

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.01**  
IB-3083(ND)/2019

**IN THE MATTER OF:**

Mr. Rakesh Kumar Jain.

.... **APPLICANT/PETITIONER**

**Vs.**

ADTV Communications Pvt. Ltd.

.... **RESPONDENT**

**SECTION**

**U/s 7 IBC code 2016**

**Order pronounced on 24.04.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-3083(ND)/2019  
is **dismissed**.

**Sd/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. III)**

**(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)**

IB-3083(ND)/2019

**IN THE MATTER :-**

Mr. Rakesh Kumar Jain

**..... Applicant/Financial Creditor**

Versus

ADTV Communications Private Ltd.

**.....Respondent/Corporate Debtor**

**Pronounced on 24.04.2023**

**CORAM:-**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**Parties / Counsels present**

For the Applicant : Mr. Praveen Sehrawat, Advocate

For the Respondent :

**ORDER**

**Per: Bachu Venkat Balaram Das, Member (Judicial)**

1. The present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been filed by one Mr. Rakesh Kumar Jain, the Financial Creditor seeking initiation of Corporate Insolvency Resolution Process against M/s ADTV Communication Private Limited (formerly known as M/s AEG Infratech Private Limited) the Corporate Debtor herein.
2. It is the case of the Applicant that the Hon'ble Delhi High Court had passed an order/decreed for an amount of Rs. 15,23,00,000/- in CS (OS)No. 2183/2013 in terms of settlement agreement dated 11.09.2014.

- 3.** The Corporate Debtor paid an amount of Rs. 5,23,00,000 and the last cheque for an amount of Rs. 10,00,00,000/- was payable on 31.03.2016 as per the terms of the settlement agreement, but the said cheque was returned unpaid on 07.04.2016 by the bank.
- 4.** The Financial Creditor filed Execution Petition No. 65/2016 before the Hon'ble High Court and the Hon'ble High Court was pleased to attach the bank account of the Judgement Debtor/Corporate Debtor i.e., Axis Bank, Nehru Place and Kotak Mahendra Bank, Nehru Place to the extent of Rs. 10,00,00,000/-.
- 5.** Since, the Corporate Debtor has failed to pay the debt of the Financial Debtor despite the decree passed by Hon'ble High Court, the present application under Section 7 of the Code has been filed.
- 6.** The Ld. Counsel appearing for the Applicant has submitted that the default has been occurring continuously since 07.04.2016 i.e., the date on which the cheque of Rs. 10,00,00,000/- was dishonored.
- 7.** The Ld. Counsel has submitted that the Applicant had subsequently filed Execution Petition No. 65/2016 and the Hon'ble Delhi High Court had passed various orders in the said Execution Petition. He further submitted that the Corporate Debtor had admitted its liability before the Hon'ble High Court of Delhi and therefore the cause of action is a continuing one and the present petition under Section 7 of IBC which has been filed on 15.10.2019 is within the limitation period as prescribed under the Law.
- 8.** The Ld. Counsel invited our attention to the settlement agreement dated 11.09.2014 entered into between one Shri Rakesh Kumar Jain and one M/s ADTV Communication Private Limited (formerly known as M/s AEG Infratech Private Limited).
- 9.** He referred to Section 8 (b) of the said agreement and submitted that the second party i.e. M/s ADTV Communication Private Limited (formerly known as M/s AEG Infratech Private Limited) has admitted the liability of payments to the first party.

**10.** The Ld. Counsel further submitted that since the Corporate Debtor has failed to pay the amount due and in default and also admitted the liability, the present application under Section 7 of IBC ought to be admitted.

**11.** We find from the records that the Corporate Debtor has filed a reply affidavit on 20.06.2021 and also has filed written synopsis on 08.01.2022. On 11.01.2023, no one appeared on behalf of the Corporate Debtor and therefore, the Corporate Debtor was set ex-parte.

**12.** The Corporate Debtor in its reply affidavit has raised several objections which are summarised as follows:

1. Petition barred by Limitation.
2. Applicant does not fall within the category of Financial Creditor and thus not covered under Section 7 of the Code.
3. Jurisdiction of the Tribunal cannot be invoked to execute a decree.

