

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 11 of 2019

IN THE MATTER OF:

The Dhar Textile Mills Ltd.

...Appellant

Versus

**Asset Reconstruction Company
(India) Ltd.**

...Respondent

Present:

For Appellant : **Mr. Pratik Tripathi, Company Secretary**

For Respondent : **Mr. Bishwajit Dubey, Ms. Radhika Dubey and
Mr. Aditya Marwah, Advocates**

ORDER

07.01.2019 This appeal has been preferred by the ‘corporate debtor’ against order dated 19th November, 2018 passed by the Adjudicating Authority whereby and whereunder the Adjudicating Authority adjourn the matter granting seven days’ time to the ‘financial creditor’ to submit its clarification or removal of the defects as pointed out therein.

2. Mr. Pratik Tripathi, Company Secretary appearing on behalf of the ‘corporate debtor’ submits that the matter is pending for about one year and the Adjudicating Authority has not passed any order either admitting or rejecting the application filed under Section 7 of the ‘I&B Code’. Ms. Radhika Dubey, learned counsel appearing on behalf of the ‘financial creditor’ submits that the Adjudicating Authority has merely asked for clarification. She has brought to our notice the order dated 3rd October, 2018 passed by this Appellate Tribunal

with regard to the present case in **“Asset Reconstruction Company (India) Ltd. vs. The Dhar Textile Mills Ltd. - Company Appeal (AT)(Insolvency) No. 618 of 2018”**, which reads as follows:

“The grievance of the Appellant is that in the application preferred by the Appellant under Section 7 of I&B Code, on 23rd November, 2017 the matter was heard by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad and order was reserved, but even after eleven months of filing, no order has been passed by the Adjudicating Authority Ahmedabad Bench.

2. Taking into consideration the facts and circumstances, while we do not intend to express any opinion, we direct the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench to pass appropriate order in the petition filed under Section 7 by the Appellant being C.P.(IB)No.191/7/NCLT/AHM/2017 on an early date, preferable within two weeks. The appeal stands disposed of with aforesaid observations and direction.

3. Let a copy of this order be communicated to Hon’ble President, NCLT, 6th Floor, ITBP Building, Block-3, CGO Complex, New Delhi”

3. This issue has already been settled by the Hon'ble Supreme Court in **"Innoventive Industries Ltd. v. ICICI Bank, (2018) - 1 SCC 407 (2018) 1 SCC 407] (Civil Appeals Nos. 8337-38 of 2017)"** wherein the Hon'ble Supreme Court has observed :

"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.”

4. From the decision aforesaid, it is clear that the Adjudicating Authority is not required to decide mis-match of ‘debt’ occurred in one place or the other place and the mis-match of ‘debt’ cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a ‘default’. Under Section 7(5), the Adjudicating Authority is to be satisfied that a ‘default’ has been occurred. If the ‘debt’ is more than Rupees One lakh, then the Adjudicating Authority is required to admit the application, except where there is defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. The ‘corporate debtor’ may only take plea that the ‘default’ has not occurred **in the sense that ‘debt’ which has also includes ‘disputed claim’** is not due, a ‘debt’ may not be due, if it is not payable in law or in fact. The issue having already settled and decided by the Hon’ble Supreme Court in *Innoventive Industries Ltd.* (Supra) as back as in the year 2017, we do not understand as to why the Adjudicating Authority is adjourning the case on the one or other grounds and the matter is pending for admission since 2017. The Insolvency Code provides specific time frame to complete the process and the Adjudicating Authority should take it seriously and cannot adjourn the matter on the one or the other ground, which we have already noticed in the order passed on 3rd October, 2018. In spite of the same, there is no reason explained as to why the matter is adjourned.

5. From the plain reading of the impugned order, we find that the Adjudicating Authority has not pointed out any defect in the sense the record

is not complete. For the reasons aforesaid, we direct the Adjudicating Authority to pass appropriate order under Section 7 of the I&B Code on merit after hearing the appeal on the next date without adjourning the matter, failing which this Appellate Tribunal will decide whether the application filed under Section 7 of the I&B Code is to be admitted or not.

5. The appeal stands disposed of with the aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/sk/