

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 535 of 2019

IN THE MATTER OF:

Prayag Polytech Pvt. Ltd. ...Appellant

Vs

Hind Tradex Ltd.Respondent

Present:

For Appellant: Mr. Virender Ganda, Senior Advocate along with Mr. Vipul Ganda and Ms. Shreya Jain, Advocates

For Respondent: Mr. Ankul Raj, Ms. Nikita Raj and Priscilla, Advocates

ORDER

16.08.2019 The Appellant – Prayag Polytech Pvt. Ltd. has filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 (In short ‘**IBC**’) on 12.02.2019 pursuant to which, on notice, Hind Tradex Ltd (‘Corporate Debtor’) appeared. However, instead of argument on the question of maintainability for admission of application under Section 7 of IBC, six Directors-Applicants of the ‘Financial Creditor’ sought impleadment as party Respondent.

2. The Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi, by impugned order dated 29.04.2019 allowed the prayer for intervention by the Directors of the ‘Financial Creditor’ and to address arguments at the time of admission without impleading them as party.

3. We have heard the learned Counsels for the Appellant/‘Financial Creditor’ and Respondent. Objection has been raised as to how the Application under Section 7 of IBC is to be dealt with. How the Adjudicating Authority should

consider the matter at the stage of admission fell for consideration of Hon'ble Supreme Court in *"Innoventive Industries Ltd. Vs. ICICI Bank and Anr."* – (2018)1 SCC 407, when the Hon'ble Supreme Court observed:

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"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 nonpayment 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.

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational*

creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating*

authority that the adjudicating authority may reject an application and not otherwise.”

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4. From the plain reading of Section 7 of IBC it is clear that the Adjudicating Authority, on being satisfied and if the application is complete, after notice and hearing the ‘Corporate Debtor’, may either admit the application or reject it. The Hon’ble Supreme Court also noticed the aforesaid mandate of law. In that view of the matter, we are of the view that there is no requirement for intervention of any Directors or shareholders of the ‘Financial Creditor’ or any other party before admission of Application under Section 7 of IBC. If the application is admitted, it would be open to any aggrieved party to move before this Appellate Tribunal.

5. For the aforesaid reasons, we set aside the impugned order dated 29.04.2019. We direct the ‘Financial Creditor’ & ‘Corporate Debtor’ to appear before the Adjudicating Authority and the Adjudicating Authority on hearing the parties will pass appropriate order on merit of the case on the next date or within a reasonable time.

The appeal is allowed with the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Akc/Sk