

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

**Company Appeal (AT) (Insolvency) No. 180 of 2017**

**(Arising out of Order dated 4<sup>th</sup> September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in Company Petition No. 551(IB)/CB/2017]**

**IN THE MATTER OF:**

**Mr. Ajay Agarwal**

**...Appellant**

**Vs.**

**Central Bank of India and  
State Bank of India**

**...Respondents**

**Present: For Appellant: - Mr. Amit S. Chadha, Senior Advocate with Mr. Rajesh Bohra, Ms. Srishti Govil, Mr. Aditya Narayan, M.S Shanmuga Sundaram and Mr. Sahil Mongia, Advocates.**

**For Respondents: - Mr. Rajiv S. Roy, Avrojyoti Chatterjee, Mr. Abhijit S. Roy, Ms. Jayshree Saha, Advocates for Respondent No.1  
Mr. Arnav Dash, Advocate for Respondent no.3.  
Mr. Abhishek Agarwal, Advocate for SBI.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by Mr. Ajay Agarwal, Director/shareholder of M/s. Ashok Magnetics Limited ('Corporate Debtor') against the order dated 4<sup>th</sup> September, 2017 passed by Adjudicating Authority (National Company Law Tribunal), Chennai in Company Petition No. 551(IB)/CB/2017, whereby and whereunder the application preferred by Respondents- the Central Bank of India and the

State Bank of India ('Financial Creditors') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of moratorium has been passed and 'Interim Resolution Professional' has been appointed with directions as mentioned therein.

2. The main ground taken by the Appellant is that there is 'mismatch of figures and dates of default', as apparent from the face of the application and therefore, petition under Section 7 of the 'I&B Code' preferred by the Respondents was fit to be rejected.

3. Learned counsel appearing on behalf of the Appellant submitted that there is a 'mismatch of figures and dates of default' relating to dues of 2<sup>nd</sup> Respondent- State Bank of India, as quoted below: -

1. STATE BANK OF INDIA (R2):

Description	Amount
i. Part-IV, Form 1 at Pg. 95	Rs. 27,47,85,655.86 as on 19.10.15
ii. See SBI S.13(2), Sarfeasi Notice (Pg.679 Vol. II dt. 19.10.15)	Rs. 31,27,32,857.06 stated to be amount due on 19.10.15 @ Pg. 680  Also at Pg.681 outstanding on 19.10.15
iii. Also see Statement of account of SBI (Pg.650) @ Pg. 652 Outstanding as on 19.10.15	Rs. 27,37,67,069.81

4. It was submitted that the aforesaid objection was raised in the Ground XLV and the State Bank of India also accepted that the outstanding amount was only ₹27,47,85,655.86/-. The statement of account was also filed which reflects the balance sheet as on 19<sup>th</sup> October, 2015.

5. It was further submitted that the State Bank of India also accepted that after the account was classified as NPA on 17<sup>th</sup> January, 2015, no payment has been made.

6. In so far as 1<sup>st</sup> Respondent- Central Bank of India is concerned, learned counsel for the Appellant submitted that there is similar 'mismatch of figures and dates of default' including Cash Credit facility, Letter of Credit facility, Fixed Deposit Credit etc. Following facts have been highlighted:

“ 2. CENTRAL BANK OF INDIA (R1) :

Description	Amount
i. Part IV, Form 1 at Pg. 95	Rs. 12,96,57,829.19 as on 30.11.16
ii. See SBI S.13(2), Sarfeasi Notice (Pg.177) dt. 17.12.15 wherein NPA dt. 26.08.15	Rs.10,98,76,416.00 under 2 facilities namely: CC – Rs.620,21,860 Inland LC Devolved – Rs.4,78,54,556

## 2.1 For CC Facility:

Description	Amount
<ul style="list-style-type: none"> <li>• The breakup of the CC facility as on Pg. 106, the balance outstanding amount on date of NPA (26.08.15)</li> </ul>	Rs. 5,98,81,058.19
<ul style="list-style-type: none"> <li>➤ See Statement of Account @ Pg. 222, the Outstanding amount filed by CBI on 31.08.15</li> </ul>	Rs. 588,77,744.19
<ul style="list-style-type: none"> <li>➤ And on 19.08.15</li> </ul>	Rs. 5,81,63,324.19

## 2.1 For Inland LC Facility

Description	Amount
<ul style="list-style-type: none"> <li>• @Pg. 106 Balance outstanding on NPA 26.08.15</li> </ul>	Rs. 4,31,01,528
<ul style="list-style-type: none"> <li>➤ See Statement of Account @ Pg.230, the Outstanding amount on 01.09.15</li> </ul>	Rs. 2,60,25,000

- Thereafter FD Credit of Rs. 6,24,791 and a Devolvement of LC Debit of Rs. 35,20,000 has been shown, which are both reflected @ Pg.231 of Statement of Account.

