

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

**Company Appeal (AT) (Insolvency) No. 1303 of 2019**

(Arising out of Order dated 16<sup>th</sup> October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 627/2019 & MA 3067/2019 in CP No. (IB)-3631(MB)/2018)

**IN THE MATTER OF:**

**Allahabad Bank**

**....Appellant**

**Versus**

**Poonam Resorts Limited**

**.....Respondent**

**Company Appeal (AT) (Insolvency) No. 1304 of 2019**

(Arising out of Order dated 16<sup>th</sup> October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 308/2019 in CP No. (IB)-3621(MB)/2018)

**IN THE MATTER OF:**

**Allahabad Bank**

**....Appellant**

**Versus**

**Link House Industries Limited**

**.....Respondent**

**Present:**

**For Appellant:**

**Mr. Debal Kr. Banerjee, Senior Advocate with Ms. Reema Khorana and Mr. Kartik Rathi, Advocates.**

**Mr. Shailesh Kr. Rai, Chief Manager of Allahabad Bank.**

**For Respondent(s):**

**Dr. U.K. Chaudhary, Senior Advocate with Ms. Manisha Chaudhary, Mr. Anupam Sanghi, Mr. Dhruv Gupta and Mr. Anurag Mehta, Advocates.**

## J U D G M E N T

### BANSI LAL BHAT, J.

The twin appeals preferred by the same 'Financial Creditor' viz 'Allahabad Bank' against two different 'Corporate Debtors' primarily assail the orders passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on 16<sup>th</sup> October, 2019 in MA 627/2019 & MA 3067/2019 in C.P.(IB)-3631(MB)/2018. The impugned orders have been assailed through the medium of the instant appeals by the 'Financial Creditor' contending that the Adjudicating Authority has, apart from giving a go by to the provisions of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short), also failed to follow the dictum of law laid down by the Hon'ble Apex Court in ***"Innoventive Industries Limited v. ICICI Bank and Anr.- (2018) 1 SCC 407"***.

2. Company Petition(IB)-3631(MB)/2018 and Company Petition(IB)-3621(MB)/2018 are the applications filed under Section 7 by the Appellant- 'Financial Creditor' against Respondents- 'Corporate Debtors' in the two appeals praying for initiation of 'Corporate Insolvency Resolution Process' on the ground that the 'Corporate Debtors' had committed default qua the financial debt that was payable in law and in fact to the 'Financial Creditor'. As some objections were raised on behalf

of the 'Corporate Debtors' that the 'Corporate Insolvency Resolution Process' had been initiated fraudulently and with a malicious intent to drag a solvent corporate who was willing to pay amounts that were actually due and payable legally, the Adjudicating Authority, being of the view that during the entire loan process due diligence was not carried out, appointed PWC Mr. Gaganpreet Singh Puri, Pricewater House Coopers Services LLP as Forensic Auditor to examine allegations raised by the 'Corporate Debtor' and submit an Independent Report delineating some factual aspects bearing upon utilisation of the credit facility extended by the 'Financial Creditor' to 'Corporate Debtor'. The impugned orders appear to have been passed at the instance of 'Corporate Debtor' who had moved applications under Section 75 of the 'I&B Code' alleging false information having been furnished in the applications.

3. The applications under Section 7 of the 'I&B Code' appear to have been filed by the 'Financial Creditor' on 5<sup>th</sup> September, 2018 and the matter was pending consideration before the Adjudicating Authority since 18<sup>th</sup> September, 2019. However, instead of admitting or rejecting the application, the Adjudicating Authority proceeded to pass the impugned order which has been assailed through the medium of instant appeals.

4. Heard learned counsel for the parties and perused the record.

5. The question for consideration is whether the Adjudicating Authority was justified in ignoring the time frame prescribed under Section 7 of the 'I&B Code' and embarking upon an enquiry to determine whether the applications filed under Section 7 contained false information, when the matters were at the very threshold stage.

6. 'I&B Code' *inter alia*, consolidates and amends the law relating to insolvency resolution of corporate persons in a time bound manner for various objects sought to be achieved by the statute as specified in the preamble. Section 7 of the 'I&B Code' deals with initiation of 'Corporate Insolvency Resolution Process' by the 'Financial Creditor'. Sub-section (4) thereof provides as under:

***“7. Initiation of corporate insolvency resolution process by financial creditor.—***

*.....(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):*

*[PROVIDED that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]”*

7. The plain language of sub-section (4) of Section 7 leaves no room for doubt that the Adjudicating Authority is required to ascertain existence of default from records of an information utility. The Adjudicating Authority can also ascertain the same from other evidence furnished by the 'Financial Creditor'. This has to be done within 14 days of the receipt of application. The 'I&B Code' has specified time frame for conclusion of 'Corporate Insolvency Resolution Process' within 180 days and the extended period prescribed is 270 days. With the latest amendment, provision has been made for inclusion of period of judicial intervention, thereby taking the total extended period upto 330 days. A mere glance at the legal framework governing 'Corporate Insolvency Resolution Process' brings it to the fore that speed is the password and all authorities under the 'I&B Code' have to adhere to the prescribed timelines. It is apt to refer to the observations of the Hon'ble Apex Court in ***"Innoventive Industries Limited v. ICICI Bank and Anr.- (2018) 1 SCC 407"***:-

*"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.

xxx

xxx

xxx

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.”***

*(Emphasis added)*

8. The dictum of law propounded by the Hon'ble Apex Court is loud and clear. The Adjudicating Authority cannot travel beyond the letter of law and the dictum of the Hon'ble Apex Court. The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the 'Financial Creditor'. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the 'I&B Code'. If the 'Financial Creditor' fails to provide evidence as required, the Adjudicating Authority shall be at liberty to take an appropriate decision. If the application is incomplete, it can return the



same to the 'Financial Creditor' for rectifying the defect. This has to be done within 7 days of the receipt of notice from the Adjudicating Authority. However, the 'I&B Code' does not envisage a pre-admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the 'Financial Creditor', 'Corporate Debtor' or any 'financial institution'. Viewed thus, the impugned order cannot be supported. Application under Section 75 of the 'I&B Code' on behalf of the 'Corporate Debtors' cannot be permitted to frustrate the provisions of the 'I&B Code' when the matter is at the stage of admission. Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of 'Corporate Insolvency Resolution Process' unless in a given case forgery or falsification of documents is patent and *prima facie* established.

9. The "common written submissions" filed on behalf of the 'Corporate Debtors' clearly admits liability to the extent of Rs.44,60,09,790/- as regards 'Poonam Resorts Limited' and Rs. 6,52,03,922/- as regards 'Link House Industries Limited'. Therefore, it is futile on the part of 'Corporate Debtors' to contend that the applications under Section 7 filed by the 'Financial Creditor' must pass the muster of Section 65 of the 'I&B Code' at the pre-admission stage. The argument raised in this regard is repelled.

10. In view of the foregoing discussion, we find that the impugned orders suffer from grave legal infirmity and cannot be sustained. The impugned orders in both appeals are set aside and the appeals are allowed. The Adjudicating Authority is directed to address the issue regarding admission of the applications filed by the 'Financial Creditors' in the light of aforesaid observations without further loss of time. However, before proceeding further, the Adjudicating Authority may provide an opportunity to parties to settle the claims.

Both the appeals are allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[V.P. Singh]  
Member (Technical)

[Shreesha Merla]  
Member (Technical)

NEW DELHI  
22<sup>nd</sup> May, 2020

AR