

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.98/2024
(IA Nos.270 & 945/2024)

In the matter of:

MR. RAJA SEKHARA RAO NARAYANAM

Suspended Director of M/s ANANDA BHARATHI
FERTILIZERS (India) PRIVATE LIMITED
At 601, Visista Apartment, Plot No.125, Phase-1,
Kalyannagar Colony, Vengalarao Nagar,
Hyderabad-500 038,
Andhra Pradesh.

MRS. KASA LATHA

Formerly the Director of M/s ANANDA BHARATHI
FERTILIZERS (India) PRIVATE LIMITED
At 601, Visista Apartment, Plot No.125, Phase-1,
Kalyannagar Colony, Vengalarao Nagar,
Hyderabad-500 038,
Andhra Pradesh.

MR. NAGADURGAPRASAD RAO KASA

Suspended Director of M/s ANANDA BHARATHI
FERTILIZERS (India) PRIVATE LIMITED
At H No. 5124, Max Society, Behind BHEL Factory,
Ramachandrapuram, Medak District
Telangana- 502032.

... APPELLANTS

V

MR. KALVAKOLANU MURALI KRISHNA PRASAD

Interim Resolution Professional of
M/s ANANDA BHARATHI FERTILIZERS
(India) PRIVATE LIMITED
8-27, Jillelguda, Mythripuram Colony, Vyshalinagar,
PO, Hyderabad, West Marredpally,
Telangana -500079.

CANARA BANK

Door No.6-3-144, First Floor,
Jahanara Kareem Complex,
Main Road, Balanagar,
Hyderabad-500 037.

...RESPONDENTS

Present :

For Appellants : Mr. Gautam Singhal, Mr. Rajat Chaudhary,
Mr. Sudhir Naagar, Advocates
For Respondents : Mr. JVL Bharathi, Advocate, For R1
Mr. M.L. Ganesh, Advocate, For R2

JUDGMENT
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

The instant company appeal has been filed by Mr. Rajasekhara Rao Narayanam and two others, against the impugned order dated 14.02.2024, that was passed in CP/10/07/HDB/2023 by Ld. NCLT Hyderabad. By virtue of the said order, NCLT had allowed the application filed under Section 7 of IBC by Canara Bank, the Financial Creditor, and directed commencement of CIRP against the Corporate Debtor, M/s/. Anand Bharathi Fertilisers India Pvt Ltd.

2. Brief facts of the case are that the Corporate Debtor was incorporated on 14.02.2011, for manufacturing of customised fertilisers and soil conditioners. On 24.03.2016, the Financial Creditor sanctioned and disbursed a term loan of Rs. 9 crore and working capital loan of Rs.1.10 crore to the Corporate Debtor. However, the Corporate Debtor defaulted in the repayment of both the principal debt and interest payable on it as per the repayment schedule. The Financial Creditor classified the loan account of the company as a non-performing asset

(NPA) on 03.06.2018. These loans were subsequently restructured in 2019 by creating FITL (Funded Interest Term Loan)-I and FITL-II by carving out the structure of interest and the penal charges that, had accrued on to that point, on the term loan. The total limits sanctioned and the amount outstanding as on 22.11.2022 stood at Rs. 13,81,99,573 and Rs. 17,85,85,580 respectively. The Financial Creditor initiated proceedings under the SARFAESI Act and issued demand notice dated 27.10.2021, a possession notice too was issued on 10.01.2022, and further issued a redemption notice on 18.01.2022. The Corporate Debtor requested a one-time settlement (OTS), which was rejected by the Financial Creditor as not financially feasible. Subsequently, the Financial Creditor filed an application under Section 7 of IBC 2016, praying for initiation of CIRP against the Corporate Debtor. After hearing both parties, NCLT admitted the said application by an order dated 14.02.2024, which is now being challenged in the instant appeal.

3. The Appellants have submitted that they were sanctioned with a term loan of Rs.9 crore and additional working capital of Rs.1.10 crore, but since the working capital was not released in time as stipulated in the sanction letter, and was disbursed after two years in 2017, it led to financial difficulties to the Corporate Debtor, leading to shortfall in repayment of the loan amount.

