NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

17.07.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.988 of 2024

M/s. Shree Dhanvantari Pharmaceuticals ...Appellant

Vs

M/s. Konkan Ayur Pharma Private Limited ...Respondent

(Arising out of Order dated 07.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP (IB) No.1309/MB-IV/2022, INVP 44 of 2023 and INVP 46 of 2023)

For Appellant: Mr. Gaurav Kumar, PCS Alpa Jain, Mr. Kishanathan Siva Kumar and Ms. Sree Kumar, Advocates

For Respondent: Mr. Jack Thalakottur, Advocate for R1.
Mr. Vikas Londhe, Advocate for R2 & R3

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

The present Appeal is preferred challenging an Order dated, 07.02.2024, passed by the Adjudicating Authority (NCLT – IV, Mumbai Bench) in CP (IB) No.1309/MB-IV/2022 dismissing an application filed by the appellant under Section 7 of the IBC.

Backdrop Facts

2. The Appellant is a partnership firm engaged in the development, manufacture and trading of Ayurvedic medicines. The Corporate Debtor was incorporated on 27.08.2008 under an AYUSH cluster initiative promoted by the Government of India. The other material facts which are relevant for the current purpose are:

a) Appellant claims to have advanced loans to the first respondent/corporate debtor on multiple occasions, which aggregates to ₹.2,26,45,568/- and it remained unpaid, and together with interest calculated @ 18% per annum, a sum of ₹.3,55,54,900/- became due and payable.

b) While so, on 14.05.2022, appellant issued a demand notice calling upon the corporate debtor to repay the outstanding amount. Upon failure of repayment, the appellant instituted the present petition under Sec. 7 of the Code before the Adjudicating Authority, for initiating a CIRP.

c) During pendency of the petition, Respondent No:2 and 3, both partner or legal representative of a deceased partner of the appellant firm, took out Intervenor Petition 44 of 2023 and 46 of 2023 respectively and opposed the initiation of CIRP against the first respondent and questioned the authority of the persons who had instituted the proceedings.

d) Eventually, vide an Order dated 07.02.2024, the Adjudicating Authority dismissed the Section 7 application holding that there is lack of clarity regarding the date of default besides absence of material explaining the nature of the transaction, and that the petition suffered from want of proper authority and it arose out of disputes amongst the partners of the Appellant firm.

Arguments

3. The learned Counsel for the Appellant contended:

a) the Adjudicating Authority erred in dismissing the Section 7 Application without examining the existence of financial debt and default and instead proceeded on the basis of disputes allegedly existing amongst the partners of the Financial Creditor. Indeed, it has overlooked the fact that the corporate debtor has acknowledged the debt due and payable to the appellant.

b) by order dated 13.07.2023, the Adjudicating Authority permitted amendment of Part-IV of Form-I with respect to the date of default. Pursuant thereto, an additional affidavit was filed specifying 30.05.2022 as the date of default, which provides requisite clarity which the Adjudicating Authority has observed.

c) if the Adjudicating Authority found the Application to be defective in any other respect, an opportunity ought to have been granted to cure such defects instead of dismissing the petition, since the defects noticed are curable, and could not have formed the basis for dismissal of the proceedings at the threshold.

d) the Adjudicating Authority travelled beyond the scope of Section 7 proceedings by entertaining Intervention Applications filed by

Respondent Nos. 2 and 3 and by considering issues unrelated to debt and default. During pre-admission stage, no third-party intervention is contemplated and, therefore, the Intervention Applications filed by Respondents 2 and 3 ought not to have been entertained. Indeed, respondent No.3 is merely the legal representative of a deceased partner, and he could not be treated as a partner of the firm, for the partnership deed does not enable it. Very unfortunately, the Adjudicating Authority has entertained issues questioning the authority of partners, interpretation of the Partnership Deed and disputes inter se amongst the partners, which, needless to state, go far beyond the scope of the enquiry contemplated under Section 7.

e) So far as the authority of the firm to institute the petition under Sec.7 IBC, after the demise of one among the four partners (whose son is the 3rd respondent), three partners remained, and the petition under Sec.7 was instituted with two, who constituted the majority of the surviving partners, consenting to it.

