

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 83 of 2017

[Arising out of Order dated 13th June, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in CP No.515 of 2017]

IN THE MATTER OF:

K.S. Rangasamy

...Appellant

Vs.

State Bank of India & Anr.

...Respondents

Present: For Appellant: - Mr. Amarendra Saran and Mr. Virendra Ganda, Senior Advocates with Mr. Amitesh Chandra Mishra, Mr. Prem Mardi, Mr. Ganesh, Mr. Sabarish Subramanian, Mr. M. Sathish Kumar and Mr. V. Raghavachari, Advocates.

For Respondents:- Mr. E. Om Prakash, Senior Advocate with Mr. Pawan Kishore Singh, Ms. Madhusmita Bora and Mr. M. Anbalagan, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Respondent- State Bank of India ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") for initiation of 'Corporate Insolvency Resolution Process' against M/s. Summer India Textile Mills Private Limited ('Corporate Debtor'). The said application having been admitted by impugned order dated 13th June, 2017, Mr. K.S.Rangasamy,

Shareholder/Promoter/Director of the 'Corporate Debtor' has preferred the appeal.

2. According to Appellant, the 'Corporate Debtor' is an on-going concern and it is the second largest manufacturer in textile industry in the Country. The Company is having 750 employees/workers whose families are entirely dependent on the survival of the 'Corporate Debtor'. The 'Corporate Debtor' was declared as Non-Performing Asset (NPA) on 28th October, 2012 by the Respondent- State Bank of India ('Financial Creditor') solely because they could not cover/collect/approach Export Credit Guarantee Corporation (ECGC) despite debiting/collecting premium from the 'Corporate Debtor' for the years 2005-06 to 2014-15.

3. It is stated that the Respondent- 'Financial Creditor' had already initiated proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act, 1993) and also issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") which came to be stayed by the Hon'ble Supreme Court. It is alleged that after the order of stay of such proceedings, the Respondent- 'Financial Creditor' filed the application under section 7 of the 'I&B Code' in Form 1 by concealing and suppressing all material facts and by inflating the claims.

4. Learned counsel for the Appellant submitted that the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, passed the impugned order in haste as apparent from the following fact:

On 7th June, 2017, the Respondent- 'Financial Creditor' filed an application in Form No.1 under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "Adjudicating Authority Rules, 2016"). 12th June, 2017, was declared as a local holiday due to the local festival at Tiruchengode, Tamil Nadu. On 12th June, 2017, the 'Corporate Debtor' received an e-mail sent by Adjudicating Authority, Chennai intimating the date of hearing i.e. 13th June, 2017. The Adjudicating Authority on 13th June, 2017 without any advance copy to the 'Corporate Debtor' admitted the application in violation of Rule 4(3) of the Adjudicating Authority Rules, 2016.

5. It was submitted that there is a huge variance in the figure mentioned in the notice dated 10th October, 2013 under sub-section (2) of Section 13 of the SARFAESI Act issued by the Respondent- 'Financial Creditor' which is Rs. 105,66,05,078/- and whereas debt claimed in Form No.1 dated 7th June, 2017 filed under Adjudicating Authority Rules, 2016 before the Adjudicating Authority, Chennai is Rs. 131,63,86,382.66/-. The Respondent- 'Financial Creditor' has included the debts of a different corporate entity i.e. Summer India Weaving and Processing Mills Private Limited along with its claims against the 'Corporate Debtor' which is impermissible in law.

6. It was submitted that sub-section (11) of Section 3 of the 'I&B Code' defines 'debt' as a liability or obligation in respect of a claim which is due from any person. This does not include the debts of another Company apart from the 'Corporate Debtor'.

7. It was further submitted that the Hon'ble Supreme Court vide order dated 25th March, 2014 directed the Respondent- 'Financial Creditor' to consider the contentions of the 'Corporate Debtor' with regard to the enforcement of security interests in agricultural lands and directed the Respondent- 'Financial Creditor' to consider one-time settlement before issuing notice under sub-section (4) of Section 13 of the SARFAESI Act.

8. Learned counsel for the Appellant submitted that stay order has been passed in favour of the 'Corporate Debtor' by the DRT, Madurai vide orders dated 2nd March, 2015 and 11th March, 2015 in S.A. 80 of 2015 against action taken under sub-section (4) of Section 13 of the SARFAESI Act. Notice has been issued on 25th February, 2015, whereby the Respondent- 'Financial Creditor' has been directed not to publish possession notice in Newspapers.