➤ Rs. 4,31,01,528  
 (-) Rs. 6,24,791

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 Rs. 4,24,76,737  
 (+) Rs. 35,20,000

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 Rs. 4,59,96,737”

7. It was submitted that the amount as on 30<sup>th</sup> November, 2016 has been calculated is based on the figure ₹5,98,81,058.19/- as on 26<sup>th</sup> August, 2015, which figure itself does not match the statement of account.

8. Learned counsel appearing on behalf of the Respondents explained the difference and submitted that on 18<sup>th</sup> September, 2012, the 1<sup>st</sup> Respondent along with other consortium members had advanced 'fund based' and 'non-fund based' credit facility aggregating to ₹43.29 crores to the 'Corporate Debtor'. Out of the said total limits, the 1<sup>st</sup> respondent had sanctioned total credit facilities of ₹10.50 crores i.e. ₹5.00 crores in the form of 'fund based' limits and ₹5.50 crores in the form of 'non-fund based' limits.

9. According to Respondents, on account of several alleged envisaged losses, the 'Corporate Debtor' filed a reference before the erstwhile 'Board for Industrial and Financial Reconstruction' (BIFR) under the provision of the Sick Industrial Companies (Special Provisions) Act, 1956 ("SICA") (now repealed), based on its audited accounts for the financial year ended on 31<sup>st</sup> March, 2015 was calculated. It was brought to our notice that the Respondents have also taken steps under Section 13(2) of the SARFAESI Act against the 'Corporate Debtor' as well as the guarantors to repay entire outstanding as on 16<sup>th</sup> December, 2015. The parties have moved before the Debt Recovery Tribunal-II, Chennai, being O.A. No. 114/2017,

seeking recovery of the outstanding loan amount. The said matter is pending before the Debt Recovery Tribunal. According to learned counsel for the Respondents, the current dues on calculation was reflected in the Form-1, which was filed under Section 7 of the 'I&B Code'.

10. Learned counsel appearing on behalf of the Appellant relied on decision of this Appellate Tribunal in ***“M/s. Starlog Enterprises Limited Vs. ICICI Bank Limited— Company Appeal (AT) (Insolvency) No. 5 of 2017”***, disposed of on 24<sup>th</sup> May, 2017 and submitted that there being a mismatch of figures and date of default in the said appeal, this Appellate Tribunal set aside the order initiating 'Corporate Insolvency Resolution Process'. However, such submissions cannot be accepted as in the case of ***“M/s. Starlog Enterprises Limited (supra)”*** this Appellate Tribunal noticed that the 'Financial Creditor'-ICICI Bank Limited in their notice issued under sub-rule (3) of Rule 4 of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' shown different claim whereas different claims were shown in the petition filed under Section 7 (Form-1). Because of **'misleading statement'**, the Adjudicating Authority reached to a conclusion of default which was contrary to the application preferred by 'Financial Creditor'. Such **'misleading statement'** having been made by the 'Financial Creditor' in the said case, this Appellate Tribunal interfered with the order impugned therein.

11. In the present case, the Respondents have explained the difference between the claim amount as made on 19<sup>th</sup> October, 2015 and as on the date of filing in the year 2017, which has been calculated, taking into consideration the interest payable in the meantime and the amount, if any, recovered under other proceedings. Apart from the aforesaid fact, we are of the view that mere mismatch of the figures will ipso facto not invalidate the order initiating ‘Corporate Insolvency Resolution Process’ under Section 7 of the ‘I&B Code’.

12. The provisions of Sections 7 and 9 of the ‘I&B Code’ fell for consideration before the Hon’ble Supreme Court in **“M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.— 2017 SCC OnLine SC 1025”**, wherein the Hon’ble Supreme Court observed and held:

*“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 sub-section (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.”*

13. The decision aforesaid makes it clear that in case a ‘Corporate Debtor’ 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. The Hon’ble Supreme Court further held that **“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.”***

14. In the present case, the Appellant raised dispute and pleaded mismatch of debt amount, but it has not been disputed that some debt is “due” and is payable to the ‘Financial Creditor’ and the ‘Corporate Debtor’ has defaulted in making such payment.

15. For the reasons aforesaid, no interference is called for against the impugned order dated 4<sup>th</sup> September, 2017 passed in Company Petition No. 551/(IB)/2017.

16. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI

13<sup>th</sup> December, 2017

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