4. They have also submitted that the default in repayment of the restructured loan fell within the period that stood covered by Section 10A of IBC (that is,

25.03.2020 to 25.03.2021), as the date of repayment as per the sanction letter for the restructuring of loans was 31.05.2020, and therefore, CIRP proceedings are not maintainable.

5. They have submitted that the Financial Creditor had proceeded under the SARFAESI Act on 16.07.2018 and had issued various demand notices, possession notices as contemplated under Section 13(2) and 13(4) of the Act, and auction notices under the said Act which were from time to time. Further, even when the Appellants had obtained a conditional stay from DRT-I, Hyderabad, in IA/857/2022 vide its order dated 14.07.2022, on the basis that the OTS proposal submitted by them should be considered and that in compliance of the said order, they had deposited Rs.1.20 crore with the Financial Creditor. The Financial Creditor did not consider their request for extension of timeline to pay the balance OTS amount and instead withdrew all SARFAESI proceedings, that were being carried before DRT-1, Hyderabad on 05.04.2023 and had initiated insolvency proceedings against the Corporate Debtor by pursuing the application CP/IB/10/7/HDB/2022 filed by them before NCLT Hyderabad. They contend that this establishes the fact that the Financial Creditor was only interested in recovery of dues and not in resolving the insolvency of the Corporate Debtor, which is not permissible under IBC as per several judgments of Hon'ble NCLAT and Hon'ble Apex Court. He had referred to the judgment of ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited in Civil Appeal No.9405 of 2017*** of Hon'ble Apex Court and ***Mr. Maulik Kirtibhai Shah***

vs United Telecoms Limited in Company Appeal (AT)(CH) (Ins) No.268 of 2023 of NCLAT to support their contention that IBC cannot be used as a recovery forum, by the Financial Creditors and that in case there is any default in payment of the dues, the same should be recovered by the lenders by recourse before an appropriate court of law and not before NCLT.

6. He has further stated that the application filed under Section 7 of IBC, does not mention the date of default, and the date of default as mentioned in para 30 of the impugned order, which is based on NeSL record should not be taken into consideration as the same has been conveniently chosen by the Financial Creditor to avoid the restrictions of limitation period and the Section 10A period, and hence the impugned order should be set aside because it does not take the same into account despite his pleadings before NCLT.

7. They have stated that mere admission of debt and default is not enough and a sufficient reason to commence CIRP proceeding because as per Section 7(5)(a) of IBC, NCLT has to satisfy itself that the parameters of default on a debt had occurred, that the threshold for filing such an application had been met, that the application under Section 7(2) is complete and that there is no other recourse left to meet the demand of the Financial Creditor. They have stated that in the instant case, there was already an OTS arrangement, which was cut short by the Financial Creditor by giving only 15 days' time to pay the agreed amount, which is against the RBI circular. Further, because there was an arbitration proceeding pending,

where the amount claimed by him is more than the dues outstanding to the Financial Creditor and this should have been taken into account by the Ld. Adjudicating Authority before taking a decision on admission of the Section 7 application.

8. On the contrary, the Respondent/Financial Creditor has argued that the loan account of the Corporate Debtor was classified as NPA on 03.06.2018, and that the accounts were restructured in 2019, and the implementation time for restructuring was until 31.03.2021, and thereafter the account again slipped into NPA on 09.05.2021. As on 22.11.2022, the total liability of the Corporate Debtor stood at Rs.17.85 crore, because of which it had to initiate proceedings under the SARFAESI Act and issued the demand notice under Section 13(2) on 27.10.2021, a possession notice under Section 13(4) on 10.01.2022 and a redemption notice on 18.01.2022.