With respect to the issue of limitation, the Corporate Debtor has averred in the reply that as per clause 8 (IV) of the Settlement Agreement dated 11.09.2014, the Financial Creditor was supposed to deposit the cheque of Rs. 10,00,00,000/- on 07.04.2016. However, the cheque was dishonoured on 07.04.2016. Since the date of default is 07.04.2016, the limitation for filing the present application being three years has also expired on the date when this present application under Section 7 IBC was filed. Therefore, the present petition is not maintainable and ought to be rejected.

With respect to the second objection, the Corporate Debtor has averred that a decree-holder does not fall within the definition of "Financial Creditor" under Section 5(7) of the Code and therefore, cannot seek initiation of CIRP as Financial Creditor under Section 7 of the Code.

**13.** In this context, he has relied upon a judgment rendered by Hon'ble NCLAT in the case of **Shri Sushil Ansal vs. Ashok Tripathi & others**,

**Company Appeal (AT) (Insolvency) No. 452 of 2020** wherein the Hon'ble NCLAT while dealing with a similar issue has held as under;

***“The answer to the question whether a decree-holder would fall within the definition of 'Financial Creditor' has to be an emphatic 'No' as the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money and does not fall within the ambit of any of the clauses enumerated under Section 5(8) of the 'I&B Code'.”***

14. The Corporate Debtor has also relied upon a judgment of Hon'ble NCLAT in the case of ***Digamber Bhondwe vs. JM Financial Asset Reconstruction Company Limited in Company Appeal (AT) (Insolvency) No. 1397 of 2019*** wherein the NCLAT has held as under:

***“We further reject the submission that because in Section 3(10) of I&B Code in definition of "Creditor" the "decree holder" is included it shows that decree gives cause to initiate application under Section 7 of I&B Code. Section 3 is in Part I of I&B Code. Part II of I&B Code deals with "Insolvency Resolution And Liquidation For Corporate Person", & has its own set of definitions in Section 5. Section 3 (10) definition of "Creditor" includes "financial creditor", "operational creditor" "decree holder" etc. But Section 7 or Section 9 dealing with "Financial Creditor" and "operational creditor" do not include "decree-holder" to initiate CIRP in Part II. We accept the submissions made by the Learned Counsel for the Appellant and hold that the Application under Section 7 in this matter was time barred and impugned order admitting the Application deserves to be set aside”***

15. The Corporate Debtor has also relied upon a judgment passed by Hon'ble NCLAT in ***Deem Roll-Tech Limited vs. R.L. Steel & Energy in Company Application No. (I.B.)24/PB/2017 decided on 31.03.2017*** wherein it has been held that in relation to a decree obtained from a civil court the Applicant is well within its rights to have it executed before the appropriate civil court. It is therefore averred that since execution proceedings have already been pending before the Hon'ble Delhi High Court, the present application is not maintainable.

- 16.** We have heard the submissions of Ld. Counsel appearing for the Applicant and perused the application and written submissions filed by the Applicant. We have also perused the reply affidavit and the written submissions filed by the Corporate Debtor.
- 17.** It is not in dispute that the present application under Section 7 IBC has been filed on the basis of a decree passed by Hon'ble High Court and execution proceedings have been initiated and pending before the Hon'ble High Court.
- 18.** The decree was passed on 10.08.2015 by the Hon'ble High Court and the date of default 07.04.2016. Thus, it makes amply clear that the present application under Section 7 has been filed beyond the period of limitation and is therefore barred by limitation.
- 19.** Further, the Hon'ble NCLAT in the case of ***Shri Sushil Ansal vs. Ashok Tripathi & others, Company Appeal (AT) (Insolvency) No. 452 of 2020*** has clearly held that the decree-holder cannot be classified as the Financial Creditor under Section 5(7) of the Code.
- 20.** Admittedly, the Applicant has initiated execution proceedings for executing a decree passed by Hon'ble High Court which is still pending and in terms of the judgment of the Hon'ble NCLAT in Deem Roll-Tech Limited vs. R.L. Steel & Energy in Company Application No. (I.B.)24/PB/2017 decided on 31.03.2017, the Applicant has rightly initiated against the execution proceedings before the appropriate Court and this Tribunal cannot be converted into an Executive Court.
- 21.** On the basis of the above analysis we come to the conclusion that the present application filed under Section 7 of IBC is not maintainable and therefore **dismissed**.

**Sd/-**  
**(ATUL CHATURVEDI)**  
Hon'ble Member (Technical)

**Sd/-**  
**(Bachu Venkat Balaram Das)**  
Hon'ble Member (Judicial)