

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 954 of 2019

IN THE MATTER OF:

Mr. A. Maheshwaran

...Appellant

Versus

**Stressed Assets Stabilization
Fund & Anr.**

...Respondents

Present:

For Appellant :

**Mr. Ashish Dholakia, Mr. Apurve M. Gokhale, Mr.
Gautam Bajaj and Mr. Shakir, Advocates**

ORDER

16.09.2019 This appeal has been preferred by the Appellant – Shareholder’ of ‘M/s. Shree Vaishnodevi Mills Pvt. Ltd.’ against order dated 22nd July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, whereby and whereunder, an application under Section 7 of the ‘I&B Code’ preferred by ‘M/s. Stressed Assets Stabilization Fund’ has been admitted.

2. Learned counsel appearing on behalf of the Appellant submitted that the claim is barred by limitation.

3. From the record, we find that the aggrieved person moved before the ‘Debt Recovery Tribunal’. Admittedly, it is accepted by the Appellant that there is mortgage of property made by the ‘Corporate Debtor’. Therefore, it is clear that for such mortgage, 12 years limitation has been prescribed under Article 62 of Part V of First Division of the Schedule of the Limitation Act, 1963.

4. Learned counsel for the Appellant next submitted that there is a dispute about the amount claimed by the Respondent (Financial Creditor). However, on such ground the impugned order cannot be set aside.

5. In '***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407***, the Hon'ble Supreme Court while dealing with the matter relating to the application under Section 7 observed and held as follows:

“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.”

6. From the aforesaid background, it is evident that even if a debt is disputed, if the amount is more than Rupees One Lakh, the application under Section 7 is maintainable. What is the exact amount of claim, that is only considered at the stage of the ‘Corporate Insolvency Resolution Process’, when the ‘Interim Resolution Professional’ after collating the claims, including the claim of the Respondent, may ascertain what amount is payable to the Respondent.

In view of the aforesaid observations, while we condone the delay of 12 days in preferring the appeal, the appeal is hereby disposed of with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/gc