

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 499 of 2019

IN THE MATTER OF:

Harkirat S. Bedi

...Appellant

Versus

Oriental Bank of Commerce.

...Respondent

Present :

For Appellant:

**Mr. Balaji Srinivasan and Ms. Pallavi Sengupta,
Advocates**

O R D E R

08.05.2019 This appeal has been preferred by Mr. Harkirat S. Bedi, Director of 'M/s. IDEB Projects Pvt. Ltd.' (Corporate Debtor) against order dated 29th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench admitted application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (for short, the '**I&B Code**') filed by 'Oriental Bank of Commerce (Financial Creditor).

2. Learned counsel appearing on behalf of the Appellant submitted that the recovery proceeding is already pending before the 'Debt Recovery Tribunal' (**DRT**) which is the subject matter of the application u/s 7 of the I&B Code. She further submitted that the challenge before the DRT is made with regard to violation of clause 35 of the 'Memorandum of Understanding' (MOU) dated 9th May, 2012. It is submitted that the 'Recovery Certificate' bearing No. 9473 dated 23rd March, 2016 issued by the DRT in O.A. No. 862/2010, which is the basis of

Section 7 application, has not attained finality as it is pending for consideration before the Authority in a Revision Case No. 4174 of 2017 filed by the Appellant bearing Miscellaneous No. 10 of 2018 seeking cancellation of the order in the light of the fraud committed by consortium.

3. Learned counsel for the Appellant submits that the amount of 'debt' is also in dispute and it cannot be held that there is a 'default' as the matter is pending for consideration in the Revision Application, which is pending before the 'DRT'.

4. We have heard the learned counsel appearing on behalf of the Appellant and perused the record.

5. Hon'ble Supreme Court in "***Innoventive Industries Ltd. v. ICICI Bank,***" - (2018) 1 SCC 407] while dealing with the application u/s 7, observed 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.

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such*

notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

6. From the aforesaid finding, it is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s 7 of the I&B Code is maintainable. Mere pendency of the case before the DRT for adjudicating of such disputed amount cannot be a ground to reject the application u/s 7 of the I&B Code, if the Adjudicating Authority is satisfied that there is a ‘debt’ and ‘default’ and the application is complete. On the other hand,

in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed during the period of moratorium.

7. For the reasons aforesaid, we are not inclined to interfere with the impugned order in appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ns/gc