

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

**Company Appeal (AT) (Insolvency)No. 814-815 of 2019**

**IN THE MATTER OF:**

**Mr. Amber Joshi, Director**

**.....Appellant**

**Vs.**

**Noble Co-operative Bank Ltd. & Anr.**

**.....Respondents**

**Present :**

**For Appellant: Mr. Bhushan Kapur with Mr. A.K. Kapur,  
Advocates**

**For Respondents: Mr. Anil Sharma with Mr. Anup Kumar, Advocates  
for R-2**

**O R D E R**

**29.08.2019** - The 'Noble Co-Operative Bank Ltd.' ('Financial Creditor' (Respondent herein) filed an application u/s 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) for initiation of 'Corporate Insolvency Resolution Process' against M/s. 'Keep in Touch Clothing Pvt. Ltd.' It was admitted by the 'National Company Law Tribunal' on 3<sup>rd</sup> July, 2019. Thereafter, an application was filed by Mr. Amber Joshi, Director to recall the order dated 3<sup>rd</sup> July, 2019 on the ground that the settlement had already been reached between the parties on 27<sup>th</sup> March, 2019 i.e. prior to the order of admission and a Demand Draft for the sum of Rs. 9 lakhs drawn on Axis Bank has been paid and encashed by 'Noble Co-Operative Bank Ltd.' ('Financial Creditor'). However, such prayer was not accepted by the Adjudicating Authority who by impugned order dated 26<sup>th</sup> July, 2019 rejected the prayer for recall of the order of admission.

2. Similar plea has been taken by the Appellant – Director that the application u/s 7 of the 'I&B' Code preferred by Respondent was not maintainable and that application u/s 7 of the 'I&B' Code preferred by 'Noble Co-Operative Bank Ltd.' ('Financial Creditor') was heard by the Adjudicating Authority ('National Company Law Tribunal') Principal Bench, New Delhi and order was reserved on 18<sup>th</sup> March, 2019. However, before the judgement was delivered on 3<sup>rd</sup> July, 2019 the parties reached the settlement on 27<sup>th</sup> March, 2019.

3. Therefore, as on the date of admission the application u/s 7 of the 'I&B' Code was not maintainable as there was no debt payable in law and in fact.

4. Respondent – 'Financial Creditor' - 'Noble Co-Operative Bank Ltd.' has appeared.

5. Learned counsel for the Respondent submitted that the agreement had not reached finality though a discussion took place pursuant to which a draft for Rs. 9 lakhs was handed over to the 'Financial Creditor'. The amount has been encashed and adjusted towards the loan.

6. When we asked the learned counsel for the Appellant to refer the agreement dated 27<sup>th</sup> March, 2019 reached between the parties, he placed reliance on a letter dated 27<sup>th</sup> March, 2019 written by the 'Noble Co-Operative Bank Ltd.' which reads as follows:

ANNEXURE-6

**N3**  
NOBLE BANK

27<sup>th</sup> March, 2019

75

Keep In Touch Clothing Pvt Ltd  
A-108A, Sector -58  
Noida - 201301

Sir


Reference to our discussion we acknowledge receipt of Demand Draft no 035591 dated 27-03-2019 for Rupees Nine Lac only drawn on Axis Bank Ltd, Sector 62, Noida Branch ( Purchaser - Rajashree Dutta u/g Sujit Dutta).

We further hereby accept the DD as amount towards withdrawal of case from NCLT subject to

- 1.) DD realization
- 2.) Approval of proposal under OTS

Regards

*Ranjit Kansal*  
Authorized Signatory



**NOBLE CO-OPERATIVE BANK LTD.**

7. Learned counsel appearing on behalf of the Appellant referred the

aforesaid letter dated 27<sup>th</sup> March, 2019 and submits that the Demand Draft has been encashed and the 'Financial Creditor' was bound to withdraw the case in terms of the said undertaking given on 27<sup>th</sup> March, 2019.

8. On the other hand, learned counsel for the 'Financial Creditor' submitted that a Demand Draft was accepted for withdrawal of the case subject to: -

- (i) Realization of the Demand Draft; and
- (ii) Approval of the proposal under One Time Settlement.

