

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 854 of 2019

[Arising out of Order dated 19th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench in C.P. (I.B) No. 20/7/NCLT/AHM/2018]

IN THE MATTER OF:

Punjab National Bank

....Appellant

Vs.

M/s Vindhya Cereals Pvt. Ltd.

....Respondent

Present:

Mr. Apoorv Sarvaria, Advocate for Appellant.

Mr. Rajul Shrivastav, Advocate for Respondent.

J U D G M E N T

[26th February, 2020]

JARAT KUMAR JAIN, J.

The Appellant – ‘Punjab National Bank’ filed this appeal against the order dated 19.07.2019 passed by Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (I.B) No. 20/7/NCLT/AHM/2018.

2. Brief facts of this case are that Appellant (Financial Creditor) has filed the application against the Respondent (Corporate Debtor) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in brief **I&B Code**) in March - April, 2018. Before filing of the application ‘Financial Creditor’ has served the notice under Section 13 (2) of SARFAESI Act, 2002 dated 03.01.2017 on Corporate Debtor.

During the pendency of the application before the Adjudicating Authority, Corporate Debtor has sent a proposal for One Time Settlement. However, the Financial Creditor was not agreed with the proposal and on the ground that the settlement is going on some hearing dates have been adjourned.

3. On 19.07.2019 Adjudicating Authority found that the Financial Creditor has already initiated parallel proceedings under SARFAESI Act, 2002 while filing the present proceedings under the I&B Code. It is also found that process of auction is going on and the Financial Creditor can realize the debt from the proceedings of such auction. In such circumstances Adjudicating Authority held that Financial Creditor has filed parallel proceedings before the Adjudicating Authority, and also proceeded under SARFAESI Act, 2002 which amounts to forum shopping. Hence, directed the authorized signatory of the Bank i.e. Chief Manager of the Financial Creditor to remained present on 09.08.2019 to show why he has not been penalized under Section 65 of I&B Code. Being aggrieved with this order, the Appellant has filed this appeal.

4. Having considered the submissions of Learned Counsel for the parties we peruse the record.

5. First question for consideration before us is whether Financial Creditor can initiate parallel proceedings under SARFAESI Act, 2002 as well as under I&B Code and second question is that whether filing of parallel proceedings attracts proceedings under Section 65 of I&B code.

6. Learned Counsel for the Appellant has cited the judgment of Hon'ble Madras High Court in the case of *M/s Anandram Developers Pvt. Ltd. & Anr. V. The National Company Law Tribunal & Anr. (W.P Nos. 29084 and 29085 of 2017*

and W.M.P. Nos. 31321 to 31323 of 2017) decided on 17.11.2017 in this case Hon'ble Madras High Court in identical facts held as under:-

“48. Further contention of the petitioners that the action of the 2nd respondent in approaching the NCLT, would amount to forum shopping, also cannot be countenanced, for the reason, I&B code, 2016, has been enacted, consolidating various enactments, such as, Sick Industrial Companies (Special Provisions) Act, 1985; the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993; the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Companies Act, 2003; Insolvency and Bankruptcy law and other laws.

49. As per Section 238 of the Insolvency and Bankruptcy Code, 2016, provisions of the Code shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force or any instrument, has effect, by virtue of such power. As per sub-Section (4) of Section 60 of the Code, the National Company Law Tribunal is vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part II of the Code, for the purpose of sub-section (2) of Section 60 of the Code and therefore, it is for the NCLT to consider, all the materials, and pass appropriate orders.

50. Code enables a financial creditor to make an application, under Section 7 of the Code, if the Adjudicating Authority is satisfied that default has not occurred or the application is

complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. Contention of the Learned Counsel that applications are mechanically admitted, cannot be accepted. Contention that approach of the 2nd respondent to NCLT, amounts to forum shopping is not tenable, as the Code enables filing of an application, notwithstanding the pendency of any proceedings, under the SARFAESI Act, 2002. When the code has not been stayed, the process envisaged in the code, has to be continued, and cannot be restrained.”

7. This Tribunal in the case of *Harkirat S. Bedi V. Oriental Bank of Commerce [2019] 108 taxmann.com 110 (NCL-AT)* held as under:-

“From the aforesaid finding, it is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s 7 of the I&B Code is maintainable. Mere pendency of the case before the DRT for adjudicating of such disputed amount cannot be a ground to reject the application u/s 7 of the I&B Code, if the Adjudicating Authority is satisfied that there is a ‘debt’ and ‘default’ and the application is complete. On the other hand, in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed during the period of moratorium.”

8. This Tribunal in the case of *Company Appeal (AT) (Ins) No. 323/2019 (Neeraj Jain Vs. Yes Bank Ltd. & Anr.)* decided on 10.04.2019 held that Section
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7 being an independent proceedings is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of *Comp. App. (AT) (Ins) No. 1021/2019 (Karan Goel Vs. M/s Pashupati Jewellers & Ors.) decided on 01.10.2019* held that merely because suit has been filed by the Financial Creditor and pending, cannot be ground to reject the application under Section 7 of the I&B Code.

9. In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force.

10. In such circumstance, we are of the considered view that Ld. Adjudicating has incorrectly held that after initiating proceedings under SARFAESI Act the Appellant i.e. Financial Creditor should be precluded from filing application under Section 7 of I&B Code.

11. From the reading of impugned order it seems that as the Financial Creditor has initiated parallel proceedings. Hence, Adjudicating Authority has drawn the conclusion that the Financial Creditor fraudulently/maliciously initiated proceedings under I&B Code against the Corporate Debtor.

12. In the application under Section 7 of I&B Code Financial Creditor has mentioned that the Corporate Debtor has sent the notice under Section 13 (2) of SARFAESI Act, 2002, thus, the Financial Creditor has not suppressed any

material fact. The Financial Creditor has initiated parallel proceedings against the Corporate Debtor in SARFAESI Act as well as I&B Code, only on this ground it cannot be inferred that proceedings against the Corporate Debtor are fraudulent or malicious.

13. The application under Section 7 of I&B Code is pending since March-April, 2018. Hence, we hope and trust that Adjudicating Authority shall decide the application expeditiously as per law.

With the above discussion we are of the view that the impugned order is liable to be set aside. Hence, it is hereby set aside. However, no order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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