

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 252 of 2018

IN THE MATTER OF:

Indiabulls Housing Finance Ltd.

...Appellant

Versus

Shree Ram Urban Infrastructure Ltd.

...Respondent

Present:

For Appellant : **Mr. Rajiv Nayar, Senior Advocate assisted by
Mr. Manik Dogra, Ms. Sonali Jaitley, Mr. Jaiyesh
Bakshi, Mr. Shyam Kumar, Mr. Palash Singhal and
Ms. Sanya Kapoor, Advocates**

O R D E R

30.05.2018 The appellant – ‘Indiabulls Housing Finance Ltd.’ preferred an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) for initiation of ‘Corporate Insolvency Resolution Process’ against ‘Shree Ram Urban Infrastructure Ltd.’ (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 18th May, 2018 dismissed the application as not maintainable in view of the fact that the winding up proceeding against the ‘Corporate Debtor’ has already been initiated by the Hon’ble High Court of Bombay.

2. The question arises for consideration in this appeal is whether an application under Section 7 of the ‘I&B Code’ is maintainable when winding up proceeding against the ‘Corporate Debtor’ has already been initiated.

3. Similar issue fell for consideration before this Appellate Tribunal in '*Innoventive Industries Limited vs. Kumar Motors Private Limited*' – *Company Appeal (AT) (Insolvency) No. 181 of 2017*. In the said appeal by judgment dated 9th February, 2018 held that :

*“17. Similar issue fell for consideration before this Appellate Tribunal in “**M/s. Unigreen Global Private Limited Vs. Punjab National Bank & Ors.— Company Appeal (AT) (Insolvency) No. 81 of 2017**” dated 1st December, 2017, though, that was the case relating to application by ‘Corporate Applicant’ under Section 10 of the ‘I&B Code’ but this Appellate Tribunal noticed the relevant provisions and observed:*

“28. In a case where a winding up proceedings has already been initiated against a Corporate Debtor by the Hon’ble High Court or Tribunal or liquidation order has been passed in respect of Corporate Debtor, no application under Section 10 can be filed by the Corporate Applicant in view of ineligibility under Section 11(d) of I & B Code, as quoted below:

*“11. **Persons not entitled to make application** -
The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:—*

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation.— For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.”

29. In view of the aforesaid provision where a winding up proceeding has already been initiated under the Companies Act, 1956 / 2013 by the Hon’ble High Court such cases have not been transferred to National Company Law Tribunal, pursuant to “Companies (Transfer of Pending Proceedings) Rules, 2016”, framed by the Central Government.

30. Clause (d) of Section 11 refers to “liquidation order”, against a Corporate Debtor. The word ‘winding up’ has not been mentioned therein. For the said reason

Tribunal or liquidation order has been passed, in such case the application under Section 10 is not maintainable. However, mere pendency of a petition for winding up, where no order of winding up or order of liquidation has been passed, cannot be ground to reject the application under Section 10.”

18. It is true that the Appellant is not covered by Section 11 of the 'I&B Code', we are of the view that the ratio laid down in “**M/s. Unigreen Global Private Limited Vs. Punjab National Bank & Ors.**” is also applicable to the 'Financial Creditor'/'Operational Creditor' for the reasons recorded below. The clause (d) of Section 11 is also applicable in respect to 'Corporate Debtor' in respect of whom a liquidation order has been made.

19. The question as raised in this appeal fell for consideration before this Appellate Tribunal in “**Forech India Pvt. Ltd. Vs. Edelweiss Assets Reconstruction Company Ltd. & Anr. – Company Appeal (AT) (Insolvency) No. 202 of 2017**”, wherein this Appellate Tribunal by judgment dated 23rd November, 2017 held as follows:

“7. There is no provision under the I & B Code which stipulate that if a 'winding up' or 'liquidation' proceeding has been initiated against the Corporate

Debtor, the petition under Section 7 or Section 9 against the said Corporate Debtor is not maintainable.

8. *However, if a 'Corporate Insolvency Resolution' has started or on failure, if liquidation proceeding has been initiated against the Corporate Debtor, the question of entertaining another application under Section 7 or Section 9 against the same very 'Corporate Debtor' does not arise, as it is open to the 'Financial Creditor' and the 'Operational Creditor' to make claim before the Insolvency Resolution Professional/Official Liquidator.*

9. *Similarly, one may argue that in case where 'winding up' proceeding has been ordered by the Hon'ble High Court and thus stands initiated, where is the question of filing an application under section 7 or 9 or initiation of Corporate Insolvency Resolution Process, which, on failure ultimately culminates into liquidation proceedings (winding up proceedings)? The argument can be that once second stage i.e. liquidation (winding up) proceedings has already initiated, the question of reverting back to the first stage of 'Corporate Insolvency Resolution Process' or preparation of Resolution plan does not*

arise. One can appreciate such stand which can be decided in an appropriate case, but such issue being not involved in the present case, we are not deciding the issue aforesaid. It is left open to be decided in other appropriate case.”

4. In the present case, admittedly the High Court of Bombay has already been ordered for winding up respondent-‘Corporate Debtor’, which is the second stage of the proceeding. For the said reason, we hold that initiation of ‘Corporate Insolvency Resolution Process’ which is the first stage of resolution process against the same ‘Corporate Debtor’ does not arise.

5. In view of the aforesaid finding, we are not inclined to interfere with the impugned order. In absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc