

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****Company Appeal (AT) (Insolvency) No. 369 of 2018**

(Arising out of Order dated 3<sup>rd</sup> July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, in CA (IB) No. 366/KB/2018 in CP (IB) No. 176/KB/2018)

**IN THE MATTER OF:****Ankit Patni****...Appellant****Vs****State Bank of India & Anr.****....Respondents****Present:**

**For Appellant: Ms. Sabya Sachi Chawdhury with Ms. Nandini Sen and Ms. Nikita Jhunjhunwala, Advocates.**

**For Respondents: Ms. Misha and Ms. Mrida, Advocates.**

**J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

Mr. Ankit Patni, Promoter and Director of 'Impex Metal & Ferro Alloys Limited'- ('Corporate Debtor') has preferred this appeal against the order dated 3<sup>rd</sup> July, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby and whereunder, the application preferred by the Respondent- 'State Bank of India' under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been admitted.

2. Learned counsel appearing on behalf of the Appellant submitted that the 'Banking Regulation Act, 1949' has been amended w.e.f. May, 2017, to empower Reserve Bank of India to issue directions to initiate insolvency resolution process in respect of a 'default' under the provisions of the 'I&B Code'.

3. It was submitted that Section 35AA of the 'Banking Regulation Act, 1949', empowers the Central Government to authorize Reserve Bank of India to issue directions to Banking Companies to initiate insolvency resolution process in respect of a default under the provisions of the 'I&B Code'. According to him, the 'default' has the same meaning as defined in Section 3(12) of the 'I&B Code'.

4. Referring to Section 35AB (1) of the 'Banking Regulation Act, 1949', it was submitted that the same confers power upon Reserve Bank of India to issue directions to the Banking Companies for resolution of stressed assets.

5. Learned counsel for the Appellant submitted that in exercise of power under Section 35AB, the Reserve Bank of India has issued three directions which, according to him, are for the following objectives:

- i. On **22<sup>nd</sup> May, 2017**:- Under Clause 5 whereof the Reserve Bank of India is working on a framework to facilitate ***an objective and consistent decision making process*** with regard to cases that may be determined for resolution under 'I&B Code'. Under Clause 6 current guidelines on restructuring

was also under examination for such modification as may be necessary. Under Clause 8 ***the Reserve Bank of India was to issue further updates.***

- ii. On **13<sup>th</sup> June, 2017**:- The Internal Advisory Committee in terms of Clause 3 arrived at ***an objective and non-discretionary criteria*** for referring accounts for resolution under 'I&B Code'. Those higher than Rs. 5000 Crore, there immediate recommendation for reference is to be made under 'I&B Code' made. As regards ***other non-performing accounts*** 6 months' time has been allowed for viable resolution plan in terms of Clause 4. The details of such resolution framework was to be ***"released in the coming days"*** in terms of **Clause 6.**
- iii. On **12<sup>th</sup> February, 2018**:- The revised framework for other non-performing accounts was published ***to substitute the existing guidelines with the harmonized and simplified generic framework for resolution of stressed assets.*** The timelines for large account to be referred under 'I&B Code' was also provided. Accounts with aggregate exposure at Rs. 20 billion and above dealt with timelines mentioned in clause 8 to 11. For other accounts with aggregate exposure ***below 20 billion and above 1 billion Reserve Bank of India intended to announce over a two-year period reference dates for implementing the resolution plan to ensure calibrated,***

***time bound resolution of all such accounts in default.***

Under Clause 13, the aforesaid arrangement would not be available for borrowers where specific instructions have been issued by the Reserve Bank of India to the Banks for reference under the 'I&B Code' but lenders have been allowed to continue to pursue such cases as per earlier instructions. There is no specific instruction issued regarding the present case which falls ***under Clause 12***. Under Clause 20, it is made clear that the ***guidelines are issued in exercise of powers conferred under Sections 35A, 35AA and 35AB of the 'Banking Regulation Act, 1949' and Section 45 L of the Reserve Bank of India Act, 1934.***

6. It was submitted that the effect of the aforesaid directions and the Press Release dated 13<sup>th</sup> June, 2017 is that Reserve Bank of India were required to provide revised framework for other non-performing accounts which will be released in the coming days. A Circular has been issued on 12<sup>th</sup> February, 2018 showing the Revised Framework in terms of guideline dated 13<sup>th</sup> June, 2017, issued by the Reserve Bank of India under Sections 35A, 35AA and 35AB of the 'Banking Regulation Act, 1949' read with Section 45 L of the Reserve Bank of India Act, 1934.

