

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

**Company Appeal(AT)(Insolvency) No. 02 of 2018**

**IN THE MATTER OF:**

**BCL Homes Ltd.**

**...Appellant**

**Vs**

**Canara Banks & Ors.**

**....Respondents**

**Present:**

**For Appellant: Mr. K. Dutta, Mr. Ashutosh Gupta, Mr. Nishant Jain and Mr. Gaurav Rana, Advocates**

**For Respondent: Mr. Vikalp Mudgal, Advocate for Respondent No. 1.**

**Ms. Manisha Chaudhury, Ms. Avanti Chandela, Mr. Nahush Jain, Advocates for Respondent No. 2**

**Mr. Rishi Raj and Ms. Kavita Singh, Advocates for Respondent No. 5.**

**ORDER**

**08.03.2018** The Appellant (Corporate Applicant) preferred an application under Section 10 of the Insolvency & Bankruptcy Act, 2016 (in short 'I & B Code'). The Adjudicating Authority, (National Company Law Tribunal) Chandigarh Bench, Chandigarh by impugned order dated 28.11.2017 in CP(IB) No. 98/Chd/CHD/2017 taking into consideration the allegations made by the home buyers and others rejected the application with following observations:

*“35. I am of the considered view that these factors could be taken into account in case the corporate debtor had come clean and not after it had disposed huge chunk of land in the past few months before filing of this petition after coming into force the provisions of the*

*Code. It seems that the only immovable property which is mortgaged with the Bank as security has been left. Learned Counsel for financial creditor also submitted that none of the sale deed has been routed through the bank though there was huge amount of liability which the corporate debtor had incurred.*

*36. In view of the aforesaid discussion, I find no merit in the petition and the same is rejected. Copy of this order be communicated to the Corporate Debtor and the Financial Creditor.”*

2. Learned Counsel appearing on behalf of the Appellant submits that the application under Section 10 of 'I & B Code' was complete and no finding has been given that the said application is defective or incomplete. Even if it is presumed that the application was incomplete, in such case the Adjudicating Authority should have allowed time to remove the defect, if any. It is submitted that the Application under Section 10 of 'I & B Code' cannot be rejected on extraneous grounds beyond the scope of 'I & B Code'.

3. Learned Counsel appearing on behalf of 1<sup>st</sup> Respondent, Canara Bank, submits that the Appellant was requested to file additional affidavit to show that the assets of the company it has sold to the close relatives of Directors prior to the filing of application under Section 10 of 'I & B Code'. However, we find that there is no such stipulation made in Form-6, which is the format of application under Section 10 of 'I & B Code'. The I & B Code or Rules or Regulations do not stipulate to provide details of the lands sold or assets transferred prior to the filing of application under Section 10.

4. Next it was contended that the Appellant has suppressed certain facts, but we are of the view that such grounds cannot be shown to reject the application till it is shown that such facts were required to be stated in terms of Form-6.

Some of the Respondents and the home buyers and others made various allegations against the 'Corporate Debtor', but we are not going to decide such allegation in this appeal as it is not required to be decided while dealing with application under Section 10.

5. Similar issue fell for consideration before this Appellate Tribunal in **"M/s Unigreen Global Private Ltd. Vs. Punjab National Bank & Ors."** in Company Appeal (AT) (Insolvency) No. 81 of 2017 wherein this Appellate Tribunal, taking into consideration the provisions of Section 10 of 'I & B Code', by its judgment dated 01.12.2017 observed and held as follows:

*"20. Under both Section 7 and Section 10, the two factors are common i.e., the debt is due and there is a default. Sub-section (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in "Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as "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 within 7 days of receipt of a notice from the adjudicating authority".*

*21. In an application under Section 10, the 'financial creditor' or 'operational creditor', may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I & B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit*

*the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.*

22. *Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the informations as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) rules, 2016 subject to ineligibility prescribed under Section 11. If all informations are provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.*

23. *Any fact unrelated or beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the ‘Corporate Applicant’ has not disclosed disqualification, if any, under Section 11. Non-disclosure of facts, such as that the ‘Corporate Debtor’ is undergoing a corporate insolvency resolution process; or that the ‘Corporate Debtor’ has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hand.”*

“25. *Similarly, if any action has been taken by a ‘Financial Creditor’ under Section 13(4) of the SARFAESI Act, 2002 against*

*the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.*

26. *Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.*

27. *It is also desirable to refer to Section 238 of the I & B Code, as quoted below:*

*“238. Provisions of this Code to override other laws - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

*In view of the aforesaid provision also, I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc.”*

“34. *Further, as we find that the Adjudicating Authority has noticed the extraneous factors unrelated to the Resolution process not required to be disclosed in terms of Section 10 or Form 6 and as the suits referred to relate to dispute between third parties, and not the Corporate Debtor, we hold that the Adjudicating Authority erred in rejecting the application on the ground of suppression of facts.”*

6. The case of the Appellant being covered by decision of this Appellate Tribunal in **“M/s Unigreen Global Private Ltd. Vs. Punjab National Bank & Ors.”**, we set aside the impugned order dated 28.11.2017 and remit the case to the Adjudicating Authority to consider application under Section 10 of ‘I & B Code’ afresh. If the application is otherwise complete, it will admit the application. However, in case it is incomplete, the Adjudicating Authority will grant time to the Appellant to remove the defects. If any statement made in Form-6 is misleading, it will be open to the Adjudicating Authority to pass appropriate order in accordance with law. The appeal is allowed with aforesaid observation. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansilal Bhat]  
Member (Judicial)

*Akc/gc*