

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1329 of 2019

IN THE MATTER OF:

HDFC Bank Ltd.

...Appellant

Vs

Bhagwan Das Auto Finance Ltd.

...Respondent

Present:

For Appellant: Mr. Sanjeev Pathak, Advocate.

For Respondent:

ORDER

09.12.2019: 'HDFC Bank Ltd.' moved application under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against 'M/s Bhawan Das Auto Finance Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata dismissed the application under Section 7 being barred by limitation.

2. Admittedly, the account of 'M/s Bhawan Das Auto Finance Ltd.' was declared NPA by the Appellant Bank in the year 2010. If it is counted from the date of NPA, application under Section 7 is barred by limitation.

3. The Appellant has taken plea that there is an Arbitral Award passed by the Arbitral Tribunal on 31st March, 2017 in favour of the Appellant Bank and against the Corporate Debtor for a sum of Rs.7,00,88,809.56/- with interest.

4. From the record we find that initially pursuant to an agreement dated 26th September, 2006 one Arbitral Award was passed by the Hon'ble Sole Arbitrator on 27th January, 2014. Subsequently, another award was passed by the Hon'ble Sole Arbitrator on 31st March, 2017. Therein apart from the

amount of Rs.7,00,88,809.56/- the Arbitral Tribunal awarded interest @ 18% from the date of award till date of payment by the Respondent or realization thereof. Therefore, if the Appellant intends to rely on the award, we hold that there is no default and thereon application under Section 7 is not maintainable.

5. From plain reading of the application, we find that the Appellant wants execution of award. Section 65 of the I&B Code reads as follows:-

“Fraudulent or malicious initiation of proceedings.

65(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

6. If it is treated as application under Section 7 for execution of award, in said case it is to be held that the application was filed with malicious intent not for purpose of resolution of insolvency or liquidation. However, we are not giving such finding in case of the Bank and hold that the application under Section 7 was barred by limitation.

7. For the reasons aforesaid, while we condone the delay of 13 days in preferring the appeal, dismiss the appeal on merit. I. A. No. 3792 of 2019 stands disposed of.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/gc