditor
- Sections 118 of Negotiable Instruments Act, 1881: Presumptions as to Negotiable Instruments
- Section 138 of Negotiable Instruments Act, 1881: Dishonour of cheque for insufficiency of funds in the account
- Section 139 of Negotiable Instruments Act, 1881: Presumption in favour of holder

Brief Facts of the Case

1. In the instant matter, an application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by the applicant financial creditor against the

Corporate debtor Piyush Infrastructure India Pvt. Ltd for a default of repayment of Rs. 12,00,000/-

2. The financial creditor stated in their application that they had given a loan of Rs. 12,00,000 at an interest rate of 18% pa to the corporate debtor of which interest was paid till 04.06.2016 and post-dated cheques were given for repayment of principal amount starting from 15.01.2018.
3. The corporate debtor stated that no interest was paid and the transactions were made during 2012-2014 and the same were barred by limitation under section 7 of the IBC, 2016.
4. It was also contended by the corporate debtor that since no interest was payable at the time, thus, applicability of financial debt does not come to play as per section 5(8) of the IBC.
5. The corporate debtor in its rejoinder also contended that they had preferred an application under section 138 of Negotiable Instruments Act for recovery of cheque amount which was pending adjudication.
6. The corporate debtor also as regards to the limitation contended that the cheques were given from January 2018 till December 2018 which were dishonored.

Issues

1. Whether the Application is barred by limitation?
2. Whether issuance of Post-dated cheques would qualify as admission of debt?

*Deputy Manager, HDFC ERGO.

Findings and Observations of the Court

The Court firstly considered the aspect of limitation on basis of submission of both the parties and documents records. The Court held that in the absence of documentation court could not establish the date of default. Court specifically stated that the tenure of loan could not be established from the documents available on record also date of demand could not be ascertained. Thus, the question of limitation cannot be established on basis of available documents.

The Court secondly came to the question of financial debt. The court held that the tenure of loan was questionable and unsubstantiated. Also, it could not be ascertained whether there was notice demanding payment of loan except for two letters of interest payment by the corporate debtor. Thus, the claims made regarding receipt of interest payment remained unsubstantiated.

The court also explained the question of financial debt considering the post-dated cheques issued by the corporate debtor in favour of financial creditor for repayment of principal amount. The same cannot be considered as unqualified debt. The court observed that without adequate documents on record, the purpose of debt could not be established, also it is not possible to establish whether any interest was required to be paid. In totality for considering financial debt as per the Code the time value of money is an important factor.

The Court dismissed the application and observed that the petition was filed merely for recovery money as opposed to the resolution of the corporate debtor which is the key objective of the Code.

Analysis

Under the Code, financial creditor includes a person to whom a financial debt is owed. And corporate person has been defined under subsection 7 of section 3 and it stipulates that corporate person includes company, limited liability partnership or any other person incorporated with limited liability. Corporate debtor means a person who owes a debt to any person.

The most important element for initiating corporate insolvency resolution process against corporate debtor is once the default crosses the threshold limit, an application may be filed by financial creditor(s) under section 7. Default is explained under section 3(12) of the Code and it stipulates the following:- "*default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be*".

In the case of *Bank of India v. Tirupati Infra projects Ltd.*, it was held that the adjudicating authority just needs to determine whether default has occurred or not and it does not need to determine the exact amount of default.

In the current case the date of default could not be established by the corporate debtor in the absence of cogent evidence and also whether the corporate debtor owed any financial debt to the applicant. Thus, since the debt was not established, application was dismissed on merits.