9. Admittedly, the Corporate Debtor requested for an OTS, but the said offer was rejected on the basis that, it was not financially feasible. Further because of the failure of the Corporate Debtor to make the payments as stipulated in the loan documents, the Financial Creditor had to file the application under Section 7 of IBC to initiate CIRP. On the issue of date of default, the Respondent has stated that in accordance with RBI guidelines, moratorium was granted on account of Covid, accumulated interest was converted into Covid FITL (Funded Interest Term Loan) for which the repayment was due on 31.03.2021, which was not paid

and therefore the default will have to be taken to have been committed by the Corporate Debtor on the said date. He has stated that the provisions of Section 10A of IBC will not apply under the facts of this case because the said period ended on 25.03.2021, and therefore, it cannot be said that Section 7 application was in contravention of Section 10 A of IBC. Further, because the Corporate Debtor after 31.03.2021, has made several payments into the loan account, this has to be taken as the acknowledgement of the liability of the Corporate Debtor in terms of Section 18 of limitation act, 1963. He has further added that non-mentioning of the date of default in the Section 7 application will not be fatal in light of the judgment of ***NCLAT in Manmohan Singh Jain v. SBI in CA (AT)(Ins)97/2021***. With regard to belated release of working capital loan, which the Appellant claims as the fundamental reason for the financial crunches of the Corporate Debtor, the Respondent has argued that the Ld. Adjudicating Authority cannot dismiss the application of the Financial Creditor on grounds of inadequate disbursement in light of the judgment of ***NCLAT in State Bank of India v. N.S. Engineering projects in Company Appeal (AT) (Insolvency) No. 978 of 2022***, where NCLAT observed that Hon'ble Apex Court in the matter of Innoventive Industries held that the application of the Corporate Debtor was unconditional and did not depend upon infusing the funds by the creditors into the Appellant company.

10. He has further stated that the Debt was duly admitted by the Corporate Debtor time and again through acknowledgement of debt and besides through

entries in balance sheets, and there are no defects in the application thus filed, and hence the appeal may be dismissed.

11. The points to determine in the appeal, are the following:

(a) Whether delay in disbursal of working capital loan would act as a bar for the Financial Creditor to initiate CIRP process?

(b) Whether, the Financial Creditor should have given more time to the Corporate Debtor to fulfil its obligations under OTS, which was offered to the Corporate Debtor pursuant to the order of DRT-1 Hyderabad dated 14.07.2022, in IA/857/2022, instead of filing the application under Section 7 of the code and accelerating the CIRP process?

(c) Whether, the Financial Creditor by initiating CIRP proceedings pushed the Corporate Debtor, which is otherwise claimed by the Appellant to be a solvent and running company, into insolvency, which had resulted in destruction of its value, and whether the said act will constitute to be against the objectives of the code as per law laid down in the matter of ***Vidarbha Industries Power Ltd. Vs Axis Bank*** by Hon'ble Apex Court?

(d) Whether Ld. Adjudicating Authority failed to consider that the Financial Creditor had deliberately omitted mentioning of the date of default in the application filed under Section 7, and that the actual

date of default is from 31.05.2020, as per the sanction letter of restructured loans and therefore the application is hit by Section 10A of the code?

(e) Whether pendency of an arbitration proceedings, which is likely to go in favour of the Corporate Debtor and which may result in realisation of an amount, sufficient to pay the outstanding dues, will call for giving a pause to the CIRP process?

(f) Whether the process initiated by the Financial Creditor can be termed as a mere recovery proceedings, instead of insolvency proceedings?

Analysis and findings

12. Regarding point (a) as above, Ld. NCLT has considered the same in detail and concluded that the instant case is similar to the case decided by this Appellate Tribunal in the matter of ***State Bank of India v. N.S. Engineering in CA(AT)(Ins) No. 978/2022***, where by its order dated 03.02.2023, NCLAT has held that rejection of a Section 7 application on the ground that for default committed by the Corporate Debtor, the Financial Creditors are also to be blamed, is against the spirit and objectives of insolvency resolution envisaged in I & B Code. The relevant paragraph is extracted below.

