

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 640 of 2019

IN THE MATTER OF:

Mrs. Bela Juneja

...Appellant

Versus

**India Bulls Housing
Finance Ltd. & Anr.**

...Respondents

Present:

For Appellant : Mr. Vaibhav Tyagi, Advocate

**For Respondents : Mr. Sumesh Dhawan, Ms. Vatsala Kak and
Ms. Geetika Sharma, Advocates**

O R D E R

01.07.2019 'Indiabulls Housing Finance Ltd.' filed an application u/s 7 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the I&B Code') against 'BHA Associates Private Limited' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi having admitted the application against 'Mrs. Bela Juneja', who was Director of 'BHA Associates Private Limited' (Corporate Debtor). Learned counsel appearing on behalf of the Appellant submits that the Adjudicating Authority declared the 'Corporate Debtor' as 'Non-performing Asset' (NPA) is under challenge in view of the agreement. However, such submission cannot be accepted under 'Insolvency and Bankruptcy Code, 2016' (for short, 'the I&B Code'). It is not necessary to see whether 'debt' of 'Corporate Debtor' has become NPA in view of decision of the Hon'ble Supreme Court in '***M/s. Innoventive Industries Ltd. Vs. ICICI Bank***

Ltd. – (2018) 1 SCC 407, wherein Hon’ble Supreme Court observed and held 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 subsection (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.”

In view of the aforesaid decision, if there is a ‘debt’ payable by the ‘Corporate Debtor’ and ‘default is committed and default is of more than Rupees One Lakh, it is open to the Adjudicating Authority to admit the application u/s 7 based on the records.

Learned counsel for the Appellant submitted that the matter should be remanded to the Adjudicating Authority to find out whether the ‘debt’ is payable or not. However, such prayer cannot be accepted as no plea was taken up by the ‘Corporate Debtor’ that no ‘debt’ is payable in the eyes of law or in fact. On the other hand, we find that the ‘debt’ is payable to the ‘Corporate Debtor’ and the ‘default’ has been committed.

For the reason aforesaid, while condone the delay of 6 (six) days in preferring the appeal, we dismiss the appeal on merit.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc