

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 580 of 2018

IN THE MATTER OF:

Keltech Infrastructure Ltd.

...Appellant

Vs

Aaj Finance & Credit Ltd.

....Respondent

Present:

**For Appellant: Mr. Krishnamohan Menon and Mr. Mohit Singh,
Advocates.**

**For Respondent: Mr. Arun Saxena and Mr. Saral Sharma,
Advocates.**

ORDER

25.09.2018: This appeal has been preferred by 'M/s Keltech Infrastructure Ltd.' (Corporate Debtor) against order dated 26th July, 2018 whereby the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench – III rejected the prayer of the applicant for restoration of right to file reply to the main petition.

2. Learned counsel appearing on behalf of the Appellant referred to Section 424 of the Companies Act, 2013 and submitted that the said provision has been adopted in view of Section 255 r/w Schedule Eleven of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code').

3. In terms of the said provision (Section 424) and in terms of decision of this Appellate Tribunal in 'Innoventive Industries Ltd. Vs. ICICI Bank & Anr.' Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017 pronounced on 15th May, 2017, a limited notice is required to be given by the Adjudicating Authority to the Corporate Debtor, which do not envisage a right to reply like a suit or rejoinder as is allowed in an adversary litigation. Therefore, the Appellant as a

matter of right cannot claim right to file reply. Thought it may object the petition, on certain grounds.

4. Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*" – (2018)1 SCC 407, observed as follows:

“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.”

5. From the aforesaid decision it is clear that if there is a debt and default and application is complete, the Adjudicating Authority is bound to admit the application. The Corporate Debtor can only show that there is no debt or default and in fact there is not debt in eyes of law or on facts.

6. Learned counsel appearing on behalf of the Respondent – ‘Financial Creditor’ submits that the application under Section 7 was filed in January, 2018 and case was listed for first time on 10th January, 2018. In spite of notice, nobody

appeared on behalf of the Corporate Debtor. Thereafter, Adjudicating Authority ordered service of notice returnable on 29th January, 2018. On 29th January, 2018, one Mr. Mohit Singh, appeared on behalf of the Corporate Debtor and sought time to file reply but did not file reply. He was allowed further 10 days to file reply. Even on the next date i.e. 12th March, 2018, Corporate Debtor sought for time to file reply but did not choose to file reply again. On 4th April, 2018, for the fourth time Corporate Debtor asked for further time to file reply, at this stage, the Adjudicating Authority closed Appellants right to file reply. Thereafter, the Appellant preferred an application under Rule 11 of the NCLT Rules, 2016 for restoration of right to file reply, which has been rejected by the impugned order.

7. Having heard learned counsel for the parties, we find no illegality in the impugned order. However, to give one last opportunity to the Appellant we allow them time to file reply before the Adjudicating Authority on or before 13th October, 2018. If such reply is file on or before 13th October, 2018, the Adjudicating Authority will give opportunity to the Financial Creditor to file rejoinder and thereafter decide the case in accordance with law.

8. It is made clear that if the Corporate Debtor fails to file reply after serving a copy to the counsel for the Financial Creditor by 13th October, 2018, the Adjudicating Authority will go through the record and if satisfied that there is a debt and default and the application is complete, may admit the application. In case application is not complete then will grant time to the Financial Creditor to complete the record.

9. In the meantime, it will be open to the Corporate Debtor to settle the claim to enable the Financial Creditor to withdraw the application. Appeal is disposed of with aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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