

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 296 of 2022

[Arising out of order dated 31.08.2021 in CP (IB) No. 59/7/NCLT/AHM/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court 1.)]

IN THE MATTER OF:

Mr. Rakshit Dhirajlal Doshi

Suspended Director of M/s Doshion Pvt. Ltd.
Building No. 9, Sigma Corporate,
Behind Rajpath Club, Off. S.G. Road,
Bodakdev, Ahmedabad, Gujarat-380054.

..... Appellant.
(Corporate Debtor)

Versus

IDBI Bank Limited

Having its Office at:
IDBI Towe, W.T.C. Complex,
Cuffe Parade, Mumbai-400005.

..... Respondent.
(Financial Creditor)

Present:

For Appellant: Ms. Vaishnavi Viswanathan, Advocate.
For Respondent:- Mr. Akshat Khare, Advocate.

J U D G M E N T
(07th November, 2022)

Justice Anant Bijay Singh;

The present Appeal has been filed by the Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) being aggrieved and

dissatisfied by the order dated 31.08.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench in C.P. (IB) No. 59/7/NCLT/AHM/2019, whereby and whereunder the Respondent herein filed Application under Section 7 of the IBC for initiation of Corporate Insolvency Resolution Process **(for short CIRP)** against the Corporate Debtor / Appellant – M/s Doshion Private Limited was allowed and appointed Mr. Ramchandra Dallaram Choudhary as IRP.

2. The facts giving rise to this Appeal are as follows:

i) Doshion Private Limited herein is a private company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and supply of water solutions for over 30 years. The Company obtained financial assistance under Consortium Finance from various banks to meet its working capital requirements. In the said consortium, the Respondent Bank was the lead bank and Dena Bank (now amalgamated with Bank of Baroda) was the other consortium member bank.

ii) Further case is that the Respondent Bank agreed to sanction Fund Based Financial Facility of Cash Credit (inclusive WCDPL/STL) amounting to Rs. 10 crores and term loan amounting to Rs. 2.70 crores and non-fund based financial facility of Bank Guarantee amounting to Rs. 15 crores and letter of credit amounting to Rs. 5 crores. Thus, the overall limit of financial assistance granted by the Respondent to the Appellant was Rs. 32.70 crores, thereafter, the said financial loan was sanctioned by the Respondent Bank and enhanced from time to time.

iii) In the year 2014, Doshion Private Limited proposed restructuring of the financial assistance with enhanced credit limits. Based on the proposal made by the Doshion Private Limited, the Respondent Bank agreed to restructure the financial assistance under the consortium finance by way of enhanced overall credit limit of Rs. 93.48 crores as per table in memo of Appeal. The said restructuring of financial assistance with enhanced limit was approved by the Board of Directors of the Doshion Private Limited by way of Board Resolution dated 26.08.2014. The Respondent Bank also issued a restructuring sanction letter dated 20.08.2014 to Doshion Private Limited, which contained the terms and conditions of the restructured enhanced facility. The Respondent agreed to restructure the facility, the resources were released very late and were delayed by more than 9 months. The restructuring failed because Dena Bank, a member of the consortium failed to release the committed financial facilities agreed during the restructuring.

iv) The cash flow of Doshion Private Limited was adjusted by Dena Bank from the revenue of Doshion Private Limited as 'Cut-Back' which also resulted in termination of many contracts. The Doshion Private Limited has suffered huge losses because of the slow decision making of the banks and non-synchronization amongst the consortium partners. There was no uniformity in the conduct of the banking business / decision amongst all the members of the consortium. Subsequently, on account of the failure of the restructuring exercise, the account of the company came to be classified as NPA on 29.10.2015.

v) Further case is that on 19.12.2018, after more than 3 years of classifying the Appellant's company account as N.P.A, the Respondent filed an application under Section 7 of the IBC before the Adjudicating Authority and after hearing the parties the impugned order was passed which led to filing of this Appeal.

Submissions on behalf of the Appellant

3. The Ld. Counsel for the Appellant during the course of argument and in his memo of Appeal along with written submissions submitted that while passing the impugned order the Adjudicating Authority failed to appreciate that the Insolvency Application filed by the Financial Creditor/Respondent herein was not maintainable as it had not been instituted by the Financial Creditor.