4. The learned counsel for the first Respondent contended:

a) no financial debt within the meaning of Section 5(8) of the Code has been established by the Appellant since there exists no contract or loan agreement, repayment schedule, due date, interest stipulation or any other document evidencing a borrowing arrangement between the parties. The amounts advanced were in the nature of financial assistance extended to support the corporate debtor and were never intended to constitute a financial debt. Indeed, the amount in question was consistently reflected in the books of the Corporate Debtor as sundry creditors, and not as financial borrowings. The financial statements containing such disclosures were signed by Shri Nandkishore Jaynarayan Jethale, who is one of the partners of the appellant firm, while he was also the director of the corporate debtor.

b) the Demand Notice dated 14.05.2022 claimed only the principal amount of Rs.2,26,45,568/- and contained no claim for interest. The claim towards interest was raised for the first time in the Section 7 Application.

c) So far as the finding of lack of clarity as to date of alleged default to repay what the appellant alleges as loan, the petition proceeded on the basis that 31.03.2019 was the date of default, the additional affidavit subsequently mentioned 30.05.2022 as the date of default. Needless to state, there is material inconsistency in the case set up by the appellant. The default under Section 3(12) of the Code arises only when a debt has become due and payable and remains unpaid, whereas neither the due date nor the event of default has been established in the present case.

5. Learned Counsel for the 2nd respondent contended:

a) The Section 7 Application as well as the present Appeal have been instituted without proper authority from all the partners of the appellant firm. A partnership firm does not have a juristic entity and proceedings instituted in the name of the firm, in substance, is proceedings on behalf of all its partners. Reliance was placed on the ratio in ***Purushottam Umedbhai & Co. v. Manilal & Sons*** [AIR 1961 SC 325] and ***Bombay Trading Co. v. Jai Santoshi Maa Enterprises*** [2012(6) Mh.L.J]. The letter of authority that accompanied both the petition under Sec.7 IBC and also the present appeal bears the signatures of only two partners and not all the partners. The second respondent opposed the filing of the Section 7 Application from its inception and had filed Intervention Petition No.44 of 2023.

b) Indeed, disputes exist amongst the partners regarding repayment of monies advanced to the Corporate Debtor, charging of interest and the conduct of the affairs of the partnership. Clause 31 of the Partnership Deed contains an arbitration clause governing disputes amongst partners and any such dispute is required to be resolved in the manner contemplated therein.

6. The learned counsel for the 3rd respondent adopted the submissions advanced on behalf of Respondent No.2 and further contended:

a) Respondent No.3 is the legal representative of late Shri Mahendra Mohanlal Sharma, who was one of the equal partners of the Appellant firm.

b) No steps have been taken by the surviving partners to settle the share and rights of the deceased partner in accordance with the terms of the Partnership Deed.

c) the surviving partners cannot deal with the assets and interests of the partnership while disregarding the rights of the estate of the deceased partner.

d) Respondent No.3 has a legitimate interest in protecting the estate of the deceased partner and was therefore entitled to oppose the filing of the Section 7 Application.

e) disputes relating to authority, rights of partners, settlement of accounts and management of partnership affairs are governed by Clause 31 of the Partnership Deed and are required to be resolved through arbitration.

f) the present proceedings cannot be maintained without first resolving the disputes arising amongst the partners and persons claiming through them in accordance with the mechanism prescribed under the Partnership Deed.

Discussion & Decision

7. There indeed are two aspects: (a) Has the Adjudicating Authority overstepped the scope of enquiry when it is required to examine merely the existence of a financial debt and the occurrence of default; (b) the other is an anterior question and it relates to the authority of the petitioner invoking the insolvency jurisdiction.

