

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 587 of 2018

[Arising out of Order dated 20th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in C. P. No. (IB) 50 (PB) / 2018.]

IN THE MATTER OF:

Vikas Aggarwal

Suspended Director
Asian Colour Coated Ispat Limited
405, Nirmal Tower, 26,
Barakhmaba Road, Connaught Place,
New Delhi – 110 001

...Appellant

Vs

1. State Bank of India

Having its central office at
Nariman Point,
Mumbai – 400 021.

Also at:
Parliament Street,
New Delhi.

2. Asian Colour Coated Ispat Limited

Through Resolution Professional

Having its registered office at,
405, Nirmal Tower, 26,
Barakhmaba Road, Connaught Place,
New Delhi – 110 001.

And
Corporate office at
ACCIL House,
Plot 26P, Section 33,
Gurgaon – 122 004.

...Respondents

Present:

For Appellant: Mr. Tanmay Mehta, Mr. Ankit Gupta, Mr. Ajay Kumar and Ms. Akshita Katoch, Advocates.

For Respondent: Mr. Ankur Mittal, Advocate for Respondent No.1
Ms. Swati Seth, Advocate for Resolution Professional.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

State Bank of India (Financial Creditor) filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') on 29th December, 2017 for initiation of Corporate Insolvency Resolution Process against 'Asian Colour Coated Ispat Ltd.' (Corporate Debtor). However, no order was passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in view of Writ Petition (C) No. 4842/2018 filed by the Corporate Debtor before Hon'ble Delhi High Court. Subsequently, by impugned order dated 20th July, 2018, the Adjudicating Authority admitted the application under Section 7 after notice and hearing the Corporate Debtor. The Said order has been challenged by 'Vikas Aggarwal', the Shareholder/Director of the Corporate Debtor.

2. Learned counsel appearing on behalf of the Appellant submitted that the 'Financial Creditor' even after four rounds of pleading including application under Section 7, rejoinder to the reply, etc. failed to cure the defects in the Section 7 application which remained incomplete.

3. However, aforesaid submission cannot be accepted in view of the averment made by the Appellant at para 22, as follows:-

“22. The Respondent pursuant to the direction of the Hon’ble NCLT filed its reply to the Application to bring the Additional Affidavit on record alongwith the Additional Affidavit itself. The reply of the Respondent runs into 4 (four) volumes intended to cure the defects in the Section 7 Application of the Respondent. Along with its reply the Respondent has filed following documents which were not part of the original Section 7 Application:

- (a) Statements of Accounts with respect to 14 accounts of Appellant;
- (b) Certificate purportedly in compliance with and under Banker’s Books Evidence Act, 1891;
- (c) Copy of Statutory Auditor’s Report;
- (d) Tabular computation/ calculation leading to the amount of Rs.1283.46 crores from the Statements of Accounts;
- (e) Copy of valuation report dated 10.02.2017; and
- (f) Copy of Search Report dated 10.01.2018.

Additionally, when the Appellant filed its rejoinder to the reply of the Respondent in relation to the Additional Affidavit, the Respondent filed an additional affidavit to bring on record further documents (statements of accounts). Notably, the affidavit was filed by Respondent on the day when the matter was listed for final arguments on

09.05.2018. Copy of the Reply of the Respondent to the Additional Affidavit of the Appellant is annexed hereto and marked as Annexure A-13 and copy of the rejoinder filed by the Appellant to the reply of the Respondent is annexed hereto and marked as Annexure A-14.”

4. It was next submitted that there is a mismatch between the claim made by the Financial Creditor as the claim has not been correctly shown. Learned counsel for the Appellant relied on the decision of this Appellate Tribunal in “*M/s. Starlog Enterprises Limited V/s. ICICI Bank Limited – Company Appeal (AT) (Insolvency) No. 5 of 2017*”.

5. In “*M/s. Starlog Enterprises Limited V/s. ICICI Bank Limited*”, this Appellate Tribunal noticed that the 'adjudicating authority' at paragraph 9 of the order impugned therein held that the Appellant of the said case had committed a default of Rs.27.77 crores. As the Adjudicating Authority had no jurisdiction to decide the claim or default at the time of admission of application and it was noticed that the 'Financial Creditor' therein moved the application in haste and obtained an ex-parte order from the Adjudicating Authority, without notice to the Corporate Debtor, held the order impugned in the said case as illegal.

6. In the present case, the Adjudicating Authority has not given any finding as to what amount the Corporate Debtor defaulted to pay. The Adjudicating Authority being satisfied that there is a debt and the Corporate

Debtor has not disputed that no debt payable in law or in fact and the application under Section 7 filed by the Financial Creditor being complete, admitted the application.

7. In “*Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407*”, the Hon’ble Supreme Court 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.”

8. From the aforesaid finding it will be evident that the definition of **claim means a right to payment even if it is disputed**. The Corporate Debtor is only entitled to point out that the default had not occurred in the sense that the 'debt' **which may also include disputed claim** is not due. The moment the Adjudicating Authority is satisfied that a default has occurred the application must be admitted unless it is incomplete. It is not the case of the Appellant or the Corporate Debtor that the debt is not payable in law or in fact. Therefore, the Code gets triggered the moment the Adjudicating Authority noticed that the default is of Rupees One Lakh or more (Section 4).

9. We have noticed that the 'Financial Creditor' has removed the defects, it is only thereafter the Adjudicating Authority passed the impugned order of admission. The Appellant in his appeal has also taken plea that documents were produced as quoted and noticed in the preceding paragraph.

10. It was next contended that the person who filed the application under Section 7 was not competent having not authorised as per law, being an officer of lower rank. However, the record shows that one Mr. Abhishek Kumar, Assistant General Manager - cum - Relationship Manager of the Bank was empowered to sign and submit the application by Authorisation Letter dated 16th June, 2017 issued by the Chairman of State Bank of India in accordance with regulation 27 of State Bank of India General Regulation, 1955 r/w Gazette Notification dated 27th March, 1987 issued by the State Bank of India, Central Office.

11. In view of the discussion as above, we hold that no case has been made out to interfere with the impugned order. The appeal is accordingly dismissed.

No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

8th February, 2019

AM