

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

**Company Appeal (AT) (Insolvency) No. 609 of 2019**

**IN THE MATTER OF:**

**Arun Rathi & Anr.**

**...Appellants**

**Vs**

**Indian Overseas Bank & Anr.**

**...Respondents**

**Present:**

**For Appellants: Mr. M. Chandrasekhar and Mr. Pundreek Dwivedi,  
Advocates.**

**For Respondents: Ms. Niti Jain, Advocate.**

**ORDER**

**31.05.2019:** Having heard learned counsel for the Appellant and learned counsel for Indian Overseas Bank and being satisfied of the grounds, delay of six days in preferring the appeal is condoned. I. A. No. 1837 of 2019 stands disposed of.

2. This appeal has been preferred by Director of 'M/s Rathi TMT Saria Pvt. Ltd.' (Corporate Debtor), against order dated 16<sup>th</sup> April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi initiating Corporate Insolvency Resolution Process against the Corporate Debtor pursuant to application under Section 7 of the Insolvency and Bankruptcy Code, 2016 filed by the Respondent – Indian Overseas Bank.

3. Learned counsel appearing on behalf of the Appellant submits that there is dispute about the debt amount. This apart the Adjudicating Authority failed to consider that by Sanction letter dated 3<sup>rd</sup> May, 2016, which was not filed by the Bank, they reduced the sanctioned credit facility. In the said letter it was not mentioned that the account of the Corporate Debtor has been declared Non-

Performing Asset (NPA) and the sanctioned credit facility is in nature of restructuring.

4. We have heard learned counsel for the Appellant and learned counsel for Indian Overseas Bank.

5. On the record we find that as per the Financial Creditor the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) with effect from 1<sup>st</sup> December, 2015. The Corporate Debtor having defaulted, the Financial Creditor issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) on 24<sup>th</sup> April, 2017. In spite of that payment having not made, action was taken under Section 13(4) of the SARFAESI Act, 2002 on 27<sup>th</sup> July, 2017.

6. The Appellant has not disputed that the Corporate Debtor defaulted in paying the debt (loan amount). The only ground is taken is about the dispute relating to quantum of payment. In the case of **“Innoventive Industries Ltd. Vs. ICICI Bank and Ors. reported in (2018)1 SCC 407”**, the 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.*

7. In view of the aforesaid decision even if the loan amount is disputed as we find that the amount is more than Rupees One Lakh (in present case more than Rs.75 Crore), we hold that the application under Section 7 was rightly admitted by the Adjudicating Authority.

8. The other ground taken by the Appellant that the application was not filed by the authorized person cannot be entertained the application having been filed by one of the officers of the Bank.

9. In absence of any merit, the appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

(Kanthi Narahari)  
Member (Technical)

*am/sk*