

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency)No.777 of 2018

IN THE MATTER OF:

**International Asset Reconstruction Company
Pvt Ltd**

...Appellants

Vs

Paramount Mills Pvt Ltd.

...Respondents

Present: Mr. Chitranshul Sinha, Advocate for appellants.

ORDER

13.03.2019- The appellants, M/s International Asset Reconstruction Company Pvt Ltd, (financial creditor) filed an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IB Code) for initiation of Corporate Resolution Process against respondent, M/s Paramount Mills Private Limited. The Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai vide impugned order dated 30th October, 2018 rejected the application on the ground that the amount claimed by the financial creditor is Rs. 6,08,6,428.53 whereas the corporate debtor has disputed the claim and stated that a sum of Rs.2.16 crore have been paid. The other grounds taken is that the civil suits are pending and there is pre-existing dispute between the parties.

2. Notice was issued on respondents. One Mr. C.R. Jaya Sukin, Advocate appeared on 30.01.2019 on behalf of the respondents. The service report also shows that notices were also sent by speed post by this Appellate Tribunal and they have been delivered. Appellant has also filed proof of service. However, they have not filed their reply affidavit.

3. In the case of **Innoventive Industries Ltd Vs ICICI Bank** the Hon'ble Supreme Court while discussing the provisions of Section 7 of IB Code held as follows:

“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.

4. In view of the above position it is clear that Section 7 application cannot be rejected on the ground that the claim has been disputed.
5. The respondent have not taken plea that the amount is not payable in law or in fact. As per Hon'ble Supreme Court decision an application under Section 7 is to be entertained even if it a disputed claim.
6. In so far as pendency of civil suits or existence of dispute are concerned it cannot be a ground to reject the application under Section 7. The Adjudicating Authority has failed to appreciate the provisions of Section 7 and the object of Insolvency and Bankruptcy Code. The Adjudicating Authority having wrongly rejected the application on the ground of pending civil suits are existence of dispute, the impugned order is set aside.

7. The case is remitted to Adjudicating Authority for admission of the case after notice to the Respondent, to enable him to settle the claim in the meantime. The appeal is allowed with the aforesaid observations. No order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Bm/sk