

NCLAT holds that loan agreement is not the only document relevant to establish the existence of debt and default

The Chennai bench of the National Company Law Appellate Tribunal (“**NCLAT**”) in *Ashique Ponnamparambath, Member of Suspended Board of Directors of The Corporate Debtor, Platino Classic Motors (India) Pvt Ltd v. The Federal Bank Limited* held that merely because the term loan agreement was insufficiently stamped, it did not preclude the financial creditor from filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

Factual Background

The Federal Bank Limited (“**Financial Creditor**”) had entered into a term loan agreement (“**Loan Agreement**”) with Platino Classic Motors (India) Pvt Ltd (“**Corporate Debtor**”) pursuant to which the Financial Creditor would grant a term loan of INR 10,00,00,000 to the Corporate Debtor. The Loan Agreement also contained provisions that in effect sought to create a charge over the assets of the Corporate Debtor as security for a loan extended pursuant to the Loan Agreement (“**Loan**”). The Corporate Debtor subsequently committed a default in repayment of the Loan consequent to which the Financial Creditor accelerated the Loan. The National Company Law Tribunal, Kochi Bench (“**NCLT**”) admitted the application filed by the Financial Creditor under Section 7 of the IBC. An appeal was filed by a suspended director of the Corporate Debtor (“**Appellant**”) challenging the order of the NCLT.

The contention of the Appellant was that the NCLT had failed to consider that the Loan Agreement was the umbrella agreement governing the various security related obligations and security documents. As the Loan Agreement was inadequately stamped and not compulsorily registered in contravention of Section 17 of the Registration Act, 1908, the Loan Agreement and security documents which had their basis in the Loan Agreement were legally inadmissible and therefore unenforceable. The Financial Creditor could not claim that it was owed a “*financial debt*” and that it was a “*financial creditor*” under the IBC on the basis of documents which were legally unenforceable. The Appellant also contended that the application filed under Section 7 of the IBC was incomplete as it was not supported by the documents mandated under the IBC and therefore liable to be dismissed.

Findings of NCLAT

The NCLAT held that the other ancillary documents filed by the Financial Creditor along with its application, including the demand promissory note, security deposit letter, guarantee agreements, letter evidencing the deposit of title deeds, certificate of registration of charge, sale deed, statement of accounts, certificate under the Bankers Book of Evidence Act, 1879 and CIBIL report, were sufficient to establish that the Corporate Debtor had defaulted in repayment of the Loan to the Financial Creditor. Even if it was presumed that the Loan Agreement was insufficiently stamped and inadmissible in evidence, the claim of the Financial Creditor was fully corroborated by other evidence filed and the instance of the debt and default were reasonably established by the Financial Creditor.

The NCLAT held that the application filed by the Financial Creditor under Section 7 of the IBC was complete in all respects and dismissed the appeal.

Conclusion

In a scenario where the principal loan agreement is adjudged to be unenforceable due to reasons including inadequate stamping, the same would not *prima facie* invalidate the claim of a financial creditor under the IBC. Supporting documents filed by a financial creditor along with its application may also be considered to establish the existence of the debt and default. However, it is advisable for financial creditors to continue to adequately stamp their financing documents to ensure that they are legally enforceable and admissible as evidence and that there are no ambiguities at the time of filing an application or submitting claims.

For more details, please contact km@jsalaw.com



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