NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 219 of 2018

IN THE MATTER OF:

Marg Limited **...Appellant**

Versus

Tata Capital Financial Services Ltd. **...Respondent**

Present:

For Appellant : **Mr. Anand Shankar and Mr. Amit Kumar, Advocates**
Mr. Chander Shekhar, A.R.

For Respondent : **Mr. Amit Gupta and Ms. Mansi Kukreja, Advocates**

O R D E R

25.09.2018 This appeal has been preferred by the appellant, Shareholder of M/s. Arohi Infrastructure Private Limited (Corporate Debtor) against order dated 20th March, 2018 (wrongly mentioned 2017) passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai whereby and whereunder an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'I&B Code'**) filed by M/s. Tata Capital Financial Services Ltd. against the 'Corporate Debtor' has been admitted, order of moratorium has been passed and 'Resolution Professional' has been appointed.

2. Learned counsel appearing on behalf of the appellant submits that an arbitration proceeding was pending before the Arbitrator between the 'Corporate

Debtor' and the 'Financial Creditor' and, therefore, an application under Section 7 of the I&B Code was not maintainable. However, such ground cannot be taken to reject an application under Section 7 of the I&B Code.

3. The difference between Sections 7, 8 and 9 of the I&B Code was explained by the Hon'ble Supreme Court in "*Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407] (Civil Appeals Nos. 8337-38 of 2017)*" wherein the Hon'ble Supreme Court observed as folows :

> ***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.

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."*

As the question of 'existence of dispute' does not arise in a petition under Section 7 of the I&B Code, the application cannot be rejected on the ground of 'existence

of dispute' due to the pendency of the arbitration proceedings. The fact that there is a 'debt' due to 'Financial Creditor' and the 'Corporate Debtor' defaulted to pay the amount has not been disputed. Therefore, the application cannot be rejected.

4. It was next contended that the 'Financial Creditor' has filed an application under Section 433 and 434 of the Companies Act, 1956 for winding up of the Company which stands transferred before the National Company Law Tribunal, Chennai and is pending for consideration. However, as the said petition has not been admitted and the winding up proceeding has not been initiated, the application under Section 7 of the I&B Code cannot be rejected on the ground of filing a winding up case.

5. Learned counsel for the appellant further submitted that the application was barred by limitation but such submission cannot be accepted for filing application under Section 7 and the Article 137 (Part II) of Limitation Act, 1963 is attracted, which reads as follows:

"PART II—OTHER APPLICATION

Article	Description of application	Period of Limitation	Time from which period Begins to run
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.

6. The Insolvency and Bankruptcy Code, 2016 having come into force on 1st December, 2016 and as per Article 137 (Part II) of the Limitation Act, 1963, the application preferred within three years from the date of right to apply accrues. This apart, we also find that there is continuous cause of action as the appellant has claimed the interest since the default, it cannot be held to be barred by limitation.

7. We find no merit in this appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/