4. It is further submitted that the Application purports to have been instituted by the Assistant General Manager as an alleged Authorized Signatory of the Respondent Bank. However, no Board Resolution or letter of authority had been annexed along with the Insolvency Application authorizing the AGM to initiate corporate insolvency resolution process as envisaged by Section 7 of the IBC.

5. It is further submitted that the Appellant relying on the Affidavit filed by the Respondent before the Adjudicating Authority on 03.09.2019 submitted that it contains a document purporting to be Minutes of a Meeting of the Board of Directors dated 14.08.2017 wherein it is stated that "Standard Operating Procedure (SOP) to be devised for NCLT/JLF cases". It is thus clear that no such SOP was devised as of 14.08.2017 and in this document, it is mentioned that

the existing Delegation of Powers dated 07.08.2017 is to be modified, but no such Delegation of Powers has been produced.

6. It is further submitted that the Adjudicating Authority failed to consider the Affidavit dated 03.09.2019 wherein there is a letter alleged to have been issued pursuant to delegation of powers dated 23.11.2017 approved by the Board of Directors. However, no resolution dated 23.11.2017 by the Board of Directors of IDBI Bank has been produced by the Respondent on record. The GM incorrectly certifies that the DOP authorizes the AGM to file the Section 7 application.

7. The Ld. Counsel for the Appellant relying on a judgment of the NCLAT in the case of ***Palogix Infrastructure (P) Ltd. v ICICI Bank Ltd. reported in (2017) SCC Online NCLAT 266*** wherein this Tribunal held that 'Power of Attorney Holder' is not empowered to file application on behalf of Financial Creditor or Operational Creditor or Corporate Applicant and only an authorized person has the power to do so. Based on these submissions the impugned order is fit to be set aside and the Appeal be allowed.

Submissions on behalf of the Respondent

8. The Ld. Counsel for the Respondent during the course of argument and in his reply affidavit along with written submissions submitted that application under Section 7 of the IBC was filed by AGM of IDBI Bank who has been authorized by GM of IDBI Bank pursuant to clause no. 6 which is at page 84 and read with clause no. VI at page 18 of the additional affidavit filed by the Appellant wherein column 4 which is reads as hereunder:

4	<p><i>Filing of claim:</i></p> <p>(i) <i>When the bank's exposure is less than Rs. 100 crore</i></p> <p>(ii) <i>When the bank's exposure is Rs. 100 crore and above</i></p> <p><i>The claim to be checked by one more officer not below the rank of AGM.</i></p>	<p>(i) <i>DGM</i></p> <p>(ii) <i>GM</i></p>	<p><i>No</i></p>
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9. The Ld. Counsel for the Respondent while referring to para 9 of the impugned order at page 64 to 66 of the Appeal Paper Book submitted that the Adjudicating Authority considered the points raised by the Appellant regarding the fact that the Section 7 of the IBC was filed by the person who was not competent being AGM and have come to the conclusion that the AGM is competent to file the Application.

10. It is further submitted that the Committee of Creditors in its meeting have resolved to initiate liquidation of Corporate Debtor and accordingly Resolution Professional had filed the IA bearing No. 769/2021 under Section 31 of the IBC and the same is pending for consideration. As the CoC by applying its commercial wisdom, had already proposed liquidation of the Appellant Company, therefore, the present appeal has become infructuous. Based on these submissions, the Adjudicating Authority has rightly passed the impugned order, therefore, there is no merit in the present Appeal, the Appeal is fit to be dismissed

as the recommendation of the CoC to liquidate the Company is pending for consideration before the Adjudicating Authority.

FINDINGS

11. After hearing the parties and going through the pleadings made on behalf of the parties, we agree with the reasons given by the Adjudicating Authority while passing the impugned order and as the CoC has recommended for liquidation of the Company for which I.A. is pending before the Adjudicating Authority, hence this Appeal has become infructuous. The Impugned Order dated 31.08.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in C.P. (IB) No. 59/7/NCLT/AHM/2019 is hereby affirmed. The instant Appeal is hereby dismissed.

12. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench), forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

New Delhi
07th November, 2022
R. Nath.