NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 65 of 2019

IN THE MATTER OF:

Sanjeev Azad & Anr. **...Appellants**

Vs.

Punjab National Bank & Anr. **...Respondents**

Present: For Appellants: -Mr. Manish Jain, Mr. Divya Sharma, Mr. Abhishek Anand and Ms. Chetna Singh, Advocates.

O R D E R

23.01.2019– This appeal has been preferred by the Appellants, Directors and Shareholders of 'Ria Constructions Limited'- ('Corporate Debtor') against the order dated 11th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, whereby and whereunder the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the 'Punjab National Bank' against the 'Corporate Debtor' has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

2. Learned counsel appearing on behalf of the Appellants submits that Form-1 was not complete as appropriate records were not enclosed with the Form-1 (application under Section 7).

3. It is further submitted that the 'Punjab National Bank' had issued a notice dated 16th July, 2016 under Section 13(2) of the 'Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and there is discrepancy in amount of sale of one of the mortgaged properties and thereby there is mismatch with regard to the amount that is shown to be payable. It is submitted that this fact has not been disclosed in the petition.

4. Having heard learned counsel for the Appellants, we are not inclined to accept such submissions. It is made clear that the application under Section 7 is not a petition. In fact, no affidavit is required to be made, nor any pleadings is to be made like a litigation.

5. In ***"Binani Industries Limited Vs. Bank of Baroda & Anr. – Company Appeal (AT) (Insolvency) No. 82 of 2018 etc."***, this Appellate Tribunal by its judgment dated 14th November, 2018 held that the 'Corporate Insolvency Resolution Process' is not a money claim nor it is a litigation.

6. In ***"Innoventive Industries Limited v. ICICI Bank and Another- (2018) 1 SCC 407"***, the Hon'ble Supreme Court 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."

7. From the decision of the Hon'ble Supreme Court, it is clear that the meaning of "debt" if read along with Section 3(11) means "claim" which includes even if it is disputed claim. As per the said decision, if the Adjudicating Authority is satisfied that a default has occurred, 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. Thus, it is clear that even when there is a default then the only plea that can be taken is that the debt is not payable in law or in fact.

8. In the present case, it is not the case of the Appellants that debt is not payable in law or in fact. The record as we gone through, we find that there is sufficient record shown in Part IV and Part V on the basis of that Adjudicating Authority has satisfied that the Form-1 is complete.

9. We find no merit in this appeal. However, this order will not come in the way of the Appellants to settle the claim with the creditors and to

take steps and may move before the 'Committee of Creditors' for orders in terms of Section 12A of the 'I&B Code'.

The appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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