

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 465 of 2019

IN THE MATTER OF:

Ashok Kumar Bansal **....Appellant**

Vs.

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

Present:

For Appellant: Mr. Rajiv Ranjan, Senior Advocate with Ms. Rukmini Mukherjee and Ms. Shankasi Mishra, Advocates.

For Respondents: Mr. Rajesh Rattan, Advocate for R-1.

Ms. Ruchi Sindhwani, Senior Standing Counsel for Official Liquidator with Mr. Amish Tandon, Ms. Megha and Mr. Ayush, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The 'Punjab National Bank'- ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Hanung Toys and Textiles Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by impugned order dated 28th March, 2019 admitted the application.

2. Learned counsel for the Appellant submitted that the order of liquidation has already been passed by the Hon'ble High Court of Delhi and 'Official Liquidator' has already been appointed and therefore, the application under Section 7 of the 'I&B Code' was not maintainable.

3. On the other hand, according to counsel for the 'Punjab National Bank', in spite of admission of the order of liquidation passed by the Hon'ble High Court of Delhi, the application under Section 7 is maintainable in absence of any bar under Section 11 of the 'I&B Code'.

4. The 3rd Respondent ('Official Liquidator') had been appointed as the Liquidator of the 'Corporate Debtor' in Company Petition No. 518 of 2013 vide order dated 12th July, 2018 passed by the Hon'ble High Court of Delhi. The citations to this effect were published in the Newspapers namely—'Statesman' (English) and 'Veer Arjun' (Hindi) on 10th January, 2019. Pursuant to the aforesaid order, the 3rd Respondent took over possession of the Factory of the Company situated at 265, Bhagwanpur Industrial Area, Roorkee, Uttrakhand on 18th August, 2018 and 9 Security Guards for 8 hours shift duty including 1 Gunman of Manasvi Security Agency were deployed for watch and ward of the property.

5. The possession of the Corporate Office situated at 108-109, NSEZ Phase-II, Noida (U.P) was also taken over on 1st September, 2018 and Security Guards having been appointed.

6. The brief fact of the case is that the 'Corporate Debtor' availed loan from the consortium of the 'Punjab National Bank' pursuant to an agreement dated 16th January, 2013. Hypothecation Agreement of Current Assets, Packing Credit Limits etc. was executed by the 'Corporate Debtor' in favour of the 'Punjab National Bank' on 9th May, 2013 and 29th March, 2014.

7. A 'Master Restructuring Agreement' was also executed by the 'Corporate Debtor' in favour of the 'Punjab National Bank' on 30th June, 2014, but the Company failed to fulfil its commitments under 'Corporate Debt Restructuring Scheme'. Therefore, the 'Corporate Debt Restructuring Scheme' was revoked and accounts were treated as NPA since 31st December, 2013.

8. Notice under Section 13(2) of the 'SARFAESI Act, 2002' was served on 12th October, 2015 by the 'Punjab National Bank' on the 'Corporate Debtor' followed by Notice under Section 13(2) by the 'Bank of Baroda' on the 'Corporate Debtor' on 17th November, 2015. 'Edelweiss Asset Reconstruction Company' also served notice under Section 13(2) of the 'SARFAESI Act, 2002' on 5th November, 2015. Many other Banks members of the Consortium issued Section 13(2) Notice demanding their NPA arrears of amount. Symbolic/ physical possession of the mortgaged immovable properties of the Company was taken by the 'Punjab National Bank' in March, 2016.

9. Pursuant to petition of winding up, the 'Official Liquidator' was appointed on 12th July, 2018. The 'Official Liquidator' took the possession from the 'Punjab National Bank' consortium of the mortgaged property land and building at Village Lakeshwari Near Bhagwanpur, measuring 25.82 acres, Roorkee, Haridwar, Uttarakhand along with all the plant, machineries, stocks, goods, etc. on 18th August, 2019.

10. On 1st September, 2018, the 'Official Liquidator' also took the possession from the 'Punjab National Bank' consortium of the mortgaged property land and building at Plot No. 108 & 109, NEPZ, Noida. It is only thereafter petition under Section 7 of the 'I&B Code' was filed on 28th March, 2019.

11. Similar issue fell for consideration before the Hon'ble Supreme Court in **"Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd.- Civil Appeal No. 818 of 2018"**. In the said case, the Hon'ble Supreme Court noticed that the winding up petition was filed against the 'Corporate Debtor' (Company) against which application under Section 7 of the 'I&B Code' was filed subsequently and observed:

17. The resultant position in law is that, as a first step, when the Code was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be

transferred to the NCLT and treated as petitions under the Code. However, on a working of the Code, the Government realized that parallel proceedings in the High Courts as well as before the adjudicating authority in the Code would stultify the objective sought to be achieved by the Code, which is to resuscitate the corporate debtors who are in the red. In accordance with this objective, the Rules kept being amended, until finally Section 434 was itself substituted in 2018, in which a proviso was added by which even in winding up petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code, which would then have to be transferred by the High Court to the adjudicating authority and treated as an insolvency petition under the Code. This statutory scheme has been referred to, albeit in the context of Section 20 of the SICA, in our judgment which is contained in Jaipur Metals & Electricals Employees Organization Through General Secretary Mr. Tej Ram Meena vs. Jaipur Metals & Electricals Ltd. Through its Managing Director &Ors., being a judgment by a Division Bench of this Court dated 12.12.2018.”

corporate applicant in respect of such corporate debtor.”

22. This Section is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. From a reading of this Section, it does not follow that until a liquidation order has been made against the corporate debtor, an Insolvency Petition may be filed under Section 7 or Section 9 as the case may be, as has been held by the Appellate Tribunal. Hence, any reference to Section 11 in the context of the problem before us is wholly irrelevant. However, we decline to interfere with the ultimate order passed by the Appellate Tribunal because it is clear that the financial creditor’s application which has been admitted by the Tribunal is clearly an independent proceeding which must be decided in accordance with the provisions of the Code.”

13. In view of the decision of the Hon’ble Supreme Court, we hold that the application under Section 7 was maintainable and therefore, no interference is called for.

The appeal is dismissed with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

NEW DELHI
25th November, 2019

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