9. It was further submitted that Hon'ble High Court of Madras vide its order dated 22nd September, 2015 has also stayed the possession notice dated 26th August, 2015 issued by the 'Financial Creditor'. These orders have been wilfully suppressed while filing Form 1 which shows the malafide action of the Respondent-'Financial Creditor'.

10. It was submitted that in terms of the impugned order, a total sum of Rs. 3051 lakhs is to be paid by the 'Corporate Debtor' to 'State Bank of India' and 'State Bank of Patiala'. Rs. 2521 lakhs to 'State Bank of India' and Rs. 980 lakhs to 'State Bank of Patiala'. The 'Corporate Debtor' is ready and willing to pay the aforesaid due amount in 12 (Twelve) equal monthly instalments with interest @ 9% p.a.

The amount of principal and interest till 31st March, 2014 is calculated as under:

	Principal (in lacs)	Interest @ 9% p.a. (in lacs)	Total (in lacs)
SBI	2521	844	3365
State Bank of Patiala	980	328	1308
			
	3501	1172	4673

11. It was submitted that the 'Corporate Debtor' is ready to pay Rs. 3365 lakhs to the Respondent- 'Financial Creditor' in 12 equal monthly instalments.

12. It was also submitted that so far the 'Corporate Debtor' has paid a total sum of Rs. 20500 lakhs (Rs. 205 Crores) approximately towards principal and interest to the Respondent- 'Financial Creditor' until the default committed by its buyer/customer.

13. Learned Counsel for the Respondents refuted the allegations and submitted that the pendency of a proceedings under Section 19 of the

DRT Act, 1993 or action taken under sub-section (4) of Section 13 of the SARFAESI Act and consequently, in terms of order of stay passed by any Court of competent jurisdiction cannot be a ground to reject an application under Section 7 of the 'I&B Code', if it is complete and there is a debt and default.

14. On perusal of the record, we find that the Appellant has not disputed that there is a debt due to the 'Financial Creditor' from the 'Corporate Debtor' and the 'Corporate Debtor' has defaulted to pay the amount. The Appellant has also accepted that amount is due and the 'Corporate Debtor' has defaulted to pay the amount. In this background and in absence of any infirmity in the petition filed under section 7 of the 'I&B Code', which was otherwise complete, we hold that the Adjudicating Authority has rightly admitted the application.

15. The next question arises for consideration is whether the impugned order is to be set aside on the ground that no notice was issued by the Adjudicating Authority prior to admitting the application under section 7 of the 'I&B Code'.

16. Similar issue fell for consideration before this Appellate Tribunal in ***"M/s. Innoventive Industries Limited v. ICICI Bank & Anr.— Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017"***, wherein this Appellate Tribunal vide judgment dated 15th May, 2017 held as follows:

“40. In *S.L Kapoor v. Jagmohan*, (1980) 4 SCC 379 the Hon'ble Supreme Court was of the view:

"Where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not insist on the observance of the principles of natural justice."

41. The aforesaid observation has been highlighted by Hon'ble Supreme Court, in a different way, observing that "useless formality" is another exception to the ratio of natural justice. Where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not insist on the observance of the principles of natural justice because it would be futile to order its observance. Therefore, where the result would not be different, and it is demonstrable beyond doubt, order of compliance with the principles of natural justice will not be justified.

42. From the aforesaid decisions of Hon'ble Supreme Court, the exception on the Principle of Rules of natural justice can be summarised as follows:-

- i. Exclusion in case of emergency,

- ii. *Express statutory exclusion*
- iii. *Where discloser would be prejudicial to public interests*
- iv. *Where prompt action is needed,*
- v. *Where it is impracticable to hold hearing or appeal,*
- vi. *Exclusion in case of purely administrative matters.*
- vii. *Where no right of person is infringed,*
- viii. *The procedural defect would have made no difference to the outcome.*
- ix. *Exclusion on the ground of 'no fault' decision maker etc.*
- x. *Where on the admitted or undisputed fact only one conclusion is possible - it will be useless formality."*

17. In the present case, as we have discussed the details relating to the merit of the case, we find no reason to remit the case to the Adjudicating Authority on the ground of violation of rules of natural justice, which will be a useless formality.

18. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 13th June, 2017. However, as we find that the Appellant has taken plea that the 'Corporate Debtor' is ready to pay the

total amount with 9% interest p.a. in 12 equal monthly instalments, it will be open to the 'Financial Creditor' to settle the dispute, if the 'Resolution Applicant' proposes 'lesser amount' and 'more time' than the 'amount and time' proposed by the Appellant. In such case, it will be also open to the concerned person to move before an appropriate forum to make the settlement absolute.

19. The appeal is dismissed but with liberty aforesaid. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

6th March, 2018

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