NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 440 of 2018

(Arising out of Order dated 11th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P. (IB)/2054/MB/2018)

IN THE MATTER OF:

Archisha Steels Private Limited ...Appellant

Vs

State Bank of India and Anr. ....Respondents

Present:

For Appellant: **Mr. Rajeeve Mehra, Senior Advocate with Mr. Arvind Kr. Gupta, Ms. Henna George and Ms. Smiti Tewari, Advocates.**

For Respondents: **None.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Pursuant to an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) by the 'State Bank of India'- 'Financial Creditor', the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 11th July, 2018 initiated the 'Corporate Insolvency Resolution Process' against 'Uttam Galva Metallics Limited'.

2. The Appellant, a Shareholder has challenged the aforesaid order dated 11th July, 2018, on the ground that the Adjudicating Authority failed to appreciate that out of two 'Credit Rating Agencies' the 'ICRA' accorded an 'investment grade' rating to their 'Resolution Plan' while 'India Ratings & Research' gave rating of below investment grade. Since the two credit rating agencies had submitted diverging views, according to Appellant, the 'State Bank of India' could not have relied upon them to reject the restructuring plan of 'Uttam Galva Metallics Limited'.

3. The other ground taken is that the 'Uttam Galva Metallics Limited'-('Corporate Debtor') had already identified an investor who is a customer of Turkey's second largest and Government owned Bank i.e. 'Ziraat Bank'. The said investor had shown its willingness to settle the entire debt owed to the consortium of lenders of Appellant and Appellant accordingly addressed a letter to the consortium including the 'State Bank of India' to cooperate with the Appellant in the settlement process and to defer the hearing of the petition for the duration of the settlement process.

4. Learned counsel appearing on behalf of the Appellant submitted that the rejection of the restructuring plan of the 'Corporate Debtor' was unfair and illegal as the two agencies were not *ad idem* on their assessment of the restructuring plan. Therefore, according to him, the 'State Bank of India' ought to have appointed a third credit rating agency.

5. Further, according to him, the 'Corporate Debtor' was never informed or made aware that the reports of the credit rating agencies would be essential for the rejection/ approval of its restructuring plan.

6. The 'Corporate Debtor' was also not informed of the criteria and the method being used by the credit rating agencies to evaluate the restructuring plan.

7. It was further submitted that the conduct of the 'State Bank of India' is unfair and the debt is not due or payable, as the 'Corporate Debtor' had plans to execute and implement an extremely viable expansion plan for which the 'State Bank of India' along with the consortium was to disburse loans under a Rupee Term Loan Facility dated 10th October, 2014. According to the aforesaid facilities agreement, the debt to equity ratio was to be maintained at 2:1 and accordingly, the Promoters of the 'Corporate Debtor' infused an amount of Rs. 575 Crores.

8. We have heard learned counsel for the Appellant and perused the records.

9. From the record we find that the Respondent- 'State Bank of India' claimed to have a financial debt of Rs. 306,85,08,344/- as was due from 'Uttam Galva Metallics Limited'- ('Corporate Debtor').

10. In Form-1 vide Part IV "Particulars of Financial Debt" has been shown total amount of debt granted/ disbursed to the 'Corporate Debtor'

which is equivalent to Rs. 461,38,69,230/-. However, the 'Financial Creditor' claimed the "debt in default" of Rs. 306,85,08,344/-.

11. The particulars of the Security held by the 'Financial Creditor' have been shown in Form-1 and noticed by the Adjudicating Authority. As it was not disputed that there is a debt and default and record being complete, the Adjudicating Authority admitted the application under Section 7 of the 'I&B Code'.

12. In ***"Innoventive Industries Limited Vs. ICICI Bank and Another– (2018) 1 SCC 407"***, the Hon'ble Supreme Court held 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."

13. It is not the case of the Appellant that there is no debt payable in law or in fact. Whatever grounds have been taken relate to legality of order of rejection dated 22nd December, 2017 by the 'State Bank of India' relating to restructuring plan which cannot be decided in the application under Section 7 of the 'I&B Code' as the Adjudicating Authority is not authorized/competent to determine the legality of the order of rejection of

restructuring plan dated 22nd December, 2017. Whether the refusal to disburse the committed loan amounts led to complete failure of the 'Corporate Debtor's expansion plan also cannot be taken into consideration to hold that there is no debt due and payable.

14. In the present case, as we find no case made out by the Appellant to interfere with the impugned order, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

30th November, 2018

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