“24. Under the Scheme of IBC, when a Corporate Debtor is unable to pay its debt, which becomes payable, it is a warning signal for Corporate Debtor and when an Application is filed

*by a Financial Creditor to initiate CIRP under Section 7 and there are ample material that Corporate Debtor is unable to pay its debt and has committed default, the Adjudicating Authority is not required to go into the reasons of default and ignore the real status of the Corporate Debtor and close its eyes to the fact that the Corporate Debtor needs insolvency resolution. **Red signal having been flagged by the Applicant, ignoring the precarious financial situation and status of the Corporate Debtor and not taking remedial action to bring back the Corporate Debtor on its track by adopting resolution process as per IBC and reject the Application on the reasons of default, is clearly contrary to the whole Scheme of the IBC.** There being sufficient material before the Adjudicating Authority that consistent defaults have been committed by the Corporate Debtor and it is unable to pay its debt, rejection of Section 7 Application on the ground that for default committed by the Corporate Debtor, the Financial Creditors have also to be blamed is closing the eyes to the Scheme of the insolvency resolution.”*

13. As regards point (b), it is to be held that OTS is in the prerogative of the Financial Creditor and the Corporate Debtor cannot claim as of right to avail OTS in its own term. In the instant case the Corporate Debtor had proposed the OTS proposal of Rs. 11 Crores on 19.07.2023 and the Financial Creditor has rejected the same on 21.11.2023. This Tribunal is not required to venture into the reasons behind the said rejections except for noting that the Financial Creditor is within its rights to take a decision on the OTS proposal as per its internal policies and procedures and that it has decided on the same. Rejection of OTS will not stand in the way of filing an application under Section 7 of the Code as long as debt and default are established.

14. Regarding point (c), it is clear from the list of dates and events and also from the own pleading of the Appellant that the Corporate Debtor faced difficulty in servicing the term loan taken by it, that the account was declared as NPA on 03.06.2018, that the account was restructured and accumulated interest was converted into Funded Interest Term Loan (FITL) by Financial Creditor on 28.06.2019, that further relaxations were given on account of Covid and subsequent accumulated interest were converted into Funded Interest Term Loan (FITL) and the revised repayment date was fixed as 31.03.2021. Thus, it cannot be said that the Corporate Debtor was a solvent company and it was pushed into CIRP by the Financial Creditor, which could at all be said was only interested in recovering its dues. Thus, filing of applications under Section 7 is not against the objectives of the code.

15. Point (d), has been dealt with extensively by Ld. NCLT in para 29-30 of the impugned order. It has recorded that there were multiple loan facilities, these were extended to the Appellant, being the term loan, FITL, Covid FITL, working capital and MSME – OD/OCC of varying tenures, which fell due on different dates, and the Corporate Debtor has defaulted in payment of such dues. The latest of such dates is 30.03.2021 and none of those default dates fell during 10A period starting from 25.03.2020 – 25.03.2021. Further, it has relied on the NCLAT judgment in the matter of Manmohan Singh Jain (Supra), which has held that *"...non-mentioning of the date of default in Col. IV is not fatal to the application and on the sole ground, the application cannot be rejected..."*.

16. As far as point (e) is concerned, it is admitted that arbitration proceedings were pending and the amount claimed by Corporate Debtor exceeded the demand of Financial Creditor. However, the said proceedings had not yet crystallized and in the absence of the same, it cannot be said that the Corporate Debtor was capable of repaying the loan, had it been given some more time.

17. Regarding point (f), Ld. NCLT has relied on the ratio of '**Innovative Industries Limited vs. ICICI Bank & Anr. (2018) 1 SCC 407**' to take the position that "*the moment the Ld. Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete...*". Based on the above and the fact that loans were sanctioned to the Corporate Debtor, the same were restructured due to inability of the Corporate Debtor to repay, and even after that, the Corporate Debtor has defaulted, it has come to the conclusion that condition for admission of the Section 7 application in the instant case is satisfied.

18. As all the points raised by the Appellants have been satisfactorily dealt with by Ld. Adjudicating Authority, we see no reason to interfere with the impugned order. Accordingly, the appeal is dismissed. IAs, if any, are also closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

19/03/2026
SN/MS/AK