

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeals (AT) (Insolvency) Nos. 141 & 146 of 2017

(Arising out of Orders dated 28th July, 2017 and 3rd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in Company Petition (IB) No. 39/Chd/Pb/2017)

IN THE MATTER OF:

Ravi Mahajan **...Appellant**

Vs.

Sunrise 14 A/S, Denmark **...Respondent**

Present: For Appellant:- Mr. Manoj Swarup, Mr. Soheb Rahman and Mr. Aditya Singh, Advocates.

For Respondent:- Mr. Virendra Ganda, Senior Advocate with Mr. Manish Kumar Jha and Mr. Yohaann Limathwalla, Advocates.

Ms. Ritu Singh, Advocate for PNB Housing Finance Ltd.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

As both these appeals arises out of common 'Corporate Insolvency Resolution Process' initiated against the Appellant-'Corporate Debtor', filed a common set of paper books, they were heard together and disposed of by this common judgment.

2. The Respondent- Sunrise 14 A/S, Denmark, a Company incorporated under the Danish Law having its registered office at Esplanaden 50, 1263 København K, Denmark, claiming itself to be the 'Financial Creditor' filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") against M/s. Muskaan Power Infrastructure Limited ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, by order dated 28th July, 2017 admitted the application, declared moratorium, adjourned the case for appointment of 'Insolvency Resolution Professional'.

By subsequent order dated 3rd August, 2017, the Adjudicating Authority appointed 'Interim Resolution Professional' and passed certain directions.

Both the aforesaid orders are under challenge in these appeals.

3. Learned counsel for the Appellant submitted that in absence of any 'record of default' or certificate from financial institution, the application under Section 7 of the 'I&B Code' was not maintainable. Referring to Part V of Form-1 of application preferred by Respondent, it was submitted that none of these documents referred to 'record of default', as required under sub-section (3)(a) of Section 7 of the 'I&B Code' not filed. Therefore, according to Appellant in absence of relevant 'record of default', it was not open to the Adjudicating Authority to admit the application under Section 7 of the 'I&B Code'.

4. Learned counsel appearing on behalf of the Respondent submitted that the aforesaid objections were not raised by the Appellant before the Adjudicating Authority. It is also submitted that following the Golden Rule of Principles of Interpretation the Court should follow the purposive interpretation to achieve the object i.e. existence of default, to the satisfaction of the Adjudicating Authority which has been done. Therefore, it cannot be alleged that there is a failure on the part of the Respondent to produce 'record of default' in terms of sub-section (3)(a) of Section 7 of the 'I&B Code'.

5. We have heard learned counsel for the Appellant and learned counsel for the Respondent and also perused the record.

6. Sub-section (3)(a) of Section 7 of the 'I&B Code' mandates the 'Financial Creditor' to enclose 'record of the default' recorded with the information utility or such other record or evidence of default as may be specified by 'Insolvency and Bankruptcy Board of India'.

7. Admittedly, the Respondent is a Foreign Company, incorporated under the Danish Law not under the Companies Act, 1956 or 2013. In the application (Form-1) while the amount of default has been shown to be USD\$ 190,210 including interest, date of default has been shown to be 16th June, 2016 and 24th August, 2016. In Part-V of Form-1, while details of financial contracts have been mentioned as against *Company Appeals (AT) (Insolvency) Nos. 141 and 146 of 2017*

document to prove 'existence of financial debt and date of default', no record of default recorded with the 'information utility' or any such other record evidence of default as specified by 'Insolvency and Bankruptcy Board of India' has been enclosed. This will be apparent from relevant portion of Part V of Form-1, as quoted below: -

“PART-V

PARTICULARS OF FINANCIAL DEBT DOCUMENTS / RECORDS AND EVIDENCE OF DEFAULT		
1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANES (IF THE CORPORATE DEBTOR IS A COMPANY)	None
XXX	XXX	XXX
8	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT. THE AMOUNT AND DATE OF DEFAULT	DOCUMENTS PERTAINING TO LOAN 15: i. Disbursement Request Letter from Corporate Debtor to Financial Creditor dated March 21, 2016 for release of funds amounting to USD 185,200.00 is annexed at “Annexure 1 (G)” hereto; ii. Notice of Assignment from Corporate

		<p>Debtor to Financial Creditor dated March 21, 2016 and Acknowledgement of receipt of Notice of Assignment dated March 21,2016 (copied to Financial Creditor) in accordance with Clause 3 of the Trade Finance Facility Agreement is annexed at <u>“Annexure I (H) Colly”</u> hereto;</p> <p>iii. Transaction details evidencing payment made by Financial Creditor to the Corporate Debtor as <u>“Annexure I (I)”</u> hereto;</p> <p>iv. Delivery Order bearing Transport Document No. 956163365 for goods to be delivered to Corporate Debtor’s Buyer YM Power Supplies and Contractor Ltd. as <u>“Annexure I (J)”</u> hereto;</p> <p>v. Bill of Lading bearing B/L No.956163365 dated July 20, 2016 is annexed as <u>“Annexure I (K)”</u> hereto;</p> <p>DOCUMENTS PERTAINING TO LOAN 23</p> <p>vi. Disbursement Request Letter from Corporate Debtor to Financial Creditor dated May 24, 2016 for release of funds amounting to USD 40,429.00 is annexed at</p>
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		<p><u>“Annexure I (L)”</u> hereto;</p> <p>vii. Notice of Assignment from Corporate Debtor to Financial Creditor dated January 4, 2016 and Acknowledgement of receipt of Notice of Assignment dated January 4, 2016 (copies to Financial Creditor) in accordance with Clause 3 of the Trade Finance Facility Agreement is annexed at <u>“Annexure I (M) Colly”</u> hereto;</p> <p>viii. Transaction details evidencing payment made by Financial Creditor to the Corporate Debtor as <u>“Annexure I (N)”</u> hereto;</p> <p>ix. Delivery Order bearing Transport Document No. 956768850 for Goods to be delivered to Corporate Debtor’s Buyer Yianakkis General Import and Export <u>“Annexure I(O)”</u> hereto;</p> <p>x. Bill of Lading bearing B/L No.956768850 dated June 28, 2016 is annexed as <u>“Annexure I (P)”</u> hereto;</p> <p style="text-align: center;">AND</p> <p>xi. Demand Promissory note dated January 21, 2016 issued by the Corporate Debtor in favour of the Financial Creditor for an amount of USD 265,334.00 plus interest as more</p>
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		<p>specifically stated in the Demand Promissory Note annexed at <u>“Annexure-I (M)”</u> hereto;</p> <p>xii. Demand Promissory note dated March 30, 2016 issued by the Corporate Debtor in favour of the Financial Creditor for an amount of USD 200,000.00 plus interest as more specifically stated in the Demand Promissory Note annexed at <u>“Annexure I (N)”</u> hereto;</p> <p>xiii. Demand Notice dated August 29, 2016 issued by the Financial Creditor to the Corporate Debtor is annexed at <u>“Annexure I (O)”</u> hereto;</p> <p>xiv. Letter dated September 4, 2016 Issued by the Corporate Debtor in response to the Demand Notice dated August 29, 2016 is annexed at <u>“Annexure I (P)”</u> hereto;</p> <p>xv. Demand Notice dated October 5, 2016 issued by the Advocates of the Financial Creditor to the Corporate Debtor along with proof of acknowledgement is annexed at <u>“Annexure I (O)”</u> hereto;”</p>
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8. On perusal of sub-section (3) of Section 7 of the 'I&B Code' and clauses therein, it would be clear that the provision of sub-clause (3) (a) of Section 7 required to be followed mandatorily and is not an empty formality. Sub-section (2) of Section 7 stipulates filing of an application under Section (1) only 'in the form and manner' and accompanied with such fees as may be prescribed.

9. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (hereinafter referred to as 'Adjudicating Authority Rules 2016' for short) has been framed by Central Government in exercise of the power conferred by Clauses (c), (d), (e), (f), of sub-section (2) of Section 239 read with sections 7, 8, 9 and 10 of the 'I & B Code'. The Adjudicating Authority Rules provide the procedure required to be followed for filing an application for 'Corporate Insolvency Resolution Process'. As per the said Rule 6, 'Financial Creditor' is required to make an application under Section 7 for initiating the 'Corporate Insolvency Resolution Process' in Form 5 accompanied with 'documents and records' required for the purpose.

10. Sub-section (3) of Section 7 of the 'I&B Code' if read with Form-5 of the Adjudicating Authority Rules, 2016, it is clear that it is mandatory to provide the relevant information and to enclose relevant record and on failure the application to be treated to be defective/incomplete and liable to be rejected.

11. In this case, we find that the application preferred by Respondent under Section 7 is not complete in absence of 'records of default', as required in terms of sub-section (3) (a) of Section 7 of the 'I&B Code'. In such case, it was not open to the Adjudicating Authority to entertain the application preferred by Respondent.

12. This apart, as we find that the application under Section 7 of the 'I&B Code' in Form-1 has not been filed by the Respondent- 'Operational Creditor', but an Advocate, Mr. Rohit Khanna, who is neither Authorised Representative nor holds any position with or in relation to the 'Financial Creditor', as required to be stated as Form-1 of the Adjudicating Authority Rules, 2016, we hold that application under Section 7 of the 'I&B Code' was not maintainable at the instance of the Respondent.

13. In view of the discussion as made above, the impugned orders dated 28th July, 2017 and 3rd August, 2017 cannot be sustained. Both the orders are accordingly set aside.

14. In effect, order (s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any,

taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The joint application preferred by Respondent under Section 7 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

15. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed and the Appellant-'Corporate Debtor' will pay the fees of the Interim Resolution Professional, for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI

6th December, 2017

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