

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 296 of 2023

IN THE MATTER OF:

IL&FS Financial Services Ltd.

...Appellant

Versus

Avance Technologies Ltd.

...Respondent

Present:

For Appellant: Mr. Akshat Hansaria, Mr. Tanmay Arora, Advocates

For Respondent:

ORDER

13.04.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 05th January, 2023 passed by the Adjudicating Authority by which Section 7 Application filed by the Appellant has been rejected.

3. The Appellant by a Loan Agreement dated 31st March, 2018 has granted Term Loan Facility of Rs. 150 Crores to the Corporate Debtor by which first and exclusive charge was created on cash flows arising out of assets being created out of the proceeds. The loan facility was granted at the interest of 12 %. The Corporate Debtor subsequently extended a loan facility to one of subsidiary of ILFS Group i.e. ITNL at the rate of 13.35 % and under that arrangement, the amount of Rs. 150 Crores was transferred. The default was committed by the ILFS subsidiary to whom the loan was granted at the rate of 13.35 %. Several notices were issued for default but the payment to the corporate debtor was not made by the ILFS subsidiary and subsequently

Section 7 Application has been filed by the Financial Creditor claiming the amount from the Corporate Debtor.

4. The Corporate Debtor opposed the Section 7 Application and submitted that the Corporate Debtor has only acted as facilitator to give the financial facility to the ILFS entity and since under the RBI Directives ILFS was unable to lend any financial facility to its subsidiary this mechanism was adopted and in fact it was not genuine loan transaction rather a transaction to lend amount to subsidiary of the ILFS.

5. The Adjudicating Authority after hearing the parties has rejected Section 7 Application by the Impugned Order against which this Appeal has been filed.

6. Learned Counsel for the Appellant challenging the order contends that under Section 7 Application, the Adjudicating Authority has to only find out “debt and default” and in the present case, debt and default is proved hence the Adjudicating Authority ought to have admitted Section 7 Application. It is submitted that judgement of the Hon’ble Supreme in **Vidharbha Industries Power Limited Vs. Axis Bank Limited, (2022) 8 SCC 352** was not applicable in the facts of the present case and were entirely different.

7. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

8. The Adjudicating Authority after noticing the submissions of the parties has also relied on letters issued by ITNL which has issued an awareness letter to loan given by **MP Border** i.e. subsidiary of the ILFS dated 29th March, 2018

and further has referred to another Letter dated 07th October, 2022 which was sent to the Corporate Debtor by IFLS Transportation Networks Limited. The Financial Facility extended by Corporate Debtor was to one of the subsidiary of the ILFS and it is not far to seek that since under RBI Directives ILFS could not directly lend the amount to its subsidiary the said mechanism was adopted which has been found so by the Adjudicating Authority. In paragraph 17 and 18 the Adjudicating Authority has made following observations:

“17. It is established beyond doubt that the lender and the ultimate borrower are the entities belonging to the IL&FS group. Pursuant to the directions passed by Hon’ble National Company Law Appellate Tribunal, at New Delhi for restructuring the IL&FS group, all the entities belonging to the group are treated as a single entity and not restructured separately. However, in the present matter the Financial Creditor is treating this one leg of transaction in isolation as against the complete transaction where the lender and borrower are both IL&FS group. In light of the facts of the case the claim of the Petitioner should be set-off between the IL&FS group companies.

18. The principle set out above applies squarely to the present case. The ability of the Respondent to recover due amounts from ITNL and ITNL entities is restricted due to the moratorium imposed by the NCLAT in unconnected proceedings. Since the Respondent cannot receive the amount from ITNL, MP Border and SSTL, there is no question of it being required to make payment of the amount of IFIN. Therefore, in light of the serious dispute relating to whether any default has been committed, the present case is not a fit case for initiating CIRP.”

9. We are satisfied that the Adjudicating Authority in the facts of the present case has rightly exercised its discretion in not admitting Section 7 Application. It is also to be noticed that under the order passed by this Tribunal in Order dated 15.10.2018, the actions against ILFS was prohibited. We thus do not find any error in the Order impugned. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn