NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 611 of 2018

IN THE MATTER OF:

D.R. Balakrishna Raja **...Appellant**

Versus

Indian Bank & Anr. **...Respondents**

Present:

For Appellant : **Mr. Nesar Ahmad, PCS**
Mr. Rohit Chaudhary, Advocate

For 1st Respondent: **Mr. Chitranshul Sinha and Ms. Sonali Khanna, Advocates**

O R D E R

03.10.2018 This appeal has been preferred by the Director of M/s. B.K.R. Hotels and Resorts Private Limited (Corporate Debtor) against the order dated 14th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai whereby an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**the I&B Code'**) preferred by the Indian Bank (Financial Creditor) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. Learned counsel appearing on behalf of the appellant submitted that one of the infirmity is that the application was not signed by the authorised representative. The Banker's record was not filed, which is mandatory to be enclosed in terms of proviso to Section 7(5)(b). It is also submitted that in terms

of Rule 9 (1) and (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the consent letter of the Interim Resolution Professional was also not filed.

3. However, such submission cannot be accepted in view of the decision of the Hon'ble Supreme Court in "*Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407] (Civil Appeals Nos. 8337-38 of 2017)*" wherein the Hon'ble Supreme Court observed 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."

From the aforesaid provision, it is clear that the 'Financial Creditor' is required to enclose any record of 'debt' and record relating to 'default' once such record are brought on record, the application under Section 7 cannot be rejected

4. So far as the 'Interim Resolution Professional' (IRP) is concerned, even if the consent letter has not been enclosed, in absence of any objection by the IRP, after his appointment, such ground cannot be entertained for setting aside the order of the admission.

5. It was next contended that the original amount due was shown to be Rs. 43 Crores but subsequently it has been claimed that Rs. 59 Crores is payable. However, on such ground the order of admission cannot be set aside there being 'debt' is payable to the bank by the 'Corporate Debtor' and there being 'default'. For the reasons aforesaid, we are not inclined to interfere with the impugned order. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/