

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 73 of 2019

IN THE MATTER OF:

Naresh Kumar Dhingra & Ors.

...Appellants

Vs

Indian Overseas Bank & Anr.

....Respondents

Present:

For Appellants: Mr. Amit Dhall and Mr. Neeraj Malik, Advocates.

For Respondents: Mr. Kunal Tandon, Ms. Niti Jain and Ms. Richa, Advocates.

ORDER

04.02.2019: This appeal has been preferred by 'Mr. Naresh Kumar Dhingra and Others', Director of 'M/s JMD Oil Pvt. Ltd.' (Corporate Debtor) against order dated 11th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi whereby and whereunder the application under Section 7 filed by 'Indian Overseas Bank' (Financial Creditor) as member of consortium of the banks has been admitted, order of moratorium passed and Interim Resolution Professional has been appointed.

2. Learned counsel appearing on behalf of the Appellant submits that the person who signed the Form-1 has signed in personal capacity. However, such ground is not acceptable as the Form-1 being submitted by authorized officer of the Indian Overseas Bank. It is further contended that date of default as shown is wrong as in terms of subsequent development date of default goes to some other date. However, such submission also cannot be accepted in view of

decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407*", wherein the Hon'ble Supreme Court observed and held as under:-

*"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to **Section 3(6) which defines "claim" to mean a right to payment even if it is disputed.** The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined*

under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim*

resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then

communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

3. As it is apparent that there is debt due payable by the Corporate Debtor in fact and they have not disputed it and the records being complete, we hold that the Adjudicating Authority rightly admitted the application under Section 7 of I&B Code. In absence of any merit, the appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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