

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

**Company Appeal (AT) (Insolvency) No. 427 of 2019**

**IN THE MATTER OF:**

**Raghav Sharma**

**...Appellant**

**Vs**

**IVL Finance Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Sangram Patnaik, Ms. Tania Sharma and Ms. Rukmini, Advocates.**

**For Respondents:**

**ORDER**

**22.04.2019:** 'IVL Finance Pvt. Ltd.' (Financial Creditor) filed application under Section 7 against 'Incom Cables Private Limited' (Corporate Debtor), which was admitted by the Adjudicating Authority by impugned order dated 8<sup>th</sup> April, 2019. The Appellant, shareholder of the Corporate Debtor has challenged the same mainly on the ground that there is no default.

2. Learned counsel appearing on behalf of the Appellant submits that in terms of the agreement the total amount is to be paid by 5<sup>th</sup> June, 2020. There were three times defaults for which the Respondent issued notice, pursuant to which the default amount has been paid, therefore, according to him there is no default and in absence of default the application under Section 7 is not maintainable and the Adjudicating Authority had no jurisdiction to entertain the application.

3. He further submitted that there was mismatch in the amount which according to the Adjudicating Authority is to be determined by the Resolution Professional or the Committee of Creditors. According to him, it is against the provisions of the I&B Code and also against the decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors. reported in (2018)1 SCC 407*", and "*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors., Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73*".

4. Admittedly, the loan agreement was executed between the parties on 27<sup>th</sup> July, 2017, in the said agreement the Directors of the Corporate Debtor namely Mr. Raghav Sharma and Ms. Rupa Rani Sharma were the co-borrowers. The clause dealing with the 'event of default' committed by the Corporate Debtor in the agreement reads as under:-

*"12. EVENTS OF DEFAULT*

*12.1 Each of the events or circumstances set out herein is an Event of Default.*

*(a) Non-payment*

*The Borrower(s) do not pay by the Due Date(s) the Borrower's Dues (or part thereof) and /or any amount payable pursuant to a Loan Document.*

*(b) .....*

- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (i) .....

12.2 *On an at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator (i) cancel/recall the Loan whereupon the Borrower's Dues shall become immediately repayable/ payable by the Obligor(s); and/or (ii) initiative/ exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws (including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender)., and/or (iii) enforce, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose of in any manner .....*”

5. From the aforesaid terms of agreement it is clear that the moment there is a default it is open to the Financial Creditor to recall the total loan amount. It is not in dispute that the Financial Creditor in view of the three defaults recalled the loan amount though amounts payable as per three defaults were made good.

6. In the case of *“Innoventive Industries Ltd. Vs. ICICI Bank and Ors. reported in (2018)1 SCC 407”*, the Hon’ble Supreme Court observed:-

*“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.*

**...x...x...x..**

**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.”*

6. From the aforesaid fact it will be evident that even if debt is disputed, there being a default of payment of more than Rupees One Lakh, on recall of loan amount, the application under Section 7 was maintainable. So far as the mismatch of the claim is concerned, the Respondent is required to file the claim before the Resolution Professional. The Resolution Professional is to collate the claim, though he has no right to decide the claim as decided by Hon’ble Supreme Court in *“Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors., Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73”*. The Resolution Professional has right to collate the claim and on verification of the claim, determines the claim payable or part of it in terms with the resolution plan.

7. In view of the aforesaid fact and position of the law, we are not inclined to interfere with the impugned order. In absence of any merit, appeal is dismissed.



No costs. However, this order will not come in the way of the Appellant to settle the claim in terms of the provisions of the I&B Code including Section 12A.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

(Kanthi Narahari)  
Member (Technical)

*am/gc*