On the issue of Authorisation

8. Second issue first, and to reiterate it relates to the authority to institute a petition under Sec.7. The petitioner/appellant is a partnership firm, which came into existence vide a deed of partnership dated 14.07.1992 and is constituted of four partners. Of them, one of the partners, who is the father of the 3rd respondent herein (one of the interveners) has died. Of the remaining three, two are on one side, and the third one (the second

respondent herein) is on the other. While the majority partners have decided to institute Sec.7 IBC, the second respondent opposes the move.

9. Before, delving into the adequacy of the decision of the two among three surviving partners to institute a petition for commencing CIRP against the corporate debtor, the right of the third respondent to intervene in the matter is taken up for consideration. Has he a locus standi? The rights, duties and obligation of the partners emanate from the partnership deed that they have entered into. It is not in dispute that the father of the 3rd respondent was a partner. How does the partnership deed deal with the death of a partner? Clause 14 of the partnership deed provides that on the death of a partner during the continuance of partnership, his nominee shall be admitted to partnership provided such nominee is acceptable to other surviving partners. And, clause 13 provides that lunacy, insolvency, or death or retirement of any of the partners "*shall not dissolve the partnership, and the partnership shall be continued by the continuing or surviving parties..*" This would imply that the death of the father of the 3rd respondent would not ipso facto dissolve the partnership, and that only a nominee of the deceased partner, who need not necessarily be his son, is not automatically admitted to partnership, but only when he is found acceptable to other surviving partners and is admitted to partnership. If, however, any dispute arises between a heir of a deceased partner to be admitted into the partnership, such dispute instantly assumes civil law overtones, and the dispute can be resolved only by a civil court. Admittedly, the third respondent is not yet admitted into the partnership

and assuming he were a nominee of his father, and if finds any resistance from other partners to be inducted into the partnership, he only acquires a cause of action for instituting a civil suit before appropriate civil court. This tribunal is neither vested with the jurisdiction to take cognizance of any such disputes, nor has it the requisite authority to decide it. Suffice to state, unless the third respondent is a partner of the firm, he cannot have locus standi to intervene.

10. The next aspect pertains to the resistance of the 2nd respondent to the decision of the other two partners to institute the petition under Sec.7 IBC. As stated earlier, there are three partners now, and the decision to file the petition was taken by the majority of two partners. Sec.12 (c) of the Partnership Act, 1932, instructs that, '*any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners*". If this provision is briefly analysed, it contemplates two categories of decisions: (a) matters connected with the business of the firm; and (b) matter relating to the change of very business of the firm. The first part of Sec.12(c) concerns itself with business-decision of the firm, of which we are also concerned in this case, and it instructs that it will be decided by a majority, but only underscores that every partner must have a right to voice his/her opinion before the majority takes a decision. Indeed, Clause 29 of the Partnership Deed also reflects this idea. It reads: *"All the questions affecting the*

partnership business insofar as no contrary provisions in this Deed, shall, as far as possible, be decided unanimously; upon failing to obtain such unanimity, each partner shall have one vote, and the question shall be decided by majority. In case of equality of votes, the view of the senior most partner shall prevail and be binding on all the parties." Admittedly, the decision to institute a Sec.7 petition was taken by a majority, and necessarily it binds the 2nd respondent. And, if the second respondent has any grievance that the resolution of the majority-partners is invalid or void, it can only be remedied by a civil court and not by us. Now, of the two partners who constitute the majority one has signed the petition, but as rightly contended by the appellant, under Sec.18 of the Partnership Act, every partner is an agent of the other partner and under Sec.22 of the Act, if an act of a partner should bind the firm, then such act should have been done in the name of the firm. Therefore, the authority of Nandkishore Jaynarayan Jethale to institute the petition under Sec.7 cannot be questioned, since he has done the act in the firm's name. The next aspect is whether both the partners who constitute the majority should sign the petition. Here, Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Form 1, is silent. When the procedural law is silent on it, then one necessarily has to fall back on the substantive law, the Partnership Act, and it enables one partner to act for all. Therefore, looking from every conceivable angle, we find no merit in the contention of the first respondent on the issue of authorisation.

