

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 624 of 2018

IN THE MATTER OF:

Lotus Three Development Ltd.

...Appellant

Vs.

Axis Bank Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. P.P. Hegde, Mr. Pai Amit and Mr. Rahat Bansal, Advocates.

For Respondents: - Mr. Ramji Srinivasan, Senior Advocate with Ms. Gauri Rastogi, Mr. Karan Khanna, Ms. Ananya Choudhary, Mr. Siddhant Sharma, Mr. Bunmeet Singh Grover and Ms. Sylona Mohpatra, Advocates.

ORDER

22.10.2018— This appeal has been preferred by a Shareholder of 'Lotus Shopping Centres Private Limited'- ('Corporate Debtor') against an order dated 30th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, whereby and whereunder, the application preferred by the Respondent- 'Axis Bank Limited'- ('Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been admitted and allegation of the Appellant that the Respondents have played fraud in filing the application has been rejected.

Contd/-.....

2. The Adjudicating Authority noticed that there is a debt payable in the law and in the fact to the 'Financial Creditor' and being satisfied that the default has occurred, admitted the application being complete. The Adjudicating Authority while passing such order also noticed the decision of the Hon'ble Supreme Court in **"Innoventive Industries Ltd. v. ICICI Bank and Anr.— (2018) 1 SCC 407"** which reads as follows:

"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. Learned counsel appearing on behalf of the Appellant submits that there is a malafide on the part of the Bank as the account become NPA on 15th January, 2016 but the Bank did not classify the account with malafide intention to charge interest and make profit.

4. It is alleged that on 19th March, 2016, they thrust a loan from Shriram Finance and a sum of Rs. 12.28 Crores was credited to the account of the Applicant which was adjusted against all other debits

towards interest and penal interest accrued prior to that date. Therefore, on 21st March, 2016, the Bank released Rs. 23.97 Crores only to adjust it against all further interest including penal interest. However, such submissions cannot be accepted while admitting an application under Section 7 of the 'I&B Code', once it is found that there is a debt due to the 'Financial Creditor' and the 'Corporate Debtor' has defaulted in paying the dues. This is also evident from the satisfaction recorded by the Adjudicating Authority while discussing the case of the Appellant at paragraphs 13 and 15 of the impugned order.

4. Having heard learned counsel for the Appellant and learned Senior Counsel appearing on behalf of the Respondents- 'Axis Bank Ltd.', we find no ground to interfere with the impugned order in absence of any illegality. There is no merit in the appeal. It is accordingly dismissed. I.A. also stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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