

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW**  
**DELHI**  
**COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) (Insolvency) No. 60 of 2017**

(arising out of Order dated 23.5.2017 passed by the National Company Law Tribunal, Ahmedabad Bench, in C.P. (IB) No. 18 & 19/7/NCLT/Ahm/2017).

**IN THE MATTER OF:**

**Asian Natural Resources (India) Limited** ...

**Appellant**

**Vs**

**IDBI Bank Limited** .....

**Respondent**

**Along with Company Appeal (AT) (Insolvency) No. 62  
of 2017**

**IN THE MATTER OF:**

**Bhatia Global Trading Limited** ...

**Appellant**

**Vs**

**IDBI Bank Limited** .....

**Respondent**

Present: For Appellant: - Shri Arvind Kumar and Ms Henna George, Advocates

For Respondent: - Shri Abhishek Anand, Advocate.

## **J U D G E M E N T**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

In both these appeals as similar question has been raised they were heard together and disposed of by this common judgment.

2. Both the Appellant(s)-'Corporate Debtor (s)' have challenged similar Order (s), both dated 23<sup>rd</sup> May 2017, passed by Adjudicating Authority (National Company Law Tribunal (Ahmedabad Bench) (hereinafter referred to as Tribunal) in C.P. (IB) No. 18/7/NCLT/Ahm/2017 and in C.P. (IB) No. 19/7/NCLT/Ahm/2017, whereby and whereunder the applications preferred by Respondent/'Financial Creditor' under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I&B Code) for initiation of insolvency resolution process against Appellant (s)/'Corporate Debtors' have been admitted, Insolvency Resolution Professionals have been appointed and moratorium have been declared with certain directions in terms of the I&B Code.

3. The Appellants have challenged the impugned orders both dated 23.5.2017 on the ground that both the orders have been passed in violation of rules of natural justice, without

giving any notice to any of the Appellant (s)/'Corporate Debtors'.

4. According to Respondent, the aforesaid submission made on behalf of the Appellants is misleading and contrary to the record. Notices in terms of sub-rule (3) of Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules) were sent to Appellant – Bhatia Global Trading Limited and Appellant – Asian Natural Resources (India) Limited by Speed Post letter (s) both dated 8<sup>th</sup> May 2017 which was duly served on the said Appellant on 9<sup>th</sup> May 2017 and Bhatia Global Trading Limited on 12<sup>th</sup> May 2017. Copies of the receipts of the Speed Post(s) and 'delivery receipt (s)' have been annexed with the reply. Ld. Counsel for the Respondent also brought to our notice the order(s) both dated 12<sup>th</sup> May 2017 passed by the Ld. Adjudicating Authority wherein the Ld. Adjudicating Authority having noticed that nobody appeared on behalf of the 'Corporate Debtors' and date of hearing had not been informed to 'Corporate Debtors', directed to issue notice (s) of hearing to the respective 'Corporate Debtors', and the Respondent was directed to file 'proof of service'. The Respondent, thereafter, sent notices to the Appellants by Speed

Post (s) both on 12<sup>th</sup> May 2017 (Annexure R-3 to the respective Appellants) intimating the Corporate Debtor (s) order passed by Ld. Adjudicating Authority, Ahmedabad Bench with further intimation that the case has been fixed. The report enclosed shows that the said notice (s) were received by the Appellants on 15<sup>th</sup> May 2017.

5. In view of the records enclosed by the Respondent, we hold that the rules of natural justice was followed before admitting the applications.

6. Next it was contended by Ld. Counsel for the Appellants' that the 'financial creditor', being a party to the consortium of bankers and having signed Inter-se Agreement on 21.2.2009, Respondent-'financial creditor' had waived its right in favour of the 'lead bank', namely, State Bank of India (hereinafter referred to as SBI). Reliance has been placed on Inter-se Agreements dated 21.2.2009 [Annexure A-3 - CA (AT) (Ins) 60/2017] and 17.3.2011 [Annexure A2 - CA (AT) (Ins) 62/2017] respectively reached between SBI and 15<sup>th</sup> other banks, including Respondent- IDBI Bank, recognising one of the bank as 'Lead Bank' and other bank as second 'lead bank', relevant portion of one of which reads as follows: -

*"1. The Member Banks hereby recognise A bank as the Lead Bank and B Bank as the second Lead Bank of the A Bank Consortium.*

*2. The Member Banks/Trustee hereby agree to abide by the directions, instructions and clarifications, as may be given from time to time by the Lead Bank in consultation with second lead Bank in respect of any matters arising out of or in relation to the Cash Credit Account (s) or other Account (s) opened by the Borrower with the A Bank Consortium.*

*However, in respect of share in the enhancement of the/ additional/ ad-hoc limit, the members' banks would be entitled/free to use their discretion.*

*3. Notwithstanding anything to the contrary contained in or arising out of or implied by the said consortium Agreement and/or the Deed of Hypothecation and/or the Second Charge, it is hereby agreed and declared by and between the said Banks/Trustee as follows:*

*(a) A Bank shall act as the Lead Bank of the A Bank Consortium and B Bank as the second lead banks and all the Members shall act in the spirit of the consortium and all decisions should, as far as possible, be arrived at unanimously including those relating to sharing of ancillary business and drawings under different Facilities sanctioned to the Borrower.*

*(b) The Members of the Consortium do hereby agree to execute in favour of the Lead Bank and the second lead bank a power of attorney or other authorisation as may be deemed appropriate for constituting the Lead Bank and the Second Lead Bank as their true and lawful attorneys for them, in their name and on their behalf to do, execute and perform all acts, deeds and things as to the Lead Bank and the Second lead Bank may deem appropriate, necessary or expedient in the given circumstances as the leaders of the A Bank Consortium and to take decisions for an on behalf of the Consortium to communicate the same in the general interest of the A Bank Consortium. The Member Banks do hereby agree to ratify and confirm whatever all acts, deeds and things lawfully and bonafide done, taken or effected by the Lead Bank and second Lead Bank as such attorney in exercise of the powers, authorities and liberties hereby conferred upon, under and by virtue of this Agreement."*

7. Apart from that the Inter-se Agreement between different banks is not binding in nature, the 'Corporate Debtors' not being signatories cannot derive advantage of such Inter-se Agreement. This apart, the 'financial creditors' having right to

file application under Section 7 of the I&B Code, individually or jointly on behalf of other 'financial creditors' as quoted below, the Inter-se Agreement between the 'financial creditors' cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code: -

***“ Initiation of corporate insolvency resolution process by financial creditor - 7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.***

*Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(2) xxxxx “

8. For the reasons aforesaid, while we reject the submission made on behalf of the appellants, in absence of any merit, dismiss both the Appeals. However, in the facts and circumstances of the case, there shall be no order as to cost.

**(Mr. Balvinder Singh)  
Member (Technical)**

**(Justice S.J. Mukhopadhaya)  
Chairperson**

**NEW DELHI**

**11<sup>th</sup> August, 2017**