7. According to learned counsel for the Appellant, the aforesaid circular is binding on Banking Companies and has statutory force, the State Bank of India is also bound by the Circulars dated 13<sup>th</sup> June, 2017 and 12<sup>th</sup>

February, 2018, and was required to wait for the publication of the revised framework in terms of Clause 6 thereof. Further, according to him, since pursuant to circular dated 12<sup>th</sup> February, 2018 two-years period have been provided for issuance of reference dates in respect of the category of the Appellant, the State Bank of India should have waited for two years.

8. According to learned counsel for the Appellant, as the State Bank of India was bound by the direction of the Reserve Bank of India and is required to follow the statutory mandate, the application under Section 7 as preferred by the State Bank of India was not maintainable which otherwise will defeat the guidelines issued by the Reserve Bank of India.

9. Learned counsel appearing on behalf of the State Bank of India submitted that 12<sup>th</sup> February, 2018 Circular is not applicable for filing an application under Section 7 of the 'I&B Code'. According to him, the 12<sup>th</sup> February, 2018 Circular specifically notes that the timelines specified in the Circular are only upper limits and that the Banks are free to invoke the provisions of the 'I&B Code' prior to the time-limits indicated in the said Circular.

10. Similar plea has been taken with regard to earlier Circular of June, 2017.

11. We have heard learned counsel for the parties and perused the records.

12. Section 35 AA of the 'Banking Regulation Act, 1949' empowers the Central Government to authorize the Reserve Bank of India to issue directions to any Banking Company. Section 35 AB empowers the Reserve Bank of India to issue directions to the Banking Companies for resolution of stressed assets. The aforesaid provision reads as follows:

**“35AA. Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process.**– *The Central Government may be order authorize the Reserve Bank of India to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.*

*Explanation.*– *For the purpose of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.*

**35AB.– Power of Reserve Bank to issue directions in respect of stressed assets.**– *(1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions*

*to the banking companies for resolution of stressed assets.*

*(2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise banking companies on resolution of stresses assets.”*

13. On 22<sup>nd</sup> May, 2017, the ‘Reserve Bank of India’ outlined the action plan to implement the Banking Regulation (Amendment) Ordinance, 2017’. On promulgation of the Ordinance, the Reserve Bank of India issued a directive bringing the following changes to the existing regulations which deals with stressed assets. Clauses 5 and 6 are as follows:

*“5. The Reserve Bank is working on a framework to facilitate an objective and consistent decision making process with regard to cases that may be determined for reference for resolution under the IBC. Reserve Bank has already sought information on the current status of the large stressed assets from the banks. The RBI would also be constituting a Committee comprised majorly of its independent Board Members to advise it in this matter.*

*6. The current guidelines on restructuring are under examination for such modifications as may be*

*necessary to resolve the large stressed assets in the banking system in a value optimizing manner. The Reserve Bank envisages an important role for the credit rating agencies in the scheme of things and, with a view to preventing rating-shopping or any conflict of interest, is exploring the feasibility of rating assignments being determined by the Reserve Bank itself and paid for from a fund to be created out of contribution from the banks and the Reserve Bank.*

14. On bare perusal of the 13<sup>th</sup> June, 2017 and the 12<sup>th</sup> February, 2018 Circulars, it is clear that they are not applicable in the present case. The 13<sup>th</sup> June, 2017 Circular only provides directions for initiating ‘Corporate Insolvency Resolution Process’ under the ‘I&B Code’ for certain ‘*identified accounts*’. The 12<sup>th</sup> February, 2018 Circular has come into effect after the filing of the application under Section 7 by the State Bank of India. Therefore, the said Circular is not applicable in the present case.

15. The directions of the Reserve Bank of India also suggest that the Reserve Bank of India never intended to interfere with the statutory remedy of resolution process under the ‘I&B Code’. Those Circulars also cannot override the provisions of the ‘I&B Code’.

16. The right of the Creditors under the ‘I&B Code’ for initiation of ‘Corporate Insolvency Resolution Process’ is a statutory right. The ‘I&B



Code' is a special enactment passed by the legislature and is a complete Code in itself. The Adjudicating Authority needs only to be satisfied of the existence of a debt and default if any. Once the Adjudicating Authority is satisfied, and the application is complete, then the application is required to be admitted.

17. In the present case, as we find that there is no dispute about debt or default and the same has not been denied by the 'Corporate Debtor', the present appeal being devoid any merit is dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansilal Bhat]  
Member (Judicial)

NEW DELHI

29<sup>th</sup> November, 2018

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