9. It is submitted that proposal for One Time Settlement has not been given nor any one-time settlement has been reached between the 'Corporate Debtor' and the 'Noble Co-Operative Bank Ltd.'- 'Financial Creditor'.

10. Learned counsel appearing on behalf of the Appellant in reply submitted that the 'Corporate Debtor' has given proposal for One Time Settlement but it is lying with the 'Financial Creditor'.

11. From the order dated 7<sup>th</sup> December, 2018 passed by the Adjudicating Authority ('National Company Law Tribunal'), New Delhi we find that the total amount claimed by the Bank in the application u/s 7 was Rs. 7,65,862/- as on 30<sup>th</sup> April, 2018. The 'Corporate Debtor' had shown inclination for such settlement.

12. One opportunity was given to the 'Corporate Debtor' to settle the matter. The order dated 7<sup>th</sup> December, 2018 reads as follows:-

ANNEXURE -4

(72) (10)

No. 1116  
Date of Presentation of application for Copy 30/07/19  
No. of Pages 1  
Copying Fee 5/-  
Registration & Postage Fee 2000/-  
Date of Receipt & Record ITEM No. 116  
(IB)-722(PB)/2018 2.8.19  
Date of Delivery of Copy 2.8.19

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**IN THE MATTER OF:**

Noble Co-Operative Bank Ltd. .... Applicant/petitioner

v.

Keep in touch Clothing Pvt. Ltd. .... Respondent

DD/DR/AB Court Officer  
National Company Law Tribunal  
New Delhi

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 07.12.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M. M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S. K. MOHAPATRA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENTS:**

For the petitioner:

Mr. Naveen Sharma & Mr. Shivam Sachdeva, Advs.

For the Respondent:

Mr. Girdhari Singh, Adv.

**ORDER**

The total amount claimed made in the petition is Rs. 7,65,862/- (Rs. seven lacs sixty five thousand eight hundred sixty two) as on 30.04.2018. The respondent has shown inclination for amicable settlement. For that purpose we grant one last opportunity to settle the matter.

List on 19.12.2018.



Sd/-  
(M.M.KUMAR)  
PRESIDENT

Sd/-  
(S. K. MOHAPATRA)  
MEMBER (TECHNICAL)

07.12.2018  
Aarti Makker

Sd/-  
सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

13. Later on 3<sup>rd</sup> July, 2019 Adjudicating Authority admitted the application u/s 7 for amount of default + Rs. 7,65,862/- as on 30<sup>th</sup> April, 2018. From the record, we find that the Adjudicating Authority has noticed that in an application u/s 7 of the 'I&B' Code the amount shown by the 'Financial Creditor' was Rs. 7,65,862/- as on 30<sup>th</sup> April, 2018. After order on 7<sup>th</sup> December, 2018, the 'Corporate Debtor' paid a demand draft for Rs. 9 lakhs which has been accepted and encashed by the 'Noble Co-Operative Bank Ltd.' - 'Financial Creditor'.

14. When before admission of the application by Adjudicating Authority, 'Corporate Debtor' had paid and 'Financial Creditor' accepted amount which was more than what was claimed, there was no more debt due and outstanding. In the facts of present matter, the act of 'Financial Creditor', in going on insisting that settlement is not there when even before admission of the application, it has received more than the amount claimed must be said to be demonstrating malicious intent and that it did not file section 7 application for purpose of resolution, which attracts section 65 of IBC. However, we are not proceeding further on that count.

15. For the reasons aforesaid, we set aside the order dated 3<sup>rd</sup> July, 2019 and 26<sup>th</sup> July, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal' PB in IB-722(PB)/2018.

16. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other

order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent under Section 9 of the 'I&B Code' is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

16. The 'Resolution Professional' submits that his fees are due and he has already incurred costs and a sum of Rs. 3,37,148/- is payable to him. The 'Corporate Debtor' will pay fee and cost of Rs. 3,37,148/- to the 'Resolution Professional' to Mr. Anup Kumar within three weeks.

The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

ss/sk