

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

**Company Appeal (AT) (Insolvency) No. 286 of 2019**

**IN THE MATTER OF:**

**Urban Infrastructure Trustees Limited** **....Appellant**

**Vs.**

**Neelkanth Realty Private Limited** **....Respondent**

**Present:**

**For Appellant:** **Mr. Arun Kathpalia, Senior Advocate with Ms. Surekha Raman, Advocate.**

**For Respondent:** **Mr. Darpan Wadhwa, Senior Advocate with Mr. Kush Chaturvedi, Mr. Aman Varma, Ms. Smriti Churiwal, Mr. Vishesh Kalra and Ms. Priyashree Sharma, Advocates.**

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

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant- 'Urban Infrastructure Trustees Limited'- ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Neelkanth Realty Private Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 25<sup>th</sup> January, 2019 rejected the application with following observations:

“34. Thus it is clear from the judgments above that a section 7 petition is to be admitted if there is default in the payment of a debt that is due and payable at the time of filing of the petition.

xxx

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xxx

37. In light of the failure of the Petitioner to provide the relevant and necessary documents for the repayment of the Debentures, the non-payment of the debentures cannot be said to be in default.

38. Thus, though the debentures have matured in 2011 and therefore dues on the date of maturity, the payment cannot be said to be in default unless the necessary documents are filed by the Petitioner with the Corporate Debtor to enable it to process the payment as per due process.

39. The documents placed on record by the petitioner are insufficient to prove the default. The issue regarding the duplicate debenture certificate cannot be decided before this Tribunal under Section 7 of the IBC. Various aspects in the present case require further adjudicating that is not permissible in present summary proceedings.

40. In this case, the applicant relies on the balance sheet of the Neelkanth Realty to contend

*that it's an acknowledgement of debt. It is a fact that the debenture certificates are transferable and can even be pledged or used as collateral security. The right to such amount is only of the person who is the lawful titleholder of the debentures and who produces such debentures certificate when redemption is sought. Acknowledgement in the balance sheet, if any, is towards a particular set of debentures and not towards any entity. Therefore, the entries in the balance sheet can't be construed as evidence of default or debt. since the debenture certificates have never been produced for redemption, there can't be any default. The financial creditor has failed to prove the debt and default, therefore, the petition under section 7 of the Insolvency and Bankruptcy Code 2016 is not maintainable.*

*41. Given the reasons recorded above, we at this moment reject this petition."*

2. Learned counsel appearing on behalf of the Appellant submitted that the Appellant is a debenture holder of the 'Corporate Debtor' and, therefore, it comes within the meaning of 'Financial Creditor'. The Adjudicating Authority erred in holding that there are no proceedings

initiated by the Appellant particularly when application under Section 7 was filed.

3. It was further submitted that record including balance sheet of the 'Corporate Debtor' constitute evidence of debt or default and the Adjudicating Authority wrongly erred in fact and law that the balance sheet did not constitute evidence of debt or default.

4. Learned counsel appearing on behalf of the Respondent submitted that the application under Section 7 was barred by limitation. However, in absence of any record of the default, we are not inclined to give any opinion.

5. From the impugned order and the record, we find that the application under Section 7 filed by the Appellant was incomplete and therefore, the Adjudicating Authority was not in a position to find out whether there is a default on the part of the 'Corporate Debtor' to pay the debt.

6. In the aforesaid background, the parties were asked to negotiate for settlement. On 26<sup>th</sup> September, 2019, learned counsel for the Respondent submitted that it agreed to pay the admitted claim amount, but it was not accepted by the counsel for the Appellant, which is quoted below:

**“26.09.2019** Learned counsel for the Respondent submits that they agree to pay the admitted claim amount of Rs. 7,23,34,059/- as mentioned in ‘Form 1’ by 31<sup>st</sup> January, 2020 in 2 equal monthly instalments – 50% of the amount will be paid by 30<sup>th</sup> November, 2019 and rest 50% claimed amount will be paid by 31<sup>st</sup> January, 2020.

Learned counsel for the appellant also claims certain amounts as shown in ‘Form 1’ wherein in the bottom it is stated that “However, this additional amount is disputed by the ‘Corporate Debtor’.” Learned counsel appearing on behalf of the ‘Corporate Debtor’ is not agreeable to pay the said amount though wants to settle the matter at this stage.

In the circumstances, we find that there is no chance of settlement and we intend to hear the case on merits.

Heard the learned counsel for the parties.

Judgment reserved.”

7. However, we are not inclined to interfere with the impugned order nor inclined to give any finding relating to the limited question as to whether the application under Section 7 was barred by limitation.

8. The Appellant is allowed to approach the Respondent if it intends to settle the claim in terms of the stand taken by the Appellant and as recorded in the order dated 26<sup>th</sup> September, 2019. If the Appellant approached for payment of admitted claim of Rs. 7,23,34,059/-, as mentioned in Form-1 by 31<sup>st</sup> January, 2020, the Respondent will settle the matter in terms with the statement as made before this Appellate Tribunal.

The appeal stands disposed of with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

NEW DELHI  
25<sup>th</sup> November, 2019

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