NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 226 & 227 of 2018

IN THE MATTER OF:

Neeraj Saluja & Anr. **...Appellants**

Versus

State Bank of India **...Respondent**

Present:

For Appellant : **Mr. Arvind Kumar Gupta and Ms. Heena George, Advocates**

For Respondent: **Mr. Arun Kathpalia, Senior Advocate with Mr. Siddhant Kant, Mr. Shantanu Chaturvedi, Ms. Moulshree Shukla and Ms. Charu Bansal, Advocates**

O R D E R

16.10.2019 The Respondent – 'State Bank of India' filed an application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the **I&B Code'**) for initiating the 'Corporate Insolvency Resolution Process' against 'SEL Manufacturing Company Limited'. The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh by impugned judgment dated 11th April, 2018 admitted the application and by another order dated 25th April, 2018 appointed the 'Interim Resolution Professional'. Both the aforesaid orders are under challenge in these appeals.

2. Learned counsel appearing on behalf of the Appellant (Promoter) submitted that 'SEL Manufacturing Company Limited' (Corporate Debtor) is the Textile Company and the Central Government provides statutory interest subsidy to textile units at the rate of 3-5%. According to the scheme, the

interest subsidy is granted on the term loan eligible for the same. As per the scheme, the claim for interest subsidy is to be filed, with the Ministry of Textiles, on quarterly basis by all the banks who have sanctioned the term loan. The claim amount is released by the Ministry of Textiles, directly into the Bank account to which the subsidy relates. The company does not have any role in filing of claim for subsidy.

3. It is further submitted that though it was the duty of the Respondent – 'State Bank of India' to file benefit (claim) of statutory interest subsidy but the Bank did not file any claim with the concerned authorities. In the result the default occurred.

4. It is also submitted that if as per 'Terms and the Guidelines' of the Central Government, the statutory interest would have been asked for by the 'State Bank of India', there would have been no 'default' and because of the *mala fide* intent on the part of the Bank the said amount triggered the 'Corporate Insolvency Resolution Process'.

5. Learned counsel for the Appellant contended that the loss of subsidy was calculated at Rs. 267 Crores and therefore, the 'Corporate Debtor' in fact sought for set off out of the claimed amount.

6. The aforesaid issue has not been taken into consideration and the Adjudicating Authority passed the impugned order and admitted the application filed under Section 7 of the I&B Code.

7. In **"*Innoventive Industries Ltd. v. ICICI Bank,*"** - *(2018) 1 SCC 407]* the Hon'ble Supreme Court while dealing with the issue relating to admission of application under Section 7 observed and held :

> ***"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 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."

8. From the aforesaid finding of the Hon'ble Supreme Court, it is clear that if there is a default of more than Rupees One Lakh and the application otherwise is complete, such application under Section 7 of the I&B Code is to be admitted. It has been held that 'debt' may include even disputed claim. The Adjudicating Authority cannot decide the question of liability of one or other party relating to asking for subsidy from the Central Government which cannot be claimed as a matter of right which will all be depending on the functioning of the company.

9. For the reasons aforesaid, we are not inclined to interfere with the impugned orders dated 11th April, 2018 and 25th April, 2018. Both the appeals are accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

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