On Merits

11. The contention of the corporate debtor is that the money which the appellant has claimed to have advanced as a loan is not a debt, and that it is only a financial assistance. In other words, the contention of the corporate debtor appears to be that what was paid to it by the appellant is not a debt. The second defence taken was on the discrepancy in the date of default as shown in Part IV of the petition and the uncertainty it has created as the date of default was changed from 31.03.2019 to 30.05.2022 by the appellant vide affidavit dated 13.07.2023.

12. Turning to the first aspect, the appellant relies on the balance sheet of the corporate debtor for the years 2015-2016 and 2016-2017 wherein the appellant was shown as sundry creditors under the head current liabilities. This would imply that the contention of the corporate debtor that the appellant did not advance any loan for time value of money but only 'financial assistance' finds itself on a slippery wicket. The corporate debtor contends that its balance sheet was signed by the very person, who has now filed the petition under Sec.7 IBC. The corporate debtor having admitted the receipt of money from the appellant, it may not matter that the one who has signed the balance sheet of the debtor is also a partner of the lender firm, the legal relationship between the parties can still be distinct. In our efforts to ascertain these facts, we probed the ledger account of the corporate debtor in the books of account of the appellant. It covers the period from 12.06.2010 to 31.03.2019. And there was apparently no transaction thereafter. This is fortified by the fact that in

Part IV of Form I of the petition under Sec.7, the appellant has chosen to detail the debt for the five financial years closing on 31.03.2015 to 31.03.2019. What could now be derived from this is that the money which the corporate debtor has received from the appellant is intended to be repaid. If this is taken alongside the classification of appellant as sundry creditor in the balance sheet of the corporate debtor, lends credence to the fact that the amount paid by the appellant to the corporate debtor constitutes only a debt. The fact that there is no formal agreement between the parties is of no consequence, for a loan transaction does not require a formal agreement.

13. The second aspect relates to payment of interest. The ledger account which the appellant has produced does not show any interest component within the amount paid by the corporate debtor. Here two facts are required to be noted: (a) Payment of interest is not sine qua non for constituting a debt vide ratio in ***M/s Orator Marketing Pvt. Ltd vs. M/s Samtex Desinz Pvt. Ltd*** [(2021) ibclaw.in 68 SC] ; and (b) In Part IV, the principal account shown to be due from the corporate debtor itself is shown to be ₹.2,26,45,568/- which very obviously exceeds the threshold limit of ₹. 1.0 crore. Therefore, even if the interest component is excluded, Sec.7 petition can still be sustained.

14. The next aspect is on the date of default. The Impugned Order shows that the date of default was noted in the main petition as 31.03.2019, and only vide an affidavit dated 13.07.2023, it was changed to 30.05.2022. When we perused Part IV of Form I, in the column where date of default is

required to be given, the same is not seen to have been given, and indeed, we could not find anywhere in the petition under Sec.7, where the date 31.03.2019 is indicated as date of default. What then is the date of default?

15. Date of default may not have sanctity except in computing the period of limitation. As stated earlier, the nearest ascertainable date from which the default has commenced was from 31.03.2019, the last date of transaction between the parties, which to repeat even the appellant relies on in part IV of his petition. If that is so, then the terminus a quo for computing limitation would commence from 31.03.2022, and the petition under Sec.7 should have been filed on or before that date. However, the appellant has issued the notice of demand, dated 14.05.2022 on the corporate debtor, mailed it on 17.05.2022 (gathered from the affidavit of the appellant, dated 13.07.2023), and laid its petition under Sec.7 in August 2022. Very evidently, the debt has become time barred and necessarily Sec.7 petition cannot be maintained. Now, if the affidavit dated 13.07.2023 is perused, while it gives the date of default as 30.05.2022, it does not explain, how? It appears that the date 30.05.2022 is artificially given, and we do not find any support for it from the materials available before us.

16. We therefore, concur with the finding of the Adjudicating Authority on the uncertainty of date of default, and have also demonstrated how it impacts the point on limitation. Necessarily we arrive at the same conclusion which

the Adjudicating Authority has arrived, and accordingly the appeal will stand